

# **Report of the Committee**

## **on the review of**

- (a) the legal framework pertaining to:**
  - (i) the running of courses and conduct of examinations;**
  - (ii) the recognition of foreign qualifications; and**
  - (iii) other conditions**

**for admission to practise law in Mauritius;**

- (b) the legal framework pertaining to:**
  - (i) the institution and conduct of disciplinary proceedings against law practitioners;**
  - (ii) the efficient and effective functioning of the Mauritius Bar Association, the Mauritius Law Society and the Chamber of Notaries; and**
- (c) other related enactments in pari materia and other matters incidental or related thereto.**

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## **TERMS OF REFERENCE**

1. This Committee consists of:
  - The Right Honourable the Lord Phillips of Worth Matravers, K.G. ,  
Chair,
  - Honourable K.D.Gunesh-Balaghee, Puisne Judge of the Supreme  
Court,
  - Mr R.Chetty, S.C.,
  - Mr A.Robert, S.A.,
  - Mr J.M.Caboche-Adam, Notary Public.

2. We were appointed by the Government in January 2019 to Review the Law Practitioners Act and other relevant enactments concerning the legal profession in Mauritius, namely the Mauritius Bar Association Act, the Mauritius Law Society Act, the Notaries Act and any enactment related thereto with the following terms of reference –

*“To invite representations from the legal professions involved and members of the public with the object of assisting the professions to overcome the problems with which they are currently confronted, namely access to the professions, including professional education, training and examinations, and ensuring that there is in place effective procedures for access to the profession and addressing circumstances in areas of concern.”*

3. The object that we are required to perform is to propose amendments and make recommendations with regard to
  - (a) the legal framework pertaining to-
    - (i) the running of courses and the conduct of examinations;
    - (ii) the recognition of foreign qualifications, and
    - (iii) other conditions,for admission to practise law in Mauritius
  - (b) the legal framework pertaining to
    - (i) the institution and conduct of disciplinary proceedings against law practitioners;
    - (ii) the efficient and effective functioning of the Mauritius Bar Association, the Mauritius Law Society and the Chamber of Notaries; and
  - (c) other related enactments in pari materia and other matters incidental or related thereto.

## ENTRY TO THE PROFESSIONS

### INTRODUCTION

#### *Mauritian law and the legal profession*

4. Mauritian law has its roots in England and in France. Its substantive law is essentially derived from the French civil and penal codes, whereas its laws of procedure and evidence are derived from England, as are the specialist areas of shipping, finance and banking law. Company law and insolvency law are based on the law of New Zealand.
5. In the Lallah Report of 1983 on Legal Studies the position was described as follows:

*“11...in spite of its origins, Mauritian law ceased over the years to be partly English and partly French but has developed into a significant body of law with a philosophy, doctrine and jurisprudence of its own, though not as yet concretised into the systematic form of text books or treatises which legal academics elsewhere have produced with regard to their own law and **which would, no doubt, have been produced in Mauritius if there had been, as is the case elsewhere, institutions for the teaching of law in this country.**”*

6. There are three branches of the legal profession in Mauritius—barristers, whose role of appearing as advocates in Court is that of the English barrister, or the French ‘avocat’, the attorney, whose role broadly reflects that of the English solicitor, save for those areas of legal practice such as transactions involving real property and the drawing up of legal documents, which are the province of the third branch, the notary. Today there are approximately 900 barristers, 200 attorneys and 60 notaries registered in Mauritius.

#### *The origin of professional legal education in Mauritius*

7. Professional legal education in Mauritius is governed by the Law Practitioners Act 1984, as amended (“the LPA”). That Act was introduced to give effect to the recommendations of the 1983 Lallah Report. Prior to that Report access to the Mauritian Bar was granted to those who had qualified as barristers, as members of one of the Inns of Court in the United Kingdom. Attorneys and Notaries received no formal legal or vocational training. They were expected to learn the law relevant to their callings while performing lengthy apprenticeships, taking qualifying

examinations in the course of and at the end of these<sup>1</sup>. The notaries' examination was oral, lasting about an hour.

8. The Lallah Committee concluded that training for the English Bar, coupled with academic training in law at a British university, which had become a pre-requisite for this, was not a satisfactory route to qualification as a Mauritian Barrister. He would learn much that was useless for practice in Mauritius, such as the law of contract, tort, land law, equity and trusts and receive no training in those parts of the French Codes that apply in Mauritius nor in those parts of the law, whether civil or criminal, that were specifically Mauritian. Furthermore, this route to qualification had become prohibitively expensive<sup>2</sup>.
9. So far as attorneys were concerned, it was plain that they were not acquiring the legal knowledge that they needed while serving their articles. The Report commented:

*"...the Committee is of the view that the difficulty for students in passing their examinations is attributable to this lack of systematic training rather than the constitution or functioning of the Board of Examiners"*<sup>3</sup>

10. The Committee recommended that Mauritius should establish a school of law at which each of the three branches of the profession would take an academic degree in Mauritian law, after which they would acquire the relevant skills required for practice and pass a vocational examination<sup>4</sup>. The academic part of the training should be provided by the University of Mauritius and *"should be geared to the law that applies in Mauritius"*<sup>5</sup>. The Committee commented that it had no reason to believe that it would be difficult for the University to institute an honours degree in law as it had done in other disciplines<sup>6</sup>.
11. The Committee proposed that candidates for all three branches of the profession should be required to take a three-year LLB course at the University of Mauritius, reduced in length where exemptions were appropriate for those who had obtained law degrees in England or France<sup>7</sup>. Thereafter barristers would do a year's vocational course followed by an examination and a further

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<sup>1</sup> See Annex 1, setting out paras 16 and 17 of the Lallah Report

<sup>2</sup> para 18(2) and (4)

<sup>3</sup> para 19

<sup>4</sup> para 28

<sup>5</sup> para 38

<sup>6</sup> para 39(4).

<sup>7</sup> para 43(4)

year as a pupil before being called to the Mauritian Bar. Attorneys and notaries should follow a two-year vocational course, while articulated. Should these arrangements not prove practical, a 'Council of Legal Education', chaired by a Judge of the Supreme Court, should "*devise other arrangements for practical training*"<sup>8</sup>. The University of Mauritius should be responsible for the conduct of the vocational courses in consultation with the Council of Legal Education.

12. The Law Practitioners Act 1984, passed to give effect to the Lallah Report is attached as Annex 2. That Act, by section 11, created a Council of Legal Education. Section 12 provided that the Council should:

*"(a) conduct or cause to be conducted vocational and training courses and examinations"*

13. The working of the Act did not prove satisfactory and was significantly amended by the Law Practitioners (Amendment) Act 2011. The 1984 Act, as amended, is attached as Annex 3. Mr Yatin Varma, who was the Attorney-General at the time, explained to us the reasons for the amendments:

(i) The vocational courses were considered too academic, being a repetition of the courses offered to obtain an academic law degree.

(ii) Students lacked adequate facilities. There were no proper classes, no full-time lecturers, no lecture theatres, no specialised library, no mock court rooms etc.

(iii) Classes took place before court in the morning or after court in the afternoon. Students had to wait around during the day and it often happened that the afternoon classes were cancelled.

(iv) There was a very high rate of failure to pass the examinations.

14. We set out, in detail, below the provisions of the amended Act<sup>9</sup>. For present purposes the most significant changes were: (i) the running of the Vocational Course was delegated to the University of Mauritius; (ii) the subjects to be covered by the Vocational Course were set out in a Schedule; (iii) a Vocational Examinations Board was set up to organize and conduct the vocational

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<sup>8</sup> paras 43(7) and (8)

<sup>9</sup> Paragraphs 27 to 34



examinations on behalf of the Council, which was renamed the Council for Vocational Legal Education.

### ***The reasons for our review***

15. The reforms made in the 1984 Act, as amended, have still not proved satisfactory. The Act continues to recognise call to the Bar in the United Kingdom, other specified common law countries and France as qualifying for admission as a barrister in Mauritius. It was anticipated that this route to qualification would cease to be widely used having regard to the alternative of qualifying in Mauritius. Unhappily the vast majority of those taking the vocational course in Mauritius have found it impossible to pass the examinations. Between 2014 and 2018 only one candidate succeeded in passing the vocational examination to become a notary, and that only on review. In 2018 only 9 out of 90 candidates to become attorneys initially passed the vocational examination, although a further 9 were passed on review. Only a handful of candidates for the bar succeeded in passing each year. In 2019 1 out of 20 candidates to become notaries, 20 out of 87 candidates to become attorneys and 5 out of 55 candidates to become barristers were successful.
16. The difficulty in passing the Vocational Course examinations has resulted in those who can afford it continuing to qualify by being called to the Bar in the United Kingdom. In 2016, 52 out of 57 candidates qualified in this way, in 2017, 61 out of 68, in 2018, 36 out of 44 and in 2019, 63 out of 70.
17. These statistics are even more lamentable than they would appear, because many of those who fail the vocational exams are re-taking the examinations. A considerable number persevere year after year until they have exhausted their rights to retake the examinations.
18. Our most urgent task is to identify the reasons for the failure rates in the vocational examinations. This is necessary in order to cater for the legitimate needs of those seeking to qualify. At the same time, we have to consider what education and training is necessary in order to satisfy the requirement in the public interest that those who practise in each of the three branches of the profession are competent.

