

Handbook of Best Practice for Registrars of Final/Appellate, Regional and International Courts and Tribunals

Commonwealth Secretariat



Commonwealth Secretariat

Handbook of Best Practice for Registrars of Final/ Appellate, Regional and International Courts and Tribunals

Commonwealth Secretariat



Commonwealth Secretariat

Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom

© Commonwealth Secretariat 2012

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording or otherwise without the permission of the publisher.

Published by the Commonwealth Secretariat

Edited by Jane Lanigan
Designed by The Charlesworth Group
Cover design by Tattersall Hammarling & Silk
Printed by Hobbs the Printers, Totton, Hampshire

Views and opinions expressed in this publication are the responsibility of the authors and should in no way be attributed to the institutions to which they are affiliated or to the Commonwealth Secretariat.

Wherever possible, the Commonwealth Secretariat uses paper sourced from sustainable forests or from sources that minimise a destructive impact on the environment.

Copies of this publication may be obtained from

Publications Section
Commonwealth Secretariat
Marlborough House
Pall Mall
London SW1Y 5HX
United Kingdom
Tel: +44 (0)20 7747 6534
Fax: +44 (0)20 7839 9081
Email: publications@commonwealth.int
Web: www.thecommonwealth.org/publications

A catalogue record for this publication is available from the British Library.

ISBN (paperback): 978-1-84929-057-9

ISBN (e-book): 978-1-84859-110-3

Foreword

This manual has arisen as part of a mandate set by the Commonwealth Law Ministers Meeting (CLMM) in Edinburgh in 2008, and by the meeting of Law Ministers of Small Commonwealth Jurisdictions (LMSCJ), which took place in London in 2007. The mandate resulted in the Commonwealth Secretariat looking for new ways to further its overall objective to improve the non-judicial aspects of court administration, case flow management and court room administration in final/appellate, regional and international courts and tribunals (hereafter referred to as the ‘courts and tribunals’). Meanwhile, a key recommendation made in 2007/08 by the Commonwealth Meeting of Justices and Registrars of Final/Appellate Courts and Regional Courts in Port of Spain, Trinidad, highlighted the importance of convening a meeting: ‘To discuss issues and exchange information about best practice in registries’. As a direct consequence, the Secretariat decided that the best way to proceed was to invite a broad cross-section of registrars and administrators to prepare detailed written papers which could then form the basis for a conference and workshop session. The outcomes of the conference would in turn be synthesised and compiled to form a user-friendly, practical manual: the *Handbook of Best Practice for Registrars of Final/Regional Appellate Courts and International Tribunals* (hereafter the *Handbook*).

Registrars and administrators from various regions across the Commonwealth were invited to submit papers and attend a meeting convened in Ottawa and hosted by the Supreme Court of Canada, between 13 and 16 April 2010 (the ‘Ottawa meeting’). The workshop discussions were wide-ranging and productive, with each the subject of plenary exchanges by the delegates. The overall consensus of the discussions is broadly reflected in the contents of this *Handbook*. Reference is sometimes made in this book to the full conference papers wherever amplification and detail is required in connection with individual courts and tribunals. In addition, some extracts from these papers are included as boxed examples/case studies for illustrative purposes.

The full texts of the papers prepared for the meeting can be found published in the *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010). Readers may also find it useful to refer to the Commonwealth Secretariat publication *Bringing Justice Home* written by Cheryl Thompson-Barrow (2008) – especially the part on Recommended Best Practices – as a useful complement to this *Handbook* and to the papers in September 2010’s *Law Bulletin*. Further additional and more substantive information and case studies can also be found in Robin Vincent’s *An Administrative Practices Manual for Internationally Assisted Criminal Justice Institutions* (2007).

This *Handbook* was originally prepared and compiled by Sir George Newman, with additional text, examples and input from the late Robin Vincent and Roger Bilodeau,

Registrar of the Supreme Court of Canada. I am most grateful for their help, time and valuable contributions.

I should also like to pay tribute to the knowledge and experience of the Ottawa meeting delegates themselves, who engendered real and progressive debate and input throughout the conference. Additionally, I would like to acknowledge the contribution made by Dr Aldo Zammit Borda, former editor of the *Commonwealth Law Bulletin*, in taking this project forward.

Finally it should be emphasised that the *Handbook* constitutes the compilers' perception of the consensus reflected by the views and opinions expressed by the delegates. The opinions should not be attributed to any individual delegates, courts or tribunals or to the Commonwealth Secretariat.

This *Handbook* is not intended to be prescriptive or didactic, and each court and tribunal will need to have regard to its own purposes and jurisdiction when weighing the guidance that is offered.¹ Moreover, while the meeting comprised the substantial participation of a cross-section of registrars from across the Commonwealth, resource and other constraints impeded Commonwealth-wide representation. The views expressed in this *Handbook* are therefore only intended as an aid, and are not representative of, nor attributable to, any particular Commonwealth member country, the Commonwealth Secretariat or any court or tribunal.

Akbar Khan

Director, Legal and Constitutional Affairs Division (LCAD)
Commonwealth Secretariat

Contents

Foreword	iii
1. Introduction	1
1.1 Outline of the approach taken to the major themes	1
2. Institutional Matters	3
2.1 Mission statement and/or strategic plan	3
2.2 Jurisdiction and status of an institution	4
2.3 Officers and employees of an institution	4
2.3.1 Hierarchy and status of officers and employees: judges and public servants	4
2.3.2 Court governance, including the roles of judges and registrars	5
2.3.3 Method of appointment of a registrar	7
2.3.4 Should there be a separate registrar and chief executive?	8
2.3.5 Should the registrar be a lawyer?	8
2.3.6 Recruitment of staff: should judges play a role?	9
2.3.7 Training for officers and staff	10
2.4 Other governance issues	11
2.4.1 Funding	11
2.4.2 Media relations, human resources, finance and protocol	12
2.4.3 Security	13
2.4.4 Accommodation	14
3. Information and Document Management	15
3.1 Moving to an IT-based system	15
3.1.1 The need for staff training on IT	17
3.2 E-filing	18
3.3 The judiciary and technology	20
3.4 Technology and outreach to the public and the media	20
4. The Needs of Court and Tribunal Users	23
4.1 Legal aid and defence support	23
4.2 Witness and victim protection and support	25
4.3 Areas of state responsibility	26

5. Eradicating Inefficiencies and Abuses of Process	28
5.1 Reasons for inefficiencies	28
5.2 Issues with the appointment of judges	29
5.3 Parallel jurisdictions and forum shopping	29
6. The Way Forward	30
Notes	31
References	32

Chapter 1

Introduction

The papers and related matters which were discussed and analysed at the Ottawa meeting fell under the following broad headings:

- Institutional matters,
- Information and document management,
- The needs of court and tribunal users, and
- Eradicating inefficiencies and abuses of process.

Those given the task of establishing or leading a court or tribunal should adopt those guidelines that meet their specific operational needs, and disregard those that do not. The examples drawn from various courts simply provide an opportunity to learn from the experience of others.

The broad structure and approach to the topics covered in this *Handbook* should allow for flexibility in adopting guidelines.

1.1 Outline of the approach taken to the major themes

Institutional matters

The character and structure of a court or tribunal will dictate the flow and management of the caseload. Particular attention should be paid to (a) the need to have qualified staff who can provide adequate support to the judges in all respects, and (b) the options for the formation of a corporate services section or department for the provision of various administrative services to all judges and staff of the court or tribunal.

This, in turn, calls for consideration of the following:

- The organisational structure of the court or tribunal,
- Human resource considerations and recruitment,
- The independence of the judiciary from interference by the executive branch of government, as well as the institutional independence of the registrar and staff,
- Accommodation for both court and office purposes, as well as detention facilities, where applicable, and
- The security and location of the court or tribunal and security generally.

Further details on these matters can be found in the following pages.

Information and document management

The management of information and documentation has a particular bearing on proper case management. In addition, proper information and document management is central to the furtherance of efficient administration.

This area of activity can be onerous, may be highly complex and requires trained staff. As a starting point, the role of technology, e-filing and electronic document management should be given careful analysis and consideration. Sub-issues of security and accessibility by the public should also be considered.

The needs of court and tribunal users

Most sections of the *Handbook* are as relevant to final appellate/regional courts and international tribunals as they are to courts and tribunals having trial jurisdiction and procedures. Notwithstanding that fact, particular attention is paid to the topics below insofar as they relate mainly to trial courts or tribunals of first instance:

Legal aid,

Defence support,

Witness and victim protection and support, and

Financing considerations in regard to the above topics.

