

Commonwealth Law Ministers Paper

Computerisation and the Administration of Justice

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1. Background

Many of the smaller jurisdictions in the Commonwealth have consistently reported that they have trouble producing laws – the legislative drafting, law revision and publication, keeping records and reporting cases.

At the 1993 Commonwealth Law Minister's meeting, Bermuda offered to help by making available to other Commonwealth countries the computer software that it had successfully developed.

To follow up on the Bermuda offer and this justice administration problem, the Legal Division of the Commonwealth Secretariat organized two Caribbean regional workshops – in Barbados in October 1997 and March 1998, that included representatives from Guyana, Belize, St. Vincent and the Grenadines, Barbados, St. Lucia, Grenada, Dominica, Turks and Caicos Islands, British Virgin Islands, Montserrat, Bermuda, Anguilla, Jamaica, Trinidad and Tobago, Bahamas, St. Kitts and Nevis.

The workshop agreed that the Bermuda system was working well but could not practically be imported into another country's justice administration system.

What these 16 countries of the region did want, was an independent assessment to be made of their needs regarding computerisation and the administration of their justice systems.

Accordingly, the Legal Division secured the production for 10 of the regional countries, of a report upon aspects of their computerisation needs and generally upon related problems in the administration of justice.

The individual reports are listed in the annexure to this paper; copies are available on request and they will later be bound and distributed by the Commonwealth Secretariat. The reports give an interesting snapshot of the various justice systems and reinforce the similarities of countries within the family of the Commonwealth.

This paper is written by Neil Adsett, who was employed as a consultant for the Legal and Constitutional Division for 4 months in 1998 for the purpose of preparing the individual country reports.

This paper gives a summary of the findings and suggests ways that the Commonwealth Law Ministers may agree to assist with some of the problems in this area.

2. Country reports

The individual country reports were compiled after wide consultation with Attorneys General and within the governments, the judicial departments and elsewhere as useful. The reports look at the computerisation situation and requirements of each country, and attempt to make a plan or give relevant sensible advice about such matters.

It will be seen that most of these countries have not computerised at all. Stories of failed attempts were common, if not the rule — donated computers remaining unpacked or never made to work, foreign software having no application.

Rather than simply attempt to foist the latest overseas computer system on a chambers, the agreed approach was to evaluate how modernisation might bring actual sustainable benefit.

This report identifies specific general areas where computerisation is needed and practical.

3. General problems in the region

3.1. Access to the law

- statute

All small countries in the region have poor access to the statute and case law that applies.

Laws are made but then can not be remembered or found. Legislators are passing new laws and hoping thus to overcome the lack of knowledge of the existing law. Courts often can not be sure what the statute law says, and this is echoed with the lawyers and the public who often do not know what law applies.

- cases

Likewise courts are writing decisions which are then lost, usually instantly and with no hope for anyone not involved in the actual case ever being guided by the decision. This limb of the justice system — statute law augmented by common law and precedent, is therefore not operating. Most lawyers have access to major UK cases and they and the courts generally rely upon English precedent heavily — often these are the only law books available and even they are not being kept up to date.

3.2. Legal staff

Throughout the justice systems there is a major problem of attracting and keeping good motivated lawyers. The money offered is often much better in the private sector and overseas. Accordingly, especially in the smaller jurisdictions, there is a high turnover of lawyers and often very little retained institutional memory within justice systems. This is to be contrasted with the Pacific region where administrations are more often served by long term legal and judicial officers.

3.3. Legal resources

Legal resources are scarce and becoming too costly to maintain. Many major legal libraries stopped subscribing to reports and series soon after independence, and now libraries are patchy. The Internet libraries will help in this field when offices get on-line and if the cost of accessing databases is affordable.

3.4. Record keeping

In most small jurisdictions visited, the crucial records of lands, courts, births, deaths, marriages, and other civil matters are badly housed and attended, and are in grave danger of being lost altogether. Systems were set up early in the colonial era and nothing much has been done since then except to try to keep up with the work somehow. Many of the reports note crumbling and lost essential basic legal records.

