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MAURITIUS

Office of the Director of Public Prosecutions

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In this Issue

Editorial Team

The views expressed in the articles are those of the particular authors and should under no account be considered as binding on the Office.

Editorial

Anusha Rawoah
Senior State Counsel

Dear Readers,

We bring to you the 82nd issue of our newsletter. In this issue, the Director of Public Prosecutions, Mr Satyajit Boolell, SC addresses Article 1 of the French Constitution.

Morever, on the 8th June 2018, the Office of the Director of Public Prosecutions ('ODPP') organised a one-day training on "Economic Crimes: An Insider's Perspective" for its law officers. The Director of Public Prosecutions, Mr Satyajit Boolell, SC, together with Lord Philips and Mr Paul Keyton, Director of the Integrity Reporting Services Agency, discussed the various aspects of the Good Governance and Integrity Reporting Act. A review of same is included in this issue. Readers will also get the opportunity to go through a riveting article on the issue of guilty plea during criminal trials and possible discount in sentencing.

Furthermore, one of our law officers attended to a one-day training session organised by the Ministry of Civil Service and Administrative Reforms in collaboration with the Independent Commission against Corruption (ICAC). Moreover, on the occasion of the launching of the "Observatoire de la parentalité, 50 ans à venir" on the occasion of the International Day of Families, Mrs Johan Moutou-Leckning, Senior Assistant Director of Public Prosecutions made a presentation on the legal aspects of parenthood at a workshop organised by the Ministry of Gender Equality, Child Development and Family Welfare. An overview of same is included.

Finally, to keep our readers abreast with recent judgments of the Supreme Court of Mauritius, summaries of same are included.

We wish you a pleasant read.

Satyajit Boolell, SC
Director of Public Prosecutions

Follow the French

The avant-gardiste decision of President Macron to rewrite **Article 1** the **French Constitution** by abolishing the notion of race, may well be a source of inspiration for us on the occasion of the 50th anniversary of our own Constitution. **Article 1** of the **French Constitution** reads :

"*France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs*"….

Once approved by the National Assembly, **Article 1** will do away with the term race. It will henceforth read "*equality of all citizens before the law, without distinction of origin, sex or religion*".

The proposal is based on the notion that there is only one race: **the human race**. And as human beings we are one and the same enjoying equal rights. It reflects the fundamental values enunciated in the Universal Declaration of Human Rights in recognising all humans as one family with equal and inalienable rights and inherent dignity. It means equal respect for everyone on the grounds of our common humanity. It cannot be by sheer coincidence that both documents were drafted in the post war era much geared towards eradicating the nazi ideology of a superior race. The French drafters ensured that there would be no longer prejudice based on a racial distinction and they provided: *"In the morrow of the victory achieved by the free peoples over the regimes that had sought to enslave and degrade humanity, the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights*".

Save that today it is felt that the recognition of the notion of race as a means to prevent prejudice on such grounds is unintentionally having the contrary effect by encouraging more racial hatred and discrimination. It has become its own source of division.

The thinking behind the proposal to rewrite **Article 1**, came from the Chairman of the International League Against Racism and Anti-Semitism. In an article published in Le Monde newspaper, Mario Stasi explained that the notion of race had been included in the 1946 Constitution after the second World War by politicians who wanted to fight the ideology of the Nazis who believed in the superiority of the Aryan race. Stasi argued that the notion of race in the constitution has been counter-productive and has "*unwittingly promoted the cause they were seeking to fight*".

The abolition of the notion of race does not mean that a person cannot enforce his rights on the grounds that he has been prejudiced or discriminated. He will be able to seek protection on the grounds of his origins, a more acceptable and accurate term.

What better argument in favor of the Macron constitutional amendment as we watch the World Cup and see the rainbow coalition of the human race.

Source: Times Newspaper

Training on “Economic Crimes: An Insider’s Perspective”

On the 8th June 2018, the Office of the Director of Public Prosecutions (‘ODPP’) had a one-day training on “Economic Crimes: An Insider’s Perspective”. The participants were Law Officers from the ODDP, representatives from the Financial Services Commission and from the Attorney-General’s Office. Mr Satyajit Boolell, SC, Director of Public Prosecutions (‘DPP’), Mr Rashid Ahmine, Deputy DPP, Mr Vinod Rammaya, Senior State Counsel, Lord Phillips and Mr Paul Keyton, Director of the Integrity Reporting Services Agency acted as resource persons.

The training was focused on three legislations:

1. **The Financial Intelligence and Anti-Money Laundering Act 2002 (“FIAMLA”);**

2. **The Asset Recovery Act 2011 (“ARA”)**; and

3. **The Good Governance and Integrity Reporting Act 2015**.

The DPP, in his opening, talked about the importance of those legislations and how they interact with the criminal process. Under the current legislation, the ARA provides for conviction and non-conviction in the form of civil recovery.