Eradicating inefficiencies and abuses of process

Challenges and impediments to efficient performance affect courts and tribunals in various ways. In particular, the *Handbook* focuses attention on those affecting regional courts or tribunals, where experience shows that backlogs and delay have created significant problems in connection with the enforcement of orders and judgments. Furthermore, significant problems have arisen as a result of parallel jurisdictions, most notably an unsatisfactory incidence of forum shopping.

Chapter 2

Institutional Matters

As a starting point, it is clear that a body administering a court or tribunal should have a mission statement and/or strategic plan.

It is also clear that a body administering a court or tribunal should be established according to rules set out in a statute or treaty. The statute or treaty should provide for: the jurisdiction and status of the institution; the hierarchy and employment status of its administrative officers and employees; as well as fundamental matters of governance, including the organisation of the body's financing.

The content of these rules will differ according to the legislative will or avowed purpose of the state promoting a given institution. Nonetheless, a firm general statement of the aspirations that should be pursued could include:

Overarching consideration being given to the creation of an institution in which, save only where practical necessity requires otherwise, there is freedom from interference by the executive branch of government, and

Overall accountability for the effective administration resting with the chief/senior judge of the institution, who should have the power to make general rules for the proper administration of the institution.

One expression of an overall objective, which could act as a guide for most institutions, can be taken from the United Kingdom where, under section 45(3) of the Constitutional Reform Act 2005, the President of the Supreme Court must exercise his or her power to make rules 'with a view to securing that the court is accessible, fair and efficient, and that the rules are both simple and simply expressed'.

Specifically, it may also be recommended that the organisational structure of a court or tribunal administration be as 'flat' as possible and not overly 'layered' with middle/top management. A structure where decision-makers at their respective levels are trusted and empowered to make decisions on a daily basis can prove to be a powerful antidote to 'time-killing' and costly bureaucracy.

2.1 Mission statement and/or strategic plan

It is extremely important that a court or tribunal adopt a mission statement and/or strategic plan for its administration (or preferably for the institution as a whole), against which the annual objectives of the institution can be set and subsequently assessed. A draft plan could be drawn up in consultation with the judiciary to ensure it captures the needs and expectations of all parties in the institution.

Such a plan, which can be reworked annually or on a multi-year basis, provides a clear indication to all those working in the institution as to what their prime goals are or should be. It can also be invaluable when bidding for funds, as it is most likely that

those responsible for allocating funds (and who work outside the institution) will want/need to have an understanding of the institution's strategic goals and priorities.

As an example, the Strategic Direction of the Supreme Court of Canada and of the Office of the Registrar of the Supreme Court of Canada is set out in a comprehensive document which contains (a) a mandate, (b) a mission statement, (c) a vision and (d) strategic objectives. For the complete text, see: <http://www.scc-csc.gc.ca/court-cour/mission/index-eng.asp> [last accessed February 2012].

2.2 Jurisdiction and status of an institution

The jurisdiction of the court or tribunal should be clearly defined, including the procedure and process by which its jurisdiction can be invoked. Some limitations, such as the necessity for leave being granted for a matter to be heard by the court or tribunal, are standard but, as it will be necessary to emphasise later, the problems which arise from overlapping jurisdictions call for special attention.

Especially with regard to regional or international courts or tribunals, it is suggested that consideration be given to the incorporation of provisions, either in the Headquarters' Agreement or in the founding instruments, which restrict the assumption of jurisdiction by one court or tribunal where proceedings are pending or have been completed in another jurisdiction in connection with the same subject matter. Careful drafting will be required but, broadly, the principles already established in abuse of process cases could be adopted.

2.3 Officers and employees of an institution

2.3.1 Hierarchy and status of officers and employees: judges and public servants

The principle that judges should be free from interference from the executive branch of government is well established, but the extent to which this principle has been recognised in the setting up of administrations surrounding a court or tribunal has varied.

Although judges are not public servants, court staff within the administrative office that supports a court or tribunal most often are. In some jurisdictions, registrars and deputy registrars of courts and tribunals perform quasi-judicial functions (in addition to their administrative management duties) but are, nevertheless, public servants.

In the United Kingdom, the administration of its Supreme Court is classed as a non-ministerial department in its own right for government accounting purposes. It can draw up its own estimate and receive its funding directly from the treasury, as voted by parliament. Consideration of this complex issue is reflected in section 48 of the Constitutional Reform Act 2005, which created the Office of the Chief Executive of the Supreme Court of the United Kingdom. The chief executive 'must act in accordance with any directions given by the President of the Court' but, that said, the chief executive, officers and staff of the court are all public servants. Their standards of conduct and behaviour are governed by those applicable to public servants. The

chief executive, while required to act in accordance with directions from the President of the Court, may not act inconsistently with the standards of behaviour required of a public servant.

The chief executive is appointed by the Lord Chancellor after consulting the President of the Court. The President may appoint officers and staff of the court, but has the power to delegate this function and all other non-judicial functions to the chief executive. In the United Kingdom, the President has so delegated these functions.

The above approach can be compared to that of the Canadian experience where the Office of the Registrar of the Supreme Court of Canada, being the federal government institution established to support the court in conducting its work, is staffed by public servants. The institution's mandate is to provide the services and support required by the judges to process, hear and decide cases, as well as to ensure that the administration of Canada's final court of appeal is and continues to be effective and independent.

The registrar, as the head of the institution, is directly responsible for ensuring that the institution is compliant with all federal government-wide policies and programmes that relate to accountability, reporting, and financial, personnel and administrative management that apply to federal government institutions. In addition to that responsibility, the Supreme Court Act requires that the registrar carry out his or her duties subject to the direction of the chief justice, and also exercise certain quasi-judicial powers. The registrar is therefore regarded as the equivalent of the chief executive officer (CEO) of an organisation, personally interacting with members of the court, as well as various judicial and governmental officials, both in Canada and abroad. Balancing these responsibilities can be a challenge. For example, even if an initiative is undertaken by the institution on behalf of the judges, who themselves are not subject to government policies, these government policies must be applied by the institution when undertaking such initiatives. Therefore, care has been taken to ensure that any government-wide administrative requirements which are imposed on the institution are adhered to in such a way that they do not conflict with the institution's ability to carry out its mandate, and to ensure that the judges are able to carry out their role without any interference from the executive branch of government. In that regard, the institution of the Office of the Registrar does require a certain measure of administrative and institutional independence from the government. As a result, it applies government-wide policies in such a manner that meets their spirit and intent, but which respects the need of the judiciary to operate independently of the executive branch of government.

2.3.2 Court governance, including the roles of judges and registrars

It is crucial to have effective working relationships at all levels within the institution, particularly between the chief/senior judge and the registrar. Given their overarching judicial responsibilities and the inevitable focus which these responsibilities demand, few chief/senior judges are interested in – or able to be too much involved in – the actual minutiae of court or tribunal administration. Hence the importance of the registrar establishing an effective channel of communication with the chief/senior

judge and his/her colleagues when it comes to consulting on/reporting on key administrative issues which may overlap or impact on the judiciary. It is crucial that the judiciary should feel in overall control of the institution, but that they should trust and support their registrar/senior administrator to handle administrative and related matters effectively.

There are clearly defined ‘demarcation’ lines between the judicial role and the administrative role, but it is the ‘grey area’ which exists between those roles that has to be managed by both sides. This requires tact and a clear understanding by both parties of their respective roles, keeping in mind that the essential pivotal interface between the administration and the judges will be provided by the registrar.

It is also highly recommended to establish a senior management board and for the major players in the institution to meet, for example, every quarter to review the court or tribunal’s performance and various administrative/operational issues.

A good example of a governance mechanism involving both judges and the registrar is provided by the High Court of Australia,² where all of the justices and the chief executive/principal registrar (‘registrar’) meet formally each sitting month on the first Tuesday of the sittings. These are called Court Business Meetings.

The registrar generally sets the agenda, having regard to the wishes of the court (which may be carry-overs of previous meetings or strategies requiring discussion or a decision). The chief justice chairs these ‘closed-door’ meetings, which cover administrative and quasi-judicial issues (e.g. rules, special leave processes, judgment production or registry procedures) and which are recorded by the registrar. Following agreement on the minutes of each meeting, which the registrar sends in draft the following day or so after each meeting, the registrar sends extracts of the minutes to relevant managers to implement any decisions or inform them of relevant decisions which might need to be communicated to various staff.

