

Event: Public Hearing
Review of the Roles of the Crown Officers

Date: 30th March 2010

Review Panel: Lord Carswell, Chairman
Mrs M-L Backhurst
Mr G Crill
Dr S Mountford
Mr I Strang

Witnesses: Mr R R Jeune CBE

THE CHAIRMAN: Mr Jeune, ladies and gentlemen, welcome to the public hearing of the review body which has been appointed by the States to review the roles of the Crown Officers in Jersey. The members of the Panel, whom I think we are known to and I need not re-introduce them, after I made a public preliminary statement yesterday. Members of the public are welcome at all these hearings and we encourage people to take an interest in the proceedings and also to send us any submissions that they would like to make.

What we would make clear again is that this is not an inquisition into how the holders of the offices have performed their roles, nor is there any suggestion against the integrity and quality of the respective holders. What we are looking at is a matter of principle, whether the present constitutional situation in Jersey is sufficient to satisfy the requirements of 21st century ideas of democracy or whether some amendment needs to be recommended.

We are holding this hearing in public. All of the hearings will be in public as far as possible. The proceedings will be transcribed. They are being recorded now and will be transcribed. Mr Jeune, you have an opportunity to check the transcript to make sure it is an accurate reflection of anything that you have said and then the transcript will be put onto the website.

We are simply seeking to inform ourselves about the working of the institutions and to hear opinions and at the end of the process then we shall consider our conclusions and make recommendations to the States.

So may I extend a particular welcome to you, Mr Jeune, for giving us the benefit of your experience? We have the submission which you addressed in your letter of 23 February. Is there anything you would like to add to that, or anything further you wish to submit to us before I ask the members of the panel if they have any questions?

MR JEUNE: My Lord, ladies and gentlemen, thank you for inviting me to take this opportunity this morning of adding to my written submission if I may. I think no doubt you have sensed from my submission, and I do now say that I feel quite strongly on the matter concerning the retention of the Bailiff in the present position that office now holds. Could I refer very briefly to three reports that have come out over the years?

THE CHAIRMAN: Yes, please do.

MR JEUNE: Firstly, the report in 1947 of the Privy Council. The members of that body were all Privy Councillors and Chuter Ede, the Home Secretary, Rab Butler, and other distinguished people, chaired by a distinguished lawyer, Sir John Beaumont. I remember listening in occasionally to that body who found that there is nothing wrong with the duality of role held by the Bailiff.

Then in 1969-1973 we had the Royal Commission, Lord Kilbrandon, the chair of that report, and they went into the matter in great depth concerning the whole constitution and the role of the Bailiff was discussed and there was a strong submission from them or answer with regard to the role of the Bailiff where they say that, in the light of no strong evidence to the contrary, no change in the office could possibly be justified.

The third report I want to refer to is one held by the Island of Guernsey, our sister island, in the year 2000. It was really looking into the constitution of the States, as was the Clothier report in Jersey. The Guernsey one was chaired by Advocate Peter Harwood. The point I want to make about that is the reference in that report to the McGonnell case. It was a Guernsey case that was referred to the Court of Human Rights, and that on the very point

was taken by the plaintiff and was decided against the plaintiff and that there was nothing wrong in the duality of role. In the Guernsey report, they finished by saying:

“In the light of that judgment, the duality of role is no longer an issue.”

So, obviously, Guernsey, or that body, examining the constitution in Guernsey were no longer prepared to discuss it and it is an important case as far as the Channel Islands is concerned.

Can I just refer to one further point?

THE CHAIRMAN: Yes.

MR JEUNE: And that raises the fact that the Bailiff holds a position and there are three prongs to his office. One is judge of the Royal Court, the other is President of the States and the third, and quite important, as chief citizen of the island and in some ways ambassador. The Bailiff is the person who meets and greets the Queen, the Royal Family. He presides over state occasions, state dinners, receives foreign dignitaries and, on occasions, goes forth from Jersey to foreign lands on behalf of Jersey.

