



## Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions

Marlborough House, London, 12-13 September 2013

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**Provisional Agenda Item 2**

**LMSCJ(13)4**

### **CONTINUING JUDICIAL AND LEGAL EDUCATION FOR LAW PRACTITIONERS – OPPORTUNITIES FOR COLLABORATION**

**Paper prepared for the Commonwealth Secretariat by  
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#### **Recommendations**

- It is recommended that well-defined strategies be devised through workshops, conferences or surveys with all relevant stakeholders in order to assess the needs and expectations of the judicial and legal profession in smaller jurisdictions before setting up Judicial and Legal Training Centres.
- It is recommended that small Commonwealth jurisdictions maximise the use of their own training centres while taking into account their limited needs and means. Mauritius has included in its own legislation specific provisions for its Institute to accommodate the maximum number of users and resource persons both locally and internationally. Resources can, therefore, be shared, costs significantly reduced and unnecessary duplication avoided. Smaller jurisdictions should ensure that they set up training systems which are tailor-made to their own specific needs.
- It is recommended that small Commonwealth jurisdictions adopt the appropriate legislation in order to provide for the legal framework which will maintain judicial independence and which will also cater for the ever-changing requirements of the judicial and legal profession, in line with international best practices in the field.
- It is recommended that small Commonwealth jurisdictions with limited resources consider local and regional feasibility studies in order to help them identify similar recognised Training Centres which already operate in their region and within the Commonwealth, to overcome financial and human resource limitations. Such feasibility studies will address the issue of unnecessarily spending limited funds for the setting up of local Training Centres when similar recognised institutes in the region can provide assistance at much reduced costs.
- It is also recommended that small Commonwealth jurisdictions contemplate signing co-operation agreements with other Institutes which already provide training in their region and where similarities exist with their own system.

## Introduction

1. Mauritius is a densely populated island state with a current population of just over 1.3 million. It inherited a singular dual legal system after it was first colonised by the French and subsequently by the British, before it became independent in 1968. The French substantive law has largely subsisted but the Court structure and procedural rules are predominantly inspired by the common law system.

2. Today, this unique legal system is made up of about 800 law practitioners in private practice (barristers, attorneys and notaries). In addition, about 100 legal officers (barristers and attorneys) are posted at the Attorney-General's Office and the DPP's Office, and 71 Judicial Officers make up the core of the Judiciary (20 Supreme Court Judges, 1 Master & Registrar, 1 Deputy Master & Registrar and 49 Magistrates).

3. Mauritian legal professionals read law in Mauritius, England and Wales, France, Australia, New Zealand and Canada among other jurisdictions. Magistrates appointed at District and Intermediate Courts were, until very recently, only required to have practised as barristers for at least two years to be eligible for appointment on the Bench. Supreme Court Judges were qualified for appointment provided they reckoned a minimum of five years' practice at the Bar.

4. It is against such a backdrop that a Presidential Commission chaired by Lord Mackay of Clashfern was set up in 1997, with the purpose of examining and reporting on the structure and operation of the judicial system and legal professions of Mauritius. The Commission came up with wide-ranging recommendations as part of what has since been commonly referred to as the "Mackay Report". Most, if not all, of Lord Mackay's recommendations have been implemented in the wake of instrumental reforms aimed at modernising the judicial and legal systems of Mauritius.

5. The Commission realised that, at that time, there was no formal arrangement for training following the appointment of Judicial Officers in Mauritius. In 2006, Lord Mackay made further recommendations so that consideration would also be given to continuous legal training for law practitioners in general, as in the United Kingdom and in other jurisdictions, and for an institution for the continuing training of Judges and Magistrates to be set up.

6. The Mackay Commission had initially recommended that a Judicial Studies Board be set up to have the responsibility of organising suitable induction and continuing training for Judges and Magistrates at various levels. It had further considered that it should be open to the proposed Training Centre to invite resource persons from overseas and that it should also be within the scope of responsibility of the Centre to make arrangements for Judges and Magistrates to travel overseas from time to time to participate in study conferences.

