

COMPUTERISATION AND THE ADMINISTRATION OF JUSTICE

Consultant's report for British Virgin Islands

TABLE OF CONTENTS AND PLAN

	page
PART 1 — INTRODUCTION	
• Background	1
• Object of report	2
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PART 2 — THE OFFICES	2
• ATTORNEY GENERAL'S OFFICE	2
• PARLIAMENTARY COUNSEL	3
• JUDICIARY	4
• Court Reporting	5
• REGISTRY	5
• Civil registry	6
• COMPUTER SERVICES	6
PART 3 - SUMMARY and RECOMMENDATIONS	7
<u>Attachment</u> : Attorney General's Computerisation Plan	9
Annexures – copies of registry computer records	

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.

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.

2 Report for British Virgin Islands, computerisation and the administration of justice

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 pilot study of the British Virgin Islands conducted by the Commonwealth Secretariat's consultant, Neil Adsett, in early November 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

Background

In the British Virgin Islands the constitution provides for the appointment by the Governor of an Attorney General to be the principal legal adviser to the Government. The present incumbent is Miss Dancia Penn, and she is a member of both the Executive Council and the Legislative Council.

Interestingly, by convention, the Attorney General does not vote in the legislature, although the written constitution does not provide so.

The office of Attorney General is seen as impartial, despite the Attorney General being part of the Executive Government. Hence opposition members can ask the Attorney General for help with problems that they face as legislators. There is no history of private member's bills, but it has happened that opposition members or government backbenchers have proposed motions calling on the Government to introduce legislation on various matters. Recently such a motion called for the Government to introduce a Bill relating to disabled persons. This Bill was passed without debate and has since been referred back to the proposer of the motion to provide details of the proposal.

Another innovation in the British Virgin Islands is, with important Bills, the Bill will be introduced and read a first time, then published in the normal way. It will then be circulated for comment and an informal meeting of the whole House convened to discuss the Bill. At this meeting officials may be present and heard (e.g. the Parliamentary Counsel) and amendments basically agreed upon so that the Bill, as so amended, may then pass easily through the remaining legislative stages.

3 Report for British Virgin Islands, computerisation and the administration of justice

Office Structure

In the Attorney General's Chambers are the following officers –

- Parliamentary Counsel (Cherno Jallow) responsible for drafting legislation
- Senior Crown Counsel (Joan Joyner, Stuart Best, Cecil Dawson), responsible respectively for criminal matters including prosecutions; civil matters; and land and income tax matters
- Assistant Parliamentary Counsel (post presently vacant, being advertised at US\$30000-40000 pa, taxable at graduated rates up to 22.5%; housing and some allowances offered)
- Crown Counsel (Carla Card)
- Two recently admitted lawyers
- Administration Officer (Lecia Rubaine) responsible for the general administration of the office
- Senior Executive Officer (Joyce Titley) responsible amongst other things for office accounting
- Executive Officer (Gale Potter) Attorney General's personal assistant
- 3 clerical officers (Dawn, Shelby, Maya)
- Messenger, filing clerk.

All officers are situated in one well appointed office in the Government administration complex (I am noticing in my travels that there is a direct correlation between office efficiency and quality of office arrangements).

The Parliamentary Counsel has and uses a computer on his desk; there are 4 computers amongst the support staff, all running *Word Perfect* and *Microsoft Word 97* for word processing, and 3 other lawyers have computers on their desks.

PARLIAMENTARY COUNSEL

The Chief parliamentary Counsel is Mr. Cherno Jallow, who has been in post for 3 years (originally from Gambia). There is usually a second drafter, but the post of assistant Parliamentary Counsel is presently vacant.

Cherno does much of his drafting on his own computer, and between him and his secretary they are able to produce all legislation required —

1995 6 Acts (82 pages total), 41 Subsidiary legislation (170 pages total)

1996 14 Acts (200 pages total), 67 Subsidiary legislation (200 pages total)

1997 8 Acts (133 pages total), 59 Subsidiary legislation (302 pages total)

The office produces camera ready copy that is merely photocopied for inclusion in the Gazette upon publication.