### ***The requirements of legal and vocational training***

19. The statutory and regulatory provisions that govern the right to practise law in Mauritius fall to be considered from two viewpoints. The first is the public interest. The public interest requires that those who practise law in Mauritius are competent

to do so. Separate consideration has to be given in relation to each of the three branches of the legal profession. The second is the interest of those who wish to practise law in one of these three branches in Mauritius. The routes to professional qualification must be open to all who have the necessary inherent abilities without prohibitive cost and without discrimination.

20. What knowledge, skills and abilities should be required of a lawyer in each of the three branches of the profession before he (for economy we shall in all contexts use the masculine 'he' as shorthand for 'he or she') is declared competent to offer his services to the public?
21. First, he must be literate in both English and French. He must be able to express himself clearly in either language by use of the written word. This is, perhaps, no longer a requirement of everyday life. Electronic communication is carried out in its own shorthand that dispenses with rules of grammar. We have not yet reached the stage where this is acceptable in legal documents or communications. He must be able to use either language because Mauritius is a bilingual society and both English and French are the languages of enactments.
22. The barrister's principal role is that of oral advocacy before the Court. This requires oral fluency in both English and French. As only Mauritian citizens can qualify to practise law in Mauritius, most are likely to have this qualification. Some may, however, not be capable of carrying out examination of witnesses in both languages. While such a person should not be qualified to practise as a barrister, this should not be an impediment to an attorney or a notary provided that he is literate in both languages.
23. A barrister, an attorney and a notary must know the basic principles of substantive Mauritian law that are relevant to his particular functions. Some of these will be common to all three branches of the profession. Members of each will need to know the basic principles of the Mauritian Constitution, of public law, of contract of delict and of criminal law. So far as the more specialist areas of law are concerned, practitioners must know enough law to recognise the issues with which they may be confronted and the areas of inquiry or research that will be necessary to resolve those issues. It is neither necessary nor possible for a lawyer to memorise all the substantive law that may have to be applied when resolving an issue that may arise. The lawyer must know the basic legal principles and be able to recognise the legal problems or issues that are raised by the individual case, to be aware of where to look to obtain the information needed to resolve the problem or issue, and to enable him to understand and apply that information.

24. A barrister, an attorney and a notary must be familiar with the rules of evidence and procedure that may be relevant to his particular function. Again, it is not essential that he should have memorised all procedural rules. It suffices that he should be aware that they exist, where to find them and how to use them.
25. Members of all three branches must know the relevant ethical principles whose observance is required by his branch of the profession and appreciate the importance of complying with those principles.
26. Apart from knowledge, a successful practitioner in each of the branches of the profession will be required to demonstrate certain skills. Common to all three are likely to be conducting a conference, and writing an opinion. The Notary will require special technical drafting skills. The Barrister will require skill in advocacy. Proficiency in these skills will necessarily develop with practice. It is, however, desirable that the practitioner shall have developed, with the assistance of training, basic competency in the relevant skills before he embarks on practice.

### ***The current scheme of legal and vocational training***

27. The supreme authority charged with legal and vocational training in Mauritius is the Council for Vocational and Legal Education (“the Council”), established pursuant to section 11 of the LPA. The Chair of the Council, appointed by the Chief Justice after consultation, has up to now always been a Judge of the Supreme Court. The other members of the Council are the Registrar, the Solicitor-General or his representative, the Director of Public Prosecutions or his representative, a member of the law faculty of the University of Mauritius, one representative of each of the branches of the profession, having ten years standing, appointed by the Attorney-General and up to three additional co-opted members.
28. Section 4 of the LPA sets out the qualifications for admission to practise law in Mauritius. In the case of everyone there is a requirement to undergo pupillage. Subject to this, anyone who holds a law degree and who is qualified to practise as a barrister, or the equivalent, in England and Wales, Australia, New Zealand Canada or France can qualify to practise as a barrister in Mauritius without any further examination<sup>10</sup>. Such a person must, however, during pupillage follow a course of training (“the Induction Course”) conducted by the Institute for Judicial and Legal Studies (“the IJLS”) in such subjects as the Council considers necessary to

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<sup>10</sup> LPA section 4(1).

enable him to practise in Mauritius. Such a person is not, however, required to sit an examination<sup>11</sup>.

29. The IJLS is created by the Institute for Judicial and Legal Studies Act 2011. It is managed by a Board whose composition is very similar to that of the Council, save that instead of the Registrar there are three members of the judiciary appointed by the Chief Justice. The primary function of the IJLS is to conduct or supervise continuing training of judicial and legal officers but, in addition to conducting the Induction Course required by section 5A(6) of the LPA, it is also required to devise, organise and conduct Continual Professional Development Programs for law practitioners.
30. For everyone, other than barristers who have qualified outside Mauritius, section 4 of the LPA requires a candidate for any of the three branches of the profession to have (a) been awarded a law degree, (b) completed the Vocational Course in accordance with section 5 and (c) sat and passed an examination conducted by the Vocational Examinations Board. This Board is, pursuant to section 11B of the LPA, set up annually by the Council to organise and conduct the vocational examinations.
31. Section 11B provides that the Board shall consist of 2 representatives of the Council, a member of the Faculty of Law of the University of Mauritius and not more than 3 representatives of accredited persons other than the University of Mauritius. To date there are no such persons<sup>12</sup>. What happens in practice is that the Chair of the Council persuades Resource Persons to set and mark the examinations, each such Resource Person being assigned a specified part of the syllabus.
32. “Law degree” is defined in section 2 of the LPA as including a law degree awarded by the University of Mauritius, a university in the United Kingdom or such other university as may be approved by the Council.
33. Section 5 provides that the Vocational Course is to be approved by the Council, conducted by an accredited person and to be in the subjects specified in the Second Schedule. “Accredited person” is defined in section 2 of the LPA as the University of Mauritius or a person authorised by the Council to run a vocational course pursuant to section 12A. No such authorisation has, as yet, been given.
34. Schedule 2 specifies that the following subjects are to be covered by the Vocational Course:

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<sup>11</sup> LPA section 5A(6).

<sup>12</sup> See para 33 above

Part I for all three branches: conferencing, drafting of legal documents, ethics and opinion writing;

Part II for Prospective Barristers and Attorneys: Administrative and constitutional law, advocacy, arbitration and mediation, civil procedure, commercial and business law, criminal procedure, evidence, family law.

Part III for Prospective Notaries: civil procedure, commercial and business law, practical aspects of family law, practical aspects of the law of immovable property, rédaction des actes, responsabilité notariale, revenue and taxation laws, tenue de l'office notarial.

### ***The Vocational Course Syllabus and Examination Questions***

35. Annex 4 contains the requirements, published by the Council in 2013, for the syllabus for the Vocational Course.
36. Annex 5 ("the Syllabus") is the syllabus for the Vocational Course published by the University of Mauritius in 2016. This sets out the Law Degrees that must be achieved before embarking on the Vocational Course:  
  
*"Candidates should hold an LLB (Hons) with at least a Second Class, Second Division or a Maîtrise en Droit/Masters 1 (Mention: Assez Bien) or a law degree as stipulated in the Law Practitioners (Amendment) Act 2011 or any other qualifications deemed acceptable by the Council for Legal Education."*
37. Annex 6 ("the List") is a list of the Resource Persons scheduled to deliver the Vocational Course in 2019, showing the number of hours that each was expected to devote to his/her topic.
38. Annex 7 is a set of the examination questions for the 2018 Vocational Course.
39. Annex 8 ("the Schedule") is the 13<sup>th</sup> Induction Course Schedule for Prospective Barristers pursuant to section 5A(6) of the LPA.
40. Annex 9 is a similar document for the Vocational Course, setting out the Modules to be covered by Resource Persons, and the time allocated to each.

### ***Representations***

41. In accordance with our terms of reference we invited representations from the legal professions and from members of the public. A list of all the representations that we have received is set out in Annex 10. The representations of the Bar Association form Annex 11. Those of the Law Society form Annex 12. The

representations of the Chamber of Notaries form Annex 13. A list of all those who appeared in person before us forms Annex 14.

### ***The immediate problem***

42. We refer to the scheme envisaged by the Lallah Committee, as summarised at paragraph 11 above. Under the current scheme, vocational training for all three branches of the profession, other than those who have qualified abroad as barristers, is compressed into approximately 6 months and followed by examinations that all but a very small proportion of the candidates, and in the case of would-be notaries virtually all candidates, find it impossible to pass. We believe that this is distorting the legal profession in Mauritius. A disproportionate number of those who wish to practise law and who can afford to do so qualify as barristers in England, taking their academic degrees there<sup>13</sup>. They then come to practise in Mauritius lacking the thorough grounding in the law of Mauritius that the Lallah Committee envisaged that practitioners should have. Those who cannot afford this route, or who are determined to enter one of the other branches of the profession, and in particular would-be notaries, find it near impossible to pass the vocational examinations. In the result the present system creates a situation where very soon there will be too many barristers in Mauritius and not enough notaries.
43. An important part of our task is to identify why the failure rate for the vocational examinations is so high. This is, however, only one aspect of considering the requirements of access to the profession. It is necessary to consider the role of examinations in the context of both academic and vocational training.

