

Chamber of Commerce Lunch

Tuesday 23 April 2024

Bailiff

Ladies and gentlemen

1. Thank you very much indeed for your hospitality and for inviting me along to speak to you this lunchtime.
2. I am very pleased indeed to have the opportunity to do so because although I have been Bailiff since October 2019, I am always surprised by how little many well-educated and intelligent people who have lived in Jersey for many years know about what the office of Bailiff is and what it entails. Now some of you here might be very well aware of the nature and ambit of the office of Bailiff but for those of you who are not, I very much welcome the chance to pass on a little bit of that information.
3. I will set the scene, if I may, with some historical background.

4. Inside the States Members entrance in the Royal Court building on the wall on the left there is a wooden board with a list of names. The first such name on the upper left hand side of the Board is Philippe Levesque 1277 and he is, as I understand it, the first Bailiff of Jersey of record. Before that, a sole Bailiff was appointed for both Jersey and Guernsey. Eighty-eight names follow his until you get to mine and I am accordingly the 90th Bailiff of Jersey. I say that with muted confidence because I don't know how completely accurate the board is and there was a period early on where, for some reason unknown to me, the office of Bailiff was held in rotation by a number of Jurats. In any event, I am going to stick with 90 as it is a nice round number.

5. As far as I am aware, the office of Bailiff is now unique to the Channel Islands and pre-dates the separation of Normandy in 1204 when the Channel Islands were granted self-governance by King John. After that time, legislative power was vested in 12 Jurats who sat with the Bailiff, forming the Royal Court. The precise nature of the Bailiff's role has been subject to dispute over many

decades and indeed centuries, it being established, however, in 1615 by Order in Council that the Bailiff was directly appointed by the King and in 1617, it declared that whilst the charge of military forces was wholly with the Governor, the care of justice and civil affairs was vested in the Bailiff.

6. Although in Jersey there have been Bailiffs since the 13th Century, it could not therefore be said that the Office was the same then as it is now. The Royal Court presided over by the Bailiff was originally not only a judicial body but a law-making body. By a process of evolution and statutory change those functions became separate and the Bailiff came to preside over the Court with the assistance of 12 Jurats and, separately, as Presiding Officer, over the States Assembly. That was not the end of the story and the Bailiff's role has continued to change over the years with the removal of the Bailiff's right of veto in the States and the casting vote where States Members are in deadlock. Accordingly, his power to influence the outcome of a parliamentary debate has now gone. In 2005, the Island moved from the Committee system to a system which created Ministerial Government and certain things

the Bailiff might have done in the past, such as dealing with officials in the United Kingdom government became the principal responsibility of Jersey government ministers.

7. So what then does the Bailiff do today? The job really has three major and some subsidiary spheres of activity. Firstly, the Bailiff is the President and Chief Justice of the Royal Court and President of the Jersey Court of Appeal. Secondly, Presiding Officer of the States Assembly. Thirdly, Chief Citizen. Other functions include President of the Licensing Assembly and Licensor of public entertainment.

8. I don't really need to say much about being Chief Justice - it is what it sounds. It is acting as a judge on a range of matters from complex trust and commercial work to serious crime, overseeing the Courts, ensuring fair trials, hearing the evidence, being addressed on the law and making a decision and often writing judgments for publication. You don't need to be the most intelligent lawyer in the Island, nor even in the Court room – you merely have to be able to understand the most intelligent one

speaking from time to time— and hopefully you deliver justice with humility as best as you are able.

9. The Presidency of the Court of Appeal is somewhat different. I do not sit frequently in the Court of Appeal although former Bailiffs do continue to do so. I am responsible for convening the Court and the appointment of judges to that Court. For the most part, those judges are either former Bailiffs, the Bailiff of Guernsey who sits *ex officio* and senior counsel or former judges of the United Kingdom who are appointed for that purpose. I will sit in the Court of Appeal on matters that are of significant constitutional importance to Jersey unless I am unable to do by reason of having presided over the case in the Royal Court.
10. From time to time, by convention, the Bailiff also sits as a judge of the Court of Appeal of Guernsey and as a Deemster of Appeal in the Isle of Man. I have done both.
11. Using a broad estimate, I would have said that I spend half of my time presiding over the courts. It has become practice for the

Deputy Bailiff to do rather more court work than the Bailiff, leaving the Bailiff free to concentrate on other aspects of his role.

