

Defence Counsel's Role in a Criminal Enquiry and Investigation

The IJLS organised on 20 November 2019 a course entitled 'Defence Counsel's Role in a Criminal Enquiry and Investigation' and delivered by Me Gavin Glover SC and Me Narghis Bundhun SC.

Me Glover SC started the lecture by reminding barristers of their specific duty in relation to criminal enquiries and investigations. There is first the duty at the police station which is instigated by a phone call. Barristers may use their professional card and should be humble at all times. This inherent humility must be balanced with a measure of forcefulness when dealing with police officers. It is essential to strike the necessary balance between soft and hard in order to ensure the rights of the clients are being protected.

Me Glover SC then moved on to provide some insight on the law. It is important for counsels to stay abreast of the changes in law and they should in particular know the mother of all laws, that is the Constitution. Counsels should be well acquainted with the provisions of the Criminal Procedure Act as well as the Code of Ethics for Barristers. There is in addition the Police Act which provides for Standing Orders of Police enumerating what are the powers of the police. A number of judgments makes references to standing orders. The sum total of these laws will give counsels the background they need. The interaction with people is something which cannot be taught. It is only when counsels deal with others in a respectful manner that they will receive respect from others. In essence, if counsels approach people correctly, it will automatically make their work easier.

Me Glover SC highlighted that counsels at times have to metaphorically bury their fist with their words to the police. They cannot do anything if their clients do not need their services. The core duty of counsels is to protect the interests of their clients and if the latter do not require such services, counsels cannot force their way. A person retaining the services of counsel in criminal matters is mostly not the accused and very difficult to deal with. Counsels should ensure that they perform their own KYC such that they know who is the client, who is giving instructions and above all where the money is coming from. It is important to be careful about who gives instructions, for example the wife, sister or mother as well as others who have an interest in the police enquiry. If counsel has been instructed by a relative who does not have an interest, counsel should bear in mind to tell the family to inform the accused that your services has been retained. Counsel should ask to see the suspect and tell him that their services has been retained by wife, mother or relative etc. Another solution would be to get the relative accompany counsel to the police station so that the police cannot contest. It is important to ensure that an entry with the day and time is made in the diary book if counsel is refused access to clients.

Me Glover SC discussed about bail. He stated that is no bail for most charges of murder inasmuch as the police takes a long time to investigate, and the results from FSL should be ready first. It is clear that the police plays with the system to have time to do what they have to do. The police force is understaffed. For example, in drug cases, the FSL Report may take 6 months to be ready. It is difficult to beat the system when the police is in a position to use the system against your client. It is imperative to communicate with clients and detective and to keep the line of communication open at all time because it is counsel who is the interface between those inside and those outside. Even if counsels cannot change the system, they can

play with it by keeping an open communication line with the police so that they can receive some benefits in return.

Counsels should keep in mind that if their approach is too forceful at an early stage, it will work against them. A police enquiry can last 2 days or 2 year but the duty of counsel never stops. Counsels should keep regular contact with the client and the CID. Moreover, Me Glover SC stressed that counsels should be mindful to never get overtly friendly with police officers as this may conflict with their independence. Some police officers will try to become friendly but counsels should refrain from mingling with them and deal with them at arm's length. If counsels believe that the rights of their clients have been infringed, they should report it and in the first place they must also take appropriate steps to ensure that their rights will not be infringed. If the constitutional rights of a client is being infringed, counsel should turn to a magistrate in order to seek an order to bring client. Me Glover SC finished his part of the course by reiterating the role of counsel.

In the second part of the course, Me Bundhun SC started by talking about the recording of statement. It usually a police sergeant who is in charge of an enquiry, and not the recording officer. However, the sergeant works on shift. The sub inspector is the most experienced person who knows about tricks that police uses in recording of statement. For instance: 'ene ti lenquete sa, amene ou client'. After the enquiry, 'nou garde li la, demain nou pou gagn approval' ; they will not tell you that they will keep him. Try to ascertain how many statement and you will ene up getting your client to be arrested. Try to get him to be released on parole or suggest the approval first then go for bail. The client's expectations is usually that he does not spend the night at the police station. Another trick used by police officers is in relation to the signature of witnesses, they try to get the counsel to be a witness. Counsels should never do this if they do not know where the case can be. By witnessing the statement, nothing in the statement can be challenged. Standing orders No 2 relates to the narrative style of statement and that if anything is to be cleared, then it should be in Q&A form. This trend has been reversed now. The proper order gives client's version and once the version is recorded the police can put any questions. Counsel can object to the question but only on the clarity of the question. All day cases are in Q&A form. But who prepares the questions?

In relation to business card, Me Bundhun SC stated that counsels need to be careful of the use they can make of their business cards. Counsels should play along with their role and maintain good relations with police officers in the exercise of their role. Small talks help and they need to build a rapport with police officers.

The course was a tremendous success insofar as it has been delivered by two of the most eminent criminal lawyers in Mauritius. Members of the legal profession had the opportunity to learn from Me Glover SC and Me Bundhun SC on the role of defence counsels in criminal enquiries and investigations.