### **EXAMINATIONS AND THEIR ROLE**

44. Practice in any of the branches of the legal profession is intellectually challenging. To be a good lawyer requires a good intellect. It also requires a good knowledge of the law, the ability to use the procedural machinery of the law and skill in providing legal services. It is desirable that those who qualify to practise law should demonstrate that they have these attributes.
45. The first stage of qualification involves academic study of substantive law. This is necessary to equip the candidate with the knowledge of the substantive law that he needs in order to practise as a lawyer. Examinations are necessary in order to ensure that the candidate has acquired this knowledge. They can serve a further

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<sup>13</sup> The Chair has learnt of at least one Mauritian bar student at his Inn, the Middle Temple, whose preferred choice would have been to qualify and practise as an attorney.

purpose however. They can constitute a hurdle that the candidate has to pass in order to demonstrate that he has the intellectual ability to pursue law as a career.

46. We consider that it is at the academic stage that those who do not have the high level of intellectual ability required by all branches of the legal profession should be identified. The challenge set by academic exams should be sufficiently high to ensure that those who go on to vocational training do not fall at that stage through lack of intellectual ability. A candidate should be confident that if he applies himself to vocational training with reasonable diligence he will pass any test or examination at that stage. There will, of course, be a minority who lack other attributes that are necessary for success, but no one should fail for want of intellectual ability.
47. At present the contrary is the case. The vast majority of those who obtain the requisite class of law degree fail at the vocational hurdle. As we shall explain, we have identified a number of systemic reasons for this state of affairs. But when considering the results of the vocational examinations, and some of the papers submitted that those results reflect, we have reached the conclusion that obtaining a second-class degree *in the second division* – a 2(2) – is not an adequate threshold qualification for practice as a lawyer in Mauritius. Our recommendation is that this threshold requirement be raised to a second-class degree *in the first division* – a 2(1). An exception should be made in the case of those who have already graduated at the time that our Report is implemented.
48. We appreciate that examination results are an imperfect guide to ability, and that the requirements of a 2(1) at some universities are more exacting than the requirements at others. But this will be true whatever the academic threshold that has to be passed. We are firmly of the view that today a 2(2) does not generally demonstrate the intellectual abilities required of a practising lawyer in Mauritius.
49. We now turn to the other aspect of academic examinations. The need to demonstrate knowledge of the substantive law that is needed to practise as a lawyer in Mauritius.

## **THE ACADEMIC STAGE OF TRAINING**

### ***Mauritian law***

50. We consider that the Lallah Committee correctly identified the need for academic training in the substantive law of Mauritius to be taught in Mauritius. The Committee envisaged that this should

be supplied by an LLB course provided by the University of Mauritius. The University of Mauritius provides such a course, but it is at present unable to accommodate all who wish to follow it. Only about one third of those who enrol on the Vocational Course are graduates of the LLB course run by the University of Mauritius. Those who graduate from that course with a good degree should have received a proper grounding in the law of Mauritius.

51. The remaining candidates on the Vocational Course do not have any grounding in the Law of Mauritius. They will have obtained degrees in either civil law or common law. Whichever be the case these candidates will be unfamiliar with legal principles that are the foundation of one area or another of the law of Mauritius.
52. The same is true of those who have been called to the Bar in England or in other common law countries. They are likely to have graduated with common law degrees. They will be unfamiliar with the principles of civil law that are applicable in Mauritius.
53. In the long term it is desirable that anyone of the requisite ability who wishes to practise law in Mauritius should be able to follow an LLB course in Mauritian law in Mauritius. We would encourage the Law Faculty of the University to increase the size of its LLB course. We would hope that other Universities that have set up branches in Mauritius will seek and obtain accreditation to offer LLB courses in Mauritian law. Graduating with a 2(1) degree from such a course should ensure that graduates have not merely the necessary grounding in Mauritian law, but the intellectual ability to practise in any one of the three branches of the profession.
54. It is, however, likely to be some years at best before there are available at universities in Mauritius sufficient places on an LLB course in Mauritian law for all who wish to practise law in Mauritius. In the interim it is necessary to provide a satisfactory grounding in Mauritian law for those who have taken law degrees that do not include Mauritian law. Currently an attempt is made to achieve this as follows:

(i) The Vocational Course syllabus includes a total of 30 hours under the heading 'Foundation' devoted to an Introduction to Mauritian Law, Practical Aspects of Criminal Law and Droit Civil Approfondi. Prospective attorneys and barristers receive a further 30 hours instruction in Administrative and Constitutional Law. We observe that, while these topics are novel for the majority of the candidates who have not graduated at the University of Mauritius they are ground already covered for those who have obtained the LLB degree at that university.



(ii) The IJLS Induction Course includes 4 hours devoted to the 'Mauritian Legal System', 15 hours devoted to various aspects of the law of contract and 4 hours devoted to the law of delict.

55. None of this comes anywhere near providing an adequate grounding in Mauritian law. Those on the Committee with court experience and members of the Supreme Court who have given evidence to the Committee have told us that barristers, who disclose ignorance of fundamental principles of Mauritian law, quite frequently appear before the Supreme Court. Most of these are likely to be barristers who have been called to the Bar outside Mauritius.
56. All who have taken degrees that are recognized as comparable to the Mauritian LLB but which do not include Mauritian law, including those who have gone on to be called to the English Bar, should be required to take an academic Conversion Course in substantive Mauritian law, lasting perhaps six months, at the University of Mauritius or other accredited university prepared to offer the course. There should be two streams, one for those who have studied common law and one for those who have studied civil law. Some areas, such as Constitutional and Administrative law, will be common to both streams. Mauritian law should be taught academically with involvement of lecturers on the staff of the University and not simply delegated to Resource Persons. It should be examined in the same way as the LLB course and to the same standard as a Class 2(1) LLB degree.
57. We have discussed this proposal with Professor Jhurry, the Vice-Chancellor of the University of Mauritius and with Mr Mahadew, the Head of the Law Faculty. They have confirmed that the University would be able and willing to provide the necessary tuition in the law of Mauritius, although the precise form of this tuition would require further consideration. It may well be that other universities that have a presence in Mauritius would be prepared to offer such a course.

#### **PROFICIENCY IN THE ENGLISH AND FRENCH LANGUAGES**

58. We have referred to the need for those practising law in Mauritius to be proficient in both English and French<sup>14</sup>. It is the experience of members of the Committee that a significant proportion of practitioners lack these linguistic skills. This is not acceptable. Before embarking on vocational training all candidates should be required to demonstrate proficiency in English and French. The University of Mauritius already has a facility for testing proficiency in both languages, which is used for those applying for posts at the

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<sup>14</sup> See paragraph 21

university and the Vice-Chancellor has confirmed that this could be employed for those wishing to qualify to practise law in Mauritius. Some of those currently failing the Vocational Course would do so by reason of lack of linguistic proficiency alone and it is desirable that these should be screened out before commencing vocational training.

## **VOCATIONAL TRAINING**

59. Vocational training is concerned with the practical aspects of the practice of law and not the substantive law that falls to be applied. It embraces the procedural rules that govern the practice of law, rules of evidence and ethics. It also embraces the skills that practice in the particular branch of the profession requires – writing an opinion, conducting a conference, drafting legal documents, and oral advocacy for barristers. The vast majority of those who have successfully completed the academic stage and the linguistic test ought to have the ability to complete vocational training, given proper tuition and the application of due diligence to this.

### ***What has gone wrong?***

60. Before making recommendations in relation to vocational training we propose to examine what has been going wrong with the current Vocational Course, as demonstrated by its lamentable pass rate. We propose to consider three areas, (i) the content of the course, (ii) the manner in which it is provided and (iii) the examination system.

### ***The content of the vocational course – Barristers and Attorneys***

61. The syllabus for the Vocational Course for these two branches of the profession is virtually identical. Most of the students who responded to our request for representations complained that the syllabus was too heavy. We share that view. We do not consider it realistic to expect students to master all the subjects in the Second Schedule to the LPA in a course that lasts only about 6 months. We consider, however, that the Second Schedule contains subjects that are not appropriate for inclusion in a vocational course. We find it significant that some of these form no part of the Induction Course for barristers who have qualified abroad, as is apparent on a comparison of the syllabus for barristers doing the Vocational Course with the Course Schedule for the Induction Course.

### ***Administrative and Constitutional Law***

62. So far as substantive law is concerned, these subjects should not form part of a vocational course. They form part of the LLB, that is

currently taken at the University of Mauritius. For those who read law elsewhere, these topics should form part of the Conversion Course in Mauritian law that we have proposed<sup>15</sup>. They should be taken out of the vocational course. Procedure, however, in Administrative and Constitutional law cases is important and should form part of the vocational course.