I have accompanied two of the Bailiffs on several occasions to Normandy, Brittany and, on one occasion, Paris. I know that the Bailiff and the Constable of St Helier are going to visit the town in Germany, later this year, where our people, who were taken away from the island during the occupation, were housed or in a camp, and cementing relations between the German town and the Island of Jersey. Bailiffs have been to Madeira, for example, on two or

three occasions, and I say, particularly our visits to France, Normandy especially Monsieur Le Bailli was looked upon quite as something special, a really special visit.

So that is an important part of the Bailiff's office and I say there's three very important parts of his role and they are all of a piece and, in my view, you couldn't take, for instance in the Clothier report, he doesn't make any great argument, but there is a reference to the idea of possibly the Bailiff remaining as judge and chief citizen.

THE CHAIRMAN: Yes.

MR JEUNE: I find that difficult that if the Bailiff had no access to the States at all whilst, I suppose you would say not impossible for a judge, and with respect to a judge but it would be unusual.

THE CHAIRMAN: But one would not expect it normally, Mr Jeune?

MR JEUNE: You wouldn't expect it normally and that the judge would be the chief citizen and the man who presided over state occasions and went forth to meet and greet on behalf of the Island of Jersey when required.

I think perhaps you might want me later to say something about what I think would be the other side, rather wrong, in the cost of labour and money. May I do that now?

THE CHAIRMAN: Of course.

MR JEUNE: If the Bailiff was not President of the States, then it is suggested that the States would elect a speaker. It's a small island with a small Assembly, 53 in number, and there are some people who want to reduce that number of States Members. It's in a particular state now of trying to settle down into a new system with some difficulty in my view, and the next few years are going to be rather crucial.

But who do you elect? If they elect one of the really bright individuals as speaker and perhaps a deputy speaker, you then denude the States of somebody who could be an outstanding minister to help forward the island. If, on the other hand, you choose a lesser mortal from the members, then chaos could ensue. I've sat when one of the Bailiffs was ill, I've presided on a number of occasions and it's amazing sitting in the chamber, as I have for many years as a Deputy and then Senator, then suddenly to be raised up and presiding over the gathering is quite a different experience I've found. But in terms of personality you see, I think it would be difficult. And whereas you get a Bailiff who normally occupies the office for say a period of ten years, something like that, there could be more coming and going as far as the choice of a speaker in the States is concerned.

As far as the costs are concerned, well again there would no doubt be a speaker, a deputy, a secretary and a separate office and, in my view, a completely unnecessary cost. It's not as if the States, as the parliament in Jersey met continuously, they meet spasmodically. I forget how many times a year, but not a tremendous number and so that speaker would be unemployed, as it were, not having a ministerial job for quite a number of days in the year.

Thank you very much for allowing me to make that addition to my submission and I rest, I leave it there.

THE CHAIRMAN: If I may put what you have put much more elegantly, when we put it in a very colloquial way, if the Bailiff were no longer speaker and a foreign dignitary, a head of state rang up and said, "I want to speak to the boss" at present there would not be much doubt that they would say at this end, "Oh, you want the Bailiff?" It might be more difficult, I think is the thrust of what you are saying, to say that any person is then the leading citizen?

MR JEUNE: Yes. I do say.

THE CHAIRMAN: Well, thank you very much. Now may I ask members, Dr Mountford?

DR MOUNTFORD: I would be interested to know, when you were talking about the Bailiff you were talking about his status, how people saw him as the head of Jersey.

MR JEUNE: Sorry, in what way?

DR MOUNTFORD: Well the head of Jersey. And as you were talking, I got the impression that if he was not head of the States, he would lose that status. Do you think it is possible that he still could be head of Jersey, the most important person in Jersey, but not be the speaker of the States?

MR JEUNE: I find it difficult to accept that because he would then be judge and chief citizen of Jersey without having any contact, he would then in that case hardly know even the Members of the States, not having constant contact with them, and yet he would be, you say, head of Jersey? I think, to say the very least, it would be unusual because he would be judge and head of Jersey and I find it unusual. I suppose it could happen, but I find it difficult to see that. It would be more unusual than what exists at the moment.

DR MOUNTFORD: I am really fascinated as well about your experience of having to lead the States. You did say it was a very, very different position, that you were one minute a politician and the next minute leading the States. Having gone through that experience, do you think particular skills are needed?

