

CHRISTMAS SPECIAL EDITION DECEMBER 2021

Office of the Director of Public Prosecutions

"To No One We Will Sell, To No One Deny or Delay Right or Justice"
Chapter 40, Magna Carta 1215

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Editorial

Dear Readers,

Welcome to the final issue of 2021!

Another year is coming to an end. The COVID-19 pandemic continues to upend our lives although we are slowly gaining a new sense of normality, the dread of variants notwithstanding. In courtrooms, we are still donning our masks and sometimes struggle to identify our peers; in many Chambers and at our Office, infection prevention strategies have led to less frequent physical meetings and teleworking is a reality. Social events which would usually spread the holiday cheer as we step into December are not happening. If this makes you feel like “Christmas” might not be on its way, worry not for I have found its presence in no less than 74 judgments on the revamped website of the Supreme Court of Mauritius- the

improved efficiency and functionality of which have not gone unnoticed these past six months!

Browsing through this list of cases, I am reminded of how, as the Christmas lights go up, certain crimes follow the same trend. Larcenies are perhaps the best example as many people travel, visit relatives, go to hotels and leave their houses unattended hence creating perfect opportunities for those looking to steal. People spending more time together while increasing their alcohol consumption and substance abuse during this period contribute to a hike in domestic violence, insults, assaults, sexual and drug offences. A boom in online purchases is also often noted and many shoppers fall prey to online identity theft, credit card fraud, hacking and child soliciting. With denser traffic on our roads during the festivities, the number of accidents and drunk-driving fatalities also soars. All we want for Christmas is... You to stay safe!

In this Special Issue, released in time to add some Christmas magic to your Inbox, the Director of Public Prosecutions, Mr. Satyajit Boolell, SC, reflects on how our criminal law, if reformed, could do more for the victims of road traffic offences.

As you scroll down the pages, you will also find inside this issue an overview of the articles contained in the latest edition of The Mauritius Criminal Law Review which was launched earlier this month. We thank the editorial board, the editorial sub-committee and the law officers without whom the success of this endeavour would not have been possible.

We thank you, our readers, not only for your continued support in reading the reviews but also this e-newsletter which has, this February, celebrated its first 10 years of existence! It had started out with the aim of providing a regular written update of the judgments being delivered by our courts and the happenings in the legal world.

Editorial

Over the years, it became so much more. It progressed to include regular topical videos and this year, in a novel initiative, podcasts too! We wish to thank everyone who, at one time or the other, was part of the Editorial Team and who, in one way or the other, have contributed to the contents of the e-newsletter. We wish to highlight the extensive and invaluable contribution of Ms. Anusha Devi Rawoah (formerly Principal State Counsel) to every issue she was editor of until she was made Magistrate of the Children's Court this month. For her boundless determination to keep the newsletter going, even when we were under lockdown conditions, we say a huge thank you! Mrs. Dushuina Pyndiah-Moorghen (formerly Senior State Counsel) was also made Magistrate of the same Court and while we are sad to see them leave the ODPP, we know that they will continue to shine in their new positions.

Finally, we share with you photographs from two conferences- the first, which was jointly organised by the UNODC and the ODPP and the second, which was organised by the Law Reform Commission and opened by the Director of Public Prosecutions, Mr. Satyajit Boolell, SC.

This year was busy at the Office of the DPP and we have had our fair share of challenges. Through them, we are learning, as a collective, to build resilience, flexibility and strength. Tomorrow can, for that, only be better.

On behalf of us all at the Office of the Director of Public Prosecutions, I wish you a very merry Christmas and a happy new year!

Here's hoping that 2022 brings to each one of you, health, hope and heart.



Anusha Sheila Aubeelack
State Counsel

The Call for Reform by the DPP



2021 witnessed an alarming rise of fatal accidents on our roads. In the first half of the year, road traffic accidents caused 53 deaths and I am given to understand that we have crossed the bar of one hundred at the time of writing. And the figures are likely to rise as we enter the festive season. Each dangerous road accident carries a broken family, a family searching solace in the face of tragedy. The criminal justice system regrettably does not provide quick relief to victims of road traffic offences.

Both the police enquiry and the subsequent prosecution of road traffic offenders last for a long time. We are yet to attain an era of collection of evidence via the use of latest technology. In addition, insurance claims and exhaustive paper work can take a toll on victims. The delay in court can be viewed, by some, as being advantageous to insurance companies.

