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# THE LEGAL TAPE

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The Newsletter of the Mauritius Bar Association

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# Note from the Editorial Team

## Nos Lettres de Noblesse

Chers lecteurs,

Cette quatrième édition du Legal Tape est la première du « new normal ». Si la pandémie n'est à ce jour certes pas éradiquée, il n'en demeure pas moins que les restrictions liées au Covid ne gouvernent plus nos vies. Plus de masques obligatoires, retour des rassemblements et des poignées de main : un petit vent de liberté souffle sur notre quotidien. Pour la Mauritius Bar Association, cette deuxième moitié de 2022 est donc le moment de renouer avec certaines traditions. Les récentes conférences au siège de l'association ont ainsi été des moments d'enrichissement intellectuel, mais aussi du plaisir de se retrouver en grand nombre et de ressentir de nouveau la réalité concrète de notre appartenance commune. Notre fête de fin d'année, prévue pour le 25 novembre, promet de couronner cette période de retrouvailles en toute beauté.

Dans ce contexte, quelle suite donner à ce magazine ? Né du besoin de maintenir l'unité de notre profession à l'heure de l'éloignement sanitaire, Legal Tape a-t-il vocation à perdurer ? Nous pensons que oui. Car si les restrictions de la pandémie ont disparu, d'autres périls nous guettent. Un avocat, président du Bar Council de surcroît, se fait malmené par des policiers dans l'exercice de ses fonctions. Un autre confrère est arrêté dans des circonstances troubles, divisant nos membres entre révoltés et sceptiques. Un imposteur est défendu par certaines voix de la presse, qui déclarent qu'il aurait très bien pu porter la toge car ayant si bien parlé devant les micros. Un constat s'impose : la perception de notre profession est menacée, sa dignité et sa raison-d'être remises en question.

C'est là que notre magazine a un rôle à jouer. Contre les dangers extérieurs, issus de changements sociaux profonds ou de pyromanes malveillants, et contre les risques internes, dont la tentation du gain facile, il nous faut nous rappeler à nos valeurs. Indépendance, intégrité, compétence – voilà ce qui fonde notre profession et ce qu'elle doit de nouveau représenter aux yeux du public. Dans cet effort, le partage des idées et la quête de la connaissance sont essentiels. La lecture est primordiale, la recherche indispensable. Les points de vue doivent être confrontés, car, comme disait Boileau, « du choc des idées jaillit la lumière ». Telle est la mission de Legal Tape. Nous faisons appel à vous : ces colonnes sont les vôtres. Ensemble, défendons le sens et la noblesse de notre métier.



# Speech of Sir Hamid Moollan KC upon his call to the Bench of the Middle Temple

## On 7 June 2022

Fellow Benchers, Ladies and Gentlemen,

I grew up in Mauritius in the 1930s knowing from as far back as I can remember that I wanted to become a barrister. In those days, one did not have to wait to obtain the Higher School Certificate to start one's studies and I accordingly joined King's College, London immediately upon obtaining my School Certificate in 1950.

The first thing I did when I arrived in London was to look for an Inn of Court to join. I would like to tell you that I chose Middle Temple following a detailed study of its exalted history. But the reality was more prosaic: at the time the only Inn whose library was left standing and fully functional was Middle Temple, and I therefore joined Middle Temple. But that choice proved to be very wise, and for the next four years the library of Middle Temple became my place of abode. I do not think I even know where the library of Kings College is or what it looks like. Middle Temple became my home.

Mauritius, as you may know, is one of the few jurisdictions in the world to have a mixed civil law and common law system and I accordingly went to France to complete my studies before going back to Mauritius to practise. The beauty of the Bar then, in my humble view, was that one did not have to choose a specific sector of the law to specialise in. We were all generalists. One of my early briefs was accordingly the defence of a man accused of murdering someone with an axe. I secured his acquittal on legal grounds. This was all over the newspapers and I went home expecting a hero's welcome, only to be given the cold shoulder as I discovered that my traditional Indian mother did not agree that the law should be used to get axe-wielding men out of jail.

Civil and commercial matters gradually took over much of my practice and I was fortunate to argue regularly in the Privy Council before many great judges from this Inn, including Lords Ackner and Templeman, of whom I keep fond memories.

I have given three sons to the Middle Temple. Whether they are thankful for this I do not know but I thank them, my wife Sara, and all my family and friends for being with me on this wonderful day.

But most of all I thank the Inn, Master Hochhauser and my fellow Masters for giving me this honour today. Middle Temple was there for me at the start of my legal career. I am honoured and humbled that it has chosen to be there for me at its twilight.





## Interview of Mr Ravind Bunwaree, SC

**Ravind Bunwaree, SC**

A trip down memory lane with Mr Bunwaree, SC who celebrated his 51st year of call at the Mauritian Bar on 13th September 2022.

*By Mayuri Bunwaree-Ramlackhan*

### **1. How was life as a young barrister when you returned to Mauritius and were called to the Bar?**

I was called to the Bar of England at Gray's Inn, London on 22nd July 1971, a date which I cannot forget as it was also my 30th birthday! Subsequently, I was called to the Bar of Mauritius on the 13th September of the same year.

