

COMPUTERISATION AND THE ADMINISTRATION OF JUSTICE

Consultant's report for Dominica

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PART 1 — INTRODUCTION

Background

The Commonwealth Secretariat has been concerned for many years to assist in maintaining the rule of law by making laws accessible and generally assisting in the delivery of justice.

A workshop was convened in Barbados in August 1997 to explore the possibility of countries making use of the Bermuda legislative drafting software or other systems for law revision. It emerged from this workshop that the primary need was to have an independent consultant visit the various countries of the region to report upon their information technology needs. Many reported that they were inundated with advice about computer and other systems from suppliers, but that failure and wastage were common results and there was no coherent overall plan.

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The Commonwealth decided to appoint a consultant to report for the countries upon these matters, and to convene another workshop, in March 1998, to settle the terms of the proposed consultant's report for them.

To assist this second workshop, pilot studies were decided upon - in St. Lucia and Barbados. These Pilot studies would form the basis of considerations at the second workshop.

This is the draft report arising from the study of Dominica conducted by the Commonwealth Secretariat's consultant, Neil Adsett, in October 1998.

The report was compiled in a single week and could perhaps be seen best as a report in progress. Any errors reported to Neil Adsett will be corrected

Object of report

The plan in compiling this report was to -

- consult with as many of the key Government lawyers as possible and to record their views;
- to note the present position, the aspirations of the lawyers, the problems, the practicalities;
- to assess the needs – short term, medium term, long term, and the possibilities and problems;
- to give practical solutions and a plan, with costing and an indication of the way forward and especially if CFTC could be approached to fund a project within the overall plan.

PART 2 —THE DEPARTMENTS

Office Of The Attorney General

In Dominica the Attorney General is established under the Constitution as the principal legal adviser to the Government. This office may be either a public or a ministerial office - the present incumbent, Mr. La Ronde, is a public officer. The Attorney General attends Cabinet and attends the legislature. In Dominica, the Attorney General's Chambers are part of the Ministry of Legal Affairs that is one of the portfolios held by the Prime Minister.

Organisationally, the ministry's permanent secretary fulfils the role of administrator of the Attorney General's Chambers, but the Chambers otherwise are seen as a separate unit controlled by the Attorney General; and the Attorney General is serviced by staff within the general chambers' office.

The Attorney General is a trained drafter and he is active in planning legislation and instructing the drafters — the senior parliamentary draftsman and the Commonwealth Secretariat funded legal drafting adviser.

The Chambers in Dominica incorporate all professional officers so communication between lawyers would not, in my opinion, be made easier by installing a computer network amongst officers. In time, when most officers have computers available to them and use them, the next useful stage would be to have these computers linked in a network so that files could be shared between the whole office, including support staff.

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Library facilities

The Attorney General sees the maintenance of library facilities as a major problem. Law books are very expensive and the library collection is not being adequately kept up to date or enhanced.

Access to internet facilities could be the key to ensuring that Dominica maintains a proper ability to research the current law that applies.

The Law Library attached to the Supreme Court is funded by the government and is available for use by the private legal profession and the public. I noted that in some countries the private lawyers were asked to contribute to the cost of maintaining the library. The Registrar thought that Dominican private lawyers would be willing to contribute to the cost of library facilities.

Senior State Attorney

Within the Attorney General's Chambers there is a Solicitor General (the post is presently vacant) a Senior State Attorney and 3 State Attorneys, a Principal Parliamentary Draftsman (post presently vacant) a Senior Parliamentary Draftsman and a legal drafting adviser.

I met with Heather Felix-Evans, the Senior State Attorney.

Her duties are to do and manage all general civil legal work in the chambers – managing actions for and against Government and statutory authorities, appearing in court in such actions, civil and commercial legal work for government and giving advices.

Heather has a computer and old printer in her office and she does all her own word processing. She has precedents and simple forms stored on the computer for adaptation as required.

Whilst studying and practising in Miami, Heather relied on the internet to research and find cases and legislation. She especially used Westlaw and Lexis/Nexis. She wants to be able to use these facilities in the chambers. She uses the internet on her home computer. Heather says that even if they have access to updated indexes of legal materials, they could ask the UWI library to send copies of the material by fax or mail.

She also wishes that there was a programme of continuing legal education so that the government (and other) lawyers could be kept abreast of developments.