The Court Business Meetings are also supported by a committee structure, with committees covering rules, finance (including property), library, IT, the Annual Report and public information. The committees each comprise one or more of the justices and the registrar, with other specialist staff attending as required. They are chaired by a justice and deal with particular strategies and make decisions as required – normally ‘in-principle’ decisions only, since formal spending or hiring decisions are usually made by the registrar or a manager, as authorised by the registrar. These committees meet as required (e.g. the Finance Committee will meet more frequently when the budget is being developed and then periodically to monitor the budget, while the Annual Report Committee might meet only once or twice per year) and the meetings are minuted (minutes are kept by the responsible manager – e.g. the IT manager in the case of the IT Committee). The committee minutes are incorporated in the papers for the next Court Business Meeting, so that the court can formally note or discuss appropriate issues, as necessary.

The registrar also meets informally with the chief justice at the start of each week, although in the Australian scenario the chief justice has no greater responsibilities in court administration than any other justice. The registrar also has numerous

discussions with the other justices, but any formal business is dealt with in meetings as described above.

As can be expected, the justices conference privately before and after sittings on cases and judgments. These are separate meetings and the Court Business Meetings never include case discussions or decision-making.

The Supreme Court of Canada has a similar governance system, where judicial and administrative roles are balanced by: (a) the registrar (and deputy registrar) having a weekly meeting with the chief justice; (b) the Executive Committee (the registrar, deputy registrar and three senior court officials) meeting with a committee of three judges on a monthly basis regarding corporate services and technology matters; and (c) the registrar or deputy registrar and chief librarian meeting with another committee of three judges with regard to library and information management services. Unlike the Australian situation, the judges of the Supreme Court of Canada have a monthly meeting (when the court is sitting) touching on all topics – whether administrative or judicial – in the absence of any court official, including the registrar. Minutes of these meetings are then provided to the registrar and senior court managers.

In summary, these examples confirm that there is a delicate balance between the respective roles of judges and registrars regarding to court governance. A driving principle that should, however, apply in all cases is that judges should not have administrative or signing authority under the applicable legislation governing finances and other administrative matters.

According to the size of the court or tribunal and the workload of the judges, there is also obvious scope for assistance to be provided to the judges from legally qualified staff, notwithstanding that there is a distinct boundary between the function of the judges and the functions of the court or tribunal staff.

2.3.3 Method of appointment of a registrar

Some hold the view that the appointment of a registrar should not be the prerogative of the institution's judiciary (chief/senior judge) because that arrangement has sometimes caused significant difficulties on the international criminal justice scene. The registrar may be placed in a difficult position if he or she is faced with having to deal with inappropriate conduct by a judge, with regard to, for example, financial or personal issues that need to be scrutinised or challenged.

In Canada, for example, the Supreme Court Act provides that 'subject to the direction of the Chief Justice', the registrar is responsible for supervising the employees of the court; that 'under the supervision of the Chief Justice', the registrar is to manage and control the library; and 'as the Chief Justice directs', is to report and publish the judgments of the court. However, the registrar is not appointed by the chief justice. The Supreme Court Act provides that the registrar (and the deputy registrar) are appointed by the Governor in Council (i.e. the prime minister and cabinet) and hold office during pleasure (i.e. they may be removed at the discretion of the Governor in Council). So, while the registrar is subject to the direction of the

chief justice for the overall operations and management of the court, the registrar is not appointed to the position by the chief justice.

2.3.4 Should there be a separate registrar and chief executive?³

It is important to consider the choice between having an integrated office, comprising a registrar who is also the chief executive acting under the direction of the chief/senior judge in all matters, or two separate offices, where the functions of the registrar and those of corporate services are under the direction of a chief executive officer.

On the whole, the integrated office will be more manageable, less apt to give rise to differences and best able to take account of the inevitable interplay and exchanges of views which require input from both the registrar and the chief executive.

Whether there should be a separate registrar and chief executive or an integrated office may also depend on the size and nature of the institution concerned. For example, the England and Wales Court Service has a number of senior administrators in the regions overseen by a chief executive, but this is a national institution with more than 10,000 staff. In smaller individual institutions, it may be recommended to avoid such an arrangement as that can prove to be divisive, operationally ineffective and expensive.

Best practice points to the need for accounting matters to be in the hands of a specified officer (i.e. an accounting officer) who could either be the registrar or another officer. The registrar must have overall responsibility and be accountable for the institution's finances/budget (indeed this provides another reason to protect the chief/senior judge from possible criticism by auditors should things go wrong). However, he/she can also be supported by an experienced chief finance/budget officer and colleagues.

It may be noted here that, given the range of responsibilities that are traditionally assigned to the registrar, it is almost impossible that he/she will have experience of and/or expertise in all these areas. What is needed is someone who understands the range of responsibilities and who is a good manager of those individuals who are the experts. In other words, a successful registrar frequently needs to be a 'Jack of all trades'.

2.3.5 Should the registrar be a lawyer?

It was widely accepted among the Ottawa meeting participants that the registrar should be a lawyer. However, where an administration is split between a registrar and chief executive, then the chief executive need not necessarily be a lawyer. Registry functions, such as the keeping and setting of a cause list, the receipt of documents and the categorisation and filing of applications, can only be properly performed if the officers or employees involved in these functions have some legal training. A high level of management, oversight and monitoring is axiomatic in the registry.

Despite the wide acceptance of the registrar being a lawyer, there are some who challenge this practice. Such a practice has long been discarded by, for example, the England and Wales Court Service, save for those parts of the recently combined

service that have responsibility for advising lay magistrates. While the inclination may be to involve lawyers in senior court administration posts, the registrar's position is that of a court administrator/chief executive, and running a court or tribunal consists in large part of management and administrative functions.

Most certainly there is no 'magic' involved in 'the keeping and setting of a cause list etc.'. While there is a need for those involved to be both trained and suited to the pressures/responsibilities of case management, it does not necessarily follow that lawyers are required. Indeed, many lawyers in such positions may find themselves unmotivated and disenchanted with the nature of their work, feeling perhaps rightly that their qualifications and training suit them better for other tasks.

This is not to say that the registrar should never be a lawyer, but – in light of the views of a number of experienced players on the national/international scene (many of whom are lawyers) – the majority of lawyers tend to not be trained for, interested in or particularly good at handling the multiplicity of often mundane tasks which are often the lot of a court administrator. Their talents lie in different areas. Having said this, a lawyer who is both skilled in and interested in administrative matters is a person to be cherished!

2.3.6 Recruitment of staff: should judges play a role?

The preferred approach and structure in regard to matters of recruitment is likely to depend upon the size of the organisation. It is likely that in smaller courts and tribunals, there will be scope for greater control over the recruiting and control of staff by the chief/senior judge, with a choice of delegation to a registrar or chief executive. The handling of relatively minor management issues can be complicated by a lack of overall control of staff. Governance will normally lie with a single officer, i.e. a registrar, and a committee structure is unlikely to be appropriate in smaller institutions.

In larger institutions, an effective method of overall governance is more likely to involve a committee structure and, with regard to recruitment and appointment of staff, to be carried out under delegated powers. There was little doubt at the Ottawa meeting of the view that the chief/senior judge should, if he or she chooses, have the ability to be involved in the recruitment and appointment of staff down to, say, the middle layers of authority. By such means, the aims and ethos of the chief/senior judge can be effectively reflected. As has been emphasised above, the relationship between the chief/senior judge and registrar is critical in achieving the highest level of administrative performance.

However, another school of thought recommends a high degree of caution in regard to involving judges in the recruitment process, other than in certain specific instances. One main reason for such an approach is that an institution must have very clearly defined public sector staffing rules and procedures, which meet all the tests of fairness, equality and competence. Such procedures can be the subject of auditing and nothing can damage an institution's credibility more than a recruitment process that is perceived to be flawed. Registrars have occasionally experienced significant difficulties

when some judges have wanted (for whatever reason) to recruit someone who did not meet the necessary requirements.

Another reason for not involving judges in the recruitment process is that this is not the most effective use of an expensive resource (i.e. a judge's time).

That said, it may still be advocated that in respect of certain positions which might directly support the judiciary (e.g. chambers' staff), that the chief/senior judge or one of his/her colleagues be involved and that their views on the person to be recruited take precedence (provided that the candidate meets the requirements of public sector or equivalent tests). Apart from anything else, such an approach can be useful if, in the event the person selected proves to be unsuitable, there can be a reduction or avoidance of recriminations.

