Law Reform Commission

Public Law Reform Project

Discussion Paper

“Access to Justice and Limitation of Actions against Public Officers and the State”

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(a) a Chairperson, appointed by the Attorney-General;

(b) a representative of the Judiciary appointed by the Chief Justice;

(c) the Solicitor-General or his representative;

(d) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;

(e) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;

(f) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;

(g) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and

(h) two members of the civil society, appointed by the Attorney-General.

The Chief Executive Officer has responsibility for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

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Law Reform Commission

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Introductory Note: The Problem

1. The Presidential Commission, which was set up, in accordance with the Presidential Commission Act 1997, to examine and report upon the structure and operation of the Judicial System and Legal Professions of Mauritius and was chaired by Lord Mackay of Clashfern, received representations that the present rule of limitation of actions against public officers was having a detrimental effect on the perception of fairness in the judicial process.[1]

2. In its Report, the Presidential Commission considered the short period of limitation available to protect public officers as distinct from other persons against whom litigation can be taken puts the State and other authorities served by such officers in a privileged position in comparison with other litigants, and that this privileged position was not justified. It therefore recommended that the special position of public officers should be abolished, but that what the correct limitation period should be for different types of action was beyond the scope of the remit with which it was charged and it therefore further recommended that consideration be given to this problem by the Law Reform Commission who would no doubt wish to proceed by way of public consultation.[2]

3. Since the privileged position of public officers and the State as litigants has a bearing not only on the time limit within which an action has to be entered, but also on the procedure to be followed and on the scope of liability, and gives rise to constitutional and human rights issues, we therefore consider it would be more appropriate for us to consider afresh this problem.

[1] Report of the Presidential Commission, chaired by Lord Mackay, set up to examine and report upon the structure and operation of the Judicial System and Legal Professions of Mauritius (1998) at paragraph 4.12.

[2] *Loc. Cit.*

The Current Law

The relevant provisions of the Public Officers' Protection Act

Action to be entered within Two years

4. Section 4(1) of the Public Officers' Protection Act [reproduced as Appendix 1] provides that every civil or criminal action, suit, or proceeding, by any person, other than the State, for any fact, act or omission, against (a) any public officer in the execution of his duty;[3] (b) any person engaged or employed in the performance of any public duty; or (c) against any person acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b), shall under pain of nullity be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding.[4]

5. The time limit only applies to actions brought by a person, other than the State.

6. The time limit is shorter than the ten years period of prescription for action personnelle, generally provided by Article 2270 of the Civil Code. The Civil Code, however, provides for shorter limitations period: vide Articles 2273-2275, 2278 and 2281 [reproduced in Appendix 2].

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[3] "Public officer'' is defined in section 2 of the Act as meaning any Government servant and any officer of a municipal council. It is to be noted that some statutes extend the protection afforded by the Act to Board members and staff of public corporations: vide section 40(2) of the Central Water Authority Act; section 23(2) of the Central Electricity Board Act; section 26(2) of the Development Works Corporation Act.

[4] Note that various statutes confer civil and criminal immunity to Board members and staff of public corporations in respect of any act which they may have done or omitted to do in good faith in the execution or purported execution of the duties of the statutory body under the enabling Act" vide section 40(1) of the Central Water Authority Act; section 23(1) of the Central Electricity Board Act; section 26(1) of the Development Works Corporation Act. Vide also section 16 of the Law Reform Commission Act of 2005 and section 10 of the Protection of Human Rights Act of 1998.

7. As regards criminal actions, as a general rule the legislator does not impose time limits for the institution of proceedings. Section 4(1) is thus in derogation to the general rule.[5]

8. The time limit only applies in relation to facts, acts or omissions done in the execution or performance of duty. In *Jaggasseah v Aubeeluck* (1982) MR 28, the Supreme Court held that a public officer who makes a false and malicious denunciation is not acting in the execution of his duty. In consequence, he cannot invoke the provisions of the Public Officers' Act. The Act protects public officers for "fautes de service", but not for "fautes personnelles". The Court had this to say:

