



BASL

NEWSLETTER

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SPECIAL GENERAL MEETING OF THE BAR ASSOCIATION OF SRI LANKA HELD ON 15TH DECEMBER, 2012 AT THE COURT PREMISES, HULFTSDORP AT 10.30 AM

Over three thousand (3,000) members of the Bar Association of Sri Lanka (BASL) from all parts of Sri Lanka attended the Special General Meeting of the BASL held on the 15th of December, 2012 at the Court premises, Hulftsdorp.

It was the largest gathering of lawyers since the BASL held a general meeting on 02-09-1989 and passed a Resolution condemning the killings of Attorneys-at-Law Wijedasa Liyanarachchi and Kanchana Abeyapala at the time when nine lawyers were killed during the 1989/1990 period.

The meeting was presided by the President of the BASL, Mr. Wijeyadasa Rajapakshe PC, Mr. Sanjaya Gamage (Secretary), Ms. Anoma Goonathilake, (then Deputy President), Mr. Charith Galhena (Assistant Secretary) and Mr. Rasika Dissanayake (Treasurer).

Many speakers including senior members of the legal profession expressed their views about the Resolutions that were tabled. Notwithstanding disagreement it was unanimously resolved to pursue a course of action so as to uphold the independence of the judiciary and the three Resolutions aimed at preserving the independence of the bar and the judiciary were adopted.

RESOLUTIONS

1. In the light of the speech made by His Excellency the President on 11th December, 2012 to evaluate the report of the Parliamentary Special Select Committee of the impeachment against the Chief Justice through an independent committee, we urge His Excellency to re-consider the impeachment.
2. In the event His Excellency the President and/or the Hon. Members of Parliament who are signatories to the impeachment resolution wish to proceed with it further, We urge His Excellency the President, the Hon. Speaker and the Parliament to formulate and enact procedural laws in relation to removal of the Judges of the Superior Courts while ensuring a fair trial by adhering to principles of natural justice before further proceedings are taken on the said impeachment.
3. In the event the incumbent Chief Justice is removed without giving an opportunity to have a fair trial in compliance with rules of natural justice, the Bar Association of Sri Lanka shall not welcome the newly appointed Chief justice.

BASL ELECTIONS FOR THE YEAR 2013/2014

POLLING WILL TAKE PLACE BETWEEN
8.00 AM AND 5.00 PM

ON WEDNESDAY THE 20TH OF FEBRUARY, 2013

CANDIDATES FOR THE POST OF PRESIDENT OF THE BASL

RE-ELECTED SECRETARY



MR. UPUL JAYASURIYA



MR. RAJA RAJESWARAN
SARAVANAMUTTU
THANGARAJAH



MR. TIRANTHA KUMARA
WALALIYADDE PC



Mr. SANJAYA GAMAGE
was re-elected without a
contest as the Secretary of
the BASL.



Legal Aid Foundation Incollaboration with UNDP towards Sustainable Solutions To Legal Aid.



SEARCHING SUSTAINABLE LEGAL SOLUTIONS –

THE ROLE OF LEGAL AID FOUNDATION / HUMAN RIGHTS CENTRE OF BAR ASSOCIATION OF SRI LANKA

The Legal Aid foundation (LAF) and the Human Rights Centre (HRC) of the Bar Association of Sri Lanka (BASL) had a successful calendar of activities during year of 2012-2013. In order to have a good rapport and co-operation with the public, the BASL, as a professional body of the highest standards, initiated numerous programmes through its arms of LAF and HRC during the year, which have immensely benefited the indigent people of the country by paving the way for them to gain access to justice, whilst addressing the notion of eliminating injustice with the ultimate objective of creating a society in harmony, it's success which we are indeed proud of, as we approach the 20th anniversary of the Centre.

Under the three thematic issues viz., *In Persona and In Absentia Consultation, Pro bono and Legal Aid Schemes and Seminars, Workshop and Legal Aid Programmes*, the LAF and HRC of the BASL have endeavored to foster the needy people, who are burdened with so many legal issues by widening the doors to gain easy access to justice and equity.

The LAF and HRC, since recently, have resorted to the process of *In Persona Consultation* as the main instrument to come closer the hearts of the public. Many people from all over the country visit the LAF and HRC every working day, seeking legal advice and redress for their burning issues of legal dimension. During the course of the year, the LAF and HRC had advised around 1000 clients. This fact highlights the wide acceptance of the service rendered by the LAF and HRC among the indigent people through out the country.

