

COMPUTERISATION AND THE ADMINISTRATION OF JUSTICE

Consultant's report for St. Kitts and Nevis

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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 St. Kitts and Nevis, conducted by the Commonwealth Secretariat's consultant, Neil Adsett, in late July 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 ATTORNEY GENERAL

The Attorney General is a public officer under the Constitution and he sits in the Executive Council and the Legislature, *ex officio*. He is chief legal adviser to Government. There are about 40 private lawyers in practice in St. Kitts and Nevis.

The Attorney General is in charge of the legal department, and his office is in the midst of the legal department in well appointed offices at Government Headquarters in Church Street Basseterre (ph 869 4652521, fax 5040).

The Attorney General's information technology position is the same as for the general legal department, and will be dealt with there. The only additional requirement that I foresee is that because he is often obliged to travel, the Attorney General would benefit from having a lap top computer and training in its operation as a word processor and for the purpose of accessing the internet to send and retrieve email and to access the legal department network if such is established as discussed.

THE LEGAL DEPARTMENT

This department is responsible for giving legal advice to the Government, legally representing the Government in all civil and commercial matters, and drafting legislation. The Attorney General is in overall charge of this department and much of this

responsibility is delegated to the Solicitor General in professional matters and to the department's permanent secretary in administrative matters.

The Solicitor General supervises the professional staff who consist of a senior crown counsel, 4 crown counsel and 2 legislative drafters. There is some fluidity of workload as well, and some of the crown counsel also prosecute for the DPP when needed (this situation is soon to be formalised by the transfer of 2 crown counsel to the DPP). This is made easy and sensible because, although the DPP is independently established by the Constitution, his office is located in the same building as the legal department.

Operational systems

There was when I visited only one working computer and one light duty printer for the whole office, and the printer is often broken. The Chief Legislative Draftsman, who is funded by CFTC, also has a computer and printer (supplied by CFTC) and this is the only printer for the whole legal department at the moment.

There are 4 support staff (secretaries), all of whom are eager to learn and use computers. There were 2 old computers still in theory in service, but most often they have out of order signs on them. The department has an arrangement with a local computer firm (Harris Electronics), but I suspect that the computers are simply too old to be worth trying to patch up. Parts are unavailable, one is an apple system, and none have enough RAM to run useful software.

These secretaries do all the word processing for the Attorney General, the DPP and all the other professional officers.

4 new computers (minimum 16 mb RAM, 1.2gb hard drive, pentium) are needed urgently plus 2 heavy duty printers – Hewlett Packard 5N or similar.

Many of the professional and support staff are understandably frustrated because they cannot get a machine that works and cannot get their work processed.

All of the staff will need training on computer equipment. The support staff have worked up some knowledge along the way, but they and the interested professional staff need formal training. I believe that a 4 day course conducted in the office on the actual machines acquired would be the best. I am told that there are several firms in St. Kitts who provide this service.

In addition, both drafters should be using computers in their day to day work, the Crown Counsel should have 2 computers between them, and the DPP should have a computer supplied by Government – another 4 computers (one drafter has a computer already).

The professional staff would thus be able to settle their own work, relying on support staff to process original drafts and correspondence.

Computer network

I believe also that this department should have the personal computers linked in a network. One of the computers would be used as a server, and all computers would be linked together with cables through this server, running Windows NT software. This would be a simple matter because all staff are located nearby. It would allow them to -

- Maintain a database of precedents and opinions
- Allow the supervision of and comment upon work in progress
- Allow communication within the office via the screens
- Allow the statute law and case law to be accessible (once developed) on all screens.

Each computer would be a stand alone PC, and operators could choose to work entirely on their own machine, or they could save documents on the network "L" drive and thus

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make it accessible to others. Office procedures could be developed to determine what documents should be placed on the network..

The computers should all have CDs built in (they come with standard computers these days) to allow programs to be run and especially to allow the lawyers to use them for research if CDs of law reports are purchased.

The Attorney General advised that several computers may be provided soon from the Government. These will be welcome, and can be included in the general office computer structure if a network is decided upon. They should be IBM compatible and then they can integrate no matter what brand they are, or the amount of memory and speed (as long as they are all bought within a few years of each other). The uses to which computers are put by lawyers do not necessitate state of the art machines, and I recommend that the current standard computers on offer at the time of purchase be used. They will be the cheapest, and it may well be possible to get more computers for your money rather than buying upmarket equipment which for lawyers will usually have more features than are needed and may be less reliable therefor. If extra machines can be purchased, then these can be used for backup purposes, so that if a computer goes down, it can be sent away and the spare one brought into the front line.

internet

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 St. Kitts and Nevis. 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 crown counsel can amend it, drop standard St. Kitts and Nevis 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.

In my experience it is preferable to allow each (or selected) computers to access the internet directly via a dial up line through the telecommunications authority. The cost is surprisingly low, and a track can be kept of usage to ensure that money is not wasted.