Each year, under the Acts Authorisation Act, an annual volume of all laws passed is prepared by the Chambers (supervised by Cherno) and published in book form (120 copies ordered). This volume also includes resolutions of the Legislative Council.

There is no actual government printery – local or overseas printers are used.

Much of the legislation being prepared in the British Virgin Islands relates to financial services, and the Director of Financial Services provides good instructions which evolve after regular meetings with the private sector, both through the Association of Registered

4 Report for British Virgin Islands, computerisation and the administration of justice

Agents, the Bankers Association, and the Financial Services Advisory Committee that the Director chairs and that is comprised in large part of people from the private sector. The Government sets a legislation programme each year, and Chernow has issued a manual showing how drafting instructions are to be formulated.

The legislature meets twice a month for one day usually.

Chernow would like to have an extensive historical database included with the revised edition.

JUDICIARY

Background

The court hierarchy in the British Virgin Islands starts with the Magistrates Court. Above the Magistrate is the High Court, comprising usually 2 Judges, who are part of the Eastern Caribbean Supreme Court.

The regional Court of Appeal is next in the hierarchy and the Chief Justice of the High Court is also Chief Justice of the Court of Appeal of the Eastern Caribbean Supreme Court. Appeals ultimately can go to the Privy Council in London.

High Court

I met with Judge Benjamin.

He would like to see the registry computerised to allow for better management of cases and to allow for the monitoring of consistency in sentencing. He confirmed that the Chief Justice is vitally interested in this field and has plans for the computerisation of all the registries and courts within the Eastern Caribbean Supreme Court system. The Chief Justice is planning to change the rules of court and expects a first draft of the new rules to be available at the end of 1998. The Chief Justice actually makes the rules in most places, but in the British Virgin Islands because of the dependency status, the rules are expected to be made by the Governor.

The Judge advised me that they had 4 court reporters who took down verbatim all evidence, submissions etc given in court, and this speeded up court proceedings considerably. He was able to get transcripts within a week if needed and overnight if necessary for a criminal trial.

The Judge advised that Court Reports were essential. Practitioners using the courts, often used to other jurisdictions, were appalled at the lack of such reports in the British Virgin Islands.

He said that reasoned decisions were usually only given when a point of law was decided, or if the case was important. Accordingly in his view all such decisions were worthy of being made available. They should also be Indexed to be of practical use. He thought that it should be possible to extract all relevant decisions from the registry files. All Court of Appeal decisions should also be included in the database.

Minor problems were –

- Death by dangerous driving should be seen as a more serious offence,
- There are no company winding up rules and it was not certain if the UK 1949 or 1986 rules applied.

Magistrate

I met with the Magistrate Mr. Taylor.

5 Report for British Virgin Islands, computerisation and the administration of justice

The general jurisdiction of the court is up to US\$10,000 in tort and contract and he had power generally to impose sentences up to \$10,000 and 3 years' prison (higher for crimes under certain statutes, including drugs and burglary).

There was no perceived need to computerise the registry or court files – having an efficient court clerk was a boon.

Some problems he experienced were the lack of a place to detain juveniles, the Traffic Act needs updating, the Coroners Act needs clarifying.

He thought that paper committals would be a good idea but the police prosecutors would need training.

Court reporting

I visited the court reporting unit and saw Janice Stoutt, the Senior Official Court Reporter (ph 4943701 x 4957).

She heads a team of 4 court reporters. They attend all High Court sittings and take verbatim every word of proceedings. They use a CAT system (computer aided transcription) using XSCRIBE 2001 software from the Stenograph Corporation. In this system they have machines with about 10 levers that basically record shorthand in such a way that when they plug it into a computer, the software reads the shorthand and converts it into full text. The reporter then edits and corrects the small numbers of places where the text is not correct. If the court was fully wired up for computers, the shorthand machines could be linked to a computer that would immediately (real time) show the audible words in printed words.

The reporters work for half a day and then edit the work while another takes over. They can provide same day transcripts.

They also attend and report the Legislative Council proceedings.

It costs about \$3000 for the machine and \$3000 for the software.

