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## Recommendations to the High-Level Committee

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### **A. ACCESS & QUALIFICATIONS**

#### **Current Situation :**

1. As at date, in order to be qualified to undergo pupillage, with a view to being called to the Bar, a person must either hold a professional qualification (from outside Mauritius) **OR** been awarded a law degree, completed the vocational course and sat and passed the examinations set by the (Mauritius) Council for Vocational Legal Education (CVLE).
2. There are several possible permutations and combinations. Four of these are:
  - a. *Law degree from the University of Mauritius (3 years) + Mauritius Council for Vocational and Legal studies (1 year) + pupillage (1 year);*
  - b. *Law degree from the University of Mauritius (3 years) + Bar Vocational Course abroad (1 year and generally England + Wales) + Pupillage (1 year that includes mandatory and non-examinable courses run by the Institute for Judicial and legal studies);*
  - c. *Law degree from a university other than the University of Mauritius (3/4 years depending on country+ Mauritius Council for Vocational and Legal studies (1 year) + pupillage (1 year); and*
  - d. *Law degree from a university other than the University of Mauritius (3/4 years depending on country+ Bar Vocational Course (England and Wales/ France1 year) + pupillage (1 year that can be completed abroad + mandatory and non-examinable courses run by the Institute for Judicial and legal studies);*
3. This situation is not satisfactory as there is no uniformity in the training in terms of:
  - a. the admission criteria for a full time and a part time LLB at the University of Mauritius that are not the same;
  - b. the Pass rate at the Mauritius Council of Vocational and Legal Education (CVLE) the past years have remained on the low side;
  - c. the curriculum is not similar /equivalent; and
  - d. the number of years spent on training are not uniform.
4. There has been an evolution to the current system of vocational studies, however, some significant lacuna remains. The main weaknesses which are present in the current system are as follows:
  - a. the lack of a comprehensive syllabus;
  - b. the components of the syllabus of the CVLE does not match that of the course provider, i.e. the University of Mauritius; and
  - c. the disparity in terms of experience, ability and knowledge of the resource persons for the course.
5. As mentioned above, one of the consequences of the above is that there is a great disparity in the competence acquired by the prospective barristers. This impacts on the

quality of the work being undertaken upon becoming law practitioners. The Litigants' interests are also impacted by this state of affairs. It is therefore of the utmost importance that appropriate steps are taken to ensure that:

- a. the CVLE standard be raised to make it credible;
- b. ALL prospective barristers receive quality training such that they are equipped to provide a quality service to the community; and
- c. the profession maintains an appropriate standard.

**Proposal:**

6. It is proposed that the whole vocational education system be overhauled to cure the abovementioned weaknesses. The suggestions are set out below:

6.1 The introduction of a post-degree training course of a total of 18 months. This will include a period dedicated to the training comprising of a number of core subjects followed by a term of pupillage.

6.2 The admission and registration to the Bar Vocational course will be subject to satisfactory completion of an entrance examination (similar to the Bar Course Aptitude Test (that is currently applicable in the UK)). The curriculum ought to include aspects of written and oral English and French languages in relation to legal work.

6.3 The said 18 months' training is to be made up as follows:

- (a) the first 6 months will consist of a set of examinable modules on a number of core subjects; It is only upon satisfactory completion of the courses and successful examination, that the trainee barrister will be able to pursue the rest of the training;
- (b) a subsequent 3 months training in examinable subjects that are specific to the Mauritius practice. These that will include ethics and court etiquette, civil procedure, criminal procedure and the rules of evidence.

The "second" 3 months training will be mandatory for all trainees, who are sitting for the local bar examination and those who have passed their bar examinations in other permissible jurisdictions. Such courses will be conducted and delivered by IJLS / CVLE;

- (c) for the next 3 months, the trainees will be required follow advocacy courses whilst starting their pupillage. Those who are sitting for the local bar examination and those who have passed their bar examinations in other permissible jurisdictions will have to attend these courses as attendance will be mandatory. These advocacy classes will be organised in collaboration with the MBA and the IJLS and such other organisation as may be deemed appropriate;
- (d) the Last 6 months will consist of the full pupillage coupled with supplementary advocacy classes. The LPA currently allows this happen under the supervision of the pupil master. Unfortunately, as at date, it appears that this is very rarely done

in practice. It is further proposed that pupil barristers will be able in the last 3 months of this period to have some limited right of audience before the various District Courts and the Intermediate Court whilst under the direct supervision of a barrister having at least 10 years of practice;

