

# STATES OF JERSEY

## OFFICIAL REPORT

WEDNESDAY, 7th MARCH 2012

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## **The Roll was called and the Dean led the Assembly in Prayer**

[9:35]

### **PUBLIC BUSINESS - resumption**

#### **1. Electoral Commission: composition and terms of reference (P.5/2012) - amendment (P.5/2012 Amd.) - Part 2 as amended**

##### **The Deputy Bailiff:**

We return to Public Business. We have reached the stage where Deputy Le Hérissier is proposing part 2 of his amendments, as the States agreed last night, as amended by the amendment which he lodged to his own amendment. I will ask the Greffier to read the part as amended.

##### **The Deputy Greffier of the States:**

Number 2, page 2, paragraph (c), after the fourth bullet point insert the following bullet points - the functions of the electoral process, voting systems and re-number the paragraphs accordingly.

##### **Deputy R.G. Le Hérissier of St. Saviour:**

Sir, I am slightly confused again. I presume this is about the issue, at this point, of voter registration, is that correct, the whole lot?

##### **The Deputy Bailiff:**

This is your page 2, paragraph (c) - After the fourth bullet point insert the functions of the electoral process and voting systems and you are not including voter registration because your own amendment removes that and the States Assembly gave you permission yesterday to propose your amendment, as amended by yourself.

##### **Deputy R.G. Le Hérissier:**

Okay. Thank you, Sir, for that clarification. I knew I was to blame somewhere along the way, I just did not know where.

##### **The Deputy Bailiff:**

That was done on the standing vote last night.

##### **1.1 Deputy R.G. Le Hérissier:**

Okay, thank you. The point was made in the main debate that voting systems and the functions and the process are very important. This was a point introduced, of course, by the Deputy of St. Mary and I have to say I did take umbrage at Sir Philip's remark or inference that I was taking rather a long time because I was told by someone I gave an excellent executive summary of the Deputy of St. Mary's original speech; **[Laughter]** that was a bit rich unfortunately. But the reason I have included ...

##### **The Deputy Bailiff:**

Refer to him as Senator Bailhache, thank you.

##### **Deputy R.G. Le Hérissier:**

Sorry, Sir, Senator Bailhache. The reason I have included it, I did make clear yesterday and I was very interested to note that one of the few people who responded to this point was the Dean when he said: "Well, you have only got to look at the U.S., the Senate and the Congress there and the Senate is based upon the structure of the States." But what I would say, why it is so important it is this issue, of course, of the value of the vote, that each vote should be of equal value and, of course, there are examples which show that importance much nearer home. You have only got to look at

Northern Ireland where there was, of course, the incredible evidence of gerrymandering for decades until that particular situation was remedied in the late 1960s where people were put in vast numbers into certain constituencies so that those numbers could not influence the vote for the other community and they could keep entrenched certain votes; in other words, the Protestant ascendancy in Northern Ireland. Of course, even nearer we then had the phenomena in Westminster where no less a person than Lady Porter decided that the large council estates in the borough had to be broken up because they were sending the wrong kind of person to the council. In a rather strange situation these people were then shipped out to other London boroughs in order that there would not be a certain bias in the voting and, of course, Lady Porter was brought to book but, by that time, I think she had resettled in Israel. That is why it is important. We have got the same issue here, a continuous theme that I alluded to; in fact the Constable of St. Saviour alluded to in 1892, as early as that, is the town versus country issue in the Jersey voting structure; that has been a continuous theme and, of course, as I have said, it has been excellently written up by one of those totally hoodwinked members of the Clothier Commission, Advocate Kelleher, the local representative who, as we know, were being totally hoodwinked by outsiders, as we were told yesterday. He wrote that issue up in considerable detail in his book called *The Triumph of the Country*. It is an issue that needs looking at, we cannot avoid it and that is why I have followed the former Deputy of St. Mary and included it. The reason I dropped voter registration was that it is being looked at by a sub-committee of P.P.C. (Privileges and Procedures Committee) of which I am a member and which is being chaired by Deputy Martin. There were a whole lot of issues to do with the mechanics of elections that are being looked at by that group and it seemed quite satisfactory that it be looked at by that group. Deputy Tadier and she have intimated in their minority report that they may not be totally happy with that and want to maybe speak on that issue. I would like to move the proposition. Thank you.

#### **The Deputy Bailiff:**

Seconded? [**Seconded**] Deputy Tadier.

#### **1.1.1 Deputy M. Tadier of St. Brelade:**

First of all I hope the Assembly will not mind if I address us in English today; I know there are a lot of ultra conservatives here who are aware of Jersey's historical and cultural context and they will know that the language of the Assembly is French. But if they do not mind being a modernist, and a reformer myself, I would like to take the opportunity to address the Assembly in English, so do bear with me. Anybody who needs a translation later on I can provide that for Members. The first point here, I think this amendment, again, is not necessary. It is not necessary because we debated this less than 12 months ago and it was already included in the original proposition but, again, that does not stop new Members from bringing amendments or changing the principles of what previous States Members have agreed. There are 2 issues here: there is, first of all, the issue of whether it is valid for electoral systems to be looked at, including the functions of the electoral register. I think these arguments go without saying because I think the response from P.P.C. is that the reason we are not going to do this is because it has already been looked at. But in case there is any doubt in anybody's mind I would draw their attention to the minority report and I would like to read briefly from it, now that we have foregone with the independent Commission, what the point of having a comprehensive review would be. On page 5 if we look at verses 27 through to 31; let us start with 26. It says: "In adopting P.15/2011, the States agreed that an independent Electoral Commission should be established to investigate and report on all aspects of the composition of the elected membership of the States Assembly and the election and voting processes for such Members. In other words, the Electoral Commission was to be independent and it was to be comprehensive." We will move on: "If the States adopt P.5/2012, this will remove the requirement that the Electoral Commission should be independent." Okay, we are already in that position but we still have the

opportunity to make sure that the Electoral Commission is comprehensive in its scope: “A decision to adopt the proposition would remove the last 3 bullet points” and this is what Deputy Le Hérissier is trying to redress, to make sure that we can consider the functions of the electoral process and the voting systems: “Voting systems such as first past the post, single transferable votes, *et cetera*, are an integral part of the electoral system. It is not sensible to suggest that they are considered by a sub-committee of P.P.C. distinct from the rest of electoral reforms.” I think the important part and this is to quote the former Deputy of St. Mary, Deputy Wimberley, is that: “Elections have 2 main functions; the first is to enable the voters to decide who represents them in the representative assembly of their jurisdiction. This should be achieved by fair and equal representation.” I think that is understood: “The second is to enable the electorate to cast a verdict on who they want in Government and to cast a verdict on the previous Government.” This is why the Deputy goes on to say the 2 must be looked at in conjunction; the 2 are inextricably linked. The way that we vote for our electorate is directly linked to what we end up with in Government and it is the same in the House. We do not use the first past the post system, for example, for voting Ministers or for chairmen in this House because it is a ludicrous system to use because we know that in Assembly we need to have the confidence of the whole Assembly or the Ministers, the Chairmen, *et cetera*, need to have the confidence of the whole Assembly; that is why we have a system that allows people to make sure that they have got more than 50 per cent of the vote.

[9:45]

Now it may not be necessary for that system to be extended to the wider public but certainly there are merits in doing so and there are lots of various different systems that produce different outcomes. I think the argument, I am taking it, is understood that electoral systems are important, that they need to be looked at. The question is then, by whom should they be looked at? This is where the rub is, I think, because we have already got these pre-existing now before the Electoral Commission is even formed, if it is formed today; there is still a possibility that it could be rejected completely. We have got these pre-existing P.P.Cs. that are looking at 3 different aspects, all of which are kind of interrelated and all of which, to a certain extent, will encroach or certainly have to have a to and fro with any Electoral Commission. The first point is, how is that interaction going to work? That is perhaps a point that we will consider later on when considering the substantive proposition, whether amended or not. My issue here is that we will have, if we adopt the P.P.C. proposition, essentially a P.P.C. sub-committee. It will be chaired by a member of P.P.C. with some co-opted members of the public to look at this. I think it is absolutely important that the people who are looking at the Electoral Commission and the whole machinery of government, which, incidentally, is my sub-committee as well, should be able to look at the voting systems. I think it goes without saying if you are going to have an Electoral Commission it has to look at voting systems; it is completely nullified if it does not do that. I think that is all I have got to say on this particular amendment. I think, again, it is a question of who looks at it. I do not think this is sufficient to be left to a sub-committee. It needs to have the authority of the whole of States Assembly backing whoever that chairman might be, to look at the whole package. There are members of the public who have made submissions certainly to P.P.C. in the past about the inadequacy of the first past the post system and I think that will be something that should be extended to the wider public for submissions.

### **The Deputy Bailiff:**

Does any other Member wish to speak? The Chairman of P.P.C.

### **1.1.2 Connétable A.S. Crowcroft of St. Helier:**

The P.P.C. is not unanimous - we know that already - in its approach to the Electoral Commission and I just want to follow the Vice-Chairman and urge the States to reject this amendment. First of

all, let me pick up the proposer's comments about that excellent book, *The Triumph of the Country*, which is, of course, really about the triumph of the town but we will let that pass. That was a Ph.D. thesis that took considerable amount of time to complete, as is the way with Ph.D. theses. I think the 2 key points P.P.C. are making here; one is that time is short. We set out in our report to the main proposition the ambitious timetable that the Electoral Commission needs to keep to if we are to deliver the promised reforms. Adding the possibility of a Ph.D. thesis on electoral systems to that body of work seems to me to be making their task even more difficult. The second argument P.P.C. would put, by a majority, is that if Members refer to the original proposition and paragraph (c): "The terms of reference for the Commission; the Electoral Commission shall consider all the following areas - classes of States Member, constituencies and mandates." That seems to me to come pretty close to what Deputy Le Hérissier is asking us to look at. Then it says, as a kind of catch up, at the capsule at the bottom of that section: "And all other issues arising in the course of the work of the Commission which are relevant to the needs stated above." It does seem to me that the Electoral Commission is perfectly entitled to look at all the areas raised by Deputy Le Hérissier in his amendment and indeed the excellent point I thought he made yesterday, and which Professor Lee made in his visit, hosted by the sub-committee of P.P.C., about the value of the vote. These are truly important things; they must be considered. I am sure the Electoral Commission has, within its terms of reference already, ample scope to consider them and that is why we would urge Members not to add more to the burden of the Commission.

### **1.1.3 Senator P.M. Bailhache:**

I would like to follow the Chairman of the P.P.C. very briefly by saying that I agree absolutely with what he has said. The terms of reference put forward by the Privileges and Procedures Committee seem to me to be broad enough to encompass voting systems, if that is relevant to the major part of the work that the Commission is going to have to consider. I hope that Members will reject this amendment principally because of the words "functions of an electoral system" which the Deputy invites the Assembly to add to the terms of reference. When the Privileges and Procedures Committee was discussing this issue - admittedly Deputy Tadier was not present - none of us could understand what it meant. I think it is important, if there are to be terms of reference that are binding upon a Commission, that it should be crystal clear what that Commission has to do. I did not understand, from the proposer's opening remarks, exactly what functions of an electoral system envisaged and I hope that he will clarify that perhaps when he replies to the debate. But if it does mean something, and it means that which the Chairman of the P.P.C. has identified in terms of the Ph.D. thesis of Mr. Kelleher, then it seems to me that that broadens the terms of reference too far. If Members are serious in allowing the Commission to produce recommendations for consideration by the Assembly and by the public within a relatively short timeframe, then we really ought not to complicate matters unnecessarily.

### **Deputy M. Tadier:**

Sir, can I make a point of clarification on the last speaker? The functions are included here on page 6 of the minority report, which are the words of the Deputy of St. Mary's point 31, but that is where one can find the definition from the former Deputy of St. Mary.

### **1.1.4 Deputy G.P. Southern of St. Helier:**

As someone who has had plenty of experiences at drafting terms of reference, in order to give myself the greatest scope possible, I am very much aware of the difference between a permissive paragraph; I may look at something else or I may look at anything I see fit to look at but I do not have to, no obligation. This issue of a vote having equal value is central to our or any democracy. To be told we have to look at this area is very different from: "And you may if you choose." Already I can hear a hint of: "In the timescale maybe we will not be able to do everything." As

soon as you allow a permissive term of reference then you allow the future Chair, whoever it is, to not necessarily go there, whereas if you tell them then they have got to go there and they have got to produce something which you can then judge; a world of difference.

#### **1.1.5 Deputy J.A. Martin of St. Helier:**

Yes, briefly because Senator Bailhache is totally right. Around the table, when I was listening to the: “Extra, let us take out this, this and this because we are covering it” and I am looking at the mechanics of the voting system and is it entirely, when I got speaking to Deputy Tadier and re-read P.15, understood that what I am looking at and what this is asking the Commission to look at, is 2 totally different things; mechanics and this? That is why when doing the minority report I was quite happy to put this back in, having thought about, well, if this is the system you are going to have you have to make sure it is representative of the public and there may be some changes. I would like to sort of say to the Constable of St. Helier, the Chair of P.P.C. and Senator Bailhache and the rest of the people who do not want to support this, if it is so innocuous, it is already in there, why do you not just accept it? What is the fear? Because, as Deputy Southern just said, there is already a paragraph that says you can go anywhere. This just adds a bit of meat on the bone to me and it will come back in the next debate about why it is not wanted because when a system comes back it will need to be externally or internally validated. If you cannot move the electoral boundaries, if you cannot change the voting system, you will never validate the proportion of people who can vote and who are elected in this Chamber. That is where it comes back; it is tying the hands of the Commission even further. I think it is straightforward. If it is already in the P.P.C.’s P.5, what is the rest of the debate about? Go for it. Thank you.

#### **1.1.6 Deputy G.C.L. Baudains of St. Clement:**

Following on from the last speaker I notice that both the Chairman of the Privileges and Procedures Committee and Senator Bailhache, if I understood them correctly, believe that the issues that Deputy Le Hérissier is wishing to include would be covered by the Commission anyway; then following on from the previous speaker, then what is the problem of having them in there? I really cannot wrap my head around the fact that they are saying: “Well, they will be in there anyway but let us vote against it.” To me it just does not add up. But taking them at their word that these issues will be covered, why is it that they would wish to vote against Deputy Le Hérissier’s amendment unless it is that really they do not intend going into these matters? **[Approbation]** I think we need to include those issues that Deputy Le Hérissier brings in his amendment because otherwise there is a danger that in fact they will not be covered. Thank you.

#### **1.1.7 Deputy T.M. Pitman of St. Helier:**

Much in the theme of Deputy Martin and Deputy Baudains; if they are going to be included, why would we vote against this? I think yesterday was a great day to be a democrat and I would urge all Members, probably 2 votes against this now, because I think we should let the public see what a complete shambles this is going to be. How on earth can you look at changing the composition of the States and you are not going to look at something that is absolutely intrinsically interwoven with it about fairness and representation? I think really that the speeches we have heard from the Chairman of P.P.C. and Senator Bailhache really shows what is really going on here. This is not about achieving something good; this is about getting something done in haste. It is about achieving a certain result and, as a certain Senator said to me today: “I think really probably the best thing to do now is move for a rescindment of the Electoral Commission” because this is truly farcical. I fully support Deputy Le Hérissier; an excellent speech yesterday. He was really passionate. I do not know if it is because he has moved his seat; he seems to have got a new rush of blood, not to the head, but he spoke very, very well yesterday. This has got to be included and, as the last 2 speakers said, if it is so innocuous and it is going to be done anyway then what message



are we sending out to the public? We are telling them we are going to do it but we are going to vote against something which ensures that we do it. Is there any credibility left in this House? That is what I would ask Members to think on. What is this Electoral Commission becoming? We are just chipping away. It seems all this is about and you can only conclude this, this is about producing a set of numbers, it is about pushing this country/town imbalance even further. It is about what I said yesterday, making square pegs fit into round holes or the other way. If we do not accept this amendment it is going to be a complete and utter shambles. I would urge Members to vote with your conscience. If you want something good, support Deputy Le Hérissier. If Members do not want something good, then go the other way. This Government really gets more and more embarrassing; sorry, Sir.

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

I really do not think that Deputy Pitman does himself any justice when he berates other Members. I would encourage Members to look at page 2 of the original proposition and to cast their eyes over the bullet points that we are being asked to amend. Part (c) of the proposition clearly says: “The Electoral Commission shall consider all the following areas; classes of States Member, constituents and mandates, number of States Members, terms of office and all other issues arising in the course of the work and the Commission which are relevant to the needs stated above.” If we then look at what Deputy Le Hérissier is asking us to add to this; he is asking us first to add the functions of the electoral process. I do not really understand what that means but I certainly think that the last part of the original P.P.C. proposition covers that. Voting system seems to be ... I do not know what he means by that; it is not clearly set out in his report but clearly if there are issues in terms of voting systems of first past the post versus multi-seat constituencies versus a possibility of having a list of first, second and third preference, that seems to me adequately covered in the terms of reference. The area that I think would be a mistake in order to extend the functions of the Electoral Commission is the issue of voter registration. Voter registration is really, really ...

[10:00]

#### **The Deputy Bailiff:**

Senator, that is not in the amendment any longer.

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

I am sorry. I think all of the issues that are relevant can be covered without tying the hands of the Electoral Commission. There does not seem to be any strong arguments and Deputy Le Hérissier is going to have to explain what he means by the functions of the electoral process and voter systems because they are covered in the terms of reference and why should they have bullet points? What do they mean and what are we signing up to?

#### **1.1.9 Senator L.J. Farnham:**

One thing the Assembly seems to be agreed on is the sentence under the bullet point which said: “And all other issues arising in the course of the work of the Commission which are relevant to the needs above.” In which case, as Senator Ozouf just said, why have any bullet points? Why not just have that as a sentence and then it encompasses everything? As Deputy Martin said, if that sentence is all-encompassing, what is the problem with accepting these 2 points? The argument could be turned around, why do we need them? But I would like to ask Deputy Le Hérissier, when he responds to the debate, if he agrees with the sentence at the end of the bullet points that is a caveat and put anything in that may be missed out, why he feels a need for the additional to the functions of the electoral process and the voting systems. But while I am standing I would just like, briefly, to say how disappointed I am with this Electoral Commission because it might be an Electoral Commission in name only. We are not setting up a real Electoral Commission; we are

setting a committee or a body to move us to the next step of the process. If you look at other jurisdictions and a true Electoral Commission is a permanent body with its own organisation and its own staff and its own website and communication and it is a permanent fixture to protect democracy moving forward and I think that is what we really should have at some time in the future.

#### **1.1.10 Senator F. du H. Le Gresley:**

I find myself very confused about what is going on in this House. Normally when a Back-Bencher brings an amendment to a proposition of a Minister or a committee there is an opportunity for that committee to either, during the course of the debate, accept the amendment or keep quiet. This morning we have heard from the Chairman, the Vice-Chairman and also another member of this P.P.C., if you can call it a committee, who all speak in favour of the amendment of Deputy Le Hérissier. To my mind there is only one member of the P.P.C. who has spoken so far against the proposition and therefore in normal terms you would say that the P.P.C. should accept this amendment because 3 of them have spoken in favour of it; the Chairman and the Vice-Chairman, in particular, have spoken in favour. What we have here is a P.P.C. totally divided quite clearly, really not fit for purpose and if this debate goes on much further I would be minded to bring the vote of no confidence in the P.P.C..

#### **The Deputy Bailiff:**

Does any other Member wish to speak? Then I call on Deputy Le Hérissier to reply.