There is no way to get, in a systematic manner, judgments of the courts of Dominica unless, years later, they are taken on appeal and are of such importance that they turn up in the West Indies Reports or the Law Reports of the Commonwealth.

Legal Drafting

I met with John Charles who is the only Dominican legislative drafter at present. He is recently qualified in this field from the University of West Indies drafting course (his attendance was funded in part by a grant from the Australian Legal Research Institute). He has been finding it difficult to concentrate on drafting because there is so much other work to do – especially in the administrative law field.

John's big problem is getting legal materials. He would welcome internet facilities at the office. He uses a computer at home.

He especially would like to get the Statute Law Review.

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The Legal Drafting Adviser is Ms Sogametsi Segopolo, originally from Botswana, who is on a 2 year contract funded by the Commonwealth Fund for Technical Co-operation. She also is a graduate of the UWI drafting course.

The legal drafting adviser uses a computer and printer that were also provided by CFTC, and she produces the draft laws that are given to the instructing departments and considered by Cabinet.

The laws of Dominica were revised in 12 volumes up until 1990 and a loose-leaf update was issued in 1995 which takes the revised edition to 1993. In fact the existence of this update was not known to the legal drafting adviser or to the Chief Magistrate and their volumes showed the law only to 1990. It may be useful to further advertise the update within Government and to other subscribers. Since 1993 the laws made each year have been bound up into annual volumes.

The lawyers all use the University of the West Indies prepared Index to the laws to locate laws made since the last revised edition. Ms. Segopolo has noted (and this accords with my experience also) that the Index has been incorrect and incomplete in recent years, and it especially fails to note amendments to laws that have been made within other Acts and regulations.

The statistics of laws made recently are —

1994	21 Acts
	57 Statutory Rules and Instruments (SRO's)
1995	33 Acts
	57 SRO's
1996	25 Acts
	67 SRO's
1997	21 Acts
	65 SRO's

The legal drafting adviser would find great benefit in having access to the internet and email — for research, obtaining precedents of other laws, and using email to communicate and transfer documents in and out in electronic form that can readily be adapted to suit the circumstances.

Regional approach?

When I visited the legal drafting adviser, she had spread out before her an array of drafts and precedents relating to intellectual property. Her large task was to produce a number of long and complicated intellectual property Bills – copyright, trade marks, patents. These were needed to enable Dominica to comply with its obligations under certain treaties, and also because it is an area where the statute law needs revision and augmentation.

Not 3 days earlier I visited the Attorney General of Grenada whose desk and task was identical. Neighbouring countries each grappling with and devoting scarce legal resources to the same problem. And in several other countries in the region they need and are planning exactly such legislation.

It does seem to me that there is scope for a regional drafting and law reform/revision resource to rationalise this situation. Many laws are similar and common to countries in the region, and they do not all need to be created afresh in each jurisdiction.

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This is not a new revelation. The Commonwealth Secretariat has produced common user laws (e.g. interpretation Act, commercial crime laws) and various United Nations Agencies produce model laws (e.g. ILO has trade union laws, WIPO has copyright laws, FAO has fisheries laws). USAID formerly had a justice improvement unit based in Barbados that produced useful draft laws for the region.

CARICOM now has a legal unit based in St. Lucia that has a similar role. This unit has been reduced from 3 people to one, and I spoke recently to him, Victor La Corbiniere, (OECS, P.O. Box 179 The Morne, Castries St. Lucia, ph 452253 email oeecs@candw.lc). The function of this unit is law reform; to produce harmonised laws in areas that are decided upon by member governments as priorities. A good mechanism they utilise is the legal affairs committee of the OECS wherein all Attorney's General meet 3 times a year to consider common laws produced by the unit.

Information Systems

The general office is equipped with two computers used for word processing purposes.

Word Perfect 6.1 is the most commonly used word processing platform in the office.

There is no perceived problem with the production of paperwork.

Because basically all of the Government lawyers are in the same office, communications are easy, informal and effective. There is no need at this stage of Dominica's development to consider networking computers or similar information technology strategies.

Law Commission

The law commission is located within the Attorney General's chambers. Presently there is no Director – just one computer operator, Mrs. Williams, who I spoke to. Her job is to take all draft laws – Bills and subsidiary legislation, and to re-typeset these into camera ready form that is sent to the Government Printer for copying and placement in the Gazette. The commission also has the task, when fully staffed, of updating the revised edition and issuing replacement pages to bring it up to date. One updating has been made – for the years from 1990 to 1993.

