

COMPUTERISATION AND THE ADMINISTRATION OF JUSTICE

Consultant's report for Guyana

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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 requirements. 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.

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. At this workshop, the participating member countries agreed that a consultant should visit as many of the countries as possible to consult with all relevant agencies and conduct a needs assessment and report.

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This is the draft report on Guyana, conducted by the Commonwealth Secretariat's consultant, Neil Adsett, in early September 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 and officers as possible and to record their views;
- to note the present position, the aspirations of the lawyers, the problems, the practicalities;
- Assess the short and long term requirements for improving the operation of law ministries through the use of current I.T. and the introduction of further I.T. with specific reference to its application in the field of legislative drafting, law revision and the administration of justice generally;
- Provide advice and guidance on short term use of existing I.T.;
- Produce a plan relating to I.T. and the administration of justice, and assist to identify specific systems to be put into place for each member country;
- Prepare outlines for specific additional assistance requested by member countries, which might be funded by CFTC or other aid agencies; and
- Follow up on the report to foster change.

PART 2 —THE DEPARTMENTS

The Legal Department

Unfortunately, the Attorney General and Minister of Legal Affairs, the Hon. Charles Ramson, was not in Guyana during the week that this report was compiled.

The Attorney General in Guyana is a lawyer appointed by the Government and he is active in the administration of the department.

There are two divisions within the department –

- the Solicitor General is responsible for giving legal advice to the Government and representing the Government in Court. Within this division there is also the office of State Solicitor. At the time of my visit, the post of Solicitor General was vacant and the complement of professional staff was badly depleted. Two young lawyers recently graduated from the UWI masters course in legislative drafting and now bonded to work for Government, are working in the litigation section.
- The Chief Parliamentary Counsel is responsible for drafting legislation and also giving advice to the Attorney General in matters especially related to legislation. Apart from the Chief, there is a deputy and two drafters funded by the CFTC.

The Department operates virtually without computers. Here and indeed everywhere that I visited the predominant sound is of manual typewriters plonking away.

Both CFTC drafters were supplied by the CFTC with computers – one drafter uses his and the other has made his available to the senior secretary (Ms Raywatie Persaud).

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Apart from this machine, there are only two other computers for the total support staff – one used by another drafting secretary and the other by the secretary to the department's permanent secretary.

There is no perceived problem, as the typing gets done. The computers are used merely as typewriters with features. None of the staff using them have had any training but they would welcome the opportunity

Computer training would be very useful to –

- Enable the department to establish a data base of precedents and basic documents to enable lawyers to prepare and file documents. The State Solicitor would welcome this facility.
- Enable the drafting section to prepare camera ready Bills and other laws. At present the Government Printer is sent the typed Bills etc and these are then re-typeset and Gazetted without the drafters checking the new version. The mistakes are then reported to the Clerk to the Legislature who ensures that at the committee stage of the Bill the errors are corrected. There are delays in having Bills re-typeset by the printer. All this could be avoided and the jobs of the support staff enhanced if they were trained in slightly advanced word processing techniques.

The computers should also be linked to the internet. This would allow –

- Email to be used. This is a well established resource that would be of great benefit in Guyana. 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 legal department, the lawyer can amend it, drop standard Guyana 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 Solicitor General or 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 or example.

I can see no other need at the present time for the general introduction of computers or networks in the legal department.

LAW REVISION

The laws of Guyana were last revised and consolidated to 1973 in 14 volumes. Lawyers throughout Government and in the private sector reported that it was very difficult to find the applicable law. The UWI produces its excellent annual index to the laws, but even this was not well known and utilised. Only the Chief Parliamentary Counsel has bound annual (photocopies) of laws. The judges and others have to resort to Gazette copies when these are known of and can be found.

This is a dangerous situation.

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There is a law revision project underway. It is organized and funded by US Aid, who were also responsible for organizing the CPC's annual compilations and many other justice administration initiatives (most of the photocopiers I saw had US Aid donation stickers on them).

The law revision project is being conducted from Barbados and the Commonwealth of Dominica, and I have know and been in contact with the lawyer there who has been doing the work for the past 2 years.

The work is progressing slowly, there has been confusion over the revision of the subordinate legislation, and generally it is my opinion that there is a likelihood that the law revision project will founder, never be completed as presently organized, and will be entirely a wasted effort.

In my experience, for various reasons, at least half law revision projects founder thus. In my opinion, a review needs to be taken of this project, in an attempt to devise a procedure to see it successfully completed. This would need a meeting in Barbados between the law revisioner (Harris Wineberg), Mr. Darby representing the funding and organising agency (US Aid ph. 57315) and me, as Commonwealth Secretariat consultant (I have long experience and expertise in law revision in many countries).