- (e) the CVLE (in collaboration with the IJLS and the MBA) is to be responsible to provide the training courses AND the selection of the resource persons shall be within the exclusive remit of the CVLE;
- (f) the courses /training have to take place in Port-Louis given that this will:
  - i. facilitate the access to courts of law and other tribunals and thereby enable the gathering by the learners of relevant exposure knowledge and experience on a regular basis, possibly even daily basis;
  - ii. facilitate the availability of a diverse array of experienced law practitioners for lectures;
  - iii. learners will be able to acquire the know-how to use the facilities and resources at the Supreme Court Library (which is used for the purposes of Advocacy examinations);
  - iv. the seat of the MBA, the IJLS and/or the building currently occupied by the Supreme Court of Mauritius may also be conveniently used for the organisation and delivery of the courses;
- (g) the examinations will be conducted by the CVLE and examination papers need to be set with the active input from the resource persons who conducted the courses for the period in lite. The Questionnaires and examination scripts will be moderated by independent persons well versed in the relevant subject; and
- (h) the introduction of mentoring and/or qualifying sessions at a frequency of at least one per term during the pupillage period. This shall be a formal event, which will enable the prospective barrister to get further acquainted with the law practitioners, current legal issues and court etiquette, amongst others. The MBA will be actively involved in the organisation of these sessions.

## **B. PUPILLAGE**

### **Current Situation:**

7. Any practitioner who reckons more than 15 years of standing at the Bar and who wishes to serve as pupil master needs to make an application to the CVLE. The MBA gives its views on such application. The applicant is thereafter registered as Pupil Master.

8. The Pupillage is currently performed over a period of 12 months. Prospective barristers undertake 3 months pupillage under the supervision of an attorney and 9 months under the supervision of a barrister/barristers. The CVLE is informed of the date of commencement and completion of these. However, the material weakness in the current system is that there is no documentary evidence of the achievement of the learning outcomes on completion of the pupillage period. The Law Practitioners Act makes provision for the Pupil Master to communicate a comprehensive report of the performance of the pupil during the pupillage, but there appears to be no, if little, enforcement of this requirement.

**Proposal:**

9. In view of the above, it is suggested that more specific criteria be made mandatory with a view to have a meaningful enforcement of the above requirement for a comprehensive report. These are as follows –

- a. during the pupillage, the pupil is required to maintain a regularly filled report of his/her pupillage and establishing the learning outcomes achieved;
- b. the report should be countersigned by the Pupil Master at least once a month.
- c. the Pupil Master should provide a comprehensive report on the performance of the pupil at the end of the pupillage;
- d. the CVLE is to provide a template or list of the expected headings/contents of the comprehensive report; and
- e. the CVLE must approve the completed and signed report of the pupil and the Pupil Master before prospective barrister is authorised to be called to the Bar.

**C. MAINTENANCE OF THE ROLL OF BARRISTERS**

**Current Situation:**

10. The Roll is currently held and being updated by the Honourable Master and Registrar. It is submitted that the Roll does not effectively reflect the names of the law practitioners who are in active practice as it still contains the names of many law practitioners who are either no more or who are not practising.

11. Furthermore, a number of organisations /institutions employ law “graduates”, who are NOT Law Practitioners, to head their legal department and who gives legal advice and accounting/management firms/companies employ law practitioners, who tender legal advice to the clients of such companies/firms.

**Proposal:**

12. In order to ensure that legal advice is tendered by qualified law practitioners and to reflect the status of each and every practitioner, the following proposal is made in relation to the Roll. Latter:

- a. is to be kept by the Honourable Master & Registrar and be updated after consultation with the Bar Council at least once every semester; and
- b. needs be further sub-divided into a number of set categories so as to reflect the real situation, namely:
  - i. Practising barristers;
  - ii. Non practising barristers;
  - iii. Law Officers Solicitor General’s Office respectively ;
  - iv. Barristers who are employed in law firms;
  - v. Barristers who are employed, other than by law firms;
  - vi. Law firms (I think that the law firm should not be on the roll but rather a list maintained and made available to the public by a specific body); and

vii. Foreign lawyers who have been authorised to practise in Mauritius by the Financial Services Commission.

13. The Mauritius Bar Association will make appropriate rules regarding the membership fees to be paid by each of the above category, where ever applicable.