Janice learned her craft in the USA and came back to the British Virgin Islands and established this system. She believes that she could train other reporters to do the same. She said that there were court reporting schools in Jamaica and Dominica, lasting 18 months, but the graduates were not up to speed (160-180 words per minute, whereas 220 wpm is needed) and that is why, nearly everywhere else, they are merely taking down submissions and judgements and not entire trials. She says that she could train them up to the proper level that is badly needed throughout the region in perhaps 4 months.

REGISTRY

In the British Virgin Islands the registry of the High Court is also the registry of deeds, births, deaths and marriages. There are separate lands and companies registries.

Court records are kept manually, and there is no problem with this. The Chief Justice has asked for computer records to be made of all cases since 1980.

Each year there are two criminal assizes and at the last assizes there were only 7 cases, 4 of which proceeded.

There are however many civil cases –

1996	268 cases
1997	132 cases
1998 to date	140 cases.

There is no backlog of cases – they are set down by the judges at a callover when they are ready to proceed.

There is an efficient court reporting unit of 4 operators and they take down all High Court cases and also sessions of the legislative council.

Civil registry

The civil records were formerly in a state of decay and in danger of being lost. The Government initiated a programme of recording and computerising these records. They contracted with a local firm run by British Virgin Islander Kedrick Malone of Northstar Services (email nstar@caribsurf, ph 4952493).

He has almost completed the scanning of these records, as images onto CD's, with certain details of the image being entered (e.g. name and date of birth or death) so that the records can be searched and located.

He uses the Imagevault software. Records captured in 18 months are –

- Births 1859 to present 50,000 records
- Deaths 1900 to present 17000 records
- Marriages 1900 to present 9000 records
- Deeds 1900 to 1988 25000 records

All these records fit on 6 CD's.

Some of the records were so faint that he had to cover them with acid free tape and write over them.

I attach as Annexures 1, 2 and 3, the following –

1. An example of the scanned image of a book in poor repair
2. An example of another page from the Births record book
3. A report generated from the births registry under child's name.

I formed the opinion that this computer system was very good and appropriate and just what is needed in many other places in the Caribbean. It needs to be finalised and Mr. Malone advised me that he would have completely finished and that the system would be running smoothly by the end of 1998. I observed that even now enquiries at the counter were routinely and effectively being dealt with by the registry staff using these computer records.

COMPUTER SERVICES

I met with Berton Smith, the Manager of the Telephone Services Management Unit (ph 4965201).

His unit is responsible for providing telecommunications to Government.

He advised that –

- They could provide a suitable web site to the Attorney General's chambers to allow a database to be placed on the internet (several other government departments already do this)
- There would be no problem setting up a server in the Attorney General's chambers to feed up data to an internet web site regularly – for example, weekly to update the database of laws
- Training should be organized through Mikey Farrara ph (4941027) who is an accredited Microsoft trainer

7 Report for British Virgin Islands, computerisation and the administration of justice

- They have been getting enquiries from users of the government web site (BVIGOVERNMENT.org) as to where the laws of British Virgin Islands can be accessed on the internet
- He recommends buying two IBM netfiniti 7000 450mb pentiums with 100gb of harddrive if we intend to use them to maintain a database on the internet.

SUMMARY AND RECOMMENDATIONS

The justice administration system in the British Virgin Islands is modern and efficient — far ahead of all but the larger countries in the region.

The registry has developed a great means of solving the endemic registry problems in the region (records badly held and deteriorating) and will soon have the computerised system completed and in place. This could be a model for the region.

The court reporting problem has also been solved and makes the functioning of the court far more efficient.

The Attorney General's chambers need to be computerised and databases of statute law and case law made available. This is a common problem but in the British Virgin Islands there is the present will and the funding to implement this now.

I have prepared a separate plan and recommendations and this is attached to this report.

In my opinion the Attorney General can safely proceed now to purchase the basic hardware for the office (i.e. PC's for all officers and support staff, server) and arrange for training in the basic software. I suggest that the emerged industry standard *Microsoft Word* be the standard word processing program and that all have training to the required level.

The equipment purchased (presumably based upon the tendered lists shown to me) will be compatible with the larger aspects of the computerisation plan, and installing this equipment first will allow staff to become familiar with the computers and software.

If a firm decision is made to implement a plan to establish and service an internet database site, then the necessary server specified could be utilised for this purpose.