> "It is common ground that no notice in terms of s. 4(2) had been served. It follows that if the act complained of was one of those protected by s. 4(1), the action could not succeed. The trial took place before two magistrates. Learned Counsel for the appellant submitted that the act complained of did not form part of the respondent's duty - presumably because the respondent acted out of malice. He went on to say that the Court could decide the question without hearing evidence. Learned Counsel for the respondent argued that the plea *in limine* ought to succeed. It seems clear that the two magistrates who heard Counsel's arguments reached different conclusions. The Court was accordingly reconstituted with a third magistrate. The majority held that the respondent acted in his capacity of public officer and in the execution of his duty. They therefore upheld the plea *in limine*, and dismissed the plaint. The dissenting magistrate held that it was necessary to hear evidence in order to decide whether the respondent had acted in the execution of his duty or not. He relied on the following passage in an article written by one of us, "*La responsabilité de l'Etat du fait de ses préposés*": *Il est vraisemblable que 'les juges' interpréteront strictement les termes "dans l'exécution de ses fonctions". L'officier public ne sera couvert que s'il agit de bonne foi et sans intention de nuire. S'il est mû, soit par le désir de faire tort à quelqu'un soit de favoriser telle personne ou tel groupe au dépens de tel autre, l'action sera recevable après le délai de six mois: car l'exercice de la fonction n'étant dès lors plus le motif, mais seulement le prétexte de l'acte, celui qui le fait agit en dehors de ses fonctions.*
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> It seems to us that there is an important distinction between a judgment, which defines what the law is, and an article like the one in question, which speculates as to what the law ought to be. In the same paragraph of the article we find this sentence: "Je tiens à souligner qu'ici je ne parle pas *ex-cathedra*, et que je me réserve le droit, après délibéré, d'arriver à une conclusion différente." It follows that the passage in question has rather less weight than an *obiter dictum* in a judgment.
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> In order to decide which acts of public officers are protected by s. 4, one may usefully refer to the difference between "*fautes de service*" and "*fautes personnelles*" as explained in *Vallet v. M.H.C.* (Judgment 91 of 1970): "Par faute de service on doit entendre les négligences, the omissions, les

[5] Vide *Erriah v Hurnam* (1980) MR 288 as regards the application of the rule to criminal cases.

erreurs, qui bien que répréhensibles, sont dans les habitudes du service, et par conséquent ne sont pas détachables du service". [*Hauriou, Précis de Droit Administratif*, p. 528.] "La faute personnelle, c'est celle qui révèle non un administrateur plus ou moins sujet à erreur, mais l'homme, avec ses faiblesses, ses passions, ses imprudences" [*Laferrière, Traité de la Juridiction Administrative*, I, p. 648]. It is only for his "fautes de service", and not for his "fautes personnelles" that a public officer may set up s. 4 as a defence. The "*faute de service*" committed by a public officer in the course of duty is deemed to merge in the general activity of the body which he serves, and in that case he is entitled to a special protection. But if he commits a "*faute personnelle*", there is no reason to grant him a privilege, which is denied to other citizens for their personal faults.

The Public Officers Protection Ordinance was inspired by, and bears a close analogy to an old English statute, the Public Authorities Protection Act, 1893 [56 and 57 Vict. c. 61.].

In Halsbury, Laws of England, (2nd Edn), Vol XXVI, para. 616, commenting on the scope of the protection the learned contributors say: "In every case the defendant must have acted in good faith, and therefore actions for deceit or malicious prosecution may be commenced after the expiration of the six months' limit." In *Pearson v. Dublin Corporation* (1907) A.C. 351, Lord Loreburn, L.C. said that he was entirely of the same opinion as the King's Bench Division, which had held that the Public Authorities Protection Act did not apply to cases of deceit. In the same case Lord Atkinson said:

The Chief Baron decided on the authority of Sharpington v. Fulham Guardians that the making of a false representation by which a person was induced to enter into a private contract with a public authority for the construction even of works authorized by statute could not be held to be an act done by that authority "in pursuance or execution of a public duty," and that therefore the statute did not apply. The judges of the King's Bench Division concurred, and the question was not dealt with by the Court of Appeal. Were it necessary to decide the point now, I should for myself be ready to concur in opinion with the Chief Baron, but, owing to the existence of the arrangement which I have mentioned, I think it is not necessary to decide it.

