



# Office of the Director of Public Prosecutions

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

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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.*

# Editorial



**Anusha Rawoah**  
**Senior State Counsel**

Dear Readers,

As we flip the calendar to a new year, we are pleased to bring to you the last issue of our newsletter for the year 2019. This has been another great year for our office and our newsletter.

In this issue, you will listen to the message of Mr Satyajit Boolell, SC, the Director of Public Prosecutions in the 'ODPP Video' segment. You will further read an interesting analysis of the recent development to jury trials in Mauritius. On 5th of December 2019, the ODPP welcomed Mr. Soleman Hattea, Ombudsman and Mrs. Rita Venkatasawmy, Ombudsperson for Children to give a lecture to our law officers. An overview of it is provided. Furthermore, we bring to you a review of the training session organized by the Rodrigues Chief Commissioner's Office, in collaboration with the ODPP, on Tourism laws in Rodrigues. Also, in line with its commitment to ensure the continuous growth of its law officers, the ODPP organized an 'Advocacy Training' for the junior law officers. In our 'Quick Facts' section, we address the offence under the Road Traffic Act, pertaining to driving under the influence of alcohol. Moreover, you will read the summaries of Supreme Court judgments.

Finally, we cannot but acclaim the dedication and hard work of all the staff of the ODPP throughout the year. The Editorial team also takes this opportunity to wish its readership a Merry Christmas and a Happy New Year 2020.





# ODPP VIDEO

**ODPP VIDEO – ‘Message from the DPP’**

Click on the ‘Play’ icon below to view the video or view video on <https://youtu.be/Nr5BBsodCWM>



**Mr Satyajit Boolell, SC**  
**Director of Public Prosecutions**



# ARTICLES



# Recent developments in the Jury Trial

The selection of potential jurors for trials scheduled before the Supreme Court for the year 2020 is going to be a major shakeup of the system in that the pool from which the list of jurors would be selected would not be from the traditional 5000 odd voluntary names but from a wider pool of over 800,000 names obtained from the list of electors which the Electoral Supervisory Commission compiles and updates regularly. Although the Mauritian citizens give their names voluntarily for election purposes they are inadvertently also acquiescing to be on the list to be ultimately selected for jury trials. This right or obligation to serve as jury has been made possible by the recent changes in the law.

The Judicial and Legal Provision (No.2) Act 2018 (Act 14 of 2018) amended the Supreme Court (Jury lists and panels) Rules and the relevant provisions relating to the preparation of list of jurors read as follows;

*“3. The Master and Registrar shall with the assistance of the Electoral Commissioner, the Registrar of the Civil Status and the Commissioner of Police draw up a list of persons qualified to serve as Jurors.*

*4. Any person who is registered as an elector of an electoral area may on good cause shown, apply in such form and manner as the Chief Justice may approve to the Magistrate of the District in which he resides to have his name removed from the list of persons qualified to serve as jurors.”*

These above provisions have come into effect on the 15th of November 2018. In the ruling in case of State V Ausman (2019) before the assizes, it has been decided that the traditional pool from which jurors were being selected is no longer valid and that the amendments brought to the Supreme Court Rules cater for the broader population. The aim of this is to achieve as much as possible a more representative jurors at the trial reflecting a cross section of our society. The right of the accused is to have a fair trial by an impartial tribunal. The point here is that the selection must be from a representative cross section of our society.

From this broader pool a panel of jurors is selected by random process. From this panel a list of hundred potential jurors is again randomly selected. These 100 jurors will be summoned to attend court and it is from this 100 that the eventual 9 jurors would be retained to decide on the facts which will have a bearing on the guilt or acquittal.



**Rajkumar Baungally**  
**Assistant DPP**

# Recent developments in the Jury Trial

The whole process appear quite simple but there is more to it. Before reaching the final 9 jurors, lawyers appearing on both sides have rights of challenge which means that they have a say on who can be retained in the final 9. So that in addition to the randomness there is also the human element where the lawyers play a crucial role as to who gets to stay in the final 9. But this intervention of the lawyers is limited and they can only challenge for a maximum number without cause. Challenge for cause is by contrast unlimited and here perhaps lawyers would want to have background information of jurors at hand before making their move. They would want to have background checks on the list of hundred. But potential jurors can rest assured that the lawyers cannot avail themselves of the previous convictions of jurors, who have been convicted of minor offence, in order to challenge them from serving as members of the Jury. Of course jurors convicted of crimes are not from the outset eligible to serve and those of certain age are also disqualified.

