

LAW SOCIETY BILL

Mr Speaker Sir,

No society, which is governed by the rule of law, can do without a legal profession. Mauritius is no exception. It is therefore vital for us in Mauritius that all the three branches of the legal profession - notaries, attorneys and barristers – are structured in such a way that they uphold the integrity, standards and independence of their respective members. I stress on “**independence**” because of the unique relationship between the legal profession and Government in the law enforcement process. It is of critical importance that the legal profession remains independent from the Government, since it is only then that the profession will be able to act in the interests of the public and retain their trust and confidence. In order to guarantee those safeguards, I consider that it will be up to the Legislature to provide the necessary legal framework.

The Law Society of Mauritius has, over the years lobbied for the enactment of a statute and the promulgation of a code of ethics to regulate the profession of attorneys. Unfortunately its request never materialized in spite of the recommendations of Lord Mackay and his assessors, who in their Report of the Presidential Commission (the MacKay Report) recommended at Paragraph 12.4 that the Law Society should be set up under statute as proposed by the Society. I am therefore particularly pleased that this Bill will do away with the existing anomalous situation. With regards to a Code of Ethics, I am aware that the Law Society, with the assistance of my office, has

finalized its Code and once the Law Society Act comes into force, the Society will promulgate its Code.

The Law Society Bill, Mr Speaker Sir, is the first of three statutes that I will introduce in this House, in order that the legal profession is regulated in a more efficient manner and its members are able to maintain high professional standards. Prior to the finalization of the Bill, my office has had extensive consultations with the Law Society and for its part the Law Society convened a Special General Meeting to receive representations on the provisions of the Bill from its members. I am glad to report to the House that the representations made by the Society to my Office have been incorporated in the Bill and the President of the Society has personally informed me in a letter that the Society fully supports the Bill.

Before coming to the different clauses of the Bill, let me highlight an important feature of the Bill. The Bill provides that, for a person to practise as an attorney, he must be a member of the Law Society. This provision of the Bill is in addition to the requirements laid down under sections 3 and 15 of the Law Practitioners Act. Under the Act, in order for a person, to practise as an attorney, other than an attorney in the public service, he must have his name entered on the Roll as laid down by section 3 and must, as required by section 15 be, firstly, the holder of a licence issued by the local authority where he has set up his practice and, secondly, have furnished a security to the Accountant- General. The present Bill will do away with the need for a licence to be issued by a Local Authority and replace it with a

Register of Attorneys in which shall be inserted the names of all attorneys who are in practice. Only those attorneys, whose names are on the Register of Attorneys and who have complied with the Law Practitioners Act, shall be eligible to practise. For the benefit of the House, I must point out that the Roll and the Register serve different purposes. The Register will be maintained by the Society whilst the Roll is kept by the Judge in Bankruptcy and Master and Registrar. The admission of an attorney on the Roll is to confirm that the attorney has indeed satisfied the academic qualifications specified under section 4 of the Act and that he is eligible to practise.

Mr Speaker Sir, the Presidential Commission chaired by Lord Mackay addressed the issue of compulsory membership and at paragraph 12.5 of the Commission's Report, Lord Mackay made the following recommendations: "We have considered whether membership of the Law Society should be made compulsory for a member of the Attorney's profession to practise, and have reached the conclusion it is essential to the maintenance of professional standards that it should be made compulsory ...and that if and when the Law Society is set up under statute membership of the Law Society should be made compulsory for practising as an Attorney. This seems to us to be necessary in order to promote high professional standards and to be of importance to safeguard public order". Mr Speaker Sir, I cannot agree more. Across the Commonwealth, Law Societies are organized in such a way that they have compulsory membership. This enables them to have the necessary funds to operate an office with a full-time staff. In that regard, they are better equipped to act as a regulatory

body and to maintain the high professional standards that one expects from attorneys. Moreover, they publish law journals for their members and the public at large which is also an important source of revenue. These are, but a few of the objectives which the Mauritius Law Society should be aiming at. The Society will have important responsibilities once the Bill comes into force. It will have to prepare itself to meet those responsibilities.

Mr Speaker Sir, Clause 3 of the Bill sets up the Society as a body corporate to enable it to have its own legal status. The membership of the Society is provided for at Clause 4 of the Bill. As I have already explained, membership of the Society shall be compulsory and, except in the case of an exempt member, every member shall pay such membership fee as the Society may prescribe. "Exempt member" is specified in the Schedule. It concerns attorneys who are in employment in the Attorney General's Office who are answerable to the Judicial and Legal Service Commission for professional and disciplinary matters. Similarly, those Attorneys who are in employment in the public service and the local authority are exempted from payment of the membership fee as their terms of office are determined by the Public service Commission and the Local Government Service Commission, respectively. Clause 4 sub-clause (3) provides for the name of the attorney and other relevant particulars listed under clause 9 to be entered in the Register of Attorneys on payment of the membership fee. Clause 4 should be read in conjunction with section 15 of the Law Practitioners Act as

amended since no person shall be eligible to practise as an Attorney if his name is not entered in the Register of Attorneys.

