

Insolvency adjudication: The institutional framework

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Some basic starting points

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Drafting Instructions

Administrative support services agency

- Judge = Super-specialist surgeon
- US Bankruptcy Law Commission (1973) - Bankruptcy judge spends more than 22% time on administrative matter
- A US Bankruptcy Judge is now entitled to (28 U.S.C. §156)
 - 1 A secretary
 - 2 A law clerk
 - 3 Additional assistants provided by *Admin Office*
 - 4 Law clerk can appoint deputies

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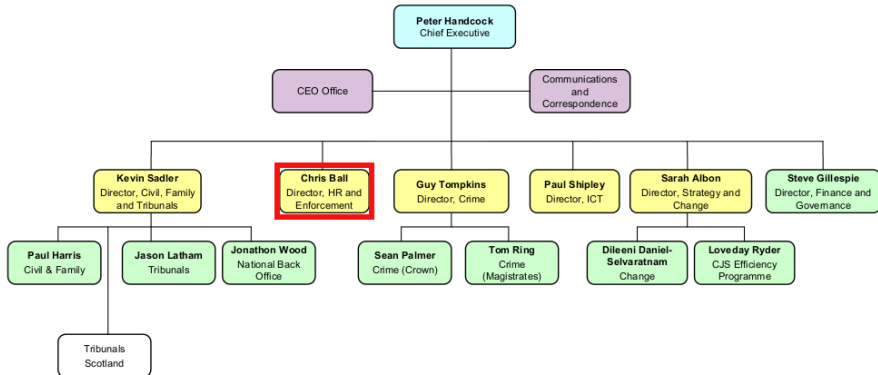
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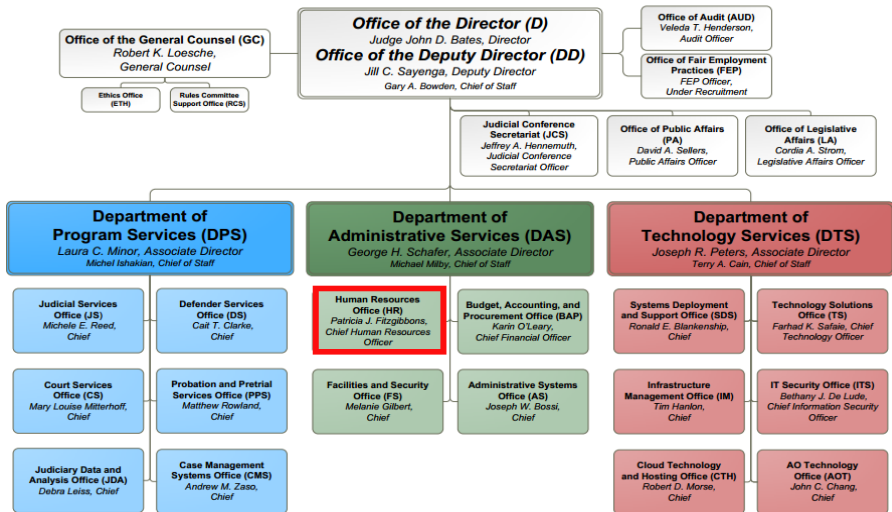
HM Courts &
Tribunals Service

HMCTS HQ organisation structure from 21 May 2013



US Administrative Office

Administrative Office of the United States Courts



Canadian Courts Administration Service

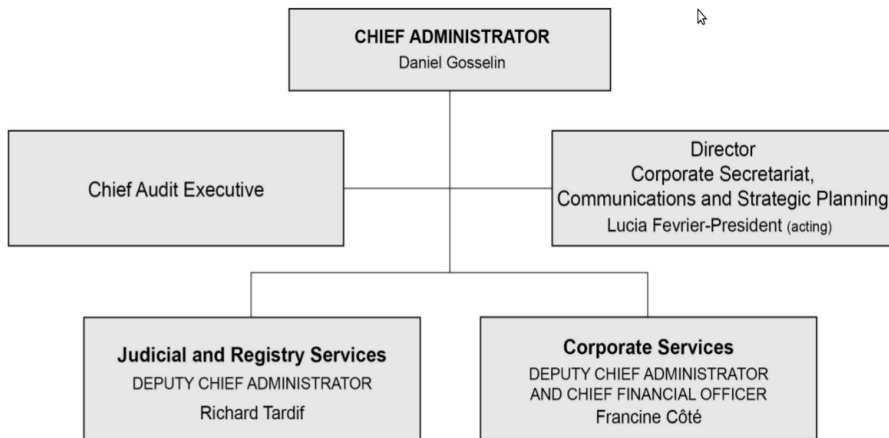


Figure: CAS Organisation Structure

How is India managing its courts?

- 13th Finance Commission Report
- Court Managers, with MBA degrees, to assist judges
- Court Managers useful in feeding the proposed National Arrears Grid

How has this system performed?

- Court Manager's perspective:
 - Roles have not been clearly defined
 - Not given the functions as per the job description communicated
- Law school's perspective:
 - 2500 court managers were to be recruited
 - NALSAR Court management degree **flopped**
 - Law graduates not very keen to switch over
 - Doing desk work for the court on the listing of the cases
 - The job does not excite an MBA person
 - Do not like to become subordinate to judicial officers
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Human Resource issue

Contemporary Developments

- FSAT Task Force
- Recommended creation of separate agency for commercial tribunal and court management

Procedure

Alternative procedure

- Different procedure
 - 1 Pre-hearing conferences - Commercial Court Bill
 - 2 Power to dispense with oral hearing in limited circumstances
 - 3 Delegate to clerk
- Q. Who will make this procedure?
 - The Code
 - The Central Government

Pre-hearing conference

- Case management conference
- Frame issues
- Fix dates of hearing
- Fix time limits of oral hearing

Oral v. Paper-based hearing

- Right to hearing \neq Right to **oral** hearing
- Paper-based hearing
- Federal Rule of Appellate Procedure 34(a)
 - 1 Frivolous case
 - 2 Issue already authoritatively decided
 - 3 Facts and issues adequately presented in briefs and records

Delegation to clerk

- US Bankruptcy judges entitled to law clerk
- Help prepare for hearings and drafting opinion
- Maintains complete record of the case with CM/ECF system
- Screening for frivolous cases or lack of jurisdiction
- Pre-hearing conference
 - Review file
 - Put documents in sequence
 - Place file and records in judge's chamber
 - Attend the pre-trial conference
- Bring to judge's attention motions ready for decision
- Read and analyse motions, briefs
- Perform independent research
- Prepare bench memos on legal and factual issues
- Discuss the motion with the judge
- Draft orders subject to directions by judge
- Notify and send copy of order to lawyers

Power to supplement procedures

- Chief Adjudicator can issue practice directions
- Practice directions subordinate to procedural rules
- Procedure Committee - review rules and practice directions

Essential features

- E-filing - 24x7
- Video hearing
- Case management system
- Audio-visual recording
- Annual reporting
- Collection and release of judicial data
- Case-load forecasting -> financial budgeting

Conclusion

- Replicate, not mimic!

Thank You