I was lucky to appear in a criminal case before the Intermediate Court on the very same day. I say lucky now. I did not feel very lucky back then. I remember feeling terrified of this first appearance in court. I had rehearsed my cross-examination in my mind a dozen times. Thankfully, it went on smoothly.

As is usual in this profession, much like in life in general, il y a des hauts et des bas for everyone in private practice. But in those days there were not many barristers, nor was there much litigation.

After some time, I was approached to join the office of the DPP and later I was again approached to join the Judiciary as a magistrate. I politely declined having by then started to make a name for myself at the Bar and being happy to be at the independent Bar. Today, as I reflect on these choices I made at the time, I am glad of the decisions I took, which for me, turned out to be the best suited for me.

### **2. We have now about 1000 barristers in Mauritius and this number continues to grow every year. Despite these growing numbers and quite paradoxically, barristers are more than ever facing criticism for their conduct and practice of the law. What is your perspective on today's Bar?**

But is it paradoxical? Or is that the growing numbers means that we are more open to criticism? I ask myself that question again and again because there is no denying that there is a problem. Some criticism is unfounded but the concern is that much of it is not. We talk about a noble profession not only because a career in law was, back in old days, only open to an elite few, but we also talk of a noble profession because it is a profession which is itself based on a strong set of ethics, required of a job which has us defending sometimes the most atrocious acts, a job which is conflictual in nature. It is this strong sense of ethics and principles which holds us as individuals accountable to the work that we do, and which holds the profession together.

I am much saddened to see our profession so often tainted by the wrong and unethical conduct of some. And I always question where we went wrong for not having been able to imprint the right values on all. As you say, is it in the numbers that the control escapes us? Is it because we have less and less time to devote to our young to steer them along the right path. Or is it a different set of values which we are not able to reconcile with our expectations?

However, I must say that we spend much time criticizing what does not work but we should also not forget the majority of barristers who live up to the dignity of the profession. Maybe when striving to find remedies to our problems, we should start by looking at what is working, at those who need to be commended instead of focusing of those who need to be reprimanded. That would be a good start.

**3. A barrister has an overriding duty to the Court, which includes ensuring the proper and efficient administration of justice; assisting the Court in the administration of justice; and not deceiving or knowingly or recklessly misleading the Court. Having appeared before illustrious judges throughout your career, what should be, according to you, the relationship between the Bar and the Bench?**

As you rightly say, our overriding duty is to the Court. I believe that the Bar and the Bench are partners in the practice and administration of justice. Hence, there should be a sound and respectful relationship when the Barrister presents his case, without fear, within the parameters of his duty. A Judge or Magistrate should be able to listen and keep an open mind to hear out the arguments of counsel whether she/he agrees with same. Respect is the root of the relationship between the Bar and the Bench. And this means no cavalier attitude from either side. Because what one must not forget, the one dispensing disrespect cannot be expected to be treated any differently from the one receiving it.

**4. You have mentored innumerable barristers who became either judges, magistrates, senior counsel or have occupied other important institutional posts. How essential is it for a barrister to have a mentor or role model?**

The role of a pupil master is essential in guiding the aspiring barrister. It is our duty to take on the role of pupil masters, but it is also a heavy responsibility to shoulder. We often underestimate how our pupils pick up from our attitudes, our approach, our work ethics. I believe that a pupil master must at all times be conscious of the eye of her/his pupil, of what she/he is imparting.

I am lucky to have had pupils whom I am very proud of, evolving in all the different functions of the profession. Nothing makes me prouder than to see how they have evolved from the shy, hesitant youngsters to the confident professionals that they have become.

**5. Many barristers, both young and not so young, aspire to have a successful career as yours at the Bar, what does it take to follow your footsteps?**

Successful... I don't know. It is enough for me to feel that at the end of my career, I am able to look back and tell myself that I have done my duty, that I have played my part and that I lived this profession to the fullest. I would not have chosen a better one. I could not have chosen any other. All the advice I can give to my young and learned friends is: Patience, Hard Work, Honesty, Respect, Humility, Fearlessness, Cooperation and Compassion. Let these be your guiding principles.

**6. You've had a successful at the Bar and accomplished a lot, yet you remain humble and down-to-earth. Firstly, is it hard to deal with success? And secondly, although one can hardly recall any setback that you have experienced in your career, do you or would you cope with failure in the same way as success?**

Success or Failure - not that it matters. I believe that both have to be taken in the same manner as both are humbling experiences. You do not gloat about having won a case. You do not despair because you lost one. You take the experience for what it is. Allow yourself to be happy at having won, at being sad for having lost, but the focus has to remain on what is next. What could you have done better? What will happen the next time you are faced with such a situation. No lost case is a setback if you take it as an experience. Perseverance and humility in success and failure alike is what will pull you through.