#### **1.1.11 Deputy R.G. Le Hérissier:**

People have said, what do I mean? This could lead me into strange territory; I mean what the former Deputy of St. Mary meant but we will get into that. I have to say a lot of hares have been set running and, as Senator Le Gresley and other people have said, if you had a self-respecting Electoral Commission - and I think it is still being confused with the Boundaries Commission, as Senator Le Marquand said - this would be an inevitable terms of reference. All I am saying is make it explicit. The whole idea, as Deputy Southern said, that it can be permissive and therefore it can be dropped, is unconscionable. If you are going to take a proper look at the whole area of how people are voted in, why they are voted in, the function of the electoral process; as the Deputy of St. Mary said and it is quoted on page 6, as Deputy Tadier has reminded us, are they voted in simply to represent people or do people, when they go to vote, vote on the past record of the Government? Do they vote on who they think will be in Government? There has been a big debate, it has not surfaced in this Chamber, but a lot of people talk to me: "Why can I not have a vote on who will be a Minister?" or they put another proposition forward, as was, of course, originally discussed and in fact tried: "Why can the Ministers not just come from the Senatorial benches so I know when I vote for a Senator I am voting for a possible Minister?" There are these debates going on and that particular thing, the functions of the election process, that is what it is meant to address, a complex issue, a subtle issue but that is what it is meant to address. When you go into that ballot box, what, not what personally you voted for but what purpose? As I said yesterday there is also that other issue, that when you vote in Jersey there is absolutely no guarantee that that vote will have any impact on policy because we do not have a party system. You vote for jolly nice people, they are a jolly nice person, they impress us in various ways because they have got a nice pedigree or whatever and that is it. It is a difficult debate but that is what I am asking the Commission. This idea that is surfacing that the whole of its work can be done on the back of a fag packet and it can be done in a couple of weeks is absolutely unconscionable. But this idea also - and here I have to move to the fence - of the Constable of St. Helier that we are writing a Ph.D. thesis on voting systems is equally unconscionable. There are people who can give you very good, quick, to the point summaries of what different systems do and they can advise the Committee. We

do not need people writing 400 pages about voting systems, that is unbelievably ridiculous. They can say: "This is what the Jersey system does. This is where it works. This is where it does not work and if you want to improve it these are the places you could look at." At that seminar quoted by the Constable of St. Helier there was much play made of Bermuda, for example, when they revamped their boundaries and, oddly enough, they have a Parish system there, as you may know; they revamped their boundaries. We have got the Guernsey coast as well where they have moved to similar constituencies and are even contemplating, although it never got through the Legislature a couple of months ago, an all-Island system, which a lot of people here want; they want an all-Island system, so there you have another system to debate. Those are the sorts of issues that have to be debated but I would find it unbelievable if people were asking for 400/500-page reports on different voting systems to make up their mind on what would be an appropriate system for Jersey. If they cannot be sharper and more analytical and more to the point than that then I am afraid we are in deep, deep trouble, as a lot of people think we are already. That is a total hare that, again, as with yesterday, another hare that has been set running we should be able to get to it. As to the point that Deputy Baudains has made and several people; P.P.C. is speaking out of both sides of the mouth. They are saying: "Yes, we can do that because we have got the right under this caveat to do it." What I am saying is if you are going to do a coherent complete review of the system you need it there explicitly. You cannot avoid major parts of the system and pretend that they are not issues because it is an issue in Jersey; there is a massive imbalance. Quite honestly, if the Commission were to conclude, as the Dean mentioned yesterday when he did mention the Senate, that the Parish boundaries are all important and we have to accept some imbalances, that is a legitimate conclusion to reach, as long as it is well-reasoned. I have got no problem if they were to reach that but it has to be reached after a consideration of all the main strands of opinion on the Island. It has to be put against a background of how different election systems work and what is or is not suitable; that is the point. This idea of the way in which the former Deputy of St. Mary's proposals were dropped, betwixt cup and lip, when P.P.C.'s paper emerged, that is what worries me. They were dropped for a reason and I imagine they were dropped because people thought they could bury the issues and that is wrong. We have had lecture after lecture yesterday that internal people ... although all the local members of Carswell and Clothier, as we know, they were all totally hoodwinked, as we were told yesterday but apparently at the same time internal people can do the job. To do the job they have got to show that they will go into areas that are uncomfortable, into areas that may not fit in with their particular biases and prejudices and preconceived view; that is what they have got to show and that is why this is included. Quite frankly it is not revolutionary. Anybody looking at the whole system would say: "You have to consider election systems. You have to consider the size of constituencies, *et cetera*". There is nothing revolutionary about it and if you try and limit it you will be giving a very, very bad message to the public. Thank you. I ask for the appel.

**Deputy T.M. Pitman:**

Can I ask for a point of clarity from the speaker, Sir? I think it is important that we do not misrepresent what Professor Lee has said and I think what the Deputy has put across may mislead people. What he said about Bermuda was they did have a Parish system, *et cetera*, and they were able to have proportionality but that is because they did not have a Mayor or the Constable; is that not correct, I think?

**Deputy R.G. Le Hérissier:**

Yes, that is correct. When they reformed they did not reform according to the Parish boundaries but, of course, you could reform; you can go either way.

**The Deputy Bailiff:**

Very well, the appel has been called for and I invite Members to return to their seats. The vote is on whether to adopt part 2 of Deputy Le Hérisier’s amendment, as amended by himself, and I ask the Greffier to open the voting.

<b>POUR: 22</b>		<b>CONTRE: 22</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F.C. Ozouf		
Senator F. du H. Le Gresley		Senator S.C. Ferguson		
Connétable of St. Martin		Senator A.J.H. Maclean		
Deputy R.C. Duhamel (S)		Senator I.J. Gorst		
Deputy R.G. Le Hérisier (S)		Senator L.J. Farnham		
Deputy J.A. Martin (H)		Senator P.M. Bailhache		
Deputy G.P. Southern (H)		Connétable of St. Helier		
Deputy of Grouville		Connétable of Trinity		
Deputy J.A. Hilton (H)		Connétable of Grouville		
Deputy K.C. Lewis (S)		Connétable of St. Clement		
Deputy M. Tadier (B)		Connétable of St. Peter		
Deputy T.M. Pitman (H)		Connétable of St. Lawrence		
Deputy T.A. Vallois (S)		Connétable of St. Mary		
Deputy A.K.F. Green (H)		Connétable of St. John		
Deputy J.M. Maçon (S)		Connétable of St. Ouen		
Deputy G.C.L. Baudains (C)		Connétable of St. Saviour		
Deputy of St. John		Deputy of Trinity		
Deputy J.H. Young (B)		Deputy S.S.P.A. Power (B)		
Deputy S.J. Pinel (C)		Deputy E.J. Noel (L)		
Deputy of St. Martin		Deputy J.P.G. Baker (H)		
Deputy R.G. Bryans (H)		Deputy of St. Mary		
Deputy R.J. Rondel (H)		Deputy of St. Peter		

### **The Deputy Bailiff:**

There are insufficient votes in favour of the proposition for it to be adopted: 22 votes in favour and 22 votes against.

## **1.2 Electoral Commission: composition and terms of reference (P.5/2012) - second amendment (P.5/2012 Amd.(2))**

### **The Deputy Bailiff:**

Very well, we now come to the amendment of Deputy Young and I ask the Greffier to read the amendment.

### **The Deputy Greffier of the States:**

Page 2, paragraph (c), after paragraph (c) insert the following new paragraph – “(d) to agree that an external group of experts should be established by the Privileges and Procedures Committee to be available to advise the Commission and validate its work as necessary” and re-number the existing paragraph (d) as paragraph (e).

[10:15]

### **1.2.1 Deputy J.H. Young of St. Brelade:**

In my speech yesterday I advised the House that I had not been aware, as a new Member, of the blow-by-blow history of this but on receiving the proposition of the P.P.C. I did take the time to read through the report of the former Deputy of St. Mary and look through the Hansard accounts of

debates to try and follow what had happened. I ended up feeling very, very impressed by that report and its thoroughness in addressing this very difficult task. I think the fact that that debate took place earlier in the year and that was still effectively on the table until the end of the year and that we went into the elections believing there would be an Electoral Commission on those lines, really, I think, gives that report more than a passing credibility. Looking through the former Deputy's report he identified several elements that were necessary for success in getting the task done and it is worth briefly reminding ourselves. Those were independence - we still have within the P.P.C. an amendment that is under consideration, so it is a P.P.C. proposition - independent members; acceptability of the recommendations to the Jersey public, absolutely essential, as we heard yesterday; focus on getting the job done and this is where we rely on the team but sufficient knowledge and expertise to complete it and to do so in a way that meets public scrutiny when the referendum questions are presented. My amendment is, to me, I thought very simple; really I quite expected it would be benign and there would not be a debate about it, so I was quite surprised that questions would be posed. **[Laughter]** I confess the naivety but Members have put a number of questions to me, which clearly influence some of the opinions I have heard why this should not be approved. My amendment is intended to ensure the Electoral Commission has available sufficient expert advice, but here is the point, without compromising the make up of the Electoral Commission and without losing the balance and independence of its membership. That is why I did not say: "Let us have an advisory panel", as the former Deputy of St. Mary had put forward to the previous P.P.C. The proposition that I put talks about an external group of experts to support the review. I think such a proposal has good credentials, not only from the former Deputy of St. Mary and his thorough analytical report, the suggestion was also made by the previous Council of Ministers because in their proposal for the review of machinery of government, which did not see the final light of day, they said that they thought an advisory panel should be formed; that was in 2011. The former Deputy proposed a panel to P.P.C. in the dying days of the old States, although the former P.P.C. then decided that the experts should be panel members but of course they did not act on it and I assume that if they had acted on it we would not be having this debate today. What is the proposal? I cannot do better... and this is plagiarism, I have to admit; it is a quote from the former Deputy of St. Mary's proposition; I put that in italics on page 4 in my report. He says and I may read it: "... all-local Commission [which we have still got] assisted by an advisory panel of experts from outside Jersey. In this way there would hopefully be greater acceptance of the Commission's membership with the Island but no concerns about a solution being imposed by outsiders." I will return to that point in a minute: "... but the local members would, nevertheless, be able to draw on advice and guidance from panel experts. The experts do not decide anything, they do not dictate anything but they do ensure that the local members of the Electoral Commission are fully aware of the issues and they provide an independent check and balance to the process." Not the answer, the process. More pragmatically my amendment, I think, achieves a number of practical advantages; firstly, it creates an arm's length arrangement for the expert advice being provided to the Commission and I think that is important because I listened carefully to the exchange between the Chief Minister and Deputy Le Hérissier about the role of external experts in the Clothier Panel. All I can say is that I did attend on that panel when it was in existence and gave evidence and felt the power across the table. For me it certainly felt as if the independent experts were strong and dominating. I do not know whether they bamboozled or whether they intimidated or what, their local membership but they may have been in a minority but, my word, were they powerful. I think I certainly bought into the Chief Minister's comments that we do not need a U.K. (United Kingdom)-centric approach here; we need local. But it is right that to do the job properly we have to be able to seek advice. It does not have to be U.K.; could it be, dare I say it, Isle of Man, other constituencies? I will not use the sister island but we should not be narrow in our thinking about that. There is another practical advantage; not being members of the Commission but apart from it means that the delays from experts that would certainly arise, not being able to

attend all the Commission meetings, that must aid the logistics and the practicalities of doing the job. You do not have to have the whole panel of experts there on every occasion to attend on every thing. These days emails, what have you and so on, and video-conferencing; be absolutely practical about it. I think having people there who are able to assist within a subordinate role is important. P.P.C., I turn to this issue of independence; if I understood P.P.C.'s report, and I think here I looked at page 7, the third paragraph on the page there, where they say that the expert advisers will be appointed on the Commission but they are obviously looking for local experts. They say if one with suitable local connection applies they will consider being appointed to the panel but though they will not actively seek them. What I worry about there is that I think we should be clear; when we are appointing the non-3 local persons to this panel I think their task is going to be tough. We have now reduced the independence from a greater number but to 3, so we have 3 independent members with 3 States Members. They are going to have, in my view, to create that counterbalance between the 2 sides of the picture. It is really important that that is not diluted by one of those or more having to do expert advice; you cannot wear 2 hats. I think the proposal of the P.P.C., as it is written in the report, is flawed in that respect. I think putting experts or half an expert, somebody who is a local but also happens to be an expert as well, I do not think is a good idea. Another thing I picked up on P.P.C.'s report it says that we want people who can be absolutely objective. I think we are going to find big trouble with that. I think people care about democracy; they have views. I do not think we should fight shy of finding people with opinions and standing in those 3 Members and they will be helped by having the expertise outside of it. A couple of things that I think, reading the comments, and Members, validation has quite clearly caused some upset, with validation I included. I did have some mind in there, however, to put that but I thought partly the validation really comes at the end because people will turn and say: "Did this go well? Can we trust what we have got here? Is it sound?" I think it is for that reason we might just as well accept we need not have the benefit of the group. The validation says ... Thesaurus offers us: "verify, establish, authenticate, corroborate, back up, endorse, attest, give seal of approval." I think, hopefully, in those words you will see what I am intending to convey and those are not the same words as supervise, control and oversee or even scrutiny; it is a lower level. The other words, I thought while I am doing that I will check the other words; what does support mean because I am proposing that the external group of experts should be available to support? Support is: "encourage, help, assist, hearten and involve them and available as necessary." That is deliberate, that I really want this to be under the P.P.C. and in co-operation with the Commission under their control. To me, maybe I am too naïve and I accept that but who could disagree with such common sense? Finally, I will just close on the P.P.C.'s comments: "Experts might be required to attend some meetings." I find this puzzling; there might be meetings you want to go to, what is wrong with that? They will not have to attend every one. Delay; I really do not think that my proposal would cause delay. The timetable says the Commission will start work on 1st May 2012. I would not personally see any problem of getting that up and running by building up a group of experts now, so there will be a cost. I have not proposed the terms of reference. I heard Senator Bailhache's comments how it is very important we have terms of reference. I think the terms of reference for the project, we have got that; I am not changing those. It is for the P.P.C. to decide what the terms of reference, in consultation with the Commission, what this group would do. I have not even suggested how many experts they have, probably are going to have more than one. I am sorry to have gone on at length but I propose the amendment.

### **The Deputy Bailiff:**

Is the amendment seconded? [**Seconded**] Does any Member wish to speak? The Connétable of Grouville.

### **1.2.2 Connétable D.J. Murphy of Grouville:**

I am extremely suspicious of this word “validate”. I understand exactly what it means and I understand it has to be checked and these things do have to be checked, and I really have no objection at all the Commission having the power to bring in an advisory panel, however, not a validation panel. What happens if they decide they will not validate the work of the Commission? I think that word is over the top, and I will say something else about the excellent speech from Deputy Young and that is he kept referring to non-local members. The actual proposition says nothing whatsoever about non-local members; it says: “There shall be 3 other persons with appropriate skills and experience who are not Members of the States.” It says nothing about non-local members and I am a bit suspicious about that one as well. Perhaps he would care to answer those points when he sums up. Thank you.

### **1.2.3 Deputy M. Tadier:**

Sometimes it is difficult to find analogies for Jersey or for how the States Assembly works. I think a good analogy that I just came up with, which sprang to my mind, is from quite a cult and slightly, perhaps, subversive TV comedy show called *The League of Gentlemen*, which is set in the small northern town of Royston Vasey, which I see the Chief Minister is nodding because he probably is from around that area, even though I think it is a fictitious town, which I think many people in the world think Jersey is fictitious as well. It reminds me of the time when they go to the shop and they say: “This is a local shop for local people; we will not have your kind here”, except if it was in Jersey it would be: “This is a local Commission for local people; we do not want any of those foreigners around there because we do not like their type interfering in local procedures.” I am in a slightly delicate position here because I support, certainly, the thrust of where Deputy Young is coming from. He is a much welcomed new member of the St. Brelade hierarchy, if I can call it that, although we are all finding that we are very low down when it comes to the real power structures in the Parish and in the Island of course. The issue here is that I would be quite happy to support this proposition if we had a worthwhile Electoral Commission to validate in the first place. I think there is a phrase that sounds like the nationalities of Polish and Turk which come to mind, and that is the expression that I will be thinking of, the relationship between how does one Polish a Turk?

[10:30]

You cannot do it. The issue here is that I do not want to give this Electoral Commission any credibility or legitimacy, because it does not have any legitimacy or credibility with the public. This is going to be an internal hatchet job, whether we like it or not. Simply, I do not see even how the Electoral Commission would even want to have an external panel looking over their shoulder, a panel of experts, who are going to say: “Well, that is not logical. You have kept this position in here, even though you know one of the basic principles and one of the functions of democracy ... oh, sorry, you are not looking at the functions of democracy, are you, because the Ministers themselves, very tellingly, have only just told us they do not understand what the functions of democracy are?” I think the public could have told us that a long time ago. The Ministers clearly do not understand what the functions of a democracy are. That is why we do not have a functioning democracy in Jersey. So, how on earth will you get experts, whether they are local or not, looking over the shoulder of this panel who are going to no doubt conduct most of their hearings in private, because we know that we need to have free and open discussions? You cannot do that if the public are looking in. How on earth are you going to get a group looking over your shoulder and saying: “Well, I do not agree with that.”? I think the answer will be: “We do not like your type here. This is a local Electoral Commission for local people. We will have none of your nonsense here.” So, I think I am minded logically to abstain or simply to vote against this proposition. Although I may yet vote for it simply out of solidarity with my St. Brelade colleagues. I think that now it is purely academic. We may not even have an Electoral Commission. I think

there is a case to be made in the next substantive debate about throwing this whole thing out and leaving it, because we are looking at the whole machinery of government, the whole voting systems and the whole internal procedures anyway. How on earth do we know how those are going to interact? Lastly, I was half expecting the Dean to quote from Revelation 3:16 yesterday, which talks about being lukewarm, when the Lord says: "Because you are lukewarm, neither hot nor cold, I am about to spit you out of my mouth." I think that is how the analogy could be extended to how the States Assembly feels on electoral reform: "We are neither hot nor cold. Oh, yeah, I will support electoral reform, an independent 12 months ago, simply as a stalling tactic, because I do not really care about electoral reform." I know one of the outgoing Senators, who I will not name, who I have respect for, told me: "I do not think the States needs to be reformed at all. I think it works fine as it is. People do not vote, but that is their problem. If they want to vote, they can come out and vote." That is partly true. Again, that is a debate for the next part of the proposition. So, I would simply say good luck to Deputy Young. I am more cynical that he is. He has probably got a brighter future than I have [Laughter], if he holds on to his naivety, because that is quite a rare commodity in politics. Let us see how that goes.

#### **1.2.4 The Connétable of St. Helier:**

I could just say as an aside, I think Members may be cynical or they may not be, but they should leave their cynicism outside the debating chamber. I want to really follow the Vice-Chairman of P.P.C. as I did before and I can hopefully explain for Senator Le Gresley, who did not seem to follow my comments last time round. I want to reiterate the fact that P.P.C. is unanimous in its approach to the Electoral Commission. We have made no secret of that. The phrase "by majority" has been used in all of our comments. Indeed in the main proposition. He seems to feel this is a cause for a no confidence vote. That is up to him, of course. But, I would say that committees do not always agree. It shows a healthy committee, I believe, that we have managed to bring this forward. We have a difference of views in many areas. Indeed, those who do not agree with the majority have been able to lodge an extremely well researched minority report, which we do not see very often in the States. I am very grateful to them for putting in all that work. I think the P.P.C.'s position on each aspect of this Commission is entirely level-headed and balanced. It just happens a majority of Members feel one way and a minority feel the other. That does not mean that the whole thing must be thrown out or that it is, to quote the Vice-Chairman: "An internal hatchet job is likely." Indeed, in a previous debate, Members were unhappy with this whole idea of a permissive situation. Clearly what the Electoral Commission can do in respect of Deputy Young's amendment is they can use expertise. I am sure they will bring in expertise to assist them, to validate their work. They will, of course, be doing something else which is perhaps more important, they will be consulting the public. That is really important. They will be doing lots of things. I fully expect them to make more use of the excellent non-local expertise of Professor Lee, who seems to know more about Jersey politics than most local people. So, this is going to happen anyway. I do not believe the Electoral Commission needs this amendment to tell them what to do. Personally, I do not belong to the paranoid political party. That is to say, the Members who feel that anything which is done which is not in agreement with their approach will in some way be tainted, will be weak or will be insincere. I believe the Electoral Commission will get on with this job and they will do it with a will. They will involve outside expertise. They will involve the kind of experts that Deputy Young has spoken about. Hopefully, with a fair wind, they will get a good result, which we will be able to consider in this Assembly in the not too distant future. Thank you, Sir.

#### **1.2.5 Deputy J.A. Martin:**

It is good to follow the Chairman of P.P.C., because on P.P.C., the minority report, yes it was a lot of hard work. Just for information, it was work between myself and Deputy Tadier. Even though it was a minority report of P.P.C. we were, maybe rightly so, denied officer time. Which is an aside,



but we did have to do this on our own. We did have a problem, myself and Deputy Tadier, when suddenly appeared, last week, the comments of P.P.C. We do not know who met. We know we were not included. Obviously we were not going to get an agreement, but I thought out of courtesy on a Commission ... and Deputy Tadier asked the officer: "When was the meeting?" We have had no reply. The President has already spoken. So, hopefully, one of the other Members who agreed these comments will explain.

**The Connétable of St. Helier:**

Would the Member give way?

**Deputy J.A. Martin:**

Yes, Sir.

**The Connétable of St. Helier:**

I could clarify that. Comments were circulated to all Members by email. Some Members did not agree with them. A majority of Members did agree with the comments and those are the ones we decided to go with.

**Deputy J.A. Martin:**

Sorry, the Chairman, my Constable, is a very intelligent man. I said: "These comments appeared." The report was discussed, we dissented. The comments were never sat round a table and put together. So, I am just saying, of course, the comments appeared and we were allowed to then comment on the comments. But who put them together? Not the officers. I have never known a committee work that the officers put the comments together; never. But, we are where we are, as they say, so I will let that one go. But, to be completely where we are with the comments, and I agree with Deputy Tadier, when I saw this proposition lodged late by Deputy Young, I thought: "Well, anyone who was sitting on the fence, thought, 'Well we will keep it in-house'." This validated that, because it was ... I am sorry the Constable of Grouville has a problem with validation. He does not like the word. He does not want any work validated.