The DPP explained that concerning unexplained wealth, there is in place a more draconian measure which places the burden of proving the source of funding on the owner or on the person who has control of the money. With regards to civil proceedings, one of the issues that may be encountered is that the liberty of the individual could be baffled. However, as case law has demonstrated, civil recovery is an action *in rem* and therefore it is not oppressive.

The training started with Mr Rashid Ahmine, Deputy DPP, who talked about Financial Crimes, Money Laundering and Reporting Obligations under **FIAMLA**. He explained that a lot of States devote a huge amount of their resources in order to combat financial crimes and money laundering as they cause disruptions to the world economy. The aim of any government is to promote stability and soundness of the economy which are disrupted by financial crimes.

In Mauritius, the fight against financial crimes started with the enactment of the **FIAMLA**. However, it is through the setting up of the Asset Recovery Unit that the fight against financial crime became more effective.

Mr Ahmine stated that there are two types of conduct in relation to financial crimes; the people who are directly involved in the fraud; and people who are not directly involved in the fraud but take certain actions to protect the proceeds of crime. Very often, there are foreigners involved in the commission of these crimes or external fraudsters who act in concert with employees of an organisation, such as a bank, in order to defraud customers. He then went on to explain the different types of offences: Fraud; Bribery and Corruption (dealt with under the **Prevention of Corruption Act 2002**); Money Laundering (dealt with under **FIAMLA**); Electronic crimes; Insider Dealing (dealt with under **The Securities Act 2005**); and Tax Evasion (dealt with under the **Income Tax Act 1995**).

Training on "Economic Crimes: An Insider's Perspective"

In the UK, there is in place, a Fraud Act which makes the task of Prosecutors much easier as there are specific provisions dealing with different types of offences. Mr Ahmine stressed on the importance and the urgency of enacting a Fraud Act in Mauritius which will cover the different types of fraud such as fraud by representation, fraud by failure to disclose information and fraud by abuse of position.

He also addressed the challenges of prosecuting complex cases. In order to deal with those cases expeditiously and diligently, there is a need for financial investigators and prosecutors to work together. It is important to have the right Investigators of high caliber and experienced Prosecutors and Judges to deal with cases of this nature so as to avoid delay.

Mr Ahmine analysed the legislations in place to combat financial crimes. He explained the three steps of laundering proceeds of crimes which are; 1. Placement; 2. Layering; and 3. Integration. However, he explained that it is not necessary to have those three steps. Being in possession of proceeds of crime in itself is an offence. He then described the techniques used by fraudsters to launder money and analysed the offences covered by **FIAMLA**. Finally, Mr Ahmine referred to the Financial Action Task Force ('FATF'), which was set up in 2009, and the recommendations made by them. He concluded his session with a case study.

After the tea break, Mr Rammaya talked about "Asset Recovery: Identification, Confiscation and Recovery of Illicit Assets". He started by describing his experience when the Asset Recovery Unit was under the aegis of the ODPP. He then went on to explain that recovering proceeds of crime is based on our international commitments such as the **Vienna Convention 1988, Palermo Convention 2000** and **UNCAC 2003** which was ratified by Mauritius.

Mr Rammaya also explained that there are important policy reasons behind recovering proceeds of crime. The need to recover assets which have been acquired through criminal activity is important so as to deprive the perpetrators from reaping the benefits of their crime.

He then discussed the legal framework in place to recover proceeds of crime which consists of the **Dangerous Drugs Act 2000** and the **FIAMLA** as well as statutory powers of the Court to order forfeiture of exhibits. Given that the statutory regime was insufficient, the **Asset Recovery Act 2011 ('ARA')** was enacted.

The difficulties faced in recovering proceeds of crime are three-fold:

1. It is difficult to identify, locate and recover the assets;

2. There is uncertainty as to the number of fraudsters and the identity of the conspirators; and

3. There is also uncertainty regarding the acquisition of those proceeds of crime and their ownership, whether it is joint or several ownership, and the valuation of those monies.

Mr Rammaya gave a brief overview of the **ARA** which is a comprehensive legislation covering all crimes. He then explained the objective of the ARA which comprises of combatting corruption and seizure and confiscation of proceeds of crime.

Training on "Economic Crimes: An Insider's Perspective"

The next issue addressed was the investigative tools available under the **ARA**, namely search and seizure order (**Section 46**) and account monitoring order (**Section 49**) which should be made before a Judge. Other investigative tools available, by way of notice, are production and disclosure order (**Section 47**) and customer information order (**Section 48**).