The LAF and HRC received a significant number of letters pertaining to day to day legal issues of the people, which were addressed mainly to the President and the Secretary of BASL or directly. In addition to above processes, under the mode of *In Absentia Consultation*, the LAF and HRC endeavored to resolve the matters referred to the Centre.

The LAF and HRC has identified that the Legal Aid is the timely intervention to narrow the gap between justice and those needy citizens. Hence, the Centre used **Legal Aid Clinics, workshops and Seminars** as its major outreach process to provide with appropriate solutions to the problems of a wider section of population through out the country. Unless the support and patronage extended by the UNDP, the LAF and HRC would not have succeeded in providing it's services to the needy people.

In collaboration with the project of Equal Access to Justice Phase II of the UNDP, the Centre successfully held three Legal Aid Clinics (in **Killinochchi**) and seminars at **Palai** Divisional Secretariat on 19th October 2012, **Karachchi** Divisional Secretariat on 20th October 2012 and **Kandavalai** Divisional Secretariat on 21th October 2012. The Centre successfully held three Legal Aid Clinics and seminars in **Mullativu** as well, namely at **Puthududiyiruppu and Maritime Pattu** Divisional Secretariats on 28th October 2012, and **Thunukkai** Divisional Secretariat on 29th October 2012.

In this transitional period, the Centre successfully launched a project named **An Advanced Training Programme in Access to Legal Aid**. The main beneficiaries of this project are the 50 law students and 20 junior lawyers in Jaffna. The project was culminated with the utmost support of the Equal Access to Justice Project Phase II of the UNDP, CSHR of Faculty of Law, University of Colombo and Bar Association of Jaffna.

In addition to these programs, the LAF and HRC have contributed immensely to the **Law Week 2012**, which was a huge success. The LAF and HRC was able to conduct a successful **Legal Aid Clinic** in Galle as well.

Under the guidance and exemplary leadership of Mr. U.R. De Silva, Chairman of the Centre, the LAF and HRC was able to conduct a **survey of remand prisoners languishing in prisons for over a year** and as the first step of this programme, the Centre was successfully able to file and support bail applications for number of remand prisoners in **Anuradhapura** prison languishing over a year. As the Second step, the Centre has collected the data of the inmates in remand prisons in **Galle, Welikada Female Ward, Kalutara and Kuruwita** and the Centre expects to file bail applications on behalf of them in near future.

The devotion and dedication of Mr. U.R. De Silva, Chairman of the Centre, Mr. Sanath Wijewardene, Convener of the Centre and Miss. Nayomi Wickramarathne, Duty Officer of the Centre and invaluable assistance of Ms. Shantha Abimanasingham PC, Ms. Pancy Joseph AAL, Miss. Upeksha Jayasooriya, AAL and Miss. Nadee Sarathchandra, AAL and Mr. Sampath Wijerathne, AAL should be acclaimed.

With the deep sense of gratitude the Center thanks Mrs. Malkanthi Wickramasinghe, Project Director of Equal Access to Justice Project and Secretary of Ministry of National Languages and Social Integration, Mrs. Tharanga De Silva, Project Manager of Equal Access to Justice Project, Miss. Sunara Samsudeen, Project Officer of Equal Access to Justice Project and Miss. Saranga Jayarathne project officer of UNDP. If not for their financial assistance, the LAF and HRC would not have succeeded so much with ease. The Centre also appreciate the support and encouragement given by the president, the secretary, the treasurer and the assistant secretary of the BASL.

EDITOR'S NOTE

SOME THOUGHTS ON THE IMPEACHMENT MOTION

(THIS ARTICLE REFERS TO THE LAW AND FACTUAL POSITION AS AT 01 JANUARY, 2013)

In the recent history of the legal profession of Sri Lanka there have been resolutions for impeachment of three incumbent Chief Justices, and the one that has attracted the most amount of publicity and public debate is the resolution against Dr. Shirani Bandaranayake.

By some quirk of destiny the resolutions for impeachment of these three Chief Justices have been presented during the term of office of the President who had the confidence to appoint them to post of Chief Justice. On a note of superstition, however, it may be interesting to reflect that the appointment of the three Chief Justices concerned was marked at one stage or another by the ill-omen of some heartburn or protest. In the case of Mr. N. D. M. Samarakoon QC he was appointed Chief Justice directly from the unofficial bar over Mr. G. T. Samerawickrame who was himself an appointee from the unofficial bar but who at the time of Mr. Samarakoon's appointment been a Judge of the Supreme Court for over ten years, and as the most senior Judge of the Supreme Court had even acted for the Chief Justice. Mr. Sarath Silva PC was appointed Chief Justice from the post of Attorney-General though Mr. Mark Fernando PC was senior to him both as a lawyer and as a Judge of the Supreme Court. Mr. Mark Fernando PC too had several times acted for the Chief Justice prior to the appointment of Mr. Sarath Silva PC as Chief Justice. The protest against Dr. Shirani Bandaranayake was when she was appointed a Judge of the Supreme Court, and that was on the basis that she came exclusively from the academic arena.