**The Connétable of Grouville:**

Sorry, Sir, would the ...

**Deputy J.A. Martin:**

No, I am not going to give way. It is not a point of order. The Constable has completely made it clear he does not like the word "validate". Deputy Young explained exactly what it is. Before the comments came, and this was added by a Member of P.P.C. and agreed to by the other majority, it did not use the part that it ended at: "Validated where necessary by appointed experts." Then it was added: "It is not clear what validation means in this context." I think Deputy Young has explained what it means. You go along a process and somebody with expertise, as Professor Adrian Lee. What he did say, for the Constable of St. Helier, is: "If you were designing a representative body for Jersey, you would not start where you are. Because you have 3 boxes; you have Constables, Deputies and Senators. It is very hard to change that." So, that is what he said. We are where we are with the Commission. But, as I say, I really feel now that I cannot even support this, because it has been so watered down. Again, would it be so terrible if the experts wanted to come and meet the Commission and sit in some of their meetings? I do not think so. The original comments from P.P.C., again making such a big deal of it, said: "Having taken into account the above points, the committee believes it is a matter for Members to decide whether or not it should appoint an external group to form an advisory panel of experts to the Electoral Commission." Which was changed to: "Having taken into account the majority of the committee would oppose the formal appointment of an external group." It was completely taken out of your hands again; completely. So, I did not just

dissent from them. Myself and Deputy Tadier could not even comment on them. We had no say in them. Do I support this? Do I want the work validated and explained? Does the public want the work validated and explained? I know we are where we are, as the former Chief Minister kept saying and reminding us. I know exactly where we are. In the next debate I am going to vote against the P.P.C., because I know exactly where we are. We have a Chairman who, round the P.P.C. table, has said: "We may elect a Chairman who is starting at a position of 42 Members, 12 of those Constables, and if (to paraphrase) he hears enough evidence that he is convinced this is not the way to go, he will consider changing his mind." I have a very good memory for Hansard and how people say things. This was in open public, with other States Members, the media there and this was not picked up. Because the media are very good scrutineers of our system, are they not? Excellent. So, I am where I am. We are where we are. The Constable says we should not be cynical. Well, I am very sorry, it goes back to, I think, what the Dean was saying yesterday. It is in the Dean's right to speak, his right to make moral speeches. Yesterday he made quite a political speech. He said (gasp, gasp): "There are some people in this House who want change and that change would be a dictatorship." The emphasis there would be myself and the likes of Deputy Pitman, whoever voted, want 53 Judy Martins of the same ilk. Not at all. Not at all. I want the 100,000 - remember there are 100,000 people - represented by people in the House and people who have to go every 3 or 4 years, whatever it is, and explain why they did this. Not one of the Constables called a meeting on this; not one. Members of the public did. It goes back to the Deputy of Grouville's understanding of why we are supposed to have 3 separate Members; because they are supposed to consult. St. Helier consulted, the Constable. Not even all the St. Helier Deputies who were at the Parish meeting could support the independence. Let us hope it does not come back to haunt them. To be honest, I am torn with this. I think I will do as Deputy Tadier says, because if it goes through the advisory validation panel, experts, whatever you want to call them ... just for the Constable of Grouville, P.P.C.'s proposition is not saying that they only want people internally. P.P.C. is determined to... the work of the Electoral Commission: "3 States Members will enable the Commission to maintain close liaison with other Members. The committee considers the involvement the 3 non-States Members will bring useful outside perspective." [10:45]

They will not go outside for expertise, but they will not be discounted. If you are going to get people like the excellent Professor Adrian Lee, who know about electoral systems. If you start, you start with the population. You start with where they live and then you make sure they have total representation. I will reserve my judgment for when the Deputy sums up, but at this point in time I do not know if I can support his proposition. Thank you, Sir.

#### **1.2.6 Deputy T.M. Pitman:**

I do not have to say too much, because I think Deputy Martin made an excellent speech. I, for one, would like a House of Deputy Martins, I think. The first thing I would like to know if Deputy Tadier has been reading my emails. Because the Royston Vasey... I was thinking exactly the same thing: "A local Electoral Commission for local people." How right he is. I have to comment, I think that Deputy Young is proving himself an excellent new addition to the States. I would commend him for that. I did not support him bringing this, because I thought, and I did say to him, that I thought it might distract from Deputy Le Hérissier - as I think Deputy Martin said - it might have given some people the chance to say: "Well, we will reject that, because we could go for this." I am in the same position really, I do not know if I can support it, because I think it will be legitimising clearly what has no legitimacy. Clearly the more we hear it is going to be, what I have been saying all along, trying to make square pegs fit into round holes or whatever. The Chairman of P.P.C., my Constable, said we should not be cynical. Well, I am probably like Deputy Tadier, I only become a cynic when I come in here. I am not a naturally cynical person. I will tell you who is right about being cynical, because I will predict right now that when we get to selecting the

States Members to be on the Commission, probably with Senator Bailhache, I will tell you the token leftie who will be nominated to give a veneer of credibility to it, it will Deputy Judy Martin. It will. He is probably scribbling out her name now, but there we go. All I think you can say on this really is that if people are going to go with it, I say to all the public listening, when you make your submissions send them in triplicate. Please send a copy of what you are sending to me, so things do not start disappearing. Because we have obviously already decided what is going to happen. It is going to be a rush job. As I say, it seems to me that the timescale is all that is important here. Deputy Young really is trying to make the best of a bad job. Yes, I will listen to his summing-up. I should support him, out of solidarity and because what he is trying to do is right. But my big concern is this is just legitimising something which is a complete and utter mess. I think we should get on, reject the whole proposition and then we can let P.P.C. look at it all. Thank you, Sir.

### **1.2.7 Senator L.J. Farnham:**

On studying the process that is taking place here, the States have delegated this to P.P.C., who have in the meantime formed 2 sub-committees. One of them is to look at the machinery of government. Then we have the Electoral Sub-Committee. Now, we are looking at having another panel of experts. I think it is just in danger of becoming too top heavy here. Deputy Tadier made a point about saying: "This is Jersey. We do not want them here." I would not quite phrase it like that. What is wrong with us sorting this out ourselves? I am going to nail my colours to the mast; I do not want to see a panel of U.K. or any other experts coming into our Island and advising us on how to set up and change our machinery of government. I think a few other States Members should be brave enough to say the same thing. This is a local thing. Let us sort it out ourselves. I am sure we are capable of doing this. Deputy Young's amendment talks about validation and while he said he is not prescriptive in how P.P.C. would address the panel of experts, he does need to explain clearly what he understands validation to be, because whether P.P.C. prescribes for it or not it is an amendment. If the States accept this amendment I see it as the Electoral Commission's work will have to be validated by the panel of experts. He needs to elucidate on that. I predict these hurdles keep being put in the way by way of amendments. We have a sensible way forward. Ultimately the States will decide. Ultimately the people of Jersey will decide - which will be a first - in a referendum. No doubt P.5, when we come to debate it, there will be torpedoes fired from all aspects of the Assembly to try and sink it then. I sincerely hope they do not succeed.

### **1.2.8 Senator P.M. Bailhache:**

I am sorry that I am not able to support the amendment of Deputy Young, because some parts of it are good. It is a bit like the curate's egg; part of it is bad, but part of it is good. Insofar as it recommends that the Commission should seek expert advice, that seems to me to be entirely correct. The Commission certainly should seek expert advice. It should go to the Boundary Commission perhaps in the United Kingdom. It should go to the Electoral Reform Society. There may be other bodies that it should consult. It should go to Guernsey and the Isle of Man, to see how they do things there. It should consult with Professor Lee, who has a great interest in this. There may be many other experts whom the Commission should consult. But setting up a panel is a different matter. A panel has an existence in itself; presumably it will have a chairman and a secretary. It just seems to me, as Senator Farnham rightly said, to be over the top. The real problem lies in this word "validation". What does validation mean in this context? It somehow implies that there are things that the Commission might do that the panel of experts will be able to invalidate. There will be a sort of clog around the activities of the Commission. Now, rightly or wrongly, the Assembly has agreed to set up a Commission composed of Members and people outside the States. It seems to me that the Assembly has to trust that Commission to do the job fairly and objectively. I find it rather a pity that some Members seem to be unable to accept the

democratic decision of the Assembly yesterday and talk about an illegitimate Commission, invalid in some way. I think that is not right. Ultimately, validation can only come from 2 sources. The first source is this Assembly itself. The recommendations of the Commission will have to be validated by this Assembly. The second source is the public. The recommendations of the Commission will be put, subject to the agreement of the States, to the public in a referendum and they will have to be validated by the public. That is the only validation that we need.

### **1.2.9 Deputy G.P. Southern:**

I return to 2 of the Ps I mentioned yesterday: principles and pragmatism. It seems to me, I was just sitting there thinking about this in the last speaker's speech, that it took us a thousand years to get here, effectively. You would not have set out to get here necessarily, if you started 1,000 years ago. Sometimes it feels like we have been discussing this for 1,000 years specifically today. But here we have an outbreak of something that happens in the States where Ministers or Chairman or Assistant Ministers certainly will not be told: "We know what we are doing and we have devised a scheme and we will not be told by this House or anybody else, any Back-Bencher, how we might do it better. We are simply not listening, because we know best." That is where I think we are getting today. Senator Farnham was right when he said effectively: "What we have here are 3 sub-panels of P.P.C. We have one looking at internal procedures, one looking at elections and one now looking at how we structure the whole system." To have credibility, I believe, it must have validation. Because otherwise it is just a sub-committee of us beavering away and that independent thing has gone. We shifted that yesterday. Pragmatically we have to get on with things as we are now; 1,000 years to get here or 65 attempts to get here, and we have this structure. How do we make it work best? We have the structure proposed by the good Deputy behind me, who says: "This is the way to organise it." As he was speaking about getting expertise in, I was thinking about my work on Scrutiny over the past 5 years - the work I am very proud of - and how and when it worked best. It worked best when we got the right expertise in and we talked to the right people who knew what they were talking about. That is when it worked best. Now, I am thinking of the privatisation of Telecom. We got the professor from Loughborough, who was the European expert on privatisation of utilities. We also got in an expert from Italy, who could tell us about the Italian experience of privatisation, which was a disaster. I think we came to the right conclusion. Thinking about Income Support reports; 2 of them recently. We got an expert in, academic again, from Cambridge. Wonderful steer, he gave us tremendously hard work, without which we could not have analysed what was going on properly at all. Then I think about working with Deputy Higgins on the Banking Deposit Protection. We flew in an expert from Canada. Again, the world expert on how to protect deposits, acknowledged. The work we did on those 3 panels were of a different order of magnitude, a different level, to much of what we had done elsewhere. Why? Because we got the right expertise in and we got the right, I believe, answers out at the end of it. They were validated, not by us beavering away, but by those experts saying: "I will put my name to this piece of work and my academic reputation goes with it." That is the sort of validation we are talking about and that is what we need. We have a way forward. It does not matter that 22 people lost a vote yesterday about independence. Let us go ahead with what we have here. Let us do it properly. Let us make sure we are told to get the right expertise in and let us do it properly.

### **1.2.10 Senator A.J.H. Maclean:**

I rise to offer some strange words. I am going to say I agree with Deputy Southern. I am sure many around me will find that quite strange, but nevertheless I do agree with him in this matter. I did, when I spoke yesterday, suggest that I might support Deputy Young. In some respects I feel sorry for him, because he seems to have been beaten up from the left, beaten up from the middle and beaten up from the right. Although I appreciate the points raised. Nevertheless I think if we look at the proposition, he is not asking for all that much. He is quite simply asking for a group of

experts. There is a question mark as to what the definition of expert is, especially in this context. But, nevertheless, he is right. I am not going to repeat the points that Deputy Southern has made in this regard. The ability for the Commission to call upon appropriate people to advise I think is right. I have no problem with that. I appreciate the concerns of some Members with the term validation. Again, that is something that the proposition says that is very much ... the whole proposition leaves the makeup and the use of any experts in the hands of the Privileges and Procedures Committee. It is for them to choose and define exactly how experts would be used by the group. I think that gives some safety. The only question I would ask the Deputy when he sums up; he talks in his proposition about a group of experts, suggesting a number - frankly I would prefer it to be a little less formal than that.

[11:00]

He did say in his opening remarks that it could consist of as many as one. But I do not think one is really a group, by definition. So, I would perhaps like his views as to how he sees it working. I would be inclined to give the benefit of the doubt. I think the idea has some merits to it, notwithstanding the reservations. I would, in this context, be prepared to support that the appropriate experts are called upon to support the work of the Electoral Commission. Thank you, Sir.

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

I listened to Deputy Southern's speech too and I thought it was an excellent speech as to why we should not support Deputy Young. I was wondering what experts are we not going to be able to get as a result of not supporting what Deputy Young is saying. In fact, I think it almost constrains the Commission by having the panel of experts. Senator Bailhache explained all of the institutions, the organisation, the institutions of academic research existing in all parts of the world that do need to be called upon in terms of their expertise. We are going to bind ourselves into a panel of experts to validate. I thought Deputy Southern spoke eloquently for the reasons why we should not be supporting Deputy Young and I will not be doing so. I would encourage my Senatorial colleagues to reconsider their positions. [Laughter]

#### **1.2.12 Deputy T.A. Vallois of St. Saviour:**

I will be extremely brief. I have enjoyed working with Deputy Young on the Chairmen's Committee. He is very enthusiastic and very driven. I did speak to him briefly about this amendment this morning. In very straightforward words I basically said: "What a waste of money." The reason for me saying that is because if we listen back to ... well, if we listened to what was said yesterday by Members who supported having States Members on the Electoral Commission. Some would argue that the expertise is already there. I know many would disagree with that. In my view, in fact this Electoral Commission, does it really need £200,000? Why can it not be just a sub-committee of P.P.C. if we wanted Members on it? That is my own view. If we are talking in monetary terms, that is probably the most economical way to go about it. We could use that £200,000 for something else, such as Deputy Southern's liking for school milk. Oh, the shock horror on Senator Maclean's and Senator Ozouf's faces. I understand what Deputy Young is trying to achieve by this. In my own view, if we are going to go with this breath of fresh air we have in the new States ... this fundamental trust we have now developing between Ministers and Back-Benchers and Scrutiny, it is a nice feeling and I hope it continues. So, if we are going along that route and throw a little bit of trust and faith in there, I think we can see what the Commission can come up with without a panel of experts. There are plenty of studies and work that has gone on. P.P.C. did an excellent piece of work themselves over the last 3 years on constitutional changes, *et cetera*, which was taken down by the States. There is plenty of research that has been

done by the previous P.P.C. So, I will have to be voting against this amendment, because in my view it is a waste of money.

**The Greffier of the States (in the Chair):**

Does any other Member wish to speak? Very well, I call on Deputy Young to reply.

**1.2.13 Deputy J.H. Young:**

I would like to thank all Members who have spoken, including both Members of the right and left. In fact, I do not mind being beaten up. I think the debate has achieved for me what I intended, that it has opened up the essential point of how this Commission is going to work. We rejected the amendment of Deputy Le Hérissier and we have on the table the P.P.C. proposition. I think clearly there are concerns expressed that that Commission without the external advice being available to it and a means of validating its work is arguably not fit for purpose. I think it is important to recognise if that opinion is expressed here it may be expressed elsewhere. It is important that I think it adds to the case why we need to ensure that these arrangements include it. I do not think it matters where the experts come from. The point I was making, I think the Commission needs to be able to choose its expert as and when. I think clearly my communication skills have failed here, because Members have talked about a panel of experts, a sort of grand design body. We have heard that it is going to have a chairman and a secretary. Where have I said this? Absolutely not. That is intended to lie all within the gift of the P.P.C. Committee to decide. It is obviously sensible to do it in consultation with the States Members that are elected to the Electoral Commission. But it is not prescriptive. I certainly do not want to build bureaucracy. I spent my working life trying to dismantle bureaucracies not build them up. This, I think, is related to Deputy Vallois point. Now, I appreciate her comments. What I said in reply is that: "I certainly do not think it is paying £200,000 for a group of experts to do this; absolutely not." That is horrifying. It does not need that. I was conceding the point of principle in my report, that obviously if you have some experts rather than none, it is going to cost you some money. The £200,000 came about because they felt very confident in being able to say that this cost, whatever it turns out being, and it will be P.P.C. that decides, will be within the £200,000, because if they spend more than that they must be mad. I also think that it is true that that money is not voted to the Electoral Commission. I think I had a little side-debate with Deputy Vallois. Looking at the proposition there, the £200,000 it says is set aside for Electoral Commission, not "to". Now, "to" means they can do as they please with it. So, I think that money is an allocation. I know that it is my first time doing a proposition and I have been told by Members that they do not like me to go through individual points. But I would thank Deputy Tadier, Deputy Martin, Senator Farnham and others for their comments. I understand this issue that it is regarded as between 2 extremes. On the one hand I am told I am making a mountain out of a molehill. I am proposing a change that does not need to be done, because it is in there already. But I will be frank, I am not convinced and I think the public needs to be convinced. I do not see what is wrong with what I see as a benign amendment that there should be a group, not a panel. A group can be one. A group can be 2. It can be left that loose. That is why I worded it that way.

**Senator L.J. Farnham:**

Would the Deputy just give way for a second? Just a bit of information I have stumbled across. The collective noun for experts is a contradiction. **[Laughter]**

**Deputy J.H. Young:**

I suppose I am guilty of using the word "group" in the context of public administration; that a group can be one. But if it helps I would say it needs to be a minimum of 2. I think in the end without going through all the comments, because I think without going through all the comments we all want to get through this on to the substantive votes. I think this is a choice for Members

between being positive and reflecting the new mood of this House and trying to make this work. That is absolutely where I stand. That is why I brought it. I did not want to interfere with the issue of Deputy Le Hérissier's debate. I tried to leave it absolutely out of the way. I think we have done that. We have had a good debate on that, a decision has been made. That decision now being made, leaves the question of, does my proposal help this work better or not? I believe it does. I do not think that I am about to change the habit of a lifetime and go for cynicism. I absolutely prefer naivety. **[Laughter]** There is nothing wrong with that, because principles in life matter. The principle here is that we are all here to do a job. What does it benefit anybody if we are destructive in those decisions? We should be positive and try and add value to everything we do here. I think my proposition adds value. I will leave that to the Members. I am in your hands. The appel, please.

**The Greffier of the States (in the Chair):**

The Appel is called for on the second amendment brought by Deputy Young. I invite Members to return to their seats. The Greffier will open the voting.

<b>POUR: 16</b>		<b>CONTRE: 30</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F.C. Ozouf		
Senator A.J.H. Maclean		Senator S.C. Ferguson		
Senator F. du H. Le Gresley		Senator B.I. Le Marquand		
Connétable of St. Brelade		Senator I.J. Gorst		
Connétable of St. Saviour		Senator L.J. Farnham		
Deputy R.G. Le Hérissier (S)		Senator P.M. Bailhache		
Deputy J.A. Martin (H)		Connétable of St. Helier		
Deputy G.P. Southern (H)		Connétable of Trinity		
Deputy of Grouville		Connétable of Grouville		
Deputy J.A.N. Le Fondré (L)		Connétable of St. Clement		
Deputy M. Tadier (B)		Connétable of St. Peter		
Deputy T.M. Pitman (H)		Connétable of St. Lawrence		
Deputy of St. John		Connétable of St. Mary		
Deputy J.H. Young (B)		Connétable of St. John		
Deputy S.J. Pinel (C)		Connétable of St. Ouen		
Deputy R.J. Rondel (H)		Connétable of St. Martin		
		Deputy R.C. Duhamel (S)		
		Deputy J.A. Hilton (H)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy G.C.L. Baudains (C)		
		Deputy J.P.G. Baker (H)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		

**1.3 Electoral Commission: composition and terms of reference (P.5/2012) - resumption**

**The Greffier of the States (in the Chair):**

Very well. The amendments all having been rejected, the debate resumes on the proposition brought by P.P.C. in its original form. I hope Members will not mind me, before we resume the debate, reminding Members of Standing Order 104(2)(h), which reminds Members that it is out of order to seek to reopen discussion of a decision that has been taken within 3 months. I appreciate some Members are aggrieved by the decisions on the amendments, but this is not the debate to reopen those concerns. The debate is now for the merits or otherwise of the proposition as put forward by P.P.C. Does any Member wish to speak?

### **1.3.1 Deputy S. Power of St. Brelade:**

I want to make 3 fairly brief points about what happened yesterday and some of what was said.

#### **The Greffier of the States (in the Chair):**

Please, do not go too far.

