

WORKSHOP ON ‘MAKING BETTER MOTIONS IN COURT’ FOR THE FAMILY WELFARE PROTECTION OFFICIERS

The IJLS in collaboration with the Judiciary and the Mauritius Magistrates’ Association organised a full day workshop for the Family Welfare Protection Officers from the Ministry of Gender Equality and Family Welfare titled ‘**Making better motions in court**’ on the 22nd of November 2019 at the seat of IJLS, Port-Louis.

The resource persons for this training were:

- Honourable Mrs. Sarita BISSOONAUTH, President of the Industrial Court
- Honourable Mrs. Meenakshi GAYAN-JAULIMSING, Magistrate of the Intermediate Court (Criminal Division)
- Honourable Mrs. Sophie CHUI, Senior District Magistrate of the District Court of Port-Louis

(i) Session 1 - What to expect from a Social Enquiry Report from the Court’s perspective?

The first speaker, Hon. Mrs. Gayan-Jaulimsing, started her presentation by stating that a Social Enquiry Report (hereinafter referred to as the SER) plays an important role in the protection of the child. She explained that child protection is actually the protection of children from violence, exploitation, abuse and neglect which can come in several forms including physical and emotional abuse, peer bullying and as well as sexual abuse.

Whilst tracing the history of the origin of child protection in Mauritius, Hon. Mrs. Gayan-Jaulimsing highlighted that it is in the year 1990 that we acceded to the Convention of the Rights of the Child. The Republic of Mauritius also signed the Declaration of the World Summit for Children and adhered to the African Charter of the Rights and Welfare of the Child.

In 1994, the Child Protection Act (hereinafter referred to as the CPA) came into force. It provides a legal framework for child safety and protection. Our national laws have been harmonized in line with the Convention on the Rights of the Child. The Child Development Unit (hereinafter referred to as the CDU), which is a unit of the Ministry of Gender Equality and Family Welfare, was set up in 1995. It ensures that the survival, protection, development and participation rights of the Mauritian child are upheld as per the Convention on the Rights of the Child.

Moving on to the SER, Hon. Mrs. Gayan-Jaulimsing emphasized on the fact that Family Welfare Protection Officers (hereinafter referred to as the FWPO) represent the link between the child victim and the court. They communicate to the court through the SER.

The SER is actually a report about the child detailing the harm committed upon the child and the circumstances behind the offence. The purpose of the SER is to assist the court by providing an impartial and professional assessment of the nature and causes of the case. It forms part of information that officers provide to the court to enable it to make informed

decisions in the best interests of the child. The report must respond to the needs of the court in the sense that the report must provide the court with a comprehensive background in relation to the child victim. On a general note, a report should include the followings:

- The particulars of the child victim
- The source of danger to the child
- The impact of the harm on the child
- The assessment of the child
- The measures to be implemented in the best interests of the child

She pointed out that the SER is usually based on the interviews of the child victim, the parents or other stakeholders. Hon. Mrs. Gayan-Jaulimsing laid much emphasis on the fact that the SER for a child victim should be first on the priority list of the FWPO such that whenever the court orders for a SER, the report must be ready within the allocated time. The report must mandatorily contain the cardinal issues including the need to remove the child from his residence, the exact nature of the danger, the people representing the danger as well as its impact on the child.

Hon. Mrs. Gayan-Jaulimsing explained that the court relies on the report to understand the psychological needs and the state of mind of the child. Although the SER must be comprehensive enough, she reinforced that the FWPO must remember that it should only contain the relevant details and that each issue must be under a specific heading so as to enable a quick and efficient reading by the courts.

She further clarified that there are different instances when a SER can be filed in court. The first intervention usually comes with the Emergency Protection Order (hereinafter referred as the EPO). The EPO has its existence as from the time the Permanent Secretary has reasonable cause to believe that a child is suffering or likely to suffer significant harm. The CPA empowers the Permanent Secretary to apply for an EPO whenever the child is at risk. It is also important to note that as per the CPA, the definition of the Permanent Secretary includes any public officer designated by him and thus it would encompass FWPO and CDU officers.

