THE MAURITIUS LAW SOCIETY

Date: 15 April 2019

The Secretary, Mr Shehu Balaram,

The High Level Committee of Experts,

9th floor, Astor Court Building,

Lislet Geoffroy Street,

Port Louis.

Sir,

The Mauritius Law Society ("TMLS") is pleased to submit its suggestions and/or representations on the following subjects :-

(i) The running of vocational courses and the conduct of examinations

The University of Mauritius ("UOM") has started teaching law as from year 1986, that is, barely 30 years ago. Other universities and tertiary education institutions have opened thereafter. To compensate for the lack of law professors in Mauritius, the said universities and institutions are employing, on a part time basis, law practitioners (that is practising attorneys, barristers and notaries) to teach law.

The main complaints of the law students against the lecturers of UOM dispensing the vocational courses are that –

(a) Some law practitioners are too busy with their own practice and come unprepared to class or are often absent. The syllabus of some modules was not even completed because of repeated absence of some part time lecturers;

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(b) Some law practitioners – albeit they may be senior in the profession and well respected practitioners – are not good teachers. Teaching is an art and not everyone can teach.

On the other hand, law practitioners who have acted as examiners and marked the papers of prospective law practitioners have noted that students may know the law but are not capable of explaining what is the right procedure to follow when practical problems are put to them. Students, especially prospective attorneys, who have done mini pupillage with attorneys before starting to follow the vocational courses are more successful in their exams. This shows that students need more practice.

The recommendations of TMLS are therefore that:

(a) Courses should be run and examinations conducted by fully fledged law professors, both Mauritians and foreigners. Professors from Reunion Island dispensing courses at the Institute for Professional and Legal Studies are drawing a big crowd and the universities and other institutions should consider employing them on a part time basis or during weekends to teach the French laws;

(b) The pupillage in the office of attorneys should be effected before and not after the students sit for the Vocational Examinations. After prospective attorneys have passed their law degree, they should effect a pupillage of two years in the office of an attorney whilst concurrently following the vocational courses on a part time basis.

(c) Being given that the law system of Mauritius is dual, students should have knowledge of both the English and French laws. It should be compulsory on law students who have studied in a commonwealth country to follow a course on French law, including mainly the Civil Code, the Code de Procedure Civile and the Code de Commerce;

(d) Similarly, It should be compulsory on law students who have studied in France or in a francophone country to follow a course on some basic principles of the English law such as evidence etc

(e) Lastly, for a country of 1.3 million which has already 900 barristers and 200 attorneys, the sector is already saturated. It is high time for the universities and institutions to consider whether they should not limit the number of law students or at least offer law courses every two years instead of every year.

(ii) The recognition of foreign qualifications

The Law Practitioners Act has been amended to recognize law degrees from the University of Mauritius, a university in the United Kingdom, or

(c) *Such university or other tertiary education institution in Mauritius, the United States, another Commonwealth country or a civil law State, as may be approved by the Council* (for Vocational Legal Education)

TMLS believes that the definition of "*or a civil law State*" is too vague and opens the door to applications for recognition from universities and tertiary institutions around the world. The Council has no means to enquire about the standard of universities and tertiary institutions outside Mauritius especially in third world countries. In order to maintain the standard of law practitioners, law degrees of only limited countries known for their high standard should be considered such as the United Kingdom, France, United States, Australia and New Zealand. Holders of law degrees from other countries – be it commonwealth or not – should be expected to sit for an exam where their knowledge in basic French and English laws are tested, before they are allowed to follow the vocational courses dispensed by the UOM.

(iii) The institution and conduct of disciplinary proceedings against law practitioners

At the time the Law Practitioners Act was adopted in year 1984, there were about a total of 100 members in all the three branches of law practitioners. Now, there are more than 1100 members and the number is increasing by the dozens every year.

The three Councils (The Mauritius Law Society, the Mauritius Bar Association and the *Chambre des Notaires*) are flooded with complaints from members of the public. The Councils are doing their best to process these complaints but for the following (but not exhaustive reasons) they are unable to do justice to the complaints:

- The Council members are law practitioners running their practice or employed in law firms which means that the time they can devote to the affairs of the Council is limited. Council members are not remunerated and therefore they can only devote a limited amount of their time to the affairs of the Councils;

- The Council members are not covered by immunity and therefore they are exposing themselves to actions in damages from the members who have been reprimanded/sanctioned. This is a deterrent and most Council members prefer not to take any disciplinary action even when they believe that the member against whom a complaint has been made is guilty;

- Some Council members who have dared reprimand law practitioners have been accused of using their position in the Council to settle their personal score against their colleagues or of *communalisme*, thus discouraging the Council members from taking sanctions;

- The Councils have no power to summon witnesses and therefore their power of investigation is very limited;