LAW REVISION

One big problem for lawyers in St. Kitts and Nevis is the great difficulty in finding the law. This is a problem that the Attorney General specifically asked me to address in this report.

The last revised edition of the laws of St. Kitts and Nevis was in 1961, when it was published in 8 volumes. To find any piece of law, it is necessary to –

- Go to the last published Index in 1991 see what laws have been made

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- Go to the progress book kept by the secretaries (is it accurate?) to see what laws have been made since 1991
- Then go back to the 1961 revised edition, look at the law as it was at that time
- Then look separately at every change since 1961 as shown in the Index and progress book.

This wastes hours a week and is likely to produce errors. In addition this presumes that every separate law made since 1961 is readily accessible. It is not. From 1964 to 1976 there are annual bound volumes of laws and since 1977 there are private collections of laws for each year – some photocopies, some originals, some not available.

The Attorney General is well aware of this problem and instigated a CFTC funded law revision project two years ago. To date this law revision has not been completed and it is likely to be a mere consolidation, with none of the errors and redundancies rectified, or enhancements made. It seems that only the principal legislation has been dealt with, so that there remains the parallel need to revise and consolidate the subsidiary legislation. There is also likely to be a problem finding the money to print this consolidation.

I advise that the manuscript of this consolidation project be obtained as soon as possible and that it then be assessed.

Options are –

- Find the money to print the consolidation and publish it in bound, looseleaf or booklet format (refer to the detailed options in this regard in the speech text given to the Solicitor General); then start a similar exercise for the subsidiary legislation and publish this separately;
- Start a similar exercise for the subsidiary legislation and find the money for printing and publish both parts at the same time;
- Start a similar exercise for the subsidiary legislation and then combine both results in an integral publication of principal and subsidiary legislation (after finding the money for printing);
- Commence to revise both principal and subsidiary legislation whilst the subsidiary is being consolidated and then combine both results in an integral publication of principal and subsidiary legislation (after finding the money for printing).

Within these options there are different approaches –

- Money may be sought for the complete typesetting and printing from an agreeable aid donor – I note that Eyre and Spottiswoode have given indicative prices for this full production facility;
- The data could be captured electronically by a specialist agency, and then an in-house desk top publishing exercise undertaken to produce the revised edition. Care must be taken with this approach and the whole process thought through – I would be happy to advise further as part of this Commonwealth Secretariat project if required.
- If camera ready material is produced in-house, then consideration should be given to the means of printing and publication in other forms. The sale of books should cover the actual printing costs (from camera ready copy stage) and publication in CD form and over the internet is possible and practical and may actually earn money for the Government once the data base is acquired and maintained.

A related problem to the finding of laws, is the finding of case law. Overseas case law would be available if a large investment in libraries was made, because due to a fire at the Supreme Court and other causes, there is no complete library in Government.

Government lawyers regularly have to ask private lawyers for access to their libraries – this is clearly not satisfactory.

There are no St. Kitts and Nevis reported cases, and it seems that local cases are not being notified to the WILR for inclusion there. There is no office case database or compilation, and the only way that a case can be obtained, to rely on it for guidance or to quote to the court as a precedent, is if you know the exact name of the case to look at the file in the Supreme Court registry. This is most unsatisfactory in a common law country where reliance is placed on precedent.

Friendly donor countries could be asked to help provide library facilities (Canada, USA, Australia, EEC) and with their ever increasing reliance on electronic libraries, there may be sets of, say, All England Reports and Halsbury that are no longer needed in these countries. At this stage, books would be most useful in St. Kitts and Nevis, however due to their expense, it may be that electronic libraries, via CD or internet, should be considered if the books cannot be obtained.

LEGISLATIVE DRAFTING

This section of the legal department consists of two persons – an experienced drafter from Uganda who is funded by CFTC, and a younger lawyer originally from Sierra Leone, a graduate of the UWI legislating drafting course.

The drafters have the problems faced by the whole legal department – viz. difficulty in finding laws and getting their work processed. This is discussed, and solutions proposed, elsewhere in this report.

The Attorney General asked me to advise how local lawyers could be attracted to legislative drafting, and retained as such. This is a problem common throughout the world – a shortage of drafters, and it is especially so in small jurisdictions where someone who is good enough to be a useful drafter can often find a career path in another field, and where the common image is of a boring back room job compared with the glamour of court work.

In some places, to make the job more attractive, flexible work procedures are adopted – as for example drafters (often women with young children) working from home. This can work if the output is monitored, because apart from taking instructions and discussing a matter, the bulk of drafting is a solitary exercise that can be done at home.

Also money is a problem if it is desired to keep a drafter in post. There is no career path in smaller jurisdictions, except up and away from drafting. In one country I know that crown counsel responsible for drafting have a right to private practice – as where some body is proposing some particular legislation ahead of government approval, the drafter can work privately on a draft. This could work if there is full disclosure and no hint of conflict of interest.

DIRECTOR OF PUBLIC PROSECUTIONS

I met with the DPP, Francis Belle, a Barbadian working on contract in St. Kitts and Nevis.