In *Selmes v. Judge* (1871) L.R. 6 Q.B. 724, Blackburn, J. said: "If a person knows that he has not under a statute authority to do a certain thing, and yet intentionally does that thing, he cannot shelter himself by pretending that the thing was done with intent to carry out that statute." Public officers should know that no statute gives them authority to bring malicious charges.

Fraus omnia corrumpit. No person can be heard to say: "I brought a malicious charge in the execution of my duty". If the defendant was prompted by malice, he wilfully placed himself outside the protection of the Ordinance.

It follows that in order to determine whether the respondent was protected or not the Court had to hear evidence in order to determine whether his acts were malicious. We therefore allow the appeal, and remit the case to the Intermediate Court with a direction to hear the case in the light of this judgment."

9. In *Ramchurn v Lamour* (1989) MR 253, the proposition of law in *Jaggasseah v Aubeeluck* was followed and applied.

10. Paradoxically, resort to the distinction made by the Conseil d'Etat in France between 'faute de service' and 'faute personnelle' turns out to be most improper. In France the administrative courts have expanded the concept of 'faute de service' so as to hold the State vicariously liable for a wider range of 'fautes commises par les fonctionnaires', with a view to affording better protection to the citizen in his dealings with the administration. In Mauritius, such a distinction when followed may well produce the opposite effect. It may widen, rather than narrow down, those instances when a public officer can invoke the protection afforded by section 4(1) of the Public Officers' Protection Act, thereby enabling the State to avoid liability.

Need for a 'Mise en Demeure' at least one month prior to institution of Civil Action

11. Section 4(2)(a) of the Act further provides that no civil action, suit or proceeding shall be instituted, unless one month previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given to the defendant. By virtue of section 4(2)(b), no evidence shall be produced at the trial except of the cause of action as specified in the notice. In default of proof at the trial that the notice under paragraph (a) has been duly given, the defendant shall be entitled to judgment with costs.[6]

Limitations on the award of Damages

12. According to section 4(3) of the Act, where

[6] Section 4(2)(c) of the Act.

(a) Before the institution of any civil action, suit or proceeding, the defendant has offered to the complainant an indemnity which is determined to be sufficient by the court before which the case is brought; or

(b) After any civil action, suit or proceeding has been commenced, the defendant has paid into court a sum of money which the court determines to be sufficient as damages or indemnity to the complainant, the case shall be dismissed, subject to such order as to costs as the court thinks just.

13. Where, in any civil action, suit or proceeding, the court certifies on the record that the defendant acted upon reasonable or probable cause, the plaintiff shall not be entitled to more than nominal damages, or to any costs.[7] This constitutes a derogation to the principle of the "réparation intégrale du préjudice et ses conséquences".

14. Note that where –

(a) an information is filed against a public officer on account of any seizure;
and
(b) judgment is given against the defendant, a nominal penalty only shall be imposed and the claimant shall not be entitled to any costs if the court certifies on the record that there was reasonable or probable cause of seizure.[8]

15. In any civil action, suit or proceeding brought against a public officer on account of any seizure, the plaintiff shall only be entitled to judgment for the things seized or their value, and not to damages or to any costs.[9]

16. The above rules also apply to a Magistrate, or a clerk or officer of any district or other court, for any act done by him, or for any omission, in the execution of his office.[10] But in a civil case, the

[7] Section 4(4) of the Act.

[8] Section 5(1) of the Act.

[9] Section 5(2) of the Act.

[10] Section 6(1)(a) of the Act.

plaintiff is also required to expressly allege that the act was done or omission made maliciously and without reasonable or probable cause.[11] And, where the plaintiff fails to prove the allegation, the defendant shall be entitled to judgment with treble costs.[12]

17. Section 6(2)(a) of the Act is to the effect that any person who has been injured by any act done –

(i) by a Magistrate, clerk or officer in a matter in which he has no jurisdiction or in which he has exceeded his jurisdiction;

(ii) under any conviction made or warrant issued in a matter mentioned in subparagraph (i), may maintain an action without averring and proving that it was done maliciously.