A further point on the recruitment of staff in general: in selective appropriate cases, recruitment and retention of staff might be facilitated if some positions are released from a public sector position classification system or the requirements of direct application of government policy in regards to recruitment and retention. The advantages of any possible flexibility in this area should always be considered.

2.3.7 Training for officers and staff

It is strongly recommended that the best practice principle of continuous training be applied in a court or tribunal for staff at every level. Such a practice facilitates the highest possible degree of mobility and promotional opportunities within the institution, as well as ensuring that best practices are followed, where applicable. If training opportunities are not available, retention and recruitment might prove difficult because employees and potential employees might perceive a limit to their career advancement within the institution. Given that at least a minimal level of legal knowledge is appropriate for employees in a registry office, there should also be opportunities for some legal training. For example, Malta has proposed a diploma in legal procedure. The availability of paralegal training as an option should also be considered.

Box 2.1 Training in Malta

The Training Academy within [Malta's] Ministry for Justice and Home Affairs was initially set up as a Training Academy for Legal and ParaLegal Staff of the Law Courts. It was launched on 30 April 2002. The aims of the Academy are to provide refresher, orientation and induction courses to court staff and to assist the ministry in so far as concerns other training. Courses deal with the managerial, legal and practical aspects of the duties carried out by the court staff and cover nearly all the employees of the Courts of Justice Division. It has recently installed state-of-the-art digital equipment that permits connections via video conferencing.

(Testone, 2010)

Unfortunately, the cost of some training activities can be high and is often an area which can be overlooked or cut in times of economic hardship and budget cuts.

Other opportunities for education and continuous training can arise when information technology (IT) is implemented in an institution. IT also facilitates the process of instructing, as well as monitoring, of staff.

2.4 Other governance issues

2.4.1 Funding

It is obvious that funding must come from government. During the Ottawa meeting significant attention was therefore given to the manner and procedure for the provision of financial resources. The participants at the meeting felt a distinction should be drawn between (a) funding for the court, and (b) funding for a corporate service. The difficulty is that the underlying purpose for the expenditure on corporate services is to achieve the common objective of delivering 'fair and efficient' or 'effective and independent' justice. As a result, the drawing of a clear line between the two areas of activity may prove difficult in regard to the provision of financial resources.

In the United Kingdom, under the Constitutional Reform Act, the Lord Chancellor must ensure that the Supreme Court is provided with such accommodation and other resources as he/she thinks are appropriate for the court to carry out its business. The chief executive is placed under a parallel duty to ensure that the court's resources are used to provide an efficient and effective system to support the court in carrying on its business. Since the chief executive is required to act in accordance with directions from the President, so long as they are not inconsistent with what is required of him/her as a public servant, conflict will only arise when the precise ambit of his obligations as a public servant requires him/her to depart from the President's directions. It can be seen that the potentiality of such a conflict is similar to the situation that has been identified in Canada, where Treasury Board requirements may conflict with the court's needs and requirements. Further, since the Lord Chancellor's obligation is to provide financial resources as 'he/she thinks appropriate', the President's directions in this area have to be read as subject to a proper exercise of discretion by the Lord Chancellor.

If one draws on the procedure adopted in Canada (and the United Kingdom), judges' salaries, allowances and pensions are provided for by statute and fall outside budgetary control, although all funding must receive the approval of parliament. In Canada, court funding (other than salaries and benefits of judges) is obtained through an Appropriation Bill and submissions to the Treasury Board via the Expenditure Management System.

It was also recognised that the doctrines of judicial and institutional independence are not rigid but, nevertheless, the aim of achieving a transparent independence from governmental influence has become all the more pressing and desirable as an informed public has become more demanding. In the application of the doctrine, the perception of the public can achieve the potency of reality and thus it was recognised by all Ottawa meeting participants that there was a continuing challenge in this area which

had to be met. For example, concern was expressed by the lack of independence which could be perceived from email addresses which employed 'gov' as part of the address of a court or tribunal.

Despite the general consensus among participants at the Ottawa meeting, others may question why there needs to be a distinction drawn between funding for (a) the court (the judges), and (b) corporate services. Of course, there is a need for separation of powers and for judges' responsibilities and remuneration to be free from 'political' interference. However, funding for the judiciary – from whichever source it springs and through whichever mechanism it is handled – is relatively straightforward in terms of its essential elements, i.e. salaries/pensions/increases, travel and subsistence etc. It may be said, therefore, that the registrar has overall responsibility for the entire budget, including the ring-fenced judicial element, but with an effective line of communication to the judges in case there are, during the course of a budget cycle, issues on their side which need to be considered (e.g. travel costs).

2.4.2 Media relations, human resources, finance and protocol

During the Ottawa meeting, it seemed an open question as to whether the registrar should have a controlling hand in the areas of media relations, human resources, finance and protocol.

In Canada, for example, the Office of the Registrar of the Supreme Court of Canada has established a management structure which effectively administers the activities of both the Office and the court, including media relations, human resources, finance and protocol. In that context, the Corporate Services Sector is responsible for: strategic, business and resource planning and reporting; financial administration; procurement; accommodation; telephones, mail and printing services; human resources; security; health and safety; emergency management and preparedness; development, delivery and management of IT strategies, plans, policies, standards and procedures; as well as business continuity planning.

For its part, the Judicial Support and Protocol Sector is responsible for the delivery of all administrative support services to the Judges' Chambers, including protocol and judges' dining room services, the development and delivery of integrated judicial support programmes and services, as well as the judges' law clerk programme.

The Court Operations Sector, which is composed of the Law Branch, Reports Branch, Registry Branch, and Library and Information Management Branch, is responsible for the planning, direction and provision of legal advice and operational support to the Supreme Court judges respecting all aspects of the case management process, from the initial filing to the final judgment on an appeal. This includes processing and recording cases, scheduling of cases, legal and jurilinguistic services, legal research and library services, legal editing services and publication of the Supreme Court reports. Information management services, including case-related and corporate records information, are also provided by that sector.

Finally, the Communication Services Branch develops and implements communications strategies, plans and programmes to increase public awareness and understanding of the Supreme Court of Canada, as well as to enhance internal communications within

the court. For example, it provides guided tours of the court to visitors and manages an outreach programme aimed at schoolteachers and their students. However, it should be noted that the Communications Services Branch is *not* responsible for media relations concerning the judges' activities or cases before the court. An executive legal officer, being a lawyer or academic having significant experience in the legal community and whose responsibilities include case-related media relations, is directly attached to the Office of the Chief Justice for that purpose.

All of the above sectors, branches and staff ultimately report to the registrar, albeit by way of a senior management governance structure.

2.4.3 Security

Security is one of the most important issues in any institution dealing with legal and criminal matters of any nature, especially where an institution such as a court or tribunal houses a number of judges. In circumstances where detainees are also held on site, security matters take on even greater importance. Security is often also one of the most expensive areas of any court or tribunal's budget.

When planning location and accommodation needs for a court or tribunal, security considerations have to be taken into account and weighed against the all-important principle of ensuring access to justice for litigants and the public. In this regard, it is also the court or tribunal's responsibility to balance the level of risk versus the level of security to be applied, insofar as the safety of judges, staff, the public and VIPs needs to be maintained at all times. Consequently, an Emergency Procedures and Business Continuity Planning Programme is crucial and needs to be developed and implemented.

In addition, security measures must be tailored in such a way so as not to interfere with the court or tribunal's regular business and operational activities.

In the particular case of international criminal tribunals and other similar bodies which are called upon to hear witnesses, the security factors are obviously highly complex. The special requirements for protective measures for witnesses, defendants

Box 2.2 Security at the Supreme Court of the United Kingdom (UKSC)

Part of the purpose of the creation of the UKSC was to make the court more accessible to the ordinary person; and the new building does just that, since anyone can walk into the building off the street (Parliament Square [opposite the UK Houses of Parliament]) when it is open. All visitors are therefore then required to go through airport-style security before they can access any other part of the building. Access to the private side of the building requires the use of appropriate electronic security passes. There is also a fairly large number of security guards throughout the building for a building of its size, monitoring visitors' progress around it.

(Arnold, 2010)

and victims are covered in a separate section, below, as are security considerations in connection with the operation of IT systems.

