

STATES OF JERSEY

Corporate Services Scrutiny Sub-panel Electoral Reform (3)

FRIDAY, 19th MAY 2017

Panel:

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman)

Deputy K.C. Lewis of St. Saviour (Vice-Chairman)

Connétable M.P.S. Le Troquer of St. Martin

Senator S.C. Ferguson

Witness:

Sir Philip Bailhache

[14:16]

Deputy J.A.N. Le Fondré of St. Lawrence (Chairman):

Welcome, everybody, for the second hearing this afternoon of the Corporate Services Scrutiny Sub-panel into electoral reform and the propositions in front of the States to be debated on 6th June. Now, Senator, as I am sure you are aware, there is a little notice to your left and obviously if you can take due attention to it, and to members of the public in the public seating, the same notification as last time around about no interruptions and also no interference from electronic devices. Right, for the purposes of this tape, Deputy John Le Fondré, Chairman of the sub-panel.

Deputy K.C. Lewis of St. Saviour (Vice-Chairman):

I am Deputy Kevin Lewis, the Vice-Chair.

Connétable M.P.S. Le Troquer of St. Martin:

Michel Le Troquer, Constable of St. Martin.

Senator S.C. Ferguson:

Senator Sarah Ferguson.

Senator Sir Philip Bailhache:

Senator Philip Bailhache.

Deputy J.A.N. Le Fondré:

Thank you very much for attending. I think we are quizzing you mainly in your former experience from the Electoral Commission side of things, but also obviously there will be some comments possibly requiring a more personal view. I think we are all under time limits this afternoon, so obviously where we think we have had sufficient information to answer a particular question we are asking, if we can then move forward on to the next question. Number 1, could you outline the recommendations in the 2013 Electoral Commission's report, which you chaired, briefly and obviously relevant to the propositions that are coming forward?

Senator Sir Philip Bailhache:

Well, they are all a matter of record, Chairman. There were 5 core recommendations. The first one was that the number of elected Members of the States should be reduced to 42. The second one was that the Island should be divided into 6 large districts, each electing either 7 representatives, or if the Constables remained in the States, 5 representatives. The third recommendation was that the public should decide in the referendum whether Constables should remain as Members of the States. The fourth recommendation was that the decision of the States Assembly to create a general election and to move to a 4-year term of office should be affirmed. The fifth recommendation was that the proposals should be put to the electorate in a referendum in the form of the question set out in the report. That question was put by agreement with the States Assembly to the people and they delivered their verdict.

Deputy J.A.N. Le Fondré:

Thank you very much. Just picking up on a couple of aspects, could you explain the rationale for 42 Members?

Senator Sir Philip Bailhache:

Again, Chairman, these matters are all set out in the report of the Electoral Commission. From memory, the recommendation for 42 Members was arrived at in part because the Clothier Committee had reached the same conclusion of an Assembly made up of 42 or 44 Members of the States. The Clothier Committee reached that conclusion on the basis that if ministerial government were to be introduced, there was a need for a smaller number of Members of the

States than was the case with a committee government. I think the electoral panel concurred with that position of the Clothier panel, and as you will know, we went rather further and we analysed what were the minimum requirements for membership of the States. We accepted that although almost every single person who made submissions to the Electoral Commission reached the conclusion that there were too many Members of the States, we thought that the public would almost invariably think that there were too many Members of the States. Rather like asking members of the public whether or not they think taxes should be reduced, the answer is almost inevitably going to go in one direction. So far as politicians are concerned, probably most people feel there are too many of them and the numbers ought to be reduced. So we analysed what were the requirements - and it is set in our report - and we concluded that 42 Members of the States could very easily carry out all the work that was required to be done.

Deputy J.A.N. Le Fondré:

During the 2011 senatorial elections, you stated - this is continuing the theme - one of the principal causes of problems in Government was that there were too many Members of the States and not enough for - well, the quote I had was - 53 people to do. Do you think that is still the case with 49?

Senator Sir Philip Bailhache:

Yes, I do.

Deputy J.A.N. Le Fondré:

Just to be clear, that the 49 Members of the States, there is not enough for them to do at the moment?

Senator Sir Philip Bailhache:

Work expands to fill the time available, Chairman, does it not? If there are 60 Members of the States, work will be found to accommodate them all. The question is what is the minimum number of States Members who can sensibly perform all the functions of a legislature such as the States Assembly? We reached the conclusion that 42 was a perfectly adequate number.

Deputy J.A.N. Le Fondré:

Just also as a refresher, how would the reduction from ... we will go from 49 down to 42 - you could refer to 44 if you wish, because obviously that is an amendment that is in front of us - impact on the functions of the Assembly, for example, Scrutiny?