7. As in other jurisdictions witnessing significant population growth, Mauritius has seen a rapid expansion of human resources in its legal services during the last 20 years. There has been a marked increase in the number of qualified professionals as a consequence of easier access to higher education. Litigation has escalated because of a higher number of qualified legal professionals and a more organised legal profession. Globalisation and improved telecommunications are additional factors which have contributed to greater recourse to litigation. The development of international financial services and the rise of white-collar crime have resulted in the need for legal professionals to respond and adapt to more sophisticated litigation processes in a rapidly changing working environment.

8. Law is a dynamic subject which keeps evolving rapidly over time. It is therefore vital for legal professionals to constantly update their knowledge on new legislations, jurisprudence and practices. Besides, Mauritius has endeavoured to position itself as a model jurisdiction

offering professional legal services in the region, and its law practitioners are conscious that they must adhere to international best practices and standards in order to play a key role in the development of the country's economy.

9. It is with the Mackay Commission's recommendations in mind, while faced with the constraints of a small island nation, that the Institute for Judicial and Legal Studies Act ('IJLS Act') was passed by the National Assembly in Mauritius on 19 July 2011.

### **Setting up the Institute for Judicial and Legal Studies**

10. The Institute for Judicial and Legal Studies ('Institute') was, in effect, set up on 1 October 2011, the date on which the IJLS Act was proclaimed. Section 4 of the IJLS Act provides that the objects of the Institute shall, amongst others, be to: (a) promote proficiency and ensure the maintenance of standards in the Judiciary, among law practitioners and legal officers, and generally in the delivery of Court services; (b) foster continuing judicial and legal education; (c) promote international exchanges and co-operation with other jurisdictions in the field of judicial and legal studies. In order to enable the Institute to further these objects, it is vested, under section 5 of the IJLS Act, with the following specific functions:

- (a) conduct or supervise courses, seminars or workshops for the continuing training of judicial and legal officers;
- (b) devise, organise and conduct Continuing Professional Development (CPD) Programmes, for law practitioners and courses for prospective judicial and legal officers and law practitioners who qualified as such in a state other than Mauritius;
- (c) identify areas of need and interest where specialised knowledge is required, and promote and co-ordinate research and development in the judicial and legal sectors;
- (d) establish areas of co-operation and linkages with local, regional and international bodies in the judicial and legal sectors.

11. The Institute is administered and managed by the Judicial and Legal Studies Board. Section 7(2) of the IJLS Act provides that the Board shall consist of:

- (a) a Chairperson, who shall be a person who holds or has held judicial office, a law practitioner or legal officer of not less than 10 years' standing, or a person who has proven ability and experience in legal education, to be appointed by the Chief Justice, after consultation with the Attorney-General;
- (b) 3 representatives of the Judiciary, to be appointed by the Chief Justice;
- (c) the Solicitor General or his representative;
- (d) the Director of Public Prosecutions or his representative;
- (e) a member of the academic staff of the Faculty of Law of the University of Mauritius;
- (f) 3 law practitioners (including a barrister, an attorney and a notary), to be appointed by the Attorney-General;
- (g) a member of civil society, to be appointed by the Attorney-General;
- (h) such other persons, not exceeding 3 in number, as the Chief Justice may, after consultation with the Chairperson, co-opt onto the Board either generally or for any specific purpose.

12. Due to limited resources, the Institute could not be launched with a large staff number or with its own seat. The legislator thus came up with innovative provisions, and except for the post of Director, the Act provides that the Board can, after consultation with the Head of the Civil Service, appoint staff from among public officers as may be necessary for the proper discharge of the functions of the Institute. These public officers are paid an allowance which is determined by the Board.