But no action shall be brought for anything done under a conviction until the conviction has been quashed by the court on appeal or otherwise.[13]

Relevant Provisions of the State Proceedings Act

18. The limitations imposed on the liability of public officers also have an impact on the liability of the State, contractual or delictual, for acts or omissions of its officers or servants.[14] Whilst section 2(1)(a) of the State Proceedings Act [reproduced as Appendix 3] provides that the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject in respect of torts committed by its servants or agents, section 2(1A) of the Act

[11] Section 6(1)(b) of the Act.

[12] Section 6(1)(c) of the Act.

[13] Section 6(2)(b) of the Act.

[14] In *Ramdenee Edible Oil Products Ltd v The State & anor* (2004) MR 298, the plaintiff claimed in damages based on the contention that inordinate delays incurred in processing application for price increases of controlled goods had resulted in losses. The Court held the liability for misfeasance of a public body requires a 'faute lourde'.

is to the effect that no proceedings shall lie against the State under subsection (1) (a) in respect of any act or omission of a servant or agent of the State[15] unless the act or omission would, apart from that Act, have given rise to a cause of action in tort against that servant or agent.

19. Similarly, whilst section 2(3) of the State Proceedings Act provides that where any functions are by law conferred or imposed upon an officer of the State[16] as such, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the State in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the State, section 2(4) of the Act is to the effect that any enactment which negatives or limits the extent of the liability of any officer of the State in respect of any tort committed by that officer shall, in the case of proceedings against the State under this section in respect of a tort committed by that officer, apply in relation to the State as it would have applied in relation to that officer if the proceedings against the State had been proceedings against that officer.[17]

20. Section 2(5) of the State Proceedings Act further provides that no proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

In *Boodhoo v State* (2002) SCJ 99, the plaintiff sought damages on the ground that an usher had failed to serve the necessary process on a defendant to a judicial sale, as a result of which the adjudication of the property to the plaintiff had been annulled. The defendant put in a plea *in limine*, which read as follows:

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[15] Agent, in relation to the State, is defined in section 1B(1) of the Act as including an independent contractor employed by the State.

[16] Officer, in relation to the State, is defined in section 1B(1) of the Act as including any servant of the Government of Mauritius and accordingly includes the President

[17] Section 22 of the State Proceedings Act further provides that nothing in the Act shall prejudice the right of the State to rely upon the law relating to the limitation of time for bringing proceedings against a public authority or against any person acting in aid or assistance of any such public authority.

"Defendant moves that the action be dismissed with costs in as much as-
1.It has not been entered in accordance with the provisions of the State Proceedings Act;
2.It has not been entered in compliance with the procedural rules provided under the Public Officers' Protection Act; and
3.Plaintiff is precluded from bringing this action under section 2(5) of the State Proceedings Act."

The Court held that the point raised *in limine litis* by the defendant was well taken: by virtue of section 2(5) of the State Proceedings Act, no action lay in respect of an act done by an usher in connection with the execution of a judicial process, which was the case even though the usher was not executing an order or judgment of Court.

21. Section 1 of the State Proceedings Act is to the effect that where a person has a claim against the State in respect of a breach of contract, then, subject to this Act, the claim may be enforced as of right by proceedings taken against the State for that purpose in accordance with the Act.

22. In *Vikas Trading Co. Ltd v Government of Mauritius* (2001) SCJ 237, the view was taken that the defence which a public officer can avail itself under section 4(1) of the Public Officers' Protection Act 1957 [that is a limitation period of two years] is also available to the State in contract.

Conceptual Problems and Difficulties linked with the Law

23. The principle of equality enshrined in the Constitution [sections 3 and 16] and the right to equal protection of the law embodied in the International Covenant on Civil and Political Rights [Article 26] requires of the State that it prohibits any discrimination on any ground, including status.[18] Of course, a difference in treatment would not be discriminatory if it pursues a legitimate

[18] But note that in *Jeekahrajee v Registrar of Co-operatives* [1978] MR 215, the view was taken that section 4 of the Public Officers' Ordinance is not repugnant to section 3 of the Constitution in as much as discrimination on the ground on 'status' is not expressly prohibited in that section.

aim [that is it is based on an objective and reasonable justification] and there is a reasonable relationship of proportionality between that aim and the means used to attain it. The question therefore arises whether such distinction based on status can be said to be in pursuance of a legitimate aim?