The procedure under **ARA** was explained to the participants where Mr Rammaya stated that the burden of proof rests on the person in possession of the property to show that it was not obtained from unlawful activities and that it was acquired legitimately. The proceedings are civil proceedings and are determined on a balance of probabilities. With regards to variation of restraining orders, provision is made under the **ARA** for the revocation and varying of a restraining order in specified circumstances. He then addressed the powers of the court where the role of the court is to determine the recoverable amount from a convicted defendant and to make an order requiring him to pay it. The extent of a defendant's liability for this sum is based on the value of the property which he obtained. This concluded the first part of the training.

The last part of the training was conducted by the Director of Public Prosecutions, Mr Satyajit Boolell SC, together with the participation of Lord Philips and Mr Paul Keyton, Director of the Integrity Reporting Services Agency.

The DPP highlighted that since 2016, there is, in place, the **Good Governance and Integrity Reporting Act** ("**the Act**") which has created a shift in the approach adopted. There now exists a duty to report unexplained wealth and an action may be triggered on the basis of a report of reasonable suspicion. This is considered as a low threshold. Basically, the **Act** places the burden on the Mauritian citizen to prove that he/she has acquired the property legitimately.

Turning to the definition of what unexplained wealth means, the DPP highlighted that the way in which the law is drafted, it would be enough to prove that the wealth is disproportionate to a person's emoluments and other income. However, it should be borne in mind that some people may receive that wealth or income by way of gift or inheritance. The person should be able to give satisfactory explanation as to its legitimacy.

Mr Paul Keyton, on his part explained that in order to explain the sources of one's fund or property, what would be analysed are the sources of the funds. There is an audit trail from a bona fide source. If the person is able to provide such kind of evidence, this would generally be satisfactory.

Training on “Economic Crimes: An Insider’s Perspective”

Mr Paul Keyton explained the process through which the Integrity Agency (“the Agency”) has to go through before emitting an Unexplained Wealth Order. With respect to the functions of the Integrity Reporting Board (“the Board”), Mr Paul Keyton referred to **Section 8** of the **Act** which reads as follows: *“… where a report has been made to it pursuant to **section 5(2),** to determine – (a) whether an application for an Unexplained Wealth Order shall be made; (b) what further action, if any, shall be taken in respect of the report; and (c) whether any person deserves a reward and the quantum thereof*”.

The **Act** also empowers the Board to request from an enforcement authority any information it considers relevant for the purposes of discharging its duties and secondly, to call any person for the communication or production of any relevant record, document or article. From the above, a question is raised as to the circumstances in which the Board should be requesting information.

On another note, the DPP advanced that the **Act** mentions that the Board shall be independent and impartial. The DPP questioned how the Agency will ensure that the information obtained remains out of the reach of the executive arm of the Government. Mr Paul Keyton referred to **Section 21** of the **Act** as a safeguard to ensure the non-release of such information. This section prevents the director, member, employee or consultant of the Agency, except in accordance with the **Act** and as authorised by the law, to divulge information obtained in the exercise of a power or in the performance of a duty under this **Act**. It also prevents the above named from divulging the source of such information or the identity of any informer or the maker, writer or issuer of a report submitted to the Agency.

One situation where the **Act** authorises disclosure of information is under **Section 8(5)(b).** This section authorises the Board to refer a matter to the relevant enforcement authority in instances where the Agency disclosed evidence of underlying criminal activity following the submission of a report by them.

As a concluding remark and given the complexity of economic crime cases, the DPP urged on the importance of cooperation among enforcement agencies, sharing intelligence information and on the need to avoid duplicity of actions.

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GUILTY YOUR HONOUR, DISCOUNT PLEASE!

James who is a citizen of England is faced with a charge of theft. At the outset, his counsel has informed him that should he decide to enter a guilty plea at the first reasonable opportunity, the Court may consider a discount of one third in respect of any custodial sentence contemplated. He has also been informed that should he decide to plead guilty after the trial date has been fixed but before the trial has begun, then he can only expect a discount of one quarter whilst should he delay a guilty plea further until the first date of trial, he can only expect a one tenth discount. Thus, James or any other accused in his position is fully informed of the consequences of unnecessarily withholding a guilty plea as well as the benefit of entering an early guilty plea.

In fact, **section 144** of the **Criminal Justice Act 2003** of England and Wales provides that the sentencing Court must take into account the stage at which the offender indicated his intention to plead guilty whilst determining the sentence to be imposed. In connection with the said statutory provision, the Sentencing Council issued guidelines in respect of the appropriate reduction for a guilty plea and the extent of such reduction depending on the stage of the proceedings. It is also interesting to note that in the case of murder which is considered to be the most serious offence, the above reduction does not apply; instead, the Sentencing Council provides for a reduction of one sixth or five years (whichever is less) in the most appropriate cases.

These sentencing principles have its roots in the judgment delivered in **R v Buffrey 14 Cr. App. R(S) 511** in which the Court of Appeal indicated that while there was no absolute rule as to what the discount should be whenever the Court is confronted with a guilty plea, as a general guidance the Court believed that something of the order of one third would be an appropriate discount.