13. The Institute has, until now, been staffed by personnel from the Judiciary and other Ministries who are paid an allowance for the additional work performed for the Institute. This has enabled the IJLS to operate with experienced personnel at reduced cost during the first year of its operations. Even the Institute's first Director was appointed from among members of the Judicial and Legal Studies Board and was able to assist in setting up the Institute with a nominal allowance from the IJLS until the appointment of a full-time Director.

14. It is also worth noting that section 9 of the IJLS Act provides that the Board may engage such resource persons and consultants as may be necessary to carry out the functions of the Institute. This wide provision enables the appointment of any category of personnel on an ad hoc basis so as to limit costs, depending on the Institute's requirements and financial resources at any given time.

15. In a further effort to save resources, the seat of the Institute is presently located within the premises of the Mediation Division of the Supreme Court, as the current Chairperson also happens to be the Judge who heads that Division.

16. Under the Judicial and Legal Studies (Continuing Professional Development Programme) Regulations 2012 made by the Judicial and Legal Studies Board in June 2012, the first academic year for CPD programmes started as from 3 September 2012. Every law practitioner and legal officer in Mauritius is now required to participate in CPD Programmes organised by the Institute for not less than 12 hours during every academic year, and to pay to the Institute a yearly fee in that respect. It is worthwhile to point out that, out of the 12 compulsory CPD hours, at least 2 CPD hours should be in respect of Ethics and Professional Responsibility, which is considered to be a crucial topic.

17. As a complementary enactment, the Law Practitioners (Amendment) Act 2011 makes provision for the Institute to devise and organise CPD Programmes for each of the three branches of the legal profession with a view to broadening the knowledge of law practitioners and legal officers, to keep them abreast of developments in the law, and to encourage them to share experiences and enhance their professional skills. Such programmes may include attendance at lectures, workshops or seminars accredited by the Institute. CPD has thus become compulsory since September 2012 for every law practitioner and legal officer, except if dispensed with by the Chief Justice for reasons such as age or ill-health.

18. Non-compliance with the CPD requirements can have severe repercussions on a law practitioner's or legal officer's continued right to practice. Under section 9B(4) of the Law Practitioners (Amendment) Act 2011, where a law practitioner or legal officer fails, without reasonable excuse, to follow a CPD Programme, the Institute may:

- (a) in the case of a legal officer, report the matter to the Judicial and Legal Service Commission; and
- (b) in the case of a law practitioner, refer the matter to the Chief Justice who may:
  - (i) issue a written warning to him; or
  - (ii) suspend his right to practise for a period not exceeding one year.

19. Section 9C of the Law Practitioners (Amendment) Act 2011 further provides that any person who wishes to be considered for appointment as a Judge, Magistrate or legal officer shall follow a course which shall be approved by the Judicial and Legal Service Commission, and that the Institute shall devise courses to enable such persons to familiarise themselves with the duties which they will be required to perform. The former requirement of having practised for 2 or 5 years at the Bar to qualify for appointment as Magistrate or Supreme Court Judge, as the case may be, is therefore no longer the only criterion.

## **The Institute for Judicial and Legal Studies in operation**

20. Since its inception, the Institute has, through its Judicial and Legal Studies Board, approved and organised a number of courses and workshops for the Judiciary and for the three branches of the legal profession in Mauritius and in the region. Courses are mainly conducted by members of the legal profession in Mauritius, as well as by distinguished persons invited by the Institute. The Institute has managed to enlist the help of two retired Chief Justices (one from Mauritius and one from India), academics of international repute, high ranking diplomats, members of the Bar of England and Wales, and French law Practitioners and Judges, to name a few. The resource persons are selected by the Chairperson and the Director of the Institute and are either remunerated or earn CPD hours. The Institute is funded by the Government through an annual grant of MUR 4 million (£ 82,000), as well as from CPD fees collected from law practitioners. About MUR 2.3 million (£ 47,000) is spent on remuneration of the Institute's staff and the remaining available funds are used for the furtherance of its objectives under the Act.