The power to appoint the Chief Justice is vested in the President under Article 107(1) of the Constitution. The provisions as to the appointment and removal of the Chief Justice have been enacted in the Constitution itself under the heading of Independence of the Judiciary.

In section 14(f) of the Interpretation Ordinance it is stated that,

"In all enactments, for the purpose of conferring power to dismiss, suspend, or reinstate any officer, it shall be deemed to have been and to be sufficient to confer power to appoint him."

The provisions in Article 107 of the Constitution pertaining to the removal of a Judge of a superior court have excluded the applicability of the above provision in the Interpretation Ordinance.

It is very clear that stringent provisions have been made in the Constitution itself for the removal of a Judge of a Superior Court in order to guarantee to Judges of the Superior Courts security of tenure which is an essential component of judicial independence.

It would appear that Standing Orders or laws cannot be made to in any manner erode that guarantee so long as the

present constitutional provisions in Article 107 for removal of Judges of a Superior Court remain.

In further confirmation of the security of tenure enjoyed by a Judge of a Superior Court it is provided in Article 108 of the Constitution that the salary and pension entitlement of a Judge of a Superior Court shall not be reduced after his appointment.

Fears have been expressed in many quarters that Standing Order 78A of the Parliament's Standing Orders has eroded the guarantee of security of tenure which a Judge of a Superior Court is entitled to enjoy in terms of Article 107 of the Constitution. These fears as will be presently seen seem to be justified.

Under Article 107 (2) of the Constitution a Judge of a Superior Court can be removed only on the ground of proved misbehaviour or incapacity.

The Select Committee appointed under Standing Order 78A2 to inquire into the allegations made against Dr. Shirani Bandaranayake has found that three of the charges are proved, and has reported its findings to Parliament.

It has been said that Standing Order 78A is ultra vires the Constitution in that it requires the Select Committee of the Parliament to investigate the allegations of misbehaviour made against a Judge of a Superior Court, and report its findings. The process of investigation and determination or finding whether the misbehaviour alleged against the Judge is proved or not involves an exercise of judicial power which the Select Committee appointed by the Speaker of Parliament cannot do because in terms of Article 4(c) of the Constitution judicial power cannot **directly** be exercised by Parliament except in regard to matters relating to the privileges, immunities and powers of Parliament and of its members, and that too in a very peripheral way.

A Select Committee is an ad hoc body of selected members appointed by the Speaker, and it cannot, therefore, ordinarily exercise judicial power.

However that may be, Standing Order 78A in violation of the Constitution has 'empowered' the Speaker to appoint a Select Committee to determine and find whether charges of misbehaviour alleged against a Judge are proved or not. It is needless to add that such a determination or finding can only be made in the exercise of judicial power. That being so, such a determination or finding must necessarily be subject to judicial review.

When Sri Lanka had a bicameral legislature under the Soulbury Constitution a Judge of the Supreme Court **held office during good behaviour**, and could not be removed except by the Governor-General upon an address of both the House of Representatives and the Senate.

Under the Republican Constitution of 1972 also Superior Court Judges **held office during good behaviour**, and could not be removed except by the President upon an address of the National State Assembly.

But under the present Constitution a Superior Court Judge can be removed only for **proved misbehaviour or incapacity**. This constitutional requirement has introduced a new dimension into the procedure for removal of a Superior Court Judge.

The danger, however, is parliamentary convention appears to be for Parliament to act on the findings of the Select Committee – *vide for example, the case of Mr. N. D. M. Samarakoon QC* where the Parliament acted on the finding of the Select Committee that the Hon. Chief Justice is not guilty of proved misbehaviour.

It is said that the Government of Sri Lanka has given a written assurance and confirmed to the Human Rights Committee established under the International Covenant on Civil and Political Rights that the findings of an ad hoc Select Committee appointed under Standing Order 78A are subject to judicial review. It is hoped that this assurance given by the Government of Sri Lanka will be honoured.

It is, therefore, wrong to assume that the findings of the Parliamentary Select Committee in regard to the alleged misbehaviour of Dr. Shirani Bandaranayake are final and conclusive.

Dr. Shirani Bandaranayake has filed a writ application to have the findings of the Select Committee quashed. The correct thing to do appears to be to await the final outcome of this writ application. We do not have to be reminded that the Rule of Law must prevail over political expediency, and that justice must be done even if the skies fall - *fiat justitia ruat caelum*.

