

## IALS Law Reform Project – A LITERATURE REVIEW

### Law Reform in Trinidad and Tobago. An Overview

Chantelle Latchmansingh\*

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#### 1. Background of the Law Reform Commission in Trinidad and Tobago

The Law Reform Commission in Trinidad and Tobago (the Commission) is one of over 50 law reform agencies throughout the world and is one of 4 agencies within the Caribbean Community (CARICOM). It is the only permanent statutory law reform agency within CARICOM; the agencies in Jamaica, the Cayman Islands and the Bahamas, are departments of government. The Commission is also a member of the Commonwealth Association of Law Reform Agencies (CALRAS). The Commission has the distinction of being the third oldest statutory law reform agency in the world having been in existence for the past 49 years. It is surpassed only by the Commissions of India (in existence for 62 years) and England and Wales (in existence for 52 years)<sup>1</sup>.

#### 2. The mandate of the Commission

The Commission was established to provide specialized law reform services. It is governed by the Law Reform Act, Chapter 3:04 (The Act)<sup>2</sup>. The Act establishes the Commission as a statutory body of Commissioners known as the Chairman and Commissioners, all of whom are appointed by the President of the Republic of Trinidad and Tobago. Under section 3(2) of the Act, persons appointed as Commissioners must be suitably qualified by holding or having held judicial office or having experience as Attorneys-at-Law or Teachers of Law in a University<sup>3</sup>.

The mandate of the Commission is set out in section 4 of the Act, which provides that the Commission is required to –

- Keep under review all the laws applicable to Trinidad and Tobago;
- Undertake the modification of any branch of the law;
- Eliminate anomalies in the law;
- Repeal obsolete and unnecessary enactments;
- Reduce the number of separate enactments;
- Simplify and modernize the law;
- Receive and consider suggestions for the reform of the law from any person or body;
- Prepare and submit to the Minister specific programmes for the examination of different branches of the law;
- Undertake draft Bills relating to proposals for reform;
- Undertake on reference from the Minister the examination of any particular branch of the law and the drafting of Bills relating to those references; and

\* Chantelle Latchmansingh is a Parliamentary Counsel at the Law Reform Commission of Trinidad and Tobago.

<sup>1</sup> Law Reform Commission Manual, October 2018. This document is an internal document which is circulated to the Board Members.

<sup>2</sup> The Act is available at <http://www.legalaffairs.gov.tt/>

<sup>3</sup> Law Reform Commission Manual, cit., p. 2.

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- Provide advice and information to Government Ministries and Statutory Authorities.

The day to day work of the Commission is performed by qualified Attorneys at Law appointed by the Judicial and Legal Service Commission; the current legal offices are:

- Commission Secretary
- Law Reform Officers
- Legal Research Officers
- Parliamentary Counsel<sup>4</sup>

The Commission plays a fundamental role in providing certain key services offered by the Ministry of the Attorney General and Legal Affairs. Primarily, the Commission keeps all the Laws of Trinidad and Tobago under review with a view to their systematic development and reform. The Commission also engages in drafting primary legislation on behalf of the Government and advising Cabinet, Ministries and State Agencies on relevant legal matters under its purview. The Commission has the task of formulating law reform recommendations and presenting them to the Government. The Commission does this bearing in mind that it is the responsibility of the Government to decide the outcome of those recommendations and whether to implement them by legislation, or not at all.

The Commission is a unique organization as it undertakes research, policy formulation and legislative drafting. These factors set it apart from the Legislative Drafting department which only undertakes legislative drafting duties. As a result of its multifaceted functions, many of the policy recommendations have been adopted and draft bills have been enacted into legislation<sup>5</sup>.