The full computerisation project can then proceed when the Attorney General is ready and satisfied with the best way to implement such a plan.

CONCLUSION

I trust that this report is of value to the British Virgin Islands. 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.

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Road Town
6 November 1998

8 Report for British Virgin Islands, computerisation and the administration of justice

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ATTACHMENT

PLAN for
British Virgin Islands computerisation

Objectives

1. Establish data base of current law

- Statute
- Case

2. Make data base available to all

- Chambers
- Government
- Local lawyers, public etc
- The world

3. Computerise the chambers

- Communication possible – networking
- Trained users
- Maintenance and back-up

4. System for keeping data base up to date

5. Enhanced system for production of laws

- Statute
- Case

1. Establish data base of current law

1.1. Statute

I advise outsourcing this function. The capture of data in computer readable form is a long and specialised operation that is beyond the achievability of the British Virgin Islands without great delay and expense. There are specialised agencies who will contract to capture this raw data exactly (using double entry and computer cross check systems) in short time.

After capture of the raw data, or during it if the data capture agency is able, an experienced data processor would need to go through the entire database and format it consistently as required. This process can be automated to some extent by the use of specialised macros.

At this initial stage I recommend that all data be captured in original form – i.e. the whole 1991 Revised Edition plus all laws made since 1 May 1990.¹

The possibility that the printers of the 1991 Revised Edition have the entire work in electronic format that could be converted to a format useable by the British Virgin Islands should also be investigated, as this *may* save some time and money.

The resulting database will contain the law but will not be terribly user friendly in that it will show the old law and later amendments will need to be located within the database and consulted separately. The database will need to be worked on by a suitably qualified person to make it into a consolidated version of the law, with updated Indexes etc.

1.2. Case

Similarly with statute law, I recommend that this data be captured in electronic form by an outside agency. For this material it may well be necessary to make an informed professional decision of what cases would be useful to include in the database² – e.g. those of the British Virgin Islands that have value,³ those of other courts within the Eastern Caribbean Supreme Court system that are useful (and that can be tracked down), decisions of the ECS Court of Appeal. The Chief Justice himself is interested in computerising these records, so some dialogue may be useful, for the sharing of records etc. I would however recommend that the British Virgin Islands goes alone in this matter rather than wait for the Court of Appeal or anyone else to join in. This data base can start small and grow in any event – with local cases first, and expanding by keeping these up to date and including cases from further afield when possible. The judgements themselves will be difficult to use or find unless they are given headnotes and included in Indexes and citators as part of the database.

2. Make data base available to all

¹ If this process was being overseen at the time of a law revision project, then there would be some saving because the judgement could then be made to exclude from the data capture process certain laws which had subsequently been repealed or were not needed.

² This could be a separate contract given to a local lawyer, specifically to sort through a nominated base of cases, to select ones of value, to headnote and index them; or if a law revision exercise was then underway, the Law Revision Commissioner could also be charged with this task.

³ Judge Benjamin advised me that this initial culling process is to some extent done by the judges, in that they only usually give reasoned judgments if there is a point of law or important issue or special value.

2.1. Chambers

Once the data base is compiled, it would reside initially on a computer (server) at the Attorney General's Chambers. For all within the chambers to be able to access this database they could —

- Be connected to the database computer by wires. Then when an officer wanted, for example, to look at a piece of law, she would simply open the relevant file on the network drive. This could easily be done. I favour having the Chambers' computers linked thus by the simplest and cheapest means that work. Vast servers with communication hubs could be specified, but would be unnecessary and would in my view eat up funds better used to enhance the actual product available to the users, and would tend to entrench this major financial investment and preclude its adaptation to changed circumstances.
- Be connected via the internet. Moreover, as I describe later in this report, I advise placing primary reliance upon access over the internet, which would be used not just by the Chambers, but by anyone in the world who is authorised.

2.2. Government

By extension of the proposed communication between officers in the chambers referred to in 2.1, it could be possible to connect other officers of government presently in the same Administration Building by means of wires. I advise against this. The wiring is expensive, not secure, will need constant changing as officials move office, would not allow proper supervision of usage (corruption possible) and in any event would only be vaguely practical within the same building.