However, there are exceptional cases where jurors can be challenged on the basis of their antecedents and objections raised as to their selection to serve as jurors in trial cases. Cases involving terrorist, cases involving violent criminal gangs and cases involving the Official Secret Act are an extreme limited category. Even here the disclosure of these antecedents are subject to the rights of privacy of jurors and would in all probabilities need the authority of the judge before its use as a basis of challenge.

In the whole jurors can serve with serenity and feel secure that their minor brush with the law will not inconvenience their role in the judicial process. The Mauritian citizens are now called upon in greater numbers in this historic change of the law.

Representativeness is the aim of the legislator but the final 9 retained may not be at all representative of the cross section of our society as the randomness and challenges may eventually lead us to have 9 persons who do not represent our diversity. Ultimately, the law requires that there is randomness and more importantly the original pool from which selection takes place must be a cross section of our society. As long as these criteria are satisfied in the process, the final composition of 9 would satisfy the requirements of impartiality.



# Presentation by Ombudsman and Ombudsperson for Children

On Thursday 5th of December 2019, the Office of the Director of Public Prosecutions ('ODPP') had the pleasure to welcome Mr. Soleman Hattea, Ombudsman and Mrs. Rita Venkatasawmy, Ombudsperson for Children to give us an overview of their respective roles, powers and functions. Mr Ahmine, Deputy Director of Public Prosecutions ("DDPP") welcomed and also thanked them for accepting our invitation to deliver a talk to keep up with the tradition of sharing experience and knowledge with the law officers of the ODPP. The common aim of the ODPP, the Office of the Ombudsman and the Ombudsperson for Children ('OC') is to strive for justice. In a nutshell, the main aim of the ODPP is to bring offenders to justice while the Ombudsman seeks to redress any injustice sustained in cases of maladministration and the OC represents and defends the rights of children.

## Presentation by Mr. Soleman Hattea, Ombudsman

Mr. Hattea is a barrister at law and has been acting as the Ombudsman for almost 29 years now. He studied law in London at the Lincoln's Inn and joined the Crown Law Office as Crown Counsel in 1972. He appeared in the famous case **Regina vs Polimont 1979 MR 277** before the assizes. He also served as Assistant Solicitor General before being appointed Ombudsman. He occupies the constitutional post of Ombudsman of Mauritius since 1990. In Mauritius, the institution of the Ombudsman is enshrined in Chapter 9 of the Constitution. In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any Court of law. The mission of the Ombudsman is to serve the Mauritian community by addressing issues arising from maladministration in the public sector and redressing wrongs that may be found to have been committed.

As part of the introduction, Mr. Hattea walked the audience through the historical overview of the Office of the Ombudsman. He underlined that the term "man" in Ombudsman is simply a Swedish derivative to person and makes no difference between genders. Mr. Hattea firstly highlighted that an aggrieved person must exhaust all remedies before having recourse to the ombudsman. The person must first address his complaint to the authority concerned and the ombudsman is empowered to look into the complaint only if the person is not satisfied with the decision of the authority.



**Mr Ahmine, Deputy Director of Public Prosecutions ("DDPP")**

# Presentation by Ombudsman and Ombudsperson for Children



**Mr. Soleman Hattea, Ombudsman  
(Middle), with**

**Mrs. Rita Venkatasawmy, Ombudsperson  
for Children (right) and**

**Mr Amarnath Ramtahul, Senior  
Investigations Officer (left)**

The power of the ombudsman is only limited to a recommendation and he cannot quash a decision of an authority. He may also request the authority to notify him, within a specified time, of the proposed steps taken, if any, to give effect to his recommendations. The final decision remains with the body under investigation and not the ombudsman. However, where after the report is made, he found that no adequate and appropriate action has been taken, he may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned. This is provided for by Section 100 of the Constitution:

His investigative powers do not extend to the following:

- Cabinet matters
- Matters relating to defence, external relations and internal security
- Matters concerning foreign missions e.g. Embassy, High Commission, etc.
- Court proceedings
- Private disputes
- Complaint against private bodies

Complaint against local authorities and parastatal bodies. In certain cases however the Ombudsman seizes the parent ministry.