### 3. The independence of the Commission

The independence afforded to the Commission in reviewing the law and in formulating policy for reform based on its research and analysis of the law is the most important factor in ensuring that it fulfils its obligations under its mandate. The Commission sets its own annual work programme comprising of matters initiated by the Commission as well as from external references. These references include other Ministries, the Judiciary, private sector organisations as well as references directly from the Attorney General<sup>6</sup>. This programme is submitted to the Minister of Legal Affairs at the start of each New Year. Subsequently, the Commission submits its annual report to the Minister who lays it in Parliament.

The Commission, by virtue of its independence is not subjected to any specific oversight other than by the Parliament. It is guided by the advice of the Minister of Legal Affairs. The implementation rate is monitored by the Commission and the Ministry of Legal Affairs. As previously mentioned, an annual work programme sets the targets for each year and the Commission does its best to reach it. Within the last 10 years, the rate of implementation of the Commission's work has decreased. This has been due to changes in the executive government as well a decrease in the resources available to the Commission. Nonetheless, the Commission continues its work in proposing necessary recommendations for the reforming the laws. The Commission's recommendations for reform are transparent, objective and free from political partisanship or association with private or special interest

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid*, p. 4

<sup>6</sup> *Ibid*, p. 5

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groups. The Commission recognizes the critical importance of carrying out its mandate in an impartial and objective way and adheres to these principles in all aspects of its work<sup>7</sup>.

### 4. The law reform process

The Commission executes its mandate in a very specific manner. Upon receipt of a reference, an officer is assigned the project. This officer is responsible for analysing the relevant subject matter and conducting in-depth research. The officer prepares an Issues or Consultation Paper setting out the lacuna in the law and proposed recommendations. This consultation paper will be used at the consultation stage. The preparation of an Issues or Consultation paper is not a mandatory step. Therefore, after basic research, analysis and consultation, a preliminary Policy Paper is usually prepared by the officer<sup>8</sup>.

After the consultation process, the officer begins the preparation of a draft Policy Paper. During this stage, the officer may undertake further research and consultation in order to settle issues and formulate policy and recommendations which may arise.

Once the Policy Paper is approved by the Chairman, it is laid before the Board of Commissioners for consideration and final approval. The officer usually is called upon to defend his work and he may have to undertake additional research and edit parts of the Paper. Sometimes, either before or after the Policy Paper is submitted to the Board, a draft Bill is prepared to give effect to the recommendations of the Paper<sup>9</sup>. In matters which are deemed urgent by the Attorney General, the Board of Commissioners may not have the opportunity to approve the policy paper beforehand.

Once the Policy Paper has been approved by the Board, it is submitted to the Attorney General, who may instruct the Commission to prepare the necessary Note for Cabinet for its consideration. If the recommendations of a Policy Paper are approved by Cabinet (and no draft legislation is submitted), the Commission is instructed to prepare the draft legislation. In some instances, the approved Policy may be sent to the Legislative Drafting Department for the preparation of a draft Bill<sup>10</sup>.

The final stage of the process involves the drafting of Bills. Bill may be drafted either before the Policy Paper is sent to the Attorney General or after its approval by Cabinet. In some cases drafting of legislation arises directly from a reference by the Attorney General. The draft bill then undergoes scrutiny by the Legislation Review Committee, a sub-committee of the Cabinet. At this stage, the officer who prepared the draft bill and the policy are called to defend their work before the members of this committee. This is also an opportunity for the government to make any necessary changes before being presented in the Parliament.

Parliamentary Counsel assigned to the matter undertake the necessary research, consultation and drafting, prepares the Note for Cabinet, and when the Bill is laid before the Parliament, prepares the

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<sup>7</sup> *Ibid*, p. 4.

<sup>8</sup> *Ibid*, p. 6.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid*, p. 7.

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Parliamentary Brief and attends both Houses of Parliament to provide legal research and drafting expertise to the Attorney General or relevant Minister during the passage of the Bill<sup>11</sup>.

The Commission provides a range of services and its principal clients are the organs of the State – the Executive, the Parliament and the Judiciary – and the people of Trinidad and Tobago<sup>12</sup>.

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid*, p. 8.