MR JEUNE: Yes, I do think that having legal training is quite essential. I suppose essential is perhaps a strong word, but it really seems to me that certainly on the part of the Bailiff's judicial experience it helps him, and I say in my submission that I had 35 years continuous service in the States and always found, always, that the Bailiffs acted in a very, very proper and judicial capacity presiding over the States. And I think that it really needs some degree of legal experience. I have also presided over numerous tribunals and things over the years, I think that it does help really.

DR MOUNTFORD: So you think having a legal background is absolutely necessary?

MR JEUNE: Yes.

DR MOUNTFORD: Can I go back to your wealth of experience as a Member of the States and having been subject to six Bailiffs and what has been suggested in previous discussions is that Jersey evolves, it changes gradually. Can you say over that period of time that you have noticed any changes in the relationship between the Bailiff and States members?

MR JEUNE: Not, not really. I think the Bailiffs I've known (even although I was not in the States with Lord Coutanche) and right through, they have behaved in a similar way. I don't know if you would call it extra judicially, but certainly impartially, firmly and certainly in the

years that I was there, the States, especially not having parties, it makes it easier for whoever is presiding to preside.

It's difficult. I sometimes think that having now a ministerial system and no parties is another difficulty because one would expect with a ministerial system that follows that we have a party system. I think that generally in Jersey, people are not strongly in favour of parties. Whether that will evolve, I don't know. But certainly over the years, because there was no party system and because the Bailiffs had that judicial experience, on the whole the States have been fairly easy to preside over.

DR MOUNTFORD: There have been suggestions that there is a very thin line between presiding and giving advice and moving into political areas. During your years of experience, was there any evidence of that?

MR JEUNE: Of the?

DR MOUNTFORD: Of moving, becoming ... because when you are giving advice I suppose you could be construed as being political. There have been some suggestions that Bailiffs do move into political areas.

MR JEUNE: I think they would only give advice within the rules of the House.

DR MOUNTFORD: All right, on a Standing Order.

MR JEUNE: I can't think an example. They wouldn't give advice - there are rules of the House, of the States Assembly and they would only give rulings and advice within those parameters.

DR MOUNTFORD: Were there ever any issues raised by members that they felt that the Bailiff, any Bailiff, was being political?

MR JEUNE: I, certainly as I say in my submission, I can't think of any occasion. I know 35 years is a long time and one's memory is not always good but I have a fairly good memory and I can't think of any occasion. There might be, but I can't recall but certainly I don't think there was any dramatic occasion which springs to mind. I think the answer is no.

DR MOUNTFORD: Can I ask you one final question, because I was fascinated by this? You said, "If there were any changes, there should be changes in Guernsey or links with Guernsey, if there were any changes in roles". I find that fascinating because of the usual distinction that we are different from Guernsey.

MR JEUNE: Any changes we were to make between Jersey and Guernsey?

DR MOUNTFORD: That any move for changes made to the office of Bailiff in our sister island of Guernsey and it would be odd if one island changed and not the other.

MR JEUNE: Yes. Well, I think that's true. I think there is a, I think a very, on the whole, deep feeling of respect for the office of Bailiff which has existed for many, many centuries and also a pride of the kind of people, many distinguished men over the centuries, who held that office. I mentioned earlier Lord Coutanche, in the living memory of quite a lot of people

still, those who were here during the German Occupation, will remember a great Bailiff in leadership in those five very difficult dark years and that's the kind of men that have arisen and through various good times and bad times and dark times have somehow held, been the glue that's held things together. And I believe, and I think, that Guernsey would probably take the same view of retaining their Bailiff, but certainly over that report in the year 2000 when they very clearly said that the duality of role was no longer an issue. Certainly a few years ago now, but not many, they made quite a strong statement.

MR CRILL: Just in relation to the position of the Bailiff as the chief citizen, you say he is the meeter and greeter and he makes the welcoming speeches and so on. He can only say so much about our cows and our new potatoes and our beaches. In those speeches, isn't there always the danger of him straying into some sort of political area as, if you like, the spokesperson or the ambassador of the island?

MR JEUNE: There could be, but there isn't. It depends. I mean if say he's receiving somebody from a foreign country or is visiting Madeira, there are enough things to say about where he's going and the people he meets and so on.

