

THE WORKING PARTY ON PARISH ASSEMBLIES: REPORT

**Presented to the States on 4th December 2001
by the Legislation Committee**



STATES OF JERSEY

STATES GREFFE

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PARISH ASSEMBLY WORKING PARTY: REPORT

Preliminary

By Act dated 26th May 2000 the Legislation Committee agreed that it would be prepared to support the creation of a Working Party to review existing legislation relating to Parish Assemblies. That Working Party was established by Act dated 12th October 2000 under chairmanship of Deputy Harry Baudains together with the following members -

Jurat M. Rumfitt
Senator C.G.P. Lakeman
Deputy K. Syvret
Connétable K. Le Brun of St. Mary
Centenier E. Gallichan of St. Helier
Mr. G. MacRae (*Procureur du Bien Public* - St. Brelade)

Advocate S.C.K. Pallot (Law Officers)
Ms S. Auckland (Judicial Greffe)
Mr. P.J. Bryans (Law Review)

The terms of reference of the Working Party were -

- (i) to bring together a clear and concise statement of the existing law (the Law Officers being charged with providing a legal statement of the existing position, including customary law);
- (ii) to identify areas in need of reform, the main criteria being the integrity of the democratic process. Also to ensure certainty and consistency in the actual procedure governing the election process in relation to Parish Assemblies (including eligibility to vote);
- (iii) in particular to clarify the position in relation to bodies corporate who are liable to rate but who are represented by a *mandataire* or other agent and if necessary to recommend amendment to existing legislation;
- (iv) in particular to clarify the position in relation to notice periods for the convening of parish assemblies and to recommend amendment if necessary to existing legislation.

The following Report contains the statement of the existing law prepared by the Law Officers and concludes (in *Part 12*) with several observations and recommendations.

Part 1: Introductory

1.1 Constitution of the Assembly

1.1.1 The governmental body for the Parish is the Assembly of Principals and Officers of the Parish, also known as the Parish Assembly.

1.1.2 When dealing with the ecclesiastical affairs of the Parish, the Rector presides; when dealing with all other Parish affairs, the Connétable presides.^[1]

1.1.3 The Assembly under the presidency of the Rector is commonly called the Ecclesiastical Assembly and the Assembly under the presidency of the Connétable is called the Civil Assembly when contrasted with the Ecclesiastical Assembly, but is commonly called the Parish Assembly.

1.2 Principals/members

1.2.1 The classification of principals and officers is now somewhat academic. Until 1975, the principals of the Parish were those assessed to rate in excess of fifty quarters. Now, however, any person residing and registered as an elector for public elections in the Parish is a member of the Parish Assembly.^[2]

1.2.2 A person who is a ratepayer, even if not resident in the Parish, qualifies as a member if the liability to rate is 50 quarters or more.²

1.2.3 In the case of persons jointly liable to rate, only the person whose name is first entered in the rate return^[3] is eligible for membership.^[4]

1.2.4 A body corporate or any professional, commercial, or industrial unincorporated body may also be a member of the Parish Assembly provided that the Connétable has been notified of the name of the member of the body who is to be its representative.^[5]

1.3 Officers

1.3.1 The officers of the Parish are -

- (a) the Connétable, who is head of the Civil Parish;
- (b) the Rector^[6], who chairs the Ecclesiastical Assembly;
- (c) the Centeniers (one of their number being appointed *Chef de Police* by the Connétable);
- (d) the *Procureurs du Bien Public*;
- (e) the *Surveillants* (Churchwardens);
- (f) the Almoners;
- (g) the Vingteniers;
- (h) the Constables' Officers;
- (i) the *Inspecteurs des Chemins*.

Mention will also be made in the historical context of the office of *apprécieur* in paragraph 2.10 below.

1.3.2 Persons who had *previously* been a Connétable or a Centenier had the right to be present and vote at the Parish Assembly even though no longer in office and although they might not still reside in the Parish. In 1984 that right was abolished,^[7] however, States Deputies were given the right (if they were not otherwise eligible as members) to attend, but not to vote, in the Parish Assembly.⁷

1.4 Administration

All the affairs of the Parish are administered by the officers of the Parish under the control of the Connétable, except that -

- (a) by-roads (*chemins vicinaux*) are administered by the Roads Committee (*Comité des Chemins*),^[8]
- (b) rate assessments are made by Assessment Committees;^[9]
- (c) in the Parish of St. Helier, the functions of the Churchwardens in relation to the maintenance of persons in need of assistance are exercised by a Commission.^[10]

1.5 Procedure

1.5.1 The President of the Parish Assembly (i.e. the Connétable or the Rector, depending on whether it is the Civil Assembly or the Ecclesiastical Assembly) is required to convene an Assembly within eight days of receiving a request to do so from four or more members of the Assembly. The request must be made in writing, dated, and must state the subject for which the Assembly is to be convened. The application must be in the hands of the President no later than Wednesday in any week in order that there is time to convene the Assembly on any day in the following

week.^[11]

- 1.5.2 There is also a power for the Rector, appointed by the Dean and residing in the Parish, to convene and preside over Ecclesiastical Assemblies. There is also a power for the *Chef de Police* to convene and preside over Parish Assemblies. Each “President” must notify the other before publishing the date of the Assembly in order that they can arrange their public functions.^[12]
- 1.5.3 The official notice must be placed in the Parish box (*boîte grillée*) in the Parish cemetery. Notice must also be given in the Jersey Gazette at least two days before holding the Assembly.¹² ^[13] A notice convening a meeting of the Parish Assembly, whether civil or ecclesiastical, may be in the French or the English language, at the option of the President of the Assembly.¹³
- 1.5.4 The convening notice must state the business to be discussed. No other business may be discussed except matters relating to public safety and the care of the poor^[14]. If an urgent matter requires the convening of an Assembly, one can proceed by notifying all the members of the Assembly through the Vingteniers. However, no Assembly may be held on the same day as the notice is published or on the following day save in matters of public safety (*sureté publique*).^[15]
- 1.5.5 The President of the Assembly is required to put every matter proposed and seconded to discussion and to the vote.^[16] The President must produce the convening notice to the Assembly and follow the order for debate as set out in the notice.^[17]

Part 2: The Officers

2.1 The Connétable

- 2.1.1 The first known reference to a Connétable in the records of the Island is dated 1462, but it is more than possible that the office came into being long before that date.^[18] The functions and status of the Connétables increased to the point at which the Connétable was head of the “Civil Parish” and Chief of the Parish Police.
- 2.1.2 The Connétables are elected by the electorate of their Parish for a period of three years but they remain in office notwithstanding their discharge from office at the expiration of that period until their successor has been sworn into office.^[19] There is no apparent age limit for the office nor, ostensibly, any disqualification such as incapacity, criminal record, or other civil offices. However, the Royal Court exercises a supervisory jurisdiction when the Connétable is in office.^[20] It is submitted that a similar jurisdiction is exercisable by the Royal Court (on a representation by the Attorney General) to decline to administer the oath to a newly elected Connétable if he or she is for whatever reason unfit for office.
- 2.1.3 The Connétables sit in the States not as elected members but by dint of their office of Head of the Parish. They may speak and vote in the States. They are not delegates of the Parish; they are its representative.^[21] If the Connétable was unable to be present in the States, the Parish used to be represented by the senior Centenier who was normally the *Chef de Police*. This was enshrined in Article 17(1) of the States of Jersey Law 1966, but that Article was repealed in 1974.^[22]
- 2.1.4 A Connétable is required to inform the Attorney General in writing, at least six weeks before the date on which three years will have expired from the date of his/her election to office or of that of a Centenier in the Parish. The Attorney General must in turn inform the Royal Court, which then orders an election to be held as soon as may be on or after the date that the term of office expires.^[23] If a Connétable dies when in office, the senior Centenier assumes the office of Connétable until the new Connétable, after the trial of the contested election, is sworn into office. The trial of contested elections have preference before all other civil suits when they are ready for hearing.^[24]

2.2 The Rector

2.2.1 The Rector is a Priest of the Church of England who is the head of the established Church within the Parish. The title of Rector is limited to the twelve Rectors of the ancient Parish Churches. The Rectors are appointed by the Crown and preside over the Ecclesiastical Assembly.

2.2.2 The Rectors no longer sit in the States^[25] as one of the traditional three estates of Jurats, Connétables, and Rectors. The Dean, however, continues to sit in the States as a non-voting member.^[26] Rectors retain the right to submit themselves for election to the States.