2.4.4 Accommodation

Historically, court and tribunal buildings have been located in imposing, ceremonial buildings in order to reflect the formal structures of the past and to emphasise the role and independence of the judicial system. From a modern perspective, these historic buildings do not always lend themselves easily to evolutions in technology, to the processing of complex cases, to increased public participation, to open communication and to dissemination of information to the public, nor to the highest degree of transparency. In addition, the continuing attention to security measures, as a result of changing world dynamics, can potentially stifle a user-friendly and accessible environment.

In recent times, we are noticing that a progressive vision of the courts expresses present day culture and values, which include transparency of the legal process, accountability, a democratic system of governance, as well as providing a welcoming rather than intimidating environment, while upholding the law and demonstrating independence. This should be symbolically and practically reflected in court or tribunal buildings, while ensuring functionality is not compromised.

In many cases, it is also a fact that courts or tribunals are not the actual owners of the premises they occupy – they are tenants. As such, it can be challenging at times to effectively influence the building planning process and ensure that accommodations are designed to reflect the specific needs of a court or tribunal. Registrars and court administrators need to maintain ongoing relationships with the relevant government authorities to ensure their requirements are well met regarding both ongoing maintenance and necessary enhancements to the premises. In parallel, registrars and court administrators need to ensure that they have the capacity and the ability to articulate their accommodation needs based on a full understanding of operational workflows, pressures and trends.

Adequate court accommodation is crucial, but appropriate buildings are frequently not available and/or are extremely expensive. In fact, it is not unusual for courts or tribunals to be located in inappropriate buildings simply because there may be neither the inclination nor the money to build something that is suitable. The end result is that more expenditure is frequently required to renovate or adapt existing buildings to meet the basic requirements of a court or tribunal building, which is often challenging and frustrating. This underscores the importance of proper planning, including a functional review of a court or tribunal's accommodation needs, whether it be for a new construction or major renovations.

As a final consideration, and in order to provide user-friendly, open and transparent court accommodation, the public must be effectively seated and comprehensively informed of the proceedings. For example, the public and litigants should be able to view on a docket or the upcoming list of cases, along with a hearing schedule. Where feasible, that information can also be provided on television-style monitors.

Chapter 3

Information and Document Management

Information and document management can be extremely expensive and, as such, it is essential to undertake a robust review of any existing manual systems before embarking upon the purchase and installation of a technology-based system. The road to an effective IT-based system has often been littered with expensive wrecks: either the base manual system has been imperfect and not conducive to being mechanised and/or a court administrator has gone ahead with an inappropriate system after having been ‘promised the world’ by an IT company’s slick sales pitch.

It should be remembered that there is no shame in using a manual system if that is what an institution’s workload and budget permits. An effective manual system is better than an ineffective IT-based one.

3.1 Moving to an IT-based system

When moving to a technological support system, there are a number of options available. As with the decision to move to an IT-based system or continue to operate a manual system, the institution should start with an assessment of its needs and capabilities. Sufficient time must be allowed: in The Bahamas, for example, there was a five-year plan to introduce systems and technology into the Registry of the Court of Appeal (Demeritte-Francis, 2010).

The advantages of introducing technology, while usually involving a massive financial investment, are clear. Technology will help to reduce time spent by employees on routine, time-consuming tasks, such as telephone or document inquiries from lawyers and the public. More importantly, it will provide enhanced control over the caseload and enable communication with, and facilitate transparency for, the public.

However, with any technology system, there will always be a need for a ‘backup system’ and this will also have to be established. No system is infallible and, without a properly planned and carefully organised backup system, there will be a risk of chaos.

It is not within the scope of this *Handbook* to review in any detail the specific options which advisers and service providers could devise. With the speed of change in technological developments, there will no doubt be a range of different software programs, facilities and functions made available on a regular basis.

In general terms, one could point to three types of generic systems: (a) a ‘bare-bones’ case listing system; (b) a case listing system with a scanning, filing and scheduling facility; and (c) a case listing system which, in addition to scanning, filing and scheduling, has additional facilities, for example, an archival system. Inevitably, the range of options regarding to technological support will also depend upon the size, workload and resources of a court or tribunal, including its ability to properly support any IT-based system on an ongoing basis after installation. In this respect, it is always

critical to factor the ongoing operational costs of such systems in the budgeting process, over and above the actual purchase price.

As with most other topics covered in this manual, it is always recommended to learn from the experience of others, especially courts or institutions of similar size or mandate, before embarking on any major IT-based initiative.

For example, a Business Transformation Program for the Supreme Court of Canada has been established as a priority for fiscal years 2012–13 and beyond so as to better align: (a) case management improvement; (b) process changes relating to the operational management of cases; and (c) technology initiatives in the Office of the Registrar, more closely with the Office's long-term strategy and vision. Given the complexity and number of individual projects involved, the registrar decided that business transformation should be approached as a programme following the success of a recently completed Court Modernization Program. Under the umbrella of the Business Transformation Program, various business transformation projects will be identified, prioritised, resourced and tracked. Governance and proper project management are key to the success of such a programme and, accordingly, a Program Office will be established to track projects as they come in and out of the programme.

Similar methodology was used for the Court Modernization Program, under which the Supreme Court of Canada brought computers into the courtroom, among other courtroom improvements. A Program Management Office was established, with a steering committee and working groups established as required. In that case, there was also greater reliance on outside contractors to assist with the design and implementation of the new technology.

Box 3.1 Website introduction in The Bahamas

... [T]he introduction of the website launched in 2003 and [its implementation has had the following benefits]:

A reduction in the daily correspondence and telephone enquiries regarding court procedures.

The provision of an alternative medium to practitioners and the general public for the delivery of court information. For example, the daily cause list is posted to the website and court judgments are posted and are available on the day it is pronounced.

An increase in control and management by the Court of Appeal.

The provision of transparency for the public at large.

(Demeritte-Francis, 2010)

3.1.1 The need for staff training on IT

The implementation of technology will not be successful without proper training for staff and other users of the system. Potential employees should have a minimum level of technological expertise. At the very least, all staff should have basic keyboard skills.

Since the aim of the registry is the timely and efficient completion of the court or tribunal's caseload, the consensus appears to be that there will be a growing trend towards technological support and IT-based systems. The analysis which has so far been identified in the *Handbook* as comprising the make-up of an operating model of a court or tribunal is that it should be operated under clear rules, under the overall governance of a chief/senior judge, and with both judicial and administrative functions under the control of a registrar who is directly answerable and accountable to the chief/senior judge. There can be no doubt that one of the principal measures of the success of the institution will always be its case flow/output efficiency which, in turn, depends to a critical degree on the proper administration of its case management system.

Case management begins when documents, prepared in accordance with procedural rules, are filed in the registry. At the time of filing, fees have to be paid or become payable. Staff members need to be disciplined in the recording, retention and calculation of the required fees. This, in turn, requires that they have been given appropriate training and have a minimum knowledge of the character of the legal documents being submitted. However, case management for registry staff is a continuing responsibility throughout the life of the case. As cases develop, the documentation can become voluminous. The filing and the categorisation of the documents can become complex. This requires staff to have training and a minimum level of legal knowledge in order to understand the process of which the documents form a part. There should be built into the process a capability and a facility to identify and retrieve documents. Each case as it is commenced must be entered in a cause book or recording system. The registrar is directly accountable for the contents and disposal of all matters listed in the cause book or system.

The experience of those operating technology in these areas supports a firm conclusion that overall efficiency and accuracy will improve even where the technology is confined to the sole introduction of a listing system. That is a consequence of the importance to be attached to the list of causes lodged within the registry, along with a concurrent need to monitor and process them expeditiously.

Additionally, a listing system which includes the capacity for scanning to image the paper version of various documents, computerised filing, creating statistics and computerised scheduling will manifestly assist staff in the registry, but such a system will not remove the need for staff to have suitable IT training and to possess a minimum level of legal knowledge. In this regard, it has been found that, as a result of training for managing computerisation and from its practical application to the job and tasks at hand, staff have developed an enhanced level of knowledge of the legal process and requirements attendant to various types of legal documents and proceedings.

As with other training requirements, it should be remembered that there is considerable experience available in existing courts or tribunals regarding training programmes across the board. There may also be a possibility of ‘twinning’ with another similar institution and sharing both experience and perhaps resources. For example, various provincial jurisdictions in Canada are planning to offer training sessions to court staff in other Canadian jurisdictions, either in person, by video conference or by webinar (i.e. by web-based seminar). This is especially helpful for smaller provincial jurisdictions, which have less resources or capacity to offer training for their staff. The same principle could easily apply to national and international courts or tribunals that need specialised training for their staff in IT or technology matters, among others.