The commission is well set up with 2 Apple computers, one IBM computer used mainly to access the internet, good printers and software that has been developed (basically pagemaker) to allow for production of laws in the required style.

In my view, the 12 volume revised edition of the laws of Dominica could be kept up to date by regular issues of replacement pages if –

- There was one other experienced desk top publishing operator made available,
- An experienced drafter/law revisioner were to work in the commission office at this task alone for an initial period of 6 months to bring the laws up to date from 1993, and thereafter for 6 weeks each year to keep those laws up to date,
- The Government Printer were engaged to print the replacement pages.

Library facilities

The Attorney General's Chambers has collections of texts and reports, but the main holding is in a separate law library controlled by the Registrar of the Supreme Court and open also to the use of private lawyers, the judiciary and the public. There are about 40 lawyers in private practice.

As mentioned earlier in this report, the cost of maintaining and enhancing this library is large and becoming impossible without help.

INTERNET ACCESS

One computer at the general office should be linked to the internet. This will allow –

- Email to be used. This is a well established resource that would be of great benefit in Dominica. Telephone and fax communication is expensive with the outside world. Email is now widely used and many documents now sent by fax could be sent cheaply by email. In addition, it is often far more convenient to send and receive documents by email. These documents arrive in a form that allows them to be saved on the receiver's computer and they can then be amended or adapted without the need to retype them. Thus if a commercial contract is emailed to the state attorneys, the lawyer can amend it, drop standard Dominica clauses into the document and then print it out or email it off for comments – either to a third party or within government to get comments from, say, the finance or planning department.
- The internet's vast libraries to be accessed for research. Thus there are many (most) of the world's cases now available on the internet that can be searched and cases downloaded and printed off. Many of these libraries allow free access to the resource. Also there is a great deal of legislation and other legal and background information that can be searched and adopted as a precedent — for example the United Kingdom via www.hmso.gov.uk , Hong Kong at www.info.gov.hk/justice/laws/index.htm, or Australian cases and laws at www.fl.asn.au.

A computer at the Law Commission Office already is connected to the internet and this is available now, in the interim, to officers in the Attorney General's Chambers for email in and out and for research on the internet.

A computer at the law library, if similarly linked to the internet via modem, would allow that library facility to be enhanced by accessibility to the internet's libraries, and it may also be more cost efficient to subscribe to CD rom reports and books which can be updated regularly – e.g. The All England Law Reports.

REGISTRIES

Background

I met with Ms Evelina Baptiste, a Deputy Registrar of the Court of Appeal of the Eastern Caribbean Supreme Court, the Registrar of the Supreme Court of the Commonwealth of Dominica, and the Registrar of Lands, Companies, Births, Deaths and Marriages, etc.

Responsibilities/functions

All Supreme Court pleadings and court documents are filed in the registry. Court of Appeal documents are also accepted and transmitted to the Court of Appeal registry.

In addition, the registry is also the registry of –

- land
- companies
- deeds, mortgages
- intellectual property

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- Births Deaths and Marriages.

The registry comes under the portfolio of the Minister for Legal Affairs.

Information systems

All systems are manual. There is no computer record at all.

Critical records of land, companies etc. are contained in large folios as they have been for more than a century. Original records are searched by applicants and there is the real danger that records will be taken or destroyed.

Some of the folios I saw were in an advanced state of decay and I was told that some records had gone missing.

There was a fire in the registry in 1979 and many records were lost. Many have never been recovered. Now when someone wants the certificate of title to land and the records are lost, an exercise is undergone to reconstruct the register using the best evidence available. Similarly with birth records that have been destroyed, a reconstruction exercise involving baptism records from a church and affidavits are used. The possibility of fraud is obvious with these crucial records – valuable land could be stolen and the integrity of the land ownership system destroyed; citizenship could be sought and granted to ineligible persons; voting rights, rights to share in estates etc.

There was a smaller fire in the registry in 1997 which again emphasised the urgent need to secure and modernise these records.

Problems

- Records are in need of modern physical storage and retrieval systems.
- A database needs to be established for record and search purposes.
- There is no backup of records.

Future requirements

External help is required to secure the present records and to make a move towards computerisation of records and systems. Existing staff are too busy running the present system to take time off to develop and integrate a new system.

