

MAURITIUS BAR ASSOCIATION



BAR COUNCIL

Chairperson: Narghis Bundhun SC

Secretary: Varuna Roy Bunwaree Goburdhun Treasurer: Rubna B. Daood Daureeawo

Members: Jacques Tsang Mang Kin, Ghanshyamdas Bhanji Soni, Angelique A. Desvaux De Marigny & Didier B.A. Dodin

Co-opted Members: Isme Azam Neerooa & Dinay Reetoo

The Council has been served with a notice of motion in the morning of 4th May 2020 by registered usher calling for a Special Meeting under Rule 3 of the Mauritius Bar Association Rules and bearing the signatures of 14 members.

A copy of the notice of motion will be posted on the MBA App and MBA website.

Since the notice of motion has been made public by being broadcasted and commented in the media several days before it was duly signed and served, the Council wishes to bring the following to the attention of its members.

1. Chronology of action taken by the Council in the context of the Curfew Order in relation to assistance to clients for statements to the police

- Since the start of the confinement, it became apparent that the Regulations gazetted pursuant to the Public Health Act did not exempt barristers from the general interdiction to circulate. Given this preoccupying context and further to representations of some of its members, the Bar Council engaged with the Commissioner of Police with a view to ensuring that barristers would not be prevented from assisting their clients who were detained or whose statement was urgently required. The Commissioner of Police recognized the need to allow barristers to assist their clients and on 09th April 2020, suggested that a Memo would be issued to barristers to enable them to assist their clients in the said context as and when required. The Council posted this information on its website and on the MBA App and has been informed that several of its members were able to assist their clients using this procedure.
- On 16th April 2020, the Chairperson was informed by counsel Me L.Sowkhee over the phone that she and Me R.Mooroongapillay had been booked for breach of curfew order after having assisted their clients in giving statements to the police. The Chairperson reported the matter to a high-ranking police officer.
- On 17th April 2020, two other counsel informed the Bar Council that when they had requested for a Memo from the *In charge unit* and their local police station, both stations claimed not to have been informed of such procedure. The

Chairperson called another high-ranking police officer and both counsel were able to obtain their Memo. The Secretary also called the office of the Commissioner of Police to report the matter and emails were sent by the Chairperson to the two high-ranking officers and by the Secretary to the contact officer of the office of the Commissioner of Police specifying that, according to the agreed procedure, once the enquiring officer had established that the person arrested had to give a statement and that he had been informed by counsel that his services have been retained, the Memo **must** be issued and that this was not a matter for the discretion of the police.

- On 20th April 2020, the press reported that Me L.Sowkhee had been refused entry to the Line Barracks despite being in possession of a Memo. The press also reported that another counsel had been booked for breach of curfew order for not obtaining a Memo. Both Me Sowkhee and the other counsel had in fact travelled to assist their clients in reporting cases to the police.
- On 21st April 2020, the Council wrote to the Hon.Prime Minister, copying the Hon.Attorney General, Hon.I.Collendavelloo DPM, Hon.S.Obeegadoo seeking for their intervention in view of the difficulties that members of the Mauritius Bar Association were facing to assist their clients at police stations and highlighting the role of counsel in upholding the rule of law in line with the Constitution.
It would appear that as a result of the said letter, the matter was raised with the Commissioner of Police.
- On 22nd April 2020, the Chairperson received a call late afternoon from Me Sowkhee's instructing attorney as regards a Motion involving the MBA and Me Sowkhee. He was requested to effect service on the Secretary.
- On 23rd April 2020, the Council met at 09:30 and was informed of the conversation between the Applicant's attorney and the Chairperson on the eve. The Council agreed that the papers be served by email. The attorney was accordingly informed and service was acknowledged almost immediately. The Council further resolved to retain the services of legal advisers to represent the MBA.

2. The Motion of L.Sowkhee v. Commissioner of Police ipo MBA

Regarding the Motion of L.Sowkhee v. the Commissioner of Police, ipo MBA, the Council wishes to inform members as follows:

- The role of the Council as Co-Respondent to Me L.Sowkhee's application was to enlighten the Court on points of law and issues arising out of the application.

- In respect of the Motion lodged by Me L.Sowkhee, it was the Bar Council's view as supported by legal advice, that it was not the Commissioner of Police who was standing in the way of barristers but the Covid Regulations GN 58 and 67 of 2020.
- The Motion was not directed against the Minister of Health and did not challenge the Covid Regulations GN 58 and 67 of 2020.
- At the outset of the hearing of 23rd April 2020, a statement was made on behalf of the Applicant and Respondent to the effect that the Applicant had agreed to withdraw her application on the understanding that *(a) the Respondent would set up a centralised process to receive applications from Barristers to allow them to circulate during the curfew order and (b) the applications would be processed with diligence and all efforts would be made to give a reply to the applications within 24 hours.*
- The Court refused to accept the statement of the Applicant and Respondent and said that it would decide what to do about the agreement at a later stage but asked for an exchange of affidavits in the meantime. The Court wanted to be enlightened as to whether a wrong has been committed, whether the application raised a question of general public importance and whether a judgment was required in the circumstances.
- The stand of the MBA was that, as per the Motion and affidavit filed in Court, no wrong has been committed. The affidavit affirmed on behalf of the Bar Council on Friday 24th April 2020 reflects that stand.
- On 24th April 2020, the MBA, through its attorney, received notice under the hand and signature of Me A.Domingue SC, that the Applicant intended to move to amend her application at the sitting scheduled later that same afternoon, by joining the Minister of Health as a further Co-Respondent. The notice also indicated that it would now raise the constitutionality of the regulations and of the Curfew Order.
- The MBA gave instructions to consent to the joinder of the new party and to draw attention to questions of procedure and substance regarding the constitutional issues.
- During the proceedings of 24th April 2020 the Respondent, the Commissioner of Police, stated that any motion to join a new party to the Motion will be objected to.
- During the sitting of Sunday 26th April 2020, all counsel stated that all parties had worked together towards finding a solution. The statements made by counsel were recorded. The gist of such statements is to the effect that the Cabinet met on

26th April 2020 and had decided to amend the Covid Regulations GN 58 and 67 of 2020 to enable barristers to attend courts, police stations and detention centres. The amended Regulations would be gazetted on 26th April 2020. This development was to the satisfaction of all parties.

- The application was thus withdrawn, with no order as to costs.

3. Notice of Motion under Rule 3 of the Mauritius Bar Association Rules

The Council has taken due note of the notice of motion and will convene a Special Meeting of the Association in due course, given the current restrictions relating to the sanitary confinement.

The Council has considered the proposal to hold the meeting by videoconference. In view of the number of its members and in view of a ballot, it is not feasible to hold the meeting by videoconference. Moreover the MBA regulations as they currently stand do not allow for general meetings via videoconference.

Narghis Bundhun SC, Chairperson
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