**7. For young barristers, particularly self-employed ones, one major issue they have to deal with is money or the lack of it. What is the approach that they should take towards money?**

I am quite conscious of this major problem which many newly-called barristers who are self-employed encounter. I believe that it is a question of aligning your values and attitude with the reality of the profession. If you walk into this profession thinking that success is the latest car model, the newest phone, being seen in the trendiest places, you may soon find yourself in a tight spot! My only advice is for young barristers to set their priorities right, to do what they can with what they have. You need to set your goals early and work towards them, not leap towards them.



**8. The schedule of a barrister can be very busy and energy-draining to such an extent that it can jeopardise one's mental and physical health. How did you cope with work pressure?**

I believe that mental health issues are too often not recognized and not talked about. There is a variety of things which can affect you mentally whether you are starting off or at any time and wherever you are at in your career. I have found having a strong foundation in terms of a solid family and a core of friends at the Bar on whom I can rely. Feeling surrounded has always made me feel strong, no matter what came my way. You need to be able to talk about bad days to people who will sympathise with you and laugh it off with you, people on whom you can rely. You need to be able to find what makes you switch off, whether it is sports, family or friends. And if there is a persistent issue, I believe that one cannot brush it under the carpet but must recognize it and understand that there is no shame in seeking help.

**9. Is it realistically possible to excel as a barrister and achieve a work-family balance?**

10. You have to ask my wife about that. I am not too sure she would agree that I have achieved this balance!!! Instead of talking about me though, I would like to share the example of Sir Hamid Moollan K.C, my dear friend. He is a living example of achieving excellence and a balanced family life. I believe that if you have the understanding and blessings of your marriage partner and the love of your children, things just fall into place on the work front as much as on the family front.

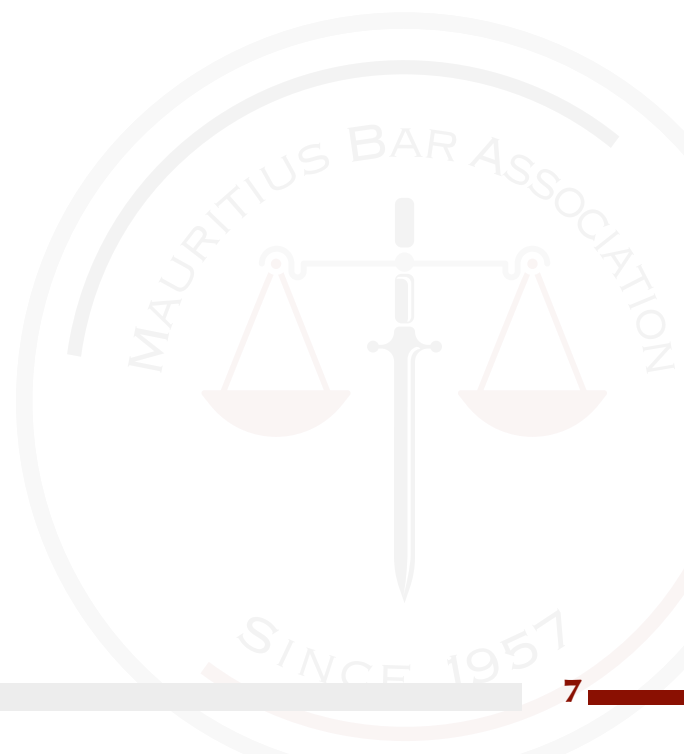
**10. If you could go back in time and do one thing differently, what would it be?**

Differently? I don't know. What I would have liked to do is to have spent more time with the friends dear to me. I miss our jokes, our laughs and even our fights, always. But why should we focus on the past? Some of my old partners-in-crime who are still around have promised that we will soon relive some of those famous (or should I say infamous!) dinners that we used to have. I look forward to one soon - 'à bon entendeur..!'

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• *"Pour plaider, il ne suffit pas de parler comme on parle, il ne suffit pas d'une*  
• *voix, d'un timbre et des choses à dire. Il faut ordonner son discours".*  
• Jean-Marc Varaut  
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# Articles

## Articles







SANJAY BHUCKORY, S.C

## LET THE CAMERAS IN

Our Constitution affirms that all proceedings of every court shall be held in public. This principle stems from the centuries' old British tradition of open justice, which provides that court proceedings should be public, i.e. the doors of the court room should be kept open, the public at large are entitled to be admitted, and the trial is to be public in all respects, with due regard to the size of the court room and other legal considerations. Former UK Chief Justice Lord Neuberger thus hailed the importance of open justice: "Unless justice is carried out publicly, there is a real risk that the public will lose confidence in the justice system, and there is a real risk that judicial standards will slip."

Countries like the UK, Canada, New Zealand, Australia and South Africa have, over the past decade, stretched the notion of 'open justice'. They have done so by transposing, not to say transporting, their Supreme Court proceedings beyond their physical courtrooms, by means of video broadcasting and live streaming. Such is not the case in Mauritius.

It is high time that our Supreme Court proceedings be broadcast live. This, I hasten to add, should be confined to appellate proceedings, to constitutional cases, and to matters of great and general public importance. Trial proceedings, where live testimony is heard from witnesses, should be excluded, as unmitigated publicity, particularly in relation to lay witnesses may undermine their privacy and hence the fairness of the trial. No such qualm exists before the appellate jurisdiction of the Supreme Court, where arguments are essentially on legal matters.

