Capacity-building through mentoring and coaching

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Background

The demand for legislative drafters continues to increase in member states of the Caribbean Community (CARICOM). This is due to the CARICOM Single Market and Economy (CSME), international agreements, trade and economic partnership agreements (EPAs), donor requirements, and sector reforms (e.g., finance, education, health, public sector). The CARICOM Secretariat requested technical assistance from the Commonwealth Secretariat to enhance the professional skills available in the CARICOM Legislative Drafting Facility. In early 2008, the Commonwealth Secretariat, through the Commonwealth Fund for Technical Cooperation (CFTC), placed three legal experts at the CARICOM Secretariat in Georgetown, Guyana.

With feedback from the Attorneys-General in the Region, course participants and discussions between the advisers from the Governance and Institutional Development Division (GIDD) and the Legal and Constitutional Affairs Division (LCAD) at the Commonwealth Secretariat and the General Counsel at CARICOM, it was decided that a mentoring programme be designed as a follow-up to the Commonwealth Caribbean Legislative Drafting Programme conducted at the University of Guyana in 2007 and 2008. This new programme would mentor and coach drafters in specific and relevant areas of legislative drafting.

This was agreed upon and a mentoring programme was designed and developed as Step 2 of the Legislative Drafting Programme, facilitated by the CARICOM Secretariat. The programme mentors were the CFTC legal experts placed with the CARICOM Secretariat, while the mentees were graduates of the Commonwealth Caribbean Legislative Drafting Programme (Step 1).

Mentoring and Coaching Programme for legislative drafters

There are several definitions of mentoring but the one used here defines mentoring as a programme designed for junior attorneys in the Commonwealth Caribbean states with a specific foundation training in legislative drafting who will be guided by senior experts in the fields of Legislative Drafting, Treaties and Enabling Legislation, and Law Revision and Law Reform in order to develop their expertise. Mentoring and coaching programmes have been around for decades and include apprenticeship programmes, which are a form of mentoring. However, mentoring and coaching is now regularly used in a formalised manner in the corporate world by international organisations and in many other professional fields. Mentorship is also not a new phenomenon in the legal profession.

Selection of candidates

The attorneys selected by the Commonwealth Secretariat for the Mentoring and Coaching Programme were graduates of the Commonwealth Caribbean Legislative Drafting Programme held in 2007 and 2008 – a prerequisite for the programme. Selection was on a ‘first come first served’ basis, since placement was limited to three people. The following candidates were selected using the above criteria from an application pool of five candidates. The chosen candidates were sent letters of invitation to this effect and were given a week to accept the offer by the Commonwealth Secretariat. Those selected were:

1. Ms Dara Modeste – St Lucia
2. Ms Amanza Walton-Desir – Guyana
3. Ms Melanie Ffrench – Jamaica

The programme was designed using the facilitated mentorship approach, which is organic in nature.

Selection of mentors

The mentors selected for this programme were the three legal experts placed with the CARICOM Secretariat by the CFTC. They were as follows:

1. Dr Sanjay Singh – Legislative Drafter
2. Mr Dayantha Mendis – Treaties and Enabling Legislation

After several months of consultations, the three-month Mentoring and Coaching Programme was designed and developed to accommodate three mentees at a time to work with the three CFTC experts at the CARICOM Secretariat. This meant that mentees had to reside in Guyana for these three months. The programme was designed to incorporate two entry points each year, and mentees would be rotated on a monthly basis among the three mentors.

Evaluation of the programme

A monthly self-assessment questionnaire was administered to mentees at the end of each month, followed by a final report at the end of the three-month programme. Mentors had to submit a report on the mentees at the end of three-month period, and the CARICOM Secretariat was required to submit a report on the entire programme.

Preliminary discussions

Discussions were held by the General Counsel and senior legal officers with each mentee, and were based on their submitted biographies, which included their educational and professional
history and their career objectives. The purpose of the preliminary discussions was to have a one-on-one with mentees about their expectations of the programme to ensure that there was a genuine desire to participate, and also to gauge whether each mentee had the characteristics necessary to be successful in the programme, such as the ability to perform in more than one skilled area, and a willingness to accept challenging assignments and responsibilities. This exercise resulted in the development of assignment schedules for mentees on a rotational basis and for developing a timetable of assignments with cut-off dates. During this exercise, mentees were also assigned to mentors on a rotational basis.

Orientation Programme

A two-day Orientation Programme was designed with the objective of elaborating on the nature and context of the Mentoring and Coaching Programme and to create awareness and understanding of the institutional arrangements within the CARICOM Secretariat and the central role of the Office of the General Counsel (OGC). Presentations were made by the General Counsel, the CFTC experts and senior legal officers in Chambers. These presentations were undertaken to familiarise mentees with aspects of legislative drafting, the Revised Treaty of Chaguaramas, and the CSME in particular. These presentations were informative and interactive.