He also elaborated on the notion of equity which is important in order to protect the right of citizen against any form of “bureaucratic pollution” and to prevent bureaucratic failures and abuse. He believes that there must be a winner-winner situation and not winner-loser situation when rectifying administrative mistakes. He explained the investigation process which is done by Mr Amarnath Ramtahul, Senior Investigations Officer, who was also present. The investigation involves requesting for further information by letters, summoning concerned officers to discuss about the complaint and site visits by the Senior Investigations Officer.

Answering a question raised by Mr Ahmine, DDPP, regarding what is being done to sensitize the public on the existence and the role of the ombudsman, Mr Hattea mentioned that his office has undertaken awareness raising programmes for the public around the island. Leaflets are also distributed to the public to apprise them of the powers of the ombudsman and how to make a complaint to him. These are available in English, French and Creole to reach out to a bigger audience.

On being asked whether authorities always abide by recommendations made by the Ombudsman, Mr. Hattea clarified that the ombudsman tries his level best to correct any maladministration. Well before reaching the stage of formal recommendations, there is a consensus reached between the parties to resolve the matter at an early stage. However, after having made a formal recommendation, the concerned authority is given a certain number of days to

# Presentation by Ombudsman and Ombudsperson for Children



comply and if not, then the Ombudsman approaches the Minister concerned and the Prime Minister. Mr Hatteea also mentioned that every year his Office makes an annual report to the President concerning the discharge of his functions and a copy is also laid to the assembly.

Moving on to the second part of the presentation, Mr Ahmine stated that as a prosecuting authority, the ODPP deals both with children who are victims, as witnesses and juveniles, as offenders. He underlined that the ODPP has a specialized Victim, Witness and Juvenile Offenders unit which is exclusively dedicated to the cooperation of victims and witnesses in order to achieve successful prosecutions of criminal offenders. The unit also acts as liaison between the Police and the Court in order to improve court practice in child abuse and also in cases of sexual violence, domestic violence and Human Trafficking in Persons.

## **Presentation by Mrs. Rita Venkatasawmy, Ombudsperson for Children**

Mrs. Rita Venkatasawmy, Ombudsperson for Children has a rich career in the field of children welfare; in fact she holds a Masters in International Child Welfare –Special focus on Child Sexual Abuse / Foster Care. She is also the founder of the Centre d'Education et de Développement pour les Enfants Mauriciens ('CEDEM'). She has also represented Mauritius in several international conferences and presented papers pertaining children rights and welfare, among others. The Ombudsperson for Children's Office was set up in 2003 by the Republic of Mauritius to ensure that children's rights are respected in our country.

Mrs. Venkatasawmy started her presentation by stating the objectives of the ombudsperson for children namely:

- Ensure that the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals.
- Promote child rights and best interests of children.
- Promote compliance with the Convention on the Rights of the Child.

The OC argued that we must promote the rights of the child and do justice to them. She highlighted that it is the duty of the OC to represent and defend the rights of children in Mauritius, Rodrigues and Agalega, children of Mauritian origin who live abroad and children of any other nationalities who reside in the Republic of Mauritius. She added that Mauritius ratified the **United Nations Convention on the Rights of the Child ('UNCRC')** in 1990 and it is essential to promote compliance with the UNCRC and ensure that our existing legislations correspond to same. Mrs. Venkatasawmy added that according to official figures sent to her office by the commissioner of police, there is at least one case of sexual abuse on a child which is reported to the police per day.

# Presentation by Ombudsman and Ombudsperson for Children

Many cases go unreported due to various challenges encountered by the police and it often difficult for the prosecution party to take concrete action due to lack of evidence. She therefore highlighted on the importance to record the statement of the child and the need to rehabilitate the child victim of sexual abuse. The OC also stressed on the need for the ODPP and her office to work hand in hand so that justice is not denied to children. The OC looks forward to the imminent introduction of the Children's Bill which is under review and proposed that the concept of "child beyond control" be reviewed. She also mentioned about the role of her office to oversee the investigations done by the Child Development Unit (CDU).

