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CALC Council

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Editor's Notes

CALC conference

Traditionally, the CALC conference has been held concurrently with the Commonwealth Law Conference. However, a number of members have pointed out that, for those attending both conferences, the resulting economies on hotel and other costs are at the price of having to make difficult choices between sessions at the CLC and sessions at CALC conference. The CALC Council has therefore decided that that the CALC conference should be held on Thursday 8 and Friday 9 September 2005, immediately before the Commonwealth Law Conference, which begins on Sunday 11 September. The venue for the conference will be the Senate House of the University of London (which is reasonably close to the British Museum in central London).

A number of CALC members have agreed to be speakers or panellists at the conference. In addition, Dame Mary Arden, a member of the English Court of Appeal, has accepted an invitation to speak on human rights. Other topics being considered for inclusion in the conference program are as follows:

- Organising a Parliamentary Counsel Office;
- Training in a Parliamentary Counsel Office;
- The nature of legislative intention;
- Consolidating, revising and rewriting legislation;
- The impact of information technology on legislative drafting; E-laws and electronic publication;
- The impact of constitutional structures on legislative drafting.

The CALC general meeting will be held on one of the two days set aside for the conference. On the Wednesday evening immediately before the conference, a reception will be held and on the Friday evening, after the conclusion of the conference, a conference dinner will be held. The venue for the dinner will be the dining hall at Lincolns Inn. Members are welcome to bring their partners to the dinner. The cost of the dinner is likely to be about £75 a head, excluding wine (which is likely to cost £15 to £20 a bottle).

Full details of the program will appear in an issue of the CALC Newsletter, which I expect to publish by the end of April.

CALC ties

CALC ties retail at £8.00 sterling or HK$90 and are obtainable from Tony Yen at the Law Drafting Division, Department of Justice, Queensway Government Offices, 66 Queensway, Hong Kong. The ties are blue with gold diagonal stripes interspersed with gold "loopholes". One version contains the letters "CALC" also in gold. The other version is without lettering.

News of members

Lany Bacon—It is with great sadness that I announce the death of Edward Bacon (who was always known to his friends and colleagues as "Lany") after a long illness. Lany served in the Irish

Office of Parliamentary Counsel for over 50 years, which must surely be a record for any legislative drafter. After retiring from the post of Chief Parliamentary Draftsman in 1989, Lany continued working in the Office of Parliamentary Counsel until his death. Lany became an associate CALC member in 2001. A full obituary will appear in the next *CALC Newsletter*.

Don Revell—Don Revell retired from his position as Chief Legislative Counsel of the Canadian province of Ontario in January.
David Morris—David Morris retired from his position as Deputy Law Draftsman in the Hong Kong Department of Justice. David, who was awarded the Order of the Bauhinia (bronze class) in 1999, ultimately plans to live in Cyprus, but in the meantime is doing some consultancy work in the Department.
On behalf of all CALC members, I should like to wish Don and David happy retirements.

Greg Calcutt—Greg Calcutt, Chief Parliamentary Counsel of Western Australia, has been appointed a senior counsel (SC). This follows his earlier appointment as a Member of the Order of Australia (AM). On behalf of all CALC members, I should like to congratulate Greg on his appointment.

Leda Koursoumba—Congratulations are also due to Leda on her recent appointment as a Cyprus Law Commissioner.

Acknowledgment

I should like to acknowledge the assistance of Janet Erasmus and Jeremy Wainwright (both members of the CALC Council) in assisting with the production of this issue.

Some aspects of compliance with UN Security Council Resolution 1373

Jeremy Wainwright[1]

The obligations imposed on Member States of the United Nations by operative paragraphs 1, 2 and 3 of Resolution 1373[2] include many that can be met by executive action (for example, international co-operation in the exchange of intelligence), others that can be met in many cases by the rigorous application of existing laws (for example, control of the entry into national territories of persons linked with terrorist activities and control of weapons) and a number that, in most cases, cannot be satisfactorily discharged without specific legislative action. The last-mentioned include, in particular, the criminalization of activities directly or indirectly connected with international terrorism, especially the financing of terrorism, and the ratification and implementation of 12 international instruments of particular relevance to the fight against international terrorism.

It is not the purpose of this paper to provide a comprehensive guide to the measures necessary to achieve compliance with Resolution 1373 but, rather, to present some observations arising out of the work during 2002 of the Counter-Terrorism Committee ("CTC") and its Report Assessment Team ("RAT").[3] For an excellent (but, in some respects, tentative) guide to compliance, members are referred to the *Report of Expert Working Group on Legislative and Administrative Measures to Combat Terrorism* published in February 2002 by the Criminal Law Unit, Legal and Constitutional Division, Commonwealth Secretariat, and the related model legislative provisions (with commentary).[4]

Just as "Bills are made to pass as razors are made to sell", so, as a by-product of the obtaining of the unanimous support of the Security Council for the resolution a mere 17 days after the events of "9/11", it is not a tightly drafted document. For example, it contains no definition of "terrorism", many of its individual provisions fail to emphasise the transnational aspects of the activities with which they concerned and it identifies by name only one of the relevant international conventions and protocols[5] relating to international terrorism, namely the *1999 International Convention for the Suppression of the Financing of Terrorism* (the "Financing Convention"). It is also to some extent repetitious. Not surprisingly, in its review of the reports submitted by member States in accordance with paragraph 6, the CTC, which is, in effect, a committee of the whole of the Security Council, has given the resolution a wide, purposive interpretation. Given the requirement

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1 Formerly Principal Legislative Counsel, Office of Legislative Drafting, Attorney-General's Department, Canberra, Australia; Expert Adviser to the Counter-Terrorism Committee, 2002.

2 Text at http://ods-dds-ny.un.org/doc/UNDOC/GEN/N01/557/43/PDF/N0155743.

3 A paper forming the basis of this article was prepared for the CALC conference held in Melbourne, Australia, in April 2003. However, the paper was not presented because the time allocated for it clashed with presentations on the topic of terrorism at the Commonwealth Law Conference, which was being held in Melbourne at the same time. Because the author has not returned to work with the Counter-Terrorism Committee, he has been unable to update the article, which therefore reflects the situation as it was in December 2002.

4 See at www.thecommonwealth.org - /shared_asp_files/uploadedfiles/ .

5 The 12 conventions and protocols concerned are listed in the Appendix to this paper.

of the resolution for States to give effect to the 12 relevant international instruments, the CTC has seen fit to import into its interpretation of the resolution concepts included in those instruments, in particular, the fairly detailed description of terrorism included in the Financing Convention. It has also chosen not to concern itself with the constitutional and human rights issues with which drafters and their instructors have to grapple.

The first reports from Member States were due by 27 December 2001. Most reports were received by, or within a couple of months after, that date but a few remained outstanding at the end of 2002. While it was envisaged from the outset that many States would require technical assistance in giving effect to the resolution, it became apparent that, due to resource constraints, some needed assistance also with the preparation of a first report.

On the basis of the RAT's examination of the initial reports, the CTC, working through 3 sub-committees, approved letters to be sent by the Chairman seeking, where considered necessary, further particulars of the measures taken by States. Those letters ranged over all 18 sub-paragraphs of paragraphs 1 to 3 and sought a further report within 3 months. By June 2002, the first of the "Round 2" reports had been received and, by November, some 40 of them had been examined (while examination of a diminishing trickle of initial reports continued).

In the analysis of Round 2 reports, the RAT focussed on the matters designated as "Stage A" priorities in the CTC's Fifth 90-day Work Programme, namely, that:

- States should have legislation in place covering all aspects of the Resolution, and a process in hand for ratifying as soon as possible the 12 international Conventions and Protocols relating to terrorism; and
- States should have effective executive machinery for preventing and suppressing terrorist financing.

This meant, in practical terms, that the RAT concentrated on 12 specific substantive issues (all bar one of them relating specifically to legislation), of which:

- 6 were within the scope of OP 1 of the resolution on the prevention and suppression of terrorism financing;
- 4 were related to OP 2, specifically in relation to the criminalization of activities, not necessarily relating to financing, carried out in support of actual or intended acts of terrorism and to the bringing to justice of alleged offenders; and
- 2 related to OP 3, as regards adherence to the 12 relevant international instruments and abrogation of the so-called "political exception" in relation to terrorist offences.

Minute examination of border control measures was not included at this stage.

As mentioned above, the Round 1 letters were very wide-ranging and included many "standard" questions which, because they were generally so numerous, tended not to include much by way of explanation. That appears to have been a reason for the lack of focus in the responses in many second reports in relation to the Stage A matters. The comments and questions in the Round 2 letters were much more didactic.

The performance of developed Commonwealth countries with regard to these issues, as well as other aspects of compliance with the resolution, was of a generally very high order. It also appeared to the RAT that, with the assistance of the excellent materials produced by the Commonwealth Secretariat, it was reasonable to expect that the smaller, less-developed members of the Commonwealth would achieve legislative compliance in relation to the Stage A matters relatively quickly. Nevertheless, members may find helpful a tabulation of the Stage A matters (as set out in a report by the RAT to the CTC in December 2002):[6]

1. Issues within the scope of OP 1

1.1 Criminalization of terrorism financing

First of all, the RAT scrutinizes the reports to establish whether a Member State has criminalized the financing of terrorism as required by sub-paragraph 1 (b) of the Resolution. The RAT is particularly interested to see how individuals are held liable for the financing of terrorist acts. It also pays attention to the manner in which legal entities such as banks are held liable for the financing of terrorist acts in accordance with Article 5 of the Financing Convention. It has been found necessary to emphasise to States that the preparatory offences contemplated by the Resolution should not be dependent on the actual occurrence of an act of terrorism, or even an attempted act of terrorism, either within or outside the territory of a Member State.

1.2 Reporting obligations

Secondly, since sub-paragraph 1 (a) of the Resolution in very broad terms requires States to "prevent and suppress the financing of terrorism" and, more specifically, obliges them to prohibit persons under their respective jurisdictions from making funds, financial assets, economic resources, etc., available to terrorists, the RAT is closely scrutinizing the relevant reporting obligations. Under standard money-laundering laws, banks and financial institutions are under a legal obligation to report suspicious transactions to authorities. The RAT has been seeking confirmation that these obligations bind not only banks and financial institutions, but also financial intermediaries generally, including members of professions (such as lawyers, notaries and accountants) involved in financial transactions, as well as money transfer agencies outside the traditional banking sector. This approach is supported by Article 18(1)(b) of the Financing Convention.

1.3 Freezing of terrorist funds

Sub-paragraph 1(c) of the Resolution requires the freezing of terrorist funds. A recurrent issue encountered in the analysis of the Round 1 reports was that very often no distinction was made between money-laundering (specifically, of the proceeds of criminal activity) on one hand, and financing of terrorism on the other. Hence, many reports did not convince the RAT that funds could be frozen when they were not proceeds of crimes, that is, where funds that are legal in origin

6 At the time of publication of this issue, the author had not found an Internet citation for this document.

are intended for terrorist purposes. As indicated in the recent paper on the freezing of assets[7], to give full effect to the Resolution and the Financing Convention, the RAT has taken the view, based both on practicality and Article 8 of that Convention, that it is necessary for a State to have the ability to freeze assets on a reasonable suspicion of links to terrorist activity. Closely related to this is the question of the ability of a country quickly to freeze funds upon request of a foreign authority.

1.4 Non-profit organizations

A particular aspect of meeting the requirements of sub-paragraph 1(d) of the Resolution is dealing effectively with the problem of the financing of terrorists or terrorist organizations through "organizations which also have or claim to have charitable, social, or cultural goals" (as they are described in the Preamble to the Financing Convention), either by their being used as front organizations or by the misappropriation of assets of legitimate bodies. Accordingly, Round 2 letters in many cases suggest the introduction of legal provisions that ensure oversight by State authorities of the use of the funds of such bodies. In some cases, oversight of this kind is in place, but only in relation to bodies enjoying special tax status.

1.5 Informal banking networks

Following analysis of the response to the question raised in almost all Round 1 letters, Round 2 letters seek further answers on how the countries regulate informal banking networks (e.g. hawala[8]) and operations such as wire services. The RAT awaits with interest impending recommendations by Financial Action Task Force on Money Laundering[9] in this regard.

1.6 Financial Intelligence Units

While the major emphasis in the Round 2 letters is on legislation, the Stage A priorities include the requirement that "States should have effective executive machinery for preventing and suppressing terrorist financing". Given that it is proposed that Stage B be directed at many aspects of the effectiveness of governmental and other regulatory institutions in giving effect to counter-terrorism measures that will require in-depth scrutiny of actual performance, the RAT has confined its inquiries in relation to effective executive machinery to one particular issue that can be dealt with, like the question of the existence of appropriate legislation, on the papers. That issue is the question whether a country has an operational and credible financial intelligence unit ("FIU"). For the present, the RAT assumes that a country meets this requirement if it has an FIU that has met the requirements for membership of the Egmont Group.[10]

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7 Text at http://www.un.org/Docs/SC/Comittees/1373/wainwright.html.

8 Hawala is a means of transferring money or money's worth from place to place outside the normal banking channels. It is widely practised in the Middle East and South Asia for both legitimate and illicit transactions.

9 The Financial Action Task Force on Money Laundering ("FATF") and is an arm of the Organisation of Economic Co-operation and Development .

10 The Egmont Group is a kind of super FATF club.

2. Issues within the scope of OP 2

2.1 Recruitment of members of terrorist groups

Regarding sub-paragraph 2(a) of the Resolution, Round 2 letters probe further how countries criminalize the recruitment of members of terrorist groups both inside as well as outside their respective territory (as distinct from the criminalization of the association to such a group). Arising out of some answers to Round 1 letters, it has been frequently necessary to point out that it should not be a requirement of a domestic offence that a recruiter be a member of a terrorist group.

2.2 Weapons and explosives

The requirement that all States refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, in particular by eliminating the supply of weapons to terrorists, has led the RAT to take a closer look at the existence of laws or regulations which deal with the export, import, sale, possession, carrying and disposition of weapons and explosives. In this context the implementation of sub-paragraph 2(a) of the Resolution will also depend on the full implementation of Article 15 of the *International Convention for the Suppression of Terrorist Bombing* (the "Terrorist Bombing Convention").

2.3 International terrorism

The RAT considers sub-paragraph 2 (d) to be a crucial provision of the Resolution. As already mentioned in Dr Gehr's Briefing on Recurrent Issues of 4 April 2002,[11] a number of Round 1 reports give the impression that transborder aspects of terrorism are not dealt with by the domestic legislation of many countries. As in the case of the financing of terrorism, it is the RAT view, here too, that criminalization of the acts listed in sub-paragraph 2(d) of the Resolution is one of the most efficient ways to prevent and suppress terrorist acts. Therefore, in a case where, after having analysed the second report, the RAT has no or insufficient evidence of the existence of adequate provisions, it includes in the Round 2 letter a suggestion to the Member State for the introduction of domestic legal provisions criminalizing the use of that State's territory for the purpose of financing, planning, facilitating or committing terrorist acts against other States or their citizens. Again, it is emphasised that actual or attempted resultant acts of terrorism, within or outside the territory of the State, should not be necessary to constitute the preparatory acts punishable offences attracting severe penalties.

2.4 Bringing offenders to justice

Building on a general question as to the jurisdiction of courts that was included in nearly all Round 1 letters, most Round 2 letters seek further information, for the purposes of the requirement in sub-paragraph 2(e) of the Resolution that States ensure that offenders are brought to justice, on the ability of Member States to apply the "prosecute or extradite" principle to the offences

[11] Text at http://www.un.org/Docs/SC/Committees/1373/gehr.html.

contemplated by the Resolution and the relevant international instruments. In that context, and having regard to the specific requirements of sub-paragraph 2 (f), Round 2 letters also ask, where appropriate, whether the existence of a bilateral agreement or arrangement is a pre-requisite either to extradition or before a specific State can offer legal assistance to other States.

3. Issues within the scope of OP 3

3.1 Status of ratification

The ratification of the 12 relevant conventions and protocols relating to the prevention and suppression of terrorism is an important requirement of the Resolution (sub-paragraph 3 (d)). Round 2 letters seek to verify how many of the relevant conventions and protocols have been ratified and implemented by each individual Member State. Ratification and implementation of the 12 conventions including the criminalization of the offences specified in the conventions through domestic laws will be conducive to the avoidance of negative conflicts of jurisdiction over terrorist acts. The RAT has been concerned that a number of Member States have pointed to Constitutional provisions giving treaties the status of law once ratified but have given no indication of how penalties are attached to the resulting offences.

3.2 Political exception

As mentioned above, sub-paragraph 2(e) of the Resolution seeks to ensure that all terrorists are brought to justice, effectively by the application of the "prosecute or extradite" principle. This requirement has also been codified in those 10 of the 12 relevant international instruments that call for the creation of criminal offences. Furthermore, sub-paragraph 3(g) of the Resolution expressly requires States to ensure that "claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists". Similar provisions exist in the Financing Convention (Article 14) and in the Terrorist Bombing Convention (Article 11). The RAT has found it necessary in many cases to seek clarification of the position of Member States with regard to compliance sub-paragraph 3(g).

Appendix—Conventions on Terrorism[12]

Deposited with the Secretary-General of the United Nations

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (General Assembly, 14 December 1973)
- International Convention against the Taking of Hostages (General Assembly, 17 December 1979)
- International Convention for the Suppression of Terrorist Bombings (General Assembly, 15 December 1997)
- International Convention for the Suppression of the Financing of Terrorism (General Assembly, 9 December 1999)

Deposited with the International Civil Aviation Organization

- Convention on Offences and Certain Other Acts committed on Board Aircraft (Tokyo, 14 September 1963)
- Convention for the Suppression of Unlawful Seizure of Aircraft (The Hague, 16 December 1970)
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971
- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 24 February 1988)
- Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991)

Deposited with the International Atomic Energy Agency

- Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980)

Deposited with the International Maritime Organization

- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 10 March 1988)
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on Continental Shelf (Rome, 10 March 1988)

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[12] A version of this list, with links to the texts of the individual instruments, appears at http://untreaty.un.org/English/Terrorism.asp.

Legislative drafting training in the Hong Kong Department of Justice

Duncan Berry[1]

The rationale for a legislation drafting training program

Lawyers joining the Law Drafting Division of the Hong Kong Department of Justice (the "Law Drafting Division") have little (if any) experience in legal writing, let alone the complexities of legislative drafting. They know very little about how statutes are formulated. From personal experience, I can safely say that the situation is certainly no different in the United Kingdom, Ireland, Australia or New Zealand. Nor is it likely to be any better in any other Common Law jurisdictions. This is because university law schools tend to concentrate on teaching law by the case law method. If statutes are mentioned at all, it is almost invariably in the context of some decided case or other. Some academics even take the view that the only law is what is decided by judges. This is despite the fact that most law these days is statute-based.

The traditional approach to training legislative counsel is to train them on-the-job (sometimes called the master and apprentice method). Under that method, the novice drafter (the apprentice) is placed under the supervision of an experienced legislative counsel (the master) and is usually given a single Bill or Regulation to draft. After completing each draft, the apprentice drafter will submit it to the "master" for comment and criticism. In essence, the apprentice drafter learns by trial and error. While there is still a place for the master and apprentice approach, there is also room for a formal program to help novice drafters counsel to develop drafting skills, and to acquire relevant knowledge and experience more quickly, so that they become more efficient and productive earlier than they would using only the traditional approach. I should add that some local counsel were sent overseas to attend legislative drafting courses at the Institute of Advanced Legal Studies or the Royal Institute of Public Administration[2] on an ad hoc basis. But only one or two counsel were sent to attend these courses each year.

Whereas there was very little literature[3] on legislative drafting when I started working in this field in 1965, there is now an abundance of material on the topic, much of which is relevant to assist junior counsel to develop their drafting skills and to give them knowledge about legislative drafting. Books on legislative drafting now include ones by Garth Thornton, Francis Bennion, Robert Dick, Elmer Driedger, Lawrence Filson and Vincent Crabbe. In addition, numerous articles on the topic have been published in the Statute Law Review.

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1 Consultant Parliamentary Counsel, Office of the Parliamentary Counsel, Ireland; former Deputy Principal Government Counsel, Hong Kong; Secretary CALC

2 Now defunct.

3 Some of the few books on legislative drafting available at that time were Sir Courtney Ilbert's *Legislative Methods and Forms* (Oxford: Clarendon, 1901) and *The Mechanics of Law Making* (New York: Columbia University Press, 1914).; Sir Alison Russell's *Legislative Drafting and Forms* (published in 1920 and now out of print); Reed Dickerson's *Legislative Drafting* (Boston: Little, Brown, 1954).

Until the mid 1980s, all Hong Kong legislation was published only the English language. Nearly all legislative drafters were from UK, Australia, New Zealand, Canada or other Commonwealth countries. Now all Hong Kong legislation is bilingual. However, the original versions are still prepared in English, with the Chinese version emanating from the English version.

Since the early 1990s, there has been a move to localise the Hong Kong Civil Service. This has meant that almost no expatriate counsel are now recruited to the Department of Justice. As expatriate legislative counsel in the Law Drafting Division have become fewer, relatively inexperienced local counsel have replaced them. In order to accelerate the development of local counsel as effective and productive drafters, the Hong Kong Law Draftsman, Tony Yen, decided there was a need to provide them with not only training using the traditional approach, but also with a formal course of instruction and training in legislative drafting. One criticism of the courses conducted by the Institute of Advanced Legal Studies and the Royal Institute of Public Administration[4] is that they were too general and not sufficiently oriented to what was needed in Hong Kong. Also, it was thought that these courses were not sufficiently comprehensive or sufficiently rigorous. As a result, Tony Yen concluded that it would be much more cost effective to have a training program conducted in house, which was tailor-made to Hong Kong needs. This is where I came in. Tony Yen invited me to prepare and deliver an in-house training program for legislative counsel in employed in the Department of Justice. The following is an outline of the course program.

The course components

The course has three components. These are:

- Seminars on topics relating to legislation (including subsidiary legislation), legislative drafting and statutory interpretation
- Legal writing workshops
- Legislative drafting exercises and seminars to discuss the students' returns on those exercises.

Seminars on topics relating to legislation

The seminars on reading materials are held twice a week. Each seminar lasts between 2 1/2 to 3 hours.

The legal writing workshops are held once a week and normally last for 1 1/2 to 2 hours.