#### *Commercial and Business Law*

63. This also has no place in a vocational course. It is a specialised area of substantive law. Those who have been called to the English Bar will not necessarily have had any training in this area of the law, yet it is not included in their Induction Course run by the IJLS. Why should it be a requirement for those who seek to qualify in Mauritius but not for those who have been called to the Bar in England?
64. Those who intend to practise in Commercial and Business Law may be well advised to subscribe to an appropriate course, and we would encourage universities in Mauritius to offer such a course. We do not, however, consider that passing an examination in these subjects should be a pre-condition of access for those who wish to practise as barristers or attorneys in Mauritius.

#### *Arbitration and Mediation*

65. The same is true of these topics. They are specialised areas of law. Practitioners who wish to embrace these forms of alternative dispute resolution can be expected to acquaint themselves with the relevant law. The topics do not properly form part of a vocational training course. We note that they are not covered by the IJLS Induction Course.

#### *Family Law*

66. The same is true of family law. This also is a specialised area of substantive law. Those who have been called to the English Bar will not necessarily have had any training in family law, yet, apart from a single lecture it is not included in their Induction Course. The elements of Mauritian family law may well be appropriate for inclusion in the LLB or the Conversion Course, in Mauritian law that we have proposed, but they should not form part of vocational training.

#### *Vocational Skills and Procedural Rules*

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<sup>15</sup> See paragraph 56

67. In contrast to the academic subjects which should be removed from the Vocational Course of would-be barristers and attorneys are those which are properly the subject of vocational training. Some of these are skills: conducting a conference, writing an opinion, drafting legal documents and oral advocacy. Others are the procedural and ethical rules that govern the way in which the practitioners should deploy their knowledge of substantive law – civil procedure, criminal procedure, evidence and ethics.

### ***The content of the Vocational Course – Notaries***

68. Very little of the syllabus for Notaries that is examinable is procedural. Most of it consists of substantive law. This reflects, we believe, the fact that there are some areas of legal knowledge that are essential for anyone who intends to practise as a notary, but not for those who wish to practise in the other two branches of the profession. These include family law, the law of immoveable property, revenue and tax law and some areas of commercial and business law, although not all that is in the present syllabus<sup>16</sup>. There is a need for those who wish to practise as notaries to study these subjects insofar as they have not formed part of their law degrees.
69. In addition to these areas of academic law that should properly form part of a notary's education, the notaries' Vocational Course includes civil procedure. The submissions made by Miss Athaw on behalf of all students of the 2019 notary stream<sup>17</sup> challenges the need for notaries to learn or be examined in this subject on the ground that a notary would always take the advice of an attorney in relation to civil procedure. The notaries' course includes similar professional skills to those required by the other two branches of the profession: conducting a conference, writing an opinion and drafting legal documents. In addition, it includes ethics. As we shall explain in due course, we believe that training in these areas should have regard to the special needs of the notaries' branch of the profession, rather than duplicate what is provided for the other two branches.

### ***The manner in which the Vocational Course is provided***

70. Mr Varma informed us that in 2011 the University of Mauritius was given responsibility for running the Vocational Course in collaboration with the Universities of Nottingham and Limoges. We understand that these two universities were responsible for

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<sup>16</sup> It was submitted to us that there is no need for notaries to be trained in the law of bills of exchange.

<sup>17</sup> Annex 15

the Vocational Course Syllabus. Mr Varma said that the expectation was that the Course would be provided with a specialised centre, have full-time lecturers, a library, manuals, and a mock court room.

71. What has happened in practice differs markedly from these expectations. The Universities of Nottingham and Limoges no longer work in collaboration with the University of Mauritius. No course materials are provided. The University of Mauritius does not provide a schedule of lectures designed to ensure that topics are approached in a logical order. There are no permanent lecturers.
72. The University of Mauritius identifies 'Resource Persons', experienced practitioners, or past or present members of the judiciary, who are persuaded to undertake to lecture the students on the various topics that make up the syllabus. The manner in which each Resource Person attempts to cover that part of the syllabus for which he is responsible is left to the lecturer. There is a feeling among students that some Resource Persons pay insufficient attention to the need to provide course materials.
73. Those Resource Persons who agree to give lectures are to be commended. While they are remunerated, this is not on a scale that is, of itself adequate to attract a sufficient number of lecturers of the quality required. There is a strong *pro bono* element in the provision of these services. Overall the students who made representations to us were appreciative of and complimentary about the standard of the lectures that they received. This was not, however, universal. There were complaints about the failure to provide course materials and lectures being cancelled, often at short notice, and about some lecturers who lacked tutorial skills.
74. A repeated complaint on the part of lecturers has been the inconvenience, for those appearing in the courts of Port Louis, of having to go to the University campus to give lectures out of court hours. Some were simply no longer prepared to assist as Resource Persons in these circumstances. Students complained of having to accept lengthy gaps between lectures, attributable in part to the time needed by the lecturers to go to and from Port Louis.

### ***The examination system***

75. Mr Varma explained to us that, when the Law Practitioners Act was revised in 2011 it was considered essential that there should be no personal contact whatsoever between those who delivered the Vocational Course and those who examined it. This was to ensure that there was no possibility of the content of examinations being 'leaked' to those who were to sit them.

76. Thus, the Vocational Examinations Board keeps the identity of the examiners confidential. The examiners are, in most cases, Resource Persons drawn from the same sources as those who are engaged to provide the Vocational Course. They are appointed by the Vocational Examinations Board which means, in effect, the Chair of that Board who, in recent years, has been Justice Caunhye. We have been impressed, both by the dedication with which Justice Caunhye has discharged this very considerable burden, and by the public spirit of those who have agreed to undertake the exacting role of examiner.
77. The system has, however experienced problems. The first has arisen from the lack of communication between lecturers and examiners. We were told that, in theory, each lecturer is supposed to prepare a schedule of the ground covered by his lectures to be passed to the Vocational Examinations Board. This should enable the examiners to ensure that the examination questions address areas of law that have been properly covered by the Vocational Course. Unfortunately, we understand that this system has not operated in practice. In consequence there have been occasions where examination questions have not been covered in the lectures given.
78. We have commented that the syllabus of the Vocational Course is too heavy and places unrealistic demands on students. Having particular regard to this, the same can be said of the examination papers. The Council has determined that, in order to pass the Course candidates must achieve at least 50% on each paper and an over-all aggregate of 60%. Thus, if a single paper makes unrealistic demands on the candidates this will lead to a failure to pass the course.
79. The problem is exacerbated by the fact that many of the examinations require answers that cite specific provisions of laws or regulations. In practice a lawyer providing the advice or opinion would be likely to go online in order to check the details of these. The student, on the other hand, has to produce them from memory.
80. The current syllabus, including as it does complex areas of substantive law, is too extensive for the salient information to be committed to memory. Nor is requiring students to commit to memory data that is readily available online to any practitioner a profitable method of vocational training.
81. Tuarika Gunesh of the 2019 barrister stream and Pritish Singh Seeboo of the attorney stream submitted a detailed critique of the Vocational Course and Examinations which makes depressing

reading.<sup>18</sup> The cost of the Vocational Course is Rs 120,000, with an additional Rs 10,000 for the examinations. The University of Mauritius makes a significant profit from this. Regrettably it has not provided good value for money.

82. Having regard to all these matters we do not consider that it is any cause for surprise that the vast majority of candidates who pursue the Vocational Course find it impossible to pass their examinations.
83. Those who fail have a right to a review of their marks at substantial expense. They get no feed-back, however, as to why they failed.

### ***The Induction Course provided by the IJLS***

84. This is an appropriate stage to consider the Induction Course provided by the IJLS for those who have qualified to come to the Mauritian Bar by getting called to the English Bar. Section 5 (6)(a) of the LPA requires the IJLS to provide for these a course of training “*in such subjects as may, in the Council's opinion, be necessary to enable him to practise in Mauritius*”. The subjects, as evidenced by the 13<sup>th</sup> Induction Course Schedule, include subjects that also form part of the Vocational Course. It is instructive to compare, in relation to these subjects, the number of hours of instruction that are provided to students on the Induction Course with the number of hours of instruction that are provided to students on the Vocational Course:

*Civil Procedure:* Attorneys on the Vocational Course receive 60 hours of instruction, barristers, 45 hours, Induction Course students, 9 hours.

*Criminal Procedure:* Attorneys, 30 hours, barristers, 45 hours, Induction Course Students, 12 hours.

*Evidence:* Attorneys, 30 hours, barristers, 30 hours, Induction Course Students, 10 hours.

85. Not only are the hours of instruction for those on the Induction Course only a fraction of the hours that have to be attended by those on the Vocational Course. Those on the Induction Course, while required to attend the lectures, are not examined on them.
86. The discrepancy between what is required of those who have been called to the Bar abroad and those who have not raises the question of whether the fast track into qualification for the Bar in Mauritius that is granted to the former is justified.

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<sup>18</sup> Annex 16

87. We have already expressed the view that there is no justification for requiring those who qualify in Mauritius to pass examinations in Commercial and Business law, Arbitration and Mediation, and Family Law when no such requirement is made on those who have been called to the Bar abroad. We are not persuaded of the justification for requiring the former to spend so much longer studying civil and criminal procedure than the latter, nor for requiring the former to pass examinations in these subjects where no such requirement is made of the latter.