The time has come for an overhaul of the system to provide facilitated means of legal assistance to victims or families of victims of road traffic offences. Since we take so much pride in our hybrid system of justice, why not adopt the “*partie civile*” procedure to enable victims of road traffic offences or their relatives to intervene in the criminal trial and seek compensation. This procedure is well established in France. The court will decide this specific issue of compensation on a balance of probabilities, the requisite standard of proof for civil claims, without the need for further legal action.

A parallel and simultaneous claim for civil compensation accompanying criminal prosecution is desirable as a quick and effective legal remedy and will save precious time. Financial compensation to families affected by the tragedy of road traffic offences can only bring reprieve. The long wait for victims which spans on average over the course of ten years is unacceptable. Victims of road traffic offences are in a sense victimized a second time by the slowness of the process.

As the year 2021 comes to a close, I express my wish for reforms in the criminal justice system to cater for the needs of victims.

Satyajit Boolell, SC
Director of Public Prosecutions

Mauritius Criminal Law Review Edition 2021

As we look back on another prosperous and illustrious year at the Office of the Director of Public Prosecutions, it is only fitting that we include the launching of the 2021 edition of the Mauritius Criminal Law Review (MCLR) in this special edition newsletter of 2021.

The 2021 edition of the MCLR provided a fabulous opportunity for the Office of the DPP to achieve two goals; firstly, to pay a tribute to late Pierre Rosario Domingue, an eminent lawyer and close collaborator of the DPP who was also an assiduous member of the editorial board of the MCLR. The second goal was to set up a platform for law officers to review some selected landmark cases in the area of Constitutional Law in Mauritius.

We express our most heartfelt gratitude to the following law officers for their priceless input and have further included an extract of their article as an 'avant-goût' to their article.

The Boundaries of Parliamentary Privilege by Mr Satyajit Boolell, DPP, SC

"At a time when the Supreme Court in England has considered prerogative powers of the Crown to be judicially reviewable, the Supreme Court of Mauritius, as "sentinel" of the Constitution, should not be deterred to review the legality of the acts of Parliament where there is clear case that the acts of Parliament constitute an abuse of its privileges. A Constitution, after all, calls for a generous interpretation avoiding what has been called 'the austerity of tabulated legalism', suitable to give to individuals the full measure of enjoyment of the fundamental rights and freedoms."

A Sovereign Democratic State by Meenakshi Gayan-Jaulimsing, Ag. ADPP

"However, it is to be remembered that our Constitution dates back to the year 1968, more than 50 years ago. Inevitably, the passage of time and changes in society will warrant amendments of our laws. It must also be borne in mind that no law should ever be inconsistent with the principles of our Constitution which safely preserves the doctrine of separation of powers and the rule of law. Such is our legacy; such is the very essence of our Constitution; such is the sanctity of our democracy."

Taxation and the Right to Property: A Delicate Balance by Anusha D. Rawoah, Principal State Counsel (As she was then)

"Given the developing nature of our island, there is no doubt that Mauritius will always be facing critical decisions over development and upholding human rights of people. Every time a balance will need to be struck. Should we however, aim to achieve an all-inclusive and sustainable development, we need more than only balancing between development for the national interest on one hand and a legal and legitimate limitation of the human rights of people, on the other hand."

Women’s Right to be One of the Nine – A Review of the Constitutionality of Intentional Sex Discrimination in Jury Service in Mauritius by Anusha Sheila Aubeelack, State Counsel

“We should continue to study our society, to see how it is evolving and fragmenting, identify the new groups which are forming and perhaps feeling marginalised, asking for their rights to be recognised because somehow, somewhere, our Constitution is letting them down. We need to think of how to increase jury representativeness this century because by pursuing this ideal, we will be serving the great principles of democracy, equality and fairness.”

An Insight into the Application of Separation of Powers in Mauritius by Sannidi P. Paupoo-Nallee State Counsel

“While this time-honoured truism has rarely, if ever, been disputed by legal scholars, it requires little imagination to understand that a very fine line exists between incrementally developing the common law and usurping the power of the legislature. Judge-made laws are after all, one important source of law in our legal system.”

Equality of Laws – Equal Protection of Laws is a Pledge of the Protection of Equal Laws by Veda Dawoonuth, State Counsel

“Thus, the rejection of a narrow or legalistic interpretation of the Constitution cannot mean that Section 3 and later sections of the Constitution “can be construed as creating rights which they do not contain”. This would mean that other than the limited grounds of race, place of origin, political opinions, colour, creed or sex to be found in sections 3 and 16 of the Constitution, an individual cannot claim to have been discriminated on any other ground. The more so, unlike the United States and India, Mauritius does not have a general principle of equality.”