The presentations and discussions were on the following topics:

- Legislative Process and Basic Drafting Techniques; Interpretation of Statutes and Treaties; Nature of Legislation and Drafting Treaties
- Legislative Drafting: A Municipal Perspective
- International Law and Enabling Treaties at National Level
- Drafting Legislation Relating to Treaties
- The History and Structure of CARICOM
- The Revised Treaty of Chaguaramas
- The CARICOM Single Market and Economy (CSME)
- Dispute Settlement
- Security as the Fourth Pillar – Amendment to the Treaty of Chaguaramas
- Basic Principles of Law Revision

In addition to the above presentations, the General Counsel outlined the areas of the OGC’s work plan in which the mentees were expected to provide input. These areas were as follows:

- Amendments to the CARICOM Arrest Warrant Treaty and enabling legislation
- Amendments to the Maritime and Airspace Security Corporation Agreement and enabling legislation
- Amendments to the Financial Service Agreement and enabling legislation
- Amendments to the CARICOM Investment Code and enabling legislation
- Amendments to the Agreement on Jurisdiction and the enforcement of judgements in civil and commercial matters and enabling legislation
- Amendments to the Draft CARIPASS IGA and enabling legislation
- Any treaties or Memorandum of Understanding (MoU) that may be required during the period of the Mentoring and Coaching Programme, such as an MoU between the Implementation Agency for Crime and Security (IMPACS) and the Caribbean Customs Law Enforcement Council (CCLCEC); an MoU on criminal deportation; and an MoU on energy. Refining any current legislative work in progress, such as model legislation relating to consumer protection, data protection, electronic transactions, computer crimes and harmonisation of customs tariffs
- Preparation of consolidated versions of treaties, incorporating amendments
- Drafting of treaties and amendments/protocols to treaties
- Support to the law revision exercises for Belize, Grenada and other CARICOM countries.

Design of work programmes

1. Legislative Drafting
   Mentor – Dr Sanjay Singh

The objective was to build capacity in drafting bills in order to assist their respective legislatures to function in accordance with their constitution. Mentees were acquainted with the legislative activities currently occurring in other countries. This allowed them to benefit from understanding policies and to keep abreast of the latest requirements of administration in good governance, thereby strengthening their overall experience. While having the practical experience of working on draft bills, issues relating to drafting were also discussed and explained. Mentees were asked to consider the range of issues brought before them and to seek ways of relating them to the needs of structures of intended legislation.

The work plan schedule and activities included:

- Preliminary meetings and discussions with mentors and mentees.
- On-going meetings on the principles, techniques and procedures of legislative drafting, in particular:
  i. knowledge of the institutional setting
  ii. keeping abreast with the legislative principles and the latest policy issues determined by administrators
  iii. learning how drafting experts are keeping pace with the burgeoning demands and changes that typically affect governments (e.g., court pronouncements)
  iv. ensuring good drafting practices
  v. comments from CARICOM member states on instruments to inform drafting
  vi. procedures outlined in steps approved by the Legal Affairs Committee (LAC) for drafting through the readiness for signature/circulation
  vii. differences between regional/international and national/municipal processes
  viii. assignments of drafting exercises under supervision, and
  ix. review and discussion of work.
2. Treaties and Enabling Legislation
Mentor – Mr Dayantha Mendis

The objective here was to impart to mentees a special expertise in dealing with legislation with respect to treaties. This was critical and still is, as there is an exponential growth in treaties and their implementation into domestic laws, as it relates to trade and investment, environment, human rights, transnational organised crime, drug trafficking, migration, humanitarian law and climate change.

In keeping with the mandate of CARICOM’s Legal Affairs Committee (the body of the Community comprising Ministers of Legal Affairs and/or Attorneys-General), every treaty prepared by the Secretariat must be accompanied by the required model enabling legislation to facilitate implementation by CARICOM members. Therefore, CARICOM Legal Services was able to provide a niche product to the mentees by focusing on imparting knowledge and skills in the preparation of treaties and amendments, as well as the corresponding legislative actions to incorporate them into domestic law.

The work plan schedule and activities included:
- Preliminary meetings and discussions on the law relating to treaties, implementing treaties at the national level, and the principles, techniques and procedures of legislative drafting, in particular those relating to enabling legislation
- Assignments of drafting exercises under supervision
- Review and discussion of work.

3. Law Revision and Law Reform
Mentor – Justice Abdullahi Zuru

Law revision is a literary exercise that involves removal of dead wood, pruning off of superfluities, and the rejection of inconsistent and outdated enactments in legislation. The exercise brings a piece of legislation up to date without changing its intent. It presents the current status of the laws in force in a country at any given time. It is, therefore, an indispensable legislative process and exercise in any given democratic jurisdiction.