Mrs. Venkatasawmy further drew our attention on the alarming situation of the housing condition of vulnerable children and highlighted that these children have a fundamental human right to adequate housing. If the right to safe and decent housing is not respected, this will inevitably hinder children from enjoying a wide range of other rights, such as their rights to education, health, social security, privacy and so on. She also laid emphasis on the increasing rate of divorce in Mauritius which has also led to the issue of parental alienation where a child becomes estranged from a parent or grandparents, which often the court is not aware of. This requires immediate attention in order to prevent the child from being deprived of parental affection and attention.

There was a constructive and animated discussion between law officers and Mrs. Rita Venkatasawmy surrounding the children's bill and the term child beyond control. She mentioned that while laws exist, what is more important is the application of the law and how they are complying with international standards. She also reported that her Office has done a lot of sensitization campaigns in schools, press and media to reach out to the masses regarding rights of children. A booklet entitled "L'amour de Nani Coco pour son pays" and a chart on "L'aliénation Parentale" published by the office of the OC were distributed to law officers in order to create awareness regarding the rights of children. Finally the OC expressed her appreciation on the children friendly approach adopted by the ODPP when dealing with cases related to children and recommended to have inter-authority synergy in order to better protect the children of the country.

**Shruti Lallbeharry and Artee Gunness Angad**

Legal Research Officers







# **WORKSHOPS/ CONFERENCES REVIEW**



# The Rodrigues Regional Assembly is targeting to further expand and develop its tourism industry

In line with this objective, the Commission for Tourism of Rodrigues, falling under the aegis of the Chief Commissioner's Office, organised a three days' training session to empower law enforcement officers by better understanding and applying Tourism laws in Rodrigues.

The Office of the Director of Public Prosecutions (ODPP) was invited to deliver the training sessions and participants consisted mainly of officers working for the Tourism Commission, police officers and the coast guards in Rodrigues.

The main expectations of attendees were to understand how to have more successful prosecutions for offences falling under the **Tourism Authority Act 2006 and the Rodrigues Regional Assembly (Tourism) Regulations 2007**.

The training sessions took place from 20th to 22nd November 2019 at conference room of the Rodrigues Regional Assembly in Port Mathurin.

The training team, constituting of **Miss Anuusha Rawoah (Senior State Counsel)** and **Mr. Arvin Ramsohok (State Counsel)**, delivered a series of lectures and discussion sessions to equip participants with a better understanding of the law, powers of law enforcement officers during investigations and court procedures during the prosecution process.

It is hoped that the workshop enabled the participants to move from the conventional theoretical problem-solving practices to one focused on practical applications of the law.

Participants gave highly positive feedbacks on highly interactive approach adopted by the trainers and have requested for further training sessions in similar formats.

The closing ceremony was honoured by the presence of Mr. Louis Serge Clair, G.C.S.K, the Chief Commissioner for Rodrigues, who thanked the ODPP for its close collaboration with the authorities in Rodrigues, handed over certificates of attendance to participants but, more importantly, reminded everyone of the need for continuous improvement through training sessions and workshops.



# ADVOCACY TRAINING AT THE ODPP

The Office of the DPP firmly believes in the continuous growth of its officers. In this context, an 'Advocacy Training' was held from the 2nd to the 4th of December 2019 whereby the trainers, Mr. J. Muneesamy, PSC and Mr. R. Bhookhun, SC, were involved in training junior officers. The officers were given cases (sexual offences) to study and prepare the examination of the complainants accordingly. The law officers had to examine and/or cross examine the complainants who were child witnesses out of turn.

The gist of the training was to train the officers to handle such witnesses efficiently in Court. Additionally, the procedures for refreshing of memory, putting inconsistent statements and treating a witness as hostile were also dealt with. The Advocacy Training has been an enriching experience for the officers who also had the opportunity to ask questions from the resourceful trainers.

**Veda Dawoonauth**

State Counsel





# QUICK FACTS

## Quick Facts

DID YOU KNOW?

