

## **2.6 Senator P.F.C. Ozouf of the Attorney General regarding whether the legal requirement of collective responsibility applied in respect of a vote of no confidence proposition in the Chief Minister: 1(412)**

Does the legal requirement of collective responsibility apply to the Council of Ministers in respect of a vote of no confidence proposition in the Chief Minister?

**Mr. M.H. Temple Q.C., H.M. Solicitor General (rapporteur):**

Collective responsibility is a constitutional convention, rather than a rule of law. Paragraph 4 of the *Code of Conduct and Practice for Minister and Assistant Ministers*, which is R.11/2015, provides that: “Ministers should uphold the principle of collective responsibility, save where it is explicitly set aside by the Chief Minister in relation to a free vote (most commonly on an issue of conscience), or an agreement to differ (as the Chief Minister may determine in exceptional cases).” So, a vote of no confidence in the Chief Minister where, if the motion was carried, that the Chief Minister and the Council of Ministers would both fall, is not a free vote, or an exceptional case of an agreement to differ. So, the consensus is that the convention of collective responsibility applies to a no confidence proposition in the Chief Minister.

### **2.6.1 Senator P.F.C. Ozouf:**

I understand absolutely the point that ... I am grateful for the Solicitor General’s answer and his clarification that it is a convention, not in fact a law, but he cites the Code of Conduct of Ministers. Would he make any comments about a theoretical situation where, effectively, Ministers might say to the Chief Minister that they are not going to support a vote of no confidence? Ministers that do not normally abide by collective responsibility, my understanding is it is a convention elsewhere is they should resign. Is that not normal and in the event of a Minister not supporting a Chief Minister, that is the most fundamental thing, or the Council of Ministers, would the Solicitor General agree that that would be the sort of area in which a Minister would be expected to resign?

**The Deputy Bailiff:**

Are you able to help on unconventional matters?

**The Solicitor General:**

This is a theoretical matter and obviously it may be transgressing more into the realm of politics rather than the law. As a matter of looking at the convention, in its classic form, of collective responsibility, if a Minister is unable to support a confidence motion, in principle, yes, the normal expectation would be for the Minister to resign.

### **2.6.2 Senator P.F.C. Ozouf:**

May I understand from the Solicitor General - understanding that this transcends law and effectively custom and practice and convention that has been built up - where might one get a more definitive answer on the issue, because it seems to me a fundamental issue that has never been tested? We might have had a situation whereby this is exactly the situation that has happened where Ministers said they were not going to support the Chief Minister for another matter and then, effectively, they did not support the Chief Minister, except if he did certain circumstances. I am just uncomfortable about this and I just would wish to have more guidance of where one could get that guidance from.

**The Solicitor General:**

I found helpful, when looking at this matter, a briefing paper from the House of Commons library, which is dated 14th November 2016, and there is a section, section 2, on conventions

of collective responsibility, and looking, in particular, at 2.1, it says: “Collective responsibility is a constitutional convention, rather than a constitutional requirement. Academic commentators have identified 3 implications of the convention: confidence, unanimity and confidentiality.” As regards confidence, the briefing paper states: “A Government can only remain in office for as long it retains the confidence of the House of Commons [obviously in this case the Assembly], a confidence which can be assumed unless and until proven otherwise by a confidence vote. A Government’s failure to command a majority on one issue need not mean that it cannot do so in other areas of policy; however, defeat in an explicit no confidence motion implies that the Commons, or Assembly, considers the Government wholly incompetent.” I found it helpful.

**Senator P.F.C. Ozouf:**

Can I thank the Solicitor General for his answer?