



LA CHAMBRE DES NOTAIRES DE L'ÎLE MAURICE

s/d Me Rajendra DASSYNE (Président)
P.C.L. Building, 43, rue Sir William Newton, Port-Louis,
République de Maurice

Mr. Shehu S.M. BALARAM,
Secretary,
Committee to Review the Law Practitioners Act,
9th Floor, Astor Court Building,
Lislet Geoffroy Street,
PORT LOUIS.

15th April 2019

Dear Sir

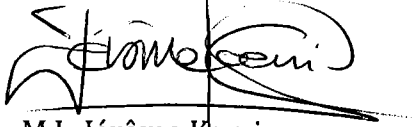
Re: Representation

The Chamber of Notaries is very much favourable to and concerned by ensuring that high level prospective candidates embrace the notarial profession. At the request of the President of the Council for Vocational and Legal Education (CVLE) last year, the Chamber has constituted a panel of notaries to review the vocational syllabus for prospective notaries and make recommendations. The said panel had numerous meetings and the outcome thereof (a copy of which is attached for your consideration) has been submitted to the President of the CVLE. The Chamber of Notaries is confident that its recommendation will largely contribute to the advancement of the notarial profession and consequently enhance legal transactions security for better protection of the public at large.

The Chamber of Notaries is also very much concerned about discipline, the more so that during the last 2 years it has received not less than 47 complaints from members of the public. Three of those complaints (*the most serious ones*) have been referred to the authorities for action but no sanction has been pronounced up to now. The Chief Justice in response to the submission to him by the Chamber of Notaries of one of the above cases under Section 36(3) of the Notaries Act has expressed the view that in the case of serious breaches by law practitioners warranting a disciplinary action before the Supreme Court, it would not be proper for the Supreme Court itself to initiate action and then be judge and party. He further indicated that disciplinary proceedings should then be initiated by the Attorney-General under Section 13 of the Law Practitioners Act.

You will find attached for your reference and records the recommendations made by the Chamber to the CVLE and also the recommendations of the Chamber as regards the existing provisions of the law pertaining to discipline.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Jérôme Koenig', written in a cursive style. The signature is positioned above a horizontal line.

M.L. Jérôme Koenig

Notary and secretary to the Chamber of Notaries of Mauritius

CONDENSÉ DES RÉUNIONS
SUR LA RÉFORME DU SYLLABUS DU CVLE DES ASPIRANTS NOTAIRES
ET DE LA STRUCTURE DE LA FORMATION DISPENSÉE

CONSTATS EFFECTUÉS / PROPOSITIONS

CRITÈRES D'ENTRÉE

Constat

Actuellement les critères d'éligibilité pour prendre part aux examens vocationnels du **Council for Vocational Legal Education** sont tels qu'ils permettent à des candidats n'ayant aucune formation quelconque en droit civil, ie. ceux détenteurs d'un LLB anglais ou de divers autres pays du Commonwealth, de prendre part aux examens en tant qu'aspirants notaires.

Proposition

- les critères d'entrée resteront les mêmes, c'est à dire, tels que prévus par le « Law Practitioners Act 2011 ».
- **MAIS**: rajout d'un « critère incitatif » à l'attention de cette catégorie d'aspirants: forte recommandation de l'obtention préalable du **Diplôme Universitaire de Droit Mauricien** délivré par IJLS qui fait suite à une formation poussée en droit civil sur 2 ans.
- Cette « recommandation » ayant pour but d'agir comme un avertissement auprès des aspirants notaire n'ayant aucune base universitaire de droit civil de la difficulté de réussir les examens sans base de droit civil et ainsi de les inciter à se former avant d'entreprendre la formation d'aspirant notaire.

DURÉE FORMATION / VOLUME HORAIRE

Constat

Volume horaire actuel de la formation insuffisant.

Proposition

- Formation à dispenser sur deux années consécutives: la première année totalisant 384 heures de cours (et 2 jours de stage par semaine sur 8 mois) et la seconde année, totalisant 192 heures de cours (et 4 jours de stage par semaine sur 8 mois).

- Création d'une école de droit sous égide IJLS / CVLE pour la formation des aspirants notaires en faisant appel à des universitaires/praticiens réunionnais / français.
- Suggestion d'autres institutions agréées par la CVLE pour dispenser les cours.

ASPECT PRATIQUE / ASPECT PROFESSIONNALISANT DE LA FORMATION

Constat

Aspect pratique / professionnalisant de la formation actuelle est insuffisant.

Les aspirants notaires n'ont au cours de leur cursus aucune obligation de faire un stage chez un notaire.

