

COMPUTERISATION AND THE ADMINISTRATION OF JUSTICE

Consultant's report for Montserrat

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.

This is the draft report on Montserrat, 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'S CHAMBERS

This department is responsible for giving legal advice to the Government, legally representing the Government in all civil and commercial matters, prosecuting criminal offences and drafting legislation. The Attorney General is a public officer established by the Constitution. He is *ex officio* a full member of both the executive council and the Legislative Council.

The Chambers are situated in temporary premises (an empty house) and comprise –

The Attorney General (UK expatriate on contract)

The legislative draftsman (UK expatriate on contract)

A crown counsel (relatively junior Montserrat lawyer)

Senior clerical officer and two secretaries

Two clerks in the registry, where all courts matters are registered, and births, deaths and marriages, companies and all civil matters.

Problems

Montserrat must be seen as a special case.

3 years ago the volcano on the island erupted and now three quarters of the people have left, the only Town has been destroyed, and two thirds of the Island is unsafe, deserted and an exclusion zone.

The remaining people and all limbs of the government have been relocated to the mountainous northern part of the Island.

The legal and judicial system needs to function nevertheless.

The Attorney General's Chambers are now situated in an empty house, along with the registry and the Magistrate.

Registry problem

Most records were salvaged from Plymouth, the former capital, but the first major problem is that the registry is inadequately housed and staffed and the crucial court and civil records are now thrown together in disarray and are in grave danger of being lost.

The common small country problem prevails here – records are still in old journals which are now falling to bits and becoming lost. Thus birth records and probate records are in danger of disappearing forever – there is no backup. This is especially bad in Montserrat where the heat of the volcano and the hurried dash from Plymouth to various temporary locations with these books carted in disarray has meant that some records have been lost and many of the older books will crumble readily at any page.

The existing staff are busy just trying to hold the system together and will not be able to set matters right in the foreseeable future.

I recommend that assistance be given to Montserrat to –

- Sort out the court and civil registry documents
- Microfilm all records

- Securely bind and house the paper records.

The Attorney General is coping well with the situation, partly because there is a reduced amount of legal work still, but the work will increase greatly as all of the multifarious problems caused by the volcano emerge –

Compulsory acquisitions

Land disputes and claims for compensation

Disputes over usage of land

Emergency actions requiring legislative intervention

Legislation needed to cover novel situations, etc

One great problem hampering the Attorney General is the inaccessibility of the law. The last revised edition of the laws was in 1962 and since then laws are scattered throughout annual volumes and private compilations. It is very difficult for even the Attorney General to find and make sense of the law – and it is near impossible for anyone outside government to find the law at all.

The Government is well aware of this problem and the UK government had planned a law revision for this dependent territory before the volcano. An investigation is now being carried out to decide if a law revision, or at least a partial consolidation of the urgently needed laws, can be commenced.

No Gazette

A further problem that needs urgent attention, is that there has been no Government Gazette published for 3 years. Thus Acts and regulations are being made by the Legislature and by the Executive, but there is no real notification of these laws and no means whereby anyone can find the existence of the law or to obtain a copy. This is a problem within Government also – one part of the government is ignorant of the laws being made.

The temporary emergency solution was that such laws and other official notices would be exhibited on a notice board outside a police station and when that was rendered unsafe, outside another (temporary) police station. A deeming order was made under the Interpretation Act in an attempt to overcome the requirement that laws be Gazetted before they come into operation.

The rawest edge of the emergency has now receded and it is a necessity that laws again be promulgated in a meaningful way. It is a nonsense to the rule of law that people are bound to obey and deemed to know, laws that cannot be known.

If the Attorney General's chambers had the correct computer equipment and some extra staff, then it could put together and distribute a Gazette. Alternatively, there are 2 printers operating in Montserrat and a contract could be let for one of these to publish the Gazette – once a month would be sufficient to meet this minimum legal requirement.

I recommend that the government give this matter urgent consideration, and if necessary that short term (2 weeks) technical assistance be provided by CFTC to put the new procedure in place and to train staff.

Computer equipment

At present, the Attorney General's Chambers shares with the registry one relatively modern computer and one other that has insufficient memory to run windows based applications. There is one decent HP 5 series printer.

The government maintains a well equipped computer training centre that would be able to train the chambers in the use of new computers and software.

I recommend that 3 new pentium computers and a HP 5 series printer be obtained, and the staff trained in its use – 1 for registry, 2 for clerk/secretaries. A laptop computer and laplink software should also be purchased, so that computer data can be synchronised with desktop computers using laplink, and then available to be carried to safety if need be.

These would only be used for word processing at this stage, but would be able to store documents in electronic form. I cannot see any need for a network in these rudimentary circumstances.

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 Montserrat. 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 Montserrat 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 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.

For example, Montserrat is a dependent Territory and so some laws are made for it in London. At present if these laws are to be locally enacted, or Gazetted, they are retyped at length – taking time, resources and introducing errors. These laws are available in electronic form on the internet (www.HMSO.uk) and can now be downloaded entirely, and with little effort re-used for Montserrat purposes.

THE COURTS

Fortunately, there is not a lot of activity at the moment through the courts, and the cases are up to date. The Eastern Caribbean Supreme Court is utilised in Montserrat, and the Judge of that court has sat twice this year. The Court of Appeal has also sat once this year.

The Magistrate (who is also the Registrar) is resident in Montserrat and he is up to date with cases, except for inquests into the volcano deaths which are long overdue and are now being arranged. There is no court house, and for each sitting premises need to be appointed. This will change when the temporary government headquarters are occupied (basically portable offices).

There is no Constitutional provision for a judicial services commission in Montserrat; but the Governor makes judicial appointments after consultation with the Chief justice of the Eastern Caribbean Supreme Court.

There is one fairly modern computer in use by the court office, but I recommend that another decent HP printer be purchased (to back up the Attorney General's chambers printer and vice versa) and also a laptop computer – for mobility reasons and to allow the Magistrate and clerk to have a computer when they are located at a temporary court house.

Part 3 - SUMMARY

Montserrat is in upheaval and the system of administration of justice is being maintained admirably in the circumstances.

To assist, the lines of communication between the Attorney General and external assistance providers, such as the Legal and Constitutional division of the Commonwealth secretariat should be strengthened.

RECOMMENDATIONS

1. I have noted briefly against each Department the basic recommendations.
2. Some computer purchases are desirable to assist with the flow of work – these are noted in the report.
3. The revision of the law and its publication is urgent, and this is being dealt with by the government.
4. The registry needs sorting out and the records must be backed up.
5. The Government Gazette must be re-established and produced regularly.
6. The Internet needs to be made use of throughout the justice administration system - as a communication and research tool

CONCLUSION

I trust that this report is of value to Montserrat. 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.

Neil Adsett
Montserrat
8 August 1998