MR CRILL: I am thinking particularly in times where, for example, the island or the island's reputation is perhaps under scrutiny or challenge and he takes the opportunity to make perhaps a defensive statement?

MR JEUNE: Well I don't recall. I suppose everybody is capable of failing, but I cannot recall.

MR CRILL: But do you think it is appropriate that he should?

MR JEUNE: I would say that over the years, I can't think of many times in which they've overstepped the mark. Whether anybody can remember one or other occasion when that happened, there may be.

MR CRILL: Do you think that mark has moved with ministerial government?

MR JEUNE: Sorry?

MR CRILL: Do you think that position, that line, has changed with ministerial government and the appointment of Chief Minister?

MR JEUNE: Not as far as the Bailiff is concerned. No, I think that the line has not been crossed, and that I think is quite remarkable, that over all the years the Bailiffs have been very strict about this. If somebody now produced some example, which I say would be a rarity but might exist because we are all human, but really overall the Bailiffs have been very correct, and I think this is true. I have known most of the Bailiffs of Guernsey since the war, and I would have thought that that applied as well to our sister island, and they have been very, very judicial and very impartial and very correct.

MR CRILL: Two, shall we call them buzzwords at the moment I think, "transparency" and "accountability". You have been involved, as you say with -- you served with four Bailiffs and I assume, as a senior politician, you were involved in the appointment of one or more of them. Could you just explain how that appointment process works from the States Members' point of view or from a senior politician's point of view?

MR JEUNE: Well it depends - I don't know that I can tell you very much about that. It's very much a chain of events. Well first of all, as you probably know, it's a chain really that seems to have over the years, has sprung up, one has to take the first appointment at Solicitor General and then Attorney General, Deputy Bailiff, Bailiff and of course in my day it was the Home Office who looked after us and the Home Office was like a mother hen to the islands, the Department of the Home Office and I think rather sadly the islands have been pushed a bit from pillar to post, and they ended up with a Ministry of Justice. Whether that's good or bad, I have not been involved in the process. I'd left the States in the end of 1996 when I didn't stand for re-election but very much the Home Office in my day and the Governor and the Bailiff would be involved with discussing the appointments and I don't know that I can tell you very much about the process.

MR CRILL: Just from the point of view of the accountability, the only, I suppose, example in recent history that we have for problems relating to the position of Bailiff or Deputy Bailiff relates to the, what is euphemistically called the Tomes Affair. I do not want to go into any of the details of it but rather the process of it. I wonder if you can recall the involvement of you or politicians in the process that led to his eventual removal.

MR JEUNE: I don't really think --

MR CRILL: Was there a formal consultation, for example?

MR JEUNE: Not exactly, I believe that the Bailiff of the day spoke to several of the leading politicians, of the senior politicians, and certainly spoke to me, I think rather more individually than collectively.

MR CRILL: And this was for the purpose of informing rather than consulting on a basis of a way forward?

MR JEUNE: Well, informing, we were able to agree or disagree.

MR CRILL: Thank you.

MRS BACKHURST: Mr Jeune, you mentioned the Chief Minister post as a new role that has now come with ministerial government. It is possible that if the Bailiff were no longer President of the States and there were to be a speaker, who may or may not be a Member of the States, then the Chief Minister's role may grow even further and may fill this role of civic head? Do you see that as a good thing or not so good?

MR JEUNE: I think that if that evolves then so be it, but I don't think one can anticipate that at the moment. It's certainly not, in my judgement, an immediate outcome of the fact that we've got a Chief Minister. I think that there are still a lot of growing pains of the new system in Jersey and I think the next few years are going to be quite crucial. It could happen, but I think if there was to be a change, as far as the Bailiff's concerned, it's my view that it could only be done by means of a referendum, because it is so historic and so much part of the fabric of Jersey that it would need, in my view, my judgement, a referendum. I somehow question whether the people of Jersey would want to change, but if the role of Chief Minister settles down, at the moment, of course, one is getting another new Minister, we will have already had one Chief Minister, I think with 18 months and then this one, I think is three years, retiring next year. If one isn't going to have a Chief Minister who stays very long, then it would be a retrograde step, compared with the continuity of the Bailiff who gets to know and is known by the people in places like the British Government, in France, the various

communities near to us. I think that's quite important, the continuity.