12. The second major sphere is that of Presiding Officer of the States Assembly. This is similar to the role of speaker in the United Kingdom House of Commons, but is different in a number of respects. The Bailiff is not elected. The role is not political. It is accepted that the Bailiff should not act politically or speak out on political matters. That is a matter for elected politicians. The only exception to that would be where the Bailiff needs to speak because something touches upon the functioning of his office or the administration of Justice but, other than that, it is the Bailiff's job to stay well clear of political matters. As Presiding Officer the duty is to ensure fair debate in a completely politically neutral way and to apply and interpret Standing Orders which are made by the States Assembly. In doing that, training as an impartial judge is of real assistance.

13. Although the Assembly now sits every 3 weeks (it used to be alternate weeks) approximately a third of my time is devoted to the

duties of presiding officer. Not only is there the actual time spent presiding but the Bailiff approves all propositions (assessing them against Standing Orders) that are placed before the Assembly and makes rulings, either whilst the Assembly is sitting or at other times, as to how matters can proceed in accordance with those Standing Orders. I am also asked to preside and do so whenever I can over the Youth Parliament and Youth Assembly and liaise closely with the States Greffier on all matters of States Assembly business.

14. The third major sphere of activity is that of Civic Head and certainly at least two of my predecessor Bailiffs have said that this position derives from and depends upon the Bailiff holding the first two positions. What does it actually mean to be Civic Head of the Island? Well, in my opinion, it means that the Bailiff represents the people of Jersey both outside on matters of a non-political nature and internally to themselves, and speaks out and about things of general application which are not political in nature. That gives me the privilege and responsibility of speaking at such events as Liberation Day and on other occasions of national significance

and moment. I interpret that as an obligation to speak out at matters of importance to Islanders. It also means that I have the opportunity to commend and encourage people and sometimes to warn those in office privately if I think that there is a matter that they have overlooked. As an example of the former, there are a number of Bailiff's awards that I was able to introduce to recognise those who have done things above and beyond the call of duty in helping people during the time of the pandemic.

15. I am also asked to do a number of interesting things in my capacity as Civic Head. I am the main meeter and greeter for Royal visits. I learnt this rather curious practice on the visit of Prince Edward whilst I was Deputy Bailiff, the Bailiff being absent from the Island – I went up to the Airport to meet him. Once I had met him and shaken his hand I had to drive off rapidly with a Police escort ahead of HRH, who followed with the Lieutenant Governor. It was important that I reached the next point of his visit well in advance of him so that I could get out and greet him. During his visit this happened approximately four times so I would get out, I would greet him, I would spend a little bit of time with him then, a few

minutes before he was scheduled to move on, I would leap into the car to be driven with a police escort to the next place, leap out and wait to meet him again. It occurred to me to say on the last occasion I was actually one of identical quadruplets and in fact he was being greeted by someone entirely different. I am not entirely sure he saw the funny side of that.

16. It is actually an enormous privilege to be able to meet on behalf of the Island our Royal visitors and indeed to represent the Island as I had the privilege of doing at the Coronation of the King. I also attended the funeral of Her Late Majesty but that was because one of the other functions the Bailiff has, in the absence of the Lieutenant-Governor, is to be Deputy Governor. At the time of Her Majesty's passing, we did not have a Governor in place so I attended the State Funeral as Deputy Governor. And that, I suppose, lets me say that I consider myself to be enormously fortunate. I have been the Bailiff during a most unusual period, perhaps the most eventful since the second world war. Not only have we been confronted with the pandemic but we have seen the death of a much-loved Monarch and the accession to the throne of

the King. You will, perhaps, have seen the reading of the Proclamation of accession in the Royal Square and I am sure you will appreciate that to be a part of that and indeed all those events is a humbling experience.

