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

In this issue, the Director of Public Prosecutions, Mr Satyajit Boolell, SC, grapples with the issue pertaining to consumer protection in Mauritius.

Furthermore, in line of our usual commitment to collaborate with the Chief Commissioner’s office of Rodrigues to provide training sessions to public officers, our law officers provided training on ‘prosecution duties’ in Rodrigues. An overview of same is included. Moreover, one of the law officers provides an insight of the 3rd Specialisation Course for junior prosecutors attended by her at the Siracusa International Institute for Criminal Justice and Human Rights, Italy. Finally, summaries of recent Supreme Court cases are included for the benefit of our readership.

In this issue, the office of the DPP expresses its deepest condolences on the passing away of Mrs Rosemary Anodin, ex-Chief Legal Secretary PDSM.

We invite your feedbacks and comments on odppnewsletter@govmu.org and wish you a pleasant reading.
Consumer Protection: Take it or leave it

Consumer protection in Mauritius has become an empty slogan, in spite of our best efforts to apply the law. The frenetic pace at which products and services are being exchanged at the market place has led to a significant shift of attitude and contractual advantage in favour of sellers of products and services. We are no longer in a “let the seller beware” situation but rather a “take it or leave it” one. Today’s consumer is helpless to assert his rights. Take for instance, the food industry; it feeds us with food full of artificial enhancers, additives, fats and very often genetically modified. No wonder then, the average Mauritian is either a heart patient or suffer from diabetes, high blood pressure or obesity.

Yet, there exists in Mauritius a plethora of laws, in the forms of Acts and subsidiary legislations which are meant to protect the consumer from the hazards of health and safety, the dangers of misleading advertisements and deceptive representations, as well as ensuring access to adequate information. Our laws are unfortunately fragmented, difficult to apply to constantly evolving market forces and at times, redundant. The whole landscape for trading products and services has changed. Today, we are confronted with a new breed of e-consumers, daily transacting online to purchase products and services. In many ways, these e-consumers are more vulnerable as they typically cannot examine the product prior to purchasing it and may not know from whom they are buying. The e-consumer is at risk the moment he opens a bank account and discloses his private information online. Identity theft online is now epidemic. The internet is a communication medium without geographical or national boundaries, hence, the difficulty of enforcing domestic laws outside Mauritius against a foreign supplier.

In October 2010, the Law Reform Commission of Mauritius produced a comprehensive report highlighting the lacunas in our legislation and invited our legislators to introduce new legislations to restore the parity of bargain between the seller/supplier of goods and services and the Mauritian consumer. I cannot say whether the Report was ever considered by our policymakers but to a large extent, it is still relevant. Amongst the numerous proposals made, the Law Reform Commission advocates for an accessible system of redress for consumers, including a mechanism for consensual resolution of disputes arising from consumer transactions. It should be a structured body staffed with professionals from social and economic fields assisted by representatives of consumer associations. It will be a first step to restore the widening gap of parity between a seller and a consumer. We should ensure that contracts no longer exclude the rights of the consumer in the instance of non-performance or inadequate performance by the supplier. Nor should a consumer who fails to comply with his obligations, be required to pay disproportionately high compensation.

As we move in a new digital age, the time has come for a new consumer protection regime.
The Office of the Chief Commissioner of Rodrigues recently reached out to the Office of the Director of Public Prosecutions to provide extensive training programmes to public officers involved in the detection and prosecution of criminal offences in Rodrigues. In that context, a training programme on Prosecution Duties was organised in July this year and it was destined to all officers involved in the enforcement and prosecution of offences falling under their relevant legislations. Around 85 officers from the following departments attended the 3-day programme: Police, Forestry, Fisheries, Consumer Protection, National Coast Guard, Legal Metrology, Health, Environment and others at English Bay Youth and Women Centre in Rodrigues.

Officers of the ODPP who conducted the training were Mehdi Manrakhan, Assistant DPP, Roshan Santokhee, Principal State Counsel and Vinod Rammaya, Senior State Counsel. It was a very practical training programme and the subjects covered were chosen accordingly so that the audiences could learn from these subjects and apply them in their professional lifestyle.