## Let the people judge

The live streaming of Supreme Court cases will benefit one and all, as it will empower and provide access to ordinary citizens who cannot attend court. Rather than relying on an interpretation of what is happening in court through the media and third parties, citizens will be able to get the information first-hand. A cardinal principle of law is that justice is not only to be done in public, but should manifestly and excessively be seen to be done. It is suggested that the best possible means to achieve this goal is to live stream the proceedings, so that counsel's arguments are heard and recorded, and judges' concerns as reflected in their interaction with the bar, are reproduced accurately and without distortions. This will thus avoid misinformation, conscious disinformation, and misunderstanding of the role of the Court.

The public can view the proceedings live, or at their own convenience, in order to make up their own minds on the merits of a case. Furthermore, video recording of proceedings play a significant educational role, as the arguments advanced and the discussions that ensue between the bar and the bench constitute an important learning reservoir for laymen, students and lawyers alike. It will also improve public understanding of the law and adherence to the rule of law.

One argument against the video recording of court proceedings is that every word uttered by the bar or the bench cannot be made available in the public domain. That issue can easily be tackled, through editing. Different courts deal with the issue differently. The International Court of Justice permits video recordings to be published only thirty minutes after the arguments, while some courts do it simultaneously.

If the Legislature can, the Judiciary can.

The debates of our National Assembly have been televised live for over a year now. This was long overdue, and it was unanimously welcomed by the population and the political class at large. The public have, so far, learnt a few lessons from the august assembly. They have learnt how not to speak proper English, how not to behave honourably, and how not to debate intellectually. We can only hope that the televised debates will, in the long term, instil some decorum in the House and will keep our honourable members on their toes, and not on their feet.

The Supreme Court should follow into the footsteps of the Legislature in terms of the implementation of recording, telecasting and webcasting of their debates. The televised court proceedings will hopefully improve the quality of advocacy, refine the rapport between the bar and the bench, and raise the standard of the legal profession. Mauritian counsel appearing before our apex court, the Privy Council, are already subject to such scrutiny, thanks to the live streaming of the proceedings there. I speak from experience. There is no reason why the live streaming there cannot devolve to our Supreme Court here. This will undoubtedly promote transparency and accountability in the administration of justice.

By making its proceedings accessible to a wider audience, the Supreme Court will help maintain public confidence in the Judiciary, and enhance the respect that it deserves as an organ of the State. In so doing, the term 'open justice' will acquire all its importance. It is only when the workings of our courtrooms are viewed in every household that our fellow citizens will legitimately be able to assert that justice has truly been seen to be done.

*Sanjay Bhuckory, SC*



KHEMILA NARRAIDOO, COUNSEL

## **L'exequatur des jugements étrangers - Lacaze J.J v Lacaze D**

L'article 8 de l'acte de capitulation de 1810 stipulait que les habitants conserveront « leurs religion, lois et coutumes ». Ainsi, le système juridique mauricien est aujourd'hui un mélange de droit civil d'inspiration française et de common law d'inspiration anglaise. Le système de droit mauricien inspiré du droit français comprend notamment le code civil, le code de commerce et le code pénal qui sont en place depuis 1808.

L'exequatur est une procédure par laquelle le bénéficiaire d'un jugement étranger (par exemple, un jugement de divorce prononcé en France) entend lui voir conférer force exécutoire sur un autre territoire étranger (il souhaite que ce jugement de divorce soit exécutoire à Maurice).

La législation concernant l'exequatur des jugements étrangers à Maurice est un parfait exemple de la nature hybride du système juridique mauricien. En effet, la législation mauricienne concernant l'exécution des jugements étrangers est composée à la fois de la loi et de la jurisprudence, autant d'origine française qu'anglaise.

Les trois principales législations qui réglementent la procédure d'exequatur d'un jugement étranger sont :

1. Le code de procédure civile;
2. Le Reciprocal Enforcement of Judgments Act 1923; et
3. Le Foreign Judgments (Reciprocal Enforcement) Act 1961.

Puisque le *Reciprocal Enforcement of Judgments Act de 1923* et le *Foreign Judgments (Reciprocal Enforcement) Act de 1961* ont des conditions d'application très strictes, la majorité des jugements étrangers dont l'exécution est recherchée à Maurice se fait sous l'article 546 du code de procédure civile qui dispose que :

*« Les jugements rendus par les tribunaux étrangers, et les actes reçus par les officiers étrangers, ne seront susceptibles d'exécution en France, que de la manière et dans les cas prévus par les (anciens) articles 2123 et 2128 du Code Civil ».*

D'une part, cet article, qui n'a jamais été modifié depuis l'entrée en vigueur du code civil à Maurice, doit se lire avec l'expression « susceptibles d'exécution à l'île Maurice » et non avec l'expression « susceptibles d'exécution en France » D'autre part, les articles 2123 et 2128 du code civil mauricien ne concernent plus l'exécution de jugements étrangers.