The seminars to discuss legislative drafting exercises are of 3 to 3 ½ hours duration.

For each seminar on the reading materials, I put to the course participants a number of questions relating to the materials they had received the previous week. Each of the participants is given approximately the same number of questions. The responses to those questions are subject to a round-table discussion and to a critical evaluation.

4 Which is now defunct.

The course outline for the seminars is as follows:

Week 1 What statute law is; who legislates; restrictions on the legislature; institutional arrangements for the preparation of legislation; the preparation and implementation of the legislative program; the condition of the statute book; the role of the legislature; the legislative stages; legislative procedures; the demands of government.

Week 2 Origins of legislation and legislative drafting; who does what in the preparation of legislation. The drafting of legislation (general outline); the drafting objectives and constraints; a broad outline of the drafting process; the pre-legislature stages, including the preparation of legislative proposals.

Week 3 The purposes of legislation; the importance of getting "the big picture"; the style in legislative drafting; the functions of particular kinds of provisions; miscellaneous matters of style (e.g. provisos and why they should not be used).

Week 4 The drafting process; five stages of the drafting process: understanding the policy and instructions; analysing the policy and instructions; designing, composing and scrutinising and editing legislative documents. Formalities and arrangement; numbering, lettering and indenting (tabulating) legislative provisions; headings to Parts, sections and Schedules of legislative documents; the importance of tables of contents.

Week 5 The importance of communication in legislative drafting; words and syntax in the legislative context; traditional grammar. Factors which block readers' comprehension and what might be done to avoid or mitigate the effect of those factors.

Week 6 Writing legislative sentences. Sentence length. Syntactic and grammatical pitfalls. The uncertainty and vagueness of words; ambiguity; instability of words (mobile and static meanings).

Week 7 The semantics of legislative drafting: miscellaneous words and expressions; the importance and significance of punctuation; words and expressions to avoid; expressing time; the use of "must" rather than "shall". Writing "gender neutral" legislation and avoiding patronising or demeaning language.

Week 8 Doubt factors (1): ellipsis; the broad term; political uncertainty; the unforeseeable development.

Week 9 Doubt factors (2): how drafting errors arise; how they might be avoided.

Week 10 Drafting the preliminary provisions—short and long titles, commencements; definition clauses; application provisions; binding the Government etc.; objects clauses.

Week 11 Substantive provisions: The significance of functions, powers, rights, authorities, duties and obligations; setting up a statutory corporation; setting up a licensing or registration system; setting up a court or tribunal.

Week 12 Supplementary provisions—enforcement: creating offences, vicarious liability, offences by corporations; powers of entry, search, seizure and inspection of documents; power to ask questions; forfeiture of seized property; injunctions, penalty notices and other means of enforcement.

Week 13 Drafting evidentiary provisions, taxing and financial provisions and validating provisions.

Week 14 Drafting the closing provisions, including saving and transitional provisions; repeals; expiry of temporary legislation; Schedules. Drafting amending legislation, including different amending techniques.

Week 15 Statutory interpretation: Its relevance to legislative drafting. The different approaches to interpreting legislation.

Week 16 Statutory interpretation: The importance of context; the associated words rule; the limited class rule; the implied exclusion rule; and other rules of construction.

Week 17 Statutory interpretation: The relationship between legislation and the common law; presumptions of legislative intent; strict and liberal construction (penal and fiscal legislation); presumptions about *mens rea* and strict liability; other presumptions used to construe legislation.

Week 18 Drafting provisions to enable the making of subordinate legislation. What is subordinate legislation? When does a document have legislative effect? Particular problems relating to subordinate legislation, including making, publishing and tabling such legislation. Quasi-legislation.

Week 19 Subordinate legislation continued: validity, repugnancy and inconsistency; improper purpose; uncertainty.

Week 20 Subordinate legislation continued: unreasonableness and proportionality; sub-delegation of the legislative power; ousting of judicial review; incorporation of material by reference; effect of revocation of subordinate legislation; retrospective operation of subordinate legislation.

Week 21 The temporal operation and application of legislation (e.g. retroactivity). Interpretation of subordinate legislation. Interpretation statutes.

Week 22 Provisions of the Basic Law of which legislative drafters need to be aware. Other laws relevant to legislative drafting, such as the Hong Kong Bill of Rights Ordinance, the Public Finance Ordinance, the Criminal Procedure Ordinance and the Administrative Appeals Board Ordinance.

Week 23 Statute consolidation, codification and revision, reprints, etc. The importance of drafting coherent and informative explanatory notes, particularly for amending legislation.

Week 24 Drafting laws in the English and Chinese languages; the need to draft provisions in a way that will facilitate their translation; communications between Anglophone and Sinophone counsel; the Official Languages Ordinance. An overview of the course.

Legal Writing Workshops

The topics for the legal writing workshops are as follows:

- Vagueness and precision in drafting legislative sentences
- Choosing how abstract or concrete to be
- Avoiding ambiguity
- Problems with modifiers
- Prefer the active voice and make sure you specify the actor
- Nominalisations and other "vampires"
- Incomplete sentences; comma splices and fused sentences; faulty use of pronouns; subject-verb disagreement; problems with negatives
- Integrate structure and content to create pictorial clarity
- Avoid centre-embedded clauses and phrases
- Inappropriate paragraphing of legislative provisions
- Dealing with complex conditional sentences
- Using parallel structure
- Being concise
- Using the proper tone
- Punctuation
- Words and expressions to avoid
- Words and expressions to use carefully
- Expressing time
- Leaving out unnecessary words
- Dealing with saving and transitional provisions
- Testing your document by proof reading it

Legislative Drafting Exercises

Those participating in the course are required to undertake a number of legislative drafting exercises. These exercises take a number of forms.

- Getting the course participants to draft provisions prohibiting certain conduct or requiring the performance of an obligation.

- Redrafting existing defective statutes or regulations.
- Preparing legislative proposals and then drafting a Bill to give effect to those proposals.

In the case of the latter, I divide the course participants into pairs. In the first week of the exercise the one member of the pair devises the legislative proposals and the second member raises drafting issues on the proposals. In the second week, the other member of the pair drafts a Bill to give effect to the legislative proposals and first member comments on the draft, which is revised as often as necessary (time constraints permitting).

The course participants hand in their exercises to me each week by a specified deadline. After scrutinising the returns of participants, we meet to discuss the returns, which are displayed on a screen by means of an overhead projector. During the discussion, I ask the course participants to see if they can spot any drafting errors or infelicities and to show how the draft might be rectified or improved.

Exercises given to the course participants include the following:

- Drafting exercise 1: Draft provisions designed to prevent Victoria Harbour from being further polluted by rubbish and other unwanted materials and substances.
- Drafting exercise 2: Draft legislative provisions designed to prevent unnecessary noise near Hong Kong hospitals.
- Drafting exercise 3: Organisation and format—Reorganise sections 273 to 282 of the *Bank Act* (SC 1991, c. 46) (Canada) to make them more coherent. Provide more helpful headings for those sections.
- Drafting exercise 4: Redraft the reorganised sections in clear language and, in particular, address the ambiguities in those sections.
- Drafting exercise 5: Analyse a piece of old legislation (Quarantine Regulation) and identify what communication difficulties it creates. Rewrite the text in a form that is easier for readers to understand.
- Drafting exercise 6: Sentence structure and paragraphing. Redraft three very long one-sentence provisions to make them easier to read.
- Drafting exercise 7: This exercise, which involves redrafting a statute about bulls, concerns the use of language connections horizontally (within a section) and vertically (between sections). The object of the exercise is to attain a high degree of precision and to avoid inferences and specific section cross-references.
- Drafting exercise 8: This exercise, which involves redrafting a newspaper registration statute, is designed to illustrate the effect on drafting of the principle that the law is always speaking. The statute contains some ambiguities as well as other flaws and difficulties that need to be addressed in the redrafting process.
- Drafting exercise 9: This exercise involves rewriting an Ordinance relating fire prevention. One of the purposes of the exercise is to keep simple what is simple.
- Drafting exercise 10: Prepare legislative proposals to provide for the conservation of the bauhinia flower (Hong Kong's emblem) which is in danger of extinction.
- Drafting exercise 11: Draft a Bauhinia Conservation Bill to give effect to the legislative proposals prepared for exercise 10.
- Drafting exercise 12: This exercise involves preparing legislative proposals for a Bill to

require containers of tobacco products to bear prescribed health warnings.

- Drafting exercise 13: Draft a Tobacco Products (Health Warnings) Bill to give effect to the instructions prepared for exercise 12.
- Drafting exercise 14: Prepare legislative proposals for a Bill to provide for the disposal of waste tyres that have become a fire hazard.
- Drafting exercise 15: Draft a Waste Tyres Disposal Bill to give effect to the legislative proposals prepared for exercise 14.
- Drafting exercise 16: Prepare legislative proposals for the regulation of the supply and discharge of fireworks.
- Drafting exercise 17: Draft a Bill to give effect to the legislative proposals prepared for exercise 16.
- Drafting exercise 18: Prepare legislative proposals to control the use of guard dogs on industrial and commercial premises.
- Drafting exercise 19: Draft a Guard Dogs Control Bill to give effect to the legislative proposals prepared for exercise 18.
- Drafting exercise 20: Prepare legislative proposals for the imposition of a levy on the supply of plastic bags at retail outlets and for the establishment of an environmental protection fund into which the levies are to be paid.
- Drafting exercise 21: Draft a Bill to give effect to the legislative proposals prepared for exercise 20.
- Drafting exercise 22: Prepare legislative proposals to ensure that patients and medical staff can enter and leave abortion clinics without harassment.
- Drafting exercise 23: Draft a Bill to give effect to the legislative proposals prepared for drafting exercise 22.

Notes on the information technology system (IT) used in the Australian Commonwealth Office of Parliamentary Counsel

Peter Quiggin[1]

Introduction

These notes[2] give some background to the IT system used in the Australian Government Office of Parliamentary Counsel and are provided to give an overview of the approach that one drafting office has taken to information technology.

Functions of the OPC system

The IT system has the following three main functions:

- a drafting system based on Word XP;
- research tools for parliamentary counsel;
- office support.

Drafting system

The OPC's responsibility is to produce electronic versions of Bills up to and including the version that is introduced into the Commonwealth Parliament. The OPC also produces electronic versions of parliamentary amendments. These are incorporated into Bills by parliamentary staff.

The drafting system uses Word XP, which has been customised through the use of styles and macros.

Styles are used to ensure that Bills are consistently formatted. All text in a Bill has a specified style that must be applied to it. The rigorous use of styles provides consistency and also simplifies automation.

Macros are used to simplify the operation of the system. They remove the need for a range of tedious tasks to be performed manually, and also ensure that things are done in a consistent manner.

Examples of macros that automate tedious tasks are—

- macros that are used to automatically renumber sections and cross-references to those sections, and
- macros that are used use to check for a range of errors in Bills.

The macros have been developed over a number of years. Initially, only those macros that were vital were written. Additional macros providing increased functionality were then added over time. Attachment A gives further information about the macros used in the OPC.
More details of the OPC's Word system are contained in Word Notes 3 and 4. These documents can be supplied on request.

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1 First Parliamentary Counsel (and formerly Director of IT), Australian Office of Parliamentary Counsel

2 These notes were handed out those attending the CALC Conference held in Melbourne, Australia, in April 2003.

Research tools

The research tools used in the OPC can be divided into the following 2 groups:

- tools that are based on information generated within the OPC;
- tools that are purchased from commercial suppliers.

Internally generated research tools

We have two databases that have been created using information generated within the OPC or the Attorney-General's Department. These are both created using Folio Views software, which provides very flexible browsing and searching capability. Folio Views works well with documents that have been created in Word and that use styles in a consistent way.

The main database has—

- consolidations of all Principal Acts that are currently in force,
- Acts from the current parliamentary session and the previous two sessions,
- all Bills currently in Parliament,
- all parliamentary amendments that have been drafted in the OPC and have been sent to Parliament, and
- all Bills and parliamentary amendments currently being drafted in OPC.

The database is updated automatically each night.

The other database includes all Drafting Directions, Office Procedural Circulars, IT Circulars and Word Notes and a range of Legislation Tables (containing information about the progress and status of Bills). It also contains *Drafting Notes*, which are papers written by parliamentary counsel on particular drafting topics.

Commercial tools

The OPC has subscriptions to a range of commercial legal services on the Internet. In addition, such reference works as Encyclopaedia Britannica and the Macquarie Dictionary are available through the Internet. All staff have access to the Internet on their desktop PCs.

Workflow support

The OPC has an internal database, using Microsoft Access, that stores a wide range of information about Bills drafted in OPC.

The database contains all information about a Bill or Act that may be required at a later date. This includes: the names of the relevant parliamentary counsel; passage information; printing cost information; Acts amended by the Bill; and Assent Checking information. Commencement information is stored in documents that are linked to particular records in the database.

The database also contains information on the progress of Bills that are on the program for particular sittings. The database is used to automatically produce a wide range of reports and is also used by First Parliamentary Counsel to manage the legislation program within OPC.

Office support

The IT system also provides resources for office support functions. Personnel of the OPC and finance systems are accessed through the OPC's network, although the personnel system actually resides on an external mainframe computer owned by an external service provider.

Publication and printing of legislation

Responsibility for printing and publication

The OPC is responsible for arranging the printing of sufficient copies of Bills for introduction into Parliament. However, once a Bill is introduced, the OPC ceases to have responsibility for printing and publication.

Printing and publication of introduced Bills is the responsibility of the Parliament. Printing and publication of Acts, both as passed and in consolidated form, is the responsibility of the Office of Legislative Counsel and Publication ("OLDP") in the Attorney-General's Department.

Printing arrangements

OPC's Bills are printed by a private printing company. The OPC supplies the printer with Postscript files that are generated from the OPC Word document. (Postscript is supplied as it is more difficult for the printer to make unauthorised changes.) The printer then uses the Postscript files to print the Bills on B5 paper. Around 250 copies of each Bill are printed for introduction (further quantities may be printed for other distribution).

IT arrangements

The split responsibility for publication and printing of Bills means that, from drafting to publication as an Act, each Bill document is handled by three separate organisations each with their own IT system. In addition, the OPC uses the Acts as prepared by OLDP as the base material for the OPC's Folio Views database of Acts. Parliamentary counsel also cut and paste material from the Acts into draft Bills.

The OPC has provided a copy of its Word system to parliamentary staff who deal with Bills after they are introduced. This ensures that those staff are able to easily incorporate parliamentary amendments and produce various prints of Bills. The OPC also provides some training and technical support to the parliamentary staff who work on Bills.

The OLDP (the publisher of Acts) uses its own customised Word software, rather than the OPC's customised Word software. However, the OLDP does use the same "version" of Word (currently

Word XP), and the same styles as are used in OPC. This means that the electronic versions of Acts that come to the OPC after assent or consolidation can be used as a direct source of material for pasting into new Bills.

Document location and naming

All documents are stored on a central server and are available to all staff (passwords are used when it is necessary to restrict access). The documents are divided into Bills, Memos and Sundries. There is a separate directory for each type of document.

We have always used a strict naming convention for all documents in OPC. The convention is assisted by having the names automatically allocated to each document when the user first saves the document.

The names of Word documents are made up of—

- one letter indicating the type of document (Bill, Memo or Sundry),
- two digits to show the year of creation,
- two letters to show the machine on which the document was created, and
- three numbers in a series generated by the macro.

For example, the first Bill document created in 2003 on the computer with station ID "EA" will have the document number B03EA200.DOC[3]. The next Bill document created on that machine would then be B03EA201.DOC.

Having consistently named documents has made file organisation substantially simpler and avoided the possibility of documents being inadvertently overwritten.

A consistent approach has also been taken to naming documents containing consolidated Acts. These are given a document number made up of the Act number and year (as this is unique). For example, the document for the Act that is Act No. 47 of 1988 would be 1988_47. Putting the year first simplifies sorting by chronological order.

Documentation

An important aspect of the OPC system is documentation. In addition to ensuring that the technical side of the system is properly documented, a large amount of resources have been put into providing extensive user documentation. For example, the Word Notes that cover the formatting of Bills should be able to answer nearly every query that a parliamentary counsel would have about the formatting of Bills.

[3] OPC starts its automatically-generated series of numbers from 200; earlier numbers are left for any documents that have to be manually named.

Although documentation takes some time to develop and keep up-to-date, it ensures consistency and saves time by avoiding the need to continually revisit issues or try to remember previous decisions/solutions to problems.

Training

Training is another area in which the OPC has invested resources. As with documentation, training takes resources initially but saves considerable time in providing help or fixing mistakes later. Most of training within the OPC is provided in-house by IT staff who understand the drafting processes, although external providers have been engaged for more general IT training.

IT Support

When the OPC first moved to Word, IT support was provided by a full-time Information Technology Manager, who was an IT specialist. He was assisted in providing support by the IT Director (a parliamentary counsel who is also responsible for IT) and by two Assistant IT Officers (who are Executive Assistants who do this as a minor part of their duties).

The OPC has since appointed a second IT professional. As part of succession planning, an Assistant Director of IT, Stephen Mattingley, was appointed to take over as Director of IT after Peter Quiggin became First Parliamentary Counsel.

Having the IT Director (a parliamentary counsel and therefore a user of the system, in charge of the system ensures that it is responsive to the needs of users. The OPC has found that a combination of in-house IT staff, limited use of external consultants for special projects, and use of external service providers (e.g. for web-site hosting and security systems) has provided us with a flexible and responsive IT system.

Further information

The OPC is happy to provide further information or access to any material that the Office has developed. If there is any way in which the OPC can provide assistance, please contact:

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Email: peter.quiggin@opc.gov.au

or

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Email: stephen.mattingley@opc.gov.au

Attachment A—Examples of OPC macros and other automation

Part A—Macros

Checking Macros

Between them, the 2 checking macros run almost 270 different checks. Some are straightforward (e.g. that each piece of text has the correct number of tabs), and some are more complex (e.g. that definitions are in the correct alphabetical order).

The macros use a graphic interface. They generate reports showing the page and line of the error/issue and the type of error/issue, with a hyperlink to the location of the error/issue (see Part B of this Attachment for examples). One of the macros has the checks hard-coded, whereas the other uses a table that can be easily edited. The hard-coded macro is more difficult to change, but it can do more complex checks.

In the OPC system, the checking macros do not actually change anything in the Bill being checked—they just identify (and provide hyperlinks to) the parts of the Bill that raise issues, and the kinds of issues raised. The macros complement checks by parliamentary counsel, executive assistants and editorial staff.

Renumbering macros

Staff of the OPC do not like Bills to have automatic numbering that changes whenever a section is added or removed. Consequently, the OPC has developed a range of macros to renumber Bills etc. only when the counsel wants to. This also means that OPC Bills do not need the large number of fields required for an automatic numbering system; this is an advantage, because the OPC has found that the inclusion of lots of fields tends to make documents slow to work with. The renumbering macros are as follows:

Subsection—renumbers the subsections in a selected section;

Paragraph—renumbers the paragraphs in a selected subsection;

Amending Schedule—renumbers the items in an amending Schedule;

Parliamentary Amendment—renumbers parliamentary amendments and checks that the correct number of topic notes have been included;

New Act—renumbers (in increments selected by the user) all of the sections in a Bill for a new Act. Also renumbers any cross-references;

Replace Using List—renumbers the sections in a Bill using a table showing the old and the new numbers. This allows large slabs of inserted sections to be renumbered. Also renumbers any cross-references.

Automation Macros

Alt-Q, (1), (a)

These macros make it simpler to insert subsections, paragraphs and subparagraphs by automatically providing the required brackets and tabs. These are simple macros that eliminate tedious keystrokes.

Ass

This macro is used when preparing a Schedule of amendments. The macro provides an abbreviated method for typing amending formulae. It substantially reduces the number of keystrokes needed to produce the appropriate amending formula. It also reduces the effort needed to remember the "right words" for an amendment.

The macro makes a "best guess" for the style of the text that follows the "action words" of an amending item. For example, if the amendment repeals and substitutes a new paragraph, the macro will apply the paragraph,a style.

The macro can handle most of the commonly-occurring forms for amending Acts with standard layout.

Pams Ass

This macro is similar to the Ass in function (except that it automates parliamentary amendments rather than Bills), but it takes quite a different approach. It is based on a graphical user interface with the user selecting the particular type of amendment required.
The macro is based on the OPC's Amending Forms Manual which, for parliamentary amendments, contains an example of almost all possible amendments.

Commencement

This macro automates the creation of commencement provisions in accordance with the new standardised approach that the OPC has introduced. This approach requires all but the simplest commencement provisions to be set out in a table. The table includes space for the actual date of commencement to be inserted by publishers of the legislation (see Part C of this Attachment for an example of the text produced by the macro).

Decentralised tables of contents

Several of large Acts drafted in the OPC contain decentralised tables of contents (i.e. a table of contents at the start of each Division or Subdivision). This macro automates the creation and updating of those tables.

Process automation macros

The OPC has several macros that automate particular office processes. These are as follows:

Finaliser—runs through a variety of processes in preparing Bills for publication by the commercial printer engaged by the OPC.

Header—puts on the correct styles to ensure that the running headers on pages of Bills work correctly with no need for user input.

Versions—a set of macros to support a structured, office-wide, approach to the making and storing of versions of Bills and other documents.

Saving—a macro to ensure that Bills and other documents are saved to the correct location. This macro is also used to extract a range of information from Bill documents for inclusion in the Bills database (see Part E of this Attachment).

Updating databases—a macro to facilitate the loading of the text of Acts received on disks from the OLDP the Folio database used by the OPC for browsing and searching Acts. The macro also records in a Microsoft Access database relevant information about the Acts received. This macro has greatly reduced the time staff in the legislation area spend dealing with Acts received on disk.

Other macros

The OPC has a range of other miscellaneous macros. These are as follows:

Mark Styles Etc—produces a version of the document with the style of each piece of text printed at the end of the text in curly brackets (see Part D of this Attachment for an example). This is useful for checking that the proper styles have been used.

Fix Document—runs a variety of routines to tidy up documents to remove unwanted styles etc.

Table—simplifies the creation of OPC's standard tables and the insertion and deletion of columns and rows into those tables.

Insert Signature—inserts a graphic of the person's signature.

Selection Documentation—a set of macros to automate the production of selection documentation to ensure that standard documentation is used. The macros include and exclude various bits of text depending on the particular position being advertised.