17. Another part of the Bailiff's civic role is to meet and host in part as first citizen visiting dignitaries such as Ambassadors or foreign leaders. We have recently received the Ambassadors of Belgium and of Spain and last night, the Czech Ambassador. What tends to happen is that the Ambassador is met at the Airport by the Lieutenant-Governor and they are then brought to the Bailiff's Chambers before formal government meetings. During this meeting I have the opportunity to briefly explain the constitution of the Island, showing the Ambassador around the Royal Court and States Building and showing him or her the Royal Mace. The Royal Mace (pictured on the slide) is a very important historical item. It is one of the 'great maces' and it is in the Bailiff's safekeeping and charge, having been given to the Bailiffs in perpetuity by Charles II in 1663 for their loyalty and steadfastness during the Civil War.

18. This, together with the Seal of the Island of Jersey, are two very important constitutional symbols, which are placed in the Bailiff's keeping as each Bailiff takes the Oath of Office.

19. After the visit, the Ambassador's official programme of meetings with Government and citizens starts. The visits are a pleasurable part of my role but each requires a speech to be prepared and a lot of work behind the scenes. For events such as a Royal or Ambassadorial visit, the Bailiff often hosts a state dinner in the Royal Court building or elsewhere. All of this is organised by the Bailiff's Chambers and all of it requires considerable work by the Bailiff's team: the Chief Officer, Ushers, and Secretariat.

20. The state dinners and ambassadorial visits are vital in supporting Jersey's External Relations. It is important for the Island, I think, to be able to present ourselves as a serious and well-established jurisdiction with a deep history and solid constitutional position. Receiving a tour of the Courts and the States Chamber followed by a dinner where the ambassador meets a cross-section of politicians,

civil servants and business representatives are important elements of doing that, and so we spend a great deal of time getting the detail correct and setting the right tone. The Bailiff makes a speech. In fact, there has become a recent practice and possibly even a touch of rivalry between myself and the Deputy Bailiff who occasionally hosts Ambassadorial dinners when I am unavailable as to what languages we might try to deploy. I was quite pleased on the visit of the Spanish Ambassador to say a few things to him during the speech in Spanish which he was kind enough to say he understood. I think I was upstaged rather, however, by the Deputy Bailiff who on a recent visit from the Belgian Ambassador was schooled to be able to say a few words in Flemish.

21. It would be very easy for me to talk at length on the responsibilities as Civic Head. They include the taking on of a number of Charitable Patronages (I would guess 20 or so at last count) and some of those require commitment in time to support the charities and attend events. We also launch and administer appeals where Jersey people need a way to provide tangible support in the face of disasters. There are some traditions – you would have perhaps seen

the Bailiff's Christmas Message in the Jersey Evening Post or Bailiwick Express, and I also record a Christmas Message to go onto social media channels. There are Christmas visits to places such as the Hospital and Jersey Post which allow both the Lieutenant-Governor and me, as Crown appointees, to thank staff and express gratitude on behalf of the public.

22. I thoroughly enjoy the chance to meet a variety of Jersey people from all backgrounds, interests and indeed religious persuasions. It really tells me how enormously rich and multi-faceted we are in this Island and how lucky we are to live in a beautiful and peaceful place which is open to newcomers.

23. As I mentioned before, there are other aspects to the Bailiff's role. I preside over the Licensing Assembly which is responsible for the granting of liquor licences and dealing with the policing of those licences when difficulties arise. We also, in the Bailiff's Chambers, licence public entertainment and that is something which takes significant amount of work for the Bailiff's Chambers through engagement and often mediation. Lastly, we are

responsible for the delivery of some major Island celebrations such as Liberation Day and will be very closely involved during any Royal visit. These events, together with the other civic head-type events are time-consuming in terms of organisation and I am grateful indeed that a large amount of the responsibility for the delivery of these things falls not on my shoulders, personally, but on the team that is the Bailiff's Chambers. It is led by the Chief Officer who is sitting somewhere over there and listening carefully to what I have to say and in addition to his Deputy, the Personal Assistants to the Bailiff and Deputy Bailiff, the Judicial Secretary and the Ushers comprise the entirety of the Bailiff's Chambers. We do all this and always have done – with 10 staff or fewer. An enormous amount of work is done, if I dare say so, to a very high standard within those Chambers and many people simply do not see it happening. But it is a real source of pride to me that we achieve what we do. I genuinely think that we punch more than our weight in terms of the services that the Bailiff's Chambers provide to the public of the Island. Of course, we don't always get things right – I certainly don't always get things right – but

nonetheless I am wholly certain that everyone does their very best to do so.