#### **Deputy S. Power:**

No, Sir. I referred in my speech, briefly, to a Member of this Assembly wanting to take political leadership or political control or political ownership of a responsibility to do something such as this. Indeed, Senator Bailhache, in his manifesto has indicated that. I do not intend to repeat that. His manifesto is still on line, for those who want to see. I am not going to go into that. But what I will say to Members in this Assembly, is there are precedents in this Assembly where Members in former times have taken the guts, the responsibility and the courage to do certain things. I will give 3 examples, in no particular order. I bring Members back to Queen's Valley, which is not directly comparable to electoral reform or the provision of an Electoral Commission. But in the Queen's Valley saga, a former Deputy for St. Helier No. 3 or 4, Deputy Don Filleul, took political responsibility for that project. He endured a great deal of grief. He endured a great deal of criticism. But he took leadership, as it was meant to be, and in his day as chairman of that committee, the Public Works Committee, I think it was, he steered that through the States, through the media. Today, for those of us who look at Queen's Valley and who were not in this Assembly at that time, one would wonder where this Island would be today without Queen's Valley, given the recent drought that has happened. It is not directly comparable to what we are about to vote on later this morning, but it is an example. The other example I would give Members is the position that was taken by former Senator Syvret on the Limited Liability Law and what happened thereafter when he made his stand against the provisions of what was being proposed at the time. He endured a certain amount of criticism. In actual fact he was suspended for a time from this Assembly. But those are 2 examples of States Members in this Assembly who have shown themselves to take a stand and to take possession or control of ownership of a project and drive it forward. I will leave it at that. There is one small other example that I will suggest Members might be aware of and that was the 2009 Homebuy proposition, where I steered that one to the Assembly where we got 46 families 46 houses. I got a good kicking for that, but I stand by it. There are men and women in this Assembly who make a stand and do worthwhile work. I believe that the Dean yesterday made 2 important points in what he said about the comparison between electoral representation in the U.S. (United States). He used the analogy of the U.S. senate, Rhode Island versus California. That is entirely appropriate to the way we represent our Parishioners with, say, the example between St. Mary and St. Helier. I think that is important. I think in this Electoral Commission those views will all be garnered and produced into a report.

[11:15]

There is still in this Assembly a suggestion, a whiff of something untold about Members being on this Electoral Commission. I think that is wrong. I think we are deeply involved in the political process. We know how the system works. Points were made yesterday about understanding the system as it works and how it has evolved in Jersey over hundreds of years. I think it is important



that those that are within the system understand what kind of work needs to be done. I think Senator Bailhache ticks all those boxes. That is all I wanted to say. I will be supporting the proposition. I urge those that perhaps were sitting on the fence yesterday that they might also reconsider. Thank you, Sir.

### **1.3.2 Deputy J.M. Maçon of St. Saviour:**

Very briefly. As Members will be aware, I have not taken up any time in this debate, appreciating that all the arguments have been said. I simply have to outline my position now. This has radically changed from what I first adopted when the former Deputy of St. Mary brought this proposition, as we all know. It is something which is totally different. Therefore, I find myself unable to justify the cost and I think a P.P.C. sub-committee could deal with it. I will not be able to support this proposition. Thank you, Sir.

### **1.3.3 Deputy R.G. Le Hérisier:**

I have to say I am totally at variance with what Deputy Power said. He tried to imply that because people took brave stands - and I notice that, good luck, he included himself in that self-nomination - therefore their case is right. The 2 things are not necessarily connected. It is certainly wonderful to see people take brave stands, but the whole issue here, and it was argued here at great length, is that it is not a question of coming up with the reforms. In fact, I do, as I said earlier, I get this impression people think that it can almost be put on the back of fag packets, and they probably can. That is not the issue. The issue is building up the support. The issue is getting the whole population behind you. We have ended up as a divided House. So, it is not a question of saying: "Are people not courageous?" Quite the opposite: "Are people not utterly naïve?" Thank you, Sir.

### **1.3.4 Deputy M. Tadier:**

If this Electoral Commission does indeed end up being done on the back of a fag packet, I hope that it carries with it the requisite health warning to the public. **[Laughter]** That remains to be seen. Similarly, I was slightly bemused by the speech of my esteemed colleague of St. Brelade No. 2 District, because of course there are different types of leaderships. The comment about former Senator Syvret; Senator Syvret took a stand in this House, I think, probably in the late 1990s over the L.L.P. (Limited Liability Partnership) law and he end up getting shafted.

### **The Greffier of the States (in the Chair):**

Not "shafted".

### **Deputy M. Tadier:**

I suspected I might get pulled up for parliamentary language, but it is parliamentary, because it used to be one of the pet words of a former Chief Minister of ours. He thought it good to use that on live radio to be ...

### **The Greffier of the States (in the Chair):**

I do not recall him using it in this Assembly.

### **Deputy M. Tadier:**

In that case, Sir, I take it back. I ask if I may be permitted to use the Jersey French word of *shafte* or is it *shufte*? *Je me suis fait shufte*.

### **The Greffier of the States (in the Chair):**

I do not think Jersey French is a language. Would you please get back to the issue.

### **Deputy M. Tadier:**

I do like to test the boundaries, Sir. Maybe I should be on the Boundary Commission when it comes to electoral reform. Anyway, let us get back to the question in hand. There are different types of different leadership, of course. I think Senator Syvret took a stand against L.L.P. because Jersey was being misused, in his opinion, by the City of London, to be forced through. It is interesting to note that the L.L.P. law in Jersey has not been used once since it was put through. It was never intended to be used. It was simply a tax avoidance mechanism, which was demanded by lawyers in the U.K. and Jersey was used as a mechanism cynically to put this through. Senator Syvret, quite rightly for the interest of democracy, took a stand and he was expelled from the Assembly. My former colleague in St. Brelade No. 2, Gary Matthews, was one of the casualties of that campaign. That is where leadership can get you. Interestingly enough, we know there were other types of leadership. In 1923 in Munich there was a particular Putsch which saw one individual rise to power. So, it is not about leadership. It is about legitimacy and democracy. I think we have not done ourselves any favour in this debate this week about the Electoral Commission. I feel sorry for any Member, in particular in this case the former Deputy of St. Mary, who dedicated 3 years of his life to this Assembly, worked very hard and for his last proposition, which was adopted successfully. We know that for the Deputy of St. Mary or for anyone who is not a Minister, one has to work doubly hard, if not triply hard, to get any proposition to be supported in the in House, only for it to be turned over. That could happen to any Member. It does not necessarily speak well for democracy. Of course, I cannot say categorically that we should not be doing that, but of course there are cases where that might be valid. Certainly I tried to do it for the waste of energy plant which we have now in No. 1 District in St. Helier. Let us get to the fundamentals here. Do we need this Electoral Commission? We have heard about the American system from the unelected Dean who spoke to us yesterday in the States. I hope that one day the Dean does stand for election as Senator, because he would get elected. I think it is important that we have Christian representation in the States. I think it is important that it is legitimate and it is voted for by the public. We do have Christian representatives in the States already in the terms of the Chief Minister, *et cetera*. The point about the U.S. is completely flawed, because the U.S. has 2 Houses, first of all. It has a congress which is voted on on a proportional basis. It has a second house which is voted on with 2 representatives from every state. That is not ideal anyway. There is a big movement against the disproportionality in the U.S. already. My point is, this afternoon at lunchtime I am chairing a meeting of the Machinery of Government Sub-Committee in the States. Other Members are chairing; Deputy Martin is chairing one to do with external electoral voting to do with voting. I know there is another one going on to do with the internal procedures in the States, which is being chaired by Senator Ferguson. Now, how do these committees all fit in with the Electoral Commission? How do I know that the work our committee, this lunchtime, is going to fit in well with the Commission? Are we going to establish the Commission first? Are we going to wait for our results to be reported back to the Electoral Commission? Are they going to be working in parallel? It seems to me, now we have a Machinery of Government Review we do not need this Electoral Commission at all, because my panel can look at the structure of the States. It will consider: do we need a Ministerial government? Is it working well? Do we need Assistant Ministers? How should we vote for people in the States? Should we be composed of 42 people? Should we be composed maybe of 62, because there is so much work that is going around that cannot be done properly that we need more States Members? These issues are going to be considered by my panel? Will they be considered by the Electoral Commission? Well, presumably they have to be as well. The voting systems; they have already given us an assurance that they have to look at voting systems, so what is the point in Deputy Martin's panel looking at this? Where is the joined-up nature of all these different committees that are going around already? I would say we need to fold the internal committees that we have on P.P.C. - of course, this needs discussion to see what the way forward is - or we do not need an Electoral Commission anymore? What is wrong with the States anyway? Okay, we need to look at the boundaries, but maybe what

we have currently works very well. Many Members of the public like the mixture of having Senators, Deputies and Constables in the States. Sure, we all get here by a different means. We have different constituencies. But the electorate know exactly what they are getting when they go out to the polls. So, do we need electoral reform? Is this not a waste of time? Would Senator Bailhache not be better off representing the Island in the Chief Minister's Department travelling to overseas jurisdictions, such as the Isle of Man, China, wherever he goes, and putting his expertise to the benefit of the Island to promote what we do well in Jersey, rather than having his time tied up here by a Commission, which is already having the work done by sub-committees of the P.P.C.? Should we not, in fact, wait until we have heard back from those sub-committees of the P.P.C. before we know exactly what needs to be going on with the formation of the Electoral Commission? What is the big rush here? I think the P.P.C. proposition is flawed in some ways. I said that yesterday. First of all, why are we voting for the people on the Commission straightaway? Why not even give one day's grace? Who wants to put their names forward? I have made these points already. I do not need to go over it. My risk is that the majority P.P.C. cannot put together a proposition. They cannot even put a basic safeguard in to allow for a credible election of States Members to the Commission. How are those people supposed to run an Electoral Commission themselves if they cannot get the basics of setting up an Electoral Commission in the first place correct? There are so many problems with this document. We have had an axe taken to the original terms of reference. The point which should have been made earlier perhaps is one simple example to do with voting systems. It was not that Deputy Le Hérissier wanted to put voting systems back in, it was the fact that they were already in there. It was taken out deliberately by P.P.C. as a conscious decision. They said: "Voting systems? We want to take that out." Clearly there is something going on there. It is not a comprehensive review. I think we need to take a step back now. We have realised that the position which was valid last year, when the Deputy of St. Mary's proposition was accepted by a different Assembly, is no longer the case today. In this new Assembly that decision no longer stands, when a completely different decision ... we should not necessarily be making the best job of something that, in fact, none of us as a majority necessarily wants in this particular way. Certainly I do not want this Electoral Commission in the format it stands. I suspect that some of the people who have supported this position of P.P.C. do not want an Electoral Commission anyway. Let us be honest about this. Let us look at this wholesale. Let us get the public on board. The other issue to do with these reviews, saying: "The Clothier Review is flawed." What has happened to Carswell? We had an in committee debate late year on Carswell. Nothing has come about it. We are always saying: "Well, this one is going to be different, because it gets put to the public in a referendum." Why do we not put Carswell to a referendum and then have a debate in the public around the Carswell Reviews? Both positions are valid, but the public must have an opinion on them and they need to make informed ... we cannot simply stack up reviews and then say: "Well, these reviews are not valid, because they were done by experts." The only review that is going to be valid is one which is done by States Members and a few external people. Good luck, incidentally, finding people who will be considered independent to be drafted on to the Commission in Jersey, because it is going to be very, very difficult. There is a dual contradiction there. If you want people who are independent and do not have any views, they are probably not going to be interested in being on the Commission in the first place, because they are probably not interested in politics. If they are interested in politics they are probably going to have decided views on how that should happen. So, I think we have basically neither fish nor fowl here. We should not necessarily be throwing good money after bad, to use a gambling expression. We should certainly not be gambling with the future of our Island's democracy. We need consensus from the very beginning. I think the vote today of a 22:22 split shows that we cannot even have any kind of consensus in the States. It is not a good basis. We need to get our heads together. We need to talk more about what the future of democracy in Jersey should be. So I would ask Members to let the P.P.C. sub-committees get on with their work and to reject this proposition. It

can come back at a future date. Let the States Members, including Sir Philip Bailhache, get on with the jobs that they were elected to do, each of us to our best ability.

### **1.3.5 Deputy T.M. Pitman:**

I have a few points. Yesterday, at the end of the debate, a new Member - and I will not embarrass him or her by giving the identity - said to me that they wanted to congratulate me on my speech, how good it was. They said that they thought I had slayed the argument. I said: "You naïve fool. Arguments are not won by highlighting the real issues, the facts, and putting logical arguments. They are decided by head-nodding subservience and vested interests." That is certainly what I have learned in the time I have been here. We are seeing exactly the same today. I feel much like Deputy Tadier, to be quite honest. I listened to the speech from Deputy Power and I think he was a bit unkind there when he talked about where leadership gets us and people take on issues. I thought: "You forgot to mention Deputy de Faye, who took on for us very kindly the issue of the environment and kindly gave us the incinerator, which was massively over-priced, redundant technology and is now a blot on the landscape in my district." So, let us be careful when we ask for leadership, because it does not always lead you where you want to end up. Next really I think it is relevant to say that I am in London next week. I am seeing a number of politicians.

[11:30]

They are personal contacts. It is not an official visit. I am not important enough for that. But I am going to do some networking there. I think what is quite clear if this does go ahead now is that we do need some oversight from the U.K. on ensuring that we have a system with some fair boundaries because it is quite clear talking to people who know what they are talking about - like Professor Lee - we are not going to get that now with this hotchpotch under a States Member. You cannot look at saying: "Let us have 10 less Members or 10 more" without looking at what those constituencies are going to be made up of. We cannot have a situation where we have a Constable in St. Helier with 35,000, more than a third of the Island, and then - it is not personal - we have got a tiny little Parish further up in the Island that represents about 6 people, 2 sheep and a set of traffic lights. It is just not right. I know that is an exaggeration, there are no traffic lights in some Parishes. But this is the situation that the person who takes on this chairmanship has now got himself or herself. Again, it is nice to be right in this House but square pegs into round holes - or the other way- that is what is going to come out. It is completely illogical what has been dismissed here today, completely illogical. We have come up with a complete fudge and when you look back - I cannot remember which Member said it - but it is just like we did with Clothier. We could not accept what was before us and put it to the people who really matter, we had to tamper with it ourselves and what a mess we ended up with. Carswell: the evidence is quite clear; the dual roles need to be separated but the trouble is the Jersey way does not like that so of course we criticise it and ridicule it and I am going to be bringing that proposition back I think fairly soon because that needs to be acted upon. It is interesting and relevant to this debate that - as I think Deputy Tadier brought up - Senator Syvret... and of course he was put out of the States for 6 months and yet the only person he could appeal to really was the person who probably put him out of the States. What a ludicrous system of democracy we have. Sitting here listening to the debate, because I really wanted this to succeed, I sat here yesterday and I was thinking would it not be nice to be in a democracy where they are really trying to develop and promote and move forward. I thought of Venezuela and my Uncle Hugo because there they have got a recall mechanism and if the leader is completely shambolic and incapable of leading they can recall him, the public. That is probably what we need to do, start again. This is a complete waste of time spending all this money now on an Electoral Commission which is not what the former Deputy of St. Mary put so much work into and did such a good job. It has been hacked; frankly it has been murdered. I almost feel like I should apologise to the former Deputy of St. Mary for what has been done to his work. This is an

absolute insult to his work. He had offered us a real way forward, a way out of the malaise that has been proven again and again that States Members, with the best will in the world, we have never got any significant reform, have we. What did we get; we got a general election which is not a general election because we have still got 3 types of Member and, as Professor Lee has so rightly said, the real problem is you would not start from here because you have got 3 types of Member which are completely unjustified and that is a big difference between us and the situation in Bermuda. They could change their system and develop because they did not have to fit in a particular group with these huge anomalies, this huge democratic deficit that we have got in Jersey and we are going to always have it now because we are saying - and Senator Bailhache I am afraid has said it - Constables are almost a non-negotiable. Now, I did not approve of the Constable of St. Lawrence abstaining, I have got a lot of respect for the Constable of St. Lawrence, I thought it was really wrong that she abstained, she should have voted one way or the other. But really I do not see how any of the Constables could vote for this because they are voting to keep their jobs because that is what we have been offered with instead of that blank canvas. That was my main thing yesterday; this was meant to be a blank canvas, it is no longer that, you cannot mislead the public that it is. This is about haste, it is about just getting something done to keep the *status quo* for ever more and I think there is just no way it can be supported. It is very disappointing. I am sorry for the Deputy of St. Mary, I am sorry for the people who felt there was some hope. I had a phone call from a gentleman who told me he was 83 yesterday; now, he described himself as a survivor of the Occupation but I think he meant just that he lived here throughout. I will tell you what he said, I would get into trouble if it was my words and I will change one word because he used the German for fascist: "In spirit the fascists never left. The only difference is when I listened to yesterday's debate that yesterday's field-grey and jackboots have now been swapped for pinstriped suits, tweeds and brogues." How sad is that a man of 83 has to feel that and I will not be supporting this. It is an utter shambles, we should save the money and let us just let P.P.C. take this on as a full committee instead of this bizarre hybrid we have made now.

### **1.3.6 Senator L.J. Farnham:**

I do not know how to respond to the last comment, I do not want to say something bad of something that was passed on to the Deputy but my father also lived here throughout the Occupation and if he heard those words he would say what utter rubbish. He cherishes the democratic freedom that we have and I think most people that lived through the Second World War do. Our generation are extremely fortunate not to have suffered that. But moving on, I am quite astounded that some Members are now saying that because it is not going our way change is not really necessary; a number of Members have said that. I would remind Members that this Assembly last year in an unprecedented move acted to remove 4 Senators without proper consultation and without the knowledge or the consent of the people of Jersey. Do we want that to happen again? I think not. I know the people of Jersey do not want that to happen. It is quite right and proper that we establish a body to move things forward. Senator Bailhache is not going to decide whether we have Constables or not; Senator Bailhache is not going to ...

### **The Greffier of the States (in the Chair):**

Senator, nobody is appointed as chairman of the Commission until the States elects somebody. It is not right to refer to somebody as if they were already the chairman.

### **Senator L.J. Farnham:**

Sorry, sir. No Member of this Assembly is going to decide whether we have Constables or not, or Deputies or Senators, or whether we have a second Chamber or whatever. It will be and it must be the people of Jersey and the process we are setting up now will ensure that. Members should think

about the alternative. If we sink this proposition now what is the alternative; probably more unprecedented, unnecessary and unwelcome moves by the States to interfere with our democracy.

### **1.3.7 Deputy G.C.L. Baudains:**

I wonder at this point how some of the newer Members feel of their initiation into States debates on reform. I can assure them that yesterday and today is merely a rehearsal compared to what we have endured in the past. In fact I recall that TV personality phrase of “We’re doomed”. [Laughter] I shall be voting against this because I just despair; I was a member of the Privileges and Procedures Committee in my last sitting here and the Deputy of St. Mary followed with 3 years more chairing P.P.C., and it does seem to me that the present P.P.C. is following in exactly the same footsteps and we are going ultimately to get nowhere. Those of us who were here years ago will recall the debates that went on and on and on and at the end we achieved exactly nothing, and I am afraid if we follow the format of a divided P.P.C. we are going in a couple of years’ time to be where we were yesterday then the public are going to be even more irritated about this States Chamber than they are at the present. I think the only elegant way out of this is either for P.P.C. to withdraw this proposition or for it to be voted down and come back with something which is more acceptable. I will just close by making an observation which I have made before, and I believe Deputy Tadier made it just a short while ago, and that is that this Commission is premature because there is a panel - of which I am a member - working on the machinery of government reform and when you think about it logically, the machinery of government reform has to be decided before the Commission’s work can start. So we are running prematurely anyway; you cannot decide how many States Members there are going to be and all that sort of thing until you know the system and the number of people needed. So there is time for the Privileges and Procedures Committee to reconsider what they are bringing here because I do fear we are just going to carry on in the same vein that we have done for the last 6 years.

### **1.3.8 Deputy J.A. Martin:**

I will try and be brief. Why I took the time to do the minority report with Deputy Tadier is because I wanted to see the Commission start with a completely blank canvas and wherever we go now States Members - whoever they will be - have preconceived ideas and some of them have already said what they are. I have said it in this House before, I do not necessarily agree with the reasons why we are where we are; I do not necessarily agree with Deputy Pitman or Deputy Tadier and I do not believe many of you are nodding dogs. What I will fundamentally say, you are fundamentally conservatives and that is what we have. We have four-fifths of this House who are basically conservatives. We have in our Chief Minister, and you only have to see we have a young Cameron and a Clegg or an Osborne, we could have a Mr. Osborne, and we even saw a bit of Mr. Miliband today from Senator Maclean, how dare he, you know. They are so close, this is your fundamental political doctoring. Members are basically conservative. There is nothing wrong with that. So why do I want to see the system change? Out of the 1,000 people - we do not have a party system - are the 12 Constables, are 8 of the country Parishes representative of the people that I represent in St. Helier who live, the majority, in States houses. Some are struggling for jobs, they have never had the good fortune to be able to get their foot on the ladder, and some of them have to claim income support. You know when it really comes home to me is when I get a question from the Deputy of St. Brelade to the Minister for Social Security: “Are we still stamping down on fraud?” When I bother to go to the Social Security Scrutiny hearing the main fraud is cohabitation and not informing the department. What that means for the people who do not know is a single mum living in St. Helier with 2 or 3 children who has the audacity to start a relationship and the partner may have a flat of their own, Social Security snoops, sit outside, and the boyfriend is staying 2 or 3 nights a week and then the single mum is committing fraud, she owes X amount of money and, hey presto, the new boyfriend is expected to pay for the 3 children who Social Security are not even

chasing the natural fathers for. This is what you get when you say that you understand ... it is empathy and not sympathy. You have never been in these situations so I have no problem ... and I certainly disagree with the remarks of Deputy Trevor Pitman and I think to have a good political look at things you have to be open-minded and before Deputy Southern faints, when I was in the U.K. twice I voted for Mrs. Thatcher; twice. [Members: Oh!] I know, shame on me. Do you know why; because in our ward in Enfield there were 2 wards and if you voted for the Conservatives they did more for you than the Labour Party or the Labour representative did and that is exactly why people vote.