3.5. Court reporting

Judges throughout the region have noted that they spend three days on a one day case because they need to write down all evidence nearly *verbatim*. There are regional court reporting training facilities and plans afoot, but this problem still persists and contributes to delays – often up to 5 years, that some countries report in having an action heard after it has been set down for trial. There may well prove to be more basic causes of these unacceptable delays in the court system¹.

3.6. Legal drafting

There seems to be a perennial shortage of legislative drafters in small Commonwealth countries, despite the costly projects in training drafters at the University of the West Indies and elsewhere. The CFTC employs 7 legal drafters in small Caribbean countries. Drafters would be one of the primary beneficiaries if offices were computerised and data bases of laws made accessible. Some drafters report great difficulty trying to locate and patch together what law actually applies in their jurisdiction.

4. COMMONWEALTH ASSISTANCE

Commonwealth Ministers each are concerned with the administration of the justice systems in their own jurisdiction.

All Commonwealth countries have emerged from the same legal system and are still fundamentally the same family in this respect.

Thus within the Commonwealth the written laws and the means of making law all follow the same form; students may study the law in overseas Commonwealth countries; Judges and other lawyers from one country may easily fit in and work within other Commonwealth jurisdictions; external judicial decisions, especially those of England, are relied upon heavily within the region as a source of law.

¹ See page 4 of the annexed report on Belize

Interestingly, the USA is not a Commonwealth country, but it likewise emerged out of the British legal system and hence many of its institutions and systems are readily identifiable with our own.

The actual mechanics of the various justice systems differ according to the size and wealth of the country. Smaller less developed jurisdictions within the Commonwealth are having trouble keeping up with the requirements of their justice administration system, and this paper addresses some of these problems.

The smaller countries look to the larger more developed countries, and to the Commonwealth as a whole, to assist them to solve their systemic breakdowns.

Since many of these problems are shared by many or most of the countries in the Caribbean, there may well be scope for a regional approach to the problem.

For example, in Grenada I saw the Attorney General one week and he was immersed in the long task of drafting a copyright law that the Government was committed to. The very next week, in Dominica, not far away, the drafter was engaged in the same long exacting task. Perhaps there is a model solution to similar problems in the region and beyond, to Pacific Islands and African countries who may experience a similar problem.

4.1. Basic computer record system

It can be seen from the country reports that in 8 countries of the region², their registries are in crisis.

Most vivid to me was St. Vincent and the Grenadines³ where there is a picturesque old colonial court and registry building. The records were originally kept of births, deaths, marriages, land, court actions, deeds etc. and entered in large leather bound volumes and stored in a large walk-in safe room. More than a century later I saw the safe overflowing with books that were crumbling and half lost; and the same manual systems were still being used. Searches by clerks and others are barely possible and there is no use of computers at all.

Fires destroy these records for ever and land ownership systems are being imperilled.

All of these countries want to modernise and the staff are bright and keen as mustard to develop the expertise and perform efficiently.

Compare this with the British Virgin Islands – one of the smaller countries, but becoming affluent. They addressed and solved the problem as can be read in the British Virgin Islands report – a simple, local, sustainable solution.

Computers do now make this problem solvable.

What the other 8 countries (and perhaps more in the Pacific and Africa) want is for a single agency to take on this discreet problem area and fund the work to construct data bases and computerise the system.

One team could conceivably travel and install the systems and perform or oversee the development of the computerised system. Each country would be grateful and could co-operate.

The Commonwealth Secretariat would be willing to offer what assistance it can, but is not resourced to implement a project. This is really a project, albeit large, that one developed country could undertake as a regional exercise.

² Montserrat, Guyana, Belize, St. Vincent and the Grenadines, St. Lucia, Grenada, Dominica, St. Kitts and Nevis

³ Page 5 of that report

The Canadians already are looking to assist the Chief Justice of the Eastern Caribbean Supreme Court to plan the computerisation of the registry of that court.