- The Councils cannot act *proprio motu* but only on receipt of a complaint;

- Although some law practitioners have been reported by the Councils to the Supreme Court, for it to take disciplinary action against them under Section 18 of the Courts Act, yet most of the reports have not been acted upon and this has, on the one hand, undermined the authority of the Councils and on the other hand given a false sense of invulnerability to the practitioners who have been reported;

- The procedure laid down by section 14 of the Law Practitioners Act to the effect that the disciplinary proceedings have to take place before at least three judges is too cumbersome. With the number of court cases pending before the Supreme Court, no doubt, His Lordship, the Chief Justice, does not want to appoint three judges to hear disciplinary actions. Everyone has in mind the protracted disciplinary case against Dev Hurnam;

- Section 18 of The Mauritius Law Society Act, gives to the Council of TMLS power to investigate and take sanction only in cases where there has been a complaint "*regarding an alleged breach of the Code by an attorney*". Cases of professional negligence do not fall within the scope of cases where the Council can investigate although most of the complaints concern the way in which attorneys have conducted the cases of their clients;

- It is apposite to note that TMLS exists since year 2006 but it is only in year 2019 that a first reprimand was issued against an attorney. And the decision of the Council of TMLS was quashed on appeal, heard before a Special Meeting of TMLS;

- This is a small country and everybody knows everybody. Members of the public often have the perception that Councils members are not independent and "protect" their peers.

At the outset, TMLS would like to add that most of its members would prefer that the profession of attorneys continue to be self regulated. However, in view of the problems enumerated above, TMLS does not believe that this is sustainable.

The recommendations of TMLS are therefore that:

(i) An independent commission and a Law Practitioners Tribunal should be set up to deal with complaints against law practitioners;

(ii) Both the commission and the Tribunal should be chaired by a retired judge and should have as members a Senior Attorney, a Senior Counsel and a Notary of at least 25 years of practice;

(iii) The members of the commission and of the Tribunal should not be the same persons;

(iv) The commission and the Tribunal should be granted powers to summon law practitioners and witnesses;

(v) The scope of both the commission and the Tribunal should be to deal with matters regarding conduct of law practitioners in general, breach of the code of ethics and professional negligence;

(vi) The commission should be able to start an investigation proprio motu;

(vii) The complaints should first be directed to the commission. After conducting a preliminary investigation into the complaints and asking the version of the law practitioners, the commission should call all the parties and investigate into the complaints;

(viii) Where it believes that a complaint is *prima facie* genuine, the commission should refer the matter to the Tribunal;

(ix) The Tribunal should have the same powers as a court of justice and should be able to award damages to a complainant and take sanctions - ranging from simple reprimand, severe reprimand, suspension and erasing the name of the law practitioners from the Roll – against a law practitioners;

(x) Any aggrieved party by a decision of the Tribunal may appeal to the Supreme Court by way of judicial review.

(iv) Power to call a law practitioner before a Medical Board

Lastly, TMLS recommends that provisions should be made – either by amending the Law Practitioners Act or by including the following recommendation in the new law which may replace the Law Practitioners Act 1984 – to allow the Councils who believe that their members are unfit to practice as a law practitioner to request the Attorney General to set up a Medical Board composed of at least three doctors, one of whom should be government medical practitioner, before which the law practitioner should appear.

The Medical Board should have powers to summon law practitioners and witnesses.

The law practitioner who has been called to appear before the Medical Board can be accompanied by his own medical practitioner or may call witnesses.

After hearing the witnesses called by the Council and the law practitioner, the Medical Board should report to the Attorney General whether the law practitioner is fit to practice as a law practitioner or not.

Any aggrieved party by a decision of the Medical Board may appeal to the Supreme Court by way of judicial review.

In the event that the Medical Board has recommended that the law practitioner is not fit to practice as a law practitioner - after the delay for appeal by judicial review has expired or in case the decision of the Medical Board has been confirmed by the Supreme Court - the Attorney General should request (i) His Honour, the Master and Registrar to erase the name of the law practitioner from the Roll and (ii) the Council to remove the name of the law practitioner from its register.

(v) Attorneys should be granted right of audience before higher court and to be appointed to the posts of Attorney General, Magistrates, Judges, President of Tribunals etc

1. The profession for attorneys, which is based on the one of Solicitor in the U.K and Commonwealth, should consider the evolution of Solicitor in the U.K whereby the area of "Solicitors Advocate" have been implemented since 2000 . Therefore, it is proposed that Section 21 of the Law Practitioners Act be amended to allow attorneys to have higher right of audience on the basis of qualifications and/or experience, especially in Civil and Commercial matters.

2. Being given that attorneys and barristers now follow the same courses and hold the same law degrees, they should be entitled to act as Attorney General, and to qualify as Magistrates, Judges, President of Tribunals etc.

Yours faithfully,

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