The overriding principle adopted for such reduction is that guilty plea should be encouraged and that the extent of reduction should decrease if the guilty plea is entered after the first appearance in Court during preliminary proceedings. There are various reasons to encourage such a reduction and the following may be only some of them:

1. It avoids the need for a full fledged trial, hence allowing other cases to be disposed of more expeditiously;

2. It shortens the time lapse between the charge and the sentence, hence being consistent with the reasonable time requirement which forms part of the concept of a fair trial;

3. It saves considerable costs;

4. It saves the victim and the witnesses from the stress of having to face the intimidating environment of a court and the need to give evidence.

GUILTY YOUR HONOUR, DISCOUNT PLEASE!

On the whole, such a reduction in case of guilty plea helps towards the effective administration of justice.

This phenomenon of reduction of sentence in case of guilty plea is not peculiar to England and Wales jurisdiction only. For instance, Hong Kong has also adopted the same policy but with variable discount at different stages of the proceedings.

When confronted with the question of the extent a guilty plea may mitigate a sentence, the Court of Appeal of Hong Kong in **HKSAR v NGO Van Nam CACC 418/2014** reviewed the principles of reduction of sentence for guilty plea both in previous Hong Kong cases as well as other commonwealth jurisdictions. The Court then drew up the following guidelines which should be followed by the Courts in Hong Kong:

• *One third discount at the stage of committal*

• *25 percent discount during preliminary proceedings before the trial court until trial date is fixed*

• *20 percent discount on first date of trial*

• *Less than 20 percent discount subsequently*

Thus, the discount policy upon a guilty plea is a trend which is being followed in most commonwealth jurisdictions.

There is however no legislation or judicial direction as at date in Mauritius which specifies the extent of discount in case one pleads guilty. The only legal provision which deals with guilty pleas and sentencing is found under **section 69B** of the **District and Intermediate Courts (Criminal Jurisdiction) Act** and which reads as follows:

"69B. Sentence on timely guilty plea

The District Court or the Intermediate Court may mitigate the sentence on an accused party who appears before it and makes, in the opinion of the Court, a timely plea of guilty to the offence with which he stands charged."

When the above legal provision is considered, it becomes clear that a timely guilty plea is a strong mitigating feature which entitles the sentencing Court to exercise its discretion and impose a lesser sentence. However, the extent of the discount to be allowed and the manner in which such a discretion is to be exercised has been left to the wisdom of the Court in the light of the particular facts of each case. This was in fact the stand of the Supreme Court in the **State v Tengur 2016 SCJ 291** in which the Court held:

"*As a general principle, an offender who pleads guilty may expect some credit, in the form of a reduction of sentence. However, there is no statutory right to a discount and it therefore remains a matter for the Court's discretion*."

The above dicta may be an exact state of our statutory law when it states that there is no statutory right to a discount in relation to a criminal matter before the Supreme Court since when **section 69B** of **the District and Intermediate Courts (Criminal Jurisdiction) Act** is carefully considered, it is found that it deals solely with cases before the lower Courts. However, the Court nevertheless also acknowledged that the Accused pleading guilty before the Assizes may also legitimately expect some credit. But it is crucial to understand that such a credit remains at the discretion of the Court wholly and exclusively. It is worth noting that despite the guilty plea, the sentencing Court in **Tengur** imposed the maximum sentence applicable for murder, i.e., penal servitude for life, so that no discount whatsoever was given for the guilty plea entered.

Nonetheless, it is a practice of the Assizes Court to consider the guilty plea of the Accused as a mitigating feature whilst sentencing him. In another instance, the Court expressly made reference to a one third discount for his timely guilty plea. However, the extent such a mitigating feature affects the sentence remains a subject matter of debate.

This debate has in fact remained an intense one since sometimes now. It is recalled that in **Goolfee v the State 1996 SCJ 144**, the Supreme Court acknowledged that an early guilty plea deserves an appropriate discount since such a plea operates as a strong mitigating feature and it would be pointless for an accused to plead guilty thereby showing remorse, saving time of the Court and sparing witnesses the ordeal of testifying but still be visited with the maximum penalty that a Court may inflict for an offence. The said judicial pronouncement was observed and applied to some extent in subsequent cases without however a definite formula how much a Court should allow as discount for a guilty plea. The debate became live again in **Tyack v the State 2004 SCJ 140** but despite referring to various authorities both in Mauritius and England, no hard and fast rule was laid as regards the extent of any discount for a guilty plea, dealing with the said issue as follows:

