

**Message from Mr. Sabir Kadel**  
**Chief Executive Officer**

***1. What is a good law?***

At the LRC, we have developed, over the years, what the Greek authors called “*kairos*”, that is, the sense of opportunity. It is indeed worth asking whether the time is ripe for the adoption of a new law and what should be the nature of it:

- A good law is a law that can be applied. Thus, it is worth asking whether the costs of its implementation are not too high, more than the institution responsible for implementing it can afford;
- Next, a good law is one that is likely to be understood and accepted by the litigant. It is thus advisable to step into the shoes of the sociologist, anthropologist, historian, to wonder if the values in force and their evolution, allow the citizen to identify with the laws;
- Finally, a good law is a law in which all stakeholders feel committed and respected.

***2. The need for clear and precise legislation***

When drafting a legal provision, Officers of the Law Reform Commission always try to keep in mind this quote from Talleyrand, then Minister for Foreign Affairs under Napoleon, to Metternich, Plenipotentiary of Prussia, at the Congress of Vienna in October 1814: “*If it goes without saying, it goes better saying it.*”

Thus, the provision should be clear and not take the form of a tautology, the most obvious example is that of sexual harassment in France, which, following a QPC (*Décision n° 2012-240 QPC du 4 mai 2012*), was made void by the Constitutional Council, and for a few days French law found itself in a most embarrassing situation, namely that sexual harassment was no longer criminalized. Until the lawmaker fixes it precipitously. The same is true in Mauritian law, whether for sexual harassment as well, but also for rape, where no definition is provided, which contravenes the principle of legality. What we remedied to in our reports (Interim Report on Reform of “Criminal Code” [May 2016] & Discussion Paper about « Reform of Law on Sexual Offences involving a physical contact between the Perpetrator and the Victim » [April 2019]).

Legal provisions are not clusters of sentences formed by words placed end to end in a random fashion. Each comma, each verb, each conjunction has its importance. And not just from a doctrinal point of view. It is the choice of words that transforms a material offense into a formal one, such as poisoning for example. It is the use of certain verbs that allows the court to judge whether such an offense, in order to be constituted, requires the presence of a “*dol spécial*” (which is a characterized intention, or that the offense is subordinated to the prosecution of a personal interest or when the agent has acted for certain reasons, as in the discriminatory motive) and not only of a “*dol général*”, which sometimes makes the difference between jail time and freedom.

### ***3. Alternatives to Legislative Implementation***

There are other alternatives to legislative implementation. Many LRAs occasionally publish reports which do not call for a change in legislation at all. This may be because they do not recommend any change in the law, because their recommendations can be implemented without legislation or because they are intended purely as guidance, as advice or as vehicles for discussion rather than for law reform. In addition, legislation is not the only way in which some recommendations can take effect, some can be implemented by the courts.

LRC reports should be authoritative and have a significant effect in changing views and shaping attitudes, and in providing guidance to the courts on particular subjects. This can lead to a gradual change in the law by developments through the courts. Many court decisions having already recognized the work of the Commission (*Cheddy Y.I.A. V Public Bodies Appeal Tribunal & Anor* [2020] SCJ 254 citing LRC Discussion Paper on Judicial Review [May 2010] - *Mungroo & Ors. V The State of Mauritius & Ors.* [2007] SCJ 326, *Dhurbarrylall A. V. Kurmally M. R. & Ors* [2012] SCJ 209 and *Ramnarain S. V Ministry of Health & Q.L. & Anor* [2017] SCJ 320 citing LRC Discussion Paper on “Access to Justice and Limitation of Actions against Public Officers and the State” [June 2007]).

In some other instances, courts have drawn the attention of the LRC to changes that should be made to our law (*District Council of Riviere du Rempart V. Alphamix Ltd & Anor* [2018] SCJ 143, concerning Article 585 of the Code de procédure civile insofar as it refers to the need for “*deux témoins français*” and *Sookur P V The State* [2015] SCJ 137 regarding reform of law of embezzlement. In both cases, the Commission has proposed changes but these are yet to be implemented).

#### ***4. The Soul of the LRC: Winning Hearts and Minds***

The LRC is not an institution where relationships between the different staff members are marginal, where work is depersonalized. The climate at the LRC is not a Weberian climate, dominated by sterile bureaucracy.

When people think of the LRC, they often think of law reform. And we cannot blame them. Moreover so, it is in the very name of the institution. But we tend to forget the other mandate of the Commission, which is to make law more accessible, to disseminate knowledge to as many people as possible. If we compare Carthage to Rome, two powerful empires of antiquity, only the legacy of the second has come down to us. Because conquering is not enough. We must also transmit.

And this is what the Commission is also working on: the transmission of law and the democratization of knowledge.

According to Law Lord Johan Steyn, a law commission is an integral part of democratic dialogue in a State. Indeed, I think the LRC has an essential role to play in the democratic debate. Independent, it is freed from political constraints, although it must constantly take the pulse of society and gauge its values before considering reform.

The LRC is, has always been, and will continue to be responsive to current trends in legal reform and embark on projects which have an impact on forthcoming generations, and take into account the interests of groups which have hitherto been neglected.



***Mr. Sabir KADEL***

**Chief Executive Officer of the Law Reform Commission**