2.3 Centeniers

2.3.1 The Centeniers are elected^[27] by a Parish constituency to undertake honorary policing of the Parishes. They are appointed for three years by the Parish electorate. They are not eligible for election if, on the day of nomination as a candidate, they are less than 20 years of age or have attained 70 years of age.^[28]

2.3.2 The election of a Centenier is governed by the same electoral process as elections of States members.^[29]

2.4 Procureurs du Bien Public

Procureurs du Bien Public are two honorary officials in each Parish who act as public trustees, i.e. they maintain an oversight of Parish finances and represent the Parish along with the Connétable (and, when appropriate, with the Rector and Churchwardens) in respect of property transactions of the Parish. The office probably came into existence when rates began to be collected from parishioners. They are appointed by the Parish Assembly for three years.^{[30] [31]}

2.5 Surveillants

The title of Churchwarden is in French ‘*Surveillant*’ and should literally be translated as ‘overseer’. As overseers of the poor (*Charité*) and guardians of the Church property (*Trésor*) they must be of very early origin.^[32] The two Churchwardens are appointed annually by the Ecclesiastical Assembly (although one may be appointed by the Rector) and their main Parochial function relates to poor relief.

2.6 Almoners

These Parish officials are appointed annually by the Ecclesiastical Assembly to assist the *Surveillants*.

2.7 Vingteniers

2.7.1 Vingteniers are junior Honorary Police officials elected by the whole Parish Assembly.^[33] Like all Honorary Police officials they are responsible to the Connétable and can act in the absence of the Connétable or a Centenier.

2.7.2 Each Vingtenier within the limits of his Vingtaine,^[34] and in the absence of the Connétable or any Centeniers, has the power and is required at all times when necessary to keep the peace and enlist the help of Constable’s Officers and must arrest all persons who breach the public peace or who break the law and bring them without delay before the *Chef de Police* of the Parish.^[35]

2.7.3 A person may not be nominated as a candidate for the office of Vingtenier unless he has attained the age of 20 and has not attained the age of 70 years.^[36] Vingteniers hold office for three years.^[37]

2.7.4 Besides their policing functions, the Vingteniers are also involved in the maintenance of roads in the Vingtaines. They traditionally have undertaken the function of collecting fines levied pursuant to a *visite du branchage* under the *Loi* (1914) *sur la voirie* as well as the Parish rates.

2.7.5 There is, as a general rule, one Vingtenier for each Vingtaine. However, in St. Helier, the Canton de Haut de la Vingtaine de la Ville and the Vingtaine de Bas du Mont-au-Prêtre each has two Vingteniers.^[38]

2.8 Constable's Officers

2.8.1 Constable's Officers are junior Honorary Police officials. They are elected for each Vingtaine by the electors of the Vingtaine. Originally, their term of office was for seven years in all Parishes except St. Helier where the term was four years. Their term of office is now three years in all the Parishes.^[39]

2.8.2 The age qualification of not less than 20 and not having attained 70 years applies.^[40] If at the end of the term of office of a Constable's Officer, the Parish Assembly cannot find a suitable replacement, the Officer may have to serve an additional term.^[41] Constable's Officers who have attained 70 years or have become unfit through illness to finish their term of office may be granted discharge before having served their full term of office.^[42]

2.9 Inspecteurs des Chemins

Roads Inspectors are appointed under the provisions of the *Loi* (1914) *sur la Voirie*. Two Inspectors are appointed for each Vingtaine by the Parish Assembly and they hold office for a term of three years.^[43] An Assembly to effect the elections must be convened in December and those elected enter into office as from 1st January following.

2.10 Apprécieurs

Rights attaching to the ownership of land in Jersey have in true Norman spirit long been treated as sacrosanct. The customary law of *partage* (the partition of land between co-heirs) was elaborate and complex requiring the precise valuation of parcels of land in successions where several properties fell to be divided between different heirs. *Apprécieurs* were officers sworn to value land "à sa valeur entière et réelle". Their status was confirmed in the Code of Laws of 1771 in the provisions relating to the *Cour d'Héritage* and, subsequently, by the *Loi* (1891) *sur le partage d'héritages*, Article 3 of which required the Parish Assembly to appoint six *Apprécieurs* whose valuations were to be made *par vergée*. The Wills and Successions (Jersey) Law 1993 introduced a new régime of succession in relation to immoveable property rendering *partage* in its previous form largely redundant. The *Loi* of 1891 was repealed and with it went the official status of *Apprécieur*.

Part 3: Annotated text of the Parish of St. Helier (Qualifications for Office) (Jersey) Law 1976, as amended

ARTICLE 1

(1) Notwithstanding any enactment or customary law to the contrary, no person being a rate payer in the Parish of Saint Helier shall be disqualified for being elected to, or being the holder of, any honorary office in the Parish of Saint Helier, by reason only of the fact that he does not reside therein.

(2) For the purposes of this Article, a person shall be deemed to be a rate payer in the Parish of Saint Helier if his name is entered in the Rate List of that Parish as the representative of a body within the meaning of Article 22 of the Parish Rate (Administration) (Jersey) Law, 1946, as amended, notified in accordance with the provisions of that Article.

Part 4: The functions of Parish Assemblies

4.1 General

4.1.1 The traditional functions of the Parish Assembly were stated in the Nineteenth Century^[44] to be as follows -

- (i) the general superintendence of the parochial police;
- (ii) the care of the roads;
- (iii) the promotion of local improvements (new roads or drains, the removal of nuisances, etc.);
- (iv) the administration generally of local charities;
- (v) the making of rates;

(vi) the administration concurrently with the Constable of relief to the poor.

4.1.2 The functions in (i) and (iv) above have largely given way to new statutory régimes. The Attorney General is titular head of the Honorary Police and, in relation to charities, whilst Parishes undoubtedly continue to have much involvement, it can no longer be said that they have the function, in a formal sense, of administering local charities. An important addition, however, to the original list of functions is the consideration by the Assembly of licensing applications under the Licensing (Jersey) Law 1974, as amended.

4.1.3 Insofar as the Ecclesiastical Assembly is concerned, Article 8 of the *Loi* (1804) *au sujet des Assemblées Paroissiales* provides (in broad translation) that “. . . ecclesiastical affairs are as follows: the choice of officers of the Church, and the examination and approval of their accounts; the *distribution extraordinaire*; repair of the Church, of the Cemetery, and of the Presbytery, the disposition of Church pews, and of property attaching to the Rectorate; the sale of *Rentes* of church property (*‘Trésor’*), for the poor (*‘Charité’*) and other property belonging to the *Trésor* or *la Charité*,^[45] and the choice of *Lecteur*, of *Fossoyeur* (grave digger), and of the School Minister, for presentation to the Dean”. This of course has to be read in the context of the times in which it was enacted; thus, for example, the function of allocating Church pews is in desuetude.

4.2 Functions in relation to roads

4.2.1 Parishes used to be responsible for all roads within their boundaries and it became the custom to levy a small rate to raise finance for this purpose. There has, however, been a gradual transfer of administration to the States. The *Loi* (1914) *sur la voirie* provides for main roads (*grandes routes*) to be administered by the States and minor roads (*chemins vicinaux*) to be administered by the Parishes. The *Loi* of 1914 has been supplemented by a Law providing for the extinguishment of roads,^[46] and Laws regulating obstructions on or above the highway.^[47]

4.2.2 Each Parish must establish a Roads Committee (*Comité des Chemins*).^[48] In St. Helier, the Committee is composed of the Connétable who is president, the Rector and five members (*principaux*) of the Assembly. The Connétable plus any four other members constitutes a quorum. In the other Parishes, the Committee is composed of the Connétable, who presides, and the Rector and three members (*principaux*). The Connétable with any two of these persons makes a quorum.^[49]

4.2.3 Roads inspectors (*inspecteurs du travail des chemins*), two for each Vingtaine, must be appointed by the Parish Assembly.^[50] Members of the Roads Committee and the roads inspectors are chosen by the Parish Assembly to fill a three year term.^[51] The Assembly must be convened for this purpose in the month of December, the persons concerned taking office on 1st January following. Centeniers and Vingteniers cannot be members of the Roads Committee. If a Vingtenier is chosen, he can appear before the Royal Court and choose either position, following which there is an election in respect of whichever post he has vacated.^[52]

4.2.4 If a member of the Roads Committee or a roads inspector dies or moves Parish, there is another election. The same applies in the event of curatorship or the appointment of an Attorney without whom the person concerned may not act.^[53]

4.2.5 It falls to the Connétable to convene the Roads Committee whenever necessary or when required by any member thereof. He must give notice of each topic for the meeting. If a member fails to attend after forty-eight hours notice, he incurs a fine at level 1 on the standard scale, which is applied towards maintenance of the *chemins vicinaux*.^[54]

4.2.6 The roads inspectors supervise road repairs and ensure the implementation of directions of the Roads Committee.^[55] The Parish Assembly must place at the Roads Committee’s disposal necessary sums for repairs and works to *chemins vicinaux* each year and the Committee must produce annual accounts before 1st July^[56]. Similarly, the roads inspectors must produce annual accounts in the first fortnight of January each year, firstly to the Roads Committee and then to the Parish Assembly. When the Assembly has examined and approved them, they are signed by the Connétable and produced to the Royal Court at the *Visite Royale*.^[57]