For the first day, in the morning, Mr Rammaya tackled practical issues and problems relating to the Information such as the drafting of the Information, amendments to the Information and defective Information. In the afternoon, Mr Santokhee covered relevant topics of the Law of Evidence and Criminal Procedure and they included a discussion on the various types of evidence and issues of admissibility of evidence.
On the second day, Mr Manrakhan dealt firstly with the Role of the Prosecutor. He stressed on the importance of a fair and impartial prosecutor whose role as a Minister of Justice is not to secure a conviction at all costs. He then gave a practical lecture on Trial Techniques and Examination of Witnesses, focusing mainly on pre-trial case preparation and eliciting evidence in court through examination of witnesses.

The morning of the final day was dedicated to Case Studies involving all issues covered during the first two days. Officers were required to consider real life problems they encounter in their day to day work. Problem questions on the Criminal Information proved quite popular with the audience. In the afternoon, a Certificate Ceremony took place in the presence of the Chief Commissioner, Mr Serge Clair. Participants received a Certificate attesting to their participation in the training program.

Overall the programme was a great success. The interactive format used was well appreciated by the audience. One of the participants expressed how much she enjoyed the exchange of ideas between the resource persons and the participants; she felt that it was not like being in a traditional classroom with teachers addressing students.

Mehdi Manrakhan
Assistant DPP
The Siracusa International Institute for Criminal Justice and Human Rights (‘SCJP’), situated in Siracusa, Italy, is an institution dedicated to education, training and research in the fields of international and comparative criminal justice and human rights. Its principal objective is to highlight the most important synergies between international criminal law and the domestic prosecution of international crimes, including transnational crimes.

SCJP in collaboration with the International Association of Prosecutors, has organised the 3rd specialisation course for junior prosecutors, in which I participated from the 24th June to 7th July 2018.

The course, was divided into two modules and it was specifically designed for prosecutors of up to ten years’ experience to gain expertise in the international aspect of their works and to expand their professional network.

The sessions were chaired by legal experts including Judge Sir Howard Morrison (Judge, Appeals Chamber, International Criminal Court), Ms Laurel Baig (Senior Appeals Counsel, UN Mechanism for International Criminal Tribunals), Ms Reena Devgun (Senior Public Prosecutor, International Public Prosecution Office, Swedish Prosecution Authority), Ms Karen Friedman-Agnifilo (Chief Assistant District Attorney, New York County District Attorney’s office), Ambassador Jean-Paul Laborde (Roving Ambassador of the Parliamentary Assembly of the Mediterranean), Mr Frederic Van Leeuw (Chief Crown Prosecutor, Belgian Federal Prosecutor’s Office).

The first module held during the first week, addressed the International Criminal Justice and Transnational Crimes such as war crimes, crimes against humanity and genocide, cybercrime, human trafficking and migrant smuggling.

The second module for week two was on International Cooperation in Criminal Matters which dealt with Mutual Legal Assistance on Freezing and Seizing of Assets and Asset Recovery, Anti-Money laundering and combating of terrorism, the Extradition and Transfer of prisoners.

The interactive, practice-oriented and experiential training methods enabled the participants to acquire the required knowledge in order to utilize legal tools to enhance international cooperation in the investigation and prosecution of international crimes. The detailed case study on the extradition and transfer of prisoners was challenging; it enabled us to appreciate the importance of mutual assistance between foreign countries, the manner in which we should tackle international crimes including the urgency of securing digital evidence.
Over the two weeks, the thirty-five participants from over twenty different countries, including Albania, Australia, Austria, Bermuda, Brazil, Canada, Finland, Germany, Kenya, Malawi, Mauritius, Netherlands, Nigeria, Pakistan, Poland, Taiwan, Ukraine, United Kingdom, United States, Yemen, and Zambia, were given the opportunity to work on cases involving core international crimes and transnational crimes. With the contribution of each participant, the course gave us an invaluable opportunity to develop our network with prosecutors and criminal justice professionals from around the world, and learn from leading experts in their field.

Being given that nowadays the majority of crimes has international ramifications, international cooperation is a key component in order to successfully prosecute a case in our domestic court. This training was a springboard to improve our prosecutorial skills when it comes to international criminal law and the domestic prosecution of international crimes.