It is also appropriate to note that the celebrated ruling of Mr. Anura Bandaranaike has no application to the facts of the instant matter. Mr. Anura Bandaranaike was dealing with a case where interim orders had been issued restraining him from appointing a Select Committee of Parliament in terms of Standing Order 78A. Mr. Anura Bandaranaike relied on sections 3, 4, 6 and 7 of the Parliament (Powers and Privileges) Act of 1953, and held that the cumulative effect of

those provisions places the question of the exercise of the Speaker's powers wholly outside the control of any Court, Mr. Anura Bandaranaike accordingly held that the Supreme Court had no jurisdiction to issue the said interim orders, that they were not binding on the Speaker, and that there was no legal obligation to comply with them.

Also, it is noteworthy that the case of Mr. N. D. M. Samarakoon QC is not an exact parallel. Mr. S. Nadesan QC who appeared for Mr. Samarakoon QC had, *inter alia*, argued that the appointment of the Select Committee had no constitutional validity. The matter before that Select Committee, however, did not go that far because that Select Committee took the view that it cannot come to the conclusion that the Chief Justice is guilty of proved misbehaviour. Mr. N. D. M. Samarakoon QC retired shortly thereafter upon reaching the statutory age of retirement.

The Resolution to impeach Mr. Sarath N. Silva PC lapsed because of a timely prorogation of Parliament.

It is thus clear that the Resolution to impeach Dr. Shirani Bandaranayake is *res integra*, and must, therefore, be considered as such.

Some newspapers and journalists and certain others have commented on the current impeachment issue on a very superficial note, and in the process have attacked and insulted the lawyers who have expressed the view that the due process of law has not been observed in regard to the impeachment of Dr. Shirani Bandaranayake. Regrettably, the impeachment issue has been personalised and politicised. Even the legal system has not been spared. It is hoped that it will be realised sooner than later that such comments and unfounded criticisms will do more harm than good to the administration of justice in this country. It has not been appreciated that the three important matters the Bar is concerned with are the independence of the judiciary, the security of tenure of Judges of the Superior Courts and the preservation of the Rule of Law.

The Bar Association of Sri Lanka headed by Mr. Wijeyadasa Rajapakshe PC has in a forthright and fearless manner done everything in its power to safeguard the independence of the judiciary and the security of tenure which Judges of Superior Courts are by law entitled to enjoy.

JUDGMENTS

Sections 839 and 341(1) of the Civil Procedure Code / Rent Act / Death of a tenant intestate and issueless during the pendency of a case

SUPREME COURT

Deepthi Fernando v. Thilak Padmakumara Arambewela

SC Appeal No. 107/2008

SC HC(CA) LA 127/08

WP/HCCA/COL/57/08

D. C. Mount Lavinia Case No. 687/02/RE

Decided on: 27-03-2012

Decided by: N. G. Amaratunga, J; S. I. Imam, J.; **R. K. Suresh Chandra, J.**

This was an action for ejectment of the Defendant on the grounds of sub-letting and arrears of rent. The Defendant filed Answer denying the allegations in the plaint, and praying for a dismissal of the action. On the trial date the Defendant was absent and unrepresented. The case was fixed for *ex parte* trial. The Plaintiff gave evidence and *ex parte* Judgment was entered against the Defendant. The Fiscal took steps to serve the *ex parte* Decree but he reported that the

Defendant had died.

The Plaintiff filed papers to substitute the Respondent in the room of the deceased Defendant by making an application in terms of section 839 of the Civil Procedure Code.

The Respondent filed objections to the application for substitution, and the matter was fixed for inquiry at which the Appellant and the Respondent had given evidence.

The learned District Judge allowed the Respondent to be substituted. The Respondent appealed to the Civil Appellate High Court, and the Civil Appellate High Court set aside the order of the learned District Judge.

It transpired that the Defendant had died intestate and issueless and there was no evidence to show that the Defendant had left an administrable estate. The Plaintiff purported to substitute the Respondent because he is Defendant's sister's son, and as such a nephew and next of kin of the Defendant. But there was no evidence to show that the Respondent had made any claim to the estate of the Defendant, and adiated the inheritance.

The Plaintiff had asserted that the premises are governed by the Rent Act, No. 7 of 1972.

The Civil Appellate High Court in the circumstances held that the applicable section was section 341(1), and that the Plaintiff could not have made the application under section 839 to substitute the Respondent. The Civil Appellate High Court was thus of the view that the Plaintiff had no right to appoint the Respondent as the substituted Defendant for the purpose of serving the *ex parte* Decree.