E-mail—a macro to simplify the attaching of documents to e-mails.

LAP memos—a macro has to make it easier for parliamentary counsel to create correspondence for the legislation approval process for Bills and parliamentary amendments. The macro creates a memo, or a letter and fax cover sheet, for a particular Bill or set of parliamentary amendments, and includes in the memo or letter text chosen by the parliamentary counsel from various options that cover the most common situations relating to policy authority and Ministerial approval of the text of Bills and parliamentary amendments. This saves the parliamentary counsel having to remember or look up standard forms of wording for such correspondence.

Ref2AGs macro—a macro to facilitate circulation of drafts to Australian Government agencies that have a policy interest in matters covered by the drafts. The macro lets the user choose the agencies to which a draft is to be sent and identify (from a checklist) the reasons why it is to be sent to each agency. The macro then creates a document listing all the agencies and reasons, and attaches it and the draft to an e-mail addressed to the relevant agencies. The macro also creates fax cover sheets for sending the document and the draft to

relevant agencies that are not on Fedlink, the secure e-mail facility for Australian Government agencies.

Advice macro—a macro to make it easier for parliamentary counsel to create correspondence for advice that certain parliamentary amendments should be moved in the Senate as requests under section 53 of the Constitution. The macro creates standard form documents for advice to Ministerial staff and statements of reasons for the advice, together with fax cover sheets for sending the advice, statements of reasons and amendments to the relevant Ministerial staff and Parliamentary Liaison Officers. This saves the parliamentary counsel having to remember or look up standard forms of wording for such correspondence.

Part B—Example of reports generated by error checking macros

Checker Macro Results

Document: B04RC239.doc

Australian Passports Bill 2004

Computer: STATION-RA by MattingleyS

Checklist: **Drafting Checklist**

Date/Time: 22 October 2004 (8:05 am)

Notes:

1. *Page, line and column numbers refer to the end of the first search term*
2. *Only FIRST occurrence of items marked with asterisks (*) are reported.*
3. *When the checklist reports a hit in or after a table on a page, the line number reported is the ACTUAL line number on the page, not the line number that is printed on the left hand side of the Bill.*

Section	Page	Line	Column	View	[CheckList #]and comment
2	1	6	13	View	42: If the Bill extends to an external territory, see DD-6/1997 (Australian jurisdictions) and DD-1/2002 (referral)
3	2	4	25	View	230: If you are using the commencement table, have you included subsection (1)? See DD-3/2003
3	2	8	13	View	252: Should the Act, or a part of the Act, commence on the day after the day on which the Act receives the Royal Assent to avoid a retrospective commencement? See DD 3/2003.
3	2	12	41	View	250: If your Proclamation commencement does not have a 6 month cap, have your instructors justified this to the SSBC in the EM?
3	3	19	57	View	184*: “writing” or “written” will not always attract AIA 33(3). See FPC e-mail dated 20-3-1998. See also DD

Section	Page	Line	Column	View	[CheckList #]and comment
					10/2001 for *Electronic Transactions Act 1999* implications for references to "writing" etc.
3	4	21	21	View	82: A Treaty does not have to be set out in the Act. see DD-3/1999
3	4	22	55	View	177: "Department of ...": Generally, Departments should not be specified by name. See FPC e-mail dated 15-10-1998
3	12	33	57	View	214: If the phrase "offence against this [Act/Part/Division/section]" is being used (other than in the Criminal Code), should it include Chapter 7 Criminal Code offences? DD 8/2001.
3	19	16	22	View	21: DD-1/2002 Offence? Refer Bill to Criminal Law If this is an offence, have you considered the geographical jurisdiction of the offence? DD 9/2001
3	19	26	52	View	126*: See DD-7/2001 for rules about using penalty units
3	37	21	11	View	156: Decisions to remit penalties etc. should normally be reviewable. See DD-5/1982. If a decision is not reviewable, have your instructors justified this to the SSBC in the EM?

Part C—Example of the page produced by the commencement macro

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

Part D—Example of styles-marked text

Division·5—Screening officers¶

93 Simplified overview of Division¶{Heading 5,s}

A screening officer may request a person to remove items of clothing for screening purposes—but may not require this. However, if a person refuses to comply with such a request and the screening officer is unable to screen the person properly, the screening officer must refuse to allow the person to pass the screening point.¶{BoxText,bt}

To protect the integrity of cleared areas and zones, screening officers are provided with similar restraint and detention powers to those of airport security guards.¶{BoxText,bt}

94 Screening officers¶{Heading 5,s}

>(1) >A person who is authorised or required to conduct screening is a ***screening officer***.¶{subsection,ss}

>(2) >The regulations must prescribe the following for screening officers:¶{subsection,ss}

>(a) >training and qualification requirements;¶{paragraph,a}

>(b) >requirements in relation to the form, issue and use of identity cards.¶{paragraph,a}

>(3) >The regulations may prescribe the following for screening officers:¶{subsection,ss}

>(a) >requirements in relation to uniforms;¶{paragraph,a}

>(b) >any other requirements.¶{paragraph,a}

95 Screening powers¶{Heading 5,s}

>(1) >If a screening officer considers it necessary in order to screen a person properly, the screening officer may request the person to remove any item of the person's clothing.¶{subsection,ss}

>(2) >The screening officer must not:¶{subsection,ss}

>(a) >require the person to remove any clothing; or¶{paragraph,a}

>(b) >remove or cause the removal of any of the person's clothing.¶{paragraph,a}

Penalty: >50 penalty units.¶{Penalty}

Part E—Bills database

The OPC Bills database contains a wide range of information about Bills and Acts, especially information about the drafting processes and history of Bills drafted in the OPC (e.g. names of counsel, dates of various approvals, name changes of Bills, dates of consideration in Parliament).

The Bills database is also used as a work tracking system. It records details of the progress of all Bills that are on the program for any particular sittings.

The underlying philosophy in creating the database was that it should be automated as far as possible, with information being automatically gathered from other sources of information (e.g. when a new Act is loaded onto the OPC system after Royal Assent, the year and Act number, and the number of pages, are automatically copied into the Bills database).

The database enables the information to be manipulated in various ways. The OPC can produce a range of reports very quickly and easily (e.g. a report listing all the Bills introduced during a specified period, or all the Bills drafted by a named parliamentary counsel). Of course, the quality and usefulness of the reports depends entirely on the quality and scope of the information that is entered and stored.

Instant Bills: The impact of information technology (IT) on legislative drafting in Canada[1]

Don Macpherson[2]

Introduction

In every legislative drafting office in Canada (even if not in every legislative counsel's office) is the ubiquitous purveyor of the information revolution – the digital computer. Ralston and Reilly's *Encyclopaedia of Computer Science* defines the digital computer as "a machine that will accept data and information presented to it in the required form, carry out arithmetic and logical operations on this raw material and then supply the required results in acceptable form." Surely it is the answer to the prayers of legislative counsel driven by deadlines!

In addition to its attractiveness as a word processor, the digital computer offers writers of laws a consolidated compendium of their work – in the form of a database of statutes and regulations. Moreover, the linking of digital computers into networks allows legislative counsel to communicate with each other on-line and provides access to legal and legislative databases for their day-to-day work. The advent of the Internet allows legislative counsel to envisage the time when their legislative texts will be accessible to, and perhaps even understandable by, everyone. It even has the potential to facilitate, one day, the interactive development of legislative texts in cyberspace by legislative counsel, policy-makers, stakeholders and groups of citizens.

The lure of this powerful technology is irresistible. In seizing it however, legislative counsel have irreversibly changed the parameters of their job, the organization of their work and even the product of their labours. I will describe in this paper how information technology has become embedded in the Bill-drafting process in Canada and how it has changed the legislative counsel's job and the way he or she does it. I will examine some of the positive and negative impacts of information technology on legislative counsel, drafting and the language of statutes. Finally, I will draw some conclusions based on our experience in Canada. My objective is not to promote the Canadian model for export to other jurisdictions. Rather, it is to cause drafters in legislative drafting offices around the world to reflect on how they are coping with the rapid pace of change brought about by information technology and how they might best approach the inevitable restructuring of their business in response to it.

Part 1: A change in pace: Legislative drafting from Driedger to Macpherson

The rapid pace of change

Information technology has undeniably made the legislative counsel's life more hectic in a number of respects:

- the seemingly endless series of drafts to be prepared before tabling a Bill, and escalating numbers of motions to amend to be prepared thereafter,

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[1] This paper is based on a paper presented in Montego Bay on 13 July 2003 at the 2nd Annual Caribbean Legislative Drafting Forum, sponsored by the University of the West Indies Faculty of Law.

[2] Legislative Counsel of the Legislation Section, Department of Justice, Canada. The views expressed in this paper are those of the author and should not be ascribed to either the Legislation Section or the Department of Justice Canada.

- unrelenting pressures to develop and perfect the underlying policy of a Bill at the same time as it is being drafted,
- numerous intervenors, both inside and outside the drafting office, whose comments legislative counsel must solicit, digest and act on,
- the necessity to master many different computer software programs,
- a daily barrage of e-mails and telephone messages, and
- the expectation by clients in government departments, by ministers and by the general public that legislative solutions to their problems be drafted for introduction into Parliament instantly.

The pace of drafting in Driedger's day

How different was the lot of the legislative drafter even 25 years ago when the technology was the typewriter (or perhaps a dictaphone) and legislative counsel had secretaries to do the typing. In the Preface to the 1976 edition of his book *The Composition of Legislation*, [3] Elmer Driedger, the doyen of Canadian drafting, provides a description of the process for drafting Bills then in place in the Department of Justice. Drafting did not begin until the sponsors of the Bill had decided on their policy.[4] This was because of the inevitable delay that would result, according to Driedger, if legislative counsel took instructions before the policy work was complete.[5] After carrying out the necessary legal research and familiarizing himself with the background for the legislative proposal (through several meetings with the sponsors of the Bill or several weeks of meetings, if necessary), the drafter then prepared a legislative plan. Only at this point was he ready to prepare a first draft of the proposed Bill, working by himself. Driedger underlined the solitary nature of the legislative counsel's work and the importance of his individual responsibility for the outcome.

> He cannot work with other people looking over his shoulder and offering comments. And no satisfactory draft can be prepared by a group of draftsmen acting as a drafting committee; they will all have different ideas about how the work should be done, there will be endless discussions over trivialities, and the final product will be at best only a compromise. Drafts can be discussed, criticized and tested in a discussion group, but the responsibility for setting up the draft or making any changes must devolve upon one person.

The drafter then revised the first draft in repeated meetings with the sponsors, until it was approved by their deputy minister or minister.

How long did the process take? For a short, ordinary Bill that had taken approximately 6 months from its inception in the sponsoring Department until Cabinet approval of the policy and drafting instructions, Driedger estimated the drafting time to be 36 working days. The draftsman only took

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3 *The Composition of Legislation: Legislative Forms and Precedents*, Elmer A. Driedger, 2 edn, Minister of Supply and Services, 1976, pp. xv to xxiv.

4 Ibid. at p. xvi. Driedger says that "A draftsman must receive a reasonably complete proposal before he can start his work, and the sponsors must therefore first settle the policy they want implemented."

5 Ibid. at p. xviii. Driedger cites an example of a Bill that the client wanted in 3 weeks that took an experienced draftsman 18 months to prepare because the department had not decided or even considered many major questions of policy.

7 days of that time however to complete 3 drafts. Most of the time was taken by departmental officials to consider the drafts. Driedger said that there was a certain irreductable amount of work required to draft a Bill and was not optimistic that the time required to do it could be reduced.

> This period [*of one month normally required to prepare a particular Bill*] could be reduced, without sacrificing quality by according the Bill top priority and by working at it evenings and weekends, which might bring the preparation period down to (say) three weeks. But the time cannot then be further reduced without sacrificing quality; as the time is cut down, the quality deteriorates, so that ultimately the point is reached where no Bill fit for introduction can be produced.[6]

The pace of drafting in Ontario

In a paper delivered at last year's Conference of the Canadian Institute for the Administration of Justice in Ottawa, Don Revell, the Chief Legislative Counsel for the Government of Ontario, compared Driedger's estimate of the time required to draft a short Bill with the speed of drafting in his office. He estimated that legislative counsel in Ontario produce a "short Bill" (including drafting, translation, editing and client review) at the rate of 1 to 2 pages a day. The rate of production of a "long Bill" is 2 to 4 pages a day.[7] This change in the speed of drafting in just 25 years is phenomenal. In the 36 days that it took to prepare a short, normal Bill in Driedger's day, the Ontario Legislative Counsel office can today prepare a Bill that is 100 pages in length.

The change in the method of doing the work is no less remarkable. One aspect highlighted by Mr. Revell is the amount of collaboration and consultation required when drafting Bills today. He lamented the loss of the legislative counsel's "splendid isolation". While 25 years ago the drafter had minimal contact with anyone other than clients and committees, today legislative counsel in Ontario have regular involvement with, and demands placed on them by, the Premier's office, the Cabinet Office, the Office of the Deputy Attorney General's Office (in particular its Constitutional Law Branch), the Government House Leader's Office and the Clerk's office. In short, the Ontario drafter no longer works alone, and there is always someone looking over his or her shoulder.

A new standard—the Anti-terrorism Act

The events of 11 September 2001 set a new standard for the drafting of legislation at the federal level in Canada. The *Anti-terrorism Act* is a complex piece of legislation that defines terrorist activity, creates new terrorist offences, identifies terrorist entities, provides new tools for law enforcement and security agencies to investigate and prevent terrorist activities, seize terrorist property and track and prevent terrorist financing. The Act also contains provisions protecting official secrets and the integrity of the registration system for charities. This 186-page Bill was drafted in the Legislation Section of the Department of Justice in just three weeks.

The preparation of the Bill was a government-wide initiative involving a series of integrated teams of policy experts, lawyers and legislative counsel, led by Justice Canada. The first drafting team

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6 Ibid. at p. xix.

7 "Drafting in a changing world", paper delivered at the Conference of the Canadian Institute for the Administration of Justice in Ottawa, *Drafting to Communicate the Law: the State of the Art*, 12-13 September 2002.

began work on the Bill in the last week of September. The following week, five additional teams of legislative counsel (one English and one French drafter for each team) were assigned to various components of the Bill. The teams worked concurrently to produce a draft Bill, which was assembled, together with the consequential and coordinating amendments, by additional teams of legislative counsel.[8] The draft Bill was edited, reviewed for bijural and bilingual consistency, and approved by senior officials and Cabinet, and was then tabled in the House of Commons on 15 October 2001—only 3 weeks after the drafting began and just over a month after the tragic events of 11 September.

The drafting rooms enabled the six teams to develop draft text for their parts of the Bill in both official languages, to consult outside experts by telephone and e-mail and to conduct legal research as a group. The computers in the drafting rooms provided access to legal databases on the Internet and on the Department's intranet, a network linking the computers of all Justice lawyers. Policy and legal advisers joined and left each team, according to the expertise required as the legislative counsel progressed through each of their parts of the Bill; client experts interested in several parts of the Bill rotated from room to room as the drafting process unfolded. Copies of draft legislation were printed and distributed to clients as each team passed various project milestones; clients repeatedly returned with new policy ideas and revisions.

Throughout the project, participants were faced with numerous constraints, including completely new and emerging government priorities, short time frames, and inter-departmental tensions. The success of this exercise won the Department of Justice the prestigious Head of the Public Service Award. But it set a new standard for legislative counsel to meet when faced with other high-priority, urgent legislative assignments (regardless of their complexity) – the "instant Bill".

For legislative drafting at the federal level in Canada, the *Anti-terrorism Act* rang the death knell of the Driedger era, where policy development and drafting were separate functions and the drafter worked alone, with control over, and individual responsibility for, his text. The *Antiterrorism Act* confirmed the emergence of a new era – the era of the "drafting team." In this new era, policy and legislation are developed together, over a collapsed time-period, by a horizontal inter-departmental team, composed of policy advisors, legal counsel and legislative counsel. The legislative counsel are responsible for the co-ordination and management of the drafting phase of the exercise. But the end-product of this process – the instant Bill – is the collective responsibility of the drafting team. These changes in the pace and methods of work of the drafter are caused by and mediated by information technology.

However, the new standard comes to us at a cost. The instant Bill has generated unrealistic expectations of the drafting process among federal departments and agencies. If a complex and lengthy Bill like the *Anti-terrorism Act* can be drafted in three weeks, why can't Department X's Bill be drafted in two weeks? What clients fail to realize is that the *Anti-terrorism Act* was an exceptional situation. The production of the Bill within such tight time limits was made possible

[8] In all, 18 drafters worked on the Bill. In addition, several teams from the Regulations Section were assigned to draft the subordinate legislation. This work was supported by legislative editors, jurilinguists, and the informatics group.

by dedicating almost all of the resources of the Legislation Section to it and by temporarily setting aside other government legislative priorities. Even the Cabinet approval process was adjusted so as to ensure quick introduction of the Bill. The instant Bill is costly in terms of the resources required to support the legislative counsel[9] and the effect of overtime and stresses on their health. For the leisurely pace of drafting that Driedger described, the instant Bill has substituted a new norm—drafting under pressure.

Part 2: An IT tour of Justice Canada's legislative drafting offices

The IT home page of the Legislative Services Branch

The Legislative Services Branch has created a new Home Page on the Department of Justice intranet. It has a picture of a woman's fingers typing on a computer keyboard and the scales of justice as a backdrop. It is hard to tell, but I think she's typing "ALT P" because that is the function that opens the style sheet for drafting Bills in Wordperfect 5.1 for DOS, the program that has replaced the pen as the drafting tool for legislative counsel in the Branch. Our legislative counsel are not only comfortable with this program; we would be unable to draft without it.

This was the program that the most technologically savvy of our legislative counsel used, in the mid-eighties,[10] to drag the Legislation Section kicking and screaming into the information age.[11] They created a series of styles[12] that allow Bills to be formatted consistently. They also developed a series of macros[13] tailored to our needs that automatically perform a number of tedious tasks and allow us to print bilingual Bills for clients that look like Bills that are tabled in Parliament. In our experience, Wordperfect 5.1 has proven superior to Microsoft Word (which was adopted as the Departmental standard in the late eighties) as a tool for legislative drafting, principally because it does not require the use of the mouse.

Wordperfect 5.1 is difficult to support however and has become obsolete. Legislative counsel in our office are now in the midst of training on the use of a new "authoring-tool" tool, which will enable us to draft Bills in the fall of 2003 in XML. This program will eliminate the conversion

9 See below at pages 12 to 15.

10 The Legislation Section was using computers even before Wordperfect – an IBM mainframe system. However the inputting was done by the drafters' secretaries.

11 Ed Hicks, our Informatics Coordinator related an anecdote to me concerning the protests of the then Director of the Section, the late Hilton McIntosh, to the introduction of computers in the Section. Hilton's retort, on being prodded to try out a few computers, was that lawyers would never use computers to draft legislation – typing was for secretaries! In the late 1980s, in response to budgetary cut-backs across government, most of the secretaries in the Legislation Section were assigned other duties, and all the drafters were equipped with computers.

12 The list of styles includes styles for formatting the opening headings for Bills, the enacting formula, marginal notes, subsections, paragraphs, headings, Part numbers, explanatory notes, schedules, etc.

13 There are macros for running headers on each page of the Bill (identifying the drafters, the name of the Bill and indicating that it is secret), renumbering the sections of the Bill and internal cross-references, creating a table of provisions and presenting the French and English versions in 2 columns on each page. There is also a "motion-maker macro" which sets up motions in the form and styles used by Parliament.

time formerly required to print Bills from Wordperfect 5.1, as well as the errors caused by conversion. By separating format from content, XML will allow the government's printer and Parliament to print Bills in their own formats directly from the text drafted by the Legislation Section. Eventually users will be able to search our XML legislative database using point in time searches.

IT also offers legislative counsel a number of electronic research tools for use in their day-to day work. The most important of these is the FolioViews database of consolidated Canadian statutes and regulations, maintained by the Legislative Services Branch Database Management Unit. FolioViews, with its flexible searching capacity, has proved indispensable in finding precedents, locating statutes for the purpose of making consequential amendments or repeals in a particular Bill and promoting greater uniformity of legal terminology and precedents across the statute book.

We also have access through the Department of Justice intranet to the Legislation Section's deskbook and drafting notes, as well as to legal research tools and opinions produced by other groups in the Department. Legislative counsel have desktop access to on-line dictionaries and to Canadian and foreign jurisprudence through commercial services. The Internet provides access to Bills and reports on their status via the website of the Parliament of Canada (www.parl.gc.ca). Other Internet websites offer access to Bills and legislation from the provinces and foreign jurisdictions.

The offices of the Legislation Section

Let me briefly describe our office environment. All legislative counsel have computers in their offices equipped with the above informatics tools and all draft by computer. The combined effects of information technology and government cut-backs in Canada over the last 25 years has meant the continual reduction of the size of lawyers' offices.[14] The computer is the main feature of our increasingly "paperless offices" and the surrounding modular furniture is ergonomically designed to accommodate people working at the computer for most of the day. The offices are set up to allow for co-drafting – the contemporaneous drafting of text in French and in English by 2 legislative counsel on 2 computers.[15]

Most legislative counsel choose to draft in the drafting rooms. Drafting rooms are board rooms, with space for 2 legislative counsel and from 4 to 8 clients, equipped with 4 flat-panel LCD

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[14] The palatial spaces occupied by drafters and their secretaries in Driedger's time have shrunk so that drafter's offices in St. Andrew's Tower today are smaller than the anterooms occupied by drafter's secretaries years ago. There are two reasons for this. First, the offices must comply with Treasury Board regulations. Second, when the Legislation Section moved into St. Andrew's Tower, the drafters agreed to reduce the size of their offices so that more space could be made available for drafting rooms, which at that time were exclusively used by drafters in the Section.

[15] The *Official Languages Act*, passed in 1969, specifically provided for the legal equality of the French and English versions of Canadian laws. In response to a report by the Commissioner of Official Languages in 1975, the Department of Justice undertook to develop original versions of legislation in each official language. Rather than translating the French version of Bills from the original draft (the English version) the Department assigned a French and English drafter to each Bill. The two drafters co-draft both versions from instructions received in both official languages.

computer screens (one with keyboard for each of the 2 legislative counsel and 2 display screens for clients – one for the English text of the draft Bill and the other for the French text). Each room has a speaker telephone, e-mail and Internet access and is close to a high-speed printer. The drafting room is the legislative counsel's court room and the crucible for producing the instant Bill.