4.2.7 Every September (and more often if necessary) the Roads Committee visits the *chemins vicinaux* accompanied by

the roads inspectors in their respective Vingtaines. It points out what is in need of repair and what work should be carried out. The inspectors must comply with the directions on pain of a level 1 fine which may be imposed by the Royal Court on the representation of the Connétable.^[58]

4.2.8 The Roads Committee has a special function in cases where a road (be it a main road or a minor road) forms the border between two Parishes, that is to say, where there are *chemins mitoyens*. The Roads Committees of each Parish have authority to (and must) determine which Parish should be responsible for the Road and, to this end, may put up appropriate boundary stones. Within the Parish, a similar function may be undertaken in respect of roads where there are adjoining Vingtaines.^[59]

4.2.9 A book must be kept in each Parish for affairs of the Roads Committee in which the Connétable must regularly insert all Committee decisions in connection with repairs, *branchage* and similar matters.^[60] Each Roads Committee (as well as the Public Services Committee) must receive and examine requests and representations made to them and summon interested parties.^[61]

4.2.10 This report does not extend to an analysis of the *Visite Royale*^[62] or the *visites du branchage*.^[63]

4.3 Compulsory purchase powers of Parish Assembly

4.3.1 The Roads Administration (Jersey) Law 1960 provided^[64] “new means for the acquisition of land for the purposes of road construction and improvement, to control building near roads and access to land from roads, and otherwise to amend the law relative to road administration”. The Parish Assembly was provided^[65] with power where it appears to it that land should be acquired for the construction of a new road or the improvement of an existing road, to acquire such land by compulsory purchase in accordance with the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961. If the Assembly invokes this power, the Connétable assumes the same role as the Greffier of the States for the purposes of the Compulsory Purchase of Land Law and the Roads Committee takes the place of the acquiring authority for the purposes of that Law.

4.3.2 If the Roads Committee (in relation to a *chemin vicinal*) believes it necessary for preventing danger from obstructions to the view of road users to impose restrictions, it can serve notice on the owner requiring him to undertake work to alleviate the danger^[66]. It is an offence not to comply with the notice and the Roads Committee may do the necessary work itself and recover the cost from the owner.

4.4 Placing of things below, on or above any land

4.4.1 The Roads Committee may grant licences authorising any person to place anything below, on or above a *chemin vicinal*.^[67]

4.4.2 The Connétable may grant any person a permit authorising him to have exclusive occupation of any land over which the public customarily has the right to pass without let or hindrance.^[68] This enables permits to be granted for so called ‘*al fresco*’ drinking. Further functions in relation to e.g. Sunday trading permits, dog permits, firearms and driving licences are not within the scope of this report.

4.5 Functions in relation to making of rates

An analysis of the rating system is not within the scope of this Report. However, as we shall see, the Parish Rate (Administration) (Jersey) Law 1946 contains many key provisions in relation to representation and voting rights in the Parish Assembly.

Part 5: Representation in Parish Assemblies of bodies corporate and unincorporate

5.1 In January each year, the Connétable must serve a notice on every owner of land in his Parish requiring him to make a return in the form required by the notice containing such particulars as may reasonably be required for rating purposes.^[69] Every person on whom a notice is served must, within fifteen days of service, make a return in the form required by the notice and deliver it to the Connétable. After delivery of the returns, the Assessment Committee

prepares a draft list based upon the forms.^[70] The draft list is, in due course, revised, if need be, and approved by the Supervisory Committee and transmitted to the Connétable not later than 31st July.^[71]

5.2 If a ratepayer is a body corporate or a professional, commercial or industrial unincorporated body, that body may, in January, notify the Connétable of the name of the person it desires to be entered in the rate list as the representative of the body. That person must be a member of the body and, once the name is entered, that person is entitled to represent the body in all matters in which it is entitled to representation.^[72] No minimum number of members is required to constitute an unincorporated body.

5.3 The body concerned must, of course, actually be liable to pay rates. The persons liable to the payment of occupier's rates are occupiers of land in the Parish.^[73] The term "occupier" means the person having the use of the land.^[74] The effect of this is that the person having the use of the land is the person liable to the payment of occupier's rate.

5.4 If two or more persons are jointly liable to pay rates, only the person whose name is first entered in the return in January in relation to the jointly held land is eligible for membership of the Parish Assembly in respect of that land.

Part 6: Membership of Parish Assembly as ratepayer

6.1 Individuals

Article 23(2) of the Parish Rate (Administration) (Jersey) Law 1946, as amended, provides that every person of full age and not having a curator or attorney shall be a member of the Parish Assembly in the Parish in which he is a ratepayer as long as his liability to rate is not less than 50 quarters. This is straightforward and does not require elaboration.

6.2 Jointly held property

If there is a joint liability to rate, the proviso to Article 23(2) has the effect that the person whose name is first entered on the return is eligible for membership of the Assembly to the exclusion of the other joint holder(s). If one or more of the joint holders is a body corporate, the name of a representative of the body may be entered on the return, but again to the exclusion of any other joint holder. The same applies to any professional, commercial or industrial body which is not incorporated.

6.3 Share transfer occupation

A company owning a block of flats will be liable to foncier rate. The occupants of share transfer flats will be liable to occupier's rate. They do not 'own' their flats in the strict legal sense but rather the shares entitling them to exclusive occupation of the flat. Therefore if any of them leases or assigns their interest in their flat, the lessee/assignee of that interest becomes liable to occupier's rate instead of the share transfer 'owner'; and so on with any sub-letting or further assignment of that interest.

6.4 'Flying freehold' ownership

The expression 'land' in the Parish Rate Administration Law is deemed to include a *lot* within the meaning of the *Loi (1991) sur la copropriété des immeubles bâtis*, as amended. A *lot* means a flat and all the rights and obligations ancillary to its ownership. The holder of a *lot* has outright legal ownership and is therefore liable to foncier rate and, if actually in occupation of the flat, to occupier's rate. If the flat is let or assigned, the owner remains liable to foncier rate (irrespective of any arrangement between the parties) and the lessee/assignee becomes liable to occupier's rate; and so on with any sub-lease or further assignment.

6.5 Companies/bodies corporate and unincorporated professional, commercial or industrial bodies

As we have seen, any of these may nominate a representative if it wishes to have a voice and a vote in the Parish Assembly. Only that representative is allowed. The representative must be a member of that body. A body which takes a paper lease (of up to nine years) of premises will presumably be the person 'having the use of' the property to the exclusion of the individual occupying it and therefore liable to occupier's rate, but this is not addressed specifically in the legislation.

6.6 Contract leases

A lease passed before the Royal Court renders the lessee effective owner and thus liable to foncier as well as occupier's rate. This results from the definition of 'owner' in Article 1 of the Parish Rate Administration Law. Thus in the case of a sub-lease, the head lessee remains liable to foncier rate.

6.7 Employees

The definition of 'occupier' in Article 1 excludes persons having use of land/premises as an employee or for the purpose of performing duties to the employer. Thus the employer remains liable for both foncier and occupier's rate.

6.8 Usufructs

A person having life enjoyment (*usufruct*) of property is deemed under Article 1 to be an owner and thus liable for both foncier and occupier's rate. In the case of a sub-lease or assignment of the interest, the usufructuary therefore remains liable to foncier rate.

6.9 Licence to occupy

A licence to occupy does not confer exclusive right of use and possession upon the licensee who therefore cannot be said to have the use of the property in the full sense. The owner thus remains liable for foncier and occupier's rate.

Part 7: List of relevant statutes

Charter of Henry VII 17th June 1495 (*Notes* 18 and 26).

Code of Laws 1771 (*Notes* 18 and 31 and *para* 2/10).

Order in Council of 6th August 1784 (*Notes* 18 and 23).

Order in Council of 2nd June 1786 (*Note* 23).

Loi (1804) *au sujet des assemblées paroissiales* (Article 4, *Note* 40) (Article 5, *Note* 41) (Article 6, *Note* 29) (Article 9, *Note* 10) (Article 11, *Note* 14) (Article 12, *Note* 15) (Article 13, *Note* 34).

Loi (1815) *sur l'ordre de procédure aux assemblées paroissiales* (*Note* 16).

Order in Council of 26th April 1817 (*Note* 26)

Loi (1853) *au sujet des centeniers et officiers de police* (*Note* 26).

Loi (1871) *sur le mode d'élection des Vingteniers* (*Note* 32).

Loi (1853) *sur le partage d'héritages* (*para* 2/10)

Loi (1897) *sur les élections publiques* (*Note* 28).

Loi (1905) *au sujet des assemblées paroissiales* (*Notes* 1, 11, 75, 76 and 77).

