

## **PART 5**

### **RECOMMENDATIONS**

"Our time calls for clear thinking to diagnose the ills of our globe, to ascertain the foot cause of society's growing problems and to formulate what must be done - a set of guiding principles and a programme of action."<sup>1</sup>

#### **A. STATUS**

As stated in Part 1, the status of the office of Chief Parliamentary Counsel must be recognised and restored to the equal status of a Court of Appeal judge. The other positions in the Drafting Section must be upgraded and should also be on corresponding equal status as those in the Advice and Litigation Section.

#### **B. TRAINING**

There is a demand for simplicity, clarity and intelligibility of legislation which the citizens can understand. Training of Parliamentary Counsel in the specialised field of legislative drafting is essential and should be regarded as a priority. Indeed "Hope for

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<sup>1</sup>Jagan, *The Fight Against Poverty. New Global Human Order*, p. i.

the recognition and solution of drafting problems rests in future generations of law students."<sup>2</sup> Training can be achieved in two ways: on the job training and academic training.

On the job training can be achieved where a Parliamentary Counsel who is academically trained in legislative drafting works in collaboration with a Parliamentary Counsel who is not so trained, offering guidance on the principles of legislative drafting.

The principles of legislative drafting must be learned<sup>3</sup> and not "self-acquired by reference to the law underlying the clause being drafted."<sup>4</sup> Academic training is the best method of learning the principles of legislative drafting. An academic training programme is available at the University of the West Indies, Barbados and this Programme simulates on the job training. This Programme is itself evidence of an increased awareness of the importance of legislative drafting. There is a six months Programme leading to the Advanced Diploma in Legislative Drafting and a

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<sup>2</sup> Dick, *op. cit.*, fn. 93, p. 4.

<sup>3</sup> See Patchett, **Report on the Caribbean, Memoranda of the Scheme for the Training of Legislative Draftsmen**. London : Commonwealth Secretariat, 1974, p. 78.

<sup>4</sup> Dhurjon, *supra*, p. 12.

fourteen months Programme leading to the LL.M. degree.

The objective of the Legislative Drafting Programme is to instruct in the technique of writing legislation and emphasis is placed on the composition of legislation. In addition to legislative drafting which includes the attendance at lectures and tutorials, examinations and the submission of one hundred and odd assignments, the fourteen months Programme also consists of examinations in Administrative Law and Constitutional Law, a Seminar Presentation and a **Research Paper**. It is submitted that this Programme benefits Attorneys-at-law in government service, in private practice or for judicial office.

Academic achievement<sup>5</sup> is also absolutely essential for individuals who fill senior positions so as to prevent "the green eyed monster" situation between those holding high office and those who wish to advance their knowledge and skill, and also the awkward situation of an individual with no proper academic training, instructing an individual with academic training, on outdated techniques of legislative drafting.

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<sup>5</sup> See pp. 8-9, *supra*.

Training of local attorneys-at-law is preferred rather than employing foreigners or consultants to do legislative drafting or law revision.<sup>6</sup> Foreigners who are generally recruited on a short term basis need time to acquaint themselves with the local laws and conditions. In addition, these foreigners are usually remunerated adequately and this huge difference in remuneration can perpetuate frustration and animosity among local Parliamentary Counsel.

It is hoped that the Parliamentary Counsel who have not been exposed to academic training in legislative drafting will benefit from on the job training from the two-years recruitment of the foreigners in the Drafting Section and that their expertise will be fully utilised and lead to improvements.

### **C. ADEQUATE REMUNERATION**

Properly qualified persons must be retained in government service. One way to do this is to pay adequate salaries<sup>7</sup>and to provide appropriate benefits.

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<sup>6</sup> It is deplorable that the Attorney-General would use the recruitment foreigners and shortage of staff as reasons for denying training opportunities to individuals who wish to advance their knowledge and enhance their skills.

<sup>7</sup> See a comparison of salary scales for Guyana, Barbados and the

Extra financial rewards as well as **promotion of job opportunities** should be offered and given to those who have undertaken extra training and have acquired specialist qualifications. Otherwise, Parliamentary Counsel will pursue other opportunities for appointment to other posts.

#### **D. INTERPRETATION ACT**

The *Interpretation and General Clauses Act* is a "dictionary" for all other Acts of Parliament except the Constitution. An Interpretation Act does not apply to another Act of Parliament where there is a contrary intention in that other Act. It provides a standard set of definitions, a set of rules which regulates certain aspects of the operation of other Acts as well as substantive rules of law. The purpose of an Interpretation Act is "to simplify the law by avoiding repetition and promoting consistency in the use of language"<sup>8</sup> and to secure uniformity in the drafting of legislation.

This Act is an important tool for Parliamentary Counsel who must be thoroughly familiar with it. In

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Bahamas. Appendix A.

<sup>8</sup> Crabbe, **Understanding Statutes**. London : Cavendish Publishing Co., 1994, p. 68.

drafting legislation, Parliamentary Counsel must take account of the provisions in the *Interpretation and General Clauses Act* such as "Powers and Functions, Appointments, Boards, Committees and Corporations" and definitions<sup>9</sup> and generally should not repeat these provisions where there is no contrary intention. It is unnecessary and time wasting although there may be cases where repetition is justifiable so as to communicate the law effectively. However, the *Interpretation and General Clauses Act* needs general law reform.

#### **E. MANUAL**

There is no consistency or standardisation in the drafting of legislation. The format used for the long title, enabling powers, offences and penalties and other provisions vary from Act to Act. So as to ensure uniformity in legislative drafting, a manual should be created for use by Parliamentary Counsel.

#### **F. OTHER PREREQUISITES FOR LEGISLATIVE DRAFTING**

To ensure maximum efficiency and planning of the work of Parliamentary Counsel, the Government should prepare at the beginning of the year a **legislative**

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<sup>9</sup> See p. 65, *supra*.

**programme** which outlines the legislation required for the year and the order of priority.

Clear policies should also be formulated and **proper drafting instructions** as described in Part 2 should be sent to Parliamentary Counsel.

Parliamentary Counsel must be **computer literate** and this knowledge must be acquired especially in light of the fact that all the Laws of Guyana are being computerised. The knowledge will require access to computers. In this regard, while arrangements must be made for the long term use of computers, those available must be properly utilised. In addition, access to the **internet** is also essential.

Parliamentary Counsel should also have easy access to **photocopying** facilities which are important in their work.

Of course **support staff** play an important role and must be properly supervised so as to get maximum performance and efficiency.

The library which is conveniently located in the Attorney General's Chambers must be fully utilised by

Parliamentary Counsel in their work. The senior Parliamentary Counsel must take steps to ensure that recent **text books, journals,** and other material on legislative drafting are acquired.<sup>10</sup> These must be readily available to Parliamentary Counsel for their use.

The accommodation of Parliamentary Counsel in individual offices which are fairly comfortable is to be welcomed and should be continued.

Other unnecessary irritations which can detract from the work of Parliamentary Counsel should not be condoned and should be addressed.<sup>11</sup>

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<sup>10</sup> In recent years financial constraints have not been a major difficulty in acquiring books. Several law reports and other texts have been purchased.

<sup>11</sup> For example, the selection for attendance at conferences and short term training courses should be done in a fair manner.