



IJLS Newsletter

**I N S T I T U T E F O R J U D I C I A L A N D L E G A L
S T U D I E S**

F O R E W O R D

I welcome the publication of the Newsletter which will keep members of the judiciary and all law practitioners informed of the ongoing activities of the Institute.

I also hope that the Newsletter will provide a platform for members of the legal fraternity to exchange views on all aspects of the judicial and legal training. Contributions in terms of articles and notes from members of the legal profession are therefore welcome.

I thank the interns of the Institute who have put in much effort and hard work in the production of this Newsletter and wish that this enterprise will become a regular feature in the life of the Institute.

Ah-Foon **CHUI YEW CHEONG**

Chairperson of the Institute for Judicial and Legal Studies

CYBERCRIME

The world has now become a global village. This is the result of technological development and the fact that nowadays everyone in the world is connected via the internet, therefore the proximity between people and the analogy with a village image is highlighted.

Whilst the use of the Internet has various positive sides, with its continuous evolution, the risk of being subjected to online-harm is alarmingly on the increase as well. This leads to cyber-

“U.S Computer networks and databases are under daily cyber attack by nation states, international crime organizations, subnational groups and individual hackers.”

-John O.Brennan

crime which may simply be defined as being any criminal or illegal activity carried out through the use of the internet. With the rise of cybercrime comes also the importance of digital/electronic evidence. Digital evidence may be referred to as being any information acting as a proof stored or transmitted in a digital form which a party may use in a Court of Law.

Mauritius is concerned with the cybercrime issue and thus is signatory to the Budapest Convention since March 2013 and has legislation

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pertaining to same, namely, The Computer Misuse and Cybercrime Act 2003, the Electronic Transactions Act 2000 and the Data Protection Act 2004 amongst others. Furthermore, the Constitution of Mauritius also provides for safeguards, for instance Section 9 of the Constitution.

The island is also very much involved in the fight against cybercrime. It is to be noted that the Ministry of Information and Communication Technology in collaboration with The Institution of Engineering and Technology held a conference on “Cyber Attack on Key ICT Infrastructure” in June 2014. Moreover, a workshop was held in Mauritius on the Budapest



Convention in April 2014 and a further conference was held in Mauritius by the Council of Europe in August 2014 on the Budapest Convention. The Institute for Judicial and Legal Studies (IJLS) has also not remained insensitive to the cybercrime and digital evidence issue and shall be together with the Council of Europe hosting a “Training for Trainers and Electronic Evidence Course” near the end of January 2015.

THE NEED FOR ONLINE LIBRARY

An online library also referred as digital or virtual library is the collection and storage of resources such as books, cases, and journals and so on, electronically. As a law practitioner, referring to sources (Law/cases/ legal journals) is of paramount importance. Decades ago, people could only go to the library for research whereas today, with the advent of technology, we have online library services. One may argue that the online library cannot replace the physical library but it cannot be denied that using online library has become a culture which entails numerous benefits. The online library (hereafter 'OL') can not only be accessed at any time even after closing hours of a library (that is 24/7) but also any-

"A library is the delivery room for the birth of ideas, a place where history comes to life"

Norman Cousins

where provided there is internet connection and hence there is no need to walk into a library anymore to have access to information. Further, the same resource or document may be consulted by different people simultaneously. For example, a law practitioner need not wait for his

"With a click of the mouse, precise materials may be found"

'confrère' to consult the same document. An online library makes the search of a document much easier for example by entering the key words in terms of rapidity and ease. Nowadays with a click of the mouse, precise materials may be found instead of going through a book page by page. Further, the storage capacity of the 'OL' is unlimited.



The 'OL' has the advantage of preserving the environment as no paper is used since it is online. A tangible document may be torn, lost or damaged as compared to same document being saved online. Law practitioners do not always have time to go to the library and hence having an online library will benefit them. It can be said that the future of information and library lies in the online database.

Feedback from law practitioners in relation to online library is most welcome.

INTERVIEW OF ME. R. CHETTY, SC

1. Importance of CPD courses, do they bring any plus to a law practitioner's career?

It is very important. For the past 5 years, there have been substantial changes in core legal subjects such as civil law, commercial law and criminal law.