Senator Sir Philip Bailhache:

I do not think it would at all.

Deputy J.A.N. Le Fondré:

Was that just an opinion or was there some justification done in the Electoral Commission's work?

Senator Sir Philip Bailhache:

It is set out in the Electoral Commission's report at paragraph 4. Paragraph 4(4) and 4(5) sets out the rationale for arriving at the figure of 42.

Deputy J.A.N. Le Fondré:

Okay, we will keep going. The 6 electoral districts proposed by the Commission in 2013 do not compare exactly with the changes approved by the States earlier this year in P.133, which obviously now forms the basis of the main proposal from P.18. Do you think the current proposed super-constituencies will be as balanced as per your recommendations?

Senator Sir Philip Bailhache:

The ones in the current proposition?

Deputy J.A.N. Le Fondré:

In the current proposition. If you wish to express it separately between the current proposition and then obviously the amendments, that is up to you.

Senator Sir Philip Bailhache:

No, I do not think the current recommendation or current proposal of the P.P.C. (Privileges and Procedures Committee) is as good as the recommendations set out in the Electoral Commission's report.

Deputy J.A.N. Le Fondré:

Okay. Would you like to comment on the amendments brought by Deputy Andrew Lewis?

Senator Sir Philip Bailhache:

The ones that are currently before the Assembly?

Deputy J.A.N. Le Fondré:

Yes, so there is an amendment. You have the main proposal, which is the one that has been lodged by P.P.C. You then have 2 amendments by Deputy Andrew Lewis which obviously reconfigure the super-constituencies under P.18 at the moment, and also there is a separate amendment to remove Senators.

Senator Sir Philip Bailhache:

I have not yet formed a view on how I am going to vote on those amendments.

Deputy J.A.N. Le Fondré:

Okay, that is fine. Your Commission's paper recommended a referendum on any changes. Do you think this should be the case for P.18?

Senator Sir Philip Bailhache:

I am sorry, Chairman, would you mind repeating?

Deputy J.A.N. Le Fondré:

The Electoral Commission's paper, as you said, recommended a referendum on any changes. Do you think this should be the case for P.18?

Senator Sir Philip Bailhache:

No, because I think that the essential changes have already been the subject of referenda.

Deputy J.A.N. Le Fondré:

Even though P.18 does differ from the proposals that the population were asked to vote on?

Senator Sir Philip Bailhache:

Yes. I think the public have already expressed their views on whether or not there should be large districts for the election of Deputies. They expressed that very clearly and 80 per cent of them thought that there should be. So far as the Constables are concerned, not quite such a large majority were in favour of keeping Constables in the States in 2013, but there was a very decisive conclusion in 2014.

Deputy J.A.N. Le Fondré:

Just a question, because it does come up at the moment in some of the work that we have been doing, in relation to the Venice Commission itself, they obviously made a recommendation on referenda, which was: "The question put to the vote must be clear, it must not be misleading, it must not suggest an answer. Electors must be informed of the effects of the referendum. Voters must be able to answer the question asked solely by yes, no or a blank vote." How do you think that ... was that taken into account when you brought the original proposals for the referendum to the public?

Senator Sir Philip Bailhache:

Yes, it was.

Deputy J.A.N. Le Fondré:

How does that comply or how did it comply?

Senator Sir Philip Bailhache:

The difficulty with the situation the Electoral Commission was faced with was that there was an almost equal division among those who gave evidence to the Commission between those who wanted to keep the Constables in the States and those who did not. If one was going to formulate recommendations for a referendum, that division had to be taken into account. The only way in which that could be done was to formulate the question in the way in which the question was formulated, which gave members of the public 3 options, 2 reform options or the status quo. You mentioned the Venice Commission. I think the Venice Commission has made recommendations; they are not anything stronger than that. When we discussed with our experts the difficulties that the Commission faced, the experts and the U.K. (United Kingdom) Electoral Reform Society and the Plain English Campaign all reached the conclusion that the question which was set out in the question which ultimately went to the referendum was fair and clear.

Deputy J.A.N. Le Fondré:

Shall I keep with that, everybody? Okay. Your Commission found that constituencies should be of equal size. Just for clarification, should this be in terms of population, registered voters, eligible voters or voter turnout from the previous election, because the Venice Commission does make reference to all of those options?

Senator Sir Philip Bailhache:

Take your choice and decide which one you like. From recollection, I think the Commission fixed upon registered voters at the end of the day, but you can make an argument for population, but registered voters seemed to be the best one for us.