Some legislative counsel prefer to draft the initial draft of a Bill together in the absence of instructing officers and to draft in teams with instructing officers in the drafting rooms only when the first draft is complete. Others prefer to do all their work in teams in the drafting rooms. This is sometimes the only option if the Bill is urgent. The Legislative Services Branch currently has eleven fully equipped drafting rooms, which are usually all in continuous use when Parliament is in session.

I might note, before closing the Branch IT Home Page, that several legislative counsel engage in "telework" from time to time, drafting on computers in their homes and communicating with co-drafters (of the other language version) by telephone and e-mail. One drafter in the Section does most of his work at home, communicates with colleagues by e-mail and transfers drafts back and forth by secure fax.

Part 3: Speeding up the drafting: the impact of IT on the process and organization of the work

The impact of IT on our economy, business and society is immense. According to one author, the reduction of transaction time brought about by IT is causing a seminal shift in the way we structure our business processes.[16] The fact that immediate information transactions are possible creates public expectations that information, whatever its nature, will be immediately available when required. We live and work in a society that demands that information be ready "just in time", a culture where nobody waits.

The main impact of IT on the drafting process is to reduce the amount of time available to do the work. IT permits the compression of the time frame required to transform policy into a Bill. However, the ability to produce Bills quickly is a speed trap for legislative counsel. It creates unreasonable expectations of the drafting process by clients and generates the demand for legislative counsel to produce instant Bills in every case.

The demand to create legislation in a hurry is not a new phenomenon.[17] Even in Driedger's time, society looked to the law for solutions to intractable social and economic problems. Politicians made electoral promises (and ministers made legislative commitments) to prepare Bills to address those problems. Officials proposed legislative solutions to Cabinet, which approved drafting instructions for a Bill. Then the officials arrived at the legislative counsel's door with the

16 See *Computer Law*, George S. Takach, Toronto, Irwin Law, 1998, at p. 38-40

17 See note 4 above. Driedger, indicates that his drafters often drafted under pressure and were pushed to do the work in a hurry.

conviction that the matter was one of highest priority to the government and that a Bill was urgently required.

What is a new phenomenon in Canada is that instructing officers arrive at the legislative counsel's door with no drafting instructions approved by Cabinet and only very diffuse ideas about legislative solutions to their problem. They have the same convictions as to the Bill's priority and urgency, and often also have a very clear idea as to the date in the current session on which their minister wants the Bill introduced in Parliament.

Fortunately, the drafter is no longer alone. We have IT. IT allows us to conscript help in the form of an inter-disciplinary team of persons who contribute to the preparation of a Bill in the area of their expertise and who fulfil their various functions contemporaneously, in the same limited period of time that is available to the drafter. IT permits the work to be done in concert by many contributors and permits the drafting to be allocated to several teams of legislative counsel. IT supports instantaneous communications among all contributors and permits the disassembling of the work and reassembling of the drafts of several teams of legislative counsel into a final product – the instant Bill. Finally, IT allows the Bill to be printed instantly in the form required by Parliament.

Merging policy development and drafting

One of the ways to reduce the amount of time required to transform an idea into government policy and the policy into a draft Bill fit for introduction into Parliament is to merge the policy development and drafting processes. This approach is becoming quite common in Canada as more and more Bills are drafted by drafting teams in drafting rooms.

In this environment, the legislative counsel become participants in the development and refinement of the policy underlying a Bill. And the instructing officers (policy and legal advisors) participate in drafting the Bill. Although the legislative counsel have the keyboard, "drafting by committee" (as Driedger called it) in the drafting room reduces legislative counsel's control over their draft. The onus is on counsel in the drafting room to maintain discipline and, above all, to maintain the legal and linguistic integrity of the draft Bill. Work in the drafting room is often exhausting, and can at times be quite intense. Issues requiring further policy or legal work by instructing officers or further study by the legislative counsel are often tabled. Once proposals for resolving them are developed, the issues are returned to the drafting room for discussion and drafting.

Traditionally, policy development and drafting have been entirely separate exercises, the former tightly controlled by Cabinet and the latter by the Chief Legislative Counsel. Both have traditionally been carried out under the close supervision of the Government House Leader and the Privy Council Office. In recent years, central agency controls have been loosened to allow the merger of the policy and drafting processes, particularly for urgent Bills.

Consider the time savings from merging the two functions for a short, ordinary Bill. Normally according to Driedger, after the initial policy development, the work would require 36 working

days, 7 for the legislative counsel. Merging the policy development and drafting offers an immediate saving of at least 7 days, although additional time would be required of the legislative counsel because they are drawn into the policy development.

In our experience in drafting the *Anti-terrorism Act*, the time saved can be even greater. Merging the two processes blurs the line between the policy product and the legislative product. For all intents and purposes the Bill becomes the objective. Ancillary policy documents, if necessary, are developed as a function of drafting the Bill. In the drafting room, the team of policy advisors, legal advisors and legislative counsel are collectively responsible for delivering the Bill to the sponsoring minister. The draft Bill is on everyone's computer screen and is developed as a group enterprise. This sharing of responsibility between the legislative counsel and instructing officers creates a kind of synergy[18] that propels the work forward, on a common timetable, towards a common objective—a legislative proposal for introduction into Parliament.

Dividing the work among legislative counsel

The greatest gain in efficiency in drafting Bills comes from distributing the work to more people. IT makes this possible and not only allows the work to be parcelled out among different teams of legislative counsel but also permits the involvement of many specialists on particular aspects of a Bill. IT allows instantaneous communications among participants during the drafting phase, and enables the various components of the Bill to be reassembled into a final product when the project is complete.

In our Legislative Services Branch, management has successfully capitalized on efficiencies gained through the division of labour, by assigning a single Bill to more than one team of legislative counsel. Even in the mid 1990s, the Chief Legislative Counsel assigned large Bills and Bills comprising several distinct subject-areas[19] to more than one team of legislative counsel. The practice has subsequently proven useful for urgent Bills and for meeting unusual or unforeseen demands on drafting resources.

Not all drafting assignments can be split among different teams of course. Some Bills, for example budget implementation Bills, are naturally broken down into a number of discrete components that are not intertwined in law or policy. The components of amending Bills that target a number of distinct statutes can also be assigned to different drafting teams without risk of loss of continuity in the Bill. After all, a consistent drafting style is not necessary in a Bill the components of which will eventually be housed in different places in the statute book, each with the statute it amends.

On the other hand, a Bill establishing a new program or a regulatory scheme is not easy to split. As a single integrated piece of legislation, this type of Bill must be coherent from beginning to

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[18] The creative group dynamic in the drafting room is most unlike the frustrating exercise in group drafting cited by Driedger. See above at page 3.

[19] The policy of the Privy Council Office during this period to combine smaller Bills with similar subject-matter into a single large Bill also had the effect of incorporating the work of different teams of drafters into one Bill.

end. Even if the Bill's subject-matter logically breaks down into discrete compartments, the amount of time and effort required to achieve legal and linguistic uniformity when the components of the Bill are reassembled may defeat the efficiency gains from splitting it.

Drafting support services

Branch management has also increased the efficiency of the drafting process by retaining the services of specialists to support legislative counsel. Support services, like the services of legislative editors,[20] have been available to drafters of federal legislation in Canada since Driedger's time. With the advent of co-drafting in the mid 1970s, the services of several French jurilinguists were also retained to support the quality of the French version of legislation. This service has since expanded[21] to include the comparison of the two language versions of Bills to ensure consistency.

In response to a Cabinet decision, the Department of Justice made a commitment in the late 1990s to ensure that federal legislation accurately reflects the private law concepts of Canada's two legal systems, the civil law and the common law. This requires a review of the corpus of Canadian legislation and the preparation of a series of harmonization Bills to incorporate both civil and common law concepts into the French and English versions of Canadian legislation. The Bijuralism and Drafting Support Services Group, recently established in our Branch to carry out this function, also reviews Bills drafted by our office before they are tabled to determine if they raise any bijuralism concerns. If they do, the Group provides advice to legislative counsel on how to resolve the issue.

Some of the legal work formerly done by legislative counsel in the Legislation Section has been assigned to a special Advisory and Development Services Group, recently established as part of the Legislative Services Branch. This Group conducts in-house training of legislative counsel, undertakes pilot projects, conducts research on plain language drafting and provides advice on issues related to statutory interpretation.[22]

IT is not the source of efficiency gains through management's use of specialists to supplement the work done by legislative counsel. After all, use of legislative editors by legislative counsel predated the information revolution. And the engagement of jurilinguists and experts in comparative law would have been desirable in any event to support the equality of the two language versions and two legal systems in Canada. However, without IT, these specialized inputs would have been very costly (in terms of delays to tabling Bills in Parliament) compared to the value added to Bills. IT turned the cost-benefit calculation in favour of enhancing the quality of

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20 Editors' work includes correcting, simplifying, formatting, ensuring consistency of language use and adding historic references and notes to Bills.

21 Jurilinguistic services are now provided by a specialized unit in the Branch, composed of 7 French jurilinguists and 2 English linguists.

22 Specialist positions were created in the Legislation Section in the mid '90's to provide opinions on statutory interpretation and matters of Parliamentary procedure. Only the latter function remains with the Section.

Bills, by allowing the work of jurilinguists and bijuralists to be done contemporaneously with the drafting.

IT also facilitates review of draft Bills by a far greater number of persons. As in Ontario,[23] routine consultations on the text of draft Bills are required with more and more people before they are introduced into Parliament – for example, with legal and policy experts in the government and with people working for central agencies. It is also common for ministers to ask Cabinet's permission to consult stakeholders, or even the public, on a draft Bill before it is tabled. This permits technical improvements to be made to the Bill and, in the case of stakeholder or public consultations, enables a minister to tailor the Bill to external realities. While IT may have ended the legislative counsel's "splendid isolation" and deprived them of definitive control over draft legislation, the extended consultation and review process often results in corrections and improvements being made to Bills.

Impact on legislative counsel and the organization of drafting services

The changes brought about by the information revolution are, for legislative counsel going through them, reminiscent of the transformations brought about by the industrial revolution. Like nineteenth century artisans displaced from their workshops by the factory owners exploiting efficiencies gained by a process of division of labour and specialization of functions in the production of goods,[24] legislative counsel have been driven from their offices and into the drafting rooms. There they work in teams, under the watchful eye of management, on one component of Bill production, the drafting. This component, along with others added down the line (drafts of other drafting teams, editing, jurilinguistic and bijural review) is assembled, in the final stages of the process, into a Bill that is then marketed to the public by Ministers and communications specialists.

The skill sets required by legislative counsel today have changed. Informatics skills, for example, are now essential to the job. The ability to participate in policy development, particularly legal policy development, is also required. So are project management skills and team leadership skills. After all, it is the legislative counsel who must ensure that the contributions of all participants in the Bill production process are integrated into the text of the Bill and that it is prepared for tabling according to the agreed timetable.

There may also be changes in the organization of the drafting office, or to the institution that houses it. For example, our Legislative Services Branch has just gone through a major reorganization. Of interest is the priority placed on management of the various services that are now part of the Bill production process. The reorganization produced a new management class responsible for the coordination and organization of the Bill production process, the coordination

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23 See above.

24 Some of senior legislative counsel in the Canadian Department of Justice remember the age of the artisan, when legislative counsel took instructions from Deputy Ministers and Ministers and controlled the production of Bills. The database of information required to prepare a Bill was all in their heads, or at their fingertips in the printed copies of Bills they had themselves drafted.

of the work of the legislative counsel and of drafting support services, and Branch communications with the Department of Justice and other client departments.

The shifting of responsibility from the individual counsel to the drafting team, the development and expansion of drafting support services and the establishment of a new layer of management has changed the role of the legislative counsel. Not only must legislative counsel provide team leadership in the drafting room, integrate the work of all participants in the Bill production process and keep managers abreast of the progress on and problems with particular files, they must also ensure the legal and linguistic quality and integrity of the Bill and, above all, produce it on time.

Part 4: Impacts of IT on the language of legislation

According to David Howes, the Internet challenges our perception of the law and even the language of legislation.[25] The positivist idea of law as a unilateral command, so convincingly conveyed by print, does not really come across in digital text. Digital text is fluid and interactive, rather than unilateral, like print. Howes notes that on the Internet all types of information are equal; whereas one of the main messages conveyed by legislation is its authority.

Governments have grappled with this inconsistency when launching their electronic databases of statutes and regulations on the Internet by denying the authority of the electronic version. The Canadian government, for example, has a disclaimer on its Internet site indicating that electronic statutes and regulations are maintained for convenience of reference and that only the print versions are official.[26] This, according to Howes, is an inadequate response to the change in the relationship between legislator and subject and to the inevitable change in the dialogue on law and legislation that takes place between them.

Improving readability – the plain language movement

There is some evidence that IT is having an impact on legal discourse in our society. The Internet is democratizing the law, by providing public access to it, much like the printing press

[25] "Understanding the Code of Codes: On the Prospects for Legislation in the Digital Age", paper delivered by David Howes at the Conference of the Canadian Institute for the Administration of Justice in Ottawa, *Drafting to Communicate the Law: the State of the Art*, 12-13, September, 2002.

[26] The notice on the Department of Justice web site reads as follows: "The legislative material on this site has been prepared for convenience of reference only and does not yet have official sanction. For all purposes of interpreting and applying the law, users should consult:

- the Acts as passed by Parliament, which are published in the "Assented to" Acts service, Part III of the Canada Gazette and the annual Statutes of Canada, and
- the regulations, as registered by the Clerk of the Privy Council and published in Part II of the Canada Gazette.

The above-mentioned publications are available in most public libraries."

The electronic version will have official status when Part 5 of chapter 5 of the Statutes of Canada 2000 is brought into force.

democratized the Vulgate Bible. Law and legislation have become subject to unprecedented public interest in the media and there is unprecedented public demand for legal information. Democratic governments in the developed world have responded by posting electronic versions of their Bills, statutes and regulations on the Internet. Many have officially adopted plain language policies that promote the modernization of the layout of statutes and regulations and writing them in plain language.

Under the banner of "readability", the access to the law movement has called into question some long-settled drafting conventions respecting the layout of the official (printed) version of legislation. Based on work done in other jurisdictions,[27] our Branch plain language project is currently examining improvements to the readability of legislation through graphic design. They are proposing radical changes to the layout of the "official" printed versions of Canadian statutes to improve their readability, including the use of more white space and user-friendly typefaces. The project is also proposing changes to marginal notes and headings and the inclusion of reader aids[28] to make it easier for readers to "navigate" their way around a statute.

Taking its lead from the community-based plain language movement in Canada, the project is also promoting techniques to change the way Bills are drafted so that they can be more easily understood. Many prescriptions of the plain language movement, like those promoting logical organization of ideas in a statute, shorter sentences and greater use of paragraphing, are based on recognized principles for good writing and easily fit within the traditions established by Driedger. Lowering readability levels to the point where even complicated statutes can be understood by the man in the street does not fit so easily with Driedger's philosophy.[29] This objective would bring about a change in the nature of the legal discourse in which legislators and citizens have historically engaged in Canada. Many legislative counsel would question whether such an objective is proper or attainable. Nonetheless, plain language is the policy of the Legislative Services Branch and it is making inroads in the Legislation Section. Legislative counsel, with the support of legislative editors and jurilinguists, are making efforts, subject to time constraints, to simplify, shorten and clarify draft legislation in order to make it accessible to as wide a readership as possible.

Unfortunately the speeding up of the drafting process leaves very little time for legislative counsel to do the rewriting, reorganization and testing necessary to write Bills in plain language or ensure that they are understandable by their intended audiences. Ironically, information technology has

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27 For examples, see the layout of recent legislation in Australia and New Zealand, both of which have reformatted their legislation to improve its readability.

28 In its rewrite of the *Employment Insurance Act*, our plain language project proposes the addition of reader's guides at the beginning of statutes and parts, examples demonstrating how a provision operates and notes containing cross-references to other relevant sections and regulations.

29 Op. cit. n. 2 at p. xxiii. "A reader who has no knowledge or the subject-matter of a statute cannot be expected to understand it; nor can a draftsman be expected to write it so that he will. …. some statutes are, indeed, frightfully complicated, but it is not the draftsman who made them so. Laws must sometimes be enacted to deal with very complex situations, and obviously no one can understand the statute unless he understands those situations."

generated a demand (through the Internet) for plain language texts, but the use of IT in support of legislation drafting has created conditions in which there is not enough time to produce them.

The quality of legislation

What is the impact of the remarkable changes of the last 25 years in the speed of drafting, the drafting process and the role of the legislative counsel on the product of our work? Has the quality of Bills been reduced? In some respects, I think it has. A Bill, like the *Anti-terrorism Act*, that is drafted by several teams of legislative counsel under enormous time pressure cannot possibly have the coherence of a text developed in the fullness of time, under the guiding discipline of a single legal mind. Despite the efforts of the legislative editors, stylistic discrepancies are inherent in texts drafted as separate parts of the same Bill by different teams of legislative counsel.

Does legislation developed in haste contain more errors? There has been considerable inflation in the number of motions that are tabled by the government before Parliamentary committees in recent years.[30] But on closer examination, it can be seen that most were made to effect policy changes, not to fix errors. What the inflation in the number of motions reflects is not a higher error rate, but the fact that policy development continues after Bills are introduced. Where motions are made to correct drafting errors, these corrections are usually the result of last-minute policy changes before the tabling of the Bill. As for errors in statute book, there is no evidence of an increase since the advent of IT. The frequency and volume of corrections made by the Miscellaneous Statute Law Amendments Act has in fact remained quite stable since the inception of this program to correct errors and anomalies in federal statutes in 1975.[31]

In some respects, the quality of Bills has improved since Driedger's day. In the day-to-day drafting of legislation for example, IT operates as a powerful tool for promoting uniformity of language usage, both within statutes and throughout the statute book. Although we have not developed the kind of automated checkers that are in use in the Office of Parliamentary Counsel in Australia,[32] the legislative counsel and legislative editors in our Branch work tirelessly to achieve uniformity of legislative expression. The goal is so much easier to reach when drafting by computer because of the capacity of the computer to perform searches within a draft Bill, and within the statute book. The latter search capacity offers access to a range of precedents used by legislative counsel to solve similar legislative problems in other contexts. The legislative

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30 The total number of motions tabled before Parliamentary Committees over the last 12 years are approximately 500 per year from 1992 to 1995, 650 per year from 1996 to 1999 and 900 per year from 2000 to 2003 (assuming trends for the first half of 2003 continue for the second half).

31 There have been 11 *Miscellaneous Statute Law Amendments Acts* since 1975, 5 during the period from 1977 to 1987 (comprising 383 pages of legislation) and 6 during the period 1991 to 2001 (comprising 353 pages of legislation).

32 See "The Australian Approach in the New Drafting Environment", a paper delivered by Hilary Penfold at the Conference of the Canadian Institute for the Administration of Justice in Ottawa, *Drafting to Communicate the Law: the State of the Art*, September 12-13, 2002.

counsel's normal penchant to use and adjust precedents to fit novel situations, has the happy side-effect of promoting the more uniform use of language in Canadian statutes over time.[33]

The increase in the number of participants involved in the production of Bills today also produces substantive legal and policy improvements in Bills that were not possible in Driedger's day. In particular, the expansion of the number of participants who review draft Bills before they are tabled (especially legal and policy specialists) reduces the risk of legal and policy problems. Moreover, consultations held with stakeholders and other groups who stand to be affected by a Bill often results in very important changes to the Bill to tailor its implementation and administration to practical realities. The process guarantees a better quality of legislation.

Conclusion

The changes that the computer has wrought in the world of legislative drafting in just 25 years are almost unbelievable. In Canada, the results from using IT in support of legislative drafting are overwhelmingly positive. Bills are ready sooner. The drafting is as good as, or better than ever. And, most importantly, we have a searchable electronic database that provides immediate access to Canada's Bills, statutes and regulations for legislative counsel, clients in government and the public.

Legislative counsel can endlessly debate the positive and negative impacts of information technology on their work, on their organizations, and even on the quality of the Bills they write. But one thing is beyond debate. We must embrace information technology and adapt to the inevitable changes of our times. Those who resist or are unable to adapt to the new information technology will be left behind. The laws of the 21st century will be drafted by computer. And the pen will join the hammer and chisel in the legislative counsel's waste bin.

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[33] The search for uniformity and standardization of legislative precedents across the statute book is a worthwhile objective. However, transplanting precedent from one context to another is a complex business. There is often a need for substantial adjustment to the new statutory environment and verification of whether all necessary supporting provisions attached to the precedent in its original context have also been transplanted.

Use and misuse of examples

Paul O'Brien[1]

Introduction

In this article I want to outline my views on the use and misuse of examples, concentrating on the question when should examples be used? I will give some examples of examples that have been used in Victoria and in other jurisdictions, and discuss whether or not their use is appropriate. Other issues that arise with examples are:

- should an example be personalised by the use of names?
- is a lesser standard of language appropriate in an example?
- should a story be continued through several examples?

In Victoria, in particular, it is very important that examples are used correctly. This is because, unlike most other Australian jurisdictions that use examples, Victorian interpretation law gives an example primacy over the operative provision. Section 36A(1) of the *Interpretation of Legislation Act 1984* (Vic) provides:

> (1) If an Act or subordinate instrument includes at the foot of a provision under the heading **"Example"** or **"Examples"** an example of the operation of the provision, the example—
>
> (a) is not exhaustive; and
>
> (b) may extend, but does not limit, the meaning of the provision.

By contrast, the Australian Commonwealth interpretation provision is as follows (section 15AD of the *Acts Interpretation Act 1901* (Cwlth):Where an Act includes an example of the operation of a provision:

> (a) the example shall not be taken to be exhaustive; and
>
> (b) if the example is inconsistent with the provision, the provision prevails.

So, in Victoria, great care is taken in deciding whether or not to use an example, and in drafting examples, because the example will prevail if there is inconsistency with the relevant provision.

When should examples be used?

In Victoria, we use examples in a number of places. The first is in definition sections. For example[2]:

> **"public place"** means any open place that is used by the public, or to which the public has access, whether or not on payment of money, whether or not the place is ordinarily so used and whether or not the public consists only of a limited class of people;
>
> **Examples**

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[1] Parliamentary Counsel, Office of the Parliamentary Counsel, Victoria, Australia. This article is based on a paper presented at the CALC Conference in Melbourne, April 2003. It complements Jeffrey Barnes' article that appeared in the issue of *The Loophole* published in 2004.