Récemment, la Cour suprême a rendu un jugement qui va faire jurisprudence, en accordant l'exequatur d'un divorce qui n'a pas été homologué par un tribunal, mais prononcé comme un contrat privé en France, notamment par une "Convention de Divorce par Consentement Mutuel par Acte sous signature privée contresigné par Avocats". La Cour suprême a prononcé ce jugement historique dans l'affaire de *Lacaze J.J v Lacaze D* [2022 SCJ 52], clarifiant ainsi que même s'il y a un conflit concernant la procédure adoptée selon les lois nationales dans des différentes juridictions, un acte reçu par un officier étranger devrait avoir une force exécutoire à Maurice tant qu'il n'est pas contraire à l'ordre public et aux bonnes mœurs.

En France, les articles 229-1 et suivants du code civil Français prévoient une nouvelle procédure de divorce par consentement mutuel. En vertu de ces dispositions, le divorce par consentement mutuel est un contrat privé entre les parties. Il fixe leur accord après la dissolution du mariage sur des questions telles que la pension alimentaire, l'autorité parentale, la garde des enfants, le droit de visite ou d'hébergement. Ces questions ne sont soumises à aucune intervention d'une quelconque autorité. Le divorce est donc traité administrativement sans aucune intervention ou contrôle judiciaire.

La convention est rédigée par les avocats des parties et leur est envoyée par courrier avec avis de réception. La convention ne doit, à peine de nullité, être signée qu'après un délai de réflexion de 15 jours. Après ce délai et la signature de la convention par les parties, la convention est déposée chez un notaire qui doit vérifier si toutes les formalités de l'article 229-1 ont été accomplies et si le délai de réflexion obligatoire de 15 jours a été respecté.

Si l'accord est régulier et remplit toutes les conditions prescrites par l'article 229-1, « ce dépôt donne ses effets à la convention en lui conférant date certaine et force exécutoire ». Ainsi, la convention de divorce devient exécutoire le jour où elle acquiert date certaine et prend effet à compter de cette date. Ainsi, le divorce par consentement mutuel par les parties en France est un divorce purement « administratif » par opposition à un divorce « judiciaire ».

A Maurice, le divorce par consentement mutuel a été introduit avec l'entrée en vigueur le 14 mai 2011 de l'article 238-3 du code civil mauricien. Les parties doivent conclure une convention réglant les conséquences du divorce et qui doit être présentée devant un juge qui va approuver et homologuer la convention et prononcer le divorce. Le juge peut aussi supprimer ou modifier toute clause de la convention ou même refuser d'homologuer la convention et de prononcer le divorce s'il estime que la convention ne protège pas suffisamment les intérêts des enfants ou de l'un des conjoints.

Ainsi, la différence fondamentale entre l'article 238-3 à Maurice et l'article 229-1 en France est qu'à Maurice, le divorce par consentement mutuel est un acte judiciaire alors qu'en France c'est un acte administratif. De ce fait, dans l'affaire de *Lacaze J.J v Lacaze D*, en première instance, le juge de la cour suprême avait refusé d'exécuter à Maurice le divorce par consentement mutuel conclu en France car ce n'était pas un divorce prononcé par un tribunal.

Toutefois, en appel, la chef juge a considéré les questions suivantes :

- La Convention de Divorce par Consentement Mutuel par Acte sous signature privée contresignée par Avocats (« Convention de divorce ») certifiée par un notaire conformément à la législation française est-elle un acte reçu par un officier étranger au sens

de l'article 546 du code de procédure civile ?

- Est-ce que cet acte reçu par un officier étranger est-il susceptible de la force exécutoire au sens de l'article 546 du code de procédure civile ?
- Cette Convention de divorce remplit-elle effectivement toutes les conditions requises pour la délivrance d'une ordonnance d'exequatur malgré les différences relatives au divorce par consentement mutuel entre l'article 229-1 du code civil français et l'article 238-3 du code civil mauricien ?

En application des principes de droit énoncés par la cour de cassation en France dans son grand arrêt de principe, *Munzer c. dame Munzer* (1<sup>re</sup> Ch. Civ.) 7 janvier 1964, la Cour suprême de Maurice a jugé que :

- a. La Convention de divorce qui a été certifiée par un notaire conformément à la législation française est un « acte reçu par un officier étranger » qui peut avoir force exécutoire à Maurice conformément à l'article 546 du code de procédure civile mauricien.
- b. Le notaire auprès duquel la Convention de divorce a été déposée était, en vertu de l'article 229-1 du code civil français, légalement autorisé à vérifier et à confirmer si les formalités prévues à l'article 229-3 ainsi que le délai de réflexion obligatoire de 15 jours prévu par l'article 229-4, ont été dûment accomplis.
- c. Les droits de la défense ont été respectés car le défendeur a eu connaissance de la Convention de divorce à laquelle il a donné son consentement en toute connaissance de cause et alors qu'il était tout le temps assisté par un avocat.
- d. La notion de l'ordre public intervient toutefois avec une intensité moindre que s'il s'agissait de trancher directement le litige en France. Il s'agit de la conception dite de l'effet atténué de l'ordre public en ce qui concerne l'exécution d'un jugement étranger. Ainsi, compte tenu du seuil plus bas qui serait imposé en raison de « l'effet atténué de l'ordre public » dans les cas d'exequatur, toute incompatibilité avec le droit interne qui pourrait survenir avec l'exécution d'un divorce étranger ne constituerait pas, en soi, nécessairement une violation de l'ordre public international.