3.2 E-filing

E-filing is one of the most important considerations with respect to technology in courts and tribunals. Yet, it is an area that is still hampered by obstacles to implementation.

At its first stage, there are two forms of e-filing that may be considered: first, e-filing directly by attorneys and, second, the filing by attorneys of a CD-Rom and documents at the registry. At the time of writing, direct e-filing is a concept rather than a reality in most institutions. However, it has been considered or examined in some courts (Actie, 2010). The concept brings into play an important principle, namely access to justice. At present, it is not justified to make the assumption that all attorneys have the technological capability to commence their clients’ proceedings by e-filing.

In addition, in most jurisdictions there has been an increased volume of litigation being commenced and pursued by litigants in person using the conventional paper process. Until there is a proper constitutional safeguard for the accessibility of litigants to justice – with e-filing or without – e-filing faces considerable practical obstacles. In other words, the justice system will very likely continue to take steps aimed at advancing e-filing mechanisms in all courts or tribunals, but a way will have to be found to accommodate litigants or lawyers who are unable to use e-filing.

On the other hand, the filing of a CD-Rom containing a copy of the documents in a given case has proved successful (Demeritte-Francis, 2010). (An obvious, but nevertheless significant, aspect of the adoption of this system is to reduce the physical space taken up by copies of documents being lodged and kept in the registry).

However, it is crucial to bear in mind that there must be complete consistency between the documents on the CD-Rom and the documents that are filed in paper format. This is an important obligation and duty which must be imposed on attorneys or litigants. A failure to do so is not simply a bureaucratic error, because the filing of documents is governed by the rules, is connected with the obligations of disclosure of documents in proceedings, provides the backup which is required for the computerised system and, therefore, amounts to a substantive obligation in connection with the filing of documents.

Two fundamental aspects of e-filing must be noted. Any e-filing process will require an amendment of the procedural rules of the court or tribunal, because the process constitutes a significant change to the formal procedural steps normally covered by the rules of a court or tribunal. All work within the registry forms part of a formal process and must be underwritten by the rules. The second fundamental aspect is the need to maintain confidentiality of all documents generated by a legal process. Indeed, one of the principal difficulties envisaged with direct e-filing, a difficulty yet to be satisfactorily resolved, concerns the maintenance of security in connection with legal documents. Appellate courts have had to consider on many occasions the consequences of unwitting and unintended disclosure of documents outside the confines of the court process. The potential for widespread disclosure in a case of electronic disclosure by error or by deliberate act on the part of those controlling the documents requires close attention. For the same reason, namely the confidentiality of all documents lodged with a court or tribunal as part of its process, the selected system must ensure that the court or tribunal filing is immune to interference by entry into it and the abstraction of court orders and documents. Such protection has been provided in registries by an effective Internet Gateway Security Module.

The importance of maintaining security in connection with the stored information – and the additions to the stored information – cannot be over-emphasised. Thus, there must be a form of audit facility, designed in the software application, which can

Box 3.2 The benefits of e-filing in the East Caribbean Supreme Court

E-filing exploits the electronic super-highway to minimise not just the physical movement of people and paper documents, but also to contain the increasing requirement for physical storage space. The following are the main benefits of e-filing:

An integrated information system through which courts can proactively track each case through its lifespan,

Improvements in efficiency through minimising paper flow throughout the litigation process,

Shortened case processing times,

Faster document filing and retrieval,

Minimising loss of documents or files through filing mistakes,

Concurrent access to any case file by different persons, and

Access to case files from any location (e.g. outside the courts).

E-filing greatly benefits both the law firms and the judiciary and has greatly enhanced case flow management since its introduction.

(Actie, 2010)

guarantee the veracity of the information entered onto the system. Users will need to be nominated and qualified according to the task to be put on the system, and an audit trail will have to be created to ensure responsibility can be allocated for each entry. The audit trail must run to the stage of judgment and include monitoring the procedural steps leading to judgment. Where, for example, a number of individuals may be involved in the drafting of formal papers, including drafts of judgments, security is required to ensure that the status of the judgment which is to be published is maintained. Experience has shown that draft judgments can sometimes be published on the internet, with the obvious consequent difficulties that this can give rise to.

It should be noted that a considerable amount of work has been carried out across existing courts or tribunals on this topic. For example, the International Criminal Tribunal for the former Yugoslavia (ICTY) has been working for some time on an 'e-court' system. It is therefore recommended to assess various systems already in place in other courts or tribunals, to determine which may be compatible for each specific registry's needs and requirements.

3.3 The judiciary and technology

Mention has already been made of the need to ensure adequate training for the staff involved in setting up or operating any IT or computer-based system. Since judges are the backbone of any court or tribunal and carry responsibility for the delivery of justice, it will be difficult to obtain best value from an investment in technology unless judges are also trained to take advantage of the benefits of a computerised information system. Further, judges' time in court will be greatly assisted by the process of filing documents in electronic format. A CD-Rom, for example, will greatly facilitate research and reference by the judges and attorneys in the course of the proceedings.

Nonetheless, it is again important to look at the experience available on the international scene. It might also be borne in mind that not all members of the judiciary across courts or tribunals will necessarily be enthusiastic about (or capable of) operating technology, regardless of the advantages of its use. Staff will need to keep that in mind and make adjustments accordingly.

3.4 Technology and outreach to the public and the media

The demands of the media and the public have drastically increased, with more focus being given to court proceedings and legal issues. Fundamental rights concepts and societal change have generated an enhanced requirement for transparency and understanding in the delivery of justice. Judges are communicators, but largely only through their judgments. The public also needs to be reached through the administrative arm of the court or tribunal and the facilities that are available should be publicised.

In this regard, a website media portal with links to news releases, publication of decisions, and information and guidance on procedure and functions is certainly something that can be effectively organised through technology. Similarly, the public

management and publication of court proceedings can be advanced invaluablely by the use of technology. A simple example can be taken from The Bahamas, where the Court of Appeal no longer places a cause list on a bulletin board in the building as well as publishing the list on the internet. Such publication on the internet is, in accordance with the rules, sufficient notice of the proceedings and it is upon that which the lawyers and attorneys must act (keeping in mind that access to justice and access to court information to the public, litigants or lawyers without computer access also needs to be maintained).

During the Ottawa meeting it was commonly found that, where technology exists, there are great advantages in the promotion of public awareness. However, not surprisingly, there were comments that the public who attend court were not able to see documents meant only for the judges and attorneys during the course of the hearing. Here again, technology can be used to increase public awareness of a court or tribunal's work, as well as to generate greater participation and understanding in the course of a hearing. Special provision can always be made for those documents that should be seen only by judges and attorneys, but not by the public at large.

Where possible (and affordable), technology should be embraced to meet the growing expectations of court users in all respects. For example, the Supreme Court of Canada adopted in 2009 a policy governing access to case-related records. This policy document is the foundation for public access, through the internet, of docket information, party information, pleadings, case summaries and webcasts (online broadcasts) of hearings. The information provided to the public is extensive and serves to enhance the public's understanding of the role and work of the court.

There is also a crucial need for a well-designed and well-resourced outreach programme to further increase the understanding and knowledge of a court or tribunal by users or the public.

In Canada, for example, the Office of the Registrar of the Supreme Court is dedicated to ensuring that the public is well informed and understands the role of the court. Litigants, the public and the media can access various court services, including court documents, through the Registry Office or the court website. Access to information about the court, its role, its building, the judges, as well as the administration of the court, is also readily available on its website. Tours of the building are also available year-round and provide visitors with the opportunity to learn more about the Canadian judicial system, as well as the role and work of the Supreme Court of Canada itself. In particular, the court has a special educational programme aimed at elementary and secondary level students, in which they are able to visit the court and learn about the Canadian judicial system and the important role of the court. School teachers who are unable to visit the court with their classes are able to download an educational kit from the website, which can be used to help teach students about the important role of the Supreme Court of Canada as a national institution.

Where a court or tribunal will, by reason of the profile of its caseload, be under closer than usual media scrutiny (for example, an international tribunal created for a single purpose or goal), staff should be available who are properly trained in handling the

media so that they might clearly articulate an appropriate response in regard to the tribunal's activities.

The expectations of the wider public also need to be considered in the outreach information that is provided by such tribunals to interested/affected communities via press releases.

In summary, any steps that can be taken to provide information to the public about a court or tribunal's work and operations will be useful and will enhance the public's understanding of the institution.