Loi (1908) *sur l'administration de l'assistance paroissiale à St. Hélier* (*Note* 9).

Loi (1914) *sur la voirie* (*Notes* 7, 42, 47-60 and 62).

Loi (1938) *sur les officiers du connétable* (*Note* 38).

Parish Rate (Administration) (Jersey) Law 1946 (*Notes* 2, 3, 4, 8, 68-73).

Assembly of the States (Jersey) Law 1948 (*Notes* 24 and 25).

Highways (Jersey) Law 1956 (*Notes* 46 and 66).

Roads (Administration) (Jersey) Law 1960 (*Notes* 46, 63, 64 and 65).

States of Jersey Law 1966 (*Note* 25).

Extinguishment of Roads (Jersey) Law 1972 (*Note* 45).

Loi (1972) *concernant les vingteniers de la paroisse de St. Hélier* (*Note* 37).

Parish Rate (Administration) (Amendment No. 3) (Jersey) Law 1975 (*Note* 2).

Parish of St. Helier (Qualifications for Office) (Jersey) Law 1976 (*Part* 3).

Honorary Police (Jersey) Regulations 1977 (*Notes* 27 and 39).

Customary Law (*Choses Publiques*) (Jersey) Law 1993 (*Note* 67).

Royal Court (Amendment No. 17) Rules 2001 (*Notes* 22 and 28).

Part 8: Relevant case law

8.1 Tables des Décisions^[75]

Nicolle -v- Connétable de St. Hélier (1903) 222 Ex 248. ACTIONS TO ANNUL ACTS OF THE ASSEMBLY - PROTEST NECESSARY AT THE TIME OF HOLDING THE ASSEMBLY. It is too late to attack the validity of Acts of the Assembly, not having moved protest either against the convening of the Assembly or against the legality of its Act, and not having moreover requested to intervene *en cause* in the process that the Connétable was

authorised to defend by the said Act.

Pritchard et aux -v- Connétable de St. Sauveur (1903) 222 Ex 388 ACTION TO ANNUL ACTS OF THE ASSEMBLY - RESTORATION OF PARISH CHURCH - RIGHT TO PROVIDE THEREFOR OUT OF PARISH RATE - BORROWING - RIGHT OF THE PARISH TO PROCEED THEREWITH. Action on the part of the principals to annul an Act of the Civil Assembly voting at the request of the Ecclesiastical Assembly funds for the restoration of the Parish Church and this by means of a borrowing charged against Parish Rate. The defendants, having regard to their own actions in the circumstances, not being personally aggrieved nor a legitimate subject to bring a judicial claim, having already admitted in principle the obligations of the Parish, by themselves inducing the Civil Assembly to vote funds towards the preliminary costs of the restoration on an earlier occasion - defendant *ès qualités* discharged from the action.

Roberts -v- Connétable de St. Sauveur (1905) 10 OC 130. RESTORATION OF THE CHURCH - ACTION TO THE SAME ENDS ON THE PART OF ANOTHER PRINCIPAL. Considering that the Remonstrant had taken no steps before the Act he attacked to prevent its partial execution by accepting a tender and the commencement of the works by virtue of that Act and of earlier Acts on the same subject, the Court judges that the Remonstrant is too late to claim a wrong to his prejudice resulting from the vote of Parish funds for the object concerned - therefore the defendant is discharged, under this head, from the action. As regards the question of the right to make a borrowing, as it appears that that part of the Act has not yet started to be put into effect, held that the Remonstrant is not barred from his right to bring a judicial claim, but that he must do so, in the circumstances, by an amended Remonstrance.

Blampied -v- Connétable de la Trinité et au (1906) 224 Ex 372. ELECTION OF OFFICERS - RIGHT TO ATTACK THE VALIDITY THEREOF - CANDIDATE. Submission that one cannot attack the legality of a decision of the Assembly without being a member thereof - dismissed, and judged that a candidate has the right to attack the validity of an election by the Assembly, even though not being a member thereof.

Renouf et aus -v- Recteur de St. Martin (1903) 222 Ex 233. ECCLESIASTICAL ASSEMBLY - ACTION AGAINST THE RECTOR OF A PARISH TO ANNUL AN ACT OF THE ASSEMBLY - LOI (1804) SUR LES ASSEMBLÉES PAROISSIALES - ARTICLE 7. Held, given the terms of the said Article, that the action is validly instituted in its present form. Submission that the defendant should have brought the action not as Rector, but as President of the Ecclesiastical Assembly – dismissed. SEVERAL PLAINTIFFS - RIGHT TO INSTITUTE AN ACTION JOINTLY - COMMON INTEREST. The Plaintiffs, members of the Assembly of Principals and Officers of a Parish having interests apparently identical and an alleged common grievance are justified in proceeding by way of a joint action.

D'Orellana -v- Recteur de St. Clément (1903) 222 Ex 294. ADJOURNMENT - VALID GROUNDS. The holding of a Parish Assembly duly convened cannot be adjourned without a valid reason and otherwise than in the proper manner, except in case of *force majeure*. The inconvenience of the day and the fact of having forgotten to take into account the convenience of a member of the States residing in the Parish, beforehand, in accordance with Article 7 of the *Loi* (1804) *sur les assemblées paroissiales*^[76] did not constitute valid reasons for authorising the adjournment of the holding of the Assembly by the person who had convened it.

Payn, Jurat -v- Connétable de St. Sauveur (1903) 222 Ex 352. MEETINGS - LOI (1804) SUR LES ASSEMBLÉES PAROISSIALES - ARTICLE 7⁶ - CONVENIENCE OF MEMBERS OF THE STATES RESIDING IN THE PARISH - INTERPRETATION. It does not suffice for the Rector or the Connétable in convening an Assembly [merely] to give notice thereof to members of the States residing in the Parish, but it is necessary that their convenience be taken formally into account.

Recteur de St. Pierre -v- Thelland et aus (1907) 225 Ex 161. MEMBERS OF THE ASSEMBLY - THEIR RESPONSIBILITY. They cannot be rendered individually liable, by reason of the alleged illegality of an Act adopted by them on a proposition duly submitted for their deliberation. Action by the Rector, President of the Ecclesiastical Assembly, against the members of the Assembly which had voted in favour of a proposition submitted to them for debate by the Plaintiff, even though protesting its illegality, by virtue of Article 12 of the *Loi* (1804) *sur les Assemblées Paroissiales* held that the action was wrongly instituted, the defendants not being able to be held individually liable to account by reason of the vote given by them on a proposition submitted for their deliberation by the President of the Assembly.

Marett et au -v- Balleine (1887) 212 Ex 97. ECCLESIASTICAL ASSEMBLY - CONVENING - LAW OF 1804. Article 7 of the *Loi* (1804) *sur les Assemblées Paroissiales* does not apply in the case of *Vacance du Bénéfice*. The Rector must convene and preside at the Assembly: in the case of *his being absent from the Island* or *his being ill*

only, the Vicar duly appointed and residing in the Parish is competent to do this, but Article 7 of the Law^[77] on Parish Assemblies, does not apply to the case of a vacancy caused by *death* or otherwise. The person duly appointed by the competent authority to fill a vacancy has all the powers belonging to the person he replaces and has the right to convene and preside at an Assembly.

Les Vesconte et aus -v- Norman, Connétable, et au (1887) 10 C.R. 351. CIVIL ASSEMBLY - LAW OF 1804, ARTICLE 4. Each Connétable is required to convene an Assembly when required to do so in accordance with Article 4 - a Connétable refusing to do so condemned in his private name to the payment of damages of £3.00 sterling and to costs, the damages being subsequently lifted by the Full Court.

Starck -v- Recteur de St. Sauveur, Bois et au Surveillants Intervenant(1908) 225 Ex 353. APPROPRIATION OF CHURCH PEWS - DISTRIBUTION. The allocation ('*appropriation*') of pews is effected by the *surveillants* acting "by the advice and counsel of their minister" by virtue of Canon 33. The use (*disposition*) of pews, as part of the interior upkeep of the church, is vested in the Ecclesiastical Parish Assembly by virtue of Article 8 of the *Loi* (1804) *sur les Assemblées Paroissiales*.

Malet -v- Le Connétable de St. Sauveur (1889) 213 Ex 253. THE CONVENING NOTICE may be printed, provided that it carries the signature of the Connétable. CONVENING NOTICE INVALID - principals being convened to consider a request, whilst that which was presented to them was only a copy of a request. [This case also deals - at 213 Ex 424 - with illegal delegation of powers of a Parish Assembly.]

P.G. -v- Messervy et aus. Aubain et aus -v- Le Brun (1892) 215 Ex 138. PROPOSITIONS - duty of the President to put proposition to the vote - Article 12 of the Law on Parish Assemblies- proposition duly made and seconded not having been put to the vote - procedure annulled by the Court and the Connétable liable in costs.