"*We have no doubt been inspired in our sentencing principles by the English decisions and the practice has always been to give discount to accused parties who have pleaded guilty and who through their revelations helped enormously the police in its investigation to catch up with the wrongdoers. What is the discount to be granted to an accused party who has pleaded guilty has always been a vexed issue and each case must be dealt with on its own merit. The Court is aware that it is impossible to have uniform sentence. For this reason, the Courts have come up with the principle that there must be uniformity in the approach of sentencing…… We must also not forget that the local social context is very different from what obtains in the United Kingdom and we must therefore not blindly follow what obtains in the United Kingdom…..*"

Interestingly however, when the said case was heard on appeal before the Judicial Committee of the Privy Council, the majority decision was to

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reduce the sentence from three years' penal servitude to two years' imprisonment after acknowledging that the Appellant was entitled to a suitable discount for his guilty plea. It is to be noted that whilst the Court applied a one third discount, such a formula in its mathematical form was never mentioned in the majority decision.

Thus, there exists a vacuum in our laws and jurisprudence as to how much a guilty plea counts towards reducing a sentence and whether such a plea entered at an early or late stage at the door of the Court has any real impact in fact. On the other hand, it is equally true that every Court acknowledges that a guilty plea is a strong mitigating factor which calls for some credit, the extent of such credit however remains widely in the ink of the pen of the sentencing judge or magistrate. The problem with such a situation is that the Accused and his counsel does not know outright what to expect with a guilty plea and whether the soonest the guilty plea is entered the better it would be. An Accused party may find himself in different situations and different sentences depending on the court before which his case is dealt with. There is no doubt that each case must be dealt with on its own merits but it is equally true that, '*It would be pointless for accused parties to plead guilty, thereby showing remorse, saving the time of the court and sparing witnesses the ordeal of testifying, if in spite of such a plea, they are to be visited with maximum penalty that a court can inflict for the offence*'.

The way forward

There is a dire need for uniformity in sentencing so that no two Accused parties in the same quasi situation who pleads guilty at the same stage of their respective cases for the same offence with almost the same facts and circumstances would have a feeling of being discriminately treated by two different courts.

There are two options so as to reach such a uniformity in the sentencing approach; either the legislature in its wisdom introduces a legislation as regards the impact of guilty plea at different stages of a case or the Supreme Court issues a practice direction to be followed by all Courts in case an Accused party enters a guilty plea and its effect on the sentence at the different stages of the court process. The Accused party as well as his counsel will then be in a better position to decide whether and when to plead guilty.

To the uninitiated, a discount for guilty plea may seem to be an unnecessarily lenient approach but to the wise like Glanville Williams, a reduction of sentence following a plea of guilty is an '*unhappy necessity*' that favours the judicial system since it persuades offenders who have no defence to plead guilty thereby saving the time of the Court as well as public funds and avoids any distress to witnesses. On the whole, a concrete discount for guilty plea would no doubt deal favourably with the serious congestion in the Courts.

CORRUPTION BEWARE!

The Ministry of Civil Service and Administrative Reforms in collaboration with the Independent Commission against Corruption (ICAC) organised a two-day training for Integrity Officers (IO) at Réduit in early May this year. The role of the IOs, the promotion of the Public Sector Anti-Corruption Framework (PSACF) were, inter alia, at the heart of the different sessions. Was it an attempt to shake any beehive? A refreshers course? A follow up? A rekindling of the flame? Well, the different interveners adamantly and strongly called on all those present to be ‘champions of Integrity’!

In line with the global movement towards corruption free societies, international and regional bodies, from the United Nations to the SADC, have conventions advocating ways and means to combat corruption. Mauritius is a signatory of most of these different instruments and in 2002 the Prevention of Corruption Act (PoCA) was proclaimed by Parliament. It, amongst others, created the ICAC and empowered it to investigate and prosecute, after fiat obtained from the Office of the Director of Public Prosecutions (‘ODPP’), all acts of corruption (13 in all, from bribery to conflict of interest). The Act also invest the ICAC with a role to educate and prevent all acts of corruption and malpractices. In that breadth, the Corruption Prevention and Education Division was set up to provide training and uphold an ethical culture across the board.

The PoCA places a duty, ‘shall’ says the law (section 43), on public officials to report all acts of corruption and malpractices. Public officials are thus empowered to ‘Recognise, Resist, Reject and Report corruption’ to Reinforce integrity (the 5 R’s).

In 2009, the ICAC thus initiated its PSACF. It is, they claim, a tool to strengthen the different institutions by providing mechanisms to control corruption, promote anti-corruption behaviour and eliminate dishonest conduct. Basically it calls upon all public bodies to set up Anti-Corruption Committees for the elaboration of Anti-Corruption Policies and eventually the carrying out of a Corruption Risk Assessment culminating in a Corruption Risk Management.