4.2. Basic computer case recording system

The smaller countries enjoy a common law system that places great emphasis on precedent to elucidate the law. Yet nowhere are the Supreme Court decisions of 9 of the 10 countries surveyed being published and the decisions are known only to the actual parties to the case. The judges and lawyers have learned to adapt to this nonsense, so that now the English cases involving the English legislative matrix are almost exclusively adhered to. Other cases from around the Commonwealth are looked at when they can be found, but local cases concerning the same statutes and circumstances are unknown.

Computers hold the key to remedying this problem fairly simply, locally and sustainably.

The judgements are all typed and could be routed through a database that would report the cases and make them accessible.

This should not be such a difficult thing to organise; but as the country reports show, nothing has been done and nothing is happening.

A single agency or donor needs to agree to take on this problem – a regional approach would be easy in this field as so many of the Caribbean countries operate under the same court.

The external agency would seize the problem, devise a simple sustainable solution and then fund the project – a single team may suffice to travel and capture the data base and install and teach the system for its operation and maintenance.

Australia has been active in the area of supplying resources and judges to help with backlogs in the region.

4.3. Basic computerisation of statutes

For small jurisdictions, the laws are made known and certain periodically in new revised editions of the statute law. At that time also the law is tidied up and modernised; with anomalies and deficiencies corrected.

This once worked well also for the larger countries who have now gradually developed such a large *corpus* of laws that periodic law revisions are too large an undertaking, and instead there are loose-leaf publications produced by the private sector or the government and increasing internet access to the data base of laws.

Unfortunately in recent decades most smaller jurisdictions have not been able to undertake law revision exercises.

In many of the Caribbean countries this has become a major problem. I know also that it is a major problem in the Pacific and Africa.

The law is not known by the lawyers and the legislators and the populace. Many statutes have been amended so often in various barely traceable ways that nobody is too sure what the law says — even if they can find a copy of it.

The problem for many⁴ has been the high cost of producing a new revised edition or consolidation or reprint.

⁴ USAID did fund several law revisions in the early 1990's and the Commonwealth Secretariat periodically funds a law revision commissioner

Now computers have come to the rescue.

Desk top publishing technology allows a small country to produce its own camera ready copy for a simple printing and thence to form the basis of a data base of laws that can be kept up to date and made available in electronic form and on the internet. This is being done in small jurisdictions⁵ and can be made to work for countries with this pressing need.

A single donor or agency could equip a regional centre dedicated to the development of a revised edition and a data base of laws for countries in the region and elsewhere. This is a big job and may need to be tackled one country at a time or as a pilot; and would need perhaps input from various agencies to fund it.

The USA has done this in the Caribbean before and is assisting law revisions still.

4.4. Commonwealth centre for legal information?

These problems all revolve around consolidating and disseminating legal information. The Commonwealth Law Ministers may consider that there is merit in examining the feasibility and practicality of establishing a Commonwealth centre for legal information. This could gather together statute law and case law not otherwise readily available, and it could be accessed by Commonwealth lawyers and drafters for precedents, and by legislators and judges.

The Commonwealth centre for legal information could work closely, even co-ordinate, the separate initiatives discussed above, to computerise records, cases and statutes and the common drafting of laws.

5. Conclusion

I trust that this paper raises issues of concern that the Commonwealth Law Ministers may decide to address.

I recommend that interested large countries, agencies or donors adopt one of the several large regional undertakings listed in Part 4 of this report, and at least commit to investigating the feasibility of devising a solution and a project, and reporting back to the Law Ministers in due course.

Neil Adsett
Law Revision Commissioner
Brisbane, February 1999

⁵ e.g. recently in the Turks and Caicos Islands in an exercise funded and organized by Britain

ANNEXURE

**LIST OF COUNTRY REPORTS PREPARED BY THE COMMONWEALTH
SECRETARIAT IN THIS COMPUTERISATION AND THE ADMINISTRATION
OF JUSTICE PROJECT**

1. BARBADOS
2. BELIZE
3. BRITISH VIRGIN ISLANDS
4. DOMINICA
5. GRENADA
6. GUYANA
7. MONTSERRAT
8. ST. KITTS AND NEVIS
9. ST. LUCIA
10. ST. VINCENT AND THE GRENADINES