[2] *Child Employment Act 2003* (Vic), section 3

Examples of public places include—

(a) streets, roads, footpaths and passages (whether or not on private property);

(b) forecourts of public and commercial buildings;

(c) carparks;

(d) parks, gardens and recreation reserves;

(e) racecourses and sports grounds;

In the old style of definition, the things listed in the example would be listed in the definition itself, perhaps as an inclusive definition. The use of an example in these circumstances allows there to be a general definition, with examples then given of specific instances. The advantage of using an example, rather than having an inclusive definition, is that it avoids any argument that the list is an exhaustive list. That is because the Victorian Interpretation Act provision provides that examples are not exhaustive.

A second use of examples is to illustrate the operation of difficult or complex provisions. One good example of this, which is too long to reproduce in this article, is found in section 23 of the *Liquor Control Reform Act 1998* (Vic)[3]. The section contains complex provisions limiting the granting of certain liquor licences to related parties, and contains an example, which is about a page long, of its operation.

A third use of examples, related to the second use, is to explain legal concepts in lay terms. One example of this in Victoria occurs in section 34(3) of the *Duties Act 2000*:

(3) This section applies whether or not there has been a change in the legal description of the dutiable property or marketable securities.

Example
An example of a change in the legal description of dutiable property is the issuing of new certificates of title of land following a subdivision of the land.

A fourth use of examples is to help explain formulas. Formulas are frequently used in legislation, particularly taxation legislation, and it can be quite helpful to include an example of the operation of a formula. The Liquor Control Reform Act example referred to above is also an example of this use in Victoria.

A fifth use of examples is to signpost or cross refer one Act to another Act. For example, this provision in section 5(6) of the *Road Management Act 2003* (Vic):

(6) This Act does not affect the application to any roadside area of any other Act or law relating to the management of land.

Example
Section 20(2) of the ***Catchment and Land Protection Act 1994*** which provides that a land owner must take all reasonable steps to prevent the spread of regionally controlled weeds and

[3] This can be found at www.dms.dpc.vic.gov.au. (Follow the links to the Victorian *Law Today*.)

established pest animals on a roadside that adjoins the land owner's land is not affected by this Act.

The only danger in this use of an example is that, while it highlights one particular cross-reference, it does not refer to any others. Potentially this might give undue attention to the provision identified in the example, at the expense of other equally important provisions.

When should examples not be used?

Examples, used appropriately and well, can be a very good aid to the reader of legislation in interpreting or applying the law. However, there are a number of situations in which the use of examples may not be advisable, or at least where caution should be taken in using them.

The first is in offence provisions. If a provision creates an offence, it might be thought helpful to set out an example of a fact situation covered by the offence. There are a number of cases where examples have been used to illustrate offence provisions. This may be unobjectionable where the example states a fact situation that will not be an offence. However, matters become more problematic if the example attempts to state a fact situation in which an offence is committed. This is because the example will generally not take into account defences that may be open to the person charged with the offence. Consider the following:

> **62B. Duty not to remain on premises for long periods**
>
> (1) Subject to sub-section (2), a supplier or person acting on behalf of a supplier who is carrying on negotiations at a premises which may lead to a contact sales agreement or for an incidental or related purpose must not remain on the premises for more than one hour.
>
> Penalty: 120 penalty units, in the case of a natural person.
>
> 240 penalty units, in the case of a body corporate.
>
> (2) .....
>
> (3) Sub-section (1) does not apply in the case of a party plan (within the meaning of section 62A).
>
> **Example**
> S, a kitchenware party plan seller, telephones P on Friday afternoon and asks P if she is interested in hosting a kitchenware party at her house on Sunday. S tells P that the party will last around 4 hours and she should invite her friends. If P agrees and there are at least 3 prospective purchasers in attendance at the party, section 62B(1) will not apply to S.[4]

This example sets out a fact situation in which an exception to an offence will apply and therefore the person will not commit the offence.

Compare the following[5]:

[4] *Fair Trading Act 1999* (Vic) section 62B. Section 62A, which is referred to in section 62B(3) provides that a "party plan" means negotiations by a supplier or person acting on behalf of a supplier with at least three persons, at the same time and in the same premises, for the supply of goods or services.

[5] *Estate Agents and Sale of Land Acts (Amendment) Bill* (Vic) (2002), clause 36L. The example was later removed from the Bill. For the uninitiated, Essendon and Carlton are Australian Rules football teams.

(5) The person must not do any thing with the intention of preventing, causing a major disruption to, or causing the cancellation of, the auction.

Example

Fred attends a public auction of a house he intends bidding for. His son accompanies him to the auction with a radio. At one point during the auction Fred's son whispers into Fred's ear. Fred immediately interrupts the auction to announce that Essendon has beaten Carlton at the match at the MCG. While this announcement causes the auctioneer to lose concentration and to stop taking bids, she is quickly able to resume the auction. Fred has not caused a major disruption to the auction.

Harry attends a public auction of a house he intends bidding for. Shortly after the auction starts he sets off a stink bomb. It is not possible to resume the auction until the fumes from the bomb have dissipated, which takes 30 minutes. Harry has caused a major disruption to the auction and has thus committed an offence against sub-section (5).

This example identifies elements of the offence and states that Harry has committed an offence. This does not take into account any defence that Harry may have available. While it may be difficult to see what defence Harry might have in the fact situation given, it is still possible that there may be a defence. It would therefore be dangerous for the example to state that Harry has committed an offence.

The second situation where examples should be avoided is where the example is not really an example of the substantive provision, but is really a substantive provision in its own right. I have two examples that I consider fall into this category. The first is from the *Local Government Act 1993* (Qld), section 347:

(7) The returning officer may give things to be given to an applicant under sub-section (3) or (5) by posting the things to the applicant's address stated in the voters roll, an electoral roll mentioned in the *Electoral Act 1992*, section 58(5), the application or the declaration form.

Example of addresses—

An applicant's address could be stated as a residential address, post office box number, mail service number or in another appropriate way.

The second example is from the *Workplace Health and Safety Regulations 1997* (Qld), regulation 64:

(2) The principal contractor must not allow an employer or self-employed person to start construction-type work at the workplace unless the current constructions workplace plan—

(a) is available for inspection at the workplace by anyone doing or about to do construction-type work at the workplace; or

(b) is otherwise readily available for inspection, by anyone doing or about to do construction-type work at the workplace;

Example of a plan readily available for inspection—

A plan is readily available for inspection at an office near the workplace.

In both these examples, I think it is arguable that the things in the example ought to be substantive provisions in their own right, rather than just examples of the provisions above them. They seems to be substantive requirements in themselves rather than simply examples of another requirement.

The third situation where caution should be exercised is that of inserting an example into an existing provision. For example, the *Road Safety (Further Amendment) Act 2001* (Vic) made the following amendment to the *Road Safety Act 1986* (the "Principal Act"):

> (2) At the foot of section 55(1) and (2) of the Principal Act, **insert**—
>
> **"Example**
>
> A person may be required to go to a police station, a public building, a booze bus or a police car to furnish a sample of breath.".

This amendment was accompanied by an amendment to section 55(1) and (2) to substitute "a place or vehicle" for "a police station or other place", and arose from a court case in Victoria that held that a police car was not an "other place" under the existing section. As the section itself was amended, the addition of an example was probably appropriate, and also helpful in the context of the court decision and the publicity surrounding it, but if the amendment had not been made to the section itself, I am not sure that simply adding an example to the existing section would have been the most effective way of dealing with the court decision.

Examples or notes

It is becoming increasingly common, at least in Victoria, for notes to be inserted within the body of an Act. The previous practice was to insert endnotes at the end of an Act, but following changes to Victoria's *Interpretation of Legislation Act 1984* in the year 2000, notes are now generally located at the foot of the relevant provision. In a number of cases, things have been included in notes that might have been better expressed as examples. The following extract from section 7 of the *Racial and Religious Tolerance Act 2001* (Vic) exemplifies the problem:

> (1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.
>
> Note: "engage in conduct" includes use of the internet or e-mail to publish or transmit statements or other material.

I think it would have been better either to convert the note into an example, or better still, to include a substantive definition of "engage in conduct" in the Act.

Another example is found in the *Outworkers (Improved Protection) Act 2003* (Vic), section 11:

> (1) Sections 5 to 10 do not limit or exclude any other rights of recovery of remuneration of an outworker, or any liability of any person with respect to the remuneration of an outworker, whether or not arising under this Act or any other law or a common rule order.

Note: An outworker may, for example, seek an order from the Magistrates' Court under section 60 instead of making an unpaid remuneration claim under section 6.[6]

Should examples be personalised?

Examples in Victoria legislation differ in this respect. Some, such as the drug offence and auction offence examples quoted above use names (Jack, Jill, Fred, Harry). Others use letters, for instance section 62A of the *Fair Trading Act 1999* (Vic) provides as follows:

(2) For the purposes of this section—

"prior consent to visit" means—

(a) consent given by a person to a supplier or to a person acting on behalf of a supplier other than in the presence of the supplier or person acting on behalf of the supplier, to visit the premises of that person for the purpose of negotiating a contact sales agreement or for an incidental or related purpose;

Example

S, a mobile phone seller, knocks on P's door on Friday afternoon and asks P if she is interested in buying one of S's mobile phones. P tells S she is busy. S asks P if she can come back on Sunday and P reluctantly agrees. This is not prior consent to visit because it was given face-to-face. If S had contacted P by telephone, then it would have been prior consent.

Personalising an example tends to make it more real, or more easy to relate to, but on the other hand, using letters instead of names avoids any association with a real person, which could be unfortunate in the case of examples about offences. It also avoids any problems of cultural or racial stereotyping.

Continuing examples

Is it advisable to have a series of examples presenting a continuing story over a number of legislative provisions? This was attempted in Victoria in the *Estate Agents and Sale of Land Acts (Amendment) Bill* in 2002, where a series of provisions creating offences for different type of behaviour at public auctions were accompanied by a series of examples. For instance, proposed section 36B:

(2) A person must not make a bid at a public auction of land knowing that the bid is being made on behalf of a vendor of the land.

Example

Ron is selling his house by public auction. Jim approaches his friend Sally with a problem. He wants to buy Ron's house, but he has been invited to a wedding reception that will be held at the same time as the auction. Sally agrees to attend the auction with her mobile phone. Once the auction starts, Sally phones Jim and keeps him on the line.

At a certain point in the auction Jim asks Sally to put in a bid on his behalf. She raises her hand and has her bid acknowledged. What Sally does not know, however, is that Jim is Ron's brother and that Ron has asked him to put in a dummy bid at the auction.

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[6] This seems to me rather like an example masquerading as a note. However, I take full responsibility for drafting this provision and note, lest it be thought that I am only criticising other drafters.

In this scenario, even though Sally has effectively put in a bid on behalf of Ron at the auction, she has not committed an offence. Jim is guilty of an offence under this sub-clause because he made (through his agent Sally) a bid on behalf of the vendor.

(3) .....

(4) .....

(5) It is immaterial that a person making a bid in contravention of this section is not in Victoria at the time the bid is made.

Example
In the circumstances outlined in the example under sub-section (2), Jim would still be guilty of an offence under sub-section (2) even though he was in San Francisco at the time he asked Sally to put in the bid.

Proposed section 36F states:

A person at a public auction of land must not falsely claim to have made a bid, or falsely acknowledge that he or she made a bid.

Example
Ron is still trying to sell his house by public auction. His brother Jim agrees to help him. Just before the auction starts Ron introduces Jim to Maria, the auctioneer, and all 3 of them have a chat.....

The Bill contained other proposed sections that continued the example of Ron's auction, to illustrate further offences. Unfortunately, the examples were removed from the Bill before it passed, and therefore do not form part of the resulting Act. If the examples are located sufficiently close together, I see no real objection to continuing them through a number of provisions, as long as the readability of the document is not adversely affected.

The language of examples

Should an example be drafted in the same language as the substantive provision, or is it acceptable for an example to be expressed more colloquially? Is it acceptable, as in the auction example above, to refer in an example to people "having a chat"? An example that is an illustration of the operation of a provision must be intelligible to people who will be affected by the provision. But then, the provision itself ought also to be intelligible to those people. In Victoria, as in other Australian jurisdictions, an example forms part of the Act, and part of the law, and therefore I see no justification for using a lesser standard of language in an example to the language used in the substantive provision. Certainly, the substantive provision may contain technical language which is then explained in lay terms by the example, but I think this can be achieved without the need to use colloquial language in examples.

Conclusion

Examples are becoming more frequent in Victorian legislation, and are also often used in other Australian jurisdictions. They serve a number of useful functions, but caution needs to be exercised to ensure that they are not over-used or used inappropriately. This is especially the case

in jurisdictions such as Victoria, which have a rule of interpretation that gives an example primacy over the provision of which it is an example.

I concluded my presentation at the CALC conference with a couple of examples of definitions, which perhaps could have done with examples to help explain what their purpose was. I leave you with the following:

> **"forest"** means an area containing trees;[7]
> **"woman"** means a female human.[8]

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[7] *Forest Practices Act 1985* (Tas), section 3(1).

[8] *Infertility Treatment Act 1985* (Vic), section 3(1).

Legislative drafting in Australia, New Zealand and Ontario: Notes on an informal survey

Nick Horn[1]

Introduction[2]

In 2002, I was seconded from my home office in the Australian Capital Territory to the Ontario Office of Legislative Counsel in Toronto. I had a great time there with my family, met lots of wonderful people (some of them legislative counsel), got wet at Niagara Falls just down the road, enjoyed fine music and opera courtesy of Tafelmusik and Opera Atelier and winced watching the Maple Leafs slug it out in the play-offs on Hockey Night in Canada. (I do not know which was more exciting: the fighting on the ice or Dapper Don Cherry's surreal commentaries in "coach's corner".) But life is not all about fun (or hockey fights). One of my reasons for going was to get a broader sense of the role of the legislative counsel and the legislative drafting office.

To give myself a baseline from which to make comparisons, before leaving I conducted an informal survey of nine Australian legislative drafting offices, the New Zealand Office of Parliamentary Counsel and the Ontario Office of Legislative Counsel, covering their institutional roles, management structures, arrangements for legislative publishing and drafting styles.

The first thing the survey shows is that within Australia, and between Australia, NZ and Ontario, there is only a small range of variation in institutional, management and publication arrangements, and professional standards and practices, for the drafting and publication of legislation. A survey of Canadian legislative drafting offices by the Canadian Department of Justice indicates that these similarities of operation extend across Canada to a large extent (though things are significantly different in Quebec).[3] This is anything but a revolutionary finding; however, perhaps it is worth emphasising just how much those legislative drafting offices have in common due to their shared heritage of the English common law and the Westminster system of government.

These survey results were strongly corroborated by my personal experience working in Don Revell's office in Toronto. Of course, when I arrived I was struck by many stylistic and environmental differences—ten-yearly revisions of the statute book (probably now at an end in Ontario due to developments in electronic publication), different drafting forms and style, a much larger office and government organisation (the ACT PCO drafts laws for 300,000 people; OLC drafts for 11 million). The major systematic difference is the requirement for legislation to be

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1 Australian Capital Territory Parliamentary Counsel's Office.

2 The survey and these notes were first presented at the conference of the Canadian Institute for the Administration of Justice in Ottawa in September 2002. For presentation at the conference of the Commonwealth Association of Legislative Counsel in May 2003, the survey was updated in March/April 2003 and these notes were significantly revised. The survey and the notes are further updated for publication in this issue of *The Loophole*.

Abbreviations in these notes: ACT=Australian Capital Territory; NT=Northern Territory; NSW=New South Wales; NZ=New Zealand; OLC = Ontario Legislative Counsel Office; SA=South Australia; WA=Western Australia.

3 International Co-operation Group, Department of Justice, Canada. "National Survey of Legislative Drafting Services 2002". Ottawa, 2002; compiled by Christine Landry.

translated into French; this affects not only office process, but reflects back on drafting practice. And there are obvious substantial differences between Canadian and Australian law, with a different version of the common law (not to mention the influence of French civil law), a different federal/provincial distribution of powers, and a Charter of Rights and Freedoms incorporated in the Canadian constitution, the like of which human rights lawyers in Australia can only dream of (though in the Australian Capital Territory, the first move has been taken to realise their dream, in the form of the *Human Rights Act 2004* (ACT)).

But I felt from my first lawyers' meeting in Ontario that, despite such differences, I was on the same wavelength as my colleagues. All the issues discussed were issues where I came from, and I was able to play a part in the sometimes vigorous debates that ensued, even if my starting point in terms of legislative drafting practice might be somewhat different. The ACT Public Access to Laws project, which has, since September 2001, provided free internet access to official versions of the law, was very similar to the slightly older Ontario e-laws system. (I might add that e-laws was partly inspired by good old Aussie know-how—the Tasmanian EnAct system). As the year progressed, it became still clearer that my experience and skills as a legislative counsel trained and working in Australia—such as they are—were sufficient for me to make a contribution to the bread-and-butter legislative drafting work for the province of Ontario, half way across the world.

None of this was startling. No survey was necessary to find out that most legislative drafting offices in Australia and New Zealand share similar basic functions, operations and legislative drafting practices. But where the survey is useful is to demonstrate the spectrum of difference—the possible alternatives—within which the same functions are carried out, and the current range of opinions and practice on some aspects of legislative drafting style. I now turn to the survey and draw attention to some of the results.

Commentary on the legislative drafting survey[4]

3 Drafting management

3.1 Drafting strength

Effective office legislative drafting strength ranges between 6+ (Northern Territory, with the lowest population of any Territory or State) and 7 for Tasmania (also with a low population) at one end, and 26 (New Zealand) and 27 (Commonwealth Office of Parliamentary Counsel).

There is no simple correlation between legislative counsel and the population of the jurisdictions for which legislation is drafted. In Ontario's case, for example, there are just 14 legislative counsel for a population of 11 million or so (only the Commonwealth of Australia has a higher population among the jurisdictions surveyed). Compare the ACT situation, with 12+ legislative counsel for a population of 300,000. One possible explanation for this particular disparity is that in Ontario, all instructors are legal counsel themselves. This does not guarantee the quality of instructions, but it provides for a significant degree of sharing of the workload, in terms of pre-processing of instructions and continuing expert legal checks.

[4] The numbering is keyed to that used in the survey. I do not comment in this paper on every section of the survey, so these numbers are discontinuous.

By contrast, in the ACT, few instructors outside the Department of Justice and Community Safety are legally qualified, and all instructors are policy officers rather than legal counsel in terms of function. In Ontario, too, unlike the ACT (or any Australasian jurisdiction, to my knowledge) there is an established practice of accepting instructions for regulations in the form of preliminary drafts from Government Ministries. This (again) is a mixed blessing, but, if these preliminary drafts are prepared by experienced legal counsel, the legislative drafting process can be significantly expedited.

The Canadian survey noted above[5] found that throughout Canada there is anything but a fixed relationship between population and legislative drafting strength. Although I have not done the sums, generally speaking Australian legislative counsel seem to be proportionately thicker on the ground, except at the federal level.

3.2 Settling

In 7 out of 11 of the surveyed offices, drafts are routinely read by another legislative counsel (either a senior or a peer). This works not only as a training device, but as a quality control mechanism. In particular, the internal review provides a mechanism for ensuring consistency in office practice. This is still more important in those offices undertaking significant legislative drafting reforms.

4 Publications

4.1 Electronic access to law

All jurisdictions surveyed have up-to-date consolidations available to the public free on the internet. Access to source law is patchier, though in most jurisdictions this is available as well, sometimes through parliamentary websites which post final-reading versions of Bills (e.g. Ontario). The AUSTLII website given is a secondary source (they post law available from other sites), but useful for its search engine and cross-jurisdiction searches.

4.2 Official status of electronic law

The ACT and the Australian Commonwealth (for legislative instruments only) are the only surveyed jurisdictions to have given official status to an electronic form of the law (though the Office of Queensland Parliamentary Counsel has done so *de facto* in the Evidence Act amendment noted in the survey results). Proposals for authorised electronic laws in Ontario, New Zealand and the Australian Commonwealth (for Acts) have been under consideration since the first edition of this survey (2002), but for various reasons have either not yet proceeded or been finalised.

5 Drafting style

Having regard to some of the comments of the respondents and my general impression from discussion with Australian, NZ and Ontario legislative counsel, it is tempting to make the assertion

5 At pp 9-18.

that there is a consensus of opinion among legislative counsel that, from a stylistic point of view, Australasian and Ontario legislative drafting is—

- better than United Kingdom legislative drafting;
- better than the normal run of United States legislative drafting; and
- light years ahead of drafting in private legal practice.

There is a perception that, as a general rule, UK and US legislative drafting, and private legal drafting, are still under the influence of the traditional *black-letter* common law school of legal writing, with an attendant obscurity of language and structure. All the respondents, by contrast, agree on the need for clarity and the desirability for the use of ordinary language in legislative drafting. On the other hand, there is not the same degree of consensus in attitudes to using plain language.

It can be seen from survey item 5.6 that almost all legislative drafting offices have adopted an express *plain language* (or *plain English*) policy, although some express scepticism about the *plain language* label, questioning whether the object of improved comprehension is actually achieved by the means proposed.

Moreover, in some cases, even those jurisdictions that have gone the furthest in the adoption of plain language style disagree with the advocates of the style. For example, no legislative drafting office has adopted as standard practice the highlighting of defined terms in the text (a practice recommended, for example, by Michèle Asprey[6]). Nor has any legislative drafting office countenanced a systematic breach of the single *sentence/single provision* rule. (This is despite Asprey's judgment, representative of that of other writers on plain legal language, that this is "far too restrictive to follow as a general rule".[7])

It would take much more than this survey, or a superficial examination of the legislative examples offered, to draw conclusions about the actual success of the adoption of a *plain language* approach in making legislation more comprehensible.[8] My questions had a rather more limited aim. The most concrete outcome of the movement towards plain language in legal drafting has been the adoption of a certain new *style* of drafting, the most visible signs of which are the adoption of innovative devices recommended by plain language reformers. The questions in this section of the survey were framed to gain some more information about the acceptance and development of this *plain language style* in Australia, marked most visibly by the indicators surveyed by survey item

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6 Michèle Asprey, *Plain Language for Lawyers*, 3rd ed, 2003, pp 133-135. She acknowledges the distracting nature of such devices, and discusses an alternative (marking the first occurrence of the defined term in some way (e.g. italics) and listing defined terms used on any page in the margin), which has been adopted or experimented with in some legislative drafting offices (Tas, WA, Vic).