### **The Mauritius Bar Association Act 1957**

#### **Current Situation:**

14. The Council is currently made up of 1 chairperson and 6 members. The representative of the Office of the Director of Public Prosecutions and the Solicitor General's Office are co-opted members. Their mandate is for one year (starting as from end January).

15. This one year mandate is arguably perceived as being an unduly short period to elaborate and implement decisions and projects in an effective manner. Moreover, there is no specific provision as regards the enforcement of the payment of membership fees by barristers although barristers are mandatorily required to be members of the Mauritius Bar Association. In addition, the Council has limited disciplinary powers as regards its members.

#### **Proposals:**

It is proposed that -

- a. the mandate of the Council may be extended to 2 years instead of one year;
- b. the AGM of the MBA continues to be held annually but the election of the members of the Council is to be held every 2 years;
- c. the Chairperson must have at least 15 years of standing at the Bar and be from the independent practice;
- d. the Chairperson must be independent and not be involved in any situation which may reasonably give rise to a conflict of interest;
- e. the composition of the Council is to be made up of 9 members as follows:
  - i. One Chairperson;
  - ii. 5 elected members from Independent practice;
  - iii. 1 elected member from the category of employed barristers; (law firm or otherwise);
  - iv. 2 elected/appointed representative from law officers at the Attorney General's Office and the Office of the DPP;
- f. a specific legal provision is to be made for protection from civil liability for any of the council members who act in good faith in the performance of their duties under the Act;
- g. in line with an existing worldwide practice, it is proposed that it becomes mandatory for Barristers to hold a Practising Certificate. This certificate will be valid for one year

and renewable for successive periods of one year. This new system will operate as follows:

- i. the prospective barrister will be required to pay his membership fee with the MBA prior to the issue of the membership certificate;
- ii. the certificate of membership is to be made a prerequisite annexure to the affidavit of the prospective barrister for the completion of the set procedure to be called before the Mauritian Bar;
- iii. after being called to the Bar, the Barrister shall receive a Practising certificate that is valid for one year;
- iv. failure to renew a practising certificate and to pay membership dues will entitle the Bar Council to request the Honourable Master & Registrar to remove the name of the barrister from the Roll such that the barrister will not be able to practise unless his name is reinstated;
- v. the Practising Certificate will not be required by law officers posted at the DPP & Attorney General's Office.
- vi. the Practising Certificate will only be issued if the member has paid the annual MBA fee, the IJLS fee and successfully completed the CPD requirements for the previous year;
- vii. the year end of the IJLS and the MBA should be aligned starting 1<sup>st</sup> April 20x0 ending 31<sup>st</sup> March 20x1;
- viii. an express discretion is to be granted to the Council to exempt a member from payment of any membership fee in very specific circumstances.

Independent Body for Complaints & Ethics and Young Bar Committee, and other Sub-Committees

- h. the Independent Body for Complaints & Ethics and Young Bar Committee are to be specifically provided for in the legislation. The composition of the Independent Body for Complaints & Ethics shall be made up as follows:
  - i. 1 Chairperson reckoning at least 25 years at the Bar;
  - ii. 3 barristers from Independent Practice;
  - iii. 1 barrister from the category of employed barristers and/or;
  - iv. 1 barrister from the Office of the DPP; and/or
  - v. 1 barrister from the Attorney General's Office.

As far as practicable, the Council and the committees are to be gender balanced.

- i. the Bar Council will make recommendation from the approval of the members of the Independent Body for Complaints & Ethics;
- j. the members of the Independent Body for Complaints & Ethics must not in any way and be involved in any situation, which may give rise to a conflict of interest;
- k. the members of the Independent Body for Complaints & Ethics are to hold office for 2 years with possibility of renewal and/or revocation in specific circumstances such as absence at a consecutive number of meetings;
- l. the Bar Council or an independent body shall appoint the members of the sub-committee;

- m. the Bar Council is to ratify all decisions of the Independent Body for Complaints & Ethics unless there is any gross procedural impropriety in which case the Council may depart from the decision of the Independent Body for Complaints & Ethics;
- n. the Bar Council is to be empowered to make all disciplinary action that the circumstance so warrant including issuing a written/oral warning, a reprimand or a suspension for a maximum of 1 year. The power to disbar any member remains that of the Supreme Court comprising of 1 judge and sitting as a court of equity. The application can be made by the Bar Council, or the Attorney General; and
- o. the power to set up any other sub-committee deemed necessary to achieve the objectives and perform the functions set by law is to be provided for specifically in the Act. NEW