Recommendations

1. Very old records should be microfilmed to back them up and because of their advanced decay – by microfilming or scanning as is advised.
2. A registry expert should be recruited to advise on and help, hands on, to microfilm (or otherwise) these records.
3. After the records are secured, consideration should be given to the computerisation of the registry.

This is an urgent problem and Dominica needs external assistance in this regard.

The Attorney General agrees and I have assisted to frame a request for aid, directed in the first instance to the Commonwealth Secretariat.

Land registration system

The law regulating land ownership is based on the Torrens system which was adopted very early. The 1886 Title by Registration Act (Cap. 56.50) has however hardly been amended and many procedures are not catered for. No regulations were ever made under that Act. Only residential land generally has been brought under this registration system,

and applications are made to register land when banks need to take security over the land for a loan. There are many existing examples of applications to bring land into the registration system being held up in the registry for 8 to 12 years – the administration system is poor and needs re-organisation.

The Registrar asked if external technical assistance could be obtained to draft changes to the legislation and also, importantly, to allow an expert to work inside the Registry to devise a system that would work and to teach that system to staff in the registry.

This is the sort of matter that an Australian or New Zealand expert would be ideally suited for, because the land title system is basically the same.

Annexed to this report is a draft request for aid in this matter – addressed in the first instance to CFTC.

The Attorney General advised me that he has plans, well advanced, to create a separate registry for civil matters and thus leave the Court registry to be independent.

JUDICIARY

The court hierarchy in Dominica starts with the Magistrates Court, which has 5 Magistrates. There is no small claims court.

Above the Magistrates is the Supreme Court, comprising usually 2 Judges.

The regional Court of Appeal is next in the hierarchy and the Chief Justice of the Court of Appeal of the Eastern Caribbean Supreme Court is also Chief Justice of the Dominica Supreme Court (and chairman of the Judicial and Legal Services Commission).

Appeals ultimately can go to the Privy Council in London.

Supreme Court

I spoke with Judge Dunbar Cenac, who is one of the two judges of the Eastern Caribbean Supreme Court based in Dominica.

The Judge agrees that the present system whereby they are required to take down verbatim all evidence given in court is wasteful of their time and contributes to the delays because criminal trials are so slow that there is scant time left for civil cases. He noted that a 4 day trial which had just concluded would only have taken a day if there were court reporters.

Magistrates Court

I met with Gail Royer, the Chief Magistrate.

The civil jurisdiction in contract and tort is generally \$10,000. The criminal jurisdiction allows magistrates to impose fines up to \$2,000 and imprisonment up to 6 months (some statutes specify higher limits, e.g. for drugs offences and under the Theft Act).

There is no legal aid in Dominica (except for capital offences) and in many cases in the lower and higher courts defendants go unrepresented.

A problem is that under the Magistrates Court Procedure Act there are virtually no procedures laid down for civil suits. Formerly the procedure was to be the same as under the summary procedure in the Supreme Court, but that procedure was repealed in 1991.

This should perhaps have been rectified in the law revision process, but to the Chief Magistrate's knowledge the law revision committee has not met for many years.

The Chief Magistrate believes that the court registry should be computerised, especially so that cases can be better managed at all stages. Dominica may also be able to benefit

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from other software developed for similar purposes by another jurisdiction or as part of a regional project.

Court reports

There is a need for local cases to be reported. This is a problem being experienced by most of the jurisdictions in the region. The West Indies Law Reports publish a fair number of decisions of the court each year, but the OECS law reports, which were produced in 3 volumes between 1991 and 1995 have not been kept up.

PART 3 - SUMMARY

EXECUTIVE SUMMARY

General

Apart from the need to secure and modernise the registry, to obtain several new computers with internet access and some training, I do not see at this stage, nor was it reported to me, a need to develop an Information Technology strategy or to change the system.

CONCLUSION

I trust that this report is of value to Dominica. Please do not hesitate to contact me or the Legal and Constitutional Division of the Commonwealth Secretariat concerning this report or matters arising from it.

Neil Adsett
Roseau
31 October 1998

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ANNEXURE A

REQUEST FOR AID FOR REGISTRY

TO:

The Director
Legal and Constitutional Division
Commonwealth Secretariat
London

30 October 1998

re: project on computerisation and the administration of justice

Dear Sir,

As you are aware, as part of this Commonwealth Secretariat project, your consultant visited Dominica to assess the need for computerisation and related matters in the justice system.