Moreover, there have been a number of new subjects which have emerged, for instance Competition law, Copyright law, Intellectual Property Law and Information & Technology Law.



Hence people who have called to the Bar years ago would not be conversant with those emerging areas and this is where the CPD sessions are essential to substantiate what we know already and to familiarise ourselves with new concepts.

2. Any room for improvement?

At IJLS, I believe that the number of hours should be different for different levels of practitioners. Perhaps new comers to the Bar may be required to do 15 hours or even 20 hours.

However, practitioners with more than 25 years of experience, should be required to do fewer hours and be given the option to concentrate on the new aspects of law. Practitioners nowadays concentrate and specialise on particular aspects of the law and enabling them to attend those particular sessions would be refreshing and at their advantage.

IJLS should further cater hours for new subjects which will become more popular and I strongly feel that fewer hours should be expected from those with more experience. Moreover, ethics sessions should not be mandatory.

3. What are your views with regards to having an online library set up at the IJLS?

I am all for it, that is for the online library. The digital world has now become a cultural environment.

4. Could you tell us about your own career path?

I was called to the Bar in Mauritius in 1987. At the time, there were a maximum of 50 practicing barristers in private practice. Back in those days, I did a bit of everything, for instance criminal, commercial and civil law. What characterised that era was the protection of the then elders of the Bar towards the younger members. The elders were always present to help and guide so that the newly called could learn from their experience. At the time, there was furthermore a great familiarity among members of the Bar, irrespective of age and level of practice. The Bar in itself was a school of training.

With time, I gradually received more and more civil and commercial briefs with the result that it is now the force of things and not a choice that I originally made, that is to be a civil and commercial lawyer.

Nowadays, with over 500 barristers, the familiarity among members of the Bar is lost. The members of the Bar have also partly lost a sense of companionship at the Bar which everyone should try to re-conquer because I believe a Bar where everybody feels comfortable with each other is in the interest of the system.

5. What would be your advice to the prospective barristers?

When one is called to the Bar, one must say to oneself that it's a new learning course. Newly called members must allow themselves one or two years to learn the customs and ethics of the profession. It is also the opportunity to learn as much as possible about the area of law which they would like to practice in. A second thing is to be patient and to cultivate the personality which you would like to be at the Bar and amongst those, take the time to cultivate your politeness, courtesy and professional skills. You must work hard and be disciplined and you must be sharp and have rigour in your work. Thirdly, you must believe in yourself and in the system and things will happen.

6. What are your views with regards to organizing debates on current issues at the IJLS and being awarded CPD hours for same?

I don't know how practical this would be and how actually to allocate CPD hours. To promote moots among University students and moot trials among younger members of the Bar and giving a recognised prize for same seems to be a good thing. For instance, participants may

be awarded a challenge trophy bearing the name of a famous case or of a past well known practitioner, seem to be more helpful.

7. What are your views with regards to the legal system in general? Any room for improvement?

I believe that there is much room for improvement. I am in favour of having a Court of Appeal. I am furthermore a strong proponent of a complete new infrastructure of the Supreme Court in the sense that the country should be persuaded to re-build the Supreme Court with a construction of at least 16 storeys in front and at the back with level of parking spaces and all ancillary services of the Supreme Court being on the same premises such as training, including the IJLS, Council of Legal Education, Probation Office and the like.

Technological services should be provided and the system should be fully computerised and screens and provisions for evidence to be given without having certain type of witness being physically present namely the old person, or the disabled one or those with mobility problems as well as foreign witnesses.

The country must realize that our highest court of justice is our flag for the international community and our highest court is not only judged by the quality of its human resources and its independence and impartiality but also by the environment and infrastructure where justice is dealt with.

As a second phase, the Industrial, Intermediate and District Courts should also benefit equally to totally new, modern and technological infrastructure.

8. The IJLS in collaboration with Reunion University is introducing a Diplôme d'Université en Droit Civil Mauricien (DU). What are your views with regards to same?

The DU is a good thing. Instead of learning 'sur le tas', the DU will offer a structured way of acquiring knowledge of our Civil Code and will be helpful for those practitioners coming from countries which do not have a civil law system.