In 2014, 128 IOs from different Ministries, Departments and Organisations were designated to facilitate the implementation of the PSACF, and given a training thereon. In 2015, this time with the blessings of the United Nations Office on Crime and Drugs, an advanced training was given to the IOs. However, it appears that the setting up of the different mechanisms in some bodies were facing practical problems as early as at the stage of conception. Hence, the memo from the Ministry of Civil Service and Administrative Reforms, which fell in December 2017, urging all Ministries and Departments to assist in this ruthless fight against corruption.

74 Integrity Officers were designated anew and therefrom a number of Anti-Corruption Committee set up.

CORRUPTION BEWARE!

The recent training stressed firstly on the duties and responsibilities of the IOs in expediting the implementation of the PSACF, in promoting best practices and in upholding values like integrity, ethics, and honesty. All the tools elaborated by the ICAC, and available on their website, in the form of manuals, toolkits, model code of conduct, handbooks and guidelines, have been introduced.

The working session highlighted the practical hurdles that an IO can encounter, mostly at the time of carrying out a feasible Corruption Risk Assessment culminating in the Corruption Risk Management, where means are devised to circumvent the risk areas previously identified (for eg. areas like recruitment, procurement, overtime management).

The latest training session was, to conclude, mostly to act as a wakeup call! And indeed it was. That the ODPP is equally head on engaged in the fight against corruption need no saying. The ruthless prosecution of cases, and eventual appeals, related in any way whatsoever to corruption pays testimony to our dedication.

Now, making a preliminary assessment internally of the framework in place at the ODPP. I believe that given the nature of cases and sensitivity of the files received, utmost care is taken at the time of recruiting for a thorough screening of those to form part of the team. Thereafter, the training and supervision follows.

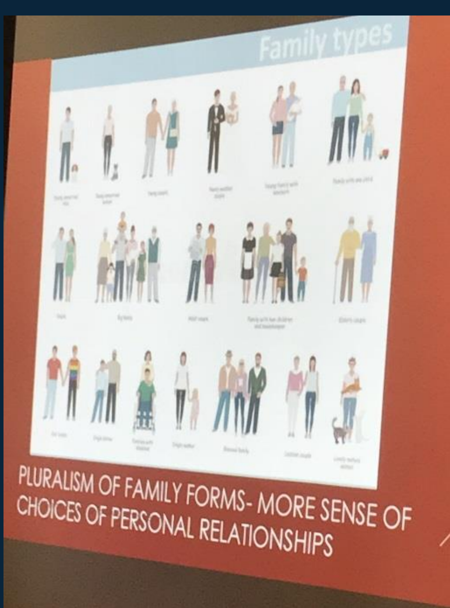
Barristers and attorneys, both in the public and private sector, have at the time of their admission taken an oath to serve the country and to act diligently in the execution of their duties. Furthermore, with the Institute for Judicial and Legal Studies, for every academic year there is a compulsory course on ethics which has to be followed. Moreover, a Code of Ethics for Barristers and one for Attorneys guide the lawyers in the fulfilment of their work. In addition, prosecutors benefit from a Code of Ethics for Prosecutors which further assist and direct them. All this to demonstrate that ethics, honesty, integrity are core values dear to the lawyers.

Nonetheless, some will certainly say that no system is fool proof. And in that perspective the PSCAF can come in handy to show in tangible and visible terms how corruption is kept at bay.

All in all, it is important to work not only individually, but also to work as one to build this ethical culture across the board and to eradicate this scourge named corruption.

Audrey Sunglee
Senior State Counsel

Parentalité, 50 ans à venir



"A platform around which we can reflect and analyse the complexities that affect the family." The ultimate goal is to strengthen family ties. This is the aim of the “Observatoire de la parentalité, 50 ans à venir” which was launched as part of the International Day of Families, Tuesday, 15th June. It is the initiative of the Ministry of Gender Equality, Child Development and Family Welfare. A full day workshop was held at the Indra restaurant, Domaine Les Pailles, where the Office of the Director of Public Prosecutions was invited to make a presentation on the legal aspects of parenthood. It was conducted by Mrs Johan Moutou-Leckning, Senior Assistant Director of Public Prosecutions. Presentations were also conducted by other resource persons, namely by Dr Oomandra Nath Varma, Director of the Mauritius Institute of Education and Dr Harry Sangeet Jooseery, Chairperson of the Association for Population and Development.

The Observatory started with the intervention of Dr Oomandra Nath Varma. His presentation focused on “l’évolution de la famille depuis l’Independence jusqu’à ce jour.” Pertinent observations were made as to what we define as family; why there have been major changes at the family level; how do we interpret those changes and how has the family structure considerably changed. Dr Varma observed that nowadays, when we talk about family, it is not a straightforward family system as we have the single man, the single woman, the married couple, the couple with or without children, the nuclear and extended family, the gay, lesbian or heterosexual family. From the above, it was agreed that we do not have an exact or restricted definition of what constitutes family as we have to bear in mind that individuals now have the liberty to adopt their own family model.