### **CHANGES IN VOCATIONAL TRAINING – BARRISTERS AND ATTORNEYS**

88. We propose first to consider recommendations for those who wish to practise as barristers or attorneys. They are the most numerous and separate consideration needs to be given to the particular requirements of the notary's practice.

### **REPRESENTATIONS**

#### *The Mauritius Bar Association*

89. The Mauritius Bar Association proposes a total of 18 months vocational training applicable to all bar candidates, including those called to the bar in England. The first six months would be spent on *“a set of examinable modules on a number of core subjects”*.
90. Subject to passing examinations, candidates would then have three months training in examinable subjects specific to Mauritius practice, including ethics and court etiquette, civil procedure, criminal procedure and evidence. This would be followed by three months of advocacy courses organised by the Bar Association, the IJLS and *“such other organisation as may be deemed appropriate”*. This would be coupled with the start of pupillage.
91. There would then be a final six months' pupillage, coupled with supplementary advocacy classes. In the last three months of this period, pupils would have some limited rights of audience.
92. In relation to pupillage the Mauritius Bar Association recommends that there should be mentoring sessions at least once a term to enable pupils *“to get further acquainted with the law practitioners, current legal issues and court etiquette, among others”* and that the Association should be actively involved in organising these.

#### *The Mauritius Law Society*

93. The Mauritius Law Society recommends that candidates to become attorneys should, after obtaining their law degrees,



undergo a two-year pupillage while simultaneously following a part time vocational course. The course should be run and examined by “fully fledged law professors, both Mauritians and foreigners”.

#### *The Law Reform Commission*

94. The Law Reform Commission does not recommend any significant change to the overall structure of the Vocational Course. It recommends that this should not be run by the University of Mauritius, but by the IJLS, under the supervision of the CVLE. Lecturers should be “persons of the highest calibre such as Judges of the Supreme Court, Senior Law Officers, senior Law Practitioners, Retired Judges/Senior Law Officers”. Visiting Lecturers and other “High Level Trainers” could assist in training advocacy and other legal skills. Those involved in training should also be involved in the preparation of exam papers.

#### **OUR RECOMMENDATIONS**

95. The representations that we have received do not draw the distinction that we have made between substantive law that should form part of academic teaching at the degree stage and procedural rules and practical skills that should properly be the subject of vocational training. All three representations proceed on the premise that the basic nature of the Vocational Course will not change. It will consist of lectures followed by exams. We consider that change is needed to this format.
96. After the removal that we propose of the areas of substantive law that should not form part of vocational training, the following are the areas of knowledge or skill that prospective barristers and attorneys need to acquire if they are to provide competent services to the public:

##### *Knowledge*

- civil procedure
- criminal procedure<sup>19</sup>
- administrative and constitutional procedure
- evidence
- ethics

##### *Skills*

- conducting a conference
- drafting legal documents
- writing opinions

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<sup>19</sup> Barristers require a closer acquaintance with criminal procedure than do attorneys.

- case management<sup>20</sup>
  - advocacy<sup>21</sup>
97. There is a difference between the matters that a barrister or attorney should be required to *know* before embarking on practice and those which he should be expected to *know of and ascertain*, as and when necessary in practice. Procedural rules fall into the latter category. Rules of evidence and ethical principles fall into the former.
  98. Rules of evidence, ethics and etiquette should be committed to memory in the course of vocational training. Knowledge of them can properly be tested by conventional written examinations. There is no reason why these topics should not be covered in the normal way by lectures and examinations in the course of vocational training. The object of the examinations should simply be to ensure that students have learnt what they have been taught. For students of reasonable diligence, they should not pose an intellectual challenge. They should be set by, or in consultation with, those who have given the lectures, and re-taken in the event of failure. We think that these subjects should be tackled at the beginning, or at least early on, in the vocational course.
  99. The same approach is not appropriate for criminal, civil, administrative and constitutional procedure. Lawyers must be aware of the existence and the nature of rules of procedure but there is no requirement that these be memorised by rote. What is important is that the lawyer should know where to find the detail of these rules and how to apply them. Conventional examinations are not the way to test whether students have acquired this ability. Open book or multiple-choice examinations are more appropriate, insofar as it is necessary to attempt to test this ability by examination.
  100. Learning *how to apply* the knowledge of substantive law acquired at university, and the rules of evidence and procedure cannot readily be taught in lectures. It is best learnt in practice. For these reasons we are in no doubt that the Bar Association and the Law Society are correct in proposing that vocational training be integrated with pupillage. We also agree with them that the length of vocational training/pupillage should be extended. We recommend that it should be extended to two years. So far as barristers are concerned, we agree that all should be required to carry out this vocational training/pupillage.

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<sup>20</sup> In the case of attorneys

<sup>21</sup> It is desirable that members of both branches should have advocacy skills, but these are obviously more important for barristers.

### *Pupillage*

101. Section 5A of the LPA sets out provisions in relation to pupillage. We recommend the following alterations to these. Both prospective barristers and prospective attorneys should be required to perform two years' pupillage, while at the same time following the new Vocational Course. Of this period prospective barristers should be permitted to spend three months as the pupil of an attorney. Those who have been called to the bar outside Mauritius and performed a pupillage in the country of call should be permitted to count up to one year of the period of that pupillage against their obligation to perform pupillage in Mauritius.
102. Section 5A of the LPA provides that the duties of a pupil master shall include (a) ensuring that the pupil is in attendance for the prescribed number of hours each week; (b) providing the pupil with the necessary assistance and guidance in the completion of his preparation to practise; (c) making the pupil familiar with proceedings in court; (d) giving the pupil the opportunity to interact with clients; (e) providing the Council with a report of the pupil's performance during pupillage.
103. The Bar Association has commented that there appears to be little or no enforcement of the last requirement.
104. We believe that a sea change is necessary in relation to the approach to pupillage in Mauritius. There needs to be a spirit of enthusiastic co-operation in helping pupils to develop the experience and skills of their callings, so that at the end of their pupillage they can confidently provide their services to the public.
105. The pupil master should be at the heart of this enterprise, allowing the pupil to shadow his professional activities and to make his own attempts at drafting opinions and other legal documents and to sit in on conferences at which advice is tendered to clients. The Bar Association and the Law Society should be pro-active in encouraging their members to play their full roles as pupil masters.

### *Vocational training*

106. It is a fact that some of the responses to examination questions on the current Vocational Course have been extremely inadequate. They have demonstrated an inability to use the academic law that has been learnt in a practical context. This reflects in part the fact that a Class 2(2) degree is too low a threshold for would-be lawyers. It reflects in part the fact that many candidates will have been approaching the examinations without an adequate grounding in Mauritian law. It reflects, in particular, the

inadequacies of the Vocational Course on which we have commented. The focus of the two-year vocational course that we propose must be to give the students a thorough schooling in the practical application of academic law.

107. We have already suggested that conventional teaching and examinations should take place at an early stage in relation to evidence and ethics and commented that the remainder of vocational training needs a different format<sup>22</sup>. This Committee lacks the expertise to make detailed recommendations as to the precise nature of the training that should be provided in the course of pupillage. We consider that separate provision should be made for prospective barristers and prospective notaries. We consider that it should be proactive rather than simply consisting of a series of lectures. Students should be regularly set course work in the form of drafting opinions or pleadings, practising giving advice in conference and taking part in mock hearings as part of advocacy training. Training should also involve frequent visits to the courts to see the law in action.
108. These views must be subject to the greater experience of the designers of the new vocational course. We turn to consider who these should be.

### ***The provision of the new Vocational Course***

109. The system for the provision of vocational training in Mauritius is paternalistic. To date it has been judge-led. It relies upon the willingness of Resource Persons within the judiciary and the professions to undertake the demanding tasks of teaching and examining. This system was better suited to a time when all three branches of the profession were small. The growth in numbers of those seeking to qualify has placed the system under stress. The Chair of the Council/Examination Board bears a particularly heavy burden.
110. This system contrasts with that in England where both the Bar and the Solicitors have delegated vocational training to universities or commercial academies of one kind or another, albeit that the Inns of Court have striven to add value to this training in the case of barristers. The course providers have not all given value for the considerable charges that they have made for their courses. Vocational training for the Bar is now undergoing radical reform, with four different pathways being opened to qualification as a barrister and the Inns of Court seeking to revive their role as primary providers of vocational training with the creation of the Inns of Court College of Advocacy.

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<sup>22</sup> Paras 95 and 98 above.