I gave this advice to Mr. Darby and suggested that if it would be of assistance, my services could be made available for this purpose under the auspices of the present Commonwealth Secretariat consultancy. Mr. Darby was aware of the need to bring the project to a successful conclusion and will advise me if I can be of any help.

State Solicitor

The State Solicitor (Sandra Bart) performs (with one lawyer assisting) all solicitor work for government (and public authorities) in court actions up until the close of pleadings when the action is taken over by the Solicitor General. This accounts for about 80% of her job, and 10% consists of all conveyancing work for the government (leases and sale of land) and 10% consists in acting as Public Trustee. The State Solicitor is also the Official Receiver but there has been no call for this function in the last 2 years.

The State Solicitor had an old computer but it broke and after a year they have been unable to get it fixed. For a year the State Solicitor has been trying to get another computer but there are no funds.

A computer or two would be especially useful in this division, because most of the work involves producing pleadings and conveyances which follow defined forms that should be available on computer word processing systems. Now each document is laboriously typed anew.

All that is needed is a basic computer and printer with WS Office software and training for the operator.

THE JUDICIARY

I met with the acting Chief Justice of the Supreme Court, Justice Prem Presaud, and with the acting Chancellor (Chief Justice of Court of Appeal) Justice Desiree Bernard.

The Supreme Court is located in a huge, outstandingly beautiful wooden building in Georgetown. There are 12 Judges, all Guyanese lawyers appointed by the constitutionally established Judicial and Legal Services Commission. They handle all civil cases over the (low) limit of the Magistrate's Court jurisdiction, and all serious crime and domestic law cases.

Court delays

I am told that there are 7,500 civil cases a year filed in the Supreme Court, which appears to be disproportionately high. Reasons advanced for the large amount of litigation were –

- The filing fees were absurdly low (10US cents),
- Lawyers were hungry for work so they sue early and for low fees,
- The civil threshold in the court is too low (US\$350),
- There is no small claims or mediation procedure
- A programme of law reform is needed generally to simplify procedure and bring the law up to date.

The fact is that there is a substantial backlog of cases awaiting decision – a 5 year delay for commercial cases. Criminal cases are up to date – it may be that as in other jurisdictions, Judges prefer to deal with criminal cases.

I discussed the possible introduction of computer technology to ease this situation, but it was obvious that at this stage of the development of the court system in Guyana, computers are of only marginal value.

Computerisation?

There are a couple of miscellaneous personal computers standing alone and being used as typewriters. There are plenty of support staff who bang away on real typewriters and nobody indicated that the production of paperwork was a problem. More computers and training in their use would be an advantage, but this is not a priority. Neither is the networking of computers within the judges' system of any relevance.

Computerisation is not a priority for the judges except perhaps in the most peripheral way, that by introducing them the Judges may consider this an enhancement and recognition of their position inducing them to be better motivated.

Training

One related area that would be of benefit, is the introduction of court reporters. At present the Judges consider that they need to take copious notes of evidence in longhand – proceedings would be speeded up and Judges allowed to concentrate on their primary function if a full record was taken by court reporters. Again USAID has been active in this area and 8 court reporters have been trained at the University of Guyana using local and overseas trainers, and this group is soon to enter service in the Supreme Court.

Also of assistance would be further training for the judges, such as is given to Judges now in large jurisdictions – to assist efficiency and organisation especially. This training would also introduce a case management system for the court. The USAID Guyana Justice Improvement Project has provided four judicial training courses to date, and another is currently underway, and there is soon to be an observation visit to a United States court system for key members of the Judiciary, members of the private bar and

Guyana Government officials. One objective of the observation visit is to expose judges to caseflow management techniques and the use of court administrators.

Court clerks and senior staff would also benefit by undergoing training in their functions – USAID is now conducting a “Sworn Clerks” training course to teach these officials about Supreme Court registry functions and procedures.

Access to law

Judges find it very difficult to locate the applicable law. The statute law has not been revised for many years and amendments are numerous and difficult to identify and locate. The law revision project will, upon completion, solve this problem, and if an electronic version is made available, then computers to search and find the current statute law would be of benefit.

The case law is equally difficult to locate. For Guyanese cases, there have been no Guyana law reports for 20 years, and the reasons for cases being decided every day are lost, unless someone knows the name of the file and can find the decision in the Supreme Court registry, or unless the case goes on appeal to the Court of Appeal and the decision then finds its way into the West Indies Law Reports or Law Reports of the Commonwealth.

Many of the judicial decisions in Guyana are based on common law decisions of the superior courts of the United Kingdom. British law reports are comparatively easy to locate but the cost of these books is becoming prohibitive – one such book can cost more than a Judge’s weekly salary. Sets are not being maintained and Judges tell me that they sometimes rely on counsel to provide photocopies.

US Aid has funded a Supreme Court library and when this (eventually) opens it will be welcomed.