P.G. -v- Hotton et aus Re Le Cornu (1922) 231 Ex 411. OFFICER HAVING CEASED TO HAVE HIS DOMICILE IN THE PARISH WHERE HE HAS BEEN ELECTED. LOI (1853) SUR LES CENTENIERS ET OFFICIERS DE POLICE - ARTICLE 5. Connétable entitled to hold an election to replace such an officer, without obtaining an order of the Royal Court authorising this to be done.

Renouf et au -v- Cabot, Connétable (1934) 238 Ex 44. ASSEMBLY CONVENED ILLEGALLY. The Connétable is not required to comply with a request to convene a Parish Assembly for a purpose contrary to law. The Court orders that the Act of the Assembly be annulled and expunged from the books of the Parish and the Connétable, in his capacity as such, liable in costs.

8.2 Jersey Judgments

Cooper -v- Public Health Committee (1966) JJ 685

The Connétable has an absolute duty at customary law to protect poor persons of unsound mind ordinarily resident within the Parish - to take necessary and reasonable steps to ensure protection without concern for who is to bear the costs, for example securing examination of a patient in hospital.

Re Lindsay (1969) JJ 1163

Constable's Officers. The holder of a bookmakers or betting office licence is disqualified from appointment as a Constable's Officer in view of the possible conflict of interest in policing of licensing offences. It is important that the appointee is not only capable of discharging his duties, but also seen to be capable.

In re Grouville (Procureurs du Bien Public) (1970) JJ 1451

They have a duty to represent the Parish in the care of Parish property and must carry out duly considered instructions of the Parish Assembly or officers even if they disagree with their wisdom. They may seek guidance of the Royal Court on the meaning or legality of any such instructions.

Osment -v- Constable of St. Helier(1974) JJ 1

Authority of the Connétable. He has no authority to bind the Parish Assembly by a promise to vary the terms of a non-contributory pension scheme. An indirect benefit to the Parish does not amount to ratification of an *ultra vires*. Ostensible Authority. A Parish is bound, if the Connétable acts outside his actual, but within his ostensible authority, in respect of a third party with no knowledge of the excess of authority. The Parish, however, is not bound if the third party has actual knowledge of the excess of jurisdiction.

Johnson -v- Lucas (1982) JJ 67

The position of the Connétable as employer. He is in position of employer of Parish employees for the purpose of

receiving statements about character of employees.

Parish of St. Helier-v- Manning (1982) JJ 183

The legal status of a Parish. A Parish is to be treated as a corporation having legal entity with perpetual succession, separate from its Parishioners. The Parish owns all public by-roads within its boundaries. The bye-roads are administered by the Roads Committee as agent of the Parish. Individual electors of the Parish have no legal or equitable interest or possession.

A Parish may show ownership of a road by *possession quadragenaire* if it has laid and maintained tar macadam and taken legal action against encroachment by others. Possession is not lost merely by giving permission for temporary parking of vehicles.

8.3 Jersey Law Reports

Robertson -v- St. Helier Welfare Board(Court of Appeal) 1985-86 JLR N-16

Welfare Benefit: discretion of Connétable. The scales of welfare benefit prescribe maximum amounts. The Connétable through the Welfare Board may exercise customary law discretion to assess an individual's need and award less than the maximum. It is a proper exercise of discretion to make payments for the claimant's benefit direct to a third party, such as a public utility, with a corresponding reduction in the amount paid to the claimant.

In re Pearce (1987-88) JLR 109

Centenier: removal from office. The Connétable may delegate his duty of enquiry into a Centenier's alleged misconduct, but the delegate must make the delegation clear to the Centenier and report freely to the Connétable. The Connétable must show the report to the Centenier and give him a full opportunity to be heard before making his own report to the Attorney General. The dismissal of a Centenier for misconduct requires observance of all rules of natural justice i.e. notice of charges, unbiased hearing and opportunity to be heard. It was held in 1990 in the same case that dismissal without affording an officer an opportunity to answer the case against him is breach of natural justice and it is unnecessary to prove that the decision would have been different had the proper procedure been followed.

In re Don Benest (1989) JLR 330

Gift of land by will to the Connétable and *Procureurs du Bien Public* "for and on behalf of the '*pauvres honteux*'" of the Parish of St. Clement. A valid trust was created and, although the Connétable and Procureurs owed fiduciary duties to the Parish and the ratepayers and one of these duties was to provide for the relief of the poor, the testatrix was not thereby prevented from imposing upon the Connétable and the Procureurs a more specific duty towards the *pauvres honteux*.

In re Clarke (1989) JLR N 9

Conflict of interest. It was incompatible for the Connétable to be director of a company owning licensed establishments within the Parish. The Connétable had to resign such directorships even if his duties as Connétable were unaffected, but was able to retain directorship of a company owning licenced establishments in other Parishes.

In re Connétable of St. John(1994) JLR N-1

A Connétable convicted of a criminal offence, for example, driving with excess alcohol, must resign if no special circumstances mitigate sentence and even though there is a long record of service and he retains the confidence of Parish electors.

In re Porée née Le Turgeon (1998) JLR 115

Duties of Parish in relation to welfare benefit: the Parish has a duty to provide the poor with a minimum standard of food, shelter and clothing appropriate in modern social conditions and must also provide for accommodation of elderly poor persons, but this does not entail a duty to run a residential home or to pay for maintenance of a Parish owners residential home for elderly through rates. The Parish may make charges for services as it sees fit; such charges not being illegal.

In re Fields (née Harvey-Smith) (1998) JLR 359

Parish rating appeals. Duty of Assessment Committee to provide information to Parish Rate Appeal Board subsists even though the assessment for which information is sought is under judicial review. Upon judicial review of an Appeal Board's decision, the Court must consider whether the decision is lawful, whether the proceedings before the Board were satisfactory and whether the decision could reasonably be made.

In re Constable of St. Helier(2001) JLR N [13]

Misconduct of Centeniers, Constable's Officers, Vingteniers. Investigation by Connétable. Regulation 5 of the Honorary Police (Jersey) Regulations 1977 has removed the Connétable's discretion in respect of misconduct by members of the Honorary Police Force. Any formal complaint made relating to the conduct of any Honorary Police Officer must now be reported to the Attorney General as soon as possible, the matter investigated, and a report submitted even if the Connétable believes it to be malicious or groundless. While it is true that there is a difference between a 'grumble' and a formal complaint, and whether a matter falls into one or the other category will depend on the particular circumstances of the case. In general, where a matter is formalised in writing and drawn to the Connétable's attention, it will constitute a complaint to be dealt with under Regulation 5.

Part 9: Addendum re suggested proxy/postal voting at Parish Assemblies

9.1 Concern has been expressed in some quarters at the potential for a small minority of members of the Parish Assembly having an unrepresentative effect on the financial workings of the Parish. This concern has been centred on the view that, where the vast majority of parishioners might be happy with a proposal, or perhaps might not hold any strong views, they would not see the need to attend when that proposal was discussed at the Parish Assembly. Thus minorities could, for example, bring a Parish to financial ruin when setting an annual rate. It has been suggested that the Parish could be likened to a business with shareholders - these being the members of the Assembly. The question has been asked whether all entitled Parishioners, if made party to the full facts of a proposal, could in some way be able to indicate their acceptance or rejection of that proposal by means of a proxy or postal vote which would be counted at the Parish Assembly in question.

9.2 The Law Officers have advised that proxy or postal voting is not catered for under existing procedures and would certainly require amendment to existing legislation.

Part 10: Extract from the first Clothier Report ^[78]

CHAPTER 3: THE SEVERAL OFFICERS OF THE HONORARY POLICE

"We turn now to consider separately the four offices of the Honorary Police, namely, Connétable, Centenier, Vingtenier and Constable's Officer. But first we have a few words to say about the Attorney General's duties in connection with the Honorary Police. The Attorney General is the titular head of the Honorary Police. His involvement with actual policing is very slight. Under Regulation 6(1) of the Honorary Police (Jersey) Regulations 1977, he may require any officer of the Honorary Police to resign for proper cause and he has a veto over appointments of all ranks on such grounds as seem right to him. He can order an investigation into a complaint against an Honorary Police Officer, but this will be carried out by the Honorary Police themselves, although they may accept assistance from the States Police. We understand that the proposal for a Police Complaints Authority embraces both the States and Honorary Forces, but the Authority has not yet been set up.