e. De ce fait, la différence entre les dispositions de la loi française et de la loi mauricienne en ce qui concerne le divorce par consentement mutuel ne constituerait pas en soi un obstacle à l'exécution d'un divorce par consentement mutuel français à Maurice.

f. En l'espèce, il n'y a ni la moindre preuve ni la moindre suggestion qu'il y ait eu une quelconque fraude en ce qui concerne la décision de procéder à un divorce par consentement mutuel conformément à la loi française et encore moins qu'il y ait eu une quelconque fraude dans cette affaire pour obtenir le divorce en France.

La chef juge a donc annulé la décision du juge de première instance qui avait refusé la demande d'exequatur et lui a substitué un jugement déclarant exécutoire à Maurice la Convention de divorce conclue entre les parties et qui est exécutoire en France depuis le 19 septembre 2019.

Ainsi, la « Convention de Divorce par Consentement Mutuel par Acte sous signature privée contresignée par Avocats » certifiée par un notaire conformément à la législation française est un « acte reçu par un officier étranger » et qui peut avoir force exécutoire à Maurice conformément à l'article 546 du Code de Procédure Civile mauricien, tant que l'acte n'est pas contraire à l'ordre public et aux bonnes mœurs.

Cette décision qui est une première à l'île Maurice est une preuve que notre système de droit devient de plus en plus dynamique et s'adapte rapidement à l'évolution du droit international et aux mœurs. Il serait intéressant de voir l'approche de nos juges en ce qui concerne l'exequatur des divorces administratifs prononcés dans les juridictions autre que la France.



"I'll ask you once more, and I remind you that you are under oath! Why did you cross the road?!"





Hanna Sayed-Hossen

## Animal cruelty offences – The law here and elsewhere

Under the Animal Welfare Act 2013 (“AWA”), a multitude of acts perpetrated against animals (defined as “a living vertebrate, other than a human being” under section 2) are deemed to be cruelty offences for which an individual can be prosecuted and be liable to a fine not exceeding Rs 15,000 and a term of imprisonment not exceeding 6 months. Part of the relevant section (section 3(1)) is reproduced below and makes it an offence when a person:

- “(a) tortures or otherwise treats an animal in such a manner as to subject it to distress, pain or suffering, or causes or permits an animal to be so treated;*
- (b) being the owner of an animal, fails to provide the animal with sufficient food, drink or shelter;*
- (c) administers an injurious drug or substance to an animal, or wilfully causes or permits any such drug or substance to be taken by an animal;*
- (d) conveys or carries an animal, in or on a vehicle, in such a manner or position as to subject it to distress, pain or suffering;*
- (e) keeps or confines an animal in a cage or other similar structure which is too small to provide the animal with a reasonable opportunity for its natural movement;*  
*(...)*
- (j) not being a veterinary surgeon, mutilates or kills an animal in any manner, or performs ear cropping, tail docking, defanging, declawing, branding, piercing, dehorning, nose roping, or castration on an animal.”*

Sadly, we often hear about cases of animal cruelty in the press or even on social media. How many times have we not heard about dogs and cats being allegedly poisoned, being unscrupulously abandoned in sugar cane fields or in marketplaces, being deprived of sufficient food and water, being beaten, sometimes to death? Animal cruelty is a sad reality worldwide, and it is my view that we should all work towards making sure that the laws in place are abided to, failing which an individual who has partaken in such acts should be held to account according to law. It is of crucial importance to report cases of animal cruelty to authorities if the law is to achieve its goal which is to actively prevent offences of cruelty to animals. One may report to the police or even the Animal Welfare Unit, which is specially tasked with preventing offences of animal cruelty from occurring.

On that same note, the case of **Ste Marie & Felicite v The State 2019 SCJ 7** which is an appeal case which dealt with an offence of cruelty to animals under section 3(1)(j) AWA is a commendable judgment delivered by the Supreme Court. The case was first heard by the Court of Rodrigues whereby the Learned Magistrate had sentenced the two Accused parties to a fine of Rs 15,000 and to 3 months’ imprisonment. The facts of this gruesome case were as follows: Accused had alleged that the Complainant’s dog, a two year-old German Shepherd, had eaten their goats. Acting out of vengeance, Accused tied the dog to their motorcycle and they then dragged it over a distance of about 75 metres before throwing it to the sea. Lacerations were observed below the right eye and chin and blood was oozing out of its left ear. The dog was held to have died out of injury according to the veterinary surgeon.