Deputy J.A.N. Le Fondré:

Okay, thank you. Just to press on the Venice Commission hopefully for a final point, if you are following the guidelines and the Venice Commission, should one be effectively implementing all of the relevant advice outlined by the Venice Commission?

Senator Sir Philip Bailhache:

If you keep the Constables in the States, you cannot comply with the guidelines of the Venice Commission. That has always been a problem. You cannot get a fair and equitable distribution of seats if you have one Constable representing 33,000 people and one Constable representing 1,700 people. But the Venice Commission acknowledges that there may be special circumstances

which justify an inequity. The people of Jersey have decided they want Constables to remain in the States and if Constables do remain in the States, you cannot have voter equity.

Deputy J.A.N. Le Fondré:

Do you think the public are suitably aware of the proposed changes being debated on 6th June?

Senator Sir Philip Bailhache:

I think many members of the public are utterly fed up with the amount of time that the Assembly has taken to resolve this issue.

[16:30]

Whether members of the public are aware of the precise terms of the proposition before the Assembly, I do not know. Your guess is as good as mine, Chairman, but I think that the public certainly were aware of the recommendations of the Electoral Commission, because we took a great deal of time and trouble to make sure that they were and every single household received a summary of the recommendations which were set out in the report. So it is true that the current proposition before the States is not precisely what the Electoral Commission recommended, but there are sufficient points of similarity to make it, I think, clear that the public are aware of what the essentials are.

Deputy J.A.N. Le Fondré:

Do you think that there is a danger that P.18 will negatively impact the parish system?

Senator Sir Philip Bailhache:

No.

Deputy J.A.N. Le Fondré:

Are you happy to be voting on P.18, despite the detailed changes having not yet been produced by P.P.C., for example, regarding the procedure at future elections, costs, things like that?

Senator Sir Philip Bailhache:

I am sorry, would I be happy to vote on it without the views of...

Deputy J.A.N. Le Fondré:

In other words, the detail of how the elections are going to take place, whether it is where nomination is going to take place, procedures at future elections, the cost of the elections, cost of taking part, all that type of stuff, do you think it is appropriate ...

Senator Sir Philip Bailhache:

Yes. These are all procedural details which can be sorted out in due course.

Deputy J.A.N. Le Fondré:

Do you think the role of Senator should continue to exist?

Senator Sir Philip Bailhache:

Do I think the role of Senator...

Deputy J.A.N. Le Fondré:

Yes.

Senator Sir Philip Bailhache:

No, I do not.

Deputy J.A.N. Le Fondré:

Would you like to expand on that briefly, as to why?

Senator Sir Philip Bailhache:

I have expressed my views in the States on many occasions, Chairman. I do not really think that you need to have Senators if you have large districts. If you are going to have a single election day for all Members of the States, I just do not think it makes very much sense to have a senatorial election. Having experienced 2 senatorial elections, I do not find them very edifying experiences.

Deputy J.A.N. Le Fondré:

How do you mean?

Senator Sir Philip Bailhache:

Well, you have 17 or 18 candidates on a platform. You have one and a half minutes, I think it was, 90 seconds, to answer a question that is put to you when perhaps 15 other people have already answered the same question. You have to try to find something that is different or interesting. It is just not a very sensible way, it seems to me, to elect Members of the States. I think that if we had large districts with 5 or 6, whatever it may be, representatives being elected, you have a system which will allow the candidates - and presumably there would be a smaller number of them - to be tested as to what their views are and give members of the public the opportunity to know what their views are and what they are voting for.

Deputy J.A.N. Le Fondré:

So you do not think there is an analogy between the elections for Senator, where you have just identified the problems, in your view, and the potential proceedings that might take place in the elections for super-constituencies?

Senator Sir Philip Bailhache:

I think the numbers are going to be smaller in larger districts.

Deputy J.A.N. Le Fondré:

Okay. Do you think St. Helier is currently under-represented?

Senator Sir Philip Bailhache:

In what scenario?

Deputy J.A.N. Le Fondré:

In terms of political representatives.

Senator Sir Philip Bailhache:

You mean under the current system?

Deputy J.A.N. Le Fondré:

Yes, under the current system.

Senator Sir Philip Bailhache:

As we are at the moment?

Deputy J.A.N. Le Fondré:

As we are today.

Senator Sir Philip Bailhache:

No, I do not think my view is that St. Helier is under-represented. I think that the number of Deputies bears a reasonable relationship to the population and to the numbers of registered electors. If you take the Constables into account, as we have discussed, of course things change. You do not get equity there, but leaving the Constables out of the equation, I think that St. Helier is perfectly adequately represented.

Deputy J.A.N. Le Fondré:

Obviously we have in front of us some proposals to increase the representation in St. Helier. Should that be to the detriment of other parishes?