MRS BACKHURST: The idea is that this duality of roles, that sitting as chief justice and sitting as President of the States, it is the two roles. I mean I could see a situation where perhaps, and this is where I find a referendum a bit difficult, where somebody might say, "Actually we'd still like the Bailiff as President of the States, we would just like to remove his judicial function". Everybody assumes that it might be the other way around, it would be the Bailiff would be removed out of the States. Would you see the other way around being possible as well?

MR JEUNE: You mean the Bailiff to remain as President of the States?

MRS BACKHURST: Correct, but no longer to have a judicial function.

MR JEUNE: I would not think that there is a real full-time job, as it were. It's all very well to compare with the Speaker of the House of Commons where they're meeting constantly and it's a very full-time job. But the number of times that the States meets in a year I really can't remember, but it's quite small in comparison to say that it would be a full-time job.

MRS BACKHURST: I suppose if the Bailiff were to be President of the States only, then the civic head role might expand, even if it was described as a part-time job, I do not know.

MR JEUNE: I don't know, I would doubt it. I mean he represents the Island now and he is a very busy man. Of course, in addition, he's called on to do all sorts of things in the Island of Jersey and so being Bailiff is a busy function.

THE CHAIRMAN: There was a report some time ago, if I recollect correctly, which recommended that they should have a permanent salaried chief judge instead of the Bailiff but I think that was rejected pretty outright by the States and most people in Jersey. Do you recollect that, Mr Jeune? I just cannot put my finger on which one it was.

MR JEUNE: No, I can't recall that.

THE CHAIRMAN: We will look it up, but it never flew, that one. May I just, before I ask Mr Strang if he has some questions, may I just follow up, because I was interested when you said in your letter that you thought a referendum would be necessary. This would be, really, a piece of constitutional propriety rather than a legal requirement which I do not think there is but you reckon it would be less than proper to make such a change without a referendum?

MR JEUNE: Indeed.

THE CHAIRMAN: Yes.

MR JEUNE: Because it's so fundamental to Jersey, because it's so unique, if one had separation then it's difficult to see where the thing would end really once you start. I think the three marry so much together and have worked so well. My plea is that on the basis of the reports that I referred to, where they have not found any impediment in the duality of role, I beg to suggest that the status quo is proper to continue.

THE CHAIRMAN: The analogy might be, in Australia, when they have considered the question of becoming a republic and the Queen ceasing to be Queen of Australia, I think that they have a referendum on that, rather than simply take the will of their parliament. Well,

thank you. Ian?

MR STRANG: Just a couple of questions, really. One of the functions of the Bailiff is guardian of the constitution. Do you think, in your experience, that worked well? It does not bring him into any ...?

MR JEUNE: Yes, indeed.

MR STRANG: Yes, so that is, that would be ...

MR JEUNE: Very much. The guardian of our rights and privileges is paramount.

MR STRANG: That has not caused any problems in your experience, no, okay. And just moving on to the Crown Officers, obviously the Attorney General, the Solicitor General are Members of the States, in your experience has that worked well with them giving legal advice? You are in favour of that position continuing?

MR JEUNE: Yes, as far as I am concerned, in all the years I was in the States it all worked very well when we wanted legal advice. I think, as far as the prosecution is concerned, I think that in this island one can only have one prosecutor, one couldn't have the Crown Officers and a Director of Public Prosecution. I really do think that that side of it works well. There are aspects of who should be responsible for the Honorary Police, I'm not sure. But the other point was the legal advice given by the Crown Officers now, when you have ministerial, Scrutiny committees, and the ordinary Members who have no particular office in the States, this is new to me and therefore I refrained from getting involved in this discussion.

MR STRANG: I quite understand that. I have no further questions.

THE CHAIRMAN: Yes. Ladies and gentlemen, any further questions? Well, Mr Jeune, we are most grateful to you for giving us the benefit of your experience and taking the time to come to meet us. Thank you very much, we have taken on board what you say, we will certainly consider it along with a great deal of other evidence that we have received from other people. We are very far, yet, from reaching any conclusions, but when we reach them then we will forward them to the States with whatever recommendations we decide to make. Thank you very much.

MR JEUNE: Thank you very much, thank you.