In deciding the sentence, the Learned Magistrate justified her decision which was in order *“to bring home the lesson that they should not take the law in their hands and inflict such cruel treatment to animals.”* The Supreme Court agreed with the Learned Magistrate and upheld the conviction and sentence and had this to say : *“This is clearly not a case where by any standard the Magistrate could have exercised her discretion in order to inflict only a fine or alternatively make a community service order to suspend the term of imprisonment imposed upon the appellants. The barbaric manner in which the killing was carried out fully justifies the sentence imposed on the appellants, who never showed any sign of remorse for such an atrocious killing.”*

This judgment is exemplary in terms of the approach taken by the Court. The law was applied and the manner in which this act, termed as “atrocious” by the Supreme Court according to all moral standards, was perpetrated, was also taken into account in deciding that a custodial sentence was warranted and that a community service order would not suffice to meet the ends of justice. In the light of this judgment, one is hopeful that perpetrators of cruel acts towards animals will be held to account in our courts of law and that the appropriate sentence, be it a custodial sentence, will be meted out if the circumstances call for it.

While the judgment of **Ste Marie & Felicite** is to be commended, it is the only case I have been able to find regarding an act of active animal cruelty which reached our courts of law. In other countries however, prosecutions and convictions and imprisonment are not uncommonly unheard of as illustrated below.

## **Animal protection laws in Greece, New South Wales and the UK**

### **Greece**

In Greece, Parliament passed a law in 2020 punishing acts of cruelty to animals with up to ten years in prison. Under Greek law, animal abuse can include poisoning, hanging, mutilation and the drowning of animals. While in Mauritius the stray population is estimated to be around 250,000 according to PAWS, Athens alone is home to about a million stray dogs and cats. The law also puts into place a minimum sentence of one year and significant fines for those convicted of cruelty offences to animals. On 2 May 2022, Greek police arrested a man who kicked a kitten into the sea as the latter was mewing for food at his restaurant table. The scene was filmed by shocked onlookers who rescued the kitten and who ensured the man was held accountable. The man was then arrested by Greek police and Citizens Protection Minister Takis Theodorikakos had this to say:

*“The government has passed a strict law to protect animals from abuse which is now in place, but in any case, it is a matter of humanity and culture. I am deeply saddened by those who mistreat animals and those who tolerate it. I heartily congratulate those who raised the issue. The case now rests with Greek justice.”*

### **New South Wales, Australia**

In New South Wales, in Australia, in September 2018, a man was convicted for beating his three-month old puppy as it was barking too much. The Sitting Magistrate, Justice Costanzo, had these remarks to make at the time of sentencing the offender:

*“It is also obvious your attack was deliberate, and you persisted knowing the dog was exhibiting fear and pain. You say the dog liked to bark, that is like saying you like to talk as a human. Barking is a dog’s means of communicating.”*

Such remarks made by the Magistrate can only be commended as they go to show the compassion shown by the Magistrate towards the animal. The offender was sentenced to 12 months’ probation and was imposed a pet ban for 3 years. In New South Wales, offenders can face up to 5 years in prison for serious animal cruelty offences.

### **England**

In England, the **Animal Welfare Act 2006** replaced the **Protection of Animals Act 1911** and effectively toughened the sanctions in place for animal cruelty offences. For acts of unnecessary sufferings inflicted on animals (**section 4**), mutilations (**section 5**), docking of dogs’ tails otherwise than for medical reasons (**section 6(1)(2)**), administering of poisons (**section 7**) and animal fighting (**section 8**), imprisonment can go up to a year on summary conviction and up to 5 years on a conviction on indictment. In December 2021, one Luke Profitt stabbed his German Shepherd 12 times on a UK public beach, severely wounding the dog named Bella. He left her to die and she was found by members of the public who alerted authorities. Bella did not survive the attack and Profitt was sentenced to 18 months in prison and was banned from owning animals for 18 years.

### **Preventing animal cruelty is a collective responsibility**

As political activist Georges Bernard Shaw had wisely put it *“The worst sin towards our fellow creatures is not to hate them but to be indifferent to them : that’s the essence of humanity.”* When we see animal cruelty acts being perpetrated, it is our responsibility to speak up. Because dogs and cats cannot speak for themselves. Let us be their voices and take actions worthy of beings bestowed with sensitivity and humanity.