[11:45]

But we had a choice; we do not get the choice here and you do not get a choice everywhere. So as for Deputy Farnham to say now that I do not want this because we do not need change; I do not want this because we are not starting with a blank canvas, we are not going out to ... look what I said yesterday, the population as what it is. There is nothing wrong with the States Members, it is the way they are elected, it is the way the boundaries are, it is the way we are carved up into 3 different Members; and if anybody ever says I am having a go at the Constables, on one or 2 propositions to remove the Constables I did not vote for that. So I can change my mind. But it has to be representative and it is certainly not representative. The next elections, yes, we had how many contested elections. We have now safe sitting Deputies and safe sitting Constables in this system and nobody will stand against them. That is fine and that is what we will have and nobody wants to change that really, especially if you are in a safe seat. So I do not have any problem saying now ... and it is not we have lost, I have lost. I started from the premise, I even did the work with Deputy Tadier to say why not to leave it in the hands of States Members because how many debates later we are exactly where we are and we will not change. At the end of the day, as Senator Farnham said, it will come back to this House. I just cannot let him go, he spoke last time in the debate about he is not having any U.K. independent bodies coming in and telling him what to do; well, he did not hesitate to rush to an independent body called the Privy Council when it suited him. There you go, we can all make an argument to suit ourselves ... no, I am sorry I will not give way, why I should I? He spoke before me this time and he did do that so that is fine, it was not going his way, he was absolutely to lose the Island-wide vote. That is what the Commission could come back with somehow, and we all know out there, if we really listen to the electorate they want more say on the Island-wide. Nobody wants to get rid of it and they want more of it. An expert could come up, it will not be Island-wide but you could have more people voting for more States Members. It would mean getting rid of the Parishes, it would mean that, but it would be representative of the people and would that not be terrible? Would that not be terrible for some States Members? I do not care about other States Members, I do not care what party they would represent if they were in the U.K.; I care about my public, I even care about the public in St. Mary, Trinity, St. John, St. Ouen. I care about those people who are disenfranchised with this system so I am sorry, I cannot support this and I urge people we must leave it as it is. We are not going to get any change and we will do so much harm in this House - as Deputy Baudains has just said - because whatever comes back it will not get support. There will be some other reason why that country Deputy or that country Constable or even a St. Helier Deputy cannot support the new reform. It will not go through; sorry, I cannot support this and I urge people to just throw it out. We might as well stay as we are.

### **1.3.9 Senator I.J. Gorst:**

I do understand that some Members feel disappointed by yesterday's vote and some of those Members perhaps have this morning outlined why they feel that disappointment. So they have quite eloquently verbalised the problems that we have always faced when it comes to electoral reform and that is right and proper. They have talked about the difficulty of starting or not with a

clean sheet; the difficulties of building consensus; the difficulties with regard to how we move forward together. They have very clearly explained, as I tried to yesterday, the difficult decisions that remain before us. Some Members have cast doubt upon Jersey's democracy. I want to say that I am proud to be associated with and a part of Jersey's democracy, for it is a democracy. It may not be exactly as every other country operates but it is a democracy. That does not mean to say that there are not changes and improvements that we should and will endeavour to make, and rather than being pessimistic about the future I believe that if we accept P.P.C.'s proposition today - as difficult as it might be, as it always is when one is moving towards having to make a difficult decision - I believe that we will be nearer to change and nearer to making improvements than perhaps we have been for a long time. I recognise that can be difficult. Other Members have said that P.P.C. is divided and inferred that we as an Assembly are divided. So we have to somehow learn to live with the fact that we are all elected as independent Members, we do not have a party system and that means that there should be and it is absolutely right and proper, and I would be concerned if it were any other way, there should be debate, there should be discussions. There will be times when we disagree and I would say it is a mark of a functioning P.P.C. when there are disagreements and there are debates and sometimes those issues are so important that they are not contained to the committee but rightly are brought to this Assembly for each Member to decide upon. Once we have disagreed it remains in our independent system incumbent upon us then to move forward. Again, it is not always an easy thing to do but I hope that we will now support P.P.C. and be able in this instance to move forward because - as I have said in the past - it will be important that we continue to work together. Yes, we will continue to disagree but that we continue to work together to face the other big issues that we face as a Government, as a Legislature and as a community. So I remain optimistic about the future and in that light I hope that Members will be able to support P.P.C.'s proposition this morning.

#### **1.3.10 Deputy G.P. Southern:**

It is pleasant to follow such optimism from the Chief Minister. We had an outbreak of optimism yesterday from the Minister for Treasury and Resources but now it is his turn. I will start with the reference yesterday to the fresh winds that are blowing through this Chamber now that we have got new Members here and as I do so I will not talk about 1,000 years but we are well into our ninth hour of debating an issue on the constitution. *Plus ça change, plus c'est la même chose.* The fresh winds are not here, we are getting bogged down already. What a wonderful debate it has been. We have talked about do not mention the war, we have talked about the Germans, we have had French and faux French and all sorts of things and now we are setting up something that looks awfully like a sow's ear which has no validity whatsoever. We started off with an independent review body, we have ended up with 3 faces from this Chamber who are not going to find it any easier than we do as a whole to come to a single uniformed opinion. What is worse we have a politician who wishes to lead this investigation and this committee, who says he has a mandate. Beware any politician who says they have a mandate. It may have the vaguest smidgeon of credibility when you are in a party system where the leader of the party can say: "Here is my manifesto, it is this wide and I have a mandate to do this bit and that is what I am going to do because I have a mandate."

#### **Senator L.J. Farnham:**

I think I would just ask for a point of order here. The Deputy is misleading the House; Senator Bailhache has never said: "I have a mandate." The fact is he does have a mandate but he has never said it.

#### **The Greffier of the States (in the Chair):**

I am not sure it is right to interrupt in that way, Senator.

#### **Deputy G.P. Southern:**



It must have been a faint echo from other people saying he has got a mandate, but I have definitely heard the word mandate associated with Senator Bailhache, and I believe he has a mandate and he has said so. Now, that might have some credibility in a party political system; it has absolutely no credibility where you have 51 independent Members. Nobody has a mandate. You can pick a bit of your manifesto if you had one, apart from apple pie and nice things or difficult choices to make: "Which difficult choice am I going to say I have got a mandate on and I am going to make it." People are going to squeal. There is no such thing but what a dangerous thing it is: "I have a vision and I have a mandate and I am going to push this through." Why are we debating - ninth hour - this issue now: because Senator Bailhache has come in and persuaded, cajoled P.P.C. to change its mind. What we are setting up, as I say, will have no validity; it is - as Deputy Tadier has pointed out - a duplication of a sub-committee we have already got, it looks awfully like a sub-committee of P.P.C. and we have got 4 of them now working on similar issues. How are we going to co-ordinate that? Without going any further in the hurdles that we have got to jump which is agreeing something in the first place, bringing it back to this House for acceptance, taking it out as a single question in a referendum to the public and then our referendum system is not binding, deciding to do something about it. It is a long way down. Without going all the way down there and all the spanners you can throw in the works; we have started from the wrong place. I remind Members that it is perfectly legitimate - even in the ninth hour - to vote against the main proposition. What happens if you do is that the independent Commission, the Deputy of St. Mary's proposition, then stands. We do not get nothing, we get something. We get something, I believe, a better decision than we made last time and not this which has no validity whatsoever. We rejected a steer of our advisors. The P.P.C. is split 4/3, we had 22-all vote today and we cross our fingers and say: "This is the way forward, we will be able to see the way when this Commission comes back to us." I do not believe that will happen; I believe it will have no validity whatsoever. It is perfectly okay to vote against this, it is not a waste of time, we go back to the old proposition. I urge Members to vote against this nonsense.

**The Greffier of the States (in the Chair):**

Does anyone else wish to speak? I call upon the Chairman of P.P.C. to reply.

**1.3.11 The Connétable of St. Helier:**

There are not an awful lot of questions to answer. As the Chief Minister said in his, I thought, very balanced and eloquent speech; several Members who have spoken are deeply aggrieved by the outcome of the various debates that have gone on and I understand their position. As the last speaker was just pointing out, we are divided on these matters. We had a vote that went to the wire, 22 each way. P.P.C. is equally divided and has been throughout. But, like the Chief Minister, I see such divisions as healthy, a sign that democracy is working.

[12:00]

I think the fact that certain debates have gone against Members, they need to, the Members who have been here some time, as I have... we have all lost debates. We have all been deeply upset by decisions that have been made by the States but we are elected to implement the decisions made by the majority of Members in this Assembly and I believe that is what we need to do; and at all times treat one another with respect. I am glad that for the most part all of the contributions today in this last section have shown due respect for other Members. Deputy Power began by talking about the need for a political champion to drive the project of the Electoral Commission, and I do not know whether he was trying to put himself forward in any way but he is certainly right that the Members that the States will go on to appoint if this proposition as amended is approved ... sorry, as not amended is approved, you can see how I have got 2 speeches here, I have to find the right one. **[Laughter]** He is quite right that political champions will be required for this process as it moves

forward. Deputy Le Hérissier is also right and I thank him for the work he has done on the matter and I know that Hansard will repay study by the Commission if it is set up when it starts its work. Deputy Le Hérissier is right, the building support is important I think particularly with the public. There is evidence that some people out there are convinced that it will be - to use an earlier phrase by another Member - a hatchet job or an internal hatchet job and I think it is very important the Electoral Commission is extremely transparent and works with the community at all levels to make sure that people see that what is going on is really in the best interests of the Island. Deputy Pitman mentioned the sub-committees and several other Members in their speeches laid hold of the existence of these 3 sub-committees as if to say that the existence of them means that we do not need an Electoral Commission. Rather than referring to the individual Members who made that argument I will just try to demolish it the once. Scrutiny has, it is true, got 3 sub-committees up and running and all States Members were invited to take part and I am delighted that we have had such a good cross-bench, if you like, involvement in that. We have got the machinery of government review being chaired by the Vice-Chairman, that is looking at the relationship of Ministers to Scrutiny and all the issues that were raised by a very important proposition brought by Deputy Tadier last year I think it was. But it is essentially looking at how Government works internally. The Public Elections Sub-Committee under Deputy Martin is probably the frontrunner of the sub-committees, it is well underway with its work, it has had expert advice, it has had a meeting well attended by States Members and I think we are going to see some very radical and exciting proposals from that sub-committee on the way elections are carried out. Then Senator Ferguson is chairing the third sub-committee on Standing Orders and internal procedures, a very divided sub-committee - because I have chaired it in her absence - already where we have very interesting tensions between those who would like the States to behave in a more orderly way and have shorter meetings and those who would like it to drag on and on and on. But anyway, that sub-committee will I am sure move forward and come up with lots of positive recommendations to improve the procedures of the House. Senator Farnham pointed out that the Electoral Commission will be a chance to address one of the big bugbears for him, which is the removal of the Senatorial positions, and of course the end result may be even worse for him but at least he is quite right, the Electoral Commission is needed. But the alternative - I have to say to Members - is a continuation of the piecemeal proposals. I predict that if this does not happen the first seats that will be targeted will be the St. Lawrence Deputies which, as the Deputy of Grouville rightly pointed out, simply have too many seats; and St. Peter and Grouville I am sure will be delighted to see St. Lawrence reduced to one. But is this how we want to carry on, a piecemeal approach to trying to reduce the numbers of the States? I do not think so, I think we have got an opportunity, let us see what the Electoral Commission makes of this, let us not assume it is going to be - as some Members have said in their speeches - head-nodding subservience, a fudge, a hotchpotch and so on. Let the proof be in the eating of the pudding. I do agree with Deputy Pitman when he talks about the danger of people voting to keep their jobs and my personal view is that Constables in particular should not be the political Members on this group because they have very much been the focus of a lot of attention. Let us keep well out of that, of course there may be some Constables that have already decided to be nominated but I will not be voting for them. Deputy Baudains and others referred to a divided P.P.C., I have made no secret of the fact that P.P.C. does not agree about everything and I deliberately chose Members, when I formed the committee, of differing views and I think the Assembly would have been more concerned if I had just gone for all the people who I thought would agree with me. So there we are, we have a possibility of taking this forward. I am indebted to the Greffier who has already prepared the draft advertisements and he has done it very fairly because I have got one if Deputy Le Hérissier's amendments were accepted and one if they were not. But we are ready to run this advertisement to get that out probably by the end of this week to ask for people to get out there to get involved in this process. All I can do is urge the States to

allow this Commission to get up and running and do its work and not to condemn it before it has even started. Thank you.

**The Greffier of the States (in the Chair):**

The appel is called for.

**Connétable D.W. Mezbourian of St. Lawrence:**

Sir, can I just inquire, does the proposition have to be taken in its entirety or is the proposer able to split it?

**The Greffier of the States (in the Chair):**

I am not quite sure, Constable, how it could be split and still make sense but did you have a particular request in mind?

**Deputy M. Tadier:**

Are you dealing with a point of order already?

**The Connétable of St. Lawrence:**

I think maybe looking at it again, obviously if (a) fell then the rest of the proposition would not make sense so I believe it needs to be taken into its entirety. Thank you.

**The Greffier of the States (in the Chair):**

Very well, the vote is for or against the ...

**Deputy M. Tadier:**

I just need to clarify, there seems to be some confusion among certain Members that are around me. If this proposition does not succeed are we in fact left with the proposition of the former Deputy of St. Mary; would that still carry weight or would we be left in no-man's-land?

**The Greffier of the States (in the Chair):**

I did address this issue in case the point of order was raised. I think it is somewhere in the middle, Deputy, because I think the proposition of the former Deputy of St. Mary as amended would remain valid but that proposition does require the States to agree the composition of the Commission so if the States do not agree this composition today the matter is effectively stalled until a further composition comes back and is agreed. Certainly the Commission could not be set up without a further States debate. Very well, the vote is for or against the proposition and the Greffier will open the voting.

<b>POUR: 32</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 1</b>
Senator P.F.C. Ozouf		Senator A. Breckon		Connétable of St. Lawrence
Senator S.C. Ferguson		Senator F. du H. Le Gresley		
Senator A.J.H. Maclean		Connétable of St. Brelade		
Senator B.I. Le Marquand		Deputy R.C. Duhamel (S)		
Senator I.J. Gorst		Deputy R.G. Le Hérisssier (S)		
Senator L.J. Farnham		Deputy J.A. Martin (H)		
Senator P.M. Bailhache		Deputy G.P. Southern (H)		
Connétable of St. Helier		Deputy J.A.N. Le Fondré (L)		
Connétable of Trinity		Deputy M. Tadier (B)		
Connétable of Grouville		Deputy T.M. Pitman (H)		
Connétable of St. Clement		Deputy T.A. Vallois (S)		
Connétable of St. Peter		Deputy J.M. Maçon (S)		
Connétable of St. Mary		Deputy G.C.L. Baudains (C)		

Connétable of St. John		Deputy of St. John		
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Greffier of the States (in the Chair):**

Very well, the proposition having been adopted places an obligation on the Assembly through paragraph (b) to appoint immediately the Chairman and 2 States Members. I am conscious of the time because the process could take some time if the nominations are contested but I think it would be sensible first of all to invite nominations for the ...

**The Connétable of St. Helier:**

I will give way for the Chief Minister but I was going to suggest that Members have complained in the debate that they have not had enough time to consider this. Would it not be better to deal with, if it is possible, the other matters on our agenda and come back to the nominations after lunch?

**The Greffier of the States (in the Chair):**

No, I am afraid not, Constable, the Bailiff has ruled that the proposition is absolutely clear, the word immediately means immediately, it does not mean later. **[Laughter]**

**LUNCHEON ADJOURNMENT PROPOSED**

**Deputy M. Tadier:**

We have corresponded on this issue and my understanding is that immediately means it is the next item on the agenda so what I would like to do is propose the adjournment for lunch early so that we all come back at 2.15 p.m. and then it still will be the next item on the agenda. I would like to propose that.

**The Greffier of the States (in the Chair):**

Yes, that is in order, Deputy. Is that proposition seconded? **[Seconded]** Those in favour of adjournment ...

**Deputy C.F. Labey of Grouville:**

Sir, could I make an amendment to that proposition, could I propose that we come back at 1.30 p.m., not 2.15 p.m.?

**The Greffier of the States (in the Chair):**

Shall we first of all consider whether the Assembly wishes to adjourn. The appel is called for, if you wish to adjourn you vote pour, if you do not wish to adjourn you vote contre and perhaps we can then agree if that is adopted a return time. The Greffier is just setting the voting system and the Greffier will open the voting.

<b>POUR: 32</b>		<b>CONTRE: 14</b>		<b>ABSTAIN: 1</b>
Senator P.F.C. Ozouf		Senator A. Breckon		Connétable of St. Lawrence
Senator S.C. Ferguson		Senator F. du H. Le Gresley		
Senator A.J.H. Maclean		Connétable of St. Brelade		
Senator B.I. Le Marquand		Deputy R.C. Duhamel (S)		
Senator I.J. Gorst		Deputy R.G. Le Hérisier (S)		
Senator L.J. Farnham		Deputy J.A. Martin (H)		
Senator P.M. Bailhache		Deputy G.P. Southern (H)		
Connétable of St. Helier		Deputy J.A.N. Le Fondré (L)		
Connétable of Trinity		Deputy M. Tadier (B)		
Connétable of Grouville		Deputy T.M. Pitman (H)		
Connétable of St. Clement		Deputy T.A. Vallois (S)		
Connétable of St. Peter		Deputy J.M. Maçon (S)		
Connétable of St. Mary		Deputy G.C.L. Baudains (C)		
Connétable of St. John		Deputy of St. John		
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy E.J. Noel (L)				
Deputy A.K.F. Green (H)				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

**The Greffier of the States (in the Chair):**

The proposition is adopted, the Assembly will adjourn. Are Members in favour without a vote of the Deputy of Grouville's suggestion we should return earlier. Members willing to return at ...

**Deputy M. Tadier:**

Sir, there are difficulties, as mentioned earlier, at 1.00 p.m. we have a meeting which I would not mind if it was moved but certainly we have officers who are involved with that so I would suggest meeting back here at 2.00 p.m. I know it is not much earlier but I think 1.00 p.m. until 2.00 p.m. meetings are going on, let us meet back here at 2.00 p.m. and it will not take long to ...

**The Greffier of the States (in the Chair):**

Would Members prefer to return at 2.00 p.m.? Well I think there is a general consensus for 2.00 p.m. so the Assembly will now adjourn and reconvene at 2.00 p.m. and if I could beg Members indulgence, very unusually the Presiding Officer will remain after Members have left.

[12:12]

## **LUNCHEON ADJOURNMENT**

[14:00]

### **The Bailiff:**

Very well, so we come now to nominations for the position of Chairman of the Electoral Commission and I invite nominations.

### **Senator I.J. Gorst:**

I would like to propose Senator Bailhache for the position of Chairman.

### **The Bailiff:**

Is that seconded? [**Seconded**] Any other nominations?

### **Deputy R.G. Le Hérisier:**

I would like to nominate Deputy Southern for Chairman of the Commission.

### **The Bailiff:**

Is that seconded? [**Seconded**] Very well, then I declare there are 2 nominations. The procedure to be followed is the same as in relation to chairmen of Scrutiny Panels so each candidate will be entitled to speak for 10 minutes and during that time and during question time the other candidate will be out of earshot. There will then be 20 minutes of questioning. In relation to the speech there will be a bell after 9 minutes and after 10 minutes I shall stop the speaker, even in mid-sentence. Similarly in relation to questions there will be a bell 2 minutes from the end and again at the expiry of the period the questions and answers will have to stop forthwith so as to maintain absolute parity between the candidates. Deputy Southern, if you would be kind enough to retire with the Assistant Greffier. Hopefully the Deputy is far enough away to be out of earshot so I invite Senator Bailhache to address the Assembly.