### The Road Traffic Act 1962

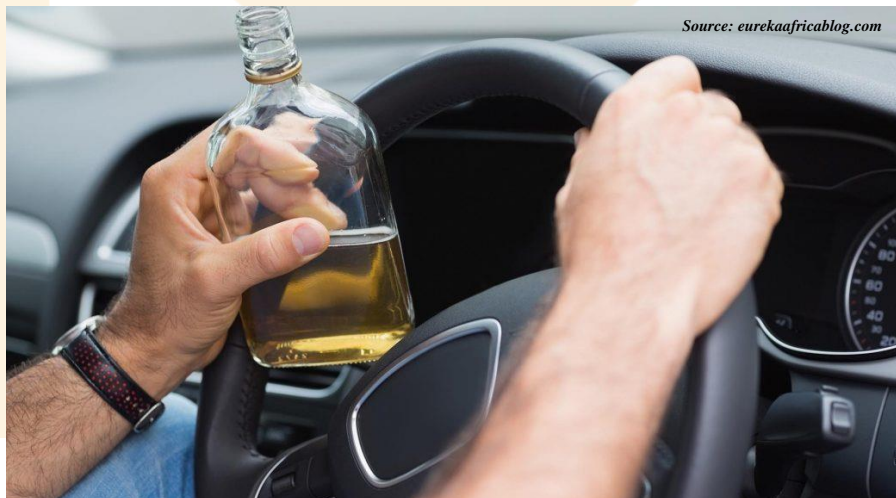
Under Section 123F(1)(a), it is an offence for a person to drive or attempt to drive a motor vehicle on a public road after consuming so much alcohol that the proportion of it in his breath, blood or urine above the prescribed limit.

Subsection (1)(b) creates an offence where the person is in charge of a motor vehicle on a road or public place whilst the proportion of alcohol in his breath, blood or urine is above the prescribed limit.

**The penalty provides for a fine of not less than 20,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 5 years.**

**For a second or subsequent conviction, the offender shall be liable to a fine of not less than 50,000 rupees nor more than 75,000 rupees together with imprisonment for a term of not less than 12 months nor more than 8 years.**

It shall be a defence for a conviction under subsection (1)(b) if the person can prove that there was no likelihood of him driving the vehicle whilst the level of alcohol in his breath, blood or urine was over the prescribed limit.





Under Section 123G(1)(a), a person riding a cycle on a road or any other public place may be required to provide a specimen of his breath for a breath test where a police officer in uniform has reasonable suspicion that the person is under the influence of alcohol. The taking of the breath specimen may be done on the spot itself or the nearest police station.

**A person who fails to provide a specimen of his breath, without reasonable excuse, shall be liable to a fine of not less than 5,000 rupees nor more than 25,000 rupees.**



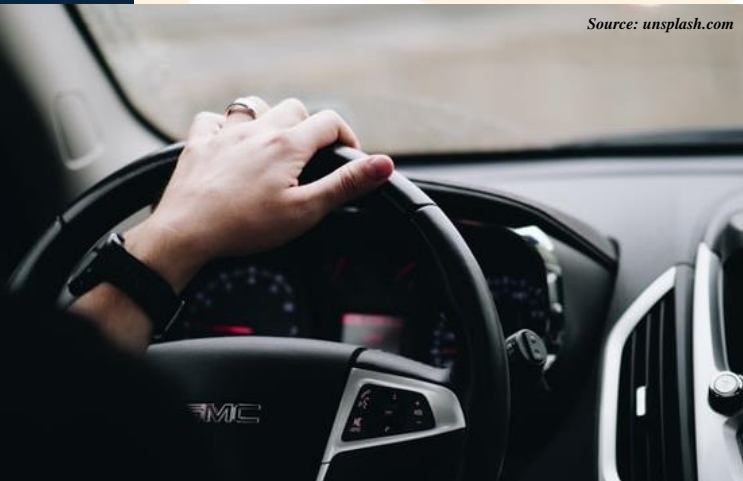
Source: [thesun.co.uk](https://www.thesun.co.uk)

Under section 123G (1)(b) to (f), a police officer, in uniform is allowed to request a breath specimen, either on the spot or at the nearest police station, for a breath test where he has reasonable suspicion that the person is under the influence of alcohol in the following circumstances:

If the person is driving a motor vehicle on a road or any other public place

If the person is in charge on a motor vehicle on a road or any other public place

If the person is occupying the driving seat of a motor vehicle on a road or any other public place and attempting to put the motor vehicle in motion



