

4.6 Deputy M.R. Higgins of St. Helier of the Attorney General regarding evidence given under oath in the 2008 Royal Court Curtis Warren abuse of process hearing and a written statement to the Operation Invicta investigation:

The question was originally directed to the Solicitor General and as he is answering it, am I entitled to paraphrase it slightly?

The Bailiff:

No, I should ask the question as stated.

Deputy M.R. Higgins:

Okay. How does he reconcile evidence given by Her Majesty's Solicitor General under oath in the 2008 Royal Court Curtis Warren abuse of process hearing that he was not misled by any of the police officers involved in the investigation, later repeated in a Privy Council statement, with a written statement to the Operation Invicta investigation alleging that the Law Officers' Department were misled by the States of Jersey Police?

Mr. H. Sharp Q.C., H.M. Solicitor General:

The Privy Council judgment records that the police produced a document during the course of their 2007 investigation into Mr. Warren that contained inaccurate information; see paragraphs 18 and 53. That document was provided to the Law Officers' Department. When I gave evidence in 2008, the issue was not whether or not I had been misled by the document, but rather what was the reason for the inaccuracy it contained: Was it the result of innocent error or something else? Ultimately, I am not the witness who can answer that question. It is a question for the author, not the recipient, but in evidence I was asked nonetheless for my initial reaction when I was first told that the document that I had received was inaccurate. What I said in 2008 is recorded on the court transcripts as follows: "I did not think that anyone was trying to mislead. I just thought it was poor draftsmanship. I had rather imagined it was some officer lower down the ranks who had just got their facts in a muddle. That is how it struck me at the time." More recently, in 2011, I provided a statement to the Operation Invicta investigation on the same topic. I said this, and I quote: "I thought that the wording was sloppy, but I never believed at the time that I had been deliberately lied to. I thought that the information was probably the work of a very junior officer." In my view, there is no difference between these 2 pieces of evidence. This question also appears to suggest that my evidence formed part of the Privy Council judgment. It did not. In fact, the Privy Council considered my evidence to be irrelevant to the issues relating to the abuse of process argument, as had the Court of Appeal and the Royal Court. In conclusion, my evidence, which was not and is not relevant to the abuse of process decisions, has not changed.

[10:15]

4.6.1 Deputy M.R. Higgins:

Can the Solicitor General tell us whether he does believe now that he was misled by the officers or anyone else in the Law Officers' Department was misled by the officers?

The Solicitor General:

I have just read out what I said in 2008 and what I said in 2011. There are 2 issues here. One was whether or not the document contained an inaccuracy. It clearly did and there cannot be any doubt about that. As to what I believe, which is frankly not relevant to what the author thought they believed, I have said already in my answer what I thought. I thought it was innocent error.

4.6.2 Deputy M. Tadier:

In the first answer he gave, the Solicitor General said he did not believe at the time that he was misled, which does leave the door open to the question which Deputy Higgins asked: So what

does he think now? It implies that the Solicitor General may well think now, after having had time to reflect, that he was misled. Can he confirm what his current opinion is at this time?

The Solicitor General:

My evidence has not changed. I read out a part of my 2011 statement to the Assembly just now to assist. In fact, in that 2011 statement I say on 2 separate occasions that I did not believe that there was a sinister reason for the inaccuracy.

4.6.3 Deputy T.M. Pitman:

Can I ask the Solicitor General what implications are there then for the unfolding of this particular court process? I fully accept his answer, obviously, if something that he thought was quite innocent but is now revealed to be probably not innocent and certainly inaccurate, what implications are there? Are there any retrospective steps that can be taken to rectify that matter?

The Solicitor General:

All I can say is that the Privy Council considered the document in question. They noted that it gave, to quote them exactly, “a false impression” but as the Deputy and other States Members will know, they decided the abuse of process in a particular way so it is difficult to see why this issue needs to be revisited now. It has been fully ventilated through the criminal court process.

4.6.4 Deputy M.R. Higgins:

Can the Solicitor General tell us then why his department were supportive of the disciplinary hearing which Operation Invicta led to, where these officers were going to be disciplined for their actions? There were discussions between the Law Officers’ Department and the Chief of Police and Deputy Chief of Police. Why were you supportive of the disciplinary action?

The Solicitor General:

The disciplinary process is a mile away from the question I was originally asked. But all I will say, and as I said in my original answer, is the reason for the inaccuracy in the document is a question for the author of the document and not for me.