Proposition

- Les deux années de formation théorique seront à effectuer en alternance sur la même période de deux années : l'inscription aux cours sera subordonnée à avoir trouvé un stage (qui sera rémunéré) auprès d'un notaire ayant plus de 15 années d'expérience, validé au préalable par la Chambre des Notaires.
- 1^{ère} année : 2 journées de 7 heures de stage par semaine sur 8 mois et 3 journées de 4 heures dédiées à l'enseignement théorique.
- 2^{ème} année : 4 journées de 7 heures de stage par semaine sur 8 mois et une journée de 6 heures dédiée à l'enseignement théorique.

LES SUJETS DEVANT ÊTRE TRAITÉS LORS DE NOTRE PROCHAINE RÉUNION :
RÉAMÉNAGEMENT DES COURS / EXAMENS SOUS FORME DE MODULES :

SUJETS À ÉLIMINER

Tout ce qui concerne « civil procedure » hormis Deposit of PoA Act, Apostille, exéquatur, divorce qui seront à intégrer dans d'autres papiers, ex, droit de la famille.

RÉORGANISATION DES MODULES

1- DROIT DES PERSONNES ET DROIT DE LA FAMILLE (120 heures)

- Régimes matrimoniaux
- Divorce + exéquatur + litispendance
- Successions
- Partages
- Libéralités
- Indivision
- Adoption
- Droit international privé (*relatif aux régimes matrimoniaux, succession, divorce, etc*)

2- ACTES COURANTS (100 heures) – pour la première année

- Variétés et typologies d'avant contrat
- Vente d'immeuble
- Prêts / sûretés réelles et personnelles
- Incapacités / personnes protégées
- Mandat + Apostille + DPA Act

3- DROIT IMMOBILIER (100 heures)

- Vente d'immeubles à construire
- Démembrement de la propriété
- Non-citizen property restriction act
- Droit de la construction et de l'urbanisme - Local Government Act, The Building Control Act, Environment Protection Act etc..
- Lotissement- Morcellement Act

- Baux- droit civil et Landlord and Tenant Act
- Copropriété

4- DROIT DES AFFAIRES (64 heures)

- Sociétés (civile, commerciale)
- Compagnies (incluant les « limited liability partnerships »)
- Nouvelle suggestion : Trusts, Fondations, Associations
- Fonds de commerce

5- RESPONSABILITÉ NOTARIALE, DÉONTOLOGIE ET GESTION DE L'OFFICE (80 heures)

- Law Practitioners Act / Notaries Act/ code de déontologie/ responsabilité notariale
- Comptabilité
- Fiscalité de l'étude notariale : income tax / TVA
- Management de l'étude- gestion des employés etc...
- Logiciel rédaction d'actes

6- FISCALITE DES ACTES ET PUBLICITÉ FONCIÈRE (60 heures)

**7- RÉDACTION DES ACTES (52 heures)
(Pour la seconde année)**

Nombre total d'heures de cours : 576 heures

EXAMENS

Chaque module sera sanctionné par un examen écrit intervenant en fin de la première année et de la seconde année. Il y aura au total, sept papiers écrits et un examen oral.

Sujets d'examens pour la 1^{ère} année :

1. Droit des personnes et droit de la famille
2. Droit immobilier
3. Droit des affaires
4. Actes courants

Sujets d'examens pour la 2^e année :

1. Responsabilité notariale, déontologie et gestion de l'office
2. Rédaction des actes
3. Fiscalité des actes et publicité foncière
4. Un examen oral

PUPILLAGE

La durée du « pupillage » sera réduite à une année calendaire au lieu de deux, après la validation des examens en raison du stage pendant la formation sur 2 ans.

1st.

In virtue of Section 13 the Law Practitioners Act (LPA) through the Attorney General who, where he thinks fit, simultaneously notifies the Chief Justice and the law practitioner.

Section 13 Law Practitioners Act

Disciplinary proceedings

(1) The Attorney-General may, either proprio motu or on receipt of a complaint under subsection (2), enquire into any act done by a law practitioner.

(2) Any person who is aggrieved by an act done by a law practitioner in the exercise of his profession may report the matter to the Attorney-General.

3) Where the Attorney-General is of opinion that an act done by a law practitioner, whether or not an enquiry under subsection (1) has been made, is of such a nature as to call for the institution of disciplinary proceedings, he shall submit a detailed report on the matter to the Chief Justice and a copy of the report to the person against whom the proceedings are to be taken.

(4) The Chief Justice shall, on receipt of a report under subsection (3), appoint a day for the hearing of the matter.

(5) The Registrar shall cause notice of the day appointed for the hearing, together with a copy of the report, to be communicated to the law practitioner.

(6) Nothing in this section shall be construed as limiting the inherent powers of the Supreme Court to deal with matters of professional discipline of law practitioners.

2nd.

Or directly, in virtue of Section 36 of the Notaries Act, « to the Supreme Court for such disciplinary action as it considers appropriate ».

Section 36 Notaries Act

Breach of rules of professional conduct

...