7 Ibid, at p. 108.

8 In other words, the question of whether plain language style = plain language is not addressed here. No claim is made or implied by the survey or this paper for the success (or otherwise) of *plain language* devices in legislation. For convenience, *plain language style* is referred to in this paper without quotation marks around the phrase (or around *plain language*). But the reader may wish to mentally (or actually) annotate the term or the phrase to indicate that these claims are held in suspension.

5.7 (though as you can see from some of the responses, e.g. from Victoria, not all of these are accepted as being genuinely in the spirit of plain language).

In terms of legislative drafting style, the responses may be located on a spectrum between what might be called a *traditional* drafting style and the *plain language* style.

The traditional style is essentially that advocated by Thornton and Driedger, emphasising consistency and economy rather than readability for its own sake.[9] Plain language style is aimed at making changes to legislative language with the aim of communicating the law more effectively, and to a broader public, than before.[10] Ruth Sullivan[11] argues that if this objective is taken seriously, it involves a reconsideration of traditional legislative drafting principles. For example, traditional legislative drafting eschews redundancy, while redundancy, in the form of repetition (for example, restatement of the main ideas of legislation in summaries, readers' guides, or examples) is one of the elements of effective communication promoted by plain language style advocates.

So how do the various legislative drafting offices line up?

5.1 Traditional style or plain language style?

Traditional style: WA, NT, SA and Tasmania—The approach in the WA Parliamentary Counsel Office is to prescribe the law rather than to include what are considered to be extraneous devices for explaining the law. Similarly, the NT, SA and Tasmania legislative drafting offices have not taken up many of the aspects of plain language style.

In flux: *NSW, NZ, Victoria*—The New Zealand Parliamentary Counsel's Office has adopted some plain language style approaches (e.g. greater use of examples), and is currently considering suggestions for further change by one of the principal advocates of plain language style (Michèle Asprey) (see survey item 5.8). The NSW Parliamentary Counsel Office (for example, see the comments at survey item 5.8) appears to be backing off from the more extroverted features of plain language style a little, after an initial period of enthusiastic experiment.[12] Victoria, where

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9 Driedger, Elmer A. *The Composition of Legislation.* 2nd ed. 1976. Thornton, G.C. *Legislative Drafting*. 4th ed. 1996.

10 For a pithy summary of what is generally understood by 'plain language drafting', see the comments of Ruth Sullivan quoted on the Australian Commonwealth Office of Parliamentary Counsel website as the essence of that office's plain language policy: http://www.opc.gov.au/plain/index.htm (as accessed 11/10/04). Professor Sullivan expands on these observations in comparing traditional and plain language legislative drafting styles in 'Some Implications of Plain Language Drafting.' Statute Law Review 22.3 (2001) pp 145-180. For a reflection on some inherent limits to plain language legislative drafting, see Horn, 'A Dainty Dish to Set before the King' at http://www.nald.ca/PROVINCE/ont/PLAIN/dish/dainty.PDF (presented at the conference of PLAIN International, Toronto, 2002; as accessed 05/11/04).

11 Ibid. See note 10.

12 The NSW PCO comments at survey item 5.8 that its focus has become more on the publication of the law in force and its accessibility on-line than on the hard copy versions. This indicates a change of emphasis in the age of electronic documents that I consider important. Increasingly, access to the law is by mans of electronic consolidations accessed through the internet. Fewer users access the law in print versions, particularly printed source law (Acts as made or

plain language style was mandated in the 1980s, is less enthusiastic about the style than its proponents mentioned below, though it seems that there is a degree of variation within the Victorian office. It is interesting, too, that the Victorian respondent noted in April 2003 that "recently use of 'shall' for creating an obligation is re-emerging".

Plain language style: *ACT, Commonwealth Office of Parliamentary Counsel, Commonwealth Office of Legislative Drafting, Queensland*—All of these legislative drafting offices have enthusiastically implemented plain language style and continue to pursue it more vigorously than other offices. Of course, practice varies from office to office (though the ACT, Commonwealth Office of Legislative Drafting[13] and Queensland have adopted a somewhat similar approach due to the leadership at different times of the same head of office, John Leahy). Elements of plain language style are pervasive in Australasia (not just in these offices). For example, "shall" is rarely, if ever, used, and "must" or some other alternative is used instead. The Australian Commonwealth Office of Parliamentary Counsel's *Plain Language Guide* is the most detailed practical legislative counsel manual currently available.[14] The federal legislative drafting office in Canada seems to be looking closely at contemporary practice in its Australian counterpart.[15]

Ontario Legislative Counsel Office—Here there is a certain difference due to historical and legal context. The Ontario Legislative Counsel's Office reference to the influence of the civil law tradition of drafting indicates a level of comfort with general statements that are not circumscribed by the prevarications of the English common law school of legislative drafting. For example, I believe that it underlies a tendency I observed in my time with the Ontario Legislative Counsel office to draft with distinctly less reliance on definitions and cross-references than in either the traditional or plain language styles as practised in Australia, using words of ordinary meaning (as the Ontario respondent notes elsewhere, no *law Latin* and no *law French*, etc.). However, I also observed a distinct lack of enthusiasm for the adoption of many of the plain language style markers mentioned in survey item 5.7 (as the survey tends to confirm).

amending Acts). Legislative counsel will increasingly have to come to terms with the challenges of electronic access, e.g. access to fragments of statutes, retrieved by search engines, rather than to statutes as complete printed documents. For fascinating discussions of the legislative drafting challenges presented by these and related questions, see the papers presented by David Howes and Ruth Sullivan to the national conference of the Canadian Institute for the Administration of Justice, 12-13 September 2002, Ottawa.

13 The Commonwealth Office of Legislative Drafting is now called the Office of Legislative Drafting and Publication. It is referred to in this article by its name at the time of the survey.

14 Available via: http://www.opc.gov.au/about/docs/PEM.PDF (accessed 11/10/04).

15 Unpublished paper by Philip Hallé, PLAIN conference, Toronto 2002.

5.2 Markers of plain language

Drafting in most jurisdictions[16] sanctions the use of many of these devices (examples, readers' guides etc., explanatory notes, in-text definitions,[17] highlighting of defined terms, general preference for rewriting,[18] short provisions and short sentences. But clearly in some jurisdictions use of these devices is encouraged more than in others.

Perhaps more to the point, the survey indicates that most jurisdictions will at least contemplate the introduction of such legislative drafting methods if particular legislative counsel wish to employ them, or if they become broadly enough accepted. The survey supports my personal observation that we are still in an age of transition and experimentation, although it has slowed in some places (e.g. NSW). Eventually, I am sure some experiments will fall by the wayside while there will be a convergence towards others as they are tested and found to be effective.

If plain language style is to improve the quality of legislative drafting, legislative counsel and, more particularly, legislative drafting offices should always keep under review the issue of whether drafting practices promoted as such assist users to access, read, understand and use legislation, while at the same time stating the law with economy and sufficient certainty.

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16 I.e. with the exception of those that continue with the "traditional" approach.

17 The question about in-text definitions could have been better phrased. I intended to refer to new styles of definition which combine a definition of a term with its first use: we call them tagged term definitions in the ACT, and they can be of the form 'In a proceeding against a person (the retailer), it is a defence if the retailer establishes that the goods were bought in good faith.' or 'A definition is a provision (however expressed) of an Act that gives a meaning to a word or expression'. These may be drafted to have varying ranges of application, and are supported by 'signpost' definitions in the main list of definitions if the tagged term is used in more than one section.

18 In Ontario, an additional reason for doing this is for ease of translation.

Survey results—Introduction

This survey was originally conducted in November-December 2001. The results were first presented at the conference of the Canadian Institute for the Administration of Justice Drafting Conference held on 12-13 September 2002 in Ottawa, Canada. A second, updated, edition of the survey was presented at the Australian Commonwealth Association of Legislative Counsel meeting, 15-17 April 2003, Melbourne. For publication of this, the third edition of the survey, in *The Loophole*, the survey has been further updated.

I asked one legislative counsel from each of the surveyed offices to respond to the survey. The respondents have all had considerable experience in the legislative drafting office for which they responded. In some instances, the respondents are the heads of the office; in most others, the responses have been cleared by the head.

The survey results indicate the substance, but not always the exact form, of the responses as provided to me. I have edited them lightly to abbreviate or standardise the responses. I have generally reserved my blue pencil for the more straightforward factual responses, and if possible I have avoided changing the more technical or discursive responses, or any which offer a distinctive opinion or statement of general practice. In those parts of section 5 (Drafting style) which called for more subjective responses, I have selectively indicated some direct quotations from those surveyed. For stylistic effect, this is intended to give the flavour of the response.

Reported expressions of opinion and assertions of fact reflect the views and beliefs of the respondent concerned, and do not necessarily reflect an official office position. I take full responsibility, of course, for any misrepresentations of respondents' views, or any errors of reporting. Finally, I wish to express my continuing gratitude to the participants for their willing assistance both initially and in the preparation of subsequent editions of the survey.[19]

Key to tables

ACT	*Australian Capital Territory Parliamentary Counsel's Office*
Asst PC	*Assistant Parliamentary Counsel*
Cwlth OLD	*Commonwealth Office of Legislative Drafting*[20] *(drafts Cwlth legislative instruments)*
Cwlth OPC	*Commonwealth Office of Parliamentary Counsel (drafts Cwlth Bills)*
LSA	*Legislative Standards Act 1992 (Queensland)*
NSW	*New South Wales Parliamentary Counsel's Office*
NT	*Northern Territory Office of the Parliamentary Counsel*
Qld/OQPC	*Office of Queensland Parliamentary Counsel*
SA	*South Australia Office of Parliamentary Counsel*
Tas	*Tasmania Office of Parliamentary Counsel*
Vic	*Victoria Office of Chief Parliamentary Counsel*
WA	*Western Australia Parliamentary Counsel's Office*
NZ	*New Zealand Parliamentary Counsel Office*
Ontario/OLC	*Ontario Office of Legislative Counsel*

19 The responses for Cwlth OLD, Qld and Tas reflect the situation in these offices in April 2003. All other responses have been updated for this survey in October-November 2004.

20 Now called the Office of Legislative Drafting and Publication.

1 Vertical relationships

1.1 In which department is the legislative drafting office located? Or does it have an independent statutory status? (Give brief details)	
ACT	Department of Justice and Community Safety.
Cwlth OLD	Attorney-General's Department.
Cwlth OPC	Independent statutory office within Attorney-General's portfolio *Parliamentary Counsel Act 1970*.
NSW	PCO is a separate public service department.
NT	Department of the Chief Minister, but the OPC effectively operates as an independent office. Part of the Department for administrative purposes only (e.g. accounts, human resources).
Qld	Independent statutory office within Premier's portfolio, with administrative links to Department of Premier and Cabinet established under the *Legislative Standards Act 1992*,s. 5.
SA	Attorney-General's Department.
Tas	Department of Premier and Cabinet.
Vic	Independent office within Premier's portfolio, with administrative links to Department of Premier and Cabinet.
WA	Department of Justice.
NZ	Independent statutory office, established as Office of Parliament under the *Statutes Drafting and Compilation Act 1920*. Under control of Attorney-General.
Ontario	Ministry of the Attorney General.

1.2 Do you draft Bills or parliamentary amendments for private members (or senators etc)? Give brief details of any legislative drafting arrangements (e.g. has the government given a general undertaking, or is authority to draft given only on a case-by-case basis?)	
ACT	Yes for both. Successive Chief Ministers have given general authority. No specific authority needed. PCO strives to meet legislative drafting requests if possible, usually with success. Ultimately, government work takes priority.
Cwlth OLD	Drafts subordinate legislation only.
Cwlth OPC	Nothing in *Parliamentary Counsel Act 1970* to prevent it. But government work takes priority. Drafting on case-by-case basis authorised by government.
NSW	Yes for both. General undertaking. But maximum limit set on core drafting hours for each private member/party/group; also legislative drafting must not interfere with government program. See "Handbook for the Drafting of Non-government Legislation".
NT	Yes for both. General undertaking subject to government work taking priority.
Qld	Yes for both. OQPS has the statutory function of legislative drafting for private members on request (LSA,s. 6). No government authority required.
SA	Yes for both. No government authority required.
Tas	Bills for private members on case-by-case basis authorised by Premier. General authority given for Upper House private members' amendments.
Vic	Yes for Bills, with Premier's specific approval (though requests for approval are rare). Yes for amendments, no specific authority is necessary.
WA	No. But occasional specific authority for amendments.
NZ	Yes for both. Members' Bills and amendments drafted if directed by Attorney-General in cases where it is likely the Bill will get majority support in the House. Advise on and draft local Bills (for local authorities—geographically confined). Advise on and draft private Bills (for individuals, trusts, corporations for private benefit). Generally, members draft their own Bills (often with assistance of legislative counsel in the Office of the Clerk of the House of Reps); Parliamentary Counsel's Office usually drafts local and private Bills. PCO generally drafts amendments to all categories of non-government Bills. (See Mark Gobbi "Neglected Orphans or Trojan Horses?" Paper presented to Drafting Forum, Melbourne, 1-3 August 2001.)
Ontario	Drafting for private members [including private Bills] is a separate OLC function as law clerk of the Legislative Assembly.

1.3 Is primary or subordinate legislation you draft subject to routine scrutiny by a parliamentary committee for encroachment on civil liberties, review of administrative decisions, etc? Are there any statutory constraints of this nature?[21]	
ACT	Yes for Bills, subordinate laws and subordinate instruments designated as disallowable. The Legislative Assembly Standing Committee on Legal Affairs performs the duties of a scrutiny of Bills and subordinate legislation committee for both. The Assembly decides the committee's criteria. Regulations are disallowable, as are other disallowable instruments (e.g. fee determinations) (*Legislation Act 2001*, ch. 7). For all government Bills, a statement by the Attorney-General about their consistency with human rights must be presented to the Assembly, under the *Human Rights Act 2004*,s. 37. The statement is prepared in the human rights office of the Department of Justice and Community Safety. An Assembly standing committee (in practice, the standing committee mentioned above) must report to the Assembly about human rights issues raised by all Bills (including private members' Bills) presented to the Assembly, under the *Human Rights Act 2003*,s. 38.
Cwlth OLD	Yes for legislative instruments (Senate Standing Committee on Regulations and Ordinances). Criteria decided by Senate. Legislative instruments are disallowable under *Legislative Instruments Act 2003*, Pt 5 (effective 1 January 2005).
Cwlth OPC	Yes for Bills (Senate Standing Committee for the Scrutiny of Bills). Criteria decided by Senate.
NSW	Yes. Bills and subordinate legislation (Legislation Review Committee under *Legislation Review Act 1989*) [Statutory rules disallowable—*Interpretation Act 1987*,s. 41].
NT	No for Bills. Yes for subordinate legislation. The Subordinate Legislation and Publications Committee of the Legislative Assembly scrutinises all subordinate legislation, but has a very low profile. Regulations, rules and by-laws are subject to disallowance under the *Interpretation Act*,s. 63.
Qld	Yes for Bills and subordinate legislation. Scrutiny of Legislation Committee under *Parliamentary Committees Act 1995* – "fundamental legislative principles" under LSA,s. 4. LSA also provides a function of OQPC to advise about application of principles, and requires that the explanatory note briefly comment on application of principles (also provides for issue of guidelines on application to drafting of "exempt instruments" (subordinate instruments other than subordinate laws). [Subordinate legislation disallowable—*Statutory Instruments Act*, s. 50.]
SA	No for Bills. Yes for regulations – Legislation Review Committee, under *Subordinate Legislation Act 1978*. Criteria decided by Committee. [Subordinate laws disallowable under *Subordinate Legislation Act 1989*, s. 6.]
Tas	No for Bills. Yes for only some subordinate legislation. Regulations disallowable by either house under *Acts Interpretation Act 1931*, s. 47. [*Subordinate Legislation Committee Act 1969*,s. 3 establishes joint Standing Committee on Subordinate Legislation. Section 8 sets out guidelines for committee to report to Parliament on subordinate legislation.]

[21] Some details of parliamentary powers to disallow subordinate legislation have been added by the author.

1.3 Is primary or subordinate legislation you draft subject to routine scrutiny by a parliamentary committee for encroachment on civil liberties, review of administrative decisions, etc? Are there any statutory constraints of this nature?[21]	
Vic	Yes for Bills and regulations. Joint Scrutiny of Acts and Regulations Committee, under *Parliamentary Committees Act 1968*,s. 4D (criteria in Act). [Statutory rules disallowable under *Subordinate Legislation Act 1994*,s. 23.]
WA	No for Bills. Yes for subsidiary legislation – Joint Standing Committee on Delegated Legislation. [Subsidiary legislation disallowable under *Interpretation Act 1984*,s. 42.]
NZ	In the case of Bills, the *Bill of Rights Act 1990*,s. 7 requires the Attorney-General to bring to the attention of the House of Representatives any provision in a Bill that appears to be inconsistent with any of the rights and freedoms contained in the Bill of Rights. The Attorney-General now makes publicly available the advice she receives from the Ministry of Justice and the Crown Law Office on Bill of Rights compliance. In the case of regulations, the Regulations Review Committee (a select committee of Parliament) may consider any regulation-making power in a Bill that is before any select committee and report on it to that other committee. All Bills, except Appropriation and Impress Supply Bills, are referred to select committees for consideration. That consideration is not limited to any particular aspects of Bills and includes the policy and drafting of Bills. The Regulations Review Committee may also draw the attention of the House to regulations on a number of specific grounds. This scrutiny role is similar to that of similar committees in Australia and Canada. [Regulations disallowable—*Regulations (Disallowance) Act 1989*.]
Ontario	Standing committee under *Regulations Act*,s. 12. The Committee reports on scope and method of exercise of delegated legislative power but without reference to the merits (s. 3). No statutory provision for disallowance of regulations by Assembly. The committee has not issued a report for several years.

2 Horizontal relationships

2.1 What do you draft? (Bills, regulations, other subordinate instruments, explanatory material for publication or tabling with Bills etc)	
ACT	Bills, Legislative Assembly amendments to Bills, regulations and court rules. No explanatory memoranda, but advise on content if requested. ACT PCO occasionally reviews or settles other instruments, but is not funded for this function.
Cwlth OLD	Commonwealth regulations and commencement proclamations. Other subordinate instruments for agencies on request, on a user-pays basis.
Cwlth OPC	Bills and parliamentary amendments of Bills
NSW	All the above, including environmental planning instruments and court rules. Draft Bills for Law Reform Commission reports.
NT	Bills, regulations, by-laws, court rules and instruments. No explanatory material.
Qld	Bills, subordinate legislation (other than exempt subordinate legislation, i.e. local government, etc.), other instruments on request. (LSAs. 7 (a) – (f))
SA	Bills, regulations, proclamations, some commissions and notices, comment on Governor's decisions under planning legislation. Draft Explanation of Clauses (attached to 2nd reading speech) for Bills.
Tas	Bills, parliamentary amendments to Bills, regulations, rules, by-laws, other subordinate legislation (statutory rules only), not municipal by-laws.
Vic	Vic OCPC drafts Bills and court rules and settles regulations (drafts some too), and settles explanatory memoranda and proclamations. The office occasionally drafts other instruments.
WA	Bills, parliamentary amendments to Bills and subsidiary legislation (including regulations, proclamations, orders in council, some by-laws and notices) and some other statutory instruments. Some subordinate legislation is not drafted by the PCO, e.g. local laws of local government.
NZ	Bills, including the clause by clause analysis of the explanatory note, select committee amendments to Bills, Supplementary Order Papers of amendments to Bills during the Committee stages, table amendments to Bills (usually typescripts but can be handwritten), statutory regulations, Orders in Council, rules (including court rules), notices, Royal Warrants, terms of reference for Royal Commissions and Commissions of Inquiry, and certain other instruments.
Ontario	Bills and all subordinate legislation, motions for amendments and proclamations proclaiming Bills in force, but not other instruments.

2.2 Who gives instructions? (e.g. legal areas of client agencies/legislation areas of client agencies/operational areas of client agencies/private contractors of client agencies)	
ACT	All of the above, as well as private members of the Legislative Assembly and their advisers, and the Supreme Court Rules Committee. Rarely take instructions from private law firms or contractors.
Cwlth OLD	All of the above. Private contractors very rare.
Cwlth OPC	All of the above. Occasional instructions from private consultants (e.g. law firms)
NSW	Government legislation – legislation and policy units of government departments. Non-government legislation – MP or member's assistant.
NT	All of the above, but private contractors (e.g. law firms, consultants contracted by client departments) only occasionally.
Qld	All of the above. Private members – member or senior adviser for opposition shadow.
SA	Policy and sometimes operational officers from client agencies. Some legally qualified. All instructors from the public sector.
Tas	Legislation areas, policy areas and operation areas of client agencies. Very occasionally private contractors of client agencies.
Vic	All of the above, and Ministerial advisers too, sometimes. Very occasionally instructions are received from law firms working in tandem with a departmental instructor.
WA	Senior public servants (sometimes legal areas of clients). Sometimes from Ministers or their offices. Private contractors only if working in tandem with departmental instructor.
NZ	Administering agencies, mostly legal officers, sometimes policy advisers. Occasionally from Minister responsible.
Ontario	Legal branch of client Ministries (government drafting). Private members or their assistants (private members' drafting).