## New Callees - 23rd September 2022

The latest addition to our profession

1. PFIRSCH Augustin François Marie
2. BABAJEE Balkrishna
3. VEERAPEN Lovania
4. JOONARAIN Dharmeshsingh
5. SONAH-ORI Anyahitha
6. BUNDHUN-PUDDOO Muhammad E'Jaaz Shahid
7. RAMLALL Prashant
8. BAZERQUE Marie Emma Laititia
9. RAMPERSAD Dhrishtee
10. RUGHOOPUTH-MATHOORA Deeviya
11. RAMASAWMY Baby Anjili Devi
12. CHUTTOO Janesh Sharma
13. GUNESS Bibi Aaisha Widad
14. VEERAPPA PILLAY Vishayen Poubarlen
15. FATAGAR Taariq Husain Kazi
16. MOHADEO Reshma
17. SANDOOKHAN Naadjidah
18. KOOMAR Fatimah Zahraa
19. KWAN PANG Alicia Weng Leen
20. BHOODNAH Sunvir
21. DOOKHEE Noor Mohammad Sharyade
22. BOODRAM Jesha
23. COONJAN Deshna
24. MOHABEER Drishti
25. ROHOMUTALLY Bibi Azrah
26. BHOOWABUL Jaya Urvi
27. AUDIT Chetanand
28. SINIVASAGEN Venisha
29. NUCKCHEDDY Pravesh
30. GOPAUL Shiksha Devi
31. HOSANEEA Bibi Zahra
32. SACCARAM Varoon Rao
33. CHAYTOO Bhinnam Devi
34. PADARUTH Shilpa Sharvana
35. THOSADU RAMDU Rakshita
36. SOKAPPADU Swati
37. ADHEEN Vyas
38. BHUCKORY Sanjana
39. ADHEEN Somand Kumar
40. BANDHU Singh Yuvir Sharma
41. BHOWON Ankur Gupta
42. SUNTOO Myrna
43. SURFRAZ Mohammad Azdine
44. MOLOYE Sanjeev Kumar
45. MUNGUR Rubeena Shreya
46. DAUHARRY Syed Usaama Shamraze Aarsal
47. BUCKTOWAR Axel Ritchy
48. BÉRENGER Joanna Marie
49. VEERAPEN Marie Anoushka Christelle
50. AJAGEER Vedshri Devi
51. SEEOBIN Krishna Sham
52. RAMTOHUL Meethil Ashved
53. DINDOYAL Yeshna
54. RAMLUGUN Sulaksmi
55. NUNKOO Erwind
56. BEEDASY Yushina



## New Publication



A paru en février 2022, aux éditions LGDJ l'ouvrage « Droit, de l'île Maurice ».

Il s'agit d'un ouvrage collectif résultant de la compétence concertée des praticiens du droit à savoir une ancienne juge, des avocats, un notaire, des professeurs de droit, et des chercheurs. Il comporte 13 chapitres qui évoquent dans les grandes lignes le droit de la république de Maurice suivant un plan identique et dans un nombre limité de signes. Ce format facilite la comparaison avec le droit d'autres pays qui font partie du réseau « association Henri Capitant ». Les professeurs Denis Mazeaud et Philippe Dupichot en signent la préface.

Le livre est disponible en version numérique sur le site lgdj.fr @ 15 euros et en version papier de la librairie Bookcourt @ Bagatelle @ 1075 roupies.

La branche mauricienne de l'association Henri Capitant est en voie de formation, toute personne qui souhaite y adhérer peut prendre attache avec :

Sabir Kadel ([Mskadel@hotmail.com](mailto:Mskadel@hotmail.com)) ou

Narghis Bundhun ([narghis@nbundhunchambers.com](mailto:narghis@nbundhunchambers.com)).

## Question Time!

Theme: About March 1968

Who was the Director of Public Prosecutions as at the 12th March 1968?

Who was the Solicitor General as at the 12th March 1968?

Who was the Attorney General as at the 12th March 1968?

Who was the Chief Justice as at the 12th March 1968?

Who was the first Mauritian appointed Queen Counsel?

### Theme: 12 March 1992

Answers to Quiz-theme 12th March 1992

1. Sir Victor Glover
2. E. Leung Shing
3. K.P Matadeen
4. Alan Ganoo
5. Desire Basset S.C

**Winner: Ashley Kaniah**

# Call for Newsletter Articles



We would like to invite members of the profession to submit articles of up to 2500 words which will be featured in the upcoming editions of “the Legal Tape”!

Note: Submit your articles in a “Microsoft Word” document format and any related images separately by sending an email to ***mba@mba.intnet.mu***

We look forward to your contribution!

# Pass Events in pictures



# Book Signing by Mrs Marie-Lourdes Lam Hung

11<sup>th</sup> May 2022





# Bar Coun

## **Mauritius Bar Association March**

11<sup>th</sup> May 2022





# Blood

## Blood Donation

24<sup>th</sup> June 2022





# Happy Hour

## Happy Hour - Port Chambly

1<sup>st</sup> July 2022





# Talk by

## Talk by Hervé Duval, SC

8<sup>th</sup> July 2022





# Football

## Football Tournament

23<sup>rd</sup> July 2022





# Pet adop

## Pet Adoption

27<sup>th</sup> August 2022





# Lunch

## Lunch at Gayasingh Ashram

24<sup>th</sup> September 2022



# Talk by

## Talk by Gavin Glover, SC

30<sup>th</sup> September 2022





# Talk by

## Mountain Hike - Le Pouce

2<sup>nd</sup> October 2022







# END OF YEAR

*Party*

VENUE: **N'JOY**  
(GRAND BAIE)

DATE: 25 NOV 2022

TIME: AS FROM 18:00

DRESS CODE: BEACH CHIC

Early Bird: Rs1,900

Juice Acc: 000200709313

LIMITED PLACES

First come, First served!







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