24. The rule of law, which is an underlying principle of our Constitution, requires of the State that it be subjected to the same rules as those of an ordinary person. What the rule of law requires is that the government should not enjoy unnecessary privileges or exemptions from ordinary law. The conferment on servants of the State of special rights, privileges, or prerogatives to be determined on principles different from the considerations, which fix the legal rights and duties of one citizen towards another, are alien to such a principle. Also alien to such a principle is the requirement that an individual in his dealings with the State does not stand on anything like the same footing as that on which he stands in dealings with his neighbour. The privileged position of public officers and the State as litigants, compared with other persons, may undermine the very foundation on which rests the rule of law.

25. The third difficulty is that persons are deprived as litigants against the State or public officers of an effective remedy under the law. Article 2(3) of the International Covenant on Civil and Political Rights lays down inter alia that each State party shall ensure that any person whose rights and freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.

Proposals for Reform

Section 2 of the Public Officers' Protection Act:

26. The definition given of a "public officer" as meaning any Government servant and any officer of a municipal council is too narrow. The words "officer of a municipal council" should be repealed and replaced with the words "officer of a local authority".

Section 3 of the Public Officers' Protection Act:

27. Section 3 has to be drafted differently[19]; in subsection (1) it includes in the definition of the offence an aggravating circumstance. It should rather have been written as follows:

"(1) Any person who resists, opposes, molests, hinders, or obstructs a –

(a) public officer in the performance of his duty;
(b) person lawfully engaged, authorised or employed in the performance of a public duty; or

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[19] Section 3 presently reads as follows:

"(1) Any person who by force or violence resists, opposes, molests, hinders, or obstructs a –
(a) public officer in the performance of his duty;
(b) person lawfully engaged, authorised or employed in the performance of a public duty; or
(c) person lawfully acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b),
shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 3 months.
(2) In the absence of force or violence, the penalty shall be a fine not exceeding 3000 rupees and in the case of a second or subsequent offence, the penalty shall be as provided in subsection (1)."

(c) person lawfully acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b),shall commit an offence and shall, on conviction, be liable to a fine not exceeding 3,000 rupees.

(2) Where the offence is committed with force or violence, the penalty shall be a fine not exceeding 10,000 rupees and in the case of a second or subsequent offence, the penalty shall be a fine of 10,000 rupees and imprisonment for a term not exceeding three months."

Section 4(1) of the Public Officers' Protection Act:

28. Two options are open. The first option is to repeal section 4(1) of the Act[20] so that actions fall to be governed by the *droit commun* of the Civil Code. This option does not appear to lack pragmatism to the extent that seemingly public authorities keep files for a period of ten years.

29. The second option is to amend section 4(1): Time limit to apply only to civil actions and to run as from the date the person became aware of the fact, act, or omission which has given rise to the action, suit or proceeding, with power conferred to Court in the interests of justice to entertain an action even outside the prescribed time limit.

The words "other than the State" could be repealed as there is no justification to treat the State differently from other litigants.

[20] Section 4(1) reads as follows:

"Every civil or criminal action, suit, or proceeding, by a person, other than the State, for any fact, act or omission, against a –
(a) public officer in the execution of his duty;
(b) person engaged or employed in the performance of any public duty; or
(c) person acting in aid or assistance of the public officer or person mentioned in paragraphs (a) and (b),
shall, under pain of nullity, be instituted within 2 years from the date of the fact, act, or omission which has given rise to the action, suit, or other proceeding."

Section 4(2) of the Public Officers' Protection Act:

30. Section 4(2) of the Act[21] is to be repealed as the provision requiring written notice of suit before commencing litigation is not serving the purpose it was meant for, that is to alert the Defendant to negotiate a just settlement or to at least have the courtesy to tell the potential plaintiff why the claim is being resisted. The Law Commission of India in its 100th Report on "Litigation by and against the Government: Some Recommendations for Reform" [May 1984] also came up with this proposal for change.

Section 4(3) & (4) of the Public Officers' Protection Act:

31. There does not appear to a justification for such provisions[22], which derogate from the principle of "réparation intégrale du prejudice". It is a matter best left to the Courts to determine what would be the appropriate compensation. Subsections (3) and (4) of section 4 can thus be repealed.