2.3 Do you offer any training for instructors and legislation officers?	
ACT	In the past (until 1999) ACT PCO ran a series of courses for instructors, and will do so again in the future when resources permit. In 2001-2002 we ran briefing sessions on the reforms in the *Legislation Act 2001* establishing the ACT legislation register. The Office also runs training programs to familiarise agencies with procedures for electronic notification of subordinate laws and instruments on the legislation register.
Cwlth OLD	The Office gives seminars and workshops to agencies on request. It also refers people to the OPC course.
Cwlth OPC	1-day Legislation Process Course, covering the drafting process in detail.
NSW	"Handbook for the drafting of non-government legislation", and "Handbook for the Drafting of Government Legislation". Addresses to groups. No formal training.
NT	Ad hoc training sessions conducted at request of client departments. A paper describing the roles of legislative counsel and instructors is regularly sent out to individual, first-time instructors. The Legislation Handbook (published by the Cabinet Office) has a section on preparing legislative drafting instructions, which legislative counsel frequently refer instructors to.
Qld	None currently offered.
SA	Seminar for instructors every 6 months. In-house seminars for particular agencies etc. on request (about 4 per year). Prepare publications to assist instructors, in particular Handbook for instructors.
Tas	No.
Vic	We run 1-day legislation process courses several times each year. [See www.ocpc.vic.gov.au, via "other documents" to "training".]
WA	IPAA (Institute of Public Affairs and Administration) course on legislation: A senior Parliamentary Counsel from the WA PCO presents a session. A document is available on the Web about how to go about getting legislation drafted.
NZ	No formal seminar or workshop programme, but have started training sessions for instructors in some agencies. Advice and information is available through the Guide to Working with PCO and regular PCO newsletters.
Ontario	When asked.

3 Management of legislative drafting

3.1 What is your current office structure (for legislative counsel)?[22]	
ACT	12+ legislative counsel (f/t equivalent currently working) PC, 2 DPC, 2 Executive APC (1 p/t), 3 PAPC (LO2) (1 p/t), 6 APC (LO1) (2 p/t; 1 LWOP) legislative counsel =14 legislative counsel on staff
Cwlth OPC	27 legislative counsel (f/t equivalent currently working) FPC, 2 Second PC, 6 FAPC, 8 S Asst PC (1 on LWOP), 15 Asst PC (4 on LWOP) = 32 legislative counsel on staff
Cwlth OLD	22 legislative counsel (f/t equivalent currently working) 1 PLC, 3 SLC, 8 PLO, 7 SLC, 3 LO = 22 legislative counsel on staff
NSW	20 legislative counsel (f/t equivalent currently working) PC, 2 DPC, 2 SAPC, 2 APC, 3 SLDO, 1 SLO, 7 LO (IV-VI), 2 LO (I – III) = 20 legislative counsel on staff. One cadet legislative counsel.
NT	6+ legislative counsel (f/t equivalent currently working) PC, DPC, 2 SAPC (1 p/t), 2 APC (level 4; 1 on LWOP), 1 APC (level 3), 1 APC (level 2) = 8 legislative counsel on staff
Qld	25 legislative counsel (f/t equivalent currently working) PC, 3 DPC, 4 FAPC (1 p/t), 7 SAPC, 11 APC = 26 legislative counsel on staff
SA	12+ legislative counsel (f/t equivalent currently working) PC, DPC, 2 SAPC, 2 APC, 7 LO (6 f/t equivalent) = 13 legislative counsel on staff
Tas	7+ legislative counsel (f/t equivalent currently working) CPC, 2 DCPC, 1 Senior PC (p/t), 1 PC, 3 Asst PC (1 p/t) = 8 legislative counsel on staff
Vic	15 legislative counsel (f/t equivalent currently working) CPC, 2 DCPC, 1 Asst Principal PC, 7 Counsel (VPS-5), 1 Counsel (VPS-4), 4 Counsel (VPS-4) = 16 legislative counsel on staff [3 p/t]
WA	14 legislative counsel (f/t equivalent currently working). PC, 2 DPC, 12 APC= 15 legislative counsel on staff. Support staff = 15
NZ	26 legislative counsel (f/t equivalent currently working). CPC, 2 DCPC, 25 PC (including 3 team leaders), 3 APC, 1 Counsel = 32 legislative counsel on staff. Includes 1 DCPC, 1 PC f/t, 5 PC p/t, on Public Access to Law project. 29 support staff (f/t equivalent currently working), 3 p/t.
Ontario	14 legislative counsel + 2 translation counsel (f/t equivalent currently working). Chief Legislative Counsel, Deputy Legislative Counsel, Registrar of Regulations, 11 other counsel, 5 production assistants Director French Legislative Services, 4 translators, 4 linguistic advisers, 2 translation counsel, 3 production assistants. Manager Publishing Services, 2 supervising legislative editors, 10 legislative editors, 2 production assistants, 2 systems officers. = 14 legislative counsel + 2 translation counsel on staff

[22] PC=Parliamentary Counsel; A =Assistant; P =Principal; C=Counsel; D=Deputy; F=First; S=Senior; LDO=Legislative Drafting Officer; LO=Legal Officer; LWOP=Leave without pay; PO=Professional Officer; CPC=Chief PC; VPS=Victorian Public Service [Grade]. Part-timers are counted as between half-time and full-time hours, so 2 p/t = 1+ f/t equivalent current working. This is intended to be indicative rather than absolutely precise.

3.2 Is legislative drafting split into groups (e.g. on the basis of client agencies, particular legislation or primary/subordinate legislation)? Are legislative counsel placed with client agencies for particular work, or for particular periods (e.g. the OPC taxation office placements)?	
ACT	No legislative drafting groups as such. Each DPC allocates work around the whole office for half of the PCO's client agencies, and has management (not necessarily settling) responsibilities for half of the legislative counsel. No out-posting, and none contemplated, but (as for SA) particular legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
Cwlth OLD	3 legislative drafting units allocated to different agencies (some agencies split between units). Legislative counsel are rotated through the units. Occasionally place a legislative counsel with a client agency for a short term.
Cwlth OPC	Not generally, and not internally.
NSW	No.
NT	No.
Qld	3 legislative drafting groups, allocated to different departments. No out-posting.
SA	No legislative drafting groups, no out-posting and none contemplated. But legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
Tas	No legislative drafting groups, no out-posting. But legislative counsel who develop expertise in a particular area tend to attract further work in that area.
Vic	No legislative drafting groups, no out-posting. But legislative counsel who develop expertise in a particular area (e.g. by drafting primary legislation) tend to attract further work in that area.
WA	No allocation by client agencies, no out-posting.
NZ	PCO has 3 legislative drafting teams organised on an agency basis. Rotation uncommon. Team structure is not rigid and teams share work on basis of interest/necessity. Tax legislation drafted in Inland Revenue Department.
Ontario	Each lawyer has a portfolio of clients (but these are reassessed from time to time). No out-posting.

3.3 At what level do you recruit, in general? Only at legal 1 equivalent (i.e. recent graduates, or lawyers with little or no legislative drafting experience)? Or horizontally into upper legal 1/legal 2 levels (lawyers with legislative drafting experience or equivalent)?	
ACT	There is a broad-banded Legal 1 classification for the APC level. Recruits may start at the bottom of the range, but with suitable experience a recruit can be started higher. We also sometimes recruit experienced legislative counsel from outside PAPC level (Legal 2), and may do so at executive level too (PC and DPC).
Cwlth OLD	Recruit at any level, but appropriate legislative drafting experience essential for senior positions. Most of the recent recruits have had several years legal experience, but no legislative drafting experience.
Cwlth OPC	Usually lawyers with no legislative drafting experience at APC1 [entry] level; top increment APC1 soon to be raised to attract lawyers with useful non-drafting experience. Higher level positions may be filled by experienced legislative counsel from outside, but in practice most promotion is internal.
NSW	LO (I-III) [entry level]. Typically honours graduates with 1 year or more experience in private practice, the public service or as a Judge's associate, with no legislative drafting experience.
NT	Have had recent success in recruiting experienced interstate legislative counsel for DPC and SAPC positions. Difficult to recruit interstate legislative counsel for APC levels. Generally rely on recruiting from local applicants at the entry level (preferably with 1 to 3 years other legal experience) and training up. Job evaluation system (which is available across the NT public service) allows legislative counsel to be promoted through the APC levels without having to wait for a vacancy.
Qld	May occur at any level (merit-based).
SA	Last several years it has proved best to recruit lawyers with some private practice experience (e.g. last 3 recruits with 5, 3 and 6 years' private experience).
Tas	Usually only have been able to recruit at entry level.
Vic	Usually lawyers with no legislative drafting experience (1 high level position filled by an interstate legislative counsel several years ago).
WA	At any level. At senior levels, experience in another legislative drafting office essential.
NZ	PCO appoints at any level. PCO appoints lawyers from public and private sectors. Recruits with less than 3 years hard experience usually appointed as Assistant Parliamentary Counsel. More experienced lawyers appointed as Parliamentary Counsel (in NZ this is a Governor-General appointment).
Ontario	Recruitment level depends on immediate needs of office.

3.4 Are junior legislative counsel paired with particular senior counsel? Or are junior/senior pairs made and broken on a job-by-job basis?	
ACT	No fixed arrangements for pairing, but mentoring relationships are used for new starters and in some other situations (e.g. a legislative counsel returning after maternity leave). Pairs are made and broken on a job-by-job basis.
Cwlth OLD	Junior-senior pairs are job-by-job, but juniors and new members of the office are also given a general mentor.
Cwlth OPC	1 or 2 APC paired with 1 SES (executive) legislative counsel for about 12 months at a time, not on a job-by-job basis.
NSW	Junior legislative counsel closely supervised by senior legislative counsel. Occasionally work in a team (taking routine etc. aspects of larger project).
NT	No formal pairing system. APCs work independently on own projects (subject to informal discussions with PC, DPC or SAPC as they go). APCs work formally settled by PC, DPC or SAPC when it reaches final stages.
Qld	Legislative counsel and supervising legislative counsel, job-by-job (for juniors, senior legislative counsel assigned as supervising legislative counsel).
SA	Junior/senior pairings job-by-job.
Tas	Junior/senior pairs as part of training process, with pairs changed approximately every 18 months.
Vic	Pairs (occasionally trios with executive component) made and broken on a job-by-job basis. Through the 1990s, fixed pairings prevailed, but even so some cross-pairing occurred.
WA	Each draft has legislative counsel and a reader (another legislative counsel). Senior legislative counsel can be assigned senior or junior readers. Junior legislative counsel are assigned to senior readers if the degree of difficulty warrants it.
NZ	A trainer is assigned to each junior legislative counsel. Supervisors are assigned for each legislative drafting job and different supervisors are assigned for different jobs. Large Bills worked on in teams of 2 or more legislative counsel will mix and match junior and more experienced legislative counsel.
Ontario	Currently using a long-term pairing.

3.5 Briefly describe the settling process for the work of junior and more senior legislative counsel. Is there any standard settling procedure for the work of senior legislative counsel (e.g. scrutiny by executive counsel)?	
ACT	APC work is always settled by a senior legislative counsel ("D2"). The PC often acts as "D3" if he is not the D2. All work of legislative counsel (including DPCs) is read or settled by another legislative counsel or the PC. Larger legislative drafting teams are becoming more common. PC reads all Bills at some stage.
Cwlth OLD	Work of junior legislative counsel closely supervised (LO and SLO). Work of PLO legislative counsel settled by unit head, or by another PLO with review by unit fead if needed. PLC (office head) reviews, and may settle, unusual jobs.
Cwlth OPC	APC work is always settled by an SES (executive) legislative counsel. SES legislative drafting work is not settled. But SES work is always read and commented on by another legislative counsel.
NSW	Work of junior legislative counsel closely supervised. No draft leaves office unless seen by supervisor. Open door policy. All Bills (junior and senior legislative counsel) reviewed by Bill Review Group (PC, DPC, SAPC).
NT	See answer to 3.4 for the APC level. PC, DPC and SAPC settle their own work. PC reads all final drafts, whether prepared by APC, SAPC or DPC.
Qld	All drafts checked by someone [similar to ACT system]. At advanced stage, drafts are given to senior legislative counsel with word search macro results. D2 then settles draft, in consultation with D1 as necessary.
SA	All legislative counsel can settle regulations or proclamations (but the work of junior legislative counsel must be checked by a senior legislative counsel). Work of junior legislative counsel is settled by a senior legislative counsel. PC, DPC and SAPC settle their own work.
Tas	Apart from those at the APC level, all legislative counsel are responsible for settling their own work.
Vic	All Bills drafted by junior legislative counsel are supervised by senior legislative counsel. Bills drafted by senior legislative counsel are unsettled. CPC reads all Bills before they are sent to Cabinet, unless prevented due to time constraints. For supervised Bills, 1st and last drafts are always read—settling practices otherwise vary depending on supervisor. All Bills are read before Cabinet by 2 editorial proof readers to detect errors.
WA	The reader's responsibility (see 3.4) is to check the draft and make suggestions as appropriate. The more difficult work of a junior legislative counsel is settled by a sufficiently experienced legislative counsel.
NZ	A supervising legislative counsel settles a draft by a junior legislative counsel. Legislative counsel not under supervision settle their own drafts with a peer reviewer unless impracticable to do so. Team leaders, CDPC, and CPC entitled to comment and require changes to drafts of all legislative counsel.

3.5 Briefly describe the settling process for the work of junior and more senior legislative counsel. Is there any standard settling procedure for the work of senior legislative counsel (e.g. scrutiny by executive counsel)?	
Ontario	A junior lawyer's work is reviewed by a senior lawyer. Senior lawyers are responsible for settling their own work. All government Bills are reviewed by a cabinet committee before first reading, but for policy not word-smithing.

3.6 Do you use a time recording system? Is there any formal/informal method of billing client agencies (or particular agencies, e.g. independent statutory authorities)?	
ACT	Time recording system for legislative drafting and non-drafting tasks. The data is used for reporting only (Annual Report, Estimates Committee, internal management, particularly useful for gauging burden of private members' work). No actual billing.
Cwlth OLD	Time recording covers all tasks. We bill for "contestable" work, for which agencies do not have to come to us; essentially anything other than regulations, commencement proclamations and work from within the Attorney-General's Dept.
Cwlth OPC	No to both.
NSW	Government legislative drafting – no to both. Private members' drafting – core drafting hours recorded [maximum limit on core hours drafting for PMs – see above].
NT	No to both.
Qld	No to both.
SA	No to both.
Tas	Some legislative drafting categories billed – simple time-recording system for these.
Vic	No to both.
WA	No to both.
NZ	No to both. PCO commissioned a study by PricewaterhouseCoopers in 1998 into cost recovery. Study involved discussions by PWC with Australian legislative drafting offices. PWC recommended against cost recovery. Will investigate time recording (not cost recovery) in 2005.
Ontario	All work is docketed. Government work is billed.

3.7 Do you have regular office (or legislative drafting group) meetings? If so, how regular?	
ACT	Weekly call-over meetings of all legislative counsel to monitor workloads and priorities. All-staff meetings monthly. Drafting and Publishing Standards Committee meets monthly. Management group meets monthly. Regular morning teas and social functions.
Cwlth OLD	Weekly meetings for legislative drafting units. Various office committees meet less frequently. Full office meetings rare.
Cwlth OPC	Monthly all-staff meeting. First and Second PC and SES legislative counsel meet fortnightly. Regular meetings of specific committees. Regular internal training sessions for legislative counsel on legislative drafting matters (monthly on average).
NSW	Legal officers' meeting most Wednesday mornings.
NT	Formal meetings held as and when required. A tradition of morning and afternoon tea provides an opportunity for regular, informal meetings.
Qld	Regular meetings of legislative counsel and specific committees (including current legislative drafting practices, uniform styles, fundamental legislative principles). Meetings of legislative counsel are usually weekly, others fortnightly.
SA	No.
Tas	Fortnightly 1-hour meetings.
Vic	Monthly (on average) 1-hour meetings. Weekly 1/2 hour meetings for CPC to monitor workloads. Weekly management meeting (1 hour) of 3 executive officers.
WA	Management meeting bi-monthly (PC, 2 senior counsel, 3 senior clerical staff). Fortnightly meetings of PC, DPC and Director, Legislation Services. Fairly informal weekly staff meetings.
NZ	Yes. 2 teams fortnightly, 1 weekly. At team meetings, legislative drafting assignments are distributed and workload and progress gauged. Style of meetings varies between teams (and matters covered, e.g. continuing education). Every 2 months or so, all-staff meeting. Various social occasions for informal contact within office. PCO management team meets 3 times each week. Management team and team leaders meet monthly.
Ontario	Aim at weekly 1-hour lawyers' meetings. At height of session meetings may be cancelled at short notice.

4 Publications

4.1 How is final draft legislation published? (e.g. camera-ready copy to printer/in-house printing etc). In what format (A4/B5)?	
ACT	Pdf files of Bills to printer, B5 window on A4 paper. Bills are supplied to Assembly in B5 pamphlet format. Urgent Bills may be supplied to agency (pdf or hard copy) for presentation in A4 format. Final draft regulations are sent to line area as pdf files. Also B5 window on A4 paper (after making and notification they are published in B5 pamphlet form). Amendments are supplied in A4 format (printed in-house). After passage and notification, Acts are printed by the Assembly (from camera-ready copy generated from word files given to the Assembly by PCO).
Cwlth OLD	Regulations—electronic camera-ready copy to printer. Other instruments—in-house printing or PDF files to agencies.
Cwlth OPC	Electronic camera-ready copy to printer. Draft Bills in B5 pamphlet form.
NSW	Camera ready A4, B5 window. Bills printed in-house; the rest outsourced.
NT	Electronic camera-ready copy to government printer in A4 and photo-reduced to B5 by printer.
Qld	Camera-ready copy of draft Bills to GoPrint (government printer). GoPrint handles printing for various stages during passage. Bills in A4, Acts, reprints etc. in Crown Quarto.
SA	Electronic file to government printer. The documents are printed in A4 (Acts also published in A4).
Tas	Camera-ready A4 to printer (postscript file + hard copy as final check). The OPC controls camera-ready copy for all stages of legislation (drafts, minister copy, Parliamentary prints and amendments, vellum[23]).
Vic	Camera-ready copy to printer. Bills-at-Cabinet in A4. Bills approved by Cabinet and Acts published in B5 pamphlets.
WA	Word 97 copy to State Law Publisher. Bills in B5, subsidiary legislation gazetted in A4 format. Reprinted legislation in B5 format from pdf files supplied by PCO.
NZ	In process of moving from WordPerfect 9 to WordPerfect 11. WordPerfect file converted to SGML by contract printer. Will move to Epic XML authoring tool as part of Public Access to Legislation project implementation. Bills published in A4. Acts and regulations published in B5.
Ontario	First reading copy printed in-house in Word. Camera-ready copy for printer after 1st reading. 8.5" x 11" paper (North American letter size). 2nd and 3rd reading versions of Bills also prepared for camera-ready stage by OLC. 3rd reading version is post-Assent, incorporating any amendments in committee.

[23] The vellum is the copy of the Bill that is submitted to the State Governor for the royal assent.

4.2 What is the standard source you use for up-to-date legislation of your jurisdiction (e.g. in-house past-ups/in-house database)?	
ACT	PCO legislative counsel access legislation through the legislation register (also available to public) (www.legislation.act.gov.au).
Cwlth OLD	In-house database made available to the public as SCALE PLUS.[24]
Cwlth OPC	Consol database maintained by Attorney-General's Dept.
NSW	In-house SGML database (updated within 3 days).
NT	In-house paste-ups, in-house reprints database (Acts in force, no uncommenced changes). Public access to database via NT Legislative Assembly website: http://www.nt.gov.au/lant/hansard/hansard.shtml
Qld	OQPC electronic legislation database (in-house to staff).
SA	Hardcopy and electronic versions supplied by government Printer on an on-going basis. Data provided by the SA PCO. (These are also available to the public.)
Tas	The OPC maintains in-house database, Tasmanian Legislation Database; still some use of hardcopy paste-ups. Amendments done by marking up Principal Act taken from legislation database. Certain parts of database available to public.
Vic	Law Today database. Data from Vic CPCO available to both legislative counsel and public at www.dms.dpc.vic.gov.au. Also in-house database that shows amendments that have yet to take effect.
WA	PCO compiles and uses cut-and-paste Acts, regulations, rules and by-laws in hardcopy and electronic forms. The electronic versions are also available to the public through the State Law Publisher.
NZ	Hardcopy paste-ups (private contractor); Electronic database via Folioviews (legal publisher). PCO will use its own electronic database following implementation of the Public Access to Legislation project.
Ontario	e-laws (www.e-Laws.gov.on.ca) available to legislative counsel and public. Legislative counsel use an intranet site which mirrors the internet site. Databases current to within 14 days for consolidated law and 2 days for source law.

[24] SCALE has now been replaced by ComLaw (www.comlaw.gov.au).

4.3 Is the legislative drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?	
ACT	Yes. Official republications of all primary legislation are available on the legislation register website. The *Legislation Act 2001* authorises corrections, minor stylistic changes, other editorial changes, renumbering (though renumbering rarely done without express statutory direction to renumber under the *Legislation Act 2001*). Notes (not a part of Acts or subordinate laws) may be updated or removed for official republications.
Cwlth OLD	On-line consolidations of both primary legislation (for Cwlth OPC) and regulations are normally up-to-date (a note indicates any unincorporated amendments). Print versions are published from time to time as there is demand. Reprints Act 1972 enables very minor editorial changes, but this power is sparingly used.
Cwlth OPC	Attorney-General's Dept. (not OPC) responsible for republications.
NSW	Selected Acts (about 100) reprinted regularly. The *Reprints Act 1972* enables very minor editorial changes, but this power is sparingly used.
NT	Yes. Electronic consolidations generally available within 5 working days after commencement. Over the last 2 years [since Nov. 2004], the number of hardcopy reprints produced has increased. Previously the decision to publish hardcopy reprints was made by the Govt Printer based on whether all stocks of previous reprints had sold. Now the decision is made by the OPC in consultation with the Government Printer and the Australian Law Librarians Group (NT Branch). The decision to reprint a particular piece of legislation is based on the number of amendments made to it and its popularity. The only statutory authority to make corrections or stylistic changes is under the *Amendments Incorporation Act*, s. 4, which requires the omission of the year from the citation of a Principal Act when it is reprinted after amendment. Rely on convention to make very minor corrections to some punctuation.
Qld	Yes. OQPC function under LSA, s. 7(k). Since 1992 (commencement of LSA), function fulfilled through Queensland Legislation Reprints series. 2 reprinting programs – printed, authorised reprints (QLR series); electronic reprints and updated versions of printed reprints. Legislation Reprinting Policy – when reprints will be reprinted in each of these. *Reprints Act 1992*, Pts 3 and 4, authority for editorial changes. But OQPC use of these powers is now strictly limited to 'those regarded as essential from a publishing perspective' (e.g. consequential amendments, spelling, punctuation, reordering definitions and lists, format and printing style, removing renumbered provisions, removing amended provisions, removing enactment words, renumbering expressly required, minor corrections).
SA	Yes. Statutory authority for changes under *Legislation Revision and Publication Act 2002*. A Senior Assistant Parliamentary Counsel is the Commissioner for Statute Revision under that Act.

