



LAW REFORM COMMISSION

Opinion Paper

Liberalization of Usher Services

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LAW REFORM COMMISSION

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About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –

- (a) a Chairperson, appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) the Director of Public Prosecutions or his representative;
- (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
- (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
- (h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.

Opinion as to the Liberalization of Usher Services

1. The Commission has been asked to express its views on the Draft Court Ushers (Amendment) Bill.

The object of the Bill is to liberalize the profession of usher, as recommended by the Presidential Commission set up in 1997 to examine and inquire into the structure and operation of the judicial system and legal professions, by enabling suitable persons, who are not public officers and who will be known as registered ushers, to serve or execute process.

The Bill also makes provision for the manner in which registered ushers will exercise their profession and for the Chief Justice to exercise disciplinary control over them, and for related matters.

2. The Ushers are an important part of the structure of the Courts in Mauritius, providing basically three distinct services. First the Ushers are the Court Officers who call the cases and generally serve the Magistrates and Judges in Court by supervising the practical arrangements that are required, informing witnesses and defendants when they are required and generally providing the practical backup which is necessary in the daily functioning of the Court. Secondly, they serve process where service on a person is required. The third function of the Usher is in the relation to the execution of court orders.
3. The Presidential Commission, chaired by Lord Mackay, examined the service provided Court Ushers and recommended the liberalization of the usher service:

“We have had numerous complaints that cases are seriously delayed by the lack of Usher services, for example, particularly in relation to the service of process. We have been told that although the return dates assigned when process is lodged gives ample time for service, because of pressure on the Usher’s availability, service is often not effected until very near the end of the return period with the

result that an application is made which can hardly be resisted for an extension of time in which to process the defence.

It is obvious that when the Ushers are required to perform Court duties the time available for their other activities is very restricted ...

The service of acting as Court Officers is we consider intimately bound up with the day to day functioning of the Court and the requirement a close liaison with the presiding Judge or Magistrate makes it necessary in our view that the Court Officer should be a public servant with the terms of service, including hours of work appropriate for the day to day running of the Court, and we do not consider that this aspect of the usher’s work is suitable for a person not in the public service. On the other hand, much of the rest of the work of the Usher can and should be done outside the Court but some at least during court hours and we see considerable advantage in suitably qualified persons being authorized to perform these functions as part of a profession organized by themselves. The provision of sufficient people to carry out the available work would then be a matter for ordinary business acumen of those seeking to provide this service. We do not consider that it is necessary to prevent a continuation of the present arrangement under which the service of process, so far as it shall continue to be necessary, and the execution of judgment can be performed by ushers who are full time public servants but we recommend that it should be possible for a person properly qualified as an Usher in accordance with the requirements laid down for that purpose to be authorized to act as an Usher for the purpose of serving Court process or executing Court judgments by the Chief Justice if the Chief Justice is satisfied that he or she is suitably qualified and is a person of integrity appropriate to be granted a certificate to act as an Usher. Any complaints against Ushers should be dealt with by the disciplinary committee that we have suggested for the legal profession, the result of any decision by that committee in relation to an Usher should be communicated to the Chief Justice who would have the right to withdraw the Usher’s certificate or, if the thought it appropriate, to make conditions on his continuing to act as an Usher.”¹

4. The Commission has examined the profession of ushers in other jurisdictions [the ‘huissier’ in France, and the ‘court usher’ and the ‘bailiff’ in England]. The Commission is favourable to the liberalization of the profession of usher as proposed by the Presidential Commission chaired by Lord Mackay.

¹ Report of Presidential Commission (1998), paragraphs 16.3, 16.4 and 16.7.