Dr Varma also explained how individuation is more of a reality nowadays. It is commonly found that the interest of the individual gains higher importance over interest of family or community. This is mainly due to the fact that people can now more easily choose their own lifestyle, the norms and traditions they wish to adopt and follow. The notion of confluent love was also largely discussed. Parenting challenges was also part of the discussion. Nowadays, it is much more difficult to be parent due to societal interference, media interference and the constant presence of social networking. Difference was also made between the authoritative and the authoritarian model of parenting. There was a general consensus that the authoritarian model is lesser used nowadays. We now talk more about reaching a consensus and negotiation between the parents and the child. Dr Varma ended his presentation by stating that the family has always been a very important part of the society in which we live in. Family function and societal evolution will always be subject to changes, however, the family unit will always be of utmost importance.

Parentalité, 50 ans à venir

Mrs Moutou-Leckning, for her part, elaborated on the Mauritian Laws concerning parenthood. Our laws have witnessed a number of upheavals. There have been reforms of the Civil Code in 1980 which have been very important in equalising "l'enfant naturel" and "l'enfant légitime" with respect to their rights and also responsibilities vis-à-vis their parents. As discussed by Dr Varma, the Mauritian society and family dimensions have fundamentally changed. However, Mauritian Laws have not evolved in this sense. Our laws provide for both the civil and criminal aspect of parenthood. **Article 372** of the **Civil Code** was lengthily discussed. The way in which this law is currently drafted could cause prejudice to the family in cases of divorce or separation. As the case is right now, only one of the parents obtains parental authority while the other one obtains visiting rights. During the presentation, it was suggested that it be reviewed so that both parents are able to exert parental authority over their children.

The Criminal Code also contains several provisions aimed at protecting the family namely provisions on rape, attempt upon chastity, sodomy, threatening verbally , assault, family abandonment, ill-treatment of minor, failure to pay alimony, poisoning animals, damaging enclosure, damaging goods and chattel. However, it is deemed that these provisions are not enough to protect families. Mrs Moutou-Leckning proposed that the Criminal Code should go further by enacting provisions which extend protection to grand-parents because of the number of incest, violence, torture and sexual cases. Another aspect of family for which the law should provide for is the ageing population. Elders are often neglected, left on their own or live in homes. This vulnerable group of people are often subject to sexual abuse, financial exploitation, mental neglect and mistreatment. It is high time to revisit the legal framework on family in order to give dignity and sufficient protection to our elders. Children with special needs and disabilities are another component of the family which needs to be revisited. The urgent need to have a Disability Bill was reiterated so as to enable those children to re-integrate society and be protected by adequate laws.

The last intervention was from Dr Jooseery and his presentation was on "Parentalité: Les défis de la jeunesse dans les 50 ans à venir." Four principal dimensions were analysed namely: demographic, economic, social and political. The demographic dimension of family was mainly characterised by insecurity, low social support, low literacy rate, limited use of contraception and a legitimate rationalisation to have many children and a very high rate of infant mortality. On the social dimension, we nowadays speak of the dynamics of the gender and a patriarchal society despite the evolution of sexual norms. At the political level, Dr Jooseery observed that the young generation is often excluded or ignored as potential candidates at elections. The economic dimension is however characterised by 1.2 billion of young people aged between 15 to 24 years old in the world. The current young generation is the largest that history has ever known.

On another note, the most vulnerable families were characterised as: families with three or more children; single-parent family namely where the family head is a single woman; families of divorces or separated parents; families whose parents were themselves in a situation of school failure; families in which a single adult supports the needs of another unmarried child.

Professionalising parenthood and positive parenthood are two themes which were recurrent during the colloquium and during Dr Jooseery's presentation. Today's young people will be parents of tomorrow. It was agreed that they should be subject to some form of training on parenthood so as to better ensure that their child develops in the best conditions. On the other hand, positive parenthood, which is a rather new concept, introduced and adopted in 2006 by the Council of Europe is one which is based on the highest interest of the child. It is a concept which is based on dialogue, mutual respect and understanding. The audience was introduced to the five fundamental principles of positive parenthood namely: an emotional education, structures and orientations – good principles of life; recognition; autonomy and an education based on non-violence.

The Observatory proved to be a real success and a high level of participation and exchange of ideas were noted.

Mrs Johan Moutou-Leckning, Senior Assistant DPP
Pooja Domun, Legal Research Officer

SUMMARY OF SUPREME COURT JUDGMENTS: June 2018

P. RENGHEN V THE STATE [2018 SCJ 204]

By Hon. Judge Mrs. N. Devat, Judge and Hon. Judge S.B.A Hamuth – Laulloo, Judge

Rogue and Vagabond – Appreciation of the Evidence - Role of Magistrate

The Appellant was prosecuted before the District Court of Grand Port on a charge of rogue and vagabond. He pleaded not guilty. He was found guilty and sentenced to pay a fine and costs.