I recommend for the Government (including the chambers' officers), and for the Judges and local lawyers, the public and any user anywhere, that the access be made available over the internet.

The database assembled in the Attorney General's chambers and residing firstly in the data base computer, would be uploaded onto a virtual computer in the sky that anyone who is connected to the internet and complies with access conditions can plug into.

Thus the lawyer in London who wants to see what Trusts law there is in the British Virgin Islands would dial into the database and search the latest version of the law. Similarly the British Virgin Islands judges, the Attorney General overseas at a meeting, or the Chief Parliamentary Counsel from his office or home.

The access conditions could be the payment of a fee for each use or for subscription. The database could not be tampered with — just viewed and downloaded and printed.

2.3. Local lawyers, public etc

The database on the internet would be available to all. Access arrangements could include payment of an access fee by credit card then and there, or the usage could be monitored and a monthly account issued to frequent users, and free access could be available to nominated persons (with a secure password) or computer stations.

2.4. The world

The database on the internet would be available to all.

3. Computerise the chambers

3.1. Communication possible – networking

As in 2.1, a local area network within the chambers would allow messages to be sent to one or all officers, files to be shared between officers – e.g. the drafters may ask the Attorney General or a Crown Counsel to comment on a draft that can be called up on both computers, and comments added electronically.

These uses are varied but, in my view, their value is not matched by the enthusiasm of computer programmers to install them. In such a compact office, it may be better just to tell everyone or send a note around. It wouldn't do any harm to have this facility (it comes with the machines anyway) but no great priority should be given to its availability.

3.2. Trained users

It is of utmost importance to provide ongoing training for all members of chambers, and to have in place a strategy for training new staff and monitoring usage. Qualified trainers would be brought to the Chambers for group and individual training sessions as required. No expense can be spared in this area.

3.3. Maintenance and back-up

Likewise it is necessary to have qualified people to maintain the hardware and software, and to have back up machinery available in the case of machines breaking. In my experience, if you stick to simple systems, once the computers are properly installed and the staff trained, there will not be much trouble. Quality printers seem to run trouble free for ages, but help must be at hand if there is a breakdown. Perhaps a service agreement with a local firm would be needed, or you could just pay as and when you require service (and to whom gives you that service).

4. System for keeping data base up to date

When the data bases are established, they can be kept up to date if a regular secure system is put into place.

The database on the database computer (server) in the Attorney General's Chambers can be worked on by someone qualified, and when correct, it will then become the database that is accessed by those in the office.

Similarly, for the database on the internet, this can likewise be updated by sending the updated database to the internet computer.

Thought must, however, be given to the status of the legislation database thus created. The revised edition and annual volumes contain the authorised law. A consolidation (and revision) of that will not have official status unless an Act of Parliament so provides, and appropriate safeguards are put in place to ensure the correctness of the database; worthy of making it the official version of the law.

After a law revision exercise, and whilst a Law Revision Commissioner (the Attorney General is often appointed *ex officio*) is maintaining and updating the resultant body of statute law, the computer database can be the official version, alongside the necessary paper versions of the law.

This can be provided in an Act as was done recently by me in and for the Turks and Caicos Islands revised edition.

5. Enhanced system for production of laws

5.1. Statute

I have seen proposals for the semi automated production of legislation and have had the Bermuda system explained and demonstrated.

In my view there is no such system suitable for a jurisdiction such as the British Virgin Islands. Presently the Chief Parliamentary Counsel is able, himself and with the assistance of one secretary, to produce the required legislation in time.

There are procedures that can be taught to these people and others who may be concerned in the production of legislation, which will speed up the process and make the resulting legislation more professional and standard in appearance. This means appropriate training, both by the qualified word processing trainer (many of the “tricks” are standard advanced features of *Microsoft WORD*) and by a specialist trainer who can be identified and who would, during training, customise the word processing package to automate many of the law production process.

5.2. Case

In co-operation with the judiciary, the clerks who type the reasoned judgements could be trained to produce them in such a way that they are in an appropriate consistent format suitable to take in electronic form for direct inclusion in the database. Suitable hardware and software could also be supplied which is compatible with the Attorney General Chambers’ equipment.