Chapter 4

The Needs of Court and Tribunal Users

There are many similarities between the needs of court and tribunal users but some aspects of international tribunals and courts deserve particular attention. A court or tribunal created within a state will take its character and some of its strength for enforcement from the existing organs and measures within that state. For its part, an international court or tribunal which exercises a coercive jurisdiction has to take a more comprehensive view of the several elements that are necessary to achieve a fair trial.

The particular areas that call for attention and that were given consideration during the Ottawa meeting are listed in the introduction to this *Handbook*. An overarching consideration, which was backed unanimously by those present at the Ottawa meeting, was the need for states to recognise and to be responsible for financing particular matters, as follows: legal aid and defence support, as well as witness protection and support.

4.1 Legal aid and defence support

The areas of legal aid and defence support are crucial from an institutional and financial point of view.

First, let us consider legal aid. It is almost impossible to select the perfect method of reimbursement for defence advocates. Nonetheless, there have been many experiences in this area, both positive and negative. The clear message should be that this area has to be managed as effectively as possible from the outset.

During the Ottawa meeting, it was *not* suggested that legal aid be made available as a right, that is, without proof of 'indigence'. Yet this raises an issue as to how need can be ascertained. A 'case for indigence' can be (and is) readily asserted, but investigation of each claim is essential. In this regard, a meaningful inquiry will be greatly assisted by co-operation through international courts and agencies. In particular, the tracing of assets can only be carried out effectively with assistance from national courts on an international basis. That said, the power to freeze assets, for example (a power possessed by a court such as the International Criminal Court), not only increases the chance of eliminating financial abuse by defendants, but also has the effect of raising the status and the reach of the court.

When considering legal aid, there will be a choice between paying counsel/attorneys an hourly rate or a lump-sum amount for a case or part of a case. The opinion of meeting attendees was strongly weighted in favour of the latter. A lump-sum payment is more likely to keep the claim for costs down, because it necessitates initial calculation and assessment and, once set, is apt to encourage financial discipline. Determining the level of aid is likely to be problematic, but the ultimate test for the level of assistance is that it should be sufficient to enable attorneys to provide

Box 4.1 Defence support at the UN International Criminal Tribunal for the former Yugoslavia (ICTY)

In the early days of ICTY, support for defence counsel was rudimentary. The [ICTY] Statute did not foresee defence counsel as institutionally part of the Tribunal, and defence counsel were at times treated with mistrust. They were not allowed to freely access the ICTY building and had to be escorted to and from the courtrooms by security. Fortunately, these early misconceptions about the role and status of the defence have been remedied, and the position of defence counsel has improved significantly over recent years. ...

... Far from weakening the integrity of the proceedings before the ICTY, a zealous and professional defence only augments the Tribunal's credibility as an independent and impartial judicial organ.

(Hocking, 2010)

competent and meaningful assistance. This is a criterion which is as relevant to the staff of the registry when assessing the amount, as it is to the court in determining any question where a dispute arises as to the adequacy of that which is available.

The paramount factor in every case will be to achieve a balance between according a fair trial and meeting a threshold of reasonable provision, which in most cases is likely to be less than the full provision claimed.

Let us now consider defence support. There must be proper premises and accommodation for meetings between defendants and lawyers. Moreover, there should be access to IT and logistical support, on the basis of a level playing field, to assist in the adequate preparation of a defence case.

Some impediments that can significantly affect the quality of the defence capability are: the location and nature of a particular institution; travel issues; climactic considerations; and security issues. Some of these issues might be beyond the control of the institution.

Nonetheless, it is important for an institution to do everything possible to ensure that it attracts defence lawyers of the highest calibre available to operate within its courtrooms.

One new approach in the recruitment of defence lawyers has been undertaken in the Special Tribunal for Lebanon, where that institution's Defence Office advertised for expressions of interest from prospective defence lawyers and then held interviews with a view to creating a 'qualified/ competent' list.

Whatever the approach, it is important that the needs/entitlements of the defence are not overlooked when budgets are being prepared, as it is potentially an extremely expensive area of work. The creation of an effective 'Defence Office' within an

institution can frequently achieve a good working relationship with defence advocates and avoid the standoff so frequently experienced in some tribunals.

4.2 Witness and victim protection and support

There are consequences of agreeing to give evidence as a witness or to participate as a victim in international trials, such as trials for mass murder and genocide. It is important to consider not only the immense psychological and emotional strain on witnesses and victims, but also the need for protection to be provided. Frequently such protection may involve a redaction or change of identity, a change of place of residence, extreme limitations on freedom of association and changes to personal and family life.

In the case of child witnesses, there are other special considerations for their protection and support. It is undoubtedly the case that best practice requires the administration and the court to address the particular sensitivities, vulnerabilities and requirements of protection for children. In every case, the availability of a general support system for witnesses should be regarded as integral to the system. Private and secure accommodation, while waiting to give and in giving evidence, will be necessary. The presence of an experienced counsellor, who can provide advice on how to give evidence or what evidence to give, can also be made available to calm and ease the exigencies of a demanding process.

A related issue is that victims will not always be witnesses, but the question arises as to whether they should be afforded some protection simply as victims. In genocide and war crime trials, a large section of the population – hundreds or thousands – may be involved and may be deeply concerned about the progress and outcome of the proceedings. Schemes for the legal assistance of victims need to be addressed. Where the numbers are large, common representation of groups can then be made available. The extent and nature of their participation will always give rise to jurisprudential issues, but experience has shown that the participation of victims can serve a distinct and useful fact-finding role, guide the component of reparation that will arise from proceedings and support the outreach campaign, which is critical to the wider

Box 4.2 The child in court: physical layout

The architecture and the interior design of the Family Court [should be] tailored to ensure that the child who uses the Court is at ease. Certain jurisdictions, such as Trinidad and Tobago, have ensured that there are spaces specifically designated for the child in various age groups. Designated spaces for the child include youth rooms, nurseries and children's interviewing rooms. ... Further, of significance in supporting the child through the infrastructure of the Family Court is the use of technology to allow remote viewing of the child's statements on secure electronic transmission by the use of video, video-conferencing facilities, satellite or closed-circuit television (CCTV).

(Robertson, 2010)

advantages to which the proceedings can give rise. One of the most notable, which has enhanced public awareness, is the role of the public meeting in connection with trials.

Recognition of these consequences and provision for them can often be a pre-requisite to the participation of witnesses or victims at such trials.

These protective measures can be more readily set up and furthered by the court, and the legislation or regulation governing the court should provide a framework for this jurisdiction to be exercised.⁴

A clear best practice recommendation that emerged was that a special unit dedicated to witness and victim protection and support should be established, whose staff members have multi-disciplinary skills.⁵ This is because judges, without assistance, are not always best qualified to determine the range or character of the measures which may be best suited to a particular witness or victim in a particular case. Indeed, the International Criminal Court (ICC) presents a good model in many respects (although its experience is in some respects untested by a large number of trials). Such a unit is critical to providing adequate care before, during and after the trial. Most pertinently, it can use its expertise to make recommendations to the judges as to the level and nature of protection. The nature of the protection and its purpose has been well described by Trial Chamber 1 of the ICC:

‘... Protective and special measures for victims are often the legal means by which the court can secure the participation of victims in the proceedings, because they are a necessary stage in order to safeguard their safety, physical and psychological well-being, dignity and private life ...’

Also worth exploring is the experience in Sierra Leone. The Special Court for Sierra Leone was the first court to operate in a country where the actual conflict took place.⁶ In this case, it was especially important for the Victim and Witness Protection Unit to work effectively.

During the Ottawa meeting, a number of other specific measures warranted particular attention: the need to educate witnesses in the consequences of their exposure and the need to provide reassurance in preparation for the trial. In some instances, 24-hour contact is likely to be necessary. In this regard, appropriate measures which can be addressed by the court include: redacting material to protect witnesses and victims, providing screening at the hearing and granting confidentiality where appropriate. Outside the court, the needs for escort by way of protection, general security protection and, as has already been indicated, the relocation of witnesses may need to be considered.

4.3 Areas of state responsibility

International trials engender a wide range of public expectations which are essential to manage. Part of managing the expectations that flow from the establishment of an international court or tribunal and its proceedings include state co-operation, playing a critical role through headquarters’ agreements and new agreements.

One of the state's responsibilities is to provide for the protection of judges and lawyers, and the ongoing care, both psychological and physical, of witnesses and victims. At the meetings, delegates identified two specific examples of protection and support that are the responsibility of a state at the international level: the need for visas to be provided to enable witnesses to travel to a court, and the grant of immunity from prosecution at a meaningful international level.