### **1.4 Senator P.M. Bailhache:**

I hope that Members will entrust me with this important chairmanship for 2 main reasons. First, my professional training as a lawyer and later as a judge has taught me how to find the common ground and how to achieve or seek to achieve consensus. I have been a chairman or a deputy-chairman for nearly all my professional life. Secondly, I feel passionately about my Island and its institutions of which this Assembly is of course one of the most important. I stood for election as a Senator because I felt strongly that the previous Assembly was letting the Island down and I wanted to do something about it. One aspect of the problem is that of reforming the constitution of the States which has defied solution for far too long. As I said in the debate on Deputy Le Hérisier's amendment to the P.P.C. proposition, I am confident that the Assembly will be willing to support a sensible package of reforms. Some Members have suggested that I am not independent and that I have expressed views or even fixed views about the form that this reform should take. During the election campaign I did certainly express views but I think that few Members in the Assembly will not have expressed views one way or the other on some aspect of the different proposals that have come forward during the last 10 years. I have in particular suggested that there are too many Members of this Assembly, but I suspect that there are few who would dissent from that; and that the Constable should remain as Members. Some Members feel strongly that that is wrong and that the Constables should go. As a judge I often expressed views after reading the papers which were

changed after listening to the evidence and hearing the arguments. There is an enormous difference between preconceptions and prejudices. *En passant* I think that the Constables of St. Lawrence and St. Helier were mistaken to suppose that the Constables should in some way abstain. The Constables are in no different position from the Senators or indeed the Deputies because change might come to both those categories of Member. If we all abstained we would be in a difficult position. The important point here is that the Chairman is only one of 6 Members of the Commission and that the ultimate recommendations of the Commission must gain the acceptance of the majority of Members of this Assembly. I do have an open mind. None of the views that I have expressed is set in stone. If the consensus were against me, my view would have to change. I hope it is fair to say, however, that the views that I did express during the election campaign did not deter the public from voting for me. They did not necessarily agree with everything that I said but at the lowest they did not disagree so vehemently that they did not vote for me. On the face of it, a reduction in the number of Members of the States, as recommended 12 years ago by the Clothier panel, seems to be a reasonable starting point. If elected I would want to start by inviting submissions from the public and holding hearings for those who wish to make oral submissions. A Commission would obviously want to hear at an early stage from Members and from officers of the States. A Commission would want to take expert advice; it may be that we would want to learn from the experience of other small jurisdictions of a comparable size to our own. As draft proposals began to take shape we would want to engage again with Members and with the public at Parish Hall meetings. There may be other important consultations but that is the broad shape of my current thinking. I appreciate that some Members have expressed disappointment at the outcome of the debate yesterday and have said some rather negative and pessimistic things about the chances of the Commission succeeding in finding sufficient common ground. Like Deputy Young I am an optimist, maybe I will be beaten down eventually like Deputy Le Hérissier but I hope not, and I do not believe, in any event, that the totality of the Assembly - whether new Members or experienced ones - will ultimately refuse to compromise if it can be shown clearly that the package of proposals that the Commission is putting forward is in the public good. It would be a dereliction of duty and I know that Members would not be guilty of that. I am sure that the public wants change and all of us have a duty to try to deliver it. I ask Members for their support. [Approbation]

#### **The Bailiff:**

Very well, now Members have the opportunity to ask questions.

#### **1.4.1 Deputy T.M. Pitman:**

Interesting speech and I thank the candidate for it. In the P.P.C. meeting I will quote the exact words that the Senator used, he said: "It is quite clear that the vast majority of the public want the Constables to remain" and he was corrected by the Greffier because that is, of course, completely untrue. At the last M.O.R.I. (Market and Opinion Research International) poll it was quite evenly split. How will he reconcile that imbalanced view, wrong view, with the evidence that might be put forward from the public and, more importantly, how will he tie that into correcting this huge democratic deficit we see with little Parishes against St. Helier. Will he try to correct that?

#### **Senator P.M. Bailhache:**

I think I said that I certainly have expressed views about the Constables on more than one occasion because I feel strongly that the Parishes are an important part of the Island's constitution and my present feeling is that to remove the Constables would diminish the Parishes. Insofar as remarks before the Privileges and Procedures Committee was concerned, I certainly was mistaken about the public view, I had not recalled the M.O.R.I. poll. But I think it is fair to say that in the last 2 debates that have taken place in this Assembly in 2009 there was, I believe, quite a substantial majority in favour of the retention of the Constables. This is a matter which will have to be

discussed and, as I said in my opening remarks, I have an open mind and one which is open to persuasion the other way.

**1.4.2 Deputy T.M. Pitman:**

Just with that last remark about the last 2 debates, I am sure the Senator would agree there is a big difference about what this House might want and what the public might want?

**Senator P.M. Bailhache:**

I agree with the Deputy, there are and always have been 2 dimensions to this particular debate. Any reforms are going to have to find the approval of a majority of Members of this Assembly and they are going to have to find the approval of a majority of members of the public and if they do not they will not succeed.

**1.4.3 Senator L.J. Farnham:**

May I ask what does Senator Bailhache think about the retention of the Island-wide mandate for Members sitting in this Legislature, or does he think it would be more suitable to create a second Chamber for such a mandate?

**Senator P.M. Bailhache:**

I know that this is a subject very close to the Senator's heart because he spoke about it many times when we were on the election trail. I think it is probably fair to say that the Island-wide mandate is probably regarded by the public as an important matter. The difficulty, as we all know, if one arrives at the conclusion that the number of Members of the States should be reduced - and that obviously seems to be the first matter for consideration - something has to give; either the Constables have to go or the Deputies have to be reduced in number or the Senators have to go. These are issues which the Commission will have to listen to others about and to take opinions from a wide range of people and reach a conclusion.

**1.4.4 Senator F. du H. Le Gresley:**

When Senator Bailhache was speaking to the amendment of Deputy Le Hérissier he made this statement which I would like to question him on, he said: "The Carswell Report did not command support of the majority of States Members." I would like to ask him why he said that given that the Carswell Report has never been debated by this Assembly other than an in Committee debate, which is not a proper debate as such. I would also like to ask him what is his opinion of the Carswell Report and does he think the Carswell Report should be part of the review or the Crown Officers should be included in the role of the Electoral Commission?

**Senator P.M. Bailhache:**

Well I think the short answer to the last question is no and indeed this Assembly has fixed the terms of reference of the Assembly, so it certainly would not form part of the role of the Electoral Commission. I expressed the view that the conclusions of the Clothier Panel and the Carswell Panel had not commanded majority support in this Assembly because as a matter of fact no proposition has ever been put to the Assembly to give effect to those conclusions. Insofar as Carswell is concerned there was an in committee debate and if I am correct - but the Senator will know better than me - the previous Chief Minister expressed the view that he was not prepared to take the matter forward.

**1.4.5 Deputy M. Tadier:**

Voter abstention is an issue in Jersey. Does the candidate agree with that and what solutions would he try to put forward in the Electoral Commission to tackle the serious issue of voter abstentions.

**Senator P.M. Bailhache:**



I am sorry, that is a question - if I may put this through you - about the low level of numbers of Members voting?

**The Bailiff:**

That is as I understood it, yes.

[14:15]

**Senator P.M. Bailhache:**

It is a serious issue to be considered and I do not know what the answer is. I do know that before the last elections, both the Greffe, perhaps acting on the instructions of the Privileges and Procedures Committee, made enormous efforts to try to ensure not only that people did register as electors but also ultimately turned up to vote at the polls. I am not sure how successful that was. Perhaps there was a marginal increase in the number of people attending to vote but we still are quite a long way behind Guernsey and the Isle of Man and it is a serious issue to be thought about and resolved if we can.

**1.4.6 Deputy R.G. Le Hérissier:**

The possible Chairman has been typified, rightly or wrongly, as a traditionalist masquerading as a reformer. Would he tell the House what he thinks are the characteristics of a good functioning democracy?

**Senator P.M. Bailhache:**

I was going to say if I had been a student in one of Deputy Le Hérissier's classes, I am sure I could have taken half an hour to answer that one. A functioning democracy is obviously one where people feel that they are engaged with the elected representative whom they put in the Assembly where elected representatives are responsive to the views of the electors and so far as possible where the electors can give shape to the form of the government that they elect. There is quite a difficulty in that last respect, as Deputy Le Hérissier will know, because we do not have a party system and it is not possible for the people at the polls to say: "We do not like this Chief Minister and this Council of Ministers because they have not performed" and to vote them out but that is the nature of our democracy at the moment and we have to work with it as best we can.

**1.4.7 Deputy T.A. Vallois:**

How would the Senator envisage the working of the Commission in tandem with the work of the sub-committees of P.P.C., in particular that of the machinery of government review?

**Senator P.M. Bailhache:**

As a member of the Privileges and Procedures Committee, and if I am elected, I am quite sure that I will be keeping the committee informed in a broad sense of the work of the Commission as the Commission goes along. The Assembly has fixed the terms of reference of the Commission and it seems to me that sub-committees of the Privileges and Procedures Committee should not engage in duplicating the work of the Commission. It is the Assembly that has fixed the terms of reference and the P.P.C. cannot really trespass on that.

**1.4.8 Connétable J. Gallichan of St. Mary:**

I am prompted to ask this because of some assumptions that I heard expressed this morning that the new style Commission could be something of a closed shop. I know the candidate touched on this but could he elaborate, please, on the level of importance he places on public hearings during the information-gathering process?

**Senator P.M. Bailhache:**

I place a very high level of importance on public hearings and engaging with the public not least because, at the end of the day, the proposals of the Commission would be placed before the public in a referendum and it would be very sad if an enormous amount of work were to be done by the Commission to obtain the approval of the Assembly and because insufficient work had been done to find out whether those recommendations met with the approval of the public, for the reform to fail ultimately at the final fence. So I regard engagement with the public as a very high priority for the Commission. There are certainly no closed areas that would not be subject to debate with the public.

**1.4.9 Deputy J.A. Martin:**

Yes, I think I was going to ask you something procedurally but I think (b)(i) and (b)(ii) are quite confusing but I think I have worked it out. It is the Chair voted for and then 2 nominations, right, which says initially nominations being made invited from the Members without initial nominations being made by the Chairman but what - and I will ask the other candidate as well exactly the same question - does the candidate have any preferred 2 States Members already in mind for the job?

**Senator P.M. Bailhache:**

The Deputy will know very well that, in my view, it would be desirable for the Assembly to elect a Senator, a Constable and a Deputy to serve on the Commission. The Deputy knows that because I invited her to serve on the Commission if I were to be elected as Chairman and it was a matter of sadness to me that she declined because I thought it was important that there should be a representative of the Parish of St. Helier, one of the Parish Deputies, serving on the Commission. But I respect her decision obviously because she feels that she cannot align herself with the Commission as it is currently composed or will be.

**1.4.10 Deputy C.F. Labey of Grouville:**

As the Parishes are an important part of our community, how would the Senator like to see Parish Assemblies reinvigorated and parishioners' views represented in this Assembly?

**Senator P.M. Bailhache:**

I am not sure that that necessarily would fall within the remit of the Electoral Commission but to the extent that it does, it seems to me that the views of the parishioners must be expressed to the Assembly in one way or another. The current constitution that we have involves the Constable representing the Parish as a whole so that if a Parish Assembly makes a particular decision, it is usually the Constable that takes that forward to the States if it is necessary to do so. The functions of Deputies in the past have been rather to represent individual constituents and their difficulties with the administration rather than the Parish as a whole. Whether that is the formula for the future depends very much upon the outcome of the Commission's deliberations. If the Constables are no longer to be Members of the States, then clearly the position of the Parish Deputy will be very much more important and the Parish Deputy would have to take responsibility not just for individual constituents but for the Parish as a whole.

**1.4.11 Deputy A.E. Pryke of Trinity:**

The candidate will be one of 6 but if there was a tied vote, how would the candidate resolve that or would he have a casting vote?

**Senator P.M. Bailhache:**

The Assembly has not made provision for a casting vote for the Chairman and I believe rightly. If the members of the Commission are divided, they will have to try to resolve that division. They will have to try to agree it or find a way around it and that seems to me to be very sensible because

there is no point in having recommendations which only represent half the views of the Commission.

**1.4.12 Senator L.J. Farnham:**

In response to Deputy Le Hérisier's question, the Senator described a functioning democracy as something with which the electors engaged with the Members of the Assembly. What would he do to ensure the highest possible engagement of the process with the general public?

**Senator P.M. Bailhache:**

I think that one of the problems that perhaps we have at the moment is that our system is complicated. There are not many Parliaments where there are 3 different kinds of representative and where, until very recently, the elections took place on different occasions for different Members of the Legislature. One of the tasks of the Commission, it seems to me, will be to seek to simplify, so far as one can, the electoral system - the voting system - so that members of the public have a greater understanding of what it is all about and that perhaps may lead to greater engagement.

**1.4.13 Deputy G.C.L. Baudains:**

There are other panels working on States reform. I was slightly concerned by a comment that the Senator made a little while ago where he said that the work of those panels should not trespass on the work of the Commission. Clearly, there is bound to be overlap in some places although obviously one would try to mitigate that as much as possible. Is he suggesting that the other panels should be subservient to the Commission?

**Senator P.M. Bailhache:**

No, I am not suggesting that the panels should be subservient to the Commission. I am just suggesting that it is not very sensible to have 2 separate bodies working on the same items of work.

**1.4.14 Deputy M. Tadier:**

The candidate said that he is passionate about reform. It will be necessary for the Chairman of this panel to be dispassionate in analysing the evidence. How does the candidate reconcile his current disposition with the disposition required for that of the Chairman?

**Senator P.M. Bailhache:**

I think the Deputy must have misheard me. I did not say I was passionate about reform. I said I was passionate about my Island and so far as the work of reform is concerned, I would, of course, be as objective as any Chairman of the Commission would be required to be.

**1.4.15 Senator F. du H. Le Gresley:**

Does the candidate believe that if he was appointed Chairman of the Commission, he should be involved in the appointment of the 3 non-States Members?

**Senator P.M. Bailhache:**

The answer to that question is that it is not a matter for the Chairman, it is matter for the States and the States have decided that the States Members of the Commission will be consulted by the Privileges and Procedures Committee in relation to the appointment of the other 3 Members.

**1.4.16 Deputy T.M. Pitman:**

It is just a second attempt to get a final answer to my question really. Does the candidate agree that this democratic deficit that exists because of the different sized Parishes with the Constables, does

he see that is something that he has got to get to terms with and is he willing to look at boundaries to change it because that is going to be essential?

**Senator P.M. Bailhache:**

The question of the Constables does resolve down ultimately to this position. Is the presence of the Constables in the States so important that it overrides the democratic deficit that exists? We all know that the Constable of St. Helier represents many thousands of people or is elected by many thousands of people whereas the Constable of St. Mary is elected by only a few hundred. It is a question of balancing out the importance of the Parishes and their representation in this Assembly in that way with the deficit to which the Deputy refers.

**1.4.17 Deputy K.C. Lewis of St. Saviour:**

I think it is widely accepted that the Clothier Report was widely cherry-picked. What would the candidate do to ensure that any future Commission would not suffer a similar fate, bearing in mind it will ultimately come back to this Assembly to be voted on?

**Senator P.M. Bailhache:**

I do not think that anyone can prevent the Assembly from cherry-picking or, to put it another way, lodging amendments to propositions that might be put forward in due course by the Privileges and Procedures Committee. One hopes that the Commission will have done its work well enough to ensure that the majority of Members are in support of its proposals.

**1.4.18 Senator L.J. Farnham:**

Very quickly, does the Senator believe that the Commission will succeed in meeting the expectations of the Island?

**Senator P.M. Bailhache:**

Yes, I do.

**The Bailiff:**

Does any other Member wish to ask a question? Very well, then. That concludes questions for Senator Bailhache and I invite Senator Bailhache to retire with the Assistant Greffier and ask for Deputy Southern to return.

[14:30]

I invite Deputy Southern to address the Assembly.

**1.5 Deputy G.P. Southern:**

Where do we start? We start by saying this is probably the shortest speech I will make when standing for a position in the States. When I woke up this morning, I thought I was coming in here for a fairly routine humdrum sort of day in the States and lo and behold, I end up challenging myself in the afternoon. Why? First, throughout the day, I have got enthused. It is 10 years, enthused by a debate about the political structures that we work under and I am amazed that I did so but it is partly due to Members today and their speeches. We had a very good debate. It was high quality debate where almost all the contributions were relevant and well researched and well argued. That started me thinking about standing for the chairmanship of this particular body because despite the Deputy Bailiff's ruling yesterday, when he attempted to say that this was not about personalities and it was not about the chairmanship of this panel, I believe it was. In particular, I believe it was because my opponent had stated that he had clear intentions of what he saw as a reform and that further to that, he had a mandate to deliver that. Now I think that is the wrong starting place. I believe a Chair of a body like this with those attitudes loses validity straight

away. So while I have some very strong opinions about what is the right way forward about the constitution of this body, membership of this body, elections, *et cetera*, and I have expressed them strongly in the past, I come with an open mind and I think that is important. We all have opinions about what is the right way forward. We have probably got 51 between us in various varieties. Nonetheless, I have spent the last 6 years in Scrutiny, as chairman of Scrutiny, in various bodies and one thing I have learned from that is to take my political hat off and put my Scrutiny hat on. The difference between the 2 hats is that one speaks, the politician speaks and tells you his opinion. The other listens. That is what we need to do. We need to listen very carefully to the public, to Members in this House and to the experts. I made a big fuss today about the use of experts and this, I think, myth that was put across that we should not be taking orders from the U.K., we should not be seeking advice from the U.K., we should not be being told what to do. This is the Jersey way. Well, we have now got a balance on that body between Members of the States and independent members so we can put the right balance in. The key, as ever, will be listening to the evidence. I believe I can lead a panel that is seen as independent, that its recommendations will be acceptable to the public and will consult with the public and again in Scrutiny, that is what I have done time and time again, that consultation with the public, on the internet through surveys, *et cetera*, can be done. I believe in Scrutiny certainly putting out report after report, sometimes 2 at once. I have got a clear focus on getting the job done and can meet deadlines and I have proven for the past 6 years I can work perfectly well with members on my panel from a completely different political perspective and agree forms of words that all of the panel backs. If one person on my panels, which happens time and time again, says: "I do not agree with that wording, I do not agree with the conclusion, I do not think we have got the evidence to go there", then we do not go there. We find where we can go on the basis of the evidence. I think I bring some knowledge and expertise to the area and I am prepared willingly to consult with expertise from wherever in order to get the right answers for this particular body. Why me? Because I think this, apart from one or 2 things, is probably the significant and most important thing we are likely to do this year. That is its importance and I believe after my 6 years on Scrutiny - I now have stopped Scrutiny for the moment - I was waiting for something to get my teeth into wholeheartedly 100 per cent and that is what I intend to do and 100 per cent of my time will be dedicated to doing this process and getting hopefully the right answer by the end. I briefly looked at P.15 where this started back in March this year and the proposition says: "The need to secure the greatest possible acceptance by the public of any new arrangements, the need to ensure that the views of the electorate are reflected effectively and as fairly as possible." We do not have to go back - and this is my original not a copy - we do not have to go back all the way to Clothier to say what principles should be operating. The principles have been elucidated today. Votes must be of equal value. As soon as you say that, you are directed to thinking what must be the logical extension of that is a single type of Member in the States. Now that is my starting point. We must have fair elections. As the ex-Deputy of St. Mary said in his report on his proposal for the Electoral Commission: "The present electoral system is manifestly unfair. The mandates of Deputies differ hugely, the mandates of Constables even more so. Furthermore, these variations in mandate ensure that the country dwellers are systematically over-represented while those who live in bigger, more populated Parishes are under-represented" and he went on to list the ways in which under and over-representation was occurring, and I do not intend to go into those details here. But he said clearly the idea of a review is that it listens, sifts, does the background reading, gathers and appraises evidence and recommends. In this case, there are 2 safeguards. One is that the panel has membership from the Island and second is that any proposal emerging from the review has to be approved by a referendum. In standing for this post, I shall be committing myself 100 per cent to doing a single job in this coming year, and that is to deliver for this House a viable and acceptable way forward in terms of our constitution.

**The Bailiff:**

Very well. So we come, then, to questions to be asked of Deputy Southern.

**1.5.1 Deputy T.M. Pitman:**

I must say I do not know whether to admire the Deputy for his willingness to take a metaphorical beating or be angry with him for legitimising this process, which I do not think is correct, but my question is he touched on this huge democratic deficit that will always exist while we have the Constables in the States. How does he see that being achievable in bringing about fair representation so that everyone's vote is worth the same?