The Reviewability of Decisions of the Director of Public Prosecutions by Bhavna Bhagwan, State Counsel

“The DPP holds substantial powers under the Constitution and the exercise of these powers undoubtedly has an impact. The power to institute proceedings entails subjecting person to the criminal process whilst the decision not to prosecute may impact a complainant ... However, the DPP holds an office which is quite unique in that his decisions involve inevitably an assessment of evidence, public interest and policy factors.”

Discrimination in Admission Policy – Making Education Accessible to All by Deepti Thakoor, State Counsel

“In particular, one must look at the multi-ethnic community in Mauritius. Having a fair and open policy of access to education is important to maintain peace in the country and to prevent a divisive rhetoric that one community has favoured its people and are being given an advantage to the detriment of other communities who may be looked down upon. Having an open and inclusive admission does not mean that religious bodies would have an obligation to admit a certain number of students of other faiths. It would only mean that, should a student of another faith wish to attend a school managed by one particular

faith, he or she should be able to apply to the school without any hurdle.”

The Extent of Our Right to Property and Protection from Deprivation of Property under Sections 3 and 8 of our Constitution by Karuna Nathoo, Temporary State Attorney

“It, nonetheless, remains an axiom that unfettered freedom is not always ideal in a democratic society; the rights protected by the Constitution are subject to limitations designed to ensure that the enjoyment of these rights does not prejudice the rights and freedoms of others. In fact, the test laid down in our Constitution for the validity of exceptions to the entrenched fundamental rights is whether the said exception is reasonably justifiable in a democratic society.”

Scandalising the Court: The Marvellously Archaic Offence which Guards Our Courts of Law by Mohammad Irfaan Mittoo, Temporary State Counsel

“Reasonable expostulation against the judiciary is permissible and indeed democratically essential when motivated by good faith and made in the public interest. Freedom of expression is treasured as much as the innate dignity of all humans together with one’s reputation or good name. It is also permissible to publish newsworthy subjects which pertain to the judiciary or judicial conduct. However, it is not permissible to leave derogatory or scandalous comments on Courts or Judges, which are intended at undermining their authority ... After all, “justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men.”

We wish you a pleasant and enjoyable reading.

Irfaan Mittoo

Temporary State Counsel

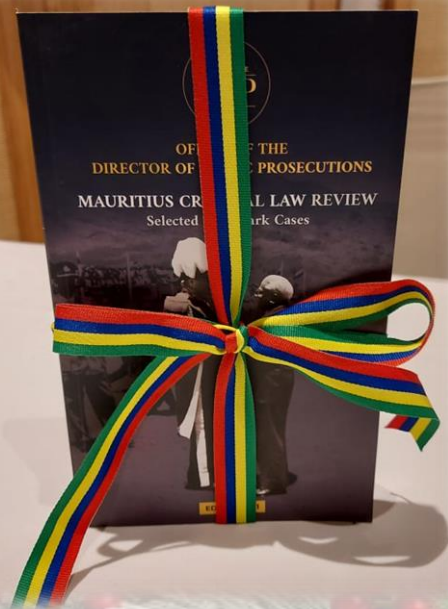
Mauritius Criminal Law Review 2021

“Your New Court Companion”

Content of the Mauritius Criminal Law Review on Landmark Constitutional Cases:
Foreword by Satyajit Boodell, SC, Director of Public Prosecutions

Articles include:

- ⇒ The Boundaries of Parliamentary Privilege
- ⇒ A Sovereign Democratic State
- ⇒ Taxation and the Right to Property: A delicate balance
- ⇒ A Review of the Constitutionality of Intentional Sex Discrimination in Jury Service in Mauritius
- ⇒ An insight into the application of separation of powers in Mauritius
- ⇒ Equality of laws - Equal protection of laws is a pledge of the protection of equal laws
- ⇒ The Reviewability of Decisions of the Director of Public Prosecutions



The Mauritius Criminal Law Review 2021 is now available at Rs 500 at the Office of the Director of Public Prosecutions.