The consultant's report disclosed two problems in Dominica that need outside assistance that the CFTC may be able to provide, namely —

- Assistance in the registry
- Assistance to modernise legislation and develop an administrative system relating to land ownership.

I am accordingly writing to you now to advise of the problem and to request assistance.

These problems appear urgent and critical to us and to your consultant, and accordingly any assistance that you can provide will be most appreciated.

The details and terms of assistance being sought are attached.

Yours sincerely,

Tony La Ronde
Attorney General

project on computerisation and the administration of justice

REQUEST FOR AID for Dominica — registry help

As can be seen from the extract from the Dominica report that is reproduced here, the general registry of Dominica is in urgent need of reform.

This problem seems to be emerging as a problem in a number of countries in the Caribbean, so the aid sought here may well have relevance in other places, and the expert involved in this request for assistance and the systems devised and implemented, may well be used in other countries for similar purposes.

CFTC help is requested for the purpose of —

1. Assigning an expert to Dominica for an initial period of one week for the purpose of -
 - assessing the situation,
 - discussing the problem with relevant officials,
 - organizing the practicalities of microfilming (or scanning or otherwise as necessary) the registry records,
 - preparing a plan for the introduction of computers and/or a new method of dealing with the registration of documents,
 - preparing a fully costed list of hardware, software and other capital items necessary for this reform.
2. Assigning an expert to Dominica for up to 6 months for the purpose of -
 - assisting in the actual introduction of the reforms proposed,
 - settling in any new systems,
 - training staff in the new system,
 - leaving Dominica with a working new system that is sustainable and efficient.

The following is an extract from the Dominica Report of 31 October 1998

“REGISTRIES

Background

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There was a fire in the registry in 1979 and many records were lost. Many have never been recovered. Now when someone wants the certificate of title to land and the records are lost, an exercise is undergone to reconstruct the register using the best evidence available. Similarly with birth records that have been destroyed, a reconstruction exercise involving baptism records from a church and affidavits are used. The possibility of fraud is obvious with these crucial records – valuable land could be stolen and the integrity of the land ownership destroyed; citizenship could be sought and granted to ineligible persons, voting rights, rights to share in estates etc.

There was a smaller fire in the registry in 1997 which again emphasised the urgent need to secure and modernise these records.

Problems

- Records are in need of modern physical storage and retrieval systems.
- A database needs to be established for record and search purposes.
- There is no backup of records.

Future requirements

External help is required to secure the present records and to make a move towards computerisation of records and systems. Existing staff are too busy running the present system to take time off to develop and integrate a new system.

Recommendations

4. Very old records should be microfilmed to back them up and because of their advanced decay – by microfilming or scanning as is advised.
5. A registry expert should be recruited to advise on and help, hands on, to microfilm (or otherwise) these records.
6. After the records are secured, consideration should be given to the computerisation of the registry.

This is an urgent problem and Dominica needs external assistance in this regard.

The Attorney General agrees and I have assisted to frame a request for aid, directed in the first instance to the Commonwealth Secretariat.”.

project on computerisation and the administration of justice

REQUEST FOR AID for Dominica — land registration law and registry help

The law regulating land ownership is based on the Torrens system which was adopted very early.

The 1886 Title by Registration Act (Cap. 56.50) has however hardly been amended and many procedures are not catered for. No regulations were ever made under that Act. Only residential land generally has been brought under this registration system, and applications are made to register land when banks need to take security over the land for a loan. There are many existing examples of applications to bring land into the registration system being held up in the registry for 8 to 12 years – the administration system is poor and needs re-organisation.

This situation is dangerous for citizens of Dominica, who are entitled to a functioning system of land ownership, registration and for dealings in land. In addition, investment in Dominica is hampered – lenders will not lend unless there is a reliable system for them to register charges for moneys loaned; and investors will not buy land in Dominica for development purposes if the system of land ownership is not reliable.

Technical assistance is needed to draft changes to the legislation and also, importantly, to allow an expert to work inside the Registry to devise a system that would work and to teach that system to staff in the registry.

This is the sort of matter that an Australian or New Zealand expert would be ideally suited for, because the land title system is basically the same.

It is estimated that an expert would be needed in country for a period of 4 months.