Speech of Hon. Yatin Varma, Attorney General

Launching of the book

“Procedural Fairness in the law of Unfair Dismissal in Mauritius and South Africa”

Thursday 26 April 2012 at the Council Room

Municipality of Port-Louis

Hon. Shakeel Mohamed, Minister of Labour and Industrial Relations

Hon. Ag. Chief Justice, Hon. Justice Domah

Professor Torul

Associate Professor Gunputh

Ladies and Gentlemen

I am thankful to Professor Ved Prakash Torul and Associate Professor Gunputh for inviting me for the launch of their book “Procedural Fairness in the Law of Unfair Dismissal in Mauritius and South Africa.

Let me first of all congratulate Professor Ved Prakash Torul and Associate Professor Gunputh for their contribution to the legal field and providing available addition material to the legal literature. There is no doubt there was a dire need for such a legal text to consolidate the doctrine of procedural fairness in the law of unfair dismissal, which would not only be an accessible resource document to employers and employees, but will also be a practical guide, and a point of reference to the legal sector in Mauritius. In my opinion, laws in Mauritius, particularly Employment Law is both evolutionary and revolutionary.

Dating from the 17th century to date, employment law has gone through various stages of enhancing the rights of both employers and employees with a view to creating better industrial relations in the work place.

At the beginning of the 21st Century the Mauritian labour jurisprudence represented nearly three hundred years of the evolution of pragmatic attempts to balance the economic logic of the open market system with the liberal aspirations to ensure that
workers are treated with respect and dignity. Justice Domah while writing in the Preface of the book realized the fact that attempt has been made in the book, I quote “to strike a balance between development values and human values, the synergy between the capital of the enterprise and the labour in the enterprise.” Unquote.

Ladies and Gentlemen

It is against this backdrop that the book has been written by the two well known law academics. The book has examined extensively the powers of an employer under the common law contract of employment in Mauritius and South Africa, and has searched for a better version of procedural justice that will provide safeguard to employees against unfair dismissal due to misconduct.

In its revolutionary state, I have to mention with greater appreciation the historical origins of the law of unfair dismissal, and the rich tapestry which our courts have woven to provide an equitable and modern jurisprudence in the law of unfair dismissal, compares favourably with international best practices. Some of the unfair dismissal cases have been deliberated with immense dexterity by our courts and have, through landmark decisions, added quality, knowledge and character to labour jurisprudence. I wish to mention here a few examples such as the case of Tirvengadum v Bata Shoe (Mauritius) Co. Ltd, Medine Sugar Estate Co. Ltd v Wodally, Harel Freres Ltd v Veerasamy and Anor, J.C. Paul v Longtill (Mauritius) Ltd and other cases that abound the area of labour law.

Ladies and Gentlemen

These judicial interventions have, to a large extent, mitigated the harshness of the common law principles and created a new labour law jurisprudence which introduced the element of equity and fairness in the law of dismissal.

I can therefore, see that the book will be a powerful tool in the hands of academics and practitioners.

In the present employment relations context our labour laws have heightened the benchmarking of procedural justice, the statutory protection against unfair dismissal has ushered a new era of jurisprudential revolution aiming at providing workers with a fair opportunity to influence the outcome of a decision to dismiss.

The substantive and procedural aspects of a dismissal have now been distinguished. It is time to canvass with greater elaboration the issues such as the requirements to
consult, to hear representations, and provide a fair and reasonable opportunity of speaking in rebuttal or in mitigation to the charge laid against an employee.

Ladies and Gentlemen
The office of the Attorney General always supported and valued legal research on topical issues. This time Professor V.P. Torul and Associate Professor R.P Gunputh have collaborated to share their rich experiences as lecturers and consultants in labour law and employment relationships. They have made disciplinary procedures look more systematic, well defined and precise.

I may add as well that my office does recollect the contribution of both authors in other fields of law. I may take the opportunity of mentioning that this book is not the only contribution of Professor Torul and Associate Professor Gunputh. They have gone beyond the field of Employment Law, and assisted my office with a Green Paper on Legal Aid Reforms following which amendments to the Legal Aid Act have been approved by Government.

Before I conclude let me again congratulate and acknowledge the immense knowledge, experience, judgment, independence, character and industry that both Professor Torul and Associate Professor Gunputh have put into this legal text. It is a praise worthy endeavour from both of them to create a classic legacy for anyone interested to put into practice procedural fairness in the law of unfair dismissal in the future.

Ladies and Gentlemen

I thank you for your kind attention.