The Supreme Court on appeal upheld the Judgment of the Civil Appellate High Court, and dismissed the appeal.

Suresh Chandra J. made the following observations:-

“The question that would arise then is as to whether the action which was basically a tenancy action would survive the death of the tenant specially when no claims had been made for the succession of the tenancy. In such a situation it would be prudent to state that since the tenancy action is based on a contract of tenancy that the death of the tenant would terminate the tenancy and therefore the action would not survive as in a contract of tenancy, death of either party would terminate the contract. S.36 of the Rent Act provides for succession to tenancy in a situation where the tenant dies. The landlord or any person specified in the said section could take steps as set out therein to name a person to succeed to tenancy. In the present case no such steps have been taken by the landlord or by anyone on behalf of the deceased tenant. The landlord who is the Plaintiff on the other hand had taken steps to effect substitution of a nephew of the deceased tenant to proceed with the action. It is in that respect that the learned district judge had made an order to substitute the respondent in the room of the deceased tenant. As stated above since there was no claim to

succeed to the tenancy in respect of the premises in suit the death of the tenant terminated the tenancy and therefore the action could not be proceeded with thereafter. The resultant position would be that the decree entered would be a nullity and of no effect in law. If the premises in suit had been occupied by some third party the Plaintiff should have had to advise herself regarding the obtaining of vacant possession of premises.

Although the Appellant and the Respondent have made submissions regarding matters relating to succession and which matters were considered by both the District Court and the High Court, a consideration of the survival of the action as discussed above would have concluded this matter.

In the generality of civil cases proceeded with under the provisions of the Civil Procedure Code where succession to a defendant who dies during the pendency of an action a consideration, of the provisions of s.341(1) of the Civil Procedure Code would be relevant. In that light as the Respondent is the defendant's sister's son, and hence a nephew of the defendant it certainly would make him a next of kin. If he made any claim to the estate of the defendant he may be entitled to such estate if there were no other claims from any other relative of the defendant. There is no evidence of such a claim having been made by the Respondent. If the Respondent had made such a claim and had acted in respect of the estate of the deceased he could be said to have adiated the inheritance or acted as an executor de son tort. But there is no such evidence. Therefore it is my view that the mere fact that the Respondent was the nephew of the defendant does not give the right to the plaintiff to substitute him in the room of the defendant and forced to inherit the obligations of the defendant.” (vide pages 3 and 4)

01 / 12-01 / 2012-2013

Land Acquisition Act / Failure to state the question of law to be argued in the Petition of Appeal

COURT OF APPEAL

A. D. Amarasinghe v. Acquiring Officer and Assistant Government Agent

C. A./LAQ/BR/01/2005

Land Acquisition Board of Review Appeal No. KG/200

Decided on: 05-03-2008

Decided by: S. I. Imam, J.; Sarath De Abrew, J.

In this case a land with a building 105.12 perches in extent situated in Angururuwella in the Kegalle District was acquired by the State. The Appellant who owned one half share of the land and the entirety of the building was awarded total compensation of Rs. 51,700/= by the Acquiring Officer under section 17 of the Land Acquisition Act. Following an appeal to the Board of Review the compensation was enhanced to

Rs. 127,225/= by Order of 06-08-2004. The Appellant appealed to the Court of Appeal praying that the total compensation be increased to Rs. 226,875/=.

When the appeal came up for hearing learned Senior State Counsel for the Respondent raised a preliminary objection that the Appellant had failed to state the question of law to be argued in the Petition of Appeal as required by section 28(2) of the Land Acquisition Act as amended, and hence the appeal cannot be maintained.

Learned Counsel for the Appellant took up the position that there is no legal requirement to specifically formulate the question or questions of law in the Petition of Appeal as long as on a plain reading of the Petition the points or questions of law to be argued are apparent and easily discernible. He relied on two cases, namely, *General Manager, Ceylon Electricity Board and Another v. Gunapala*, [1991] 1 Sri L. R. 304 and *Lanka Walltiles Ltd. v. K. A. Cyril*, [1986] 2 CALR 344.

The Court of Appeal overruled the said preliminary objection. His Lordship Sarath de Abrew J. said as follows:-

“Section 28 of the Land Acquisition Act states as follows: 28(1) Where a party to an appeal to the board is dissatisfied with the Board’s decision on that appeal, he may, by written petition in which the other party is mentioned as the Respondent, appeal to the Court of Appeal against the decision on a question of law.

Provided that no such appeal may be preferred on any question determined by any decision which is declared by section 10(5) or section 12(4) to be final.