The prosecution's case which relied mainly on the testimony of the declarant was to the effect that on 29.11.2014 at 11.15 hours at the junction of Rue Colony and Flamand, Mahebourg, the Appellant said offensive words at his address and threated to kill him. The declarant admitted that he was being prosecuted on a charge of assault against the Appellant but denied having levelled a false allegation against the latter.

The Appellant elected not to depose and denied the charge in his statement to the police. Most of the grounds of appeal were dropped at the hearing of the appeal and the Appellant pressed only on grounds 2,3 and 6.

Grounds 2 and 3 were as follows:

(i) "*Because the learned Magistrate failed to consider that prosecution witness no. 4 had an axe to grind against Appellant and furthermore the learned Magistrate failed to give due consideration that there was material departure in the testimony of prosecution witness no. 4*."

(ii) "*Because the learned Magistrate was wrong in finding that W4 came forward as a witness of truth*."

Grounds 2 and 3 failed for the following reasons:

(a) the Appellate Court held that they were unable to hold that the conclusion of the magistrate was unwarranted in the light of the evidence on record.

(b) They were of the view that the Magistrate had the opportunity of watching and assessing the declarant and was entitled to find him a witness of truth.

(c) More so, a perusal of the court record showed that the evidence of the declarant remained unshaken on material issues.

(d) The magistrate did bear in mind that there was bad blood between the declarant and the Appellant and yet was satisfied that he was a witness of truth. They referred to the case of **O. Foollee v The State [2004 SCJ 251]** in which it was held: "…*the mere existence of bad blood prevailing between the parties (…) did not entitle the appellant to the benefit of the doubt when the evidence adduced by the prosecution was straightforward and stood unrebutted by any other evidence*".

Grounds 2 and 3 failed.

Ground 6 was to the effect that the learned Magistrate was wrong to indulge in some kind of extrapolation. This grounds reads as follows:

"*Because the learned Magistrate indulged in extrapolation in finding that "if W4 had to level a false charge against Accused he would have for a matter of certainty put a false charge of a more serious nature and not one where Accused would be prosecuted for rogue and vagabond*" ".

The Appellate Court did not find any merit in that ground because the magistrate considered the version of the prosecution as well as the version of the defence before reaching his conclusion. They were of the opinion that the issue of bad blood was made a live issue at trial. It was therefore the duty of the Magistrate to assess the evidence as well as the credibility of the witnesses so as to decide which version to accept. They were also of the view that the Magistrate made a correct appreciation of the evidence and his finding was unimpeachable.

The appeal was dismissed.

THE STATE V MUNGROO B A P [2018 SCJ 198]

By Hon. Judge Mr. Benjamin G. Marie Joseph

Sentence – Manslaughter – Guilty Plea

The Accused was charged for the offence of manslaughter in breach of **Sections 215** and **223(3)** of the **Criminal Code**. The offence was committed on the 23.08.2013 on the person of Mohamed Reshad Kauroo. In the light of the guilty plea, the Accused was found guilty as charged.

It was borne from the statements of the Accused which were produced that he was at the material time working as a labourer in a vegetable plantation and he was living with his wife and two children.

The victim and him were friends and they used to consume drugs. At first the Accused in his first statement denied knowing anything about the latter's death.

In his further statements he admitted having tried to slit the face of the victim with a knife but the knife accidentally slopped and passed over on his neck. He explained that the victim gave him Rs 2000 to buy Rivotril tablets for their consumption. He got only 8 tablets which were not enough. After having consumed the tablets and a bottle of wine they tried unsuccessfully to get more tablets from other people over the phone but they were unable to get any. A discussion arose and the victim tried to inflict him injuries with a screwdriver. He defended himself by taking a knife that Bangladeshi workers used to scale fish by the river and which was kept at the spot. He tried to slit the cheek of the victim but it slashed his neck. The victim fell in the river and he left him there. He also admitted in his statements having stolen the mobile of the victim which he sold to the person from whom it was recovered.

The record of previous convictions of the Accused showed that he had between 2000 and 2010 three convictions for Larceny and two for drug related offences.

In assessing the sentence to pass on the Accused, the Court took into consideration:

(a) The seriousness of the offence with its surrounding circumstances

(b) The Accused pleaded guilty at the first reasonable opportunity

(c) His remorse

(d) The hardship to his family which comprised of two children and

(e) The trend in sentencing for similar offences.

The Accused was sentenced to undergo 25 years penal servitude

"I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law."

– Martin Luther King, Jr

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MAURITIUS

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

Chap 4, Magna Carta 1215