The Connétables

1. We have already remarked upon the political nature of the office of Connétable. Most of those holders of this high office who appeared before us asserted that they had much business to attend to in the State as well as a heavy burden of parochial administration. Some even held concurrently the presidency of a major Committee of the States, a demanding political service. A few asserted or admitted that they had nothing at all to do with active policing, finding that their duties in the States and the parish fully absorbed their time and energies. Most if not all of them, as already noted, delegated operational policing to their Chefs de Police.
2. Hearing this evidence, we were soon struck by the poor perception amongst the Honorary Police of the important distinction between the political will and the operational execution of that will. Failure to observe this distinction may lead in the end to a diminution of the democratic ideal which we all cherish in free countries. It is the function of politicians to ensure that the services needed in a civilised society are provided, financed and made accountable to, but not controlled by, political authority. But it is the function of the executive to decide how to implement the will of the people, which is a highly professional and nowadays technical task. Policing must be applied professionally and correctly to every citizen, impartially and without regard to political opinion, race or creed.
3. One or two of the Connétables, a distinct minority, try to participate in the operation of the parish force, for example by attending at the Parish Hall to watch patrols being assembled and sent out. We believe that not only is this attempt at being the functional head of a parish force illusory, but that it is also a dangerous confusion of the two important functions mentioned above. It may have been overlooked that the holder of an office under the Crown, which the office of Connétable historically is, may not sit in the parliament of a true democracy, because to do so confuses the functions of legislature and executive. No true democrat wants a political policeman.

4. To say, therefore, that the Connétables should cease to be even nominal heads of police forces, is merely to recognise the status quo as it is today. The final abandonment of an almost entirely nominal post would not only regulate properly the constitutional position of the Connétables in Jersey, but would open the way to more consistent and co-operative relations within and between the twelve separate forces of the Honorary Police. The existence of that separation is the single most inhibiting factor standing in the way of a rational development of the Honorary Police. We have to record, with some reluctance but believing it to be our duty to do so, that we had the greatest of difficulty at the outset of our review in obtaining from the Connétables any kind of submission about the future of the Honorary Police to which they could all agree. Inability to agree upon a course of action is the hallmark of a weak structure. When the submission finally arrived, it contained not one single suggestion for improvement of the service.
5. We believe that the time when it was necessary and practicable to isolate the organisation and command of the twelve parish forces from each other has long passed. Jersey is not a large island nor is its population so very numerous when compared with typical administrative areas in other developed countries, in which category Jersey must certainly now be included. Much advantage would be gained by a command structure which, while recognising the parishes as natural divisions for the purposes of deployment, had a central core of command and control capable of acting concertedly throughout the Island.
6. This would in no way diminish the status or proper function of the Connétables. Besides their important work in the States, we would expect them to continue to be in charge of the administration of their parishes and to preside as now over the parish assemblies, providing as much political input towards shaping police services as they do towards any other communal service. We would also expect the Connétables to be represented on whatever central political structure for providing police services on the Island should emerge in the future. We refer to this topic and make recommendations in Chapter 7. But the Connétables in our view should cease to be even nominal heads of the parish police forces now that they have ceased to be involved in operational policing.

The Centeniers

1. The Centeniers are the most important echelon in the Honorary Police since in practice they are the active heads of the Honorary Police of the parish, to which their authority is still confined. They attend at incidents and conduct some sort of investigation, although, as we have said, not all of them have a very clear perception of the purpose and extent of their duties. They have the power to charge and bail a suspect, to the extent of their duties. They have the power to charge and bail a suspect, to the exclusion of the States Police, a matter to which we shall refer later. Alternatively, they may “warn” a suspected offender to attend a Parish Hall Inquiry, an institution with which we deal in the next Chapter. They may, and sometimes do, preside at Inquiries even in cases which they have themselves investigated. As already noted, one of their number is appointed by the Connétable to be the Chef de Police and this officer is the de facto head of the parish force who organises the tours of duty and in general manages their operations.
2. We received several clear impressions from the evidence of the Centeniers, both individually and through the officers of their Association. The first was that the occasional intrusion of the Connétable into police operations was unwelcome and of little practical use. The second was that they were more willing to recognise the need for change and adaptation to improve the performance and standing of the Honorary Police than were the Connétables. A third impression was that the Centeniers were much readier to co-operate amongst themselves on an Island-wide basis, if they were left free to do so.
3. The Centeniers have the right to present at the Magistrate’s Court any person accused of an offence within that jurisdiction. They attach great importance to this role. It was dealt with at some length in the Second Interim Report of the Jersey Judicial and Legal Services Committee which reported in 1990. Paragraphs 14 and 38 to 46 of that report made recommendations about this to which the reader may wish to refer.

The Vingteniers

1. These officers of the Honorary Police, to whom there are altogether some 61, are subordinate to the Centeniers and carry out those police duties deputed to them from time to time. Historically, they had functions which, in early days very important, had little or no bearing on policing. These duties included acting as collectors of rates, fines and defaults.
2. All of these duties the Vingteniers are still empowered to carry out and occasionally do. But we were told in evidence that the majority of Vingteniers have handed over these administrative burdens to the staff employed by

the Parish, which seems both sensible and convenient. Again, one can see this development to be the result of Jersey's changing economic structure: for increasingly, the officers of the Honorary Police no longer represent the 'principaux' or wealthier landowners of the parish as once they did, but have a daily full-time employment, which may well be in some business located outside their parish.

3. It was related to us in evidence that there was no greater responsibility now left to the Vingteniers than to the Constable's Officers. This raises a question-mark against the need for a rank in the Honorary Police intermediate between Centenier and Constable's Officer. Some witnesses complained to us that not enough responsibility was delegated to Vingteniers, plainly a discouragement to the recruitment of energetic and intelligent people.
4. However, in the more sophisticated organisation which we envisage for the Honorary Police in a subsequent Chapter, we believe there will be a need for an intermediate rank and that the ancient and honourable title of Vingtenier should be retained and used to denominate the middle tier of the Honorary Police.

The Constable's Officers

1. There are approximately 174 Constable's Officers at the time of writing our report (all such figures must be approximate because officers from time to time retire or die whilst still in office and are not immediately replaced). These are the officers who form the base of the Honorary Police forces and from whose ranks senior officers are usually, but by no means always, recruited.
2. The most important observation we have to make about them is that their quality and motivation lie at the foundations of the honorary system. The recruitment of the right people, joining for the right reasons, is vital to the survival of the institution. What we have had to say about training in earlier pages applies especially to these officers."

Part 11: Extract from the second Clothier Report^[79]

CHAPTER 7: THE PARISHES

- “1. Jersey has twelve Parishes. They vary considerably in size, St. Helier obviously being the largest. Each is presided over by a Connétable, for whom every voter in the Parish is entitled to vote in an election which is held every three years or whenever the office becomes vacant. The elections are thus held at irregular intervals. But in practice elections are rare. If the sitting Connétable wishes to continue in office, it would be very unusual and indeed unpopular to stand against him or her. In most parishes, candidates for the office usually emerge by an invisible process from the senior ranks of the Honorary Police or posts in the Parish, from one of which the Connétables will almost always have been chosen.
2. The Connétable has a considerable task of local administration in the Parish. He or she, with the concurrence of the Parish Assembly (consisting of all the ratepayers and electors of the Parish who wish to attend), decides what to do about such matters as parish welfare, local rates, road maintenance, licensing, firearms, and so forth. There is a considerable diversity here between the Parish of St. Helier and the other Parishes to which we will refer later. The Connétable is assisted in his administrative responsibilities by a small staff accommodated in the Parish Hall, except in St. Helier which has a significant staff establishment.
3. The Connétable is also regarded as “The Father of the Parish”. In this capacity he is called upon to make himself available to all his parishioners for advice on almost any problem they may have, business, domestic or other.
4. Those Connétables who are diligent in the discharge of all these duties may be extremely busy and may have to devote much of their time to Parish business. It is a form of local government and as such useful and practical. We would not wish to recommend any fundamental change in the way this system works. On the contrary, we believe that the opportunity of a revised Machinery of Government should be taken to expand its remit with a view to reducing the workload of the States. There is a tendency in the States to spend too much time on matters of only local importance, at the expense of more demanding considerations affecting Jersey as a whole. It should be open to the States to commit to the Parishes some, or part of some, of the public services. We would also like to see the Connétables taking steps to co-ordinate amongst themselves the various services over which they preside.
5. We would, however, recommend a more formal structure for the Parish Assembly. Its present composition and membership are somewhat uncertain and the list of those entitled to vote on Parish matters should form part of the Central Register which we recommended above (see *paragraph 2.4*).

6. Particular attention should we think be given to the Parish of St. Helier, where one-third of the Island's Parish business is run by one person - the Connétable. The Parish of St. Helier also has the largest budget of any and attention must be given to whether the administration of the Parish should be differently arranged."

Part 12: Observations and recommendations

12.1 Membership of the Assembly

The structure of membership of Parish Assemblies has served the Island well for over two hundred years, with adjustments to meet change as needed from time to time. The Working Party has not been able to identify any fundamental flaw in the present structure of Parish Assemblies and does not recommend that there be any changes to the existing membership of Parish Assemblies as described above (*paragraphs 1.1, 1.2, 1.3 and Part 2*).