28(2): A petition of appeal under subsection (1) shall state the question of law to be argued, shall bear a certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal, and shall be presented in duplicate to the board by the appellant within twenty-one days after the date of the board’s decision against which the appeal is preferred.

*Since an appeal on a question of law is intended to be a beneficial remedy, the provisions of section 28 of the Land Acquisition Act have to be interpreted broadly and liberally. Authority for this proposition is the view taken by four Justices of the Supreme Court in the divisional bench landmark decision in *Colletes Ltd vs Bank of Ceylon*, where the Supreme Court, in interpreting provisions of Article 128(1) of the constitution as to the right of appeal to the Supreme Court on a substantial question of law, took a similar liberal view. A litigant who is aggrieved of the quantum of compensation awarded to him with regard to the State acquiring valuable land and property affecting his substantial rights should not be denied his statutory right of appeal in a mere technicality.*

the appellant are based on section 31D of the Industrial Disputes Act, where there is no statutory requirement to state the question of law to be argued in the petition of appeal. However, section 28 of the Land Acquisition Act could be distinguished from section 31D of the Industrial Disputes Act, in that the latter requires:-

- (1) *Stating the question of law to be argued in the petition of appeal.*
- (2) *A certificate by an Attorney-at-Law that such question is fit for adjudication by the Court of Appeal.*

Section 28 of the Land Acquisition Act, when interpreted broadly and liberally, does not confine an appellant to one single question of law but an appellant could base his appeal on several questions of law. Similarly, this provision does not stipulate that the question or questions of law should be specifically and categorically enumerated and listed in so many words in the petition of appeal. In my view, it would suffice for the question or questions of law to be stated in the averments in the petition which would be easily discernible and apparent on the face of the petition. I am satisfied that the appellant has subscribed to the above requirement for the following reasons.

On a perusal of the petition of appeal, paragraphs 08-11 disclose the following questions of law,

- (a) *The Board has erred in law as it has failed to make proper evaluation of the evidence of the valuer ...*
- (b) *... the Board has failed to give any reason whatsoever for not accepting the evidence of Mr. Ubert (the valuer)*
- (c) *... sufficient evidence was led on behalf of the Appellant to prove that correct date of the actual taking over of possession and that the building was in a good condition at the time of vesting and taking over, which fact the Board erred in law in not taking into consideration.*
- (d) *The Board has also erred in law in not considering the comparable sales on the ground that they are long after the relevant date.*
- (e) *the Board erred in law in considering only the previous acquisition of land for the children’s park which was four fold in extent.*
- (f) *the Board has failed to make a proper analysis and judicial evaluation of the comparable sale prices of lands in the immediate neighborhood.*
- (g) *the Board has ... erred in law in not awarding costs of appeal to the Appellant” (vide pages 6 – 11)*

BASL ELECTIONS FOR THE YEAR 2013/2014

POST OF PRESIDENT

THE NOMINATION PAPERS OF **MR. UPUL JAYASURIYA** FOR THE POST OF PRESIDENT WERE ACCEPTED BY THE RETURNING OFFICER, HON. Y. J. W. WIJAYATILAKE PC, THE SOLICITOR GENERAL, ON 10TH JANUARY, 2013 AND WAS PROPOSED AND SECONDED BY:

	PROPOSED BY	SECONDED BY
1	MR. ANANDA DE Z. WIJESKERA PC	MR. ROHAN SAHABANDU PC
2	MR. IKRAM MOHAMED PC	MR. UPALI ARI GOONERATNE PC
3	MR. J. ROMESH DE SILVA PC	MR. S. A. PARATHALINGAM PC

THE NOMINATION PAPERS OF **MR. RAJA RAJESWARAN SARAVANAMUTTU THANGARAJAH** FOR THE POST OF PRESIDENT WERE ACCEPTED BY THE RETURNING OFFICER, HON. Y. J. W. WIJAYATILAKE PC, THE SOLICITOR GENERAL, ON 10TH JANUARY, 2013 AND WAS PROPOSED AND SECONDED BY:

	PROPOSED BY	SECONDED BY
1	MR. PHILIP EARDLY VERNON BOTEJUE	MR. VALENTINE REGINALD ANTHONY RODRIGO
2	MR. R. S. K. WIJERATNE	MR. GANGATHARAN ALVAPILLAI
3	MR. R. C. B. JOSEPH	MS. CHANDIRA DEVI SIVAYOGAM
4	MR. E. A. LIYANAGAMA	MR. W. H. P. N. PERERA