**Deputy G.P. Southern:**

The key starting point in that statement is that votes must be of equal value. If one has that at the forefront, then I believe a coherent way of achieving that can be made possible. It will require not just listening to the public because what the public says is: "We want the Constables, yes, and we like our Deputies and we want the Island-wide mandate and, and, and", and nobody has yet pointed out to people: "Yes, but you cannot have it all. Now which bits do you want?" Nobody has said that and so they have this list and proponents of one or the other pick on that list and say: "Oh, look, the public want Constables, the public want the Island-wide mandate" but they do not point out that if you want equality of votes, you want your vote to be equal, then you cannot have it all. Somewhere there has to be a compromise. Compromise is a good word for coming forward with a plan that might produce a decent Constitution.

**1.5.2 Deputy R.G. Le Hérissier:**

Given the history of reform and the numerous aborted attempts, what special skills and approaches will the candidate Chairman bring in order that we can put those attempts behind us and really develop a working consensus?

**Deputy G.P. Southern:**

There are no magic answers. I do not pretend to be Superman and I accept the difficulty of achieving an acceptable answer. The answer, I think, as I said in my speech, is one starts by listening. One starts with a simple principle and one attempts to build a coherent joined-up system that works. I believe that part of that will be in educating the public about what can and cannot be done in that list of answers. So no special formula but 100 per cent effort, dedication and the reliance on evidence.

**1.5.3 Senator L.J. Farnham:**

If I get the opportunity, I plan to ask the same 3 questions but I will start by asking the Deputy in the previous debates on the amendments and the proposition, he voted against the establishment of the Commission and he was, as always, well researched and spoke passionately for the reasons why. Therefore I am going to ask him if elected, does he feel confident that he can steer the Commission to deliver and meet the expectations of the people of Jersey?

**Deputy G.P. Southern:**

Absolutely or else I would not be standing.

**1.5.4 Deputy M. Tadier:**

Previously in the open debate, the other candidate explained that he did not understand what was meant by the functions of the electoral process. Can this candidate explain whether he is politically and linguistically more erudite than the other candidate so as to be able to understand what the functions of the electoral process are and does he agree that it is important for any Chairman to be able to summarise those succinctly?

**Deputy G.P. Southern:**

I suspect the answer to that is no but I will have a go at it. I think what we are after is an improved and responsive democratic principle, one where the public are confident that their vote will count for something in terms of delivering policy because at the moment, it does not and I think that is the critical thing. What I would hope to see is that after this reform is developed and put in place, we will see a tremendous lift in participation rates for voting and that is what we should be aiming for, more people voting and confident that their vote means something.

**1.5.5 Deputy J.A. Martin:**

Although the P.5 proposition says that the other 2 States Members would be opened up to the floor, does this candidate have any preferred choices for the other 2 Members? It is exactly the same question that I asked the other candidate.

**Deputy G.P. Southern:**

No, I am quite happy to work with any Member of this Chamber and have done successfully with many different political backgrounds in the past.

**1.5.6 Senator L.J. Farnham:**

What are the Deputy's views on retaining the office of Senator? Does he believe the holders of the Island-wide mandate should continue to serve in the Island's Legislative Assembly or does he believe they would be better placed in a second Chamber?

[14:45]

**Deputy G.P. Southern:**

Somebody mentioned yesterday the possibility of a second Chamber and suggested that we should put the Constables in there. Now I am hearing a comment that perhaps a second Chamber, if it would be viable, let us put the Senators in there, so take your pick. Can we put both of them in there? No, no, no. The relevance or otherwise of my views on the Senators is neither here nor there. I am here to do a job and that is to chair and part of that requirement to chair is to seek balance with neutrality, not to push my agenda.

**1.5.7 Deputy R.G. Le Hérissier:**

Given the candidate has mentioned the absence of an obvious link between voting and impact on policy and given the aversion still present despite his efforts to party politics in Jersey, what kind of approaches would he wish his committee, were he to be Chairman, to discuss so that the public can have a more direct impact on the policy that is decided upon?

**Deputy G.P. Southern:**

By the policy that is decided upon, are you talking about the process of this committee or are you talking about policies in general in the future?

**Deputy R.G. Le Hérissier:**

Policies in general.

**Deputy G.P. Southern:**

That is a difficult one. As the Member knows, I have tried to form a political party and failed to hold it together. It is often said that the public of Jersey does not want that. I am not sure that that is an accurate version of what the public wants. The public wants an effective voice. How we do that is difficult. I hope at the end of this process that the public will accept the recommendations and see that there is a chance that the vote is more effective in terms of delivering policy.

**1.5.8 Deputy T.A. Vallois:**

How would the Deputy envisage the Commission to work in tandem with the work of the sub-committees of P.P.C., in particular the machinery of government review?

**Deputy G.P. Southern:**

I think we must work co-operatively at all times and communicate clearly about what sorts of things we are investigating. I think we would have to sit down together and decide exactly who is doing what so that we do not get a repetition of effort because that would be counterproductive.

**1.5.9 Deputy M. Tadier:**

This one is slightly easier; it is a yes or no answer. In P.P.C.'s substantive report, they talk about the need for individuals who will be drafted on to the Commission, non-States Members who know about Jersey's history and culture, which would put those at a significant advantage. Would the candidate consider asking the former Deputy of St. Mary on to this panel were he to be successful? Would he be a good candidate?

**Deputy G.P. Southern:**

Indeed I would. The amount of thought that he has put into this project in the first place and the depth of his analysis in most things and the depth of his understanding. Yes, he would be probably a very useful member if we could get him to stand still for long enough.

**1.5.10 Connétable P.J. Rondel of St. John:**

Given the candidate stood twice as a Senatorial candidate in 2 elections and was not returned by the Island in that position, does he consider that the Island would be supportive of him leading this Commission?

**Deputy G.P. Southern:**

Yes, indeed, I believe that I could convince the public that the process that I am engaged on is, in fact, fair and straightforward, honest and clearly transparent. I remind the Member asking the question that once I came second out of 6. Close but no cigar.

**1.5.11 Senator F. du H. Le Gresley:**

The other candidate suggested that the 3 States Members should be a Senator, a Deputy and a Constable. If the candidate were successful, who would he choose as Senator if he were to follow this particular route?

**Deputy G.P. Southern:**

It is definitely not a question of one of each. I do not think that is a recipe for finding a straightforward way forward and it is certainly not for the Chairman to choose but rather for those who wish to volunteer to do so. I think that is the appropriate way round. Those who want to commit themselves to what is going to be very hard work and very intensive for the next however many months it is, 8 months, whatever, then let them volunteer and say: "I want to come on board, I am bringing you the energy. I am bringing you the thinking and I am prepared to put in that effort." That is what we need rather than picking one of each like a bunch of dolly mixtures.

**1.5.12 Deputy E.J. Noel of St. Lawrence:**

The candidate has said that he will devote 100 per cent of his time to the role of Chair. Is that a promise he intends to keep and if so, does that mean that we will not be getting any more written and oral questions from him in the coming year? **[Laughter]**

**Deputy G.P. Southern:**



I have already assured the Minister for Social Security that from now on, if I did get this job, he would have a far easier time. I now promise that to all the Ministers and all the Assistant Ministers in terms of question time as well as propositions that if I am doing this, there will be far fewer questions and far fewer propositions coming from me because I will be busy. So think about that.

**1.5.13 Senator A.J.H. Maclean:**

It remains to be seen if bribery gets you anywhere or not. I would like to ask the candidate, if he is not successful in his attempt to become Chairman of the Commission, whether he would be planning to put his name forward to serve on the Commission?

**Deputy G.P. Southern:**

That is like the question that is asked at every election. If you do not get in, would you become an honorary and I always answer it by saying I am open to persuasion. It would depend upon, as you know, the reservations I have about the alternative Chairman. It would depend upon his approach to decide whether I could join him, working under him.

**1.5.14 Deputy T.M. Pitman:**

The other candidate quite rightly acknowledged that if we have to keep the Constables, then we can never balance up that fair proportion of votes and he said rightly that it would come down to whether keeping the Constables in the Chamber was more important than that. Given that fact, does the candidate think that possibly the 2 varieties to go, possibly a complete Island-wide mandate, for all the Members of the House or super-constituencies?

**Deputy G.P. Southern:**

Again, the questioner is trying to draw me into my own opinions and that is really not valid. The fact is that super-constituencies must be investigated as a way to getting more equal value votes. In terms of the Constables themselves, then what I can say is that the Constables would be among the first people I go and talk to because I think I need to give, as Chairman, some reassurance that they will get a fair hearing as well from me but their opinions would be important early on in terms of what the possibilities are.

**1.5.15 Senator L.J. Farnham:**

A good democracy is often described as one where the electorate is fully engaged with their elected representatives. How would the Deputy ensure that the highest level of public engagement is obtained to assist the Commission with its deliberations?

**Deputy G.P. Southern:**

We shall have a thorough campaign in all the media to try and ensure that the public does get engaged despite their obvious worries about the economic situation and, as was mentioned in debate, the fact that this is probably secondary to many of them. It is not at the prime forefront of their thinking but nonetheless an extensive campaign in all media, especially the web.

**1.5.16 Deputy R.G. Le Hérisier:**

When the candidate was saying how he would build up consensus, he ended by saying he would be evidence-led. Could he in the case of the Constables tell us what is the evidence? We have heard talk of sentiment, attachment to tradition. How do all these things come out as evidence that will sway him one way or the other?

**Deputy G.P. Southern:**

Well already we have some evidence because what we are told by Professor Adrian Lee on the sub-committee that is already up and running at that public meeting was that the most difficult

constitutions to change are those which have grown organically over the years where nobody has said: "This is the way to run an Island" but they have grown and adapted and changed. So the warning is that any change to that which has grown traditionally and organically is going to be difficult and that is my starting point, but the evidence is already there that it can be changed from around the world. Get the right method and people end up with the best system and again I come back to this key about equal value for the vote. That is a fundamental principle that cannot be ignored and, if necessary, if changes need to be made to preserve that as the principle, then I believe that they should be made.

**1.5.17 Deputy M. Tadier:**

What should be done with the recommendations of the Carswell Review?

**Deputy G.P. Southern:**

Carswell is not on my agenda at the moment.

**Deputy M. Tadier:**

Can I ask a supplementary to that if no one else is ...

**The Bailiff:**

Yes, all right.

**1.5.18 Deputy M. Tadier:**

No one else has got a light on. If it is not in the scope of the Electoral Commission to look at Carswell, does he not agree that the recommendations of that review have implications for the Electoral Commission insofar as it talks about the separation of powers and that could be extended to other roles in the States?

**Deputy G.P. Southern:**

I get my colleague's drift. Yes, the principle of separation is a sound one, I believe, and that is what Carswell says and that is his starting principle and yes, we have already come across, and I have mentioned earlier today, that there are other dual roles not least that of the Constables which need to be sorted, yes.

**1.5.19 The Connétable of St. Mary:**

The candidate has said on several occasions that votes must be of equal value. Would he go further and say that all electors or voters must have the same number of votes and the same participation?

**Deputy G.P. Southern:**

I think that would be a sound principle on which to work. Yes, I agree with it.

**1.5.20 Senator L.J. Farnham:**

Deputy Pitman suggested earlier that he was cross with Deputy Southern for standing because his candidacy legitimated the Commission. In answer to my first question, the Deputy stated he was absolutely confident that the Commission could deliver to the expectation of the people of Jersey. Upon reflection over lunch, could he for the record now say that he is absolutely behind the Commission? Whether he is successful or not, he is absolutely behind the work of Commission and will not continue to ...

**The Bailiff:**

Sorry, you took too long over the question, Senator. **[Laughter]** A more concise question would have forced an answer. Very well, that brings questions to Deputy Southern to an end so I ask that Senator Bailhache be invited back to the Assembly.

[15:00]

**Deputy T.M. Pitman:**

Sir, could I ask your guidance, please?

**The Bailiff:**

Yes.

**Deputy T.M. Pitman:**

I do not mean any disrespect to either of the candidates but because I do not believe in this, I do not feel I can vote for either. What are my options? I would not want to spoil my paper and people do not know. I am saying this openly. What are my options? Just to sit here and not vote or ...

**The Bailiff:**

You can spoil your paper and put your name on it.

**Deputy T.M. Pitman:**

Absolutely, I will do that, thank you.

**The Connétable of St. John:**

It is an open ballot, I presume?

**The Bailiff:**

Yes. When Senator Bailhache is back, which he now is, I am just going to remind Members of the procedure. Very well. So this is an open ballot. You will each be given a slip which has at the top written "Your name" so you must put your name against it. Because it is an open ballot, if you fail to put your name, it will be a spoiled paper so therefore not count and then you must write at the bottom half on the paper the name of the candidate that you wish to vote for.

**Deputy M. Tadier:**

Could I just seek the indulgence of the Chair and ask ... it may not have been done before but it might be worth considering using the voting buttons for this occasion. It would save a lot of time. It would save the risk of people ... and one would also be able to abstain.

**The Bailiff:**

Thank you, Deputy, I have just announced the procedure and we will proceed as I announced. Very well. Could ballot papers please be distributed? If it helps Members, I have just received a question from the Greffier as to how one should abstain if one wishes to abstain and the answer is write your name down and then write "abstain" underneath it. Very well, I will ask that the ballot papers be collected, please. Very well, have all ballot papers been returned? Then I will ask the Attorney General and Deputy Viscount to act as scrutineers and also for the Assistant Greffier to retire with them in order to record the identity of the votes. I suspect this may take a few minutes so perhaps we will adjourn very briefly and then come back when they are ready.

[15:04]

**ADJOURNMENT**

[15:21]

**The Bailiff:**

Very well, then. I am able to announce the result of the ballot for chairmanship of the Electoral Commission. Senator Bailhache, 34 votes, Deputy Southern, 5 votes and there were 4 Members who marked their papers as “abstained” and there was one spoilt paper.

**Deputy G.P. Southern:**

May I be the first to congratulate the Senator? **[Approbation]**

**Senator P.M. Bailhache:**

May I respond as well and thank Deputy Southern for his very gracious remarks and express my thanks to the Assembly for their confidence in the Commission which I am to chair.

**The Bailiff:**

Very well. Then we move next to the nomination of Members. There are 2 Members to be nominated so I invite nominations.

**1.6 Senator I.J. Gorst:**

In light of the now elected Chairman’s suggestion that there be a category of Member from each Member in the Assembly, could I propose the Connétable of St. Mary and a representative of St. Helier, Deputy Baker.

**The Bailiff:**

Are those nominations seconded? **[Seconded]** Are there any other nominations? Very well. Then I declare that the Connétable of St. Mary and Deputy Baker are elected as members of the Commission. **[Approbation]** So that concludes matters in relation to that projet.

**2. Channel Islands Lottery: allocation of profits for 2011 (P.6/2012)**

**The Bailiff:**

The next matter on the Order Paper is Projet 6 - Channel Islands Lottery: allocation of profits for 2011 - lodged by the Minister for Economic Development and I will ask the Greffier to read the proposition.

**The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to agree, in accordance with the provisions of Regulation 4(5) of the Gambling (Channel Islands Lottery) (Jersey) Regulations 1975, that all monies standing to the credit of the Channel Islands Lottery (Jersey) Fund which have not already been set aside by the Minister (representing 90 per cent of the total Jersey portion of the profits of the Channel Islands Lottery from 2011) should be paid to the Association of Jersey Charities for the benefit of the community and the charitable needs of the Island.

**2.1 Senator A.J.H. Maclean:**

I hope this will be a relatively straightforward matter. I would like to just begin by thanking members of the Jersey public for continuing to support the lottery. Although sales were down slightly in 2011 compared to 2010 - there was a reduction of 2.94 per cent in terms of total sales - this still resulted in a sum of £419,572 being awarded to the Association of Jersey Charities, subject obviously to the agreement of Members. There is an intention, as stated in the proposition, to retain 10 per cent of the profits from the lottery which will go into the reserve. I just ask Members if they would support this proposition.

**The Bailiff:**

Is the proposition seconded? [**Seconded**] Does any Member wish to speak on the proposition?

**2.1.1 Deputy M. Tadier:**

I do speak sometimes on issues to do with gambling. It is partly because I studied the statistics at school and that still haunts me to this day. I still have dreams where I wake up in the middle of the night, I have not prepared for my Maths O Level exam and then I realise in the morning that I do not need to anymore because I no longer study Maths but hopefully, as one progresses, and when I get old, it will no doubt be the States Assembly for which I have not prepared my speech and then I wake up in a cold sweat. The issue I have in general with the Jersey Lottery is not that it is not a good thing insofar as the monies that are raised go to good areas. That goes without saying. It is that there still is no mechanism when one is purchasing a lottery ticket to be told of what the expectancy is of one's winning or losing on the lottery ticket. We have these things on fruit machines. They tell us what the expected payout is. It is usually between 72 and 78 per cent minimum payout. That means for every £100 we put in, if you play the machine correctly, you are likely to get £72 to £78 back which should be a salutary warning to most of us not to play on them. When it comes to the lottery, it is already fixed. We know exactly how much of the ticket value is going to go to the charities so that means let us say if it is 50 per cent, you know that for every £100 you spend, you are going to lose £50. Most of the public probably do not mind that so much because they know it is going to a good cause and it is a little bit of fun. So my question is if we do it with other areas of gambling and if we put warnings on cigarettes telling people that it is likely to kill them or harm their health, we should also be putting things especially when they are endorsed directly by the Government as a way of redistributing funds which do not rely directly on taxation, direct or otherwise. We should be putting statistics on the lottery ticket so people can gamble in an informed and sensible manner. I ask the Minister to consider this because it has not been taken up to date but I do support the principle. I think the principles of the lottery are good although it is obviously more philosophically you can look at the lottery as taking the place of what funding that should come from the public purse in other directions, but that is a completely different argument for a different day. So I would ask the Minister to take this point up and I am going to have to vote against this proposition to register that and so next time a lottery-related issue comes up, I will not have to necessarily vote against it if this anomaly has been resolved.

**The Bailiff:**

Does any other Member wish to speak? Very well, I call upon the Minister to reply.

**2.1.2 Senator A.J.H. Maclean:**

I note the comments raised by Deputy Tadier. I would say to him that I am more than happy to raise the issue with the Jersey Gambling Commission. Obviously, as far as they are concerned, one of the guiding principles is that gambling should be verifiably fair. All I would say to him is I am not aware of any lotteries that operate of a similar nature that put statistics and odds on the tickets. That is not to say that the matter should not be considered and I am certainly prepared to ask the Gambling Commission to consider the matter. I would just add that I hope the Deputy, notwithstanding his concerns in this area, would, if he feels strongly enough, perhaps abstain rather than voting against, bearing in mind the very positive contribution that the lottery makes to charitable causes in the Island, but I would not want his voting against it to send out a negative message in that regard. So if he feels strongly with regard to the odds issue, perhaps an abstention might be the way to do that. I maintain the proposition.

**The Bailiff:**

Very well. All those in favour of adopting the proposition, kindly show? The appel is called for then in relation to the proposition. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 41</b>		<b>CONTRE: 1</b>		<b>ABSTAIN: 0</b>
Senator P.F.C. Ozouf		Deputy M. Tadier (B)		
Senator S.C. Ferguson				
Senator A.J.H. Maclean				
Senator B.I. Le Marquand				
Senator F. du H. Le Gresley				
Senator I.J. Gorst				
Senator L.J. Farnham				
Senator P.M. Bailhache				
Connétable of St. Helier				
Connétable of Trinity				
Connétable of Grouville				
Connétable of St. Clement				
Connétable of St. Peter				
Connétable of St. Mary				
Connétable of St. John				
Connétable of St. Ouen				
Connétable of St. Martin				
Connétable of St. Saviour				
Deputy R.C. Duhamel (S)				
Deputy R.G. Le Hérisssier (S)				
Deputy G.P. Southern (H)				
Deputy of Grouville				
Deputy J.A. Hilton (H)				
Deputy of Trinity				
Deputy S.S.P.A. Power (B)				
Deputy K.C. Lewis (S)				
Deputy T.M. Pitman (H)				
Deputy E.J. Noel (L)				
Deputy T.A. Vallois (S)				
Deputy A.K.F. Green (H)				
Deputy J.M. Maçon (S)				
Deputy G.C.L. Baudains (C)				
Deputy of St. John				
Deputy J.P.G. Baker (H)				
Deputy J.H. Young (B)				
Deputy S.J. Pinel (C)				
Deputy of St. Mary				
Deputy of St. Martin				
Deputy R.G. Bryans (H)				
Deputy of St. Peter				
Deputy R.J. Rondel (H)				

### **3. Income Tax: individual tax assessments (P.11/2012)**

#### **The Bailiff:**

Then we come next to Projet 11 - Income Tax: individual tax assessments - lodged by Deputy Southern and I will ask the Greffier to read the proposition.

### **The Deputy Greffier of the States:**

The States are asked to decide whether they are of opinion to request the Minister for Treasury and Resources to bring forward for approval the necessary legislation as part of the Budget 2013 proposals to provide that personal income tax assessments will be based on each taxpayer's own individual earnings thereby repealing the current provisions that a wife or civil partner's earnings can be assessed as part of the husband's or civil partner's earnings.