24. Once of the last functions of the Bailiff that I should mention is amongst the most important - that of guardian of the constitution. The Bailiff has always been the final protector of the constitution of the Island. Our constitution is largely unwritten and has been interpreted on occasion both judicially and administratively. It has been described in a report presented to the States in 2010 that the constitutional relationship between the United Kingdom of Jersey, *“is subtle and unwritten, enshrined in custom and practice developed over many years...”*

25. That function derives from the fundamental nature of the office of Bailiff. Under Norman law, the word Bailiff or *‘Bailli’* carried with it the sense of *“guardian”* or *“protector”* and the Bailiff was regarded as the protector of the people and the laws. The requirement to uphold the constitution of the Island is enshrined in the Oath of Office that the Bailiff takes when he is sworn in and that duty requires him to be informed about when there are threats

to the constitution, to advise and sometimes to challenge publicly anything that is of an unconstitutional nature. Sometimes, difficulties with the United Kingdom arise such as whether or not the United Kingdom extends a permissive extent clause to Jersey without its consent or even purports to bind Jersey to legislation and those in the past have given rise to major constitutional disputes. Sometimes, however, all it needs is a conversation and an explanation of the position to ensure that the constitution which is always an evolving thing, nonetheless evolves in a way that is beneficial to Jersey and its people.

26. In terms of challenges that the office of Bailiff may face, there are of course the usual challenges such as resourcing. The courts are busier and busier and we undoubtedly need court facilities that can deal with more than one Assize (jury trial) at the same time. By and large, the office has shown itself to be resilient both as to the management of the courts and the Presidency of the Assembly when you look at the way both were able to function efficiently and effectively during the pandemic. We were, I believe, the first

Assembly in Europe to become fully virtual during the pandemic – the courts had no backlog to clear.

27. I do not lay personal claim for achieving any of that – sometimes the right thing for the Bailiff to do is to get out of the way and let other people who are better at particular aspects such as the States Greffe, the Judicial Greffe or members of my Chambers go ahead and achieve them. But we were able to function to a very high level in enormously challenging circumstances.

28. Of course, the question arises from time to time as to whether or not the Bailiff's role should change and the Bailiff should cease to preside over the Assembly.

29. You may indeed have read recently that there may be a proposition to that end in Guernsey and we have seen similar propositions over the years in Jersey. It will not surprise you to hear that I think that there are a number of advantages to maintaining the *status quo* and I do not see a conflict between the Bailiff's roles, but questions such as this are matters of a constitutional nature and ultimately for

decision by the Assembly with the approval of His Majesty in Council.

30. If the Bailiff were to be removed, of course, careful consideration would need to be given to who would replace him. Does one take a current Member of the Assembly, with whatever political baggage they may have, and place them in that neutral position? Is that tenable in an Assembly of 49? Is it advisable to lose the services of a skilled politician? You would not wish to see the Presidency held by someone who was not a skilled member and if you did use a skilled member, then the services of that member would be lost to those for voted for him or her.

31. I can see some theoretical justifications for a change but I can equally see theoretical justifications for maintaining the *status quo* and some real practical difficulties in giving effect to a change. However, this is a matter for the Assembly ultimately. In my own view, however, as indeed the Assembly has resolved in the past on other occasions, if there is to be a change then this is of such a fundamental constitutional nature carrying with it the very possible effect on the civic headship amongst other things, that it probably

should be ratified by a referendum so that the people of Jersey can have the final say.

32. I have now probably spoken for longer than expected. So let me just say this. As a proud Jerseyman who has made law his career I hold the very best job in the world and I am very grateful indeed to have had the opportunity of speaking to you. I would be delighted now to take any questions.