111. We have considered whether an attempt should be made to persuade one of the major providers of legal vocational training in England to set up a branch offering this in Mauritius. We have rejected this idea. If such a provider agreed to this it would be for commercial motives. No one on its staff would be likely to have knowledge of Mauritian law. There is no certainty that value for money would be provided and the cost of the course would be likely to be prohibitive for all, save the wealthy.
112. The Mauritius Bar Association has not recommended any change in the Mauritian system of using Resource Persons for vocational training. Its recommendations envisage the provision of lectures by Resource Persons selected by the Council with examinations conducted by the Council. The Law Society recommends that courses should be run and examinations conducted by fully fledged law professors, both Mauritian and foreign. The Law Reform Commission recommends that vocational training should be provided by Resource Persons “of the highest calibre”, possibly supplemented by “visiting lecturers and high-level trainers”.
113. We have recommended that a large portion of the vocational syllabus that consists of substantive law be removed from the Vocational Course and taught in a university. So far as vocational training is concerned we consider that Resource Persons should continue to play a central role in the provision of training but that changes must be made to the overall responsibility for, and direction of, vocational training.
114. The provision of the current Vocational Course by the University of Mauritius has not proved satisfactory. This has been universally recognized by those who have made representations to us, including representatives of the University itself. No one has advocated that the University should continue to perform the role of supervising any aspect of vocational training and we do not believe that it should.
115. A number of consultees have commended the IJLS and suggested that it should be in charge of running Vocational training. The Law Commission commented that the IJLS presided over by a retired Judge, had a better infrastructure and logistics to run courses. Courses run by the IJLS were well organized. We consider that this commendation is well deserved. The success of the IJLS is due in part to the diligence of Mrs Cheong, who has been its Chair since its inception in 2011 and to the fact that she has been well placed to identify suitable Resource Persons and to persuade them to help to provide training. It also reflects the fact that it has a full-time salaried Director and dedicated premises in Port Louis.

116. We have concluded that the IJLS is the body best suited to have overall responsibility for the Vocational Course. We are conscious, however, that the resources of the IJLS are currently likely to be fully stretched. Furthermore, we do not believe that the IJLS is in a significantly better position than this Committee to specify in detail the various types of proactive training that are required to prepare prospective barristers and attorneys for practice nor to devise and administer any tests or examinations that may be necessary to make sure that candidates have properly applied themselves to the vocational training provided.
117. We have concluded that the demands of vocational training both justify and require the input of a full time, salaried, Director of Vocational Training and Continuing Professional Development of the Mauritian Law Profession. (“DVT”).
118. The role of this individual will be of critical importance and he (or she) must be of high calibre and have experience of vocational training. He must be well paid and we recommend the use of a recruitment agency in recruiting the appropriate candidate, who may well be sourced in the United Kingdom. He should have a permanent secretariat and be permitted to recruit one or two assistants with similar experience to his own.
119. The initial role of the DVT and his staff, in conjunction with the IJLS, will be to prepare the new Vocational Course. We recommend that the appointment of the DVT should proceed immediately. Primary legislation will be required to give effect to some of our recommendations, but we believe that the DVT can and should be appointed before this. He would then have sufficient time to prepare for the introduction of the new course. Preparations will include identifying appropriate premises. We recommend that these be in Port Louis. We do not believe that the current premises of the IJLS will be adequate and question whether there may be a possibility of using the premises presently occupied by the Supreme Court.
120. The DVT, in consultation with the IJLS will have to prepare the syllabus for the new Vocational Course and identify the resource persons, who will assist in delivering it. We hope that these will be prepared to assist with the more proactive vocational training that we have recommended.

### ***Examinations***

121. We have observed that the current IJLS Induction Course is not examined. We have also observed that, apart from evidence and ethics, the use of procedures and skills that will form the major part of the vocational course are not readily examinable. We are

anxious that passing examinations should not become the object of the new course. At the same time, it will be necessary to ensure that candidates are applying themselves to the course with due diligence and that any who do not, or who prove otherwise lacking in the attributes essential for their chosen profession, should not qualify.

122. The Mauritius Bar Association has recommended that detailed records be kept by the pupil and pupil master of the hours and activities of each pupil and we consider that the requirements of section 5A(3)(e) of the LPA should be properly respected. We recommend that periodic reports of the pupil's progress be made to the IJLS/DVT so that remedial steps can be taken if a pupillage is not proceeding as it should.
123. Rather than examinations at the end of the course, what is required is a system of continuous assessment of the progress of candidates, so that assistance can be given where needed and most will have acquired competence by the time that the course has been completed. We do not consider that it is necessary or desirable that the Vocational Examinations Board should be responsible for this. Rather tests or examinations should be administered as an integral part of the course.

### ***Funding***

124. We hope that, if necessary, the State will be able to fund any start-up costs of the new Vocational Course that cannot be recovered from the students. Thereafter those undergoing this Vocational Course should be charged a fee that will defray the costs of providing it.
125. In England it is now mandatory for chambers to pay pupils. We do not propose that such a requirement be introduced in Mauritius. It would be likely to have the same effect as it did in England, namely to significantly reduce the number of pupillages on offer. We would hope, however, that there will be an opportunity for pupils to do some paid 'devilling' for busy members of chambers. They should be granted limited rights of audience, under supervision, in specified lower courts in the second year of pupillage.

### **WHAT SHOULD BE DONE – NOTARIES?**

126. Barristers and attorneys are generalists who need to develop professional awareness and skills, including awareness of the rules of evidence, covering a wide area of criminal and civil procedure. The professional demands on a notary are very

different and relate to the specialist areas of legal activity reserved to them.

127. We have received submissions and heard reports of candidates who have attempted to pass the notaries' Vocational Course in recent years which are desperately sad. Some had reasonable expectations of qualifying, having worked in notaries' offices for periods of years and, in consequence, being very familiar with the notary's role and task. Some had made the maximum number of attempts permitted, namely six. All had found the task of passing each paper with a 50% score and aggregating a score of 60% impossible.
128. We have received two particularly impressive submissions. The first is that of Miss Athaw, to which we have already referred<sup>23</sup>. The second is that of the Chamber of Notaries, appending a paper on reform of the notaries' vocational course submitted to the CVLE in 2018<sup>24</sup>. They share some common ground.
129. Miss Athaw starts by making a number of general criticisms of the examination system and of the excessive demands of the examinations themselves, with which we have sympathy, as we have already indicated. Miss Athaw also submits that the Vocational Course should last a full year.
130. Miss Athaw goes on to consider the syllabus. As to this the following comments that she makes are particularly pertinent:
- Drafting of legal documents: The same lectures are provided to all three streams but are only relevant to the attorney and barrister streams.*
- Opinion writing: The same lectures are provided to all three streams, but are geared towards the attorney and barrister streams.*
- Civil procedure: immaterial to notaries.*
- Practical aspects of family law: This is one of the most important topics for the notary. The module is insufficient and should be doubled.*
- Rédaction des Actes: This is the day in day out work of the notary. The module is insufficient and should be doubled. “*
131. In summary, the syllabus does not cater adequately for the particular needs of the notary and that part of the course which has particular relevance for notaries is much too short.

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<sup>23</sup> Annex 15 - See para 65 above

<sup>24</sup> Annex 13



132. The submission of the Chamber of Notaries starts by making the point that the LPA permits candidates who have no knowledge of Mauritian law, and in particular no knowledge of civil law, to take the Vocational Course. It recommends that, before embarking on the Vocational Course, candidates should follow a two year course run by the IJLS - the *Diplôme Universitaire de Droit Mauricien*. This would seem a satisfactory, though much longer, alternative to the Conversion Course in Mauritian law that we have recommended. We would expect most candidates to opt for the latter.
133. The Chamber of Notaries agrees with Ms Athaw that a general instruction in civil procedure is not appropriate and that the current Vocational Course is much too short, but recommends a more radical solution. Anyone who wishes to become a notary must first obtain a paid placement ('stage') for two years with a notary of at least 15 years' experience, approved by the Chamber of Notaries. This would be served part time, while following a course to be provided by the Council/IJLS, or other accredited institutions, with tuition being provided by university lecturers or practising notaries, some at least being recruited from Réunion or France.
134. The Chamber sets out a detailed course syllabus, involving 382 hours of teaching in the first year and 192 hours in the second year. Some subjects would be examined at the end of the first year and others at the end of the second year. After passing the examinations at the end of the second year, candidates would be required to do a single year's pupillage.
135. In principle we accept the recommendations of the Chamber of Notaries in relation to the structure of the course that they propose, the subjects to be covered and the examinations to be passed. This is on the important premise that their members will support their proposals to the extent of being prepared to offer paid placements for two years to all those who wish to qualify as notaries. In recent years these have numbered about 20, though many of these were re-taking the exams. We recommend that the limit of six attempts should not preclude any candidates who scored an average of 50% over all the papers in an examination from taking the new examinations. Once this backlog is cleared, we would not expect there to be more than about six candidates a year.
136. We have, however, reservations in respect of the number of hours that the Chamber of Notaries recommends should be devoted to teaching. We question whether this strikes the right balance between academic teaching and practical training. We recommend that more time be spent concentrating on the practical application

of the subjects recommended by the Chamber, under the overall direction of the IJLS. In this regard we refer to our comments on practical skills at para 69 above.