12.2 Election of Officers

Connétables and Centeniers rank alongside States members in the procedures governing their election, that is to say, they are subject to the Laws on Public Elections as opposed to being elected at Parish Hall level. In the case of the Connétable, this is quite natural because he is *ex officio* a member of the States Assembly. Historically, as we have seen, Centeniers too sat in the States in the absence or in the event of the death of the Connétable. No doubt this was a consideration in deciding originally that Centeniers should be elected by the same procedure. However, it must also have been an important consideration that (quite apart from the ability of a Centenier to sit in the States) his office was of such public importance and responsibility that a public, rather than a Parish Hall, election was deemed appropriate. It is understandable that the more junior officers such as Vingteniers and Constables' Officers are elected by the Parish Assembly. In this context, the Working Party has, however, considered the nature and responsibilities of the office of *Procureur du Bien Public*. Of that office the Royal Court^[80] said -

"We conceive that the Procureur du Bien Public is not strictly a trustee, but is the procurator or proxy of the Parish, and that his principal duty is to represent the Parish in looking after the property of the Parish.

The Procureur has a duty to report to the Principals and Officers of the Parish any matter concerning the public property of the Parish, or the application of the income of the Parish, about which the principals and officers should be made aware."

The *Procureur* has the right to seek the guidance of the Royal Court. He thus carries a heavy responsibility and must of course be strictly impartial and objective in overseeing the affairs of the Parish and the use of its funds. He or she must enjoy the utmost confidence of the electors of the Parish.

The Working Party believes that the mandate of the *Procureur* should be seen to be the widest possible of the electorate within the Parish, which will best be achieved by an electoral process in which as many Parishioners as possible are likely to cast their vote. For that reason, the Working Party recommends that elections for the office of *Procureur du Bien Public* should be governed by the Public Elections Law rather than (as at present) be held at a Parish Assembly.

Mention has already been made of the office of Constable's Officer. As noted at *paragraph 2.8.1.*, a Constable's Officer is elected by the electors of the relevant Vingtaine and not, as is the case with a Vingtenier, by the electors of the Parish as a whole. The title 'Vingtenier', ironically, would suggest the opposite. The Working Party can see no merit in confining the electoral mandate of a Constable's Officer to those members of the Assembly who reside in a particular Vingtaine. The responsibilities of the Officer are to the Parish as a whole; his electoral mandate ought to reflect this. Accordingly, the Working Party recommends that, whilst a Constable's Officer should continue to be elected at Parish Assembly level, the full Assembly should be eligible to vote.

12.3 Notice of holding of an Assembly

The procedure for convening a Parish Assembly is set out in *paragraph 1.5*. The official notice must be given at least two days before holding the Assembly. If an urgent matter requires the convening of an Assembly, one can proceed by notifying all the members of the Assembly through the Vingteniers. However, no Assembly may be held on the same day as the notice is published or on the following day save in matters of public safety (*sureté publique*).

In the opinion of the Working Party, the period of two days notice is too short. It is recommended that the period of

notice should be not less than one week prior to the day of the Assembly. The period of not less than one week should be irrespective of a Saturday or Sunday or a Bank Holiday. However, the present statutory provision enabling an Assembly to be held at short notice for matters of *sureté publique* should be maintained (see *paragraph 1.5.4*).

As to the manner in which notice is to be given, there is at present, in addition to the requirement to give notice in the Jersey Gazette, a requirement for an official notice to be placed in the Parish Box (*boîte grillée*) in the Cemetery (see *paragraph 1.5.3*). The possibility of notice through the media of television and radio was discussed. It was felt however, that this should not be a statutory requirement, but ought nonetheless to be encouraged as a means of giving notice of the convening of a Parish Assembly.

Consideration was, however, given to introducing a statutory requirement for the convening notice to be placed so that it could be read from outside the Parish Hall; it was felt that this would be a useful and convenient means of notice in addition to existing requirements. Accordingly, it is recommended that, in addition to the existing provisions relating to the notice placed in the *boîte grillée*, there should be a statutory requirement for a notice of a Parish Assembly to be posted in a conspicuous place on the exterior of the Parish Hall.

12.4 Representation of corporate bodies etc.

Part 5 of this Report details the existing statutory provisions under which a body may be represented by a *mandataire* (see *paragraph 5.2*). The Working Party has also taken note of the draft Parish Rate (Administration) (Jersey) Law 200- [*Projet 143/2001*], *Article 25* of which would allow a rate-paying body to appoint a person to represent it and allow a group of people owning or occupying land jointly to appoint one of their number to represent them. The Working Party has also noted the provisions of the draft *Article 27(2)* which would provide that

“A member of the Parish Assembly has one vote on any decision by the Assembly despite the fact that -

- (a) the member is the owner or occupier or both of more than one area of land in the Parish;
- (b) the member is the representative of more than one body corporate; or
- (c) the member is the owner or occupier of an area of land in the Parish and the representative of a body corporate.”

The Working Party respectfully agrees with the approach taken in the draft Law and confines itself to expressing the view that the arrangements for appointing a *mandataire* of a body should be formalised so that there be -

- (a) a common application form;
- (b) a list of existing *mandataires* held by the Connétable and available for inspection;
- (c) a formal procedure for changing the *mandataire* of a company in any year (including up to noon on the day before the holding of an Assembly),

and recommends accordingly.^[81]

12.5 Voting procedures within Parish Assemblies

The Working Party considered that there should be a clear procedure in relation to voting on amendments similar to that in the States when voting on an amendment to a proposition and that there should also be provision for scrutineers to be appointed when a vote is taken and there is no objection to the holding of a secret ballot.

It is recommended that the *Comité des Connétables* produce a code of practice to make clear voting procedures for propositions and amendments to propositions.

12.6 Postal/proxy voting

The introduction of a procedure for postal or proxy voting would require substantial and quite complex amendments to existing legislation. Whilst differing views were expressed, the Working Party does not, overall, see merit in the suggestion that postal and/or proxy voting be introduced. In the context of the business of Parish

Assemblies, such procedures would be cumbersome and difficult to implement. Any advantages in the introduction of such procedures would, in the opinion of the Working Party, be outweighed by the burden of bureaucracy that would inevitably come in their train and by the potential for confusion in the conduct of Parish Meetings.

12.7 Public interest meetings

The functions of Parish Assemblies have been noted (see *Part 4*). They have evolved throughout the centuries notably in relation to policing and matters relating to charities. The evolutionary process will undoubtedly continue. The Working Party has not identified a need for specific reform in terms of increasing or diminishing the role and responsibilities of the Parish Assembly. It does not consider that the role of Parish Assemblies should be extended to matters beyond those specifically relating to the administration of the Parish. The Working Party observed that on occasions meetings were held in Parish Halls to debate matters of local interest, for example, Les Landes Race Course and Pontins Holiday Camp Site in St. Ouen; but it did not consider that a statutory framework was required for such informal proceedings which ought not to be confused with the formal business of Parish Assemblies.

12.8 Consolidation/codification of existing legislation

Part 7 of this Report lists the statutes relevant to Parish Assemblies, the most important being the *Loi (1804) au sujet des Assemblées Paroissiales*. For the most part those statutes are in the French language and drafted in a style well removed from that of the present day. They are old; they are disparate, reflecting as they do the antiquity and evolution of the Island's Parish Assemblies for which they have over centuries made provision. To some, the possibility of a brand new Law in the English language codifying all matters relating to Parish Assemblies and sweeping away the various *Lois* (and Orders in Council) at the foundation of the Parish system of administration may be attractive: to the Working Party it is not. The antiquity of a Law is often its strength rather than its weakness. It is submitted that this is true of the statutes governing Parish Assemblies; they are the subject of a large body of Jersey case law (see *Part 8* of this Report); they are at the foundation of more than two Centuries of practice and custom which has served the Island well, and are at the core of its unique honorary system.

This is not to say that nothing can be done to amend those statutes; indeed recommendations for several amendments have already been made by the Working Party. Neither is it to say that more cannot be done to clarify the workings of those statutes; indeed the Working Party was mandated to do just that, and it is hoped that this Report itself will have gone some way, in the words of the Working Party's terms of reference, "to bring together a clear and concise statement of the existing law" governing Parish Assemblies.

The Working Party has gone on, however, to consider whether an authoritative translation into English of those Laws in the French language can be undertaken, and believes that such a translation would be beneficial. Accordingly it is recommended that such a translation be undertaken, if possible, by the Law Officers.

It has also noted that certain provisions of those Laws are now spent or in desuetude (*e.g.* provisions relating to the allocation of Church pews) and may be repealed. It is recommended that, if and when amendments to the relevant Laws resulting from the earlier recommendations in this Report are prepared, the opportunity be taken to repeal provisions which are no longer of any practical effect.

