

4. Oral Questions

4.1 Deputy J.H. Young of St. Brelade of the Minister for Economic Development regarding the use of public resources to prosecute local fishermen under the Shipping (Fishing Vessels – Safety Training) (Jersey) Order 2004:

Will the Minister inform the Assembly whether he authorised the use of public resources to prosecute local fishermen for time-expired certificates of training under the Shipping (Fishing Vessels - Safety Training) (Jersey) Order 2004? If so, would he explain why this was considered preferable to the direct provision of training by the Harbourmaster and how he considers imposing fines on fishermen assists the industry in difficult economic times?

Senator A.J.H. Maclean (The Minister for Economic Development):

I have not authorised the prosecution of anyone. It is the Law Officers' Department who have the function of taking prosecution decisions. The Harbourmaster has a duty to refer relevant cases where the law has been broken to the Law Officers' Department for a prosecution decision to be made. Decisions taken by the Law Officers will have regard to the public interest considerations. The fishermen have been convicted and fined in the Magistrates Court. They are in the process of appealing their fine only and therefore I cannot talk further about the individual case. The Harbourmaster has no duty to provide training but nonetheless has gone well beyond his call of duty by assisting in the scheduling of 2 additional courses during last year and is currently in the final stages of negotiating with training providers for the future provision of courses. The prosecution of anyone is a last resort and in no one's interest, which is why strenuous efforts were made to avoid this situation, but no individual or industry should be above the law.

4.1.1 Deputy J.H. Young:

The Minister stressed that it was not his decision, it was the Attorney General's decision, but I wonder if the Minister could tell us whether he is familiar with the guidelines issued by the Attorney General on the circumstances when it is not appropriate to refer a breach to the Attorney General, for example minor matters, genuine mistakes, misunderstandings, relying on information volunteered in the course of an inquiry, *et cetera*? Is he aware of that, has he considered it and, if he has not, will he do so?

[9:45]

Senator A.J.H. Maclean:

Officers within departments certainly consider those matters, which are of course very relevant. We do not want to be bothering the good officers of the Law Officers' Department for minor misdemeanours. This unfortunately is a situation that had dragged on for some considerable time, repeated warnings had been made and, sadly and unfortunately, those involved did not act upon those encouragements from the department to rectify the situation. The law was unfortunately, therefore, broken and in a knowing way.

4.1.2 Deputy S.G. Luce of St. Martin:

In the media reports in this case, the case immediately following was another fisherman who was charged with going to sea without a valid certification. The fisherman pleaded not guilty and the prosecution offered no evidence. Does the Minister think this is a good use of court time?

Senator A.J.H. Maclean:

The Deputy perhaps should not rely upon media reports for accuracy. That would be the first point I would make. I would also seek from him clarification as to whether he is referring to a related party in this particular transaction or incident or whether he is talking about a totally separate case.

The Deputy of St. Martin:

The case I refer to was the father of the person who was charged initially. The case went to court and no prosecution evidence was given.

Senator A.J.H. Maclean:

There was, as I understand it, another individual on the boat who was appropriately certificated and therefore this particular incident was not one that we progressed because there was no infraction of the law as such.

4.1.3 Deputy M.R. Higgins of St. Helier:

Perhaps the Minister can tell us how many cases put forward by his officers to the Law Officers have ever been rejected? I witnessed a case in the Magistrates Court yesterday and it does appear to be that the Law Officers' Department appear to rubberstamp or basically do what the departments are telling their people to do. Is that the case in your department?

Senator A.J.H. Maclean:

I would turn that question on its head. This legislation came about first of all in 1999 as a result of the sad loss of life, where it was made clear that Jersey was deficient in terms of protecting its seafarers by having appropriate legislation and training programmes in place to ensure that we mitigate such risks. Since the law was introduced there have, as far as I am aware, not been prosecutions although there are 2 current potential cases that are being considered.

Deputy M.R. Higgins:

With respect, the Minister answered a totally different question. He did not answer my question about has he had any cases overturned at all that he has referred to the Law Officers Department and, secondly, is it a case of his department gives a recommendation and it is rubberstamped?

Senator A.J.H. Maclean:

I do not think it is a case of being rubberstamped at all. As far as this legislation is concerned, I am not aware of any cases being brought, apart from the one we are referring to now. I think I answered the question by simply saying there are 2 others in train that potentially could lead to prosecution. Whether indeed those are accepted by the Law Officers' Department, it is too early, clearly, to tell at this stage.

4.1.4 Connétable P.J. Rondel of St. John:

Given many fishermen have only worked for 3 days out of the last 60, would the Minister say what good putting people to court is and getting fined £3,000-odd for not having a certificate when the Minister himself has just admitted that there was a certified person on that vessel with the necessary qualifications? Therefore, the other party whose certificate had lapsed ... will he tell us what he has put in place, through the Harbour Office, to assist these people in getting that certificate? Historically, the Harbour Office used to arrange special courses for the industry. Has that fallen away?

Senator A.J.H. Maclean:

The Harbour Office organises, through independent training providers, for courses to be laid on. There are a whole raft of courses that are laid on through the year. The majority of fishermen seemed to be able to attend these courses. The legislation was crafted to be a light touch. For example, with regard to the firefighting course, in particular in the U.K. - and this question may be asked - it is a lifetime certification but that is because it is a significantly more complicated course to go through. Ours is in the evening for a couple of hours. We have tried to make it light touch, we have tried to make it easy, and it is supported, I might add, by the Jersey Fishermen's Association and other fishing body associations.

4.1.5 The Connétable of St. John:

The Minister talks about a light touch but, given the fine is something up to £5,000, does he consider a £3,500 fine a light touch, in particular when nobody has been working in the industry for roughly 2 months, apart from 3 days?

Senator A.J.H. Maclean:

Within the legislation, the maximum fine, I understand, was up to £7,000. The magistrate clearly took the decision, based on the details of the case presented before her, that £3,500 was appropriate. I have already mentioned this is a matter of appeal and I cannot talk any further about it. The Connétable raises a very valid point about industries suffering in the current economic climate but in particular, as far as the fishing industry is concerned, with regard to the weather conditions. They have not been able to go to sea, we appreciate that, but it is a totally separate issue to what we are discussing in terms of this question. Do we support the fishing industry? Yes, we do, to the tune of tens of thousands of pounds. I have had conversations with the president of the Fishing Association who is satisfied.

4.1.6 Deputy J.H. Young:

Is it not the case that we have now a new regime under the Ports of Jersey where technical transgressions of a time expiry of a certificate are seen to be a rationale for prosecuting? Would the Minister not accept that the department are relying on courses provided by other people, that the earliest dates that courses are currently available are in the April, May and September coming, and what situation does that leave the fishermen in now whose certificates may have expired? He has mentioned 2 others in the pipeline. Surely we should be devoting the resources... will he not accept we should be devoting resources to helping these people meet the requirements that we are having to approve in the States?

Senator A.J.H. Maclean:

The Deputy has raised the point about the range of courses throughout the year, and that is just one particular firefighting course that he is referring to. There are first aid courses that are even more frequent. The department will respond where necessary if courses are required, working with third-party providers, quite correctly, to ensure that courses are available. In this particular instance, there was warning after warning; the individuals knew that the requirement to certificate was there; they knew that courses were on. Indeed, on top of all that there was a 3-month exemption for the whole fishing industry in order to provide a course and allow them to get certificated within that additional period. There has been plenty of effort to assist the industry, and there will be more, of course, if necessary.