Some other areas of state responsibility include: the establishment of a proper system of legal aid governed by consistent criteria; the encouragement of pro bono participation; the establishment of trust funds to be administered by the court or tribunal (there was strong support at the meetings for this); and methods whereby assets can be identified and hidden assets can be revealed and the enforcement of this through state co-operation.

Chapter 5

Eradicating Inefficiencies and Abuses of Process

Without question, it was this part of the Ottawa meeting and its working sessions – concerning the eradication of inefficiencies and abuses of process – which gave rise to the most concern. The value of these deliberations is that the failings have been clearly identified. The measures for reform do not lie with the individuals within a court or tribunal or any particular system within a registry, but rather with the member states of the various regional organisations. Considerable resources are being spent in connection with the resolution of disputes in this area. However, unless these concerns are addressed, the results may at best create a limited benefit for participants and no clear advantage to the community at large.

5.1 Reasons for inefficiencies

For a number of reasons, some regional courts and tribunals have not managed to achieve a sustained record of success in the clearing of case backlogs, the enforcement of judgments and forum shopping.

A number of reasons were identified for this state of affairs:

- The ad hoc nature of some regional courts has led to their proceedings being organised at the convenience of judges. There are obvious difficulties in getting together a number of judges from different states for a hearing. The solution put forward at the meetings, and firmly supported, was that there be at least a number of judges who are permanently based at the seat of the court or tribunal in question. Having said this, it is important that there be enough work for the judges to do at the court or tribunal. In addition, a permanent base is likely to be expensive in terms of accommodation and security.
- Manual case management systems, which are still commonly used, can contribute to delay. Best practice points strongly to a need for some level of technological support along the lines already discussed in chapter 3.
- The need to tighten up the rules of practice in order to:
 - Impose time limits for litigants at every stage,
 - Avoid adjournments,
 - Have continuous hearings so as to eliminate the very long delays which can occur,
 - Make costs an effective sanction,
 - Encourage judges to produce more timely judgments,⁷
 - Provide facilities for linguistic assistance in multi-lingual proceedings, and
 - Give greater attention to the financial assistance and the recruitment of qualified staff to operate regional courts and tribunals.

5.2 Issues with the appointment of judges

In most cases, judges of regional and international courts and tribunals are appointed and nominated by individual states. Appointments are frequently made by state departments, such as a ministry of justice. These appointments are made without a system of inquiry, such as a Judicial Services Commission inquiry, which looks into the nature of the appointment and the independence and impartiality of those appointed.

Urgent attention needs to be paid to the concept of judicial independence in this regard. A commission that is independently appointed and that has a function in connection with judges can also be used as an authoritative body for making judges accountable.

5.3 Parallel jurisdictions and forum shopping

Experience has shown that the main culprits of forum shopping are often the member states. Experience has also shown that, notwithstanding a ruling from a regional court or tribunal, without the will of the states to agree to effective enforcement, judgments are 'written on water'.

The record shows that institutions established under regional economic community treaties, having jurisdiction conferred upon them to resolve differences between members and individuals who wish to bring an action against a member state, have not taken full account of the possibility of abuse from forum shopping and the difficulties that arise from the existence of parallel jurisdictions. It has been demonstrated that there is urgent need for this to be addressed by states.

The Caribbean Community (CARICOM) Treaty contains a pointer in the direction to which states should go by having a requirement for all treaties between states in connection with commercial or general association or co-operation to be logged with the CARICOM General Secretariat. There the treaty will be considered in order to determine whether it is inimical to the obligations of any member state of CARICOM. However, more specific action is required to deal with the problems faced by other courts and tribunals, particularly those of regional economic communities.

Box 5.1 Parallel jurisdictions within the East African Community (EAC)

Much as the East African Court of Justice (EACJ) is the main judicial organ of the Community that has been tasked with the resolution of disputes arising out of the Treaty [for the establishment of the EAC] and other Community laws, the EAC continues to establish other quasi-judicial bodies or mechanisms with the same mandate as the EACJ. The Customs Union and Common Market Protocols [provide examples] where such parallel mechanisms have been established with potentialities for making the EACJ redundant.

(Ruhangisa, 2010)

Chapter 6

The Way Forward

To borrow a well-worn phrase, this *Handbook* should be seen as a work in progress and as a springboard to future publications which could provide more detailed guidance on the wide variety of topics which come into play in ‘a day in the life of a registrar’.

It is also suggested that there be regular working sessions and meetings of registrars at which the approaches outlined in this *Handbook* can be further developed, new problems can be explored, and a process of continuous review and reform can be implemented. Chief executives and/or court administrators should be included where appropriate, according to the particular circumstances and set-up of a court or tribunal.

These working sessions and meetings could also serve as forums to consult with and learn from one another. The meetings could occur at the invitation of a court or tribunal or of an international organisation such as the Commonwealth Secretariat. Another distinct possibility would be to organise such meetings in the context of regular international conferences, such as that organised by the International Association of Court Administrators (IACA).

Notes

- 1 In this Handbook, where the particular circumstances and set-up of a court or tribunal so require, reference to the 'registrar' shall be construed to include reference to the chief executive/court administrator.
- 2 With special thanks to Andrew Phelan, Chief Executive and Principal Registrar of the High Court of Australia, for having graciously provided this example and information.
- 3 It is important to underscore that the model proposed here, as elsewhere in this Handbook, is subject to the particular circumstances and set-up of each court or tribunal. It is hereby acknowledged that the circumstances of particular courts and tribunals may require a different model to ensure overall efficacy.
- 4 See, for example, the Rome Statute of the International Criminal Court (ICC).
- 5 The ICC unit – the Victims and Witnesses Unit (VWU) – is a good example. See: <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Protection/Victims+and+Witness+Unit.htm> [last accessed February 2012].
- 6 For further information see: <http://www.sc-sl.org/> [last accessed February 2012].
- 7 In some instances, many months of delay take place.

References

- Actie, Agnes (2010) 'The role of technology and e-filing: the ECSC experience'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Arnold, William (2010) 'The Supreme Court of the United Kingdom: "something old" and "something new"'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Canada: Supreme Court Act (1985) RSC c. S-26. See: <http://laws-lois.justice.gc.ca/eng/acts/S-26/index.html> [last accessed February 2012].
- Demeritte-Francis, Indira Nicole (2010) 'The role of technology within the Court of Appeal of the Commonwealth of the Bahamas'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Hocking, John (2010) 'Legal aid and defence support at the UN International Criminal Tribunal for the former Yugoslavia'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Robertson, Marissa (2010) 'Support for the child in proceedings before a Family Court – A practical approach: reflections from Trinidad and Tobago'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Ruhangisa, John (2010) 'Parallel jurisdictions of courts: the view from the EACJ'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Supreme Court of Canada and of the Office of the Registrar of the Supreme Court of Canada, Strategic Direction. See: <http://www.scc-csc.gc.ca/court-cour/mission/index-eng.asp> [last accessed February 2012].
- Testone, Aldo (2010) 'The Courts of Malta'. *Commonwealth Law Bulletin*, Volume 36, No. 3 (September 2010).
- Thompson-Barrow, Cheryl (2008) *Bringing Justice Home: The Road to Final Appellate and Regional Court Establishment*. London: Commonwealth Secretariat.
- United Kingdom Constitutional Reform Act 2005. See: <http://www.legislation.gov.uk/ukpga/2005/4/contents> [last accessed February 2012].
- United Nations General Assembly (1998) Rome Statute of the International Criminal Court (last amended January 2002), 17 July 1998, A/CONF. 183/9. See: <http://www.unhcr.org/refworld/docid/3ae6b3a84.html> [last accessed February 2012].
- Vincent, Robin (2007) *An Administrative Practices Manual for Internationally Assisted Criminal Justice Institutions*. New York: International Center for Transitional Justice.

This user-friendly, practical handbook is designed to assist registrars in the day-to-day performance of their duties, thereby contributing to improving the administration and efficiency of final/appellate, regional and international courts and tribunals.

The handbook is divided into four sections: institutional matters; information and document management; the needs of court and tribunal users; and eradicating inefficiencies and abuses of process. It provides examples of good practice to help registrars benefit from the challenges faced by other courts and tribunals, throughout the Commonwealth and worldwide.



Commonwealth Secretariat

ISBN 978-1-84929-057-9



9 781849 290579