21. Subjects included in the CPD Programme range from Awards of Damages in Personal Injury Claims, Ethics and Professional Conduct, to Recent Developments in Anti-Money Laundering Laws. Between 3 September 2012 and 8 August 2013, the Institute will have organised not less than 63 CPD courses totalling 155 CPD hours. These CPD courses can last for a minimum of 1.5 hours and can extend up to half-day or full-day sessions.

22. Various courses are also conducted for the benefit of Judges and Magistrates on wide-ranging subjects such as Comparative Family Law, Mediation Skills and Sentencing Practices. Induction courses for Judges, Magistrates and Legal Officers will be launched by the Institute before the end of 2013. Courses for Judges and Magistrates are dispensed by judicial officers, lawyers and professionals who have knowledge in specific areas of required study.

23. Judging by the feedback from participants at the courses offered by the Institute, it can be safely concluded that the Institute for Judicial and Legal Studies of Mauritius is already a success story in spite of its very young life. Thanks to the support of its many associates such as the Commonwealth Secretariat and the French École Nationale de la Magistrature (ENM), Continuing Professional Development has now become a very real and essential component in the Mauritian judicial and legal culture. Surveys and Training Needs Analyses are well under way by the Institute in order to identify priority areas where training is most required and to meet client-based demands.

24. During its next phase of development, the Institute will cast renewed focus on the training needs in respect of supporting Court services in order to improve the level of service offered within the legal profession. A new seat will also be identified and publications of guidebooks and curricula will soon be initiated, so that the Institute can continue to position itself as a reputed Regional Centre for Judicial and Legal Training.

## **Opportunities for collaboration**

25. Interestingly, the Mackay Commission clearly anticipated that, in setting up its own Training Centre, Mauritius would be facing difficulties caused by the comparatively small number that would require training. It was thus outlined, at page 126 of the Mackay Report, that participation in regional courses and co-operation with other institutions in the region might be necessary and appropriate. As already highlighted, section 5(d) of the IJLS Act lists as one of the functions of the Institute that it shall establish areas of co-operation and linkages with local, regional and international bodies in the judicial and legal sectors.

26. This reality was taken on board in the very early stages of the Institute's existence since a formal agreement for co-operation was signed with the French École Nationale de la Magistrature (ENM) in 2012. This resulted in trainees from the ENM being sent to Mauritius and attached to the Institute for one month at the end of their training cycle.

27. Over and above the opportunity to share common experiences between the two Training Centres, the agreement with its French counterpart has enabled the Institute to develop its own network in the region and to invite French Judges and Law Practitioners posted in Réunion Island to dispense and participate in some courses organised by the Institute.

28. Moreover, thanks to financial assistance provided by the Commonwealth Secretariat, the Institute further managed to invite senior law practitioners from Lincoln's Inn to provide training in Mauritius in 2012. As for 2013, the Lincoln's Inn has agreed to partly fund the training of five nominated law practitioners from Mauritius in London. The Institute is also about to hold training sessions which will be dispensed by the British Advocacy Training Council during the month of July 2013.

29. In a further spirit of regional co-operation, the Institute has regularly invited law practitioners from Seychelles and Réunion Island to courses which are of common interest to legal professionals in these jurisdictions.

## **Conclusion and Recommendations**

30. Mauritius is renowned as a stable democracy with a dynamic economy as part of the African continent and in the region. The country has recently upgraded its telecommunications network and is currently focused on the launch of e-services across all Government Departments. Fast speed Internet access is now a common feature in all businesses and in most Mauritian households. Moreover, the island's unique social blend and the dual origins of its judicial and legal culture, combined with the skills of its legal professionals, can set the Institute for Judicial and Legal Studies as a preferred regional centre for judicial and legal training.

31. The Mackay recommendations provided Mauritius with the backbone for extensive judicial and legal reforms that were initiated 15 years ago and which are now reaching completion stage. By the time the IJLS Act was proclaimed, extensive consultations had already taken place with all interested parties in order to meet their expectations in relation to the introduction of initial and continuing judicial and legal training. The current Director of the IJLS is still actively engaged in wide-ranging survey processes to identify key areas for training within the legal profession.