**INTERVIEW OF ME. J. LAU,
BARRISTER AT LAW, ASSISTANT SOLICITOR
GENERAL**

1. Your career path is different from those in private practice. Do CPD sessions serve any purpose to your career?

I was called to the Bar in 1991 and was in private practice until the beginning of 1996 when I joined the magistracy. I served a term of 13 years as a magistrate, sitting in various District Courts and then moved on to the Intermediate Court where I stayed for 6 years.

In 2009, I moved to the State Law Office and have been here for 5 years now I started as a Principal State Counsel and climbed up the ladder to my current position as one of the three Assistants to the Solicitor General.

CPD sessions are very important. They are intellectually very refreshing since they help us practitioners to keep pace with the new areas of law which are emerging. The law is so vast- be it in Mauritius or elsewhere, CPD sessions help us to keep up with these fast developments. We get the opportunity to listen to renowned Law Professors who are experts in their respective areas of specialization. For example last year we were privileged to attend a workshop conducted by Law Professors from the University of Reunion. It was a knowledge gaining experience.

2. What guidance / advice can you offer to prospective barristers?

All of us need to work hard and strive for perfection. We must do our best to increase our level of advocacy and we must be of assistance to our Courts. We must always keep up to date with our jurisprudence and research in “precedent and analogy”. If there are any similar cases which have been adjudicated in other Courts, we must cite them as example. In my opinion, the most important consideration is to defend the case to the best of our abilities by upholding the Rule of Law.

3. Is there any room for improvement with our legal system in general?

There is always room for improvement and things can always be made better.

4. The digital world is now the current trend. What are your views with regards to implementing an online library system at the IJLS?

An online library is an excellent tool. I experienced the wonders of this technology when I

studied on a distance learning mode. Vast amounts of information are so easily accessible by the click of the mouse. The volume is overwhelming that at times it is difficult to get a good grip on all the information. We can even say that the digital technology has eroded all limits as regards access to information. I believe it would be a very good thing to have an online library set up at the IJLS as it will be of great benefit to all law practitioners whatever their field of expertise be.

5. What are your views with regards to organizing debates on current issues at the IJLS?

Organizing mock hearings and debates at the IJLS is an excellent idea. I would like to salute the initiative of the IJLS for having held sessions on controversial subjects such as “Euthanasia” and “Should white collar offenders be sent to jail or not” which must be open to debate. There are many areas which are controversial and the list is non-exhaustive.

6. Do you think that there is any room for improvement at the IJLS?

I would suggest that more handouts could be distributed. To enhance the level of debate, the practitioners could send their arguments to the participants beforehand. Wifi facilities could be provided and electricity supply stations could be set up for recharging laptops or ipads for whole-day running sessions.

7. The IJLS in collaboration with Reunion University is introducing the Diplôme Universitaire. What are your views with regards to same?

I believe that the *Diplôme Universitaire* is a very good opportunity for all practitioners, especially for those who have either studied in the UK or not been exposed to the Civil Law system.

I, myself, have found the lectures by the academics from the University of Reunion very enriching.

INTERNS AT THE IJLS

The initiative of the IJLS to introduce the internship program to law graduates is a laudable step, especially to those graduates wishing to pursue an academic path. The interns' main task is to produce research papers. They conduct further research for the purpose of CPD sessions as and when required by the resource person. The areas on which research papers have been produced to date are Cybercrime, Sentencing in drug cases in Mauritius, Postponement and Adjournment, Ethics for Barristers, Ethics for Notaries, Expert Evidence, Insurance Law and Rights of the Accused. The research task is an enriching experience as it is a good way to learn about the Mauritian legal system – especially for foreign graduates. Interns are further bestowed with the duty of rapporteur of CPD sessions, for the purposes of the yearly records of the IJLS Board members.



Administrative duties are also part and parcel of the internship at the IJLS. Interns were actively involved in the '2ème Conférence Judiciaire de l'Océan Indien' hosted jointly by the IJLS and the Supreme Court in September 2014.

As upcoming project for the interns, IJLS aims at producing a bench book as well as a compendium of Privy Council cases classified as per different areas of the law.

The current interns at the IJLS value the experience gathered during their internship as being career-oriented and having an impact in their choice of a career path. Some have taken a liking for research and are considering a career in the academic field by pursuing a PhD. The atmosphere at IJLS is dynamic and there is exposure to a work environment where there is professionalism and real teamwork spirit.