[15:30]

#### **3.1 Deputy G.P. Southern:**

I hope this will not take us too long because I have delayed us already enough perhaps but as they say in one of my favourite jokes: "Tea break over, back on your head." Here we have a principle of taxation that women should not be regarded as adjuncts to their husbands and it is a principle that has come to my attention twice in the past year and one which we have to deal with, I think, sooner or later. The 2 occasions where the Minister for Treasury and Resources' consultation on how to raise more tax earlier last year where he talked about options in front of him were Goods and Services Tax, Social Security contributions, domestic property rates or income tax changes rises. As part of that consultation, it came to the notice of many people that if we were to consider raising a new rate of tax of a higher rate of tax, which was the option that was being discussed, then the differentiation between married couples and non-married couples would mean that with a tax change, we were discriminating against marriage. This was noted by a few people and it seems to me that if we are to consult on an option like raising a higher rate of income tax then at least that option should be viable and that would mean a change in our Income Tax Law. It was further brought to sharp focus when the States passed the Civil Partnership Law more recently when it came to the attention of people out there in the public and to myself that this new law, instead of taking the opportunity to change the Income Tax Law, simply did this. In the absence of a husband and a wife in a civil partnership, instead of abolishing an outdated and discriminating practice for all Jersey residents, the States have invented a complicated system of civil partner A and civil partner B where A takes the husband's role as responsible for the partner's tax as merely the older one and I wonder if anyone were to engage in a civil partnership whether they would be content to have the older partner in charge of their tax affairs. I suspect that that is not automatically the case. We disagree, I think, only - I hope - on the timetable. I have brought this proposition which says please can you bring a workable package to change this archaic law where wives are treated as chattels of their partners effectively and I thought I was giving a reasonable time by saying in time for the Budget 2013. The reaction of the Minister for Treasury and Resources is that he could not possibly do that and anyway he agrees that we should investigate changing this but the timescale is much more distant. It is between 2 and 3 years. I believe that it should be and could be possible to certainly investigate the pros and cons and to come up with schemes in a much shorter time than that. Why I say so and I am almost tempted to say if we can agree across the Chamber perhaps a slightly shorter timescale, maybe I would be prepared to withdraw on the word of the Minister for Treasury and Resources. However, I have brought this and I intend to maintain it because we have had promises before from the Minister for Treasury and Resources. For example, he promised to find out ways of getting additional revenues from the non-financial services companies and he promised to do that by the time of the last budget and we are still waiting. Now he has got a good team there, he says, to develop modernisation of our tax laws and top of the list it says clearly: "Specific areas of focus over the next 2 to 3 years will include" and this is in the Budget 2012 "considering the feasibility of moving to independent taxation and current year taxation for all individuals." So 2 things there, independent taxation which is this one, and current year taxation again, which has been 5 years in the promising. I believe his predecessor did. It goes on: "Seeking to replace the 27 per cent marginal rate on personal income tax with a simpler regime [*et cetera*]

continue to review ways in which additional revenues can be obtained from non-financial”, it then goes on. There are 10 things that the Minister wants to do to modernise his tax law between now and the next 2 years. So the first thing I would say is the first on the list is independent taxation and current year taxation of individuals. Please, Minister, will you get on with those as soon as possible? Now it appears that we have something circulating from Deputy Noel with quite a good photograph which says, of course: “Deputy Southern has not thought through his proposition to tax married women independently of a husband. The States should be asking themselves the following questions” and it then goes on to say: “Oh, yes, there are all sorts of things that could go wrong with this. We could change the balance of tax. People might move their incomes around to get a different tax balance. There is a whole range of difference in income and income range altogether. We obviously would need to look at the exemption levels and see what balance was come up with in order that some people, either the middle-earners, upper-earners or the lower-earners, were not getting unfairly damaged. We must also make sure that in any new system with the exemptions and allowances all changed and altered, that it maintains fairness and that it does not lose the Treasury too much income.” Absolutely agree, we agree. Again, the only difference between us is when are we going to do that? Now I am not content with 2 or 3 years down the line. I think we could do it quicker. I think it ought to be the priority of the Minister for Treasury and Resources to sort this out not least because come the end of the year, we are going to be talking about anti-discrimination law and here we have an archaic tax law which effectively has the potential to discriminate. So it is coming together of several strands of modernisation in order to get a coherent, fair and balanced and non-discriminatory tax system. There, I think, I shall leave it. The principle I maintain. We should be moving towards this. I think if we really got on with it, the Minister for Treasury and Resources could produce something. However, he is not prepared for the moment and is saying it will be at least 2 to 3 years. Now I think at the very outside, we should be able to see a report containing this principle and its implications within 18 months, if not the Budget 2013, and certainly in time for the Budget 2014. That is a reasonable timescale and I await the Minister’s response to that but otherwise I maintain the proposition.

**The Bailiff:**

Is the proposition seconded? **[Seconded]**

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

May I start by saying that I believe that women are equal to men and I am very clear of the equal rights of both sides of a marriage. We will be discussing at our next sitting civil partnerships and I do not want to start the debate on whether or not civil partnerships is enough and whether or not we should have same sex marriage, but I do want to agree with something that Deputy Southern has said in his proposition and that is that I do think that the election of the older partner in a civil partnership was probably not the best way of dealing with it and I publicly commit, after having discussed with the Tax Policy Department, perhaps bringing legislation in this year’s budget to allow a self-election of a civil partner in terms of dealing with who is the partner A and partner B. I totally understand the point that Deputy Southern has made on that and I think that probably we can do better than simply have the older partner. But obviously I do not also think that that is a serious enough impediment for us to bring in civil partnerships in 2 weeks’ time in this Assembly. Of course, civil partnerships will be able to elect, as married couples do at the moment, an individual election that they can have their tax assessed separately in any event but, as we will discover during the course of this debate, building on the current system will mean that there are some unintended consequences. I have circulated Members with a set of comments on this issue. This is a complicated issue and I am grateful for Members that will have read the report that we have produced. Also I perhaps was tempted to simply read the former Comptroller of Income Tax letter to the paper yesterday because he made exactly the points in perhaps more summarised form than I



have done. I was, when I first saw the proposition, a little surprised that Deputy Southern has lodged this. I think that it came out of an individual, who I do not know and have had no contact with, writing to the *J.E.P. (Jersey Evening Post)* on this issue and then there was a number of articles that have been written, some of which I have taken cause to engage in some discussion with the *J.E.P.* about their accuracy. The first thing to say is that married couples can, of course, elect to have their own separate tax assessments. I can advise the Assembly that there are 400 out of 20,000 married couples who have opted for separate assessments and if there is any member of the public that wishes to have individual assessments before inevitable changes are made, then the Income Tax Department will do everything they can in order to allow that to happen. Secondly, I do recognise that the current default position of joint taxation for married couples and for civil partnerships needs to change and, indeed, Deputy Southern has rightly ... and I thank him for setting out the bold modernisation of our taxation system that we are going to try and achieve over the course of this Assembly. There is a great deal of modernisation bringing up our taxation system to the modern world of e-filing and e-assessment, having individual taxation, dealing with the issue of current year versus past year. All these issues require a huge effort which is now going on to modernise our taxation system and that is why I have already committed to reviewing and indeed dealing with the issue of independent taxation and that is why I said, and I meant it, not only in the written statement that I made but also in the budget speech last year. We set out a timetable; a timetable that I have to say is going to be challenging in terms of the reform of tax. If we can better it, then of course we will and work is underway in order to do it. But there are very good reasons I am afraid why I cannot accept the request by Deputy Southern to bring forward legislation in this year's budget. Simply dealing with the current system is not going to be possible. There are unintended consequences of dealing with that both in terms of the bad side in terms of the fact that as Mr. Gaiger points out, that there would be an unintended consequence for low income married income and non-working women that they would be paying more tax. There are some other examples where, in fact, there is a benefit to individual assessment. You simply cannot construct individual assessments on the back of what we have at the moment. Of course, Deputy Southern has been quite honest also in his remarks that he regards independent taxation as the easier route in order to having a higher rate of tax. Now I understand that he has made that very clear. I wish to state quite categorically that I hope that we will see the 20 per cent rate of tax maintained as the foundation of our income tax system and that we will not consider a higher rate but I understand why Deputy Southern wants to see independent taxation.

[15:45]

Our exemption and allowance system is complex. It has been designed over many years. It is a matter of regret that while it does allow lower-income families and lower-income individuals under the marginal rate arrangement to pay less tax, of course it means that it is not understandable because it is so complex and we simply cannot add, I am afraid, another system of thousands of assessments on the basis of a system which was not designed for individual taxation on the back of it. I think that if we go in favour of requiring me to bring forward legislation, we will have unintended consequences. Middle-income households in Jersey may well pay more tax. I want to modernise the taxation system in a way that does not disadvantage any sort of taxpayer as a result of individual taxation that would be regarded as unfair. Also, I think that it would be unwise to rush legislation in this year's budget without considering the overall costs. Bringing in place an arrangement where thousands more tax assessments would be required to do without electronic filing and electronic calculation would be extremely burdensome in terms of the administrative cost and also it could have the unintended consequence of reducing overall taxation into the States Exchequer and that would be unwise. We would need to give very careful consideration to any proposition that would reduce taxation when revenues are already squeezed. Would the introduction of independent taxation result in an overall higher tax burden for any section of the

taxpaying community? I do not know all the answers to those questions because the system is not designed to do so. I have been advised by the Director of Tax Policy and the Comptroller of Income Tax that it will take at least 2 years, possibly 3, for us to work out how to deal with independent taxation current year basis and e-filing and I do not want to rush decisions and rush legislation such that we will have the catastrophe that other jurisdictions, other nations have seen in terms of a tax system that then basically implodes because it has been rushed for online filing or else. We have to do this properly and it has to be done with the proper regard to all of the different competing issues. It is true that if a higher rate of tax were in place, a married couple could pay more than an unmarried couple because of how the current system works but that is not the only reason for Deputy Southern's proposition for a higher rate of tax. Independent taxation as the default position is recognised as an important feature of most modern tax systems and it should be, I think, the way forward for Jersey. I have committed to this and I have committed to looking at the whole structure of the tax regime but it must not be rushed and it cannot be rushed because we will end up with bad legislation, moreover unintended consequences and higher costs. I genuinely believe that if it is approached in a timely but forthrightly optimistic improving way, then I think that we can end up with independent taxation, an improved taxation system overall, a less resourceful taxation system and a taxation system, if I may say, that also maintains its very high collection rate in terms of tax right-off. I was proud to be able to issue the press release last week, criticised I know, in some of the media that said our taxation system in Jersey has a collection rate of 99.6 per cent, one of the highest in the world because of the diligence of our tax department and because of the way that we do have a system that works and I would not want a system which basically compromises on that. I say to the *J.E.P.* not £15 million wasted: celebrate what is good about it. There will always be issues where we will not be able to collect tax because of bankruptcies or because of people dying, *et cetera*, but it is a minuscule amount and for once let us focus on the positive rather than on the negative. I will also say that I am sorry that I was not able to do what I wanted to do in relation to the issue of non-finance service companies and I think Deputy Southern was a little unfair to chastise me as I know some other aspects of the media have been doing in relation to financial services companies. I could not do so until Zero/10 was resolved. We have now got Zero/10 resolved against a lot of opposition by some people in both this Assembly and outside but it has been resolved and I commit again to dealing with the issue of non-finance, non-locally owned companies and I can do so. I have not been dilly-dallying. I have not been waiting but I could not do it and I would ask that Deputy Southern, in his summing up, if he could just concede that point, that I do stand by my promises when I make an undertaking but some things are outside of my control, including the E.U. (European Union). I think there is a measure of agreement between Deputy Southern and myself. I commit absolutely to bringing this forward as soon as possible but I would ask him to reconsider whether he really wants to push it to a vote to say that we should bring this forward in the Budget 2013. I cannot do it. I will not do rushed legislation. I will work swiftly. If we can do it within 2 years, we will. If it takes a little longer, so be it, but we will put all our resources and our energies into solving this issue and I would just ask him if he would reconsider his position because I think there is a measure of agreement.

**Deputy G.P. Southern:**

Can I just ask before the Minister sits down, is it possible that he could commit today to bringing forward a model scheme, not necessarily a perfect one, for people to examine within the next 18 months, if that were the case, and again I am looking at longer term, as one of the changes so people can examine and get used to it before we bolt on to more changes on it? Is that possible or not?

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

I do not like promising things that I cannot definitely deliver. If we are going to change our taxation system within 2 to 3 years to individual assessment, to online filing, to current year assessment, there is a huge change that has got to be done. This is a mass rewiring of our taxation system and certainly it is going to have to be consulted on, certainly it is going to have to be explained. If I can do it within 18 months, then we will do it but I do not want to give a firm undertaking that I can do something where I am not certain I can do so. I am being reasonable, I think, to Deputy Southern. I am agreeing with independent taxation. I am agreeing with the issue of civil partnerships but I do not want to over-promise and under-deliver.

### **3.1.2 Deputy R.G. Le Hérisier:**

Just to build on that point because I think Members want a solution to this and the argument simply revolves. Very surprising from Senator Ozouf who usually is “action man” in these circumstances. The argument revolves around the time. Can he not give a promise to Deputy Southern that he will use every endeavour to get this model to him in 18 months and if there were to be a hitch, he would get in touch with him to see whether it is possible to renegotiate that 18 months?

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

Will the Deputy give way? I cannot be more forthright in what I have said. We will give every energy and every “action man” action in order to deal with it but I am not going to promise to do something that I cannot deliver.

### **3.1.3 Deputy J.H. Young:**

I will be brief. I do not want to see a higher rate of tax. I would like to see people empowered to make their own decisions in tax matters and try and achieve more fairness in our tax system so I am very strongly in favour of the principle of Deputy Southern’s proposition but I think in doing this review and bringing forward proposals, I would ask that the Minister reflects that it is not true to say that 400 people who are opting for separate assessment at the moment indicates there is disinterest. That I do not believe to be the case because one of those is myself. I think the way in which this has been done up to now is not equitable. If I can sum it up, the very complex formula that is done apportioning the allowances and distorting the small incomes relief all adds up to a “heads we win, tails you lose” arrangement which I think is part of policy to increase taxation under 20 per cent to 20 per cent. I think the practical problems are understood but I really think that the House should send a message to the Minister that this archaic practice of joint assessment simply cannot be sustained anymore, especially with civil partnerships, and really priority needs to be given for this review. So having heard the suggestion just now, I like the idea of let us see a model but that should allow people to make their own decisions in tax matters which I think is people’s right as citizens because they earn the money, it is their income, it does not belong to their partner or their husband or wife and therefore those decisions, I think, should ... at the moment, they are not effectively allowed to do because the system prevents it. So I shall be supporting the proposition.

### **3.1.4 The Deputy of Grouville:**

I too feel very similar to Deputy Young. I think we do need some assurance from the Minister for Treasury and Resources, not that he is going to do his best. I think he could commit to a time limit. I have looked at his comments here and I must confess I was a little surprised at them. I would have thought this is something that he is endeavouring to produce. I have heard what he said, 18 months, 2 years maybe. These sorts of arrangements were put in place in the U.K., Ireland, in the 1970s. We are not asking to reinvent the wheel albeit our tax system is completely different but to consult on this issue of independent tax assessments. We have independent tax assessments but for all intents and purposes they are just 2 different tax forms. The assessment is the same rate so hardly independent. I do notice that in his calculations in his comments he uses an incredibly low

figure for spouse B of £5,000 to sort of obviously make his point but if that figure is increased to £10,000, the tax liability is the same. He has been a bit clever here. But I am inclined to support Deputy Southern. We want a practical solution. It is not unreasonable to ask for a commitment of 18 months for this because what we have got in place at the moment discriminates against married couples and I do not think that is a very good message to give out.

### 3.1.5 The Connétable of St. Mary:

Just very briefly, as a child bride, I pride myself on the fact that I have never had a tax assessment in my own name. I think administratively I have come out quids in there because it is enough trouble in our household getting one together let alone getting 2. However, times change, I appreciate that. I do not feel slighted by being a chattel of my husband because we have a partnership. I understand all the other reasons. I want to just say the thing that has been echoed so many times today. There are many, many pressing things that this Government has to do and there are many pressing demands that the people expect us to fulfil, and I think we should just respect that this is probably not the most demanding and understand that in the scheme of things, the Minister for Treasury and Resources is doing what he thinks will give us the best outcome for investment of officer time.

#### The Bailiff:

Does any other Member wish to speak? Very well, I call upon Deputy Southern to reply.

### 3.1.6 Deputy G.P. Southern:

I thank the Minister for Treasury and Resources for his reply and I hope he will forgive me for reminding people that he has missed one deadline already. I thank those who have spoken in support and will therefore maintain this proposition and encourage people to vote for it in the spirit that the more people that vote for it, the more urgently the Minister might get on with things and point out that some aspects are already underway. For example, in the budget on page 15 just before that list of things we are going to do: "We are making it easier for all taxpayers to pay electronically planned for mid-2012 and to file returns electronically." Now as soon as that happens, and we are talking 2012, then a lot of the objections administratively start to fall away. So I think it is perfectly feasible for the Minister to commit himself to bringing forward a model exemplar scheme in the next 18 months and the more people who vote for this proposition, the more likely he is to do that. I call for the appel.

#### The Bailiff:

Very well. The appel is asked for in relation to the proposition of Deputy Southern. I invite Members to return to their seats and the Greffier will open the voting.

<b>POUR: 7</b>		<b>CONTRE: 30</b>		<b>ABSTAIN: 0</b>
Senator A. Breckon		Senator P.F.C. Ozouf		
Connétable of St. Brelade		Senator S.C. Ferguson		
Deputy R.G. Le Hérisssier (S)		Senator A.J.H. Maclean		
Deputy G.P. Southern (H)		Senator B.I. Le Marquand		
Deputy of Grouville		Senator F. du H. Le Gresley		
Deputy J.A. Hilton (H)		Senator I.J. Gorst		
Deputy J.H. Young (B)		Senator L.J. Farnham		
		Senator P.M. Bailhache		
		Connétable of St. Helier		
		Connétable of Trinity		
		Connétable of Grouville		
		Connétable of St. Clement		
		Connétable of St. Peter		

		Connétable of St. Lawrence		
		Connétable of St. Mary		
		Connétable of St. Ouen		
		Connétable of St. Martin		
		Connétable of St. Saviour		
		Deputy R.C. Duhamel (S)		
		Deputy of Trinity		
		Deputy S.S.P.A. Power (B)		
		Deputy K.C. Lewis (S)		
		Deputy E.J. Noel (L)		
		Deputy T.A. Vallois (S)		
		Deputy A.K.F. Green (H)		
		Deputy J.M. Maçon (S)		
		Deputy G.C.L. Baudains (C)		
		Deputy of St. John		
		Deputy J.P.G. Baker (H)		
		Deputy of St. Mary		
		Deputy of St. Martin		
		Deputy R.G. Bryans (H)		
		Deputy of St. Peter		
		Deputy R.J. Rondel (H)		

## ARRANGEMENT OF PUBLIC BUSINESS FOR FUTURE MEETINGS

### The Bailiff:

There is one matter which has been lodged, Draft Policing of Parks (Amendment No. 4) (Jersey) Regulations - Projet 23 - lodged by the Minister for Transport and Technical Services. So we come finally to the arrangement for future States meetings and I invite the Chairman of P.P.C. to speak to it.

### 4. The Connétable of St. Helier (Chairman, Privileges and Procedures Committee):

Business for 20th March is as set out under M on the Order Paper with no changes. Later sittings on 17th April, we have the addition of the Draft Loi (201-) (Amendment No. 2) sur l'atténuation des peines et sur la mise en liberté surveillé - P.22 - and on 1st May we have the addition of the Draft Policing of Parks (Amendment No. 4) (Jersey) Regulations - P.23 - lodged by the Minister for Transport and Technical Services.

[16:00]

#### 4.1 Deputy R.G. Le Hérisier:

I would just like to add... I am not sure the Constable was going to add it. I have deferred my proposition on a Committee of Inquiry into payments on premature cessation of employment contracts - golden handshakes. I have been in discussions with the Comptroller and Auditor General. He has launched inquiries into that area which will then be referred to P.A.C. (Public Accounts Committee) and it is my wish to await the outcome of that process before we trigger that particular debate.

### The Bailiff:

Deputy, are you saying you do not want it on 1st May or just you are giving notice that you might move it?

#### Deputy R.G. Le Hérisier:

I have asked for it to be put on 1st May already.

**The Bailiff:**

I know so I was wondering what you were saying. Do you want it moved or ...

**Deputy R.G. Le Hérisier:**

No, I wanted to explain to Members why it has not taken place.

**The Bailiff:**

I see, all right. Does any other Member wish to say anything about future business? Very well, do Members agree then to take future business as set out in the Order Paper with the amendments mentioned by the Chairman? Very well, then, that concludes the Assembly's business and so it will adjourn and reconvene on 20th March.

**ADJOURNMENT**

[16:01]