**A. It is, therefore, recommended that well-defined strategies be devised through workshops, conferences or surveys with all relevant stakeholders in order to assess the needs and expectations of the judicial and legal profession in smaller jurisdictions before setting up Judicial and Legal Training Centres.**

32. In a day and age where it is easy to resort to "*cut and paste*" practices when drafting legislation, smaller nations should be wary of simply reproducing what larger jurisdictions have achieved in the field of judicial and legal training. Although Mauritius benefited from the exhaustive study conducted by the Mackay Presidential Commission and it was inspired by the established judicial and legal education bodies in the United Kingdom and France, its legislators were careful to adapt its Institute to Mauritian realities. The Institute is thus dedicated to the training of judicial and legal officers, and some of its functions under section 5 of the IJLS Act include the setting up of areas of co-operation with bodies outside Mauritius, to organise and conduct courses for Police and Public Officers, as well as Court

Staff and persons employed by law practitioners, with a view to improving the administration of justice in general.

- B. It is, therefore, essential for smaller jurisdictions to maximise the use of their own training centres whilst taking into account their limited needs and means. Mauritius has included in its own legislation specific provisions for its Institute to accommodate the maximum number of users and resource persons both locally and internationally. Resources can, therefore, be shared, costs significantly reduced and unnecessary duplication avoided. Smaller jurisdictions should ensure that they set up training systems which are tailor-made to their own specific needs.**

33. As a result of the extensive consultations which took place with all relevant stakeholders, the main objectives which ensued under section 4 of the IJLS Act were the following: to promote proficiency, ensure the maintenance of standards in the Judiciary, among law practitioners and legal officers, and generally in the delivery of court services. The Institute also bears, as part of its functions, the responsibility of formulating, adapting and monitoring best practices in the administration of justice. In order to implement such wide-ranging objectives, the Institute operates through a Judicial and Legal Studies Board which is mainly composed of members appointed by the Chief Justice and the Attorney-General. Moreover, under section 11 of the IJLS Act, the Chief Justice can give such directions to the Board as he considers necessary in the interests of the Judiciary and of the legal profession, as long as such directions are not inconsistent with the Act.

- C. It is, therefore, necessary for smaller Commonwealth Jurisdictions to adopt the appropriate legislation in order to provide for the legal framework which will maintain judicial independence and which will also cater for the ever-changing requirements of the judicial and legal profession, in line with international best practices in the field.**

34. Without adequate resources, there can be no sustainable development and training within the judicial and legal profession. There is no room for amateurism when it comes to training judges and legal professionals in order to maintain public confidence in a country's justice system. One of the key challenges which arose in the early stages of the Institute's operations was to ensure that it had adequate financial means to be successfully launched and that it could be sustained as a self-financing institution in the future. The Mauritian Institute is currently engaged in the process of drawing up a three-year budgetary plan in its endeavour to finance itself whilst furthering its objectives in the long term.

- D. It is recommended that smaller jurisdictions with limited resources consider local and regional feasibility studies in order to help them identify similar recognised Training Centres which already operate in their region and within the Commonwealth, to overcome financial and human resource limitations. Such feasibility studies will address the issue of unnecessarily spending limited funds for the setting up of local Training Centres when similar recognised institutes in the region can provide assistance at much reduced costs.**

- E. It is also recommended that smaller nations contemplate signing co-operation agreements with other Institutes which already provide training in their region and where similarities exist with their own system.**

35. As highlighted above, the Institute for Judicial and Legal Studies in Mauritius is now well versed in the many constraints facing smaller jurisdictions wishing to set up their own Training Centre while maintaining public confidence in their judicial and legal systems locally

and internationally. The Institute welcomes the opportunity to share its knowledge and experience with other jurisdictions in the region and elsewhere in the Commonwealth in order to avoid unnecessary duplication and to help foster judicial and legal development assistance internationally.

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