Hon. Mrs. Gayan-Jaulimsing shed light on the fact that when an EPO is issued, the magistrate would act upon an information on oath. At this point in time, the magistrate is totally unaware of the details of the case. Foremost, it is the FWPO or the CDU officer who intervenes in cases of child neglect or abuse and thus they have been conferred upon with wide powers under section 4(3) of the CPA which are as follows:

- To summon any person with or without the child to give evidence for the purpose of verifying whether the child is suffering or likely to suffer significant harm;
- To enter any premises specified in the order, where necessary by force, and search for the child, provided that the order or a copy thereof shall be produced to the occupier of the premises on request;
- To remove or return the child to, or to prevent the child's removal from, any place of safety;
- Where necessary for the welfare of the child, to cause him to be submitted to medical examination or to urgent treatment;
- To request police or medical assistance for the exercise of any power under the order.

Although there is no mandatory requirement in the law for a SER at the time an EPO is issued, the District Court is entitled to ask for the report to understand the nature of the case and the reasons behind the issue of the EPO.

Following an EPO, the CDU officer needs to find a place of safety for the child. Upon the application of a committal order in the place of safety, there is a mandatory requirement under section 8(2) (b) of the CPA that the court orders for a Probation Report in relation to the child's family background, general conduct, home surroundings and school record.

Gearing towards the end of this session, Hon. Mrs. Bissoonauth buttressed that all SER should adhere to the following guiding:

- Impartiality
- Confidentiality
- Non-Discriminatory
- Relevancy
- Comprehensiveness

(ii) **Session 2 – Court decorum and etiquette for family welfare officer**

HH Ms. Chui intervened to explain the court decorum and the essential etiquettes that should be adhered to. She stated from the outset that she would prefer an interactive session so she might provide guidance on the practical issues which the Family Welfare Officers (hereafter referred to as FWO) are currently facing. She proposed to deal with the definition and importance of etiquette before moving onto the essential tools that helps with respecting the court decorum. It was also stated that etiquette plays an important role in fostering the proper administration of justice.

Moving on, HH Ms. Chui went on to address the importance of etiquette and the need to respect court decorum. The following reasons were cited:

- Ensuring a proper and efficient administration of justice;
- Helps to maintain professional boundaries; and
- Essential to make a good impression to the court.

The resource person also pointed out that despite the fact that most of the cases involving the Child Protection Act are conducted in-camera or privately, the FWOs still have to adhere to court etiquette and maintain the level of professionalism. Moreover, she went on to provide the following basic etiquette rules which the FWO is expected to adhere to:

- If the FWO is in a hurry, he/she has to direct his/her needs to the court usher;
- The FWO is expected to stand up whilst addressing the court/magistrate;
- The FWO should address the magistrate properly;
- He/she should respect the timings of the court;
- He/she should wear appropriate clothing;
- Electronic devices should be switched off;

- He/she should be polite and courteous towards the magistrate and the staff of the court;
- He/she should avoid interrupting the magistrate or the proceedings of the court without permission;
- He/she should direct his/her concerns towards the bench;
- If it is his/her first time appearing before the magistrate, he/she should introduce himself/herself to the court;
- Prepare the case and be ready for questions or queries by the court;
- The FWOs should ensure that preparatory and precautionary measures are taken as they are dealing with children;
- In cases where the FWOs do not have the appropriate/relevant information, they need to form their phrases appropriately.

(iii) Session 3 - How to Make Motions for Specific Orders before the Court

In the third part of the training, the learned Magistrates intervened on ‘How to Make Motions for Specific Orders before the Court’. The Child Protection Act 1994 (as amended) empowers the court to make a range of orders with the aim of protecting the rights of the child. The learned Magistrates provided a comprehensive account of the legal and practical aspects relating to (i) Emergency Protection Orders; (ii) Committal Orders; (iii) Mentoring Orders; (iv) Variation of Orders; and (v) Lapse of orders.

Section 4 CPA states that a district magistrate shall issue an Emergency Protection Order (EPO) if he or she is satisfied that the information presented by the Permanent Secretary shows reasonable cause that a child is suffering or is likely to suffer significant harm. The EPO is an order that will be issued with the aim of protecting a child from ongoing or imminent risk of harm including sexual, physical emotional or moral injury, neglect ill treatment and impairment of health or development. This order is most frequently applied for by officers of the Child Development Unit. Insofar as it is an extreme measure, magistrates can be consulted outside office hours. The CDU officer will personally liaise with the magistrate of the district court. The magistrate will then designate someone to deal with the issue personally. For instance, if the offense is committed in Rose Hill and the magistrate of the district court of Rose Hill lives at Flacq, it is highly likely that the magistrate will consult a colleague who lives in the area of Rose Hill who is more easily accessible to the officer. The CDU officer can then formalise the application on the next business day.