Senator Sir Philip Bailhache:

That is a matter for the Assembly, is it not?

Deputy J.A.N. Le Fondré:

I was asking your opinion.

Senator Sir Philip Bailhache:

Politics, Chairman, as we all know, is the art of compromise and my view is that the introduction of large districts is a small step forward which is beneficial, a small piece of progress. I am willing to pay, as the price of that small progress, over-representation for the electors of St. Helier.

Deputy J.A.N. Le Fondré:

But from that perspective, are you accepting to achieve that over-representation or in achieving that representation, it is acceptable to be to the detriment of the other parishes?

Senator Sir Philip Bailhache:

It must follow, must it not?

Deputy J.A.N. Le Fondré:

You were quoted in Hansard on 2nd February as saying: "What would be the justification for giving electors in St. Helier the right to elect 6 representatives while giving electors in every other part of the Island the right to elect only 4 representatives?" Do you want to expand any further on that? Obviously...

Senator Sir Philip Bailhache:

No. I mean, that was my view on 2nd February and I was arguing my case on a different proposition, was I not?

Deputy J.A.N. Le Fondré:

The second point I think is you were also recorded as saying, which I would have thought is germane to what we have got coming up: "To combine large districts with an Island-wide vote would be an absurdity." So obviously this is what is now being placed in front of States Members. Would you care to comment?

Senator Sir Philip Bailhache:

I do not withdraw that statement at all. I think it is an absurdity, but as I have already explained, in politics one has to make compromises in order to make progress. In my view, the institution of large districts is an important step forward for a number of different reasons, which I have given in various debates in the States. The dog's dinner that we are presented with in this proposition is the price that we have to pay for that.

Deputy J.A.N. Le Fondré:

That is not a ringing endorsement. What I was...

Senator Sir Philip Bailhache:

It is not a ringing endorsement, but then I am not entirely enthusiastic, as you might imagine, with the position at which we have arrived.

Deputy J.A.N. Le Fondré:

I suppose a final query - I think I have got the general view - again going back to the principles that were established under the Commission, which was about the voters having equality in votes that was the ability for vote for the same number of representatives irrespective of the district they are in. Again, just expanding on this thing, obviously the 2 districts in St. Helier each have 6. All the other districts - or super-constituencies - will have 4 under the main proposals. I am not wanting to put any further words in your mouth, so would you care just to comment on that generally?

Senator Sir Philip Bailhache:

It is not a very desirable state of affairs.

Deputy J.A.N. Le Fondré:

Okay. Any questions?

The Connétable of St. Martin:

Yes. Senator, what you were just saying about this is just one small step, is it not, you would expect further changes in 2022?

Senator Sir Philip Bailhache:

Connétable, that will be a matter for another bunch of Members of the States and not for us. I should be personally very surprised if people find it satisfactory to have Senators and large districts and I suspect that there will be pressure to drop the senatorial rank, but I may be wrong. It will be a matter for the next Assembly or the one after that.

The Connétable of St. Martin:

It could be the Connétables as well.

Senator Sir Philip Bailhache:

I do not think that that is likely, because I think that the people have expressed a view on the Constables. I do not see any correlation between the Senators and the Constables.

Deputy J.A.N. Le Fondré:

Can I follow up on that, because the query I would ask is if there is a view that one wants to move to a single class of States Members, and following your analysis of super-constituencies, potentially it would weaken or we might up with a change in the role of Senator or the removal of the role of Senator, does it not then follow that if you removed one of the classes of States Members, the next Assembly would then move to remove another class of States Members, which would be the Constables?

Senator Sir Philip Bailhache:

They might, Chairman, but we know that 40 per cent of the people voting in the referendum voted for option A, which would have created a single class of States Member and remove both the Senators and the Constables, but 60 per cent did not. When the issue of Constables was put to the people in 2014, they voted 55 per cent to 45 per cent in favour of keeping the Constables in the States. It would take quite a large swing to remove that balance of the public who think that the Constables ought to remain in the States. I do not think whether or not the Senators remain in the States has got anything to do with the position of Constables. They are an entirely different issue. It is the value that you place on the parochial system and on the office of Connétable that is in question when one talks about the role of the Connétable.

Deputy J.A.N. Le Fondré:

So you do not think there is a connection between the 2?

Senator Sir Philip Bailhache:

I do not see any correlation, no.

Deputy J.A.N. Le Fondré:

Okay, thank you.

Deputy K.C. Lewis:

The Constable of St. Martin pipped me to the post on that one. Senator, you said that this was a step in the right direction. Where do you feel is the ultimate destination?