THE NOMINATION PAPERS OF **MR. TIRANTHA KUMARA WALALIYADDE PC** FOR THE POST OF PRESIDENT WERE ACCEPTED BY THE RETURNING OFFICER, HON. Y. J. W. WIJAYATILAKE PC THE SOLICITOR GENERAL, ON 10TH JANUARY, 2013 AND WAS PROPOSED AND SECONDED BY:

	PROPOSED BY	SECONDED BY
1	MR. MOHAMED RAZIK ZAROOK PC	MR. CHANDRADASA LIYANARACHCHI
2	MR. E. K. I. DE ZOYSA PC	MR. M. P. A. PRIYADARSHANA DE SILVA
3	MR. SUNIL SHANTHA HERATH	MS. M. G. INOKA RUWANI

POLLING WILL TAKE PLACE BE BETWEEN 8.00 AM AND 5.00 PM ON 20TH FEBRUARY, 2013.

KINDLY INDICATE ANY CHANGE IN THE POLLING DISTRICT, IF ANY, BEFORE 8TH FEBRUARY, 2013 TO THE BASL SECRETARIAT, NO. 153, MIHINDU MAWATHA, COLOMBO 12 BY POST OR BY FAX (ON NO. 0112448090).

SANJAYA GAMAGE
SECRETARY
BAR ASSOCIATION OF SRI LANKA

BASL ELECTIONS FOR THE YEAR 2013/2014

POST OF SECRETARY

THE NOMINATION PAPERS OF **MR. SANJAYA P. D. M. GAMAGE** FOR THE POST OF SECRETARY WERE ACCEPTED BY THE RETURNING OFFICER, HON. Y. J. W. WIJAYATILAKE PC, THE SOLICITOR GENERAL, ON 10TH JANUARY, 2013 AND WAS PROPOSED AND SECONDED BY:

	PROPOSED BY	SECONDED BY
1	MR. WIJAYADASA RAJAPAKSHE PC	MR. CHARITH GALHENA
2	MR. IKRAM MOHAMED PC	MR. I. W. N. INDATISSA
3	MR. MANOHARA R. DE SILVA PC	MR. SUNIL D. B. ABEYARATNE
4	MR. J. ROMESH DE SILVA PC	MR. SALIYA K. M. PIERIS
5	MR. JAYANTHA DE ZOYSA GUNASEKERA PC	MR. MAHINDA B. K. LOKUGE
6	MR. K. NEELAKANDAN	MR. NEVILLE A. ABEYRATNE

AS MR. SANJAYA P. D. M. GAMAGE WAS THE ONLY CANDIDATE DULY NOMINATED FOR THE POST OF SECRETARY, THE RETURNING OFFICER, HON. Y. J. W. WIJAYATILAKE PC, SOLICITOR GENERAL, DECLARED THAT **MR. SANJAYA P.D.M. GAMAGE WAS DULY ELECTED TO THE POST OF SECRETARY** OF THE BAR ASSOCIATION OF SRI LANKA FOR THE YEAR 2013/2014.

D. T. DE S. L. BOGAHAWATTA
ADMINISTRATIVE SECRETARY
BAR ASSOCIATION OF SRI LANKA

SPECIAL NOTICE

At the Bar Council meeting held on 12th January, 2013 **Mr. Kapila Manamperi** was unanimously elected as the **Deputy President** of the Bar Association of Sri Lanka (BASL). Mr. Manamperi who was at the time the Zonal Vice President of the of the Matara Zone was nominated by Mr. Wijeyadasa Rajapakshe PC and seconded by Mr. Sanjaya Gamage. **Mr. M. P. C. M. Muthukumarana** has now been appointed as the Zonal Vice President of the Matara Zone to fill the vacancy created by Mr. Manamperi's appointment as the Deputy President.

OBITUARIES

Justice (Retired) Dr. A. R. B. Amerasinghe
 Ms. Anna B. de Almeida
 Mr. Laksiri de Silva
 Mr. W. Karunajeewa
 Ms. Seetha Wijewardena
 Hon. Patrick Fernando

(Extracts of a letter sent by the President of the Student's Union of the Faculty of Law of the University of Colombo to the President of the Bar Association of Sri Lanka)

"Hand for Achala - Justice for Negligence"

W. K. Achala Priyadarshini, who is a final year student at the Faculty of Law, University of Colombo is presently receiving treatment at the Colombo General Hospital, Ward No. 64, following the amputation of her left arm on 23-01-2013.

