**SESSION 6 – Reform of Law of Evidence**

**CHAIR Judge Narandran KOLLAPEN, Chairperson South African Law Commission**

Welcome back everybody to the last substantial session of what no doubt has been a very stimulating, informative and at times provocative conference. Certainly for me, the time taken to travel here and the time that will be taken to travel back home has been well worth it already, leaving aside the wonderful hospitality we’ve all experienced here in the last two days. This Session is entitled the Reform of the Law of Evidence. And as you’d probably know, it’s trite that ultimately evidence is what is presented in court and courts play a critical role in any functioning democracy. On the one hand, the simple task of delivering justice to people who seek it is an important one. On the other hand, and more profoundly, you have the rule of law, the maintenance of certain values, of accountability, of responsiveness, is equally important. And some people say, well courts are constantly in search of the truth. I don’t necessarily agree with that, because, truth, itself, is a very elusive concept. Even philosophers have battled to give meaning to what is the truth, and rather than searching for the truth, courts adopt certain standards of evidence. So in a criminal proceeding generally, you’ll have proof beyond reasonable doubt, while in civil proceedings you would have proof on a balance of probabilities. So ultimately courts receive evidence and they receive it really on I think two broad criteria: the relevance of the evidence, but more importantly, the reliability of the evidence. And how evidence has emerged over years has changed quite dramatically. Somewhere in one thousand B.C. China, in order to determine whether someone was lying or not, they would put a handful of rice in their mouth and ask them to spit it out, if the rice that was spit out was dry, the person was lying, and that apparently was scientific, the theory being that when you’re under fear and when you’re lying you don’t salivate and your mouth is dry and therefore when you spit the rice out and it would be dry and therefore you’re lying. And they regarded this as scientific. You will recall that sometimes when to determine if someone is a witch, they would be tied to stone and thrown into a pond. If you sank, well you’re innocent, but hard luck you know. If you survive then you’re a witch and we can now burn you to death. So, either way you look, you lose. And another version of the story, someone is thrown in a pit and if you survive, the theory is God loved you and God intervened to help, and if you sank, then God didn’t love you, or perhaps the water didn’t want you and rejected you.

But fortunately, we’ve moved on since then. And now we’ve become quite sophisticated in our own ways, in terms of evidence. We can determine with accuracy whether I sat on a particular chair last night at that wonderful dinner, because my skin follicles might well be on the seat and DNA evidence can be seen on that particular seat. We live in an electronic age and we can contact anybody in the world, we can have conversations, I can send messages, and so in many ways the law of evidence has to keep up with developments in our world. But it also has to keep up with social norms and mores. We often have the sense that we have to be cautious when dealing with a woman in a sexual violence matter. Or with children. Because children are prone to exaggerate, those cautionary rules are often based on harmful stereotypes that were part of our civilization. So, the law of evidence has changed over time and will continue to evolve, to ensure it is relevant and remains so.

With those few words of introduction, I think we’ve got an eminent panel today. We have sitting right alongside me, the Director of Public Prosecutions in the wonderful Republic of Mauritius, Mr. Satyajit Boolell, SC. Sitting alongside him, we have Ms. Masuku, who’s from the Ministry of Justice in Zimbabwe, Chief Law Officer. And last but not least, we have the Chairperson of our Association, Mrs. Nsanze.

The good news is that all the speakers have unequivocally committed to me that they will keep within the time limit, which is 15 minutes and I have no reason to doubt that, and the consequence of that is that we will have some time for discussion thereafter. So, without further ado, I’d like to invite Mr. Boolell to favor us with his presentation.