^[1] *Loi (1905) au sujet des Assemblées Paroissiales*.

^[2] Parish Rate (Administration) (Jersey) Law 1946: Article 23, as amended by the Parish Rate (Administration) (Amendment No. 3) (Jersey) Law 1975.

^[3] Parish Rate (Administration) (Jersey) Law 1946: Article 10.

^[4] *Ibid*: Article 23, as amended by the Parish Rate (Administration) (Amendment No. 3) (Jersey) Law 1975.

^[5] *Ibid*: Article 22.

^[6] Appointed by the Crown.

^[7] *Loi (1984) au sujet des Assemblées Paroissiales*.

^[8] *Loi (1914) sur la Voirie*: Article 2.

^[9] Parish Rate (Administration) (Jersey) Law 1946: Article 7.

^[10] *Loi (1908) sur l'Administration de l'Assistance Paroissiale à St Hélier*.

^[11] *Loi (1804) au sujet des Assemblées Paroissiales*: Article 9.

- [12] *Loi (1905) au sujet des Assemblées Paroissiales*.
- [13] Official Publications (Jersey) Law 1960: Article 4.
- [14] *Loi (1804) au sujet des Assemblées Paroissiales*: Article 10.
- [15] *Ibid.*: Article 11.
- [16] *Ibid.*: Article 12.
- [17] *Loi (1815) sur l'Ordre de Procédure aux Assemblées Paroissiales*.
- [18] See *Bois*: A Constitutional History of Jersey, para 5/91.
- [19] The Order in Council of 6th August 1784 supplemented the provisions of the Code of Laws of 1771 by providing that "...the former Constable shall continue to sit and vote in the Assembly of the States ... until the new Constable shall have been sworn into his office". Also see Charter of Henry VII dated 17th June 1495 ("...the Connétable of each Parish...shall be freely elected and chosen by the Elders of the said Parish without any recommendation of the Captain or the...Jurats in this behalf").
- [20] See e.g. *In re Constable of St. John* 1994 JLR N-11.
- [21] See Report of the Committee of the Privy Council (1947) page 12.
- [22] States of Jersey (Amendment) Law 1974: Article 1.
- [23] Royal Court (Amendment No. 17) Rules 2001 [R&O 152/2001] repealing that part of the Code of Laws 1771 which prevented the Royal Court from ordering an election until after the relevant term of office had expired.
- [24] Orders in Council of 6th August 1784 and 2nd June 1786 (and see *Bois*: A Constitutional History of Jersey, para 5/102).
- [25] Assembly of the States (Jersey) Law 1948: Article 2(2) [now repealed].
- [26] *Ibid.*: Article 2(3); and States of Jersey Law, 1966: Article 1(1).
- [27] Centeniers are elected in pairs. Article 2 of the *Loi (1853) au sujet des Centeniers et Officiers de Police* provides (in translation) that "elections for Centeniers shall be ordered by the Court in such manner that two Centeniers may be elected for the same Parish on the same day; and the replacement of a Centenier of one of the Parishes of this Island shall only be proceeded with when there is a vacancy in the office of a second Centenier. Each elector may vote for two candidates. The two candidates who have obtained the most votes shall be declared elected. If one of the Centeniers thus elected dies before the end of his period of office, an election shall be held to replace him; but then, the person who is elected shall only remain in office until the expiration of the period of office of his colleague." (See also the Order in Council of 26th April 1817 which, following a disputed election, confirmed that Centeniers were to be elected in conformity with the Charter Of Henry VII of 17th June 1495 - see *note 19 supra*).
- [28] Honorary Police (Jersey) Regulations 1977: Regulation 2 (as amended by R&O 44/2000).
- [29] *Loi (1897) sur les Élections Publiques*: Article 1. Also Franchise (Jersey) Law 1968: Article 1 (same definition of "public election"). According to *Bois* (para 5/99) a Centenier remains in office until his successor is sworn into office. No authority, however, is cited. The Royal Court (Amendment No. 17) Rules 2001 - see *para 2.1.4*, and *note 22 supra* - vary previous procedural arrangements for the election of Centeniers to ensure that there is negligible delay between the expiry of a term of office and the administration of the oath of the incoming Centenier.
- [30] *Loi (1804) au sujet des Assemblées Paroissiales*: Article 6. After three years, a new choice of *Procureur* must be made.
- [31] See *Bois*: A Constitutional History of Jersey, para 5/103.
- [32] According to Jurat Charles Le Quesne (writing in 1856) "*The rentes due to the churches in the Island were of various kinds, according to the intentions of the donors. There were those of le trésor, la charité, obits, and fraternities. The rentes of le trésor were given to the church for permission to be buried within its walls; those of la charité were, as its name denotes, for the poor; those of obits were for masses to be said on the anniversaries of the decease of the founders; and those for fraternities were for special prayers for the individual members of the particular society who assembled at stated periods for religious worship in the churches. The rentes of le trésor and la charité were not abolished at the time of the reformation; but they have been sensibly reduced by a portion being sold and applied to secular purposes, as the records abundantly testify, but to which misappropriation a stop was put by the code of laws of 1771. The obit and the other rentes were, as above stated, confiscated at the reformation.*"
- [33] *Loi (1871) sur le Mode d'Élection des Vingteniers*: Article 2.
- [34] In St. Ouen, a vingtaine is known as a 'cueillette', but the officer is still called a Vingtenier.
- [35] *Loi (1804) au sujet des Assemblées Paroissiales*: Article 13.
- [36] Honorary Police (Jersey) Regulations 1977: Regulation 2 (as amended by R&O 44/2000).
- [37] For an historical perspective, see *Report of the Civil Commissioners 1861* page lxi.
- [38] *Loi (1972) concernant les Vingteniers de la Paroisse de St. Hélier* Article 1.
- [39] *Loi (1938) sur les Officiers du Connétable*: Article 1.
- [40] Honorary Police (Jersey) Regulations 1977: Regulation 2 (as amended by R&O 44/2000).
- [41] *Loi (1804) au sujet des Assemblées Paroissiales*: Article 4.
- [42] *Ibid.*: Article 5.

- [43] *Loi* (1914) *sur la Voirie*: Articles 4 and 5.
- [44] List in the Report (1861) of the Civil Commissioners at page lxi.
- [45] See note 32 *supra*.
- [46] Extinguishment of Roads (Jersey) Law 1972.
- [47] Highways (Jersey) Law 1956 and the Roads Administration (Jersey) Law 1960.
- [48] *Loi* (1914) *sur la voirie*: Article 2.
- [49] *Ibid*: Article 3.
- [50] *Ibid*: Article 4.
- [51] *Ibid*: Article 5.
- [52] *Ibid* (as amended in 1938).
- [53] *Loi* (1914) *sur la voirie*: Article 6.
- [54] *Ibid*: Article 7 (level 1 is £50).
- [55] *Ibid*: Article 8.
- [56] *Ibid*: Article 10.
- [57] *Ibid*: Article 11.
- [58] *Ibid*: Article 12.
- [59] *Loi* (1914) *sur la voirie*: Article 15.
- [60] *Ibid*: Article 16.
- [61] *Ibid*: Article 20A (this provision was enacted during the German Occupation).
- [62] See Report of the Civil Commissioners 1861: page lxi, and *Le Gros Droit Coutumier de Jersey*: pages 333 *et seq*.
- [63] See *Loi* (1914) *sur la voirie*: Articles 41 to 48.
- [64] In the words of its Long Title.
- [65] By Article 3(2) of the Law.
- [66] Roads Administration (Jersey) Law 1960: Article 5.
- [67] Highways (Jersey) Law 1956: Article 4.
- [68] Customary Law (*Choses Publiques*) (Jersey) Law 1993: Article 2.
- [69] Parish Rate (Administration) (Jersey) Law 1946: Article 10.
- [70] Parish Rate (Administration) (Jersey) Law 1946: Article 12.
- [71] *Ibid*: Article 16.
- [72] *Ibid*: Article 22.
- [73] *Ibid*: Article 4(1).
- [74] *Ibid*: Article 1.
- [75] There follows a translation into English of the French entries.
- [76] Article 7 repealed but re-enacted insofar as relevant to this case in the *Loi* (1905) *au sujet des assemblées paroissiales*.
- [77] See note 76 *supra*.
- [78] Report of the Independent Review Body on Police Services in Jersey published in July 1996.
- [79] Report of the Judicial Review Panel on the Machinery of Government in Jersey, published in December 2000.
- [80] In the case of *In Re Grouville (Procureur du Bien Public)* (1970) JJ 1451.
- [81] Senator Lakeman dissented in the following respect: he considered that a person should be able to vote both in a private capacity and as a representative at a Parish Assembly.