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[21] Section 4(2) reads as follows:

"(a) No civil action, suit or proceeding shall be instituted, unless one month's previous written notice of the action, suit, proceeding and of the subject matter of the complaint, has been given to the defendant.
(b) No evidence shall be produced at the trial except of the cause of action as specified in the notice.
(c) In default of proof at the trial that the notice under paragraph (a) has been duly given, the defendant shall be entitled to judgment with costs."

[22] Section 4(3) and (4) read as follows:

"(3) Where –
(a) before the institution of any civil action, suit or proceeding, the defendant has offered to the complainant an indemnity which is determined to be sufficient by the Court before which the case is brought; or
(b) after any civil action, suit or proceeding has been commenced, the defendant has paid into Court a sum of money which the Court determines to be sufficient as damages or indemnity to the complainant,
the case shall be dismissed, subject to such order as to costs as the Court thinks just.

Section 5(1) of the Public Officers' Protection Act:

32. Section 5(1) can be repealed as there is no justification for this provision.[23] It is best to leave it to the Court to decide, in the circumstances, what would be the appropriate penalty.

Section 5(2) of the Public Officers' Protection Act:

33. Section 5(2) is to be repealed.[24] Why should a litigant be precluded to claim compensation for material or moral prejudice caused as a result of an unlawful seizure? Why no order for costs can be made in his favour? There does not appear to be any justification for such preferential treatment to be given to a public officer in a democratic society.

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(4) Where, in any civil action, suit or proceeding, the Court certifies on the record that the defendant acted upon reasonable or probable cause, the plaintiff shall not be entitled to more than nominal damages, or to any costs."

[23] Section 5(1) provides:

"Where –
(a) an information is filed against a public officer on account of a seizure; and
(b) judgment is given against the defendant,
only a nominal penalty shall be imposed and the claimant shall not be entitled to any costs if the Court certifies on the record that there was reasonable or probable cause of seizure".

[24] Section 5(2) provides as follows:

"(2) In a civil action, suit or proceeding brought against the public officer in respect of the seizure, the plaintiff shall only be entitled to judgment for the things seized or their value, and not to damages or costs."

Section 6 of the Public Officers' Protection Act:

34. Section 6(1) of the Act needs to be amended; that the act done or omission must have been made maliciously and without reasonable or probable cause seems OK, but entitlement to treble costs when plaintiff fails to make out his case is not justified.[25]

Section 2(5) of the State Proceedings Act:

35. Section 2(5) of the State Proceedings Act is to be repealed.[26] Why should the State exonerate itself for any wrongful act done by a person whilst exercising judicial function or in connection with the execution of judicial process?

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[25] Section 6 reads as follows:

"(1) (a) Sections 4 and 5 shall apply to a civil or criminal action, suit or proceeding, brought against a Magistrate, or a clerk or officer of any district or other Court, for any act done by him, or for any omission, in the execution of his office.
(b) Subject to subsection (2), the plaintiff shall also expressly allege that the act was done or omission made maliciously and without reasonable or probable cause.
(c) Where the plaintiff fails to prove the allegation mentioned in paragraph (b), the defendant shall be entitled to judgment with treble costs.
(2) (a) Any person who has been injured by an act done –
(i) by a Magistrate, clerk or officer in a matter in which he has no jurisdiction or in which he has exceeded his jurisdiction;
(ii) under any conviction made or warrant issued in a matter mentioned in subparagraph (i),
may maintain an action without averring and proving that it was done maliciously.
(b) No action under paragraph (a) shall be brought for anything done under a conviction until the conviction has been quashed by a Court on appeal or otherwise."

[26] Section 2(5) of the State Proceedings Act reads as follows:

"(5) No proceedings shall lie against the State by virtue of this section in respect of anything done, or omitted to be done, by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities which he has in connection with the execution of judicial process."

Concluding Observations

36. The Commission shall report on the issues raised in this Discussion Paper after consultation with stakeholders and interested parties. Comparative legal research on the evolution of similar provisions in other Commonwealth countries is needed, as well as further reflection on the constitutional principles at stake.

APPENDIX 1: PUBLIC OFFICERS' PROTECTION ACT

APPENDIX 2: Miscellaneous Provisions of Code Civil Mauricien

APPENDIX 3: STATE PROCEEDINGS ACT