Senator Sir Philip Bailhache:

I think the ultimate destination is the removal of the Senators.

Deputy K.C. Lewis:

Would that include in time the Constables? Would you like, for instance, one class of States Members for the whole Island?

Senator Sir Philip Bailhache:

No. I think that the role of the Constables is very important. The parishes are very important to our way of life in Jersey. For my part, I think that the Constables ought to remain in the States. I was an option B supporter in the referendum and my views have not changed.

Deputy J.A.N. Le Fondré:

So just to clarify, I think 2 questions. One was option B. Sorry, I was having a mental blank, I thought I was right and if I just double-check. Option B of course was in essence the removal of the Senator as well, was it not?

Senator Sir Philip Bailhache:

Yes.

Deputy J.A.N. Le Fondré:

It was super-constituencies, removal of the Senators and retain the Constables. So from that perspective, I suppose that ties in - maybe it is only one question - how do you address the issue that the referendum was a relatively low turnout, I think it was 26 per cent, in terms of assessing what the views of Islanders were?

Senator Sir Philip Bailhache:

It was not a very high turnout, it is true, but there was not a very high turnout when Senator Ferguson was elected and I do not think that means that she is not a properly elected Member of the States and perfectly entitled to take her seat. I do not think that the fact that only 27 per cent of the electorate turned out in the referendum undermines the validity of the result.

Deputy J.A.N. Le Fondré:

To just, I think, challenge you on one of your comments just there, surely the election of Senator Ferguson is more a change in a position, it is not a change or a major change or removal of a role. Is there not a distinction? In other words, one is a constitutional change, one is election to a post, but the post has not changed.

Senator Sir Philip Bailhache:

One is certainly a constitutional change, it is true, but one of the purposes of bringing about change is to try to bring about greater voter engagement. The fact that we are right at the bottom of the pile in terms of O.E.C.D. (Organisation for Economic Co-operation and Development) countries and voter participation in elections ought to be a matter of shame to all of us in Jersey and we ought all to be thinking to do something about it. In the Electoral Commission's report, we carried out analysis of the things that we thought were wrong and they are all there; I am not going to repeat them. One of the issues that we thought was important was the fact that we have a complicated system and if you are an immigrant to the Island, where you do not instinctively know what a Constable is or what a Senator is, the electoral system is complicated. One of the advantages of simplifying it, either in the way of option A or option B, is to make it easier to understand and to enable more people therefore to think it is worthwhile taking a part in the elections.

[16:45]

Deputy J.A.N. Le Fondré:

Any questions? I have got just one other, because in a way this is, I think, the last question. It is tied into, I suppose, representations or comments we have received during the course of some of our work. Is there a risk within super-constituencies? You talked about the opportunities. You are hoping to increase voter engagement presumably as a result of the changes and that, you are suggesting, is broadly speaking what the States are going to be voting on on 6th June. Is there any risk of super-constituencies making voter engagement worse because of the disconnect potentially - or perceived disconnect potentially - with parish representation? I just thought I would put it to you so you can give a response.

Senator Sir Philip Bailhache:

Yes. Well, it is a possibility, Chairman. I do not think it is very likely. It has certainly not been the experience in Guernsey, which has introduced large districts, and voter participation in Guernsey is better than it is in Jersey.

Deputy J.A.N. Le Fondré:

Possibly a follow-up question from that, and it is only from a former Member of the States, I always seem to remember, and I have never known the answer. He used to argue that in Guernsey less people registered, whereas we have a higher registration vote and therefore because less people vote, that distorts the turnout figures. His argument was in Guernsey less people register and therefore even if the same proportion voted in Guernsey as in Jersey, the figures would look better

in Guernsey. Was any work ever done on that or have we always taken the figures at face value between Guernsey and Jersey, as an example?

Senator Sir Philip Bailhache:

I am not sure I can help on that, Chairman. I do not recollect that we went behind any of the figures that were given to us. I mean, on the face of it, voter turnout in Guernsey is better than it is in Jersey.

Deputy J.A.N. Le Fondré:

No, that is okay. I remember it being expressed a few times and I did not know if it had been covered in your work.

Senator Sir Philip Bailhache:

No, not to my knowledge.

Deputy J.A.N. Le Fondré:

All right, I think we have concluded on, by my watch, 29 minutes, so thank you very much.

Senator Sir Philip Bailhache:

Very good.

Deputy J.A.N. Le Fondré:

We have certainly explored a few areas. It is very quick, this hearing, as it were, and the work we are trying to do, so thank you very much for your time today.

Senator Sir Philip Bailhache:

Pleasure, thank you.

[16:47]