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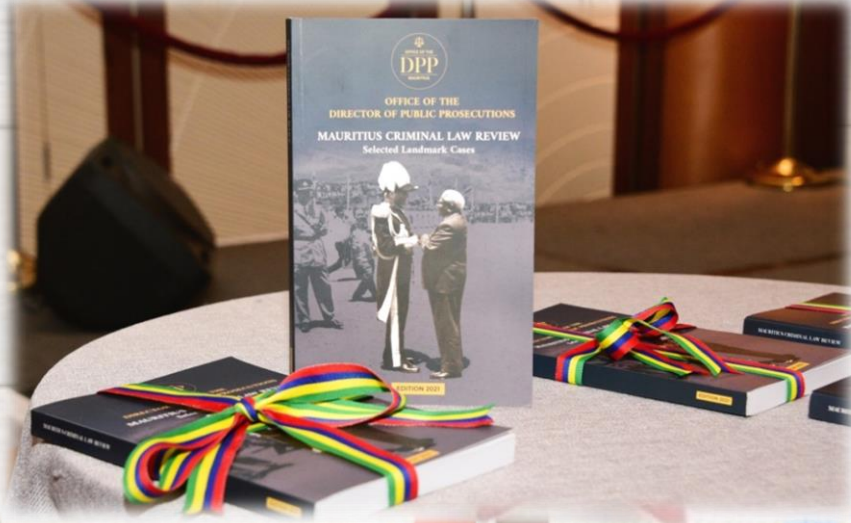
Address : 15th floor, Garden Tower, La Poudrière St, Port-Louis

Issuing Hours : 09.00 till Noon And 12.30 till 14.30

Email : mclr@govmu.org

The Jointly-Organised UNODC & ODPP Conference Highlights

Highlights of the legal conference on Maritime Crimes organised jointly by the UNODC and the ODPP at Le Meridien Hotel on the 2nd December 2021. The event was also followed live from the office of the ODPP by online participants in total respect of Covid 19 sanitary restrictions. The conference marked the launch of the 2021 edition of the Mauritius Criminal Law Review.



Mr S. Boolell, SC, DPP launching of the Mauritius Criminal Law Review (MCLR) Edition 2021

The Jointly-Organised UNODC & ODPP Conference Highlights



Mr S. Boolell, SC, DPP during opening ceremony



Ms. Pooja Bissoonauthsing, Representative of UNODC



Mr S. Boolell, SC, DPP presenting the new MCLR to Ms. Bissoonauthsing

The Jointly-Organised UNODC & ODPP Conference Highlights



Mr S. Boolell, SC, DPP (Left), Mrs. B.R. Jannoo – Jaunbocus, SADPP (middle) and Mr. Yatin Varma, President of Bar Council (right)



Mr. R. Santokhee, Principal State Counsel



The Jointly-Organised UNODC & ODPP Conference Highlights



Law Officers following the Conference from Office

Conference Organised by the Law Reform Commission with the Participation of the ODPP

The Law Reform Commission invited the Office of the DPP to attend a colloquium on Criminal Law on the 10th December 2021 at The Westin Turtle Bay Resort & Spa, Balaclava. The conference saw the participation of eminent jurists and culminated in reform proposals for the future of Criminal law. Topics discussed included *the victim in criminal law*, *the perpetrator in criminal law*, *Criminal Law in the age of Globalisation*. The opening and closing ceremony were conducted by Mr Satyajit Boolell, SC, Director of Public Prosecutions. The Office of the DPP conveys its deepest appreciation and reiterates its close collaboration with the Law Reform Commission.