ACTIVITIES AT IJLS – 3RD ACADEMIC YEAR 2014 – 2015 FIRST SEMESTER

The Institute for Judicial and Legal Studies (IJLS) started its third academic year on the 3rd September 2014. During the first semester, the Institute has organised and conducted 23 Continuing Professional Development (CPD) courses, induction course for prospective barristers and has had the honour of hosting the *2ème Conférence Judiciaire de L’Océan Indien* in collaboration with the Supreme Court of Mauritius.

The CPD courses have included an array of subjects related to the legal profession. While some courses were based mainly towards criminal law and civil law, others covered such subjects as Time and Stress Management, Liberating Leadership Skills and Ethics in the Legal Practice. Courses in civil law have been much appreciated and have had very good participation from the audience who have shown a keen interest to revisit the basics of civil law through the modern approaches adopted by various jurisdictions. Also Court Officers have had the opportunity to attend courses such as Court and Time Management and Digital Evidence which have a bearing upon tasks that they are required to carry out on a daily basis.

With regards to Prospective Barristers in Mauritius, the fourth induction course was held in November – December 2014 which placed particular emphasis on areas of law which aimed at supporting those pupils who have done their legal studies in countries other than Mauritius.



*Audience present for CPD Course
delivered by Sir Anthony Hooper on
02 July 2014*

2^{EME} CONFERENCE JUDICIAIRE DE L'OCEAN INDIEN 2014

The IJLS had the privilege of being the platform where the *2^{ème} Conférence Judiciaire de L'Océan Indien* was held on the 25th and 26th September 2014. The Conference welcomed highly eminent personalities from the judiciaries from Reunion Island, Seychelles, Madagascar, Comoros and Mauritius. Among several themes that were discussed and debated during the 2-day conference, the main themes were *La Médiation Judiciaire et l'arbitrage*; *Ordre Judiciaire et Ordre Administrative* and *La lutte contre les trafics illicites*. For the occasion, since most of the conference speakers were from French-speaking countries, IJLS with the assistance of the interns at the Institute, was able to provide a French version of the Mediation Rules 2010 which was much appreciated.



DIPLOME D'UNIVERSITE EN DROIT CIVIL MAURICIEN

La coopération universitaire et scientifique dans L'Océan Indien est un facteur essentiel de développement car elle permet de bénéficier aux étudiants en formation initiale et continue, aux enseignants-chercheurs et de promouvoir l'enrichissement de la population scientifique de cette zone géographique. Puisque les juristes mauriciens ayant effectué leurs études à Londres ou en Angleterre se heurtent au constat que leur législation est majoritairement soumise au Droit Civil, il a été jugé important de leur offrir la possibilité de suivre des cours dispensés en vue d'un «Diplôme d'Université en Droit Civil mauricien».

Le diplôme est un diplôme universitaire s'étalant sur une période de deux ans et comprenant 90

heures d'enseignement, outre la rédaction d'un mémoire qui doit être arrêté dans l'année 1 et la soutenance sera effectuée dans l'année 2 aussi bien que des examens et sera accessible à tous les professionnels du droit exerçant à Maurice ou à ceux issus de la profession légale dans son ensemble. Il est à noter que c'est un diplôme de droit civil mauricien et non de droit français. Les modalités de sélection des étudiants seront déterminées par le directeur du diplôme et celui de l'IJLS. Dans cette optique, le cursus universitaire, l'expérience professionnelle et la cohérence du projet professionnel seront tenus en considération et les étudiants seront tenus de soumettre un dossier de candidature. Les modalités de contrôle des connaissances mettront l'accent sur l'oral, l'aisance rédactionnelle et l'aptitude à l'argumentation. Les cours auront lieu dans les locaux de l'IJLS à Port-Louis, le vendredi et samedi matin (5 séminaires de 9h/an).

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Editorial
IJLS Intern Team

Forthcoming Events

January 2015

- Start of 2nd Semester Academic Year 2014 – 2015
- Training of Trainers by the Council of Europe under the GLACY Project.

February 2015

- Start of academic year for the Diplôme d'Université de Droit Civil Mauricien.

April 2015

- Lincoln Inns Workshop
- Conference in conjunction with l'Association Henri Capitant