Most CARICOM member states have not revised their laws in the past ten to fifteen years or more. Currently, CARICOM’s OGC has embarked on a full revision of the laws of Belize and Grenada. Dominica, St Lucia and St Kitts have indicated their interest in engaging the CARICOM Secretariat to revise their laws in the same manner as Belize and Grenada.

The work plan and schedule of activities included:
- Preliminary meetings and discussions on the principles, techniques and procedures of law revision
- Collation of all old and new substantive legislation (Principal and Subsidiary), and their amendments that were made from the year the laws were last revised
- Consolidating the amendments into their respective substantive Principal and Subsidiary legislation
- Incorporating the new substantive (Principal and Subsidiary) legislation into the list of existing legislations, which entails revising the existing General Index of both Principal and Subsidiary legislation
- Revising the consolidated substantive Principal and Subsidiary legislation within the scope of the Law Revision Act, St Vincent and the Grenadines
- Consultations with stakeholders
- Typesetting and proofreading the consolidated and revised legislation
- Tabling the typeset and proofread legislation for verification and endorsement by the Attorneys-General
- Publication

![Figure 1 Evaluation of results](image)
Examination of the laws of Belize that have been revised so far
Assignments of practical revision exercises from Belize laws and amendments
Monthly assessments to be determined by the outcome of the exercise undertaken in each month.

Evaluation of the Mentoring and Coaching Programme

Evaluation of the programme was carried out on three levels: 1) the mentee; 2) the mentor; and 3) the organisation (i.e., the CARICOM Secretariat).

1. Evaluation by mentees

Mentees completed a self-assessment questionnaire of five questions using a 5-point Likert scale, with (5) denoting ‘Strongly Agree’ and (1) denoting ‘Strongly Disagree’. This questionnaire was completed at the end of each month, which was also when the mentees rotated between the mentors.

The results of the evaluation at the end of each month showed that all mentees agreed that the partnerships were working well and the collaborative agreement between the mentor and mentee was being honoured. The goal being challenging and achievable was also agreed by all mentees, together with progress on their individual action plans and receiving required assistance as and when needed. There was no significant difference in the way mentees felt about their work or about the mentors or the CARICOM Secretariat during the three months.

Figure 1 shows the average of the combined results of the three monthly questionnaires. The honouring of the collaborative agreement between mentee and mentor, and the development goal being challenging and achievable were the two areas in which mentees strongly agreed, followed by agreeing that the partnerships were working well and that they received assistance as and when required. Even though there was agreement that progress was being made on the action plans, the figure shows that more work is needed in this area. In addition to the self-assessment questionnaire, mentees submitted end-of-programme reports.

With their mentor, mentees participated in preparing documents relating to, for example, an MoU on procedures relating to deportation of criminal offenders; identification of elements of the model legislation for the Kyoto Protocol; the CARICOM Anest Warrant Treaty; and amendments to agreements establishing the Caribbean Knowledge and Learning Network (CKLN) under treaty drafting and enabling legislation.

Under law revision and law reform, mentees were acquainted with the principles, techniques and procedures of law revision. They were engaged in exercises such as the Finance and Audit Act of Belize and the Electricity Act of Belize; collating all the old and new substantive legislation, both Principal and Subsidiary and their amendments; consolidating the amendments into their respective substantive legislation; and incorporating the new substantive legislation into the list of existing legislation.

Under legislative drafting, mentees were able to identify and draft several critical amendments, and carry out exercises in harmonisation of legislation – for example, harmonising customs regulations for the Caribbean Community; proofread and make suggestions about drafting recommendations; and draft the CARIPASS Travel Card Act 2009.

In addition to these tasks, mentees also carried out other assignments that were given to them by the Office of the General Counsel. Mentees were encouraged to contribute articles to the CARICOM Chambers Quarterly. One mentee accompanied her mentor on a visit to the Regional Law Revision Centre in Anguilla to gain first-hand knowledge of the systems and procedures being used there.

2. Evaluation by mentors

Mentors were requested to evaluate mentees in five areas: (i) suitability for the programme; (ii) attitude to learning; (iii) areas covered during the training; (iv) recommended follow-up by the Commonwealth Secretariat and CARICOM Secretariat; and (v) plans for continued networking and sharing of information.

(i) Suitability for the programme

The mentors’ collective comments were that the mentees were exceptionally suitable for the programme as they were qualified attorneys and law graduates and had the necessary training and experience prior to the Mentoring and Coaching Programme. They were also graduates of the Commonwealth Caribbean Legislative Drafting Programme held at the University of Guyana. All three mentees, in addition to mentoring and coaching, had also contributed to the review and drafting of various bills and regulations.

