

LAW REFORM COMMISSION

1997 ANNUAL REPORT ON THE ACTIVITIES OF THE LAW REFORM COMMISSION

1. The Commission held six meetings in 1997.
2. The Commission examined the following matters during the year:-

(a) Further consideration of the proposed Administrative Justice Bill dealing with Judicial Review

The Commission recommended that the draft bill be submitted to the Attorney-General.

(b) Further consideration of the proposed Evidence Bill

The Commission recommended that the draft bill be submitted to the Attorney-General.

(c) Consideration of the Court of Civil Appeal Act

The Commission was of the view that the Act be amended so that the Court of Civil Appeal should have jurisdiction to hear appeals from civil judgments of the Supreme Court at first instance even when the Court is composed of more than one Judge; in which case the Court of Civil Appeal should be composed of a larger number of Judges than the Court of first instance.

(d) Consideration of the Rules of the Supreme Court

The Commission was of the view that:-

- (i) The present rules are unsatisfactory and cumbersome,
- (ii) There should be a single form of commencement of action for all actions preferably by way of Plaintiff with Summons.

This will simplify access to the Court and allow the Court to monitor proceedings throughout.

(iii) The privilege of the Bar to move the Court must be preserved and this be done in appropriate cases, by motion paper supported by affidavits, when required.

(e) Consideration of other issues of relatively lesser magnitude, viz,

(i) Banking Act Section 39 dealing with Confidentiality

The Commission recommends that the statutory provisions relating to the duty of confidentiality of Offshore Banks, be reintroduced.

(ii) Trade Mark/Service Mark

The Commission recommends that the concept of “service marks” be introduced in Mauritius.

(iii) Intermediate Court

The Commission recommends that cases at the Intermediate Court be tried by a single Magistrate unless the Presiding Magistrate otherwise decides.

(iv) Court of Criminal Appeal Act

The Commission recommends that either the Chief Justice or the Senior Puisne Judge must be a member of the Court.

(v) GN 95 of 1994, the Supreme Court Rules

The Commission recommends the repeal of GN 95 of 1994.

(vi) Swearing of Affidavits

The Commission recommends that Solicitors of more than 15 years standing be empowered to administer the oath.

(vii) Execution of Judgments

The Commission considers the present procedure for execution too costly and cumbersome and should be streamlined. The Commission will consider the matter further and make concrete proposals.

(viii) Preliminary hearing for discovery of documents in civil cases for Personal Injuries

The Commission considered such a proposal but did not endorse it.

(ix) Imprisonment for Civil Debt

The Commission recommends that this practice be abolished.

(x) Registration of Documents

The Commission has made its recommendations to the Presidential Commission to be considered in the overall reform of the system.

(xi) Legal Aid

The Commission made its recommendations to the Presidential Commission.

(xii) Constitution of “Partie Civile” in Road Accident Cases

The Commission considered such a proposal and did not endorse it.

3. During the year 1997, the Presidential Commission to Report on The Reform of the Judiciary (The Presidential Commission) was set up. The Law Reform Commission welcomed its institution. As 2 members of the Law Reform Commission form part of the Presidential Commission, viz, Sir Hamid Moollan Q.C. and Mr. Georges Robert, the Law Reform Commission decided that they should remit to the Presidential Commission all the papers relating to the work of the Law Reform Commission to-date and give full assistance to the Presidential Commission in its works. The Chairman later reported that this was done and that the Presidential Commission was extremely interested with the work already done by the Law Reform Commission, took on board most of the views expressed and requested the Law Reform Commission to make concrete and specific suggestions concerning some matters, more particularly the Rules of Court. This was done under the aegis of Mr. Georges Robert by the Joint Committee set up by the Law Reform Commission and the Rules Committee. The proposal of the Joint Committee is being sent to Lord McKay of Clashfren.
4. At the last meeting of the Law Reform Commission held on the 30th December 1997, the Chairman expressed the view that, in its present set up, the work of the Law Reform Commission is not translated into practical results. In order that the Law Reform Commission may properly discharge the functions set out in the Act, there must be a permanent secretariat

manned by an experienced executive office (e.g. a retired Court Officer of Senior Rank), a Clerical Officer and legally qualified Research Officer who can do the research for the Commission, follow up proposals discussed at the Commission and prepare the first draft of proposed Bills. That part of the work of the Commission is now being done by members who already have a busy schedule. The hiatus between the time a subject is first discussed and the finalisation of the recommendations relating thereto is far too long and may last several years. With the setting up of a permanent establishment devoted specifically to this type of work, under the responsibility of the Secretary and the Chairman of the Commission, the work will be better researched, more effective and more expeditious.

The members of the Commission shared the views expressed by the Chairman and drew attention to the fact that Mr. Madun Gujadhur, a past Chairman, felt likewise.