Chitalata Soobagrah
State Counsel
Obituary: Mrs Rosemary Anodin

On 17th September 2018, Mrs Rosemary Elizabeth Winifred Anodin Chuttoo (ex-Chief Legal Secretary PDSM) left us all in shock and grief. Mrs Anodin joined the public service on 2nd October 1972 to give assistance at the Clerical Officer level and was then posted to the telecommunications Department. After nearly three years as Clerical Officer, she left the General Services Cadre and joined the legal cadre as Trainee Law Officer on 15th September 1975. Mrs Anodin was appointed as Law Clerk on 1st July 1978. She was then promoted as State Attorney and Senior State Attorney on 14 May 1991 and 10 July 1996, respectively. She was subsequently appointed as Assistant Legal Secretary on 29th November 2002, thereafter, she was promoted as Legal Secretary on 15 September 2004 and finally, as Chief Legal Secretary on 20th February 2009. Mrs Anodin retired from the office of the Attorney General on 4th May 2018 after 45 years of meritorious and fruitful service.

During her tenure of office Mrs Anodin has had the opportunity to work under the guidance of various Solicitor General namely Mr Vanchard, Mr Seetulsingh and Mr Dabee. Mrs Anodin has always been a dedicated, responsible and hardworking officer who has upheld the reputation and prestige of the Office of the Attorney General. She has always provided her full assistance to the DPP and his office. The departure of Mrs Anodin will be deeply felt by each and everyone of us.

She will be missed and remembered.

Our thoughts go to her family and closest friends.
SUMMARY OF SUPREME COURT JUDGMENTS:
August 2018

CHUMROO J. v THE STATE 2018 SCJ 276
Interlocutory Judgment delivered on 29 August 2018 by Hon. D. Chan Kan Cheong, Judge and Hon. S.B.A. Hamuth-Lauloo, Judge

The applicant appealed against the judgment of the learned Magistrate of the Intermediate Court finding her guilty on an information charging her with the offence of embezzlement by person in receipt of wages in breach of section 333(1) and (2) of the Criminal Code.

The conviction was being challenged on several grounds. Subsequently, a motion was made in order to obtain leave of the Court to file three additional grounds of appeal.

The respondent filed a preliminary objection to the effect that those additional grounds ought not be entertained. Arguments on the motion were heard.

Learned Counsel for the applicant contended that Court should take into consideration not only the circumstances of the delay but also the arguableness of the three additional grounds. She submitted that those three grounds were not included in the Notice of Appeal through sheer oversight. She also contended that the new grounds were not vague and were arguable when read together with the skeleton arguments filed in the appeal case.

Learned Counsel for the respondent submitted and further contended that the additional grounds had admittedly been omitted due to oversight and such conduct should not be condoned by the Court.

What the Court of Appeal had to determine was whether there was a sufficient justification for them to exercise their discretion to allow the new grounds to be entertained out of time.

The guiding principles regarding the issue were clearly laid down in the case of S. Ramtohul v The State [1996 MR 207] and they can be summarized as follows:

1. The Court has a discretion to allow an appeal to either proceed or not outside delay;
2. At some stage, the finality of judicial decisions should be certain so that procedural requirements governing appeals should not be disregarded;
3. Non-compliance with the strict rule regarding delay should not be due to negligence on the part of the appellant or his legal advisers;
4. The Court can always exceptionally exercise its discretion to entertain an appeal outside delay even in cases where the delay is due to the laches of the appellant or his legal advisers, if it considers that there is sufficient justification to do so;
5. The Court may consider the circumstances giving rise to the proposed ground of appeal to decide whether, having regard to its arguability, it should be allowed or not.

In A. A. Dilloo v The State [2012 SCJ 148], when considering the issue of additional grounds of appeal outside delay, the Court quoted the case of V. Mareemootoo v The State [2001 SCJ 313] to reiterate the principle that whilst the Supreme Court, in the exercise of its supervisory jurisdiction under the Constitution, “may make such orders as are appropriate for the purpose of ensuring that justice is duly administered by a Court”, it will, “however, not condone the mistakes and negligence on the part of litigants or their legal advisers”.

The Learned Judges considered the additional grounds of appeal and were of the opinion that these grounds cannot be favorably entertained. They concluded that there would be no miscarriage of justice if additional grounds were not considered.

The fact that the new grounds were not included can only be as a result of the mistake and negligence of the legal advisers of the applicant and that Court was not ready to condone, in the present circumstances and for the reasons above, such behavior.

Hence, the motion of learned Counsel for the applicant was rejected.

“Every man's life ends the same way. It is only the details of how he lived and how he died that distinguish one man from another.”

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

Chap 4, Magna Carta 1215