Although independent under the Constitution, the DPP presently shares office and secretarial facilities with the general legal department. This seems to work happily. The DPP uses his own personal computer and printer at work to do first drafts of court documents, opinions etc. He would like to have a laptop computer because he is away from the office, at the court complex, much of the time.

The DPP would also like access to the internet to research laws and communicate via email.

THE JUDICIARY

The single Supreme Court Judge was not available to meet me whilst I visited St. Kitts and Nevis on this occasion.

I met with the Chief Magistrate. There are 3 Magistrates, including the one on Nevis. They have no computer to process their paperwork. Presently everything is written in long hand and then typed on a typewriter. This is especially tiresome when depositions are needed after a preliminary investigation or for an appeal. The Magistrate's notes are then consulted and typed out. I visited the Magistrate's chambers in Nevis as well, and a computer for word processing is needed here to avoid the need for the separate court registry having to type up these depositions etc.

There are some delays in the system – some defendants have to wait 2 years to have their preliminary investigation. A system of paper committals would be useful here, to avoid the claims of justice being delayed, and of witnesses disappearing and forgetting.

I discussed this briefly with the Attorney General and he advised that a Bill to introduce paper committals did get a first reading but didn't progress further. He is also doubtful if this would be effective in any event if the defendant (and lawyers) had an option to have a full committal. The DPP also doubted whether the Police would be up to the task of preparing full paperwork for committals. I undertook to send to the Attorney General copies of legislation from Turks and Caicos Islands and Australia where the defendant had no option to elect a full committal.

Another problem for the Magistrate is the low criminal jurisdiction of the Court in some matters – eg simple theft for paltry sums had to be heard by judge and jury; after a full PI before the Magistrate. The Attorney General advised that this matter is also being attended to via a Bill to increase the criminal jurisdiction. The civil jurisdiction is sensible - \$10,000 in contract and \$5,000 in tort, and there is a wide family jurisdiction (maintenance, custody).

The Magistrate found that whilst he was able to stand back and let the adversarial system operate in most cases, in family cases often he needed to help a party (usually the wife) and he thought that legal aid would be a good idea to ensure his independence.

The Magistrate enquired whether any training is available for clerks of court – he understood that in Barbados there was a para legals course being offered at the community college.

The Judge

The Registries

The Nevis Administration

I visited the Island of Nevis and saw the police, magistrate's chambers, Supreme Court Registry, and the Legal adviser to the Nevis Administration, Mark Armstrong.

Under the constitution, Nevis has sole responsibility for certain matters, including land, housing, roads, tourists, agriculture. There is a separate Nevis Legislature that meets to pass Ordinances. These Ordinances are drafted in Nevis and are published in the St. Kitts and Nevis gazette. Nevis also has an active off shore company register and this is handled entirely at Nevis by a separate registry.

The legal section of the Nevis administration needs to obtain computers and training in their use.

SUMMARY

In St. Kitts and Nevis I find a group of good lawyers working within the justice administration system who are hampered greatly by the lack of resources available to them. Most striking and dangerous is that the statute law and case law is very difficult to locate.

The lack of adequate word processing computers and printers is also a big problem. A sophisticated computer network is not needed, but I do think that a simple network would be an advantage.

Other noteworthy problems are the need for training detailed in this report, and also the need to find a way to encourage local lawyers to make a long term career in the legal department, especially in legislative drafting.

RECOMMENDATIONS

1. I have noted briefly against each Department the basic recommendations.
2. Computer training is necessary, both for professional staff and support staff. If the training is carried out across the entire justice system, the trainers would then be able to train operators in batches across the Ministry, depending more on function than office proximity.
3. The revision of the law and its publication is urgent, and I have dealt with the options elsewhere. The law revision itself would establish, apart from the new law books, a database of the law which could then be maintained, made available as books, booklets, CD's, and on the internet (at a price to external users) and enhanced over the years, by the inclusion of annotations and related material to make the law more user friendly and relevant - as with guidelines and directions that would perhaps not be part of the actual law, but would assist in making the law practical and alive.
4. 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

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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.

5. 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 St. Kitts and Nevis 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 St. Kitts and Nevis can be made available on the internet very effectively and updated quickly and cheaply.

To be provided –

- To Attorney General, precedent of paper committal legislation
- To Senior Crown Counsel, details of UK legislative drafting courses
- To Legislative draftsman, web sites for law precedents
- To DPP, web sites of case data bases
- To drafters (email sulaay@caribsurf.com), sample of legislation tracking spreadsheet
- Advice on how to get back to UWI index scheme
- Information on obtaining All England Reports (especially since 1982 when the annual subscriptions seemed to cease, plus odd volumes), and up to date Halsbury's laws, in book and internet/CD form
- Information to the Attorney General on training for clerks of court and court reporters.

CONCLUSION

I trust that this report is of value to St. Kitts and Nevis. 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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St. Kitts and Nevis
1 August 1998

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