Source: [unsplash.com](https://unsplash.com)



If the person is occupying the front seat in a motor vehicle as a competent driver supervising a learner driver who is driving the motor vehicle on a road or any other public place;



If the person drives or attempts to drive a motor vehicle which is involved in a road accident, on a road or any other public place

**If a person, without reasonable excuse, fails to provide a specimen of breath in the abovementioned situations, he shall be liable to a fine of not less than 20,000 rupees nor more than 25,000 rupees.**

**In a second or subsequent conviction, the person shall be liable to a fine of not less than 25,000 rupees nor more than 50,000 rupees and to imprisonment for a term not exceeding 12 months.**

No Matter What You Drive This Holiday Season,



# Highlights of 2019



**Team Building Activity of the ODPP**



**Independence Day Celebration**



**Advocacy Training**



**Talk on An overview of the UK Police and Criminal Evidence Act 1984**



**Courtesy Visit of Justice Madan Bhimarao Lokur**



**Presentation by Ombudsman and Ombudsperson for Children**



**Les abus sexuels à l'encontre des enfants  
Père Stéphane Joulain au ODPP  
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December 2019**



**Training session to empower law enforcement officers by better understanding and applying Tourism laws in Rodrigues** Page 20



# Highlights of 2019



**Judicial Training of Trainers on Cybercrime and Electronic Evidence**



**Malagasy Delegation at ODPP**



**The Director of Public Prosecutions, Mr Satyajit Boolell, SC giving a lecture at the seat of the Institute for Judicial and Legal Services entitled "Mauritian Constitution: A modified version of the Westminster Model?"**



**Team Building Activities during Lunch**



**Celebration of Christmas Party for children at the ODPP**



# **SUPREME COURT JUDGMENTS SUMMARY**

# SUMMARY OF SUPREME COURT JUDGMENTS: December 2019

JEAWON D. v THE STATE 2019 SCJ 329

By Hon. Judge Mrs. A.D. Narain and Hon. Judge Mrs. R. Seetohul-Toolsee

*Hearing for sentencing purpose – Constitutional rights of accused – Mitigating circumstances – Special discretion*

The Appellant was prosecuted before the District Court for driving motor vehicle with alcohol concentration above the prescribed limit in breach of the **Road Traffic Act**. He pleaded guilty to the charge and was unrepresented at the hearing for sentencing purpose. He was eventually convicted and sentenced accordingly. The most pertinent ground of appeal was to the effect that *“it is not apparent on record that the Appellant (then accused) was informed of his rights to offer any mitigating factor before sentence.”*

The Respondent conceded that the learned Magistrate failed to give the Appellant an opportunity to be heard at sentencing stage and that a hearing was necessary to enable her to assess whether there were special reasons for her to exercise her discretion not to impose the disqualification order on the appellant pursuant to **section 52** of the **Road Traffic Act**. The Appellate Court held that the court record being silent as to whether the Appellant was explained his rights, including his right to adduce evidence in relation to sentence, and the different options open to him before the sentence was passed, it cannot be presumed that the learned Magistrate did so explain without recording this important matter.

Failure to so explain in itself amounts to a breach of the Appellant’s right to a fair hearing at the sentencing stage, as observed by the Supreme Court in **Teeluck v The State 2014 SCJ 16**. The Appellate Court further highlighted the need for a trial Court to ensure that there is sufficient evidence placed before it to enable it to make a proper exercise of its *“special discretion”* under **section 52** of the **Road Traffic Act**, prior to making an order for cancellation or disqualification of a driving licence - **Fagoonee v The State 2008 SCJ 224**.

Reference was also made to the case of **Bardottier v The State 2014 SCJ 10** where the Court noted *“that it is particularly important in cases where the Court is given a special discretion not to pass an otherwise compulsory sentence, that an accused should be explained the options open to him and that his decision should appear on record as well as the fact that such explanation has been given to him”*. In the circumstances, the learned Magistrate was not in presence of mitigating circumstances, if any, which could have led her to exercise her discretion under the **Road Traffic Act**.

In the light of the above, the appeal was allowed and remitted back to the lower Court for a fresh sentence hearing.

“What we learn with pleasure we never forget”

–Alfred Mercier







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

**Chap 4, Magna Carta 1215**