(ii) Attitude to learning

All three mentees were very keen to learn and had an inquisitive mindset, which is essential in order to benefit from the programme. ‘Legislative drafting is a difficult area to teach and to sustain interest unless the mentees display genuine interest in this field. Undoubtedly, they displayed a correct attitude towards learning this arcane and mysterious skill during this training programme,’ stated one of the mentors.

(iii) Areas covered during the training

Training covered the following areas: law revision principles and techniques, harmonised legislation, drafting legislation, intellectual and practical knowledge of treaties, and implementing legislation.

(iv) Recommended follow-up by the Commonwealth Secretariat and CARICOM

It was strongly recommended that the programme be repeated on a continual basis until one or two attorneys from the CARICOM member states who require it are trained in legislative drafting, since this is one of the best ways to teach legislative and treaty drafting. It was also recommended that the period of training be extended to six months.

(v) Plans for continued networking and sharing of information

Mentees have continued to be in touch, seeking advice on legislative problems. Exercises have also been given to mentees online, where continued feedback is provided.

3. Evaluation by the CARICOM Secretariat

The Mentoring and Coaching Programme for legislative drafters has been highly successful. The programme’s design and execution
has ensured that the aims of developing expert drafters in Commonwealth Caribbean countries can be achieved in a relatively short period of time.

(i) Specific benefits of the programme

a) The programme represented a ‘win-win-win’ solution to the perennial problem of the chronic shortage of legislative drafters: individual Commonwealth Caribbean countries have benefited through the development of their drafters; the drafters themselves have been able to further their career development; and the pool of drafters at both the regional and national levels, who are able to carry out both international and municipal law drafting requirements, has been enhanced.

b) The programme was an ideal vehicle to ensure diversity of experience and provide critical exposure to treaty law and practice and the interplay between international and domestic law; the latter being a growing feature of the CARICOM landscape as the region moves towards greater integration and trade, and as multi-faceted, multi-layered co-operation with third states increases.

(ii) Long-term sustainability within the CARICOM Secretariat and CARICOM members

This programme focused on building the capacity of legal drafters in the Caribbean Region through mentoring and coaching at the Legal Facility of the CARICOM Secretariat. The entire Region benefits from this facility and therefore naturally lends itself to long-term sustainability of necessary drafting capacity within the CARICOM Secretariat and CARICOM members, if this programme is to be repeated and maintained. The ongoing contact and networking between mentors and mentees, even after the formal conclusion of the programme, will enhance its long-term impact. Since returning to their home countries, the recently trained attorneys have been contracted to draft specific pieces of legislation for the CARICOM Secretariat.

The proposal that the programme be extended to six months is supported, as this will strike a happy balance between affording enough time for a meaningful transfer of knowledge from mentor to mentee, and facilitating the mentees’ substantial contribution to particular drafting assignments.

Summary and conclusions

1. Mentoring and coaching and on-the-job training in legislative drafting of attorneys is always the preferable mode of training.

2. Training in treaties and enabling legislation is very useful to CARICOM member states and will help to implement the ‘Accession Kits’ prepared by the Commonwealth Secretariat for the ratification and implementation of treaties at national level.

3. The common practice in law schools is to rely only on precedents from New Zealand, South Africa, Australia and Canada. However, there is also a wealth of legal knowledge to be learned from countries such as India, Sri Lanka and Pakistan, as their customs regimes are more in keeping with the customs regime desired by CARICOM member states.

4. Social norms and constructs will continue to impact on the legislation of particular jurisdictions even though much focus is placed on gender neutrality in law.

5. There is need for harmonised customs legislation throughout the Caribbean Region to facilitate more efficient movement of people and goods throughout the region. This will be required for the CARICOM Travel Card (CARIPASS) project.

6. Law revision is not given particular attention in law schools within the Caribbean Region, and as a result most practitioners, even within the government service, do not have sufficient understanding of this area of the law.

Programme feedback

Looking to the future, it is my earnest desire to increasingly utilise and continuously hone the skills I have acquired over the last few years and to be able to do so in an environment which allows greater contribution to the development of the legal infrastructure of the Caribbean as a region. I wish to take this opportunity to express my gratitude to the Commonwealth Secretariat, first, for this sterling initiative in the form of the Drafting Programme, and then for allowing me the honour of participation.

Amanza Walton-Desir, Georgetown, Guyana

I can safely say that I have used every aspect of the training received on the programme in completing my assigned tasks. In fact, it would seem that the value of the course has been recognised by my employers, as no sooner had I returned from the course, I began receiving more complex assignments.

Before I went to Guyana, I was given instructions mainly to prepare amendment legislation. Now, however, I have been drafting new bills and have received some commendations for my drafting skills. I love drafting and I am grateful for having received training that helps me in developing my craft.

Melanie Ffrench, Kingston, Jamaica

Endnote

1 Murray, Margo, 2001. Beyond the Myths and Magic of Mentoring: to facilitate an effective mentoring programme