This library, and indeed Judges’ chambers should have internet access to the databases of cases not available.

Court of Appeal

Appeals to the Privy Council were abolished when Guyana became independent 30 years ago. The Guyana Court of Appeal consists of 3 judges and is the final court of appeal. This court is up to date, but concedes that the backlog in the Supreme Court means that many cases are not getting through to the appeal court.

Again plain typewriters are in use at this court (there is one personal computer) and again this is not presently a problem.

The Acting Chancellor observed that if the Supreme Court registry was successfully computerised, there would be less time wasted in tracking cases and it would assist in case management.

The Supreme Court Registry

I have had the advantage of reading the 1997 annual report of this registry and discussing it and related matters with the Registrar Ms. Sita Ramlal.

The registry deals only with court cases and documents – civil registrations (birth, death, marriage, deeds, etc) are dealt with separately. This is a busy court registry, with 7,500 civil matters filed in 1997 (c/f less than 1,000 in Belize for example) plus over 1,000 probate and related matters.

It is now taking about 5 years for a civil case to be heard.

Action is being taken now by the Registrar to streamline the registry by rationalising procedures. The plan is, with US Aid assistance, to computerise the registry functions after new manual procedures are in place. This is a sensible plan – for to attempt to computerise a confused system would lead only to more confusion. In fact the US Aid team has already commenced computerising some areas in the registry (cause books and probates) and this is getting staff used to computers before any attempt is made to place primary reliance upon them..

I can see no need for any assistance from the Commonwealth Secretariat in this area at this stage. The US Aid project encompasses staff training, training and exposure for the Judges and other officials, and a planned move towards case management along the lines employed now in US courts.

There is a long and dangerous delay in having Preliminary Inquiries (PI) heard in the Magistrates Court. Defendants can wait for 4 years to have their PI heard, all the while languishing in jail if bail is not granted (one year on average). This is unacceptable. In most other Commonwealth countries a system of “paper committals” has been introduced. The accused is still given the full trial at the superior court stage, but the wasteful and unnecessary double trial procedure is done away with if appropriate. The Magistrate can, if the case is adequately presented by sworn paperwork, dispense with the calling of witnesses at the preliminary stage.

I attach to this report, as Annexure A, the PI provisions enacted in the Bahamas. I recommend that consideration be given to the introduction of this procedure in Guyana. There is in most countries when the procedures are changed, a great wail of complaint from the private bar who may see themselves losing revenue, and their complaint will take on the guise of shock that individual rights are being eroded. The counter argument is that most Commonwealth countries have gone this way happily and that there is in fact no erosion of rights and in fact the justice system is made more affordable and timely.

President of Bar Association

I met with Miles Fitzpatrick, the president of the Bar Association. There are 200 to 250 lawyers in practice in Guyana (up from 100 in 1978).

He noted that the US justice improvement programme had made a difference, especially by rehabilitating the Magistrate’s Court.

He thought that a system of temporary judges from the private bar would go a long way towards removing the case backlog and motivating the judges by example. He noted that such a scheme operated in the mid 1970’s and the work rate of temporary judges was 6 times that of full time judges who nevertheless improved by learning from example.

SUMMARY

Guyana’s problems with administration of justice are institutional and personality based. In general Guyana is not ready for and has no need to embrace computer technology in the justice system, except in the limited and exploratory areas that I have noted.

RECOMMENDATIONS

1. I have noted briefly against each Department the basic recommendations.

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2. The revision of the law and its publication is urgent and once completed should be maintained.
3. The courts are deciding matters every day, and these decisions should be available to lawyers and others to flesh out the statute law and common law. Accordingly there needs to be established a database of cases, organized by subject to allow them to be a guide to the likely interpretation of the law. This would mean that many cases could be avoided, if potential litigators or defendants (and the court) know of relevant decisions which would most likely be followed again by the court.
This database of cases needs to be planned for, and a qualified person appointed with the specific task of going through the court decisions and organising them and including them in Citator/Digest/Index form and with the full text of the reports available. This job is not massive; 18 months work properly organized and supervised would suffice to complete the project. Budget restrictions (of Government and users) would dictate how the product could be presented - in Index form perhaps, with the full text available in electronic form (CD or Internet) that is computer searchable and cheap to produce.
4. The Internet needs to be made use of throughout the justice administration system - as a research tool, lawyers can access the main overseas databases of cases and statute law. For example the drafter who needs to produce a certain law could search for precedents from other countries, pull text down onto the drafter's computer, adapt it to Guyana's circumstances, and present it as a draft - quickly, with no need to retype, and having the advantage that it is a law with proven workability.
In addition the databases of laws and cases established in Guyana can be made available on the internet very effectively and updated quickly and cheaply.

CONCLUSION

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

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Guyana
8 August 1998

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