137. We are concerned that the proposed examinations should not require memorising laws, rules and regulations that a practicing notary would not expect to know by heart. Thus, exams should be open book, or multiple choice, where appropriate.
138. It is essential that there be proper co-ordination between those who are teaching and those who set the examinations, so that the latter are aware of the ground that has been covered by those providing the tuition. Those setting the examinations must be skilled in this function and familiar with open book and multiple-choice examinations. We consider that if a candidate fails to pass an examination, he should be permitted to resit the subject in question, rather than being required to resit the entire examination.
139. Just as in the case of barristers and attorneys, prospective notaries who have acquired 2(1) degrees should be well capable of passing such examinations as may be needed to demonstrate proficiency in the special areas of practice of the notary. Examinations should be set simply to test this proficiency, not as some form of competitive screening of those who aspire to be notaries. In practice, examinations will almost inevitably have to be set by notaries and marked by notaries. It is necessary to guard against the perception that a higher standard is required than is needed to demonstrate competency, with the intention of restricting entry into this branch of the profession.
140. The IJLS, in conjunction with the DVT and his staff, should be responsible for the organisation of the notaries' Vocational Course. They are likely to need assistance in this from one or more practising notaries. The DVT should oversee the necessary coordination between those teaching and those setting the examinations.
141. The two-year Vocational Course for notaries should be followed by one year's pupillage.

## **SUMMARY**

142. Our recommendations in summary are as follows:
  1. The academic threshold for entry into the profession of a barrister, attorney or notary should be raised to a 2(1) LLB degree, or equivalent.

2. All who seek to qualify as barristers, attorneys or notaries must have studied and been successfully examined in the law of Mauritius. They must also have passed a test for proficiency in the use of both the English and the French languages.
3. Vocational studies for barristers, attorneys and notaries shall be organized by the IJLS with the assistance of a full-time salaried Director of Vocational Training and Continuing Professional Development of the Mauritian Law Profession (“DVT”).
4. In the case of prospective barristers and attorneys all areas of substantive law will be removed from the syllabus of the Vocational Course.
5. The Vocational Course for barristers and attorneys will be integrated with pupillage, which will last two years. This will include instruction and examination in evidence and ethics and training in the application of the rules of civil, criminal, administrative and constitutional procedure tailored, to the needs of the particular branch of the profession. For barristers, particular emphasis should be placed on criminal procedure and on advocacy. For attorneys, particular emphasis should be placed on civil procedure and drafting of pleadings and other court documents. Initially at least, the training will predominately be provided by Resource Persons, enlisted by the IJLS, and the DVT will assist in their deployment. Those who have performed pupillage abroad will be credited with the time so spent.
6. The candidate’s progress will be monitored and accompanied by appropriate tests designed to demonstrate that the candidate is applying due diligence and acquiring the competencies that the course is designed to provide.
7. The notaries will also follow a two-year Vocational Course while undergoing a paid placement with a notary of 15 years’ experience. The syllabus of the Vocational Course will be revised in accordance with the recommendations of the Chamber of Notaries. It will include instruction in the specialist areas of substantive law with which the notary is concerned. These will be examined at the end of the first and second years. The IJLS, assisted by the DVT, will be responsible for the oversight of both the training, which must include training in vocational skills, and the examinations, and for the proper integration of the two. The Vocational Course will be followed by one year’s pupillage.

## **UNINTENDED CONSEQUENCES**

- 143.** The Vocational Course has operated as an unintended filter on those seeking to qualify in one of the three branches of the legal profession in Mauritius, a filter that has not operated on those called to the bar outside Mauritius. One object of our recommendations is to remove that filter. We are replacing it with a requirement to obtain a 2(1) LLB degree and, if this is not a degree in Mauritian law, to pass an academic course in Mauritian law to the same standard and, in any event, to pass a proficiency test in both English and French. These requirements are designed to act as the only significant filter on those seeking call to the bar or admission as an attorney in Mauritius. This may result in more lawyers entering these branches of the profession than are necessary to meet the demand for their services.

## **IMPLEMENTATION OF OUR RECOMMENDATIONS**

- 144.** Our recommendations should not be considered as written in stone. They are subject to the vies of the proposed DVT and susceptible to variation without derogating from their principle features. For instance, it might prove desirable to restrict the period of pupillage/vocational training to a shorter period than the two years that we have proposed.
- 145.** Implementation of our recommendations will require primary legislation. We suggest that the legislation be amended to grant the Council, with the approval of the Attorney General, wide powers to make Regulations providing for qualification to practise as a barrister, attorney or notary. Our recommendations, insofar as approved or varied, can then be embodied in Regulations that will subsequently be susceptible to change without the need for primary legislation.

## **INTERIM MEASURES**

- 146.** This year the demands of the Vocational Examinations were made somewhat less exacting as a result of interim recommendations made by this Committee. The failure rate remains, however, far too high. It is not likely to prove possible to implement the changes that we have recommended in time for them to take effect before the next round of examinations. Accordingly, we make the following recommendations for interim measures that may alleviate the position.
- 147.** Section 5 of the LPA provides that an applicant will have completed the vocational course when he has:

*“(a) followed such course as may be approved by the Council and conducted by an accredited person, in the subjects specified in the Second Schedule; and*

*(b) satisfied the Council of his proficiency in the subjects specified in the Second Schedule, following such oral and written examinations as the Vocational Examinations Board may conduct.*

148. The Second Schedule includes those subjects that we have advised should not form part of a Vocational Course, namely Arbitration and Mediation, Commercial and Business Law, Family Law and, in the case of Notaries, Civil Procedure.

149. Section 22 of the LPA provides that

*“Regulations may for the purposes of this Act be made –*

*....*

*(c) in relation to any other matter, including an amendment of the Schedule by the Council, with the approval of the Attorney-General”*

150. The LPA has, in fact, two Schedules, but it seems to us that the singular can properly be deemed to include the plural. We would recommend that Regulations should be made removing from Schedule 2 the following subjects:

*For prospective barristers and attorneys:*

- Arbitration and Mediation
- Commercial and Business Law
- Family law

*For prospective notaries*

- Civil procedure

151. The University of Mauritius, which has statutory responsibility for the Vocational Course, should actively supervise the courses delivered in the remaining subjects so as to ensure that those who provide the courses give precise details of the ground covered to those who set the examinations. If a DVT has been appointed the University could seek his assistance in this task.

152. The Vocational Examinations Board should emphasise to those setting the exams, particularly those for prospective notaries, the importance of ensuring that the examinations do not impose unreasonable demands on the candidates.

153. The Council should be satisfied of the proficiency in the subjects remaining in the Second Schedule of any candidate who attains a

score of 50% in each of those subjects, without requiring an overall pass rate of 60%.

154. If these changes are made within the existing statutory framework, diligent candidates should have a reasonable chance of passing the Vocational Course.

## **DISCIPLINE**

### **INTRODUCTION**

155. As with education there is one glaring problem in relation to professional discipline that explains why this issue has been referred to the Committee. The various statutory provisions in relation to professional discipline provide for serious cases of misconduct to be referred to the Supreme Court and to be dealt with by a court of three Judges. In the last few years three such cases have been referred by the Mauritius Bar Association and a further three by the Chamber of Notaries. These cases are still before the Supreme Court.
156. Our understanding is that pressure of work on the Supreme Court is such that it has not been considered possible to attend to these cases.
157. Less serious cases fall to be dealt with by the Mauritius Bar Association, the Mauritius Law Society and the Chamber of Notaries. Consideration needs to be given to the statutory provisions that govern these duties and to the manner in which they are carried out.

### **THE STATUTORY FRAMEWORK**

158. Section 13 of the LPA provides that the Attorney-General may submit a report to the Chief Justice when he considers that disciplinary proceedings should be brought against a law practitioner. Section 14 provides for the consequent hearing to take place in public before at least three judges, with witnesses being heard on oath. The Court's powers include suspending the practitioner or ordering that his name be erased from the Roll.
159. Section 18 of the Courts Act gives the Supreme Court power to "*hear and determine any complaint of a disciplinary nature in respect of the professional conduct of a law practitioner...complaint includes ...a written report by...any ...body or authority exercising powers of supervision over the conduct of*" a law practitioner. The procedure is that laid down by section 14 of the LPA.

160. Section 13 of the Mauritius Bar Association Act provides:

*(1) The Council may investigate any report made to it regarding an alleged breach of etiquette by a barrister and may, subject to subsections (2) and (3), determine that the barrister shall be reprimanded or severely reprimanded.*

*(2) The Council shall-*

*(a) attempt to reach an amicable solution between the parties concerned by a report under subsection (1); and*

*(b) afford any barrister who is the subject of a report under subsection (1) an opportunity to be heard.*

*(3) Where, upon a receipt under subsection (1) it appears to the Council, after such examination as it thinks fit, that there is a prima facie case of a breach of etiquette by a barrister, it shall refer the matter for determination by the Supreme Court.*

*(4) The Council may determine that any member of the Association who has been sanctioned for a breach of etiquette shall be suspended or removed from membership of the Association.*

*(5) Any barrister may, within 21 days from the date on which a decision under subsection (1) or (4) is communicated to him, by written notice addressed to the Secretary of the Association, appeal against the decision to a special general meeting of the members of the Association...*

161. Section 18 of the Mauritius Law Society Act and section 36 of the Notaries Act make similar provisions, although each includes a right to appeal to the Supreme Court by way of judicial review, in the case of the Mauritius Law Society Act against a decision under section 18(5), which does not make sense, and in the case of the Notaries Act against a decision under section 36(1) or (4), which does make sense. We suspect that the former is a drafting error.

#### **THE CURRENT POSITION**

162. Representatives of the Bar Council, the Law Society and the Chamber of Notaries attended together<sup>25</sup> to assist us with the working of these provisions.