The incidents which led to the amputation are as follows. Achala suffered a fracture on her left hand on 17-01-2013 after a fall from a height of about three feet. She went for treatment to the Urubokka Heegoda Hospital and was transferred to the Matara General Hospital on the same day. However, at the Matara Hospital, she was not treated for her injuries till the following day (18-01-2013), when an x-ray of her hand was taken. The x-ray revealed a fracture that doctors stated could be treated without surgery. Consequently, her hand was put in a plaster of paris cast. The cast had been exceedingly tight and Achala had repeatedly complained of pain. However, the staff at the hospital had merely given her sedatives. The following day (19-01-2013), Achala's fingers had turned blue and she was immediately transferred to the General Hospital in Colombo. Upon inspection at the General Hospital, the doctors had informed her that the cells and nerves in her hand had gone lifeless due to a lack of blood. Consequently, a surgery was performed to amputate her arm on 23-01-2013.

Achala hails from a family with many economic hardships and was the only member of her family to enter University. Her father is a farmer and her mother is employed as a domestic maid in Lebanon. As her peers at the Faculty of Law, we are committed to helping Achala regain as much function as possible in her lost limb through acquiring an artificial electronic hand for her. Such electronic limbs are extremely expensive and we humbly request your Association and its members to assist us in any way possible to help remedy this miscarriage of justice for Achala to the greatest extent possible.

Any donations maybe made to the following accounts:

Bank of Ceylon (Vishaka Vidyalaya Branch)

Name: Achala Priyadarshini

Account No: 74280067

Commercial Bank (Reid Avenue Branch)

Name: Achala Priyadarshini

Account No: 8116015076

Whilst our priority remains restoring Achala's severed limb through the best in available technology, we recognise that those responsible for the negligence that resulted in Achala's predicament must be held accountable. This is not only for the purposes of any compensation that Achala may rightfully receive, but to raise awareness of the multitude of cases of gross negligence in state hospitals and to serve as a reminder that those serving in the medical sector must act with the utmost levels of care *vis-à-vis* their patients. We would be obliged if your Association would provide us with the legal expertise and advice required in this regard.

Should you require any further information, please do not hesitate to contact the following individuals:-

Jayantha Dehiaththage - 0718825329

Lakmali Hemachandra - 0776021250

Kalpani Jayasena - 0717616950

Thushara Weerasiri - 0718211340

Thilina Pieris - 0715114139

Sachintha Dias - 0776303364

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(Contd. on page 10)

NOTICES

REVISION OF STAMP DUTY

1. RATE CHANGES

	INSTRUMENT	NEW RATE
i.	Any Affidavit (made on or after January 01, 2013)	Rs. 250.00
ii.	Any Policy of Insurance For every Rs. 1,000 or part thereof of the aggregate of the premia payable for any period commencing on or after January 01, 2013	Rs. 1.00
iii.	A Warrant to act as a Notary Public (made on or after January 01, 2013)	Rs. 2,000.00
iv.	Any licence (in respect of any period commencing on or after January 01, 2013) authorising the holder to carry on any trade, business, profession or vocation, other than any trade or business for the sale of liquor, for any period (as specified in such licence)	Rs. 2,000.00 or 10% of licence fee whichever is less
	Any licence issued authorising the holder to carry on any trade or business for the sale of liquor, in respect of any period (commencing on or after January 01, 2013) as specified in such licence	Rs. 20,000.00
v.	Any claim, demand, or request presented (on or after January 01, 2013) for the payment of any sum of money not including any finance or service charge due in respect of any transaction entered into by using any credit card for every Rs. 1,000 or part thereof of such sum of money	Rs. 15.00

2. EXEMPTIONS

Any instrument of transfer of stocks, by any person to a margin trading account (slash account) or *vice versa*.

For any further clarification, please contact:
Taxpayer Service Unit—0112134171-3
Secretariat—0112135412-3
Inland Revenue Website—www.ird.gov.lk

(reproduced from a Notice published by the Committee for Interpretation of Tax Laws)

(Contd. From page 9)

Thanking you,

Yours Faithfully,

Sgd.
Sajith Mihiri Bandara,
President,
Students Union,
Faculty of Law,
University of Colombo

Sgd.
Jayantha Dehiaththage,
President,
“Hand for Achala, Justice for
Negligence” Committee

N.B. A few days after this letter was handed over to the Bar Association of Sri Lanka, Prof. G. L. Pieris, Minister of External Affairs, made a pledge that Achala would receive an electronic limb, fully funded by the Government of Sri Lanka. The “Hand for Achala - Justice for Negligence” Committee has, however, not stopped their fundraising initiative based solely on this promise. The Committee continues to seek your generosity to create a fund for Achala, so that she may cover any expenses related to the maintenance of the arm provided and have a financially secure future despite the loss of her arm.

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