Clause 5 of the Bill lays down the objects of the Society which shall henceforth have to play a proactive role to safeguard the interests of its members, uphold their dignity, reputation and independence. Under sub-clause (1), paragraph (d) the Society has to ensure compliance with the Code of Ethics for Attorneys. In line with the recommendations of the Mackay Report, the Society is being given the responsibility under Clause 17 of the Bill to draw up its Code and to enforce it.

Under sub-clause (1) paragraph (e), the Society is given the responsibility for continued legal education. It is highly desirable, Mr Speaker Sir, that attorneys and, for that matter, all members of the legal profession show a high standard of client-care, and continuing legal education is one of the ways to achieve this objective. The legal profession should in collaboration with the University of Mauritius organize courses for continuing education of its members in legal developments, from time to time. Whilst it is open to the Society to organize specific courses for its members, especially when it comes to procedural law, it may also consider joint courses with other bodies of the legal profession.

Clause 6 of the Bill provides for the setting up of a Council which shall administer the Society. The Council shall consist of a State Attorney designated by the Solicitor General and seven other members, two of

whom shall be attorneys of not less than 15 years standing, to be elected at a General Meeting specially convened for that purpose. Under sub- clause (2) the term of office of a member of the council shall be for a period of two years as proposed by the present Law Society. Clause 7 provides for the appointment of the office bearers within seven days of the Council being constituted.

Clause 8 provides for the circumstances in which an Annual General Meeting or a Special General Meeting can be convened. Whilst the term of office of members of the Council lasts for a period of two years, the Council has to meet its members annually and in any event not later than three months after the close of each financial year for the purpose of receiving the President's report on the activities of the Society during the preceding financial year. The meeting is also called upon to approve the audited accounts of the Society. The accounts of the Society shall henceforth be audited by an auditor licensed to practise as an auditor under the Financial Reporting Act 2004.

Clause 10 lays down the circumstances in which the name of an attorney may be removed from the Register. In that context paragraph (c) of sub-clause (1) provides for a situation where a request is made by the Supreme Court. This request would apply to a situation where the Supreme Court has exercised its disciplinary powers over an attorney by virtue of section 18 of the Courts Act or following the submission of a report by the Attorney General to the

Chief Justice for the institution of disciplinary proceedings against an attorney pursuant to section 13 of the Law Practitioners Act.

Under sub-clause (3), the Council may temporarily remove a member from the Register where the attorney is charged with a serious offence involving fraud or dishonesty before a court of law, or is subject of an investigation for a serious breach of the Code or has failed to pay the annual subscription fee. The Council, however, shall reinstate the attorney on the Register on good cause shown.

Mr Speaker Sir, Clause 16 of the Bill empowers the Council as the governing body of the Society to make such Rules as it considers appropriate to meet its responsibilities under the Act. Clause 16 is an important clause as the Council will be able to provide by way of Rules provisions to administer the Society generally and to regulate the admission and removal of its members.

Part III of the Bill provides that the Council shall establish and cause to be published in the Gazette a Code of Ethics for Attorneys within four months from the coming into operation of the Act. Clause 17 of the Bill in fact fulfills the recommendations made at paragraph 12.6 of the Report of the Presidential Commission which considered that the promulgation of a code of ethics was an urgent necessity and that the responsibility rests with the Society to draw up its Code. In that context, the Bill provides at Clause 18 (3) that the Council may refer to the Supreme Court a serious breach of the Code by an attorney, after the holding of a preliminary investigation.

Finally, under Clause 19 of the Bill a judge is given the power to order an attorney to deliver to his client a list of moneys or securities which the Attorney has in his custody or control on behalf of his client subject to the payment of any claim for costs.

Mr Speaker Sir,

When I introduced the Law Reform Commission Bill a few months ago in the House I referred to the huge transformation that is taking place in our society. This transformation has inevitable consequences for the law and for its development. Lawyers have a central role to play in the process. The Law Society Bill lays down the regulatory framework which will enable the Society to play that important role and ensure that its members serve their respective clients in a manner consonant with the proper and efficient administration of justice.

With these words I commend the Bill to the House.