The court will grant an EPO if it is satisfied that the measure will be in the best interests of the child. It is important for officers to ensure that the application clearly avers all the facts that demonstrates how the child is at imminent risk of harm or danger. Once the EPO is issued, the Permanent Secretary can legally remove the child from the environment where he or she is exposed to harm. The EPO is meant to offer an immediate response to situations in which a child is believed to be at risk of imminent danger. It is a temporary order which lasts for 14 days (S 5(1) CPA). However, a magistrate can extend the order for an additional period of 14 more days (S 5(2) CPA). The word ‘may’ suggests that this is at the discretion of

the court. Officers must provide compelling information so that the court can exercise its discretion to show good reason why the EPO has to be extended.

The Committal Order can be granted if the Permanent Secretary or his representatives have established in their application that there is reasonable ground to that a child is ill-treated, neglected, abandoned, destitute or otherwise exposed to harm, and that it is in his interests to be committed to a place of safety. The court can exercise its discretion under section 8(2)(a) CPA to make an interim order for the child to be put in a place of safety for an initial period not exceeding 14 days and may extend such interim order for further periods of 14 days until the final determination of the application. The Child Protection (Place of Safety for the Welfare and Protection of Children) Regulations 2019 caters for the conditions that must be satisfied in order for institution to be designated as a place of safety by the Minister under these regulations.

A Child Mentoring Scheme has been set up in order to assist children between the age of 10 and 16 who are victims of neglect; suffer from mild behavioural problems; are in distress; or have problems of social adaptation. A Mentoring Order may be granted if a magistrate is satisfied that the information presented by the PS shows that (a) a child may require assistance under the Scheme; (b) a child cannot adequately be dealt with under the Juvenile Offenders Act; (c) the parents of a child are refusing to take or cannot take any measures to provide the child with the assistance and support that he needs; (d) it is in the best interest of a child to be placed under the Scheme; and (e) there is no alternative means of providing assistance and support to a child.

The application for a Mentoring Order shall, as far as possible, be accompanied by a report from the Permanent Secretary which shall specify the reasons why the child should be placed under the Scheme, including the name of the child mentor who shall follow the child and the reasons why the child mentor has been chosen. a psychological report and such other information or document which may be relevant for the purpose of determining the application. Upon receipt of an application for a mentoring order, the District Magistrate shall cause a notice of the application to be served on the parents of the child, requiring them to appear before him on such day and time as may be specified in the notice; and in any case not later than 14 days of the date of the application, to show cause why the order applied for should not be made. The CPA deals with all the procedural aspects of applying for a Mentoring Order.

A child's parent (including persons who have custody or guardianship of the child) or the child may also apply to vary or revoke the order before it ends. Any order may only be revoked if the court is satisfied that the order is no longer appropriate and desirable for the child's protection. The court may have regard to a contravention of the order or the CPA. The District Magistrate may vary or discharge a mentoring order, or substitute a child mentor by another child mentor where he is satisfied that it is in the best interest of the child to do so. The Permanent Secretary or a parent may, at any time during which a mentoring order is in force, apply to the District Magistrate for a variation or discharge of the mentoring order, including the substitution of a child mentor by another child mentor. Notwithstanding any other enactment, the Permanent Secretary or any parent of the child or a guardian ad hoc appointed for the purpose may appeal to a judge in Chambers against any order made under section 8 (3) or any variation made under section 8 (4). Where an emergency protection order

has been made in respect of a child, Permanent Secretary may at any time within a period of 12 months after the order has lapsed - (a) summon any person and the child; (b) enter the premises where the child is living for the purpose of ascertaining whether the child is suffering or likely to suffer significant harm.

(iv) Practical session

The family welfare protection officers were extremely satisfied with the conduct of this training inasmuch as this gave them the opportunity to meet their peers and exchange ideas on how to make better motions in court. The practical session was a complete success which enabled the participants to have a deeper understanding of the theoretical and procedural side of the law as well as an opportunity to develop the key skills that are required to present their case in front of the magistrates. All the participants were delighted and satisfied with the organisation of this event by the IJLS.