

5.8 The Deputy of St. Martin of the Chief Minister regarding the Terms of Reference of the Napier report:

Was part (d) removed from the terms of reference on 9th April 2010 following a discussion between the Deputy Chief Executive and Mr. Napier, and, if so, was that fact made known to the Chief Minister when he signed the Ministerial Decision on 13th April 2010 approving the appointment of Mr. Napier and for his C.V. (curriculum vitae) and the terms of reference containing the original part (d) to be included in R.39/2010?

Senator T.A. Le Sueur (The Chief Minister):

The simple answer to this question is no. I have already supplied the Deputy of St. Martin with a full explanation on how the paragraph was omitted from the published terms of reference in my written answer on 18th January 2011 and again in my written answer today. I believe it is time to draw this matter to a close. Mr. Napier had access to all the information he requested, all the people he wished to interview and made reference to the affidavit in his final report, which demonstrates that he had it and made use of it. Mr. Napier has also confirmed he did not see that the particular paragraph to which the Deputy of St. Martin continually refers had much relevance following Mr. Power's agreement to participate fully. There is simply no further information I can add and my department is now repeating answers to the same question. If the Deputy of St. Martin has any new concerns that have not been addressed I would be happy to meet him, but I do not feel that we are making the best use of question time simply by repeating answers.

5.8.1 The Deputy of St. Martin:

I am not surprised, given the answers I have received, that the Chief Minister wants to push this under the carpet. Can I just ask the Chief Minister, does he not think he should have been made aware that the documents he was signing were not correct, because in actual fact part (d) had been removed on 9th April? Therefore, the officer who gave him the document to sign either failed to inform the Minister or he did inform the Minister. I just find it so hard for the Minister to continually say that he was unaware that such an important part of a document, the terms of reference agreed by this House, was removed and he knew nothing about it.

Senator T.A. Le Sueur:

The Deputy is misrepresenting the facts and also saying that I hid this under the carpet. It has been fully documented in written and oral questions. The fact is that the Ministerial Decision I signed at the time did include the relevant paragraph. It was subsequently omitted when it was sent to the Greffe for printing, and I have tried to explain that in my written answer in January and again today.

5.8.2 The Deputy of St. Martin:

If the Chief Minister is accepting that it was an administrative error that part (d) was not included in R.39, will the Chief Minister explain why part (d) was omitted in the actual Napier report which was subsequently produced in October 2010?

Senator T.A. Le Sueur:

Mr. Napier's report was compiled by Mr. Napier and I did not interfere in any way what he put in. I did not interfere in any way with what Mr. Napier wrote.

[12:15]

The terms of reference that he understood and that he worked to were fully open. He had all the information he required, as I have said in numerous answers. There was no question of withholding any information from Mr. Napier or withholding access to him from any person that he wished to see in those discussions.

5.8.3 Deputy M. Tadier:

We are learning now that it is a reprographic error. Will the Chief Minister explain why if it was simply a typographical error, an omission when it went to printing, why the normal procedure for a corrigendum which would be sent round was not done, because quite obviously the terms of reference are agreed by the House and if one of them has been missed out accidentally it should be the case that as soon as possible that correction is made, and why was that not the case on this occasion?

Senator T.A. Le Sueur:

I quite agree. Unfortunately no one spotted the omission until months after the event, by which time it was irrelevant anyway because, as I said, Mr. Napier still had all the information that he required.

5.8.4 Deputy M. Tadier:

Just a supplementary. Is it any surprise, and obviously I am not buying into this necessarily, that the conspiracy theorists out there who see it as quite convenient that part (d) should be dropped for political reasons are learning that it is just a typo which has not been corrected and then quite conveniently it influences, perhaps you could argue, the outcome of that report?

Senator T.A. Le Sueur:

I can understand the Deputy's view that in his view there might be a conspiracy. There was no conspiracy. It did not, in any way, influence the report of Mr. Napier because he has confirmed that he had access to all the information and all the witnesses that he required.

5.8.5 The Deputy of St. Mary:

My question is quite simple. Was Mr. Napier working to a terms of reference which included paragraph (d), notwithstanding what States Members received through the Greffe, but was Mr. Napier working to a terms of reference including part (d)?

Senator T.A. Le Sueur:

He was effectively, whether he was in practice or not is irrelevant, because he said he had access to all the information he required and he was quite clear at the time of the discussions what he was expected to do.

5.8.6 The Deputy of St. Mary:

With respect to the Chief Minister, that really is very ambiguous and ambivalent. This highly respected Q.C. (Queen's Counsel) is working to a document with his terms of reference and then he proceeds to spend a lot of time and a lot of effort in carrying out his inquiry. Was he working from (a), (b), (c) and (d) or was he working from (a), (b) and (c)? It is quite a clear question, and I expect a clear answer.

Senator T.A. Le Sueur:

I am sorry if the Deputy finds it ambiguous. The fact is that I cannot enter the mind of Mr. Napier and I cannot judge on what basis he was working. I believe he was working on the basis that he had full access to all the information he required.

5.8.7 Deputy M.R. Higgins:

Will the Chief Minister not accept that he is particularly accident prone with regard to ensuring that the Assembly's wishes are carried out? Not only have we had this omission, we have also had previously the States decision that the incinerator funds should be hedged against the euro.

Senator T.A. Le Sueur:

I do not believe the 2 matters have anything much in common whatsoever and certainly any accidental activity between transmitting a document, which I had signed and which was subsequently transmitted, is an accident which is not necessarily attributed to any one particular person.

5.8.8 The Deputy of St. Martin:

I do not think it was an accident because it is quite clear part (d) was removed and, if it was so, will the Chief Minister accept that it was removed and the evidence is in the fact that it was not included in the terms of reference as produced by Mr. Napier in October 2010?

Senator T.A. Le Sueur:

No, I refute the fact that it was removed. The Ministerial Decision which I signed, which the Deputy will have already seen, which is publicly available, makes it quite clear the decision that I made and which I signed.