163. We were concerned generally with the extent to which each body had administrative staff, able to assist with tasks such as the organization of disciplinary proceedings. The responses showed that we had reason for concern.

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<sup>25</sup> on 24 September 2019

164. The Mauritius Bar Association Act is elderly, dating back to a time when membership of this branch of the profession was small. It needs to be replaced. We refer to the representations made by the Bar Council in relation to this<sup>26</sup>. In general, we support these. In particular it is important that membership of the Mauritius Bar Association, together with payment of membership fees, should be compulsory<sup>27</sup> so that the Council's administration can be properly funded.
165. The Mauritius Law Society has an established office but only one member of staff, an administrative assistant. The Chamber of Notaries has no seat and no secretariat. In both cases it seems to us that an increase in administrative assistance is needed.
166. To date the Bar Council and the Chamber of Notaries have managed to discharge their statutory responsibilities in relation to discipline without undue problems. Complaints about fees, or of failure to provide services that have been paid for, have usually been resolved by mediation. Each body has, as we have observed<sup>28</sup>, referred three serious cases to the Supreme Court, in respect of which no action has been taken.
167. The experience of the Mauritius Law Society has, however been an unhappy one. The Council investigated one complaint and issued a reprimand, whereupon the attorney in question exercised the right to appeal at a special general meeting and the meeting reversed the decision of the Council. Without adequate administrative assistance or the ability to delegate, members of the Council have shown themselves disinclined to be involved in any disciplinary process.<sup>29</sup>

## **REPRESENTATIONS**

168. The Bar Council recommends that amendments to the Mauritius Bar Association Act make express provision for the setting up of an Independent Body for Complaints and Ethics to which decisions about complaints will be delegated. The Bar Council seeks jurisdiction to suspend a barrister for a year. In contrast, the Law Society would prefer to be relieved of any disciplinary duties.

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<sup>26</sup> Annex 12 pages 5 to 7.

<sup>27</sup> Note the recommendation at 12.5 of the Report of Lord Mackay's Commission of 1997

<sup>28</sup> at para 146

<sup>29</sup> Annex 13



## OUR RECOMMENDATIONS

169. Each branch of the profession must be entitled to exact sufficient subscriptions from their members to fund the assistance necessary for proper administration of, inter alia, professional discipline. Failure to pay annual membership fees should disqualify from practice.
170. The statutes that create the three professional bodies should be amended to make common provision in relation to professional discipline.
171. The three branches of the profession should continue to handle complaints in the first instance. The sanctions that they should be able to impose should be a reprimand, a severe reprimand or a maximum of 3 months suspension. An appeal by way of judicial review should lie against the imposition of such a sanction. There should be no other right of appeal.
172. Rather than making legislative provision for referring complaints to a specified body as the Bar Council suggests, we recommend that the amended legislation should simply confer on the Councils and the Chamber a general power to delegate the investigation of complaints and the making of recommendations. The legislation should also confer an exemption from any liability in relation to any acts or omissions done in the exercise of the disciplinary powers and duties conferred or imposed by the legislation.
173. The major change that we recommend relates to complaints that call for more serious sanctions than those available to the Councils and the Chamber. Having particular regard to the growth of the three branches of the profession and the increase in the number of complaints that this is likely to produce we do not consider it any longer appropriate that complaints of professional misconduct should be referred to the Supreme Court.
174. We recommend that the legislation be amended to substitute for the Supreme Court an independent Disciplinary Board to deal with serious complaints of professional misconduct. The Chair should be appointed by the Chief Justice, in consultation with the Attorney General, for a renewable term of three years and should receive appropriate remuneration and administrative assistance. The Bar Council, the Council of the Law Society and the Chamber of Notaries should each be required to nominate a panel of five practitioners of at least 15 years standing, to be renewed every three years, from which the Chair should select one member of each panel to sit with the Chair on disciplinary hearings. In the event of an equal division of opinion as to the appropriate action the Chair's opinion should prevail.

175. The procedural provisions of the current legislation should stand unchanged, save that provision should be made for the branch of the profession referring a case to the Disciplinary Board to appoint a prosecuting counsel for that case.
176. An appeal to the Supreme Court by way of judicial review should lie from any decision of the Disciplinary Board.
177. The legislation should provide that any outstanding complaints before the Supreme Court should be referred to the new Disciplinary Board.
178. One further point was made to us. Members of any of the branches of the profession who are employed in Government Service are not susceptible to professional disciplinary procedures. Misconduct is dealt with 'in house'. If such a person is dismissed for misconduct, he should then become subject to the relevant professional disciplinary procedure in relation to the misconduct in question. We endorse this representation.

### **THE ROLL OF BARRISTERS**

179. We refer to the representations of the Mauritius Bar Association in Annex 11. These include the following proposals in respect of the Roll of barristers to be kept and updated every semester by the Master and Registrar, in consultation with the Bar Council:  
It is proposed that the Roll should be subdivided into the following categories:
  - (i) barristers;
  - (ii) non-practising barristers;
  - (iii) Attorney-General's Office and Office of the Director of Public Prosecutions respectively;
  - (iv) barristers who are employed in law firms; and
  - (v) barristers who are employed other than in law firms.
180. We endorse this recommendation, which will make it clear which members of the bar are in active practice.
181. There is a further point. If an individual who is employed qualifies for call to the bar he is required to relinquish his employment before being called, although he can take it up again thereafter. This makes no sense. Such an individual should be able to be called as an employed barrister without having to resign from his employment.

**THE MAURITIUS BAR ASSOCIATION ACT 1957**

182. The Mauritius Bar Association has made further representations in Annex 11 as to proposed changes to the 1957 Act. We consider that these make sound sense and we endorse them.

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Signed by

**Lord Phillips of Worth Matravers,**  
Chair

**Justice K.D.Gunesh-Balaghee**  
Member

**R. Chetty, S.C.**  
Member

**A. Robert, S.A.**  
Member

**J.M. Caboche-Adam**  
Member

Port Louis

10<sup>th</sup> March 2020

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# **ANNEX 1**

**Paras. 16 & 17 of the Lallah Report**

16. With regard to Attorneys, the conduct of the relevant examinations and their certification fall within the responsibility of the Chief Justice who, for this purpose, appoints an Examination Committee. The qualifications are the passing of intermediate and final examinations coupled with 5 years' service as an articled clerk with an Attorney.<sup>(7)</sup> The period of articleship is reduced to 3 years in the case of a person who has been called to the Bar or has obtained a degree in Great Britain. In the case of a Barrister who has had at least 5 years practice, he is exempted from articleship and also from the intermediate examination.<sup>(8)</sup> In the case of a person who has passed the Notarial examinations, his period of articleship is reduced to 2 years.<sup>(9)</sup> The syllabus for those examinations is geared to a practical knowledge of the civil and commercial laws (criminal law being optional), civil and criminal procedure, evidence, the organisation and jurisdiction of the Courts, and statutory interpretation. Although the syllabus comprises solely Mauritian law, it was designed as one leading towards vocational qualification and not towards an academic and wide-ranging knowledge of Mauritian law. The Examination Committee consists of practitioners under the Chairmanship of a Judge<sup>(10)</sup> and the questions set are necessarily of a practical nature.
17. As far as Notaries are concerned, their number is limited by law to 30.<sup>(11)</sup> Their appointment is made by a commission issued by the Prime Minister, after consultation with the Attorney-General,<sup>(12)</sup> from among persons who have received a certificate of proficiency delivered by a Board of Examiners composed of the

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(7) See Rules 2, 3, 9 and the Second Schedule of the Attorneys (Admission Rules 1961).



(8) Rule 15 *ibid.*

(9) Rule 16 *ibid.*

(10) Rule 10 *ibid.*

(11) Section 11 of the Notaries Act.

(12) Section 9, *ibid.*

Attorney-General or his representative, the Master and Registrar, the Conservator of Mortgages, three Notaries selected by the Chamber of Notaries and a Barrister.<sup>(13)</sup> No person can be admitted to take the relevant examinations unless he has been articled as a clerk to a Notary for a period of 6 years or for the shorter period of 2 years where he has practised as a Barrister or an Attorney for at least 5 years.<sup>(14)</sup> It should be noted that the law does not lay down any syllabus other than the passing of "an examination in law"<sup>(15)</sup> with the result that it is the Board of Examiners which determines in what particular subjects questions are to be set. It is our understanding, however, that candidates are examined in civil and commercial law and those laws that are particularly relevant in the practice of a Notary, such as the Notaries Act and enactments governing Transcription, Mortgages, Prescription, Registration, Successions, Donations, Wills, Restrictions on purchase of property and Hire Purchase. It should also be noted that there are no written examinations and that these are conducted orally and in public.<sup>(16)</sup> It is our understanding that this oral examination does not in practice last more than 2 to 3 hours. Lastly, a particular feature is that, unlike the case of candidates reading for the Bar

or the Attorney's examination there is no minimum secondary school qualification, such as the Cambridge School Certificate or the General Certificate of Education.

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(13) Sections 4 and 5, *ibid.*

(14) Section 7, *ibid.*

(15) Section 4 (d), *ibid.*

(16) Section 6, *ibid.*