Mr. S. Boolell, SC, DPP



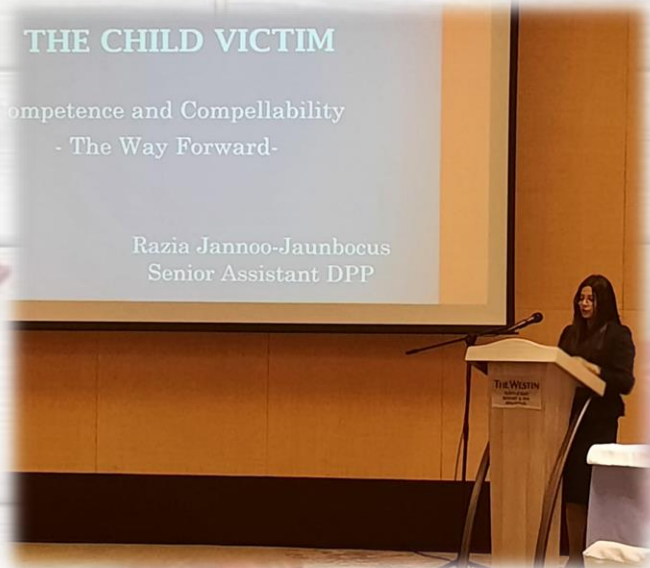
Mr. Sabir Kadel, CEO of LRC



Highlights of the Conference



Mr. Azam Neerooa, Senior Assistant DPP



THE CHILD VICTIM

Competence and Compellability
- The Way Forward -

Razia Jannoo-Jaunbocus
Senior Assistant DPP

Mrs. Razia Jannoo-Jaunbocus, Senior Assistant DPP



Mrs. M. Gayan-Jaulimsing, Ag. ADPP



Mr. Jagganaden Muneesamy, Principal State Counsel

Vote of Thanks

This special edition newsletter conveys the magic of Christmas spirit. As we celebrate the end of year festivities and prepare ourselves to embrace the new year, we seize this beautiful opportunity to express our earnest thanks and appreciation to the ones who work tirelessly and assiduously behind the scenes. Indeed, behind every great newsletter, there are three phenomenal ladies who are:

- Ms Genisha Raudhay, Communication Officer
- Ms Neelam Nemchand, Legal Research Officer
- Ms Pooja Domun, Legal Research Officer.

We commend them for their unflinching commitment, dedication, passion, support and contribution towards the newsletter every month. We wish them a blessed Merry Christmas and a prosperous new year 2022.

Mrs. M. Gayan-Jaulimsing
Ag. ADPP



Ms. G. Raudhay (Left), Mrs. P. Domun
(Centre) & Ms. N. Nemchand (Right)

Spreading the Christmas Cheer



Without any legally binding commitment on our part

↓ reasonably

and / OR festive period

Have a Merry Christmas

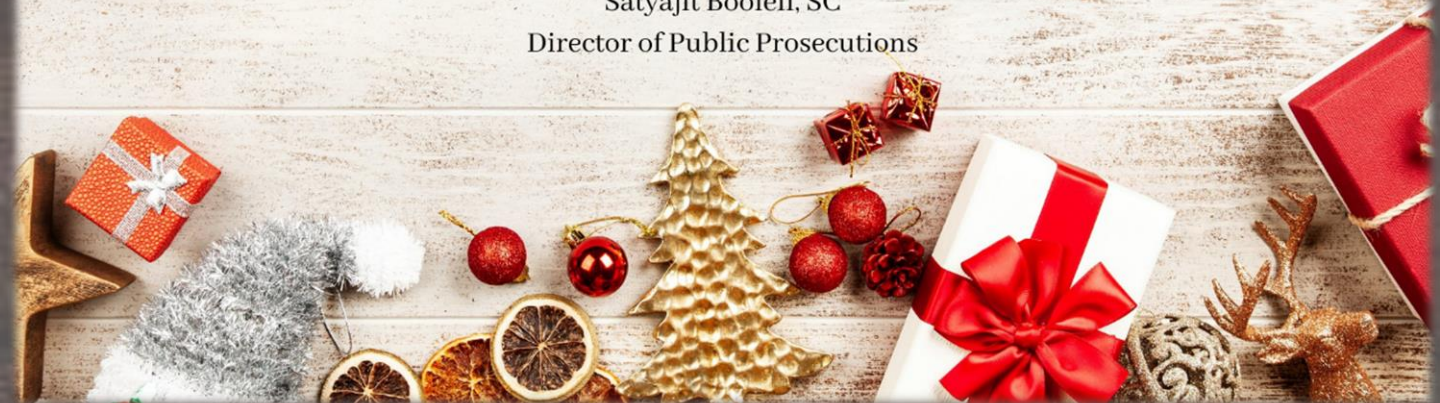
and / OR (but not limited to)

a Happy New Year! (12 (twelve) months commencing 1st January 2022)



On behalf of the Office of the DPP and in my personal name, I wish the legal profession as well as each and every one of you, a sweet and safe Christmas and a Happy New Year 2022.

Satyajit Boolell, SC
Director of Public Prosecutions



“Christmas is the spirit of giving without a thought of getting. It is happiness because we see joy in people. It is forgetting self and finding time for others. It is discarding the meaningless and stressing the true values”

- Thomas S. Monson





“TO NO ONE WILL WE SELL, TO NO ONE DENY, OR DELAY RIGHT OR JUSTICE”

Chapter 40, Magna Carta 1215