(3) Where it appears to the Chamber, after such preliminary investigation as it thinks fit, that there is a prima facie case of serious professional misconduct by a notary, it shall refer the matter to the Supreme Court for such disciplinary action as it considers appropriate.

3rd.

In virtue of the inherent disciplinary powers of the Supreme Court.

Section 18 Courts Act

Disciplinary Powers

(1) Notwithstanding any other enactment, the Supreme Court shall have power and jurisdiction to hear and determine any complaint of a disciplinary nature in respect of the professional conduct of a law practitioner or a ministerial officer including a land surveyor.

(2) For the purposes of subsection (1), 'complaint' includes a motion by a law officer, a written report by, or on behalf of the Chief Justice, of the Master and Registrar, of the Bar Council or of any other body or authority exercising powers of supervision over the conduct of a person referred to in subsection (1).

(3) The Court may require the Ministère Public to intervene in any such matter in such manner as it thinks fit.

(4) A hearing under this section shall be governed by section 14 of the Law Practitioners Act 1984.

Section 14. Law Practitioners Act

Procedure at disciplinary proceedings

(1) Any proceedings under section 13 shall take place -

(a) before at least 3 judges;

(b) unless the Court otherwise directs, in public.

(2) Any witness for proceedings under subsection (1) shall be examined on oath.

(3) The court may, after considering the evidence laid before it -

(a) suspend the law practitioner for such period as it thinks fit;

(b) order that the name of the law practitioner be erased from the Roll; or

(c) make such other order as it thinks fit.

REMARKS

It is common practice that any disciplinary actions, power to sue and punish any professional breaches by the notaries MUST be SHARED between the Chamber of Notaries and the Courts.

The Chamber of Notaries will apply the minor penalties like reprimand, severe reprimand or temporary suspension.

As regards dismissal, the most severe sanction for notaries, the « death penalty », it should apply where the deeds and doings of the notary undermine the very essence of the notary's role in his mission of authenticator of deeds and guarantor of the legal security of transactions, and should, in order to protect the interests of the public and those of the notarial profession, be referred to the Court.

If the Court does not take action, it exposes itself to a proliferation of litigation which it will have to deal with. The notarial profession also has the mission to avoid litigation between parties. That cannot be otherwise than in the interest of Society.

Because we are notaries and not judges, this dichotomy is necessary in our opinion. We take charge of calling to order the members of our profession, but where they override the limits and are irrecoverable they should be excluded from our profession.

We have a real need for assistance from the judiciary which will be in the latter own interest. Indeed a prompt reaction from the judiciary would preclude litigation prone professionals from further causing harm and entail litigation.

Our recommendation (underlined):

Section 13 Law Practitioners Act

Disciplinary proceedings

The Attorney-General shall, either proprio motu or on receipt of a complaint received by the Chamber of Notaries regarding an act done by a notary in the exercise of his profession, where that act is of nature to call for disciplinary proceedings other than reprimand, severe reprimand or suspension provisoire, he shall forthwith submit a detailed report on the matter to the Chief Justice and a copy of the report to the person against whom the proceedings are to be taken.

(4) The Chief Justice shall, on receipt of a report under subsection (3), appoint a day for the hearing of the matter.

(5) The Registrar shall cause notice of the day appointed for the hearing, together with a copy of the report, to be communicated to the law practitioner.

(6) Nothing in this section shall be construed as limiting the inherent powers of the Supreme Court to deal with matters of professional discipline of law practitioners.

Section 36 of the Notaries Act, « to the Supreme Court for such disciplinary action as it considers appropriate ».

Section 36 Notaries Act

Breach of rules of professional conduct

...

(3) Where it appears to the Chamber, after such preliminary investigation as it thinks fit, that there is a prima facie case of serious professional misconduct by a notary it shall refer the matter to the Supreme Court for such disciplinary action as it considers appropriate.

On receipt of such a report, the Supreme Court shall appoint a day for the hearing of the matter.

Section 18 Courts Act
Disciplinary Powers

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On receipt of such a report, the Supreme Court shall appoint a day for the hearing of the matter

(2) For the purposes of subsection (1), 'complaint' includes a motion by a law officer, a written report by, or on behalf of the Chief Justice, of the Master and Registrar, of the Bar Council or of any other body or authority exercising powers of supervision over the conduct of a person referred to in subsection (1).

(3) The Court may require the Ministère Public to intervene in any such matter in such manner as it thinks fit.

(4) A hearing under this section shall be governed by section 14 of the Law Practitioners Act 1984;

Our efficiency in sanitizing our profession will depend on our capacity to cause the rules encompassed in the Notaries Act, our Code of Ethics and our practice to be applied. We do have laws but their efficient and prompt application is a problem.

An immediate reaction from the Attorney General or the Supreme Court would allow our profession to improve.