4.3 Is the legislative drafting office responsible for republications? How up-to-date is your republication program? Is there any statutory authority or accepted convention for the parliamentary counsel to make corrections or stylistic changes to republications?	
Tas	The OPC maintains Tasmanian Legislation Database. Automatic consolidation system – aims to provide in-house access and access to the public of up-to-date consolidated and new legislation on the day that a change occurs or the day new legislation gets Royal Assent, commences or, in the case of subordinate legislation, is notified in the gazette. Point in time searching is available from 1 February 1997 for Acts and April 1998 for Statutory Rules. Corrections etc. under *Legislation Publication Act 1996*.
Vic	Yes. Republications only if there have been enough amendments to make republication worthwhile. Capacity to republish fairly soon after amendment (often on date of effect of amendment). No express statutory authority to make changes. But until recent changes to the *Interpretation Act* [which made section headings and punctuation part of law] the view was taken that amendments to section headings and punctuation could be made in republication, but the power was rarely exercised. The respondent considers that OCPC can make stylistic changes of a formatting type at will, but notes that this has only ever been done across the board (e.g. new Act format in the early 1990s).
WA	Yes. The *Reprints under Reprints Act 1984*. Attorney-General (through delegate, Parliamentary Counsel) may authorise some minor corrections and stylistic changes. Not all authorised changes are made – it is often considered more useful for a reprint to contain a historical record of the written law being reprinted than to omit all spent provisions that there would be power to omit. Approximately 90% of WA legislation is reprinted in "new" (1999) format. The balance is of marginal relevance.
NZ	Yes. PCO compiles and publishes reprints of Acts and regulations under annual reprints programme determined after consultation with users, e.g. judiciary, law society, law librarians, government departments. See *Statutes Drafting and Compilation Act 1920* and *Acts and Regulations Publication Act 1989*. Acts and regulations are reprinted in a new format (from 1 January 2000) and in line with current legislative drafting practice (see *Acts and Regulations Publication Act 1989*, ss. 17A-17F).
Ontario	Yes, in partnership with the Queen's Printer. We do the database updating and camera-ready work. We publish office consolidations and provide updated files for the e-Laws website. We have no authority at present to make corrections but spelling errors and other typos are fixed. [Past practice has been to publish official consolidations every 10 years ("decennial" revisions) - republications - of virtually all primary (non-amending), Acts and regulations in force, authorised under a revising statute. Last revision was in 1990 (incorporating official French translations of Acts and many regulations). This practice is probably going to be superseded by next phase of the e-laws project, in which it is intended to publish authorised electronic consolidations of each law (on an individual basis) soon after it is amended.]

4.4 Is your legislation (including any associated subordinate legislation or instruments) published on the internet? If so, how? (e.g. via SCALE[25] or AUSTLII, or in-house website)?	
ACT	Primary site: www.legislation.act.gov.au. Authorised (pdf) files; non-authorised (rtf) files; selected future republications also available that show the effect of uncommenced amendments (rtf). ACT PCO has an active back capture program for source law (primary and subordinate legislation as made) and point-in-time republications. Notifications and subordinate instruments (e.g. approved forms, determined fees) are available online (disallowable instruments from 1989, others from 2001). Bills are available from 1994. AUSTLII: www.austlii.edu.au/au/legis/act/consol_act/
Cwlth OLD	Primary site: SCALE http://scaleplus.law.gov.au/ AUSTLII: www.austlii.edu.au/au/legis/cth/consol_reg/
Cwlth OPC	Primary site: SCALE http://scaleplus.law.gov.au/; Bills at Parliament House website: www.aph.gov.au/legis.htm. AUSTLII: www.austlii.edu.au/au/legis/cth/consol_act/
NSW	Primary site: www.legislation.nsw.gov.au/ AUSTLII: /www.austlii.edu.au/au/legis/nsw/consol_act/
NT	Primary site: http://www.nt.gov.au/lant/hansard/hansard.shtml. Current consolidations; historical consolidations; Bills; numbered Acts; numbered subordinate legislation. Instruments not published. AUSTLII: www.austlii.edu.au/au/legis/nt/consol_act/
Qld	Primary site: www.legislation.qld.gov.au/Legislation.htm. LSA,s. 7 (m) requires OQPC to arrange for electronic access to Queensland legislation. OQPC legislation database fulfils this function. Electronic reprints frequently updated. AUSTLII: www.austlii.edu.au/au/legis/qld/consol_act/
SA	Primary site: www.parliament.sa.gov.au/legislation/5_legislation.shtm. Made available to SA Parliamentary website, fortnightly cycle. [NB no link to statutes through Attorney-General's page on government website]. AUSTLII: www.austlii.edu.au/au/legis/sa/consol_act/
Tas	Primary site: www.thelaw.tas.gov.au/ AUSTLII: www.austlii.edu.au/au/legis/tas/consol_act/
Vic	Primary site: www.dms.dpc.vic.gov.au. AUSTLII: www.austlii.edu.au/au/legis/vic/consol_act/

[25] SCALE has now been replaced by ComLaw (www.comlaw.gov.au).

4.4 Is your legislation (including any associated subordinate legislation or instruments) published on the internet? If so, how? (e.g. via SCALE[25] or AUSTLII, or in-house website)?	
WA	Primary site: State Law Publisher, via Parliament House website: www.slp.wa.gov.au/statutes/swans.nsf [NB no link through Dept of Justice website – only through WA government – Parliament – Statutes]. AUSTLII: www.austlii.edu.au/au/legis/wa/consol_act/
NZ	Primary site: www.legislation.government.nz This is an unofficial database of up-to-date legislation provided by Brookers Ltd (part of Thompson group) under an arrangement with the PCO and is available free. It is an interim website and database. Individual Acts and regulations, repealed Acts and revoked regulations, and Bills, are available free to browse at: www.knowledge-basket.co.nz/gpprint/docs/welcome.html. Following implementation of the Public Access to Law project, the interim database will be replaced by a database owned by PCO and maintained by Brookers Ltd under contract with PCO. That database will also be available free on the internet. The PCO will, over time, "officialise" the database through the exercise of reprint powers under the *Acts and Regulations Publication Act 1989.*
Ontario	Primary site: www.e-Laws.gov.on.ca Source laws and consolidations of statutes [and regulations]. Bills available via the Legislative Assembly website at www.ontla.on.ca.

4.5 Are there any plans for an electronic form of the legislation to become the statutorily authorised official form of the law (as now in the ACT)?	
ACT	Authorised versions are published on www.legislation.act.gov.au, in pdf form (non-official rtf files also supplied for convenience of users). Downloads (electronic and print) from authorised pdf files are authorised by the *Legislation Act 2001*.
Cwlth OLD	From 1 January 2005, authorised versions of Commonwealth legislative instruments will be available on a new Legislative Instruments Register under the *Legislative Instruments Act 2003*.
Cwlth OPC	Under review.
NSW	Under active consideration.
NT	Not at this stage.
Qld	*Evidence Act 1977* recently updated to allow courts to receive copies of legislation from any source that appears reliable. The authentication of electronic reprints is inevitable.
SA	Under review.
Tas	Plans but nothing concrete.
Vic	No.
WA	No, but courts widely use the electronic database.
NZ	Yes. Timeline to be determined.
Ontario	Yes. In policy development stage.

5 Drafting style

5.1 Samples of primary Acts (subordinate laws) and amending Acts (sub laws)	
ACT	*Health Professionals Act 2004* (No 38 of 2004); *Health Professionals Legislation Amendment Act 2004* (No 39 of 2004).
Cwlth OLD	*Petroleum (Submerged Lands) (Diving Safety) Regulations 2002* (No 300 of 2002); *A New Tax System (Goods and Services Tax) Amendment Regulations 2003* (No. 1) (No 37 of 2003).
Cwlth OPC	*Spam Act 2003*; *Criminal Code Amendment (Terrorism) Act 2003*.
NSW	*Chiropractors Act 2001; Workers Compensation Legislation Further Amendments Act 2001*.
NT	*Electoral Act 2004* (Act No. 11, 2004); *Gaming Machine Amendment Act 2004* (Act No. 45, 2004). This amendment Act uses traditional, long-form amending formulae. From the November 2004 sittings onwards, all amendment Bills will be drafted using short-form amending formulae.
Qld	*Mental Health Act 2000*, No 16; *Financial Management Standard 1997* (including commentary); *Domestic Violence Legislation Amendment Bill 2001*; *WorkCover Queensland Amendment Regulation (No. 1) 2001*, SL 197.
SA	*Petroleum Act 2000; Racing (Controlling Authorities) Amendment Act 2000* (No 59 of 2000); Statutes *Amendment (Gambling Regulation) Act 2001* (No 18 of 2001).
Tas	*Child Care Act 2001; Gas Amendment Act 2001; Federal Courts (Consequential Amendments) Act 2001*.
Vic	*Surveying Act 2004* (No 47 of 2004); *Transport (Rights and Responsibilities) Act 2003* (No 101 of 2003).
WA	*Port Authorities Act 1999; Port Authorities (Consequential Provisions) Act 1999*.
NZ	*International Crimes and International Criminal Court Act 2000; Civil Aviation (Medical Certification) Amendment Act 2001; Fisheries (Foreign Fishing Vessel) Regulations 2001; Employment Relations Act 2000*.
Ontario	"Any recent Bills in our Assembly will give you feel for our style." (See www.ontla.on.ca) "The PDF version will also give you a feel for our printed formats. The e-Laws site www.e-laws.gov.on.ca/ will give you a feel for our electronic layout."

5.2 How would you briefly describe the house style of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?	
ACT	Until 1998, PCO followed traditional Commonwealth legislative drafting style (though in the late 90s that was already developing beyond what was used for ACT laws) – as clear and concise as possible but with a conservative bias. This style was still clearer than non-legislative drafting and UK legislative drafting. From early in 1999, PCO has moved rapidly to a more radical plain language style. A simpler vocabulary is used (e.g. notices are usually "given" rather than "issued"). Shorter sentences and shorter sections are encouraged. Legal (and other) jargon is avoided and legislative language is less formal than before. Narrative presumptions are more boldly made, avoiding cumbersome cross-references.
Cwlth OLD	Moved towards plain English in the 1990s. Substantial changes were made in the late 1990s, with a good deal of experimentation. Some of those experiments have become normal, others have been dropped. The emphasis is on communicating effectively with the reader.
Cwlth OPC	Emphasises plain English and has made a conscious move towards simplifying provisions and making them more readable. Substantial resources invested in last 10-15 years have resulted in a significant change in legislative drafting style. Use of plain English drafting devices is noticeable – in addition to the obvious changes, the process of legislative drafting has altered. Many legislative counsel now adopt particular planning techniques and hold more face-to-face meetings than previously. More external scrutiny in some cases (Tax Law, Corporations projects).
NSW	Plain clear language. Early 1990s: enthusiastic use of plain English devices (flow charts, boxed overviews, examples, notes). Recent years: "return to reliance on the use of the words and structure of the document".
NT	Similar to most other Australian jurisdictions. Rely on well-structured provisions expressed in clear, concise language. Over the last few years, greater use of standard form provisions. Over the last 12 months, greater use of the narrative and a reduction in the number of cross-references. From the November 2004 sittings onwards, all amendment Bills will be drafted using short-form amending formulae.
Qld	Plain English style. Style changed in early to mid-90s and then settled down in the later 1990s. Consideration could than be given to documentation of changes and finessing of changes to style.
SA	Plain English style.
Tas	Similar to other Australian jurisdictions. "Aim for clear and concise language". Main layout change from B5 to A4 several years ago. Style changes made from time to time.

5.2 How would you briefly describe the house style of your office (e.g. by comparison with other Australasian or other English-language jurisdictions, or with non-legislative legal drafting)? Has it changed greatly in recent times?	
Vic	"Reasonably modern"; "can generally be relatively easily understood by a reader who has completed one of the upper levels of secondary school". However, the respondent's view is that the format has deficiencies (headings, smaller point sizes for schedules, little space between sections and bolding of Victorian Act references.) Compares well with Commonwealth (though Commonwealth legislation is inherently more complex, perhaps). Not quite as plain or informal as NSW legislation. Way ahead of private legal drafting ("in terms of their legal writing, many Victorian lawyers have yet to make it into the 20th century, let alone the late 20th or this century"). Plainer than NZ in style, and way ahead of US legislation.
WA	Straightforward—no frills. Format changed 1999—now largely based on Commonwealth format.
NZ	"NZ has been evolving plain language style since 1997. In matters of legislative drafting style and format, NZ is closer to Australian legislative drafting practices than to UK or Canada. Features of NZ approach include use of examples, avoidance of excessive cross-referencing, avoidance of legalistic terminology and jargon, use of purpose and overview provisions, flow charts, and other techniques. Format of legislation changed January 2000."
Ontario	"We attempt to follow the principles of plain-language drafting. We have been heavily influenced by the civil code style of Quebec. I would describe our style as midway between the civil code and the common law drafting styles. Compared to much of what happens in non-legislative drafting we use a much simpler style. Are we 100% successful in following plain language principles – no. However, like so much of life – it is a journey. Recent changes – no law Latin, no law French in English versions, no Anglicisms in French versions, gender-neutral style, no clause sandwiches."

5.3 How much variation in legislative drafting style is there within the office? Apart from the osmotic effect of the training process, is there much (or any) express insistence on uniformity of style?	
ACT	"The change in style introduced in 1999 in the ACT office was accompanied by an increased emphasis on uniformity and on documentation of house style. The Parliamentary Counsel has a hand, or at the least an active oversight, in all legislative drafting projects. There are stricter controls on standard vocabulary, and a greater attempt is made than before to establish standard approaches to standard issues. But this does not prevent differences in style between legislative counsel; legislative drafting is still a bespoke art that seeks individualised solutions for particular problems."
Cwlth OLD	"There is a limited set of situations where uniformity is required, and a larger set where it is required unless a senior legislative counsel agrees to the variation. Otherwise, the approach will depend on the legislative counsel concerned and the subject matter."
Cwlth OPC	Insistence on compliance with Amending Forms Manual, Drafting Directions and the Plain English Manual, all available via http://www.opc.gov.au/about/documents.htm. Legislative counsel are encouraged to draft in a style that promotes a uniform statute book, while recognising that each legislative drafting job needs to be considered in its specific context.
NSW	Standard precedents for many matters, but room for variations in individual style. Junior legislative counsel rotated through supervisors to sample different approaches while developing own style.
NT	Legislative counsel are required to give effect to all formal legislative drafting directions. Exceptions only with the approval of the PC or DPC. Legislative counsel are encouraged to think more about the structure of provisions and to make greater use of the narrative.
Qld	Insistence on uniformity of style. Drafting Standard and Precedents and Information Standard followed. Word search macro used to vet words and phrases. Standards and macro subject to continuous improvement. D2 process ensures common thread.
SA	"Relatively mild variation of legislative drafting styles."
Tas	"Little express insistence on uniformity of style." Enact system (style sheets etc) "imposes a certain amount of consistency on legislative counsel." Amending forms automated due to automatic consolidation system. "Legislative counsel can override the automatically generated wording but this is seldom done."
Vic	Considerable variation. "Some of us draft in a general style that was state of the art in the early 1980s – some of us draft in a style that would not be out of place in the most progressive of the Australian offices, and most of us fall somewhere in between." Uniformity for some things (e.g. commencement provisions), but no express insistence for the most part. Limits on radical departures from norm.
WA	Word 97 macros used extensively, resulting in uniformity in formal matters. General conformity of style, but no rigid insistence on uniformity.

5.3 How much variation in legislative drafting style is there within the office? Apart from the osmotic effect of the training process, is there much (or any) express insistence on uniformity of style?	
NZ	"Format is uniform and is enforced. The plain language style of legislative drafting is still evolving and a certain amount of experimentation in style is possible and inevitable. Individuality is encouraged within limits. The bulk of legislative drafting in the PCO is consistent in style."
Ontario	"Reasonable range, but most would recognise an 'Ontario' style."

5.4 What written documentation is there of the office legislative drafting style (e.g. office manuals, collections of legislative drafting instructions)? How comprehensive and up-to-date is the documentation?	
ACT	An Office Practice Manual (recently updated); Words and Phrases Guide (being updated); Amending Guide; Spelling and Abbreviations Guide; Technical Amendments Guidelines. Some of these are available on the PCO website; the rest are intended to be made available in the future: http://www.pco.act.gov.au/pages/draftpubstand.htm.
Cwlth OLD	Drafting directions: *Words and Phrases* guide; rules on how to set out different kinds of provisions; ad hoc papers dealing with issues such as retrospectivity. The document is fairly extensive and reasonably up-to-date, but it is intended to rewrite it to improve its organisation.
Cwlth OPC	Extensive and up-to-date Drafting Directions. Word Notes relate to styles and formatting, also comprehensive and up-to-date. [Drafting Directions, Plain English Manual and Amending Manual are available via: http://www.opc.gov.au/about/documents.htm.]
NSW	Drafting instructions 1985-1991. Drafting circulars 1992-2004. Professional development circulars 1991-2004. Amendment in committee manual (up to date). Drafting manual (being revised).
NT	The Guide to Legislative Drafting sets out amending formulae (but needs to be updated in light of recent move to short-form amending formulae). Drafting directions are issued periodically. The Guide and legislative drafting directions are available in electronic form.
Qld	Drafting standard; Original legislation process manual; Precedents and Information Standard; Fundamental Legislative Principles Standard; Word Search Macro. Subject to continual improvement – monitoring and review by office committees.
SA	None. Some precedents for proclamations.
Tas	Up-to-date office procedures and precedent and EnAct users manual. No up-to-date legislative drafting instructions, but they are currently being updated.
Vic	An Office Manual has recently been compiled and is in use, still incomplete although a lot of work has gone into it. It incorporates legislative drafting instructions, old and new, on various topics.
WA	Model Bill with amending forms-1999, comprehensive but not up-to-date (but there have not been significant changes). Customised word-processing manual, up-to-date. Parliamentary Counsel's occasional legislative drafting notes. Intended to consolidate these into a legislative drafting manual in due course.
NZ	*Drafting Manual* and *Style Guide*. Both documents are being revised.
Ontario	Short set of legislative drafting conventions (available to clients and public). All documents including Drafting Manual are kept up-to-date. An instructions document is circulated to clients.

5.5 Does your office have a uniform amending style? Are amending forms documented? How comprehensive and up-to-date is the documentation?	
ACT	Yes. Amending *Reference Guide* (available on PCO website; see 5.4 above). New style developed from Qld and OLD styles (see Qld below), but with some differences. Final check reads by legislative counsel and editors enforce uniformity.
Cwlth OLD	Yes. Amending forms documentation is comprehensive and up-to-date.
Cwlth OPC	Yes. Amending Forms Manual (very comprehensive and up-to-date, available via http://www.opc.gov.au/about/documents.htm).
NSW	Yes. SGML DTDs ensure uniformity.
NT	Yes – see the answer to 5.4.
Qld	In *Drafting Standard*, which is detailed and current. Location line – amendment command line – inserted text line(s) (if needed). "omit", "omit and insert", "insert".
SA	Yes – uniform style. Style is documented.
Tas	Yes—amending legislation automatically generated from legislative counsel's marking-up of consolidated principal legislation. Documentation in EnAct system specifications.
Vic	Yes—uniform style. 2002 Drafting instruction "sets out the style to be used in great detail and is comprehensive."
WA	Yes. Model Bill (see 5.4). Word 97 macros used following model Bill examples.
NZ	Amending style is uniform and there is little room for variations. Style is well documented in Drafting Manual and Style Guide and is up-to-date.
Ontario	Precedents, with some flexibility. "However, as part of e-Laws we are examining the use of highly standardized wording to facilitate easier updating of our database." [Tas Enact and RMIT influence]

5.6 Has your office expressly adopted a plain English [plain language] policy? If so, in what form? Is there any detailed documentation of this policy (e.g. plain English legislative drafting manual)?	
ACT	Yes. One of PCO "Key objectives" (stated in Annual Report). Published legislative drafting and publication procedures are designed to achieve goal of plain language (see 5.4 above). Basic plain language style guidelines are enforced for each Bill and draft regulation (e.g. 5-line limit on slabs of text) by checklist at time of handover for editing. However, this is a checklist only and may be deviated from.
Cwlth OLD	Yes, in the 'OPC's Mission Statement. Documentation generally reflects policy.
Cwlth OPC	Yes. Plain English Manual (available via http://www.opc.gov.au/about/documents.htm).
NSW	"Plain language was adopted as a policy in 1986". Plain Language Policy is available on PCO website.
NT	No express policy. However, emphasis on well-structured provisions expressed in clear, concise language.
Qld	Yes, since 1991. Standards are based on this policy.
SA	Parliamentary Counsel requirement to draft in plain English. No documentation.
Tas	Yes. No detailed documentation (apart from some precedents).
Vic	Yes, mid 1980s (at Attorney-General Jim Kennan's insistence). Robert Eagleson in 1986 suggested additional changes. Job advertisements mention that Vic PCO is a "plain English office". Statement of policy on website.
WA	Not formally, and there is no detailed documentation. However, legislative drafting notes are used by PC cover particular matters; some matters have evolved by convention following internal discussion (e.g. gender-free language in new legislation; avoidance of "shall" and language seen as unnecessarily legalistic).
NZ	The PCO adopted a plain language policy in 1997, although the style of legislative drafting is evolving. The policy and legislative drafting practices that support it are documented in the Drafting Manual and Style Guide.
Ontario	Yes—lawyers' meetings, standard texts, legislative drafting conventions and legislative drafting manual.

5.7 Here are some of the markers associated with plain English [plain language] legislative drafting style. Give brief notes of office practice. ***5.7.1 Is "must" used rather than "shall"?***	
ACT	"Yes. "Shall" is never used. But not all uses of 'shall' replaced by 'must' (alternatives: present tense for statements of law; passive 'is to' if imperative not appropriate). *Legislation Act 2001*,s. 146 defines 'may' and 'must'".
Cwlth OLD	"Yes. 'Shall' is never used. Replaced by 'must' wherever grammatically appropriate. Up to the legislative counsel to find an alternative otherwise."
Cwlth OPC	Yes, always.
NSW	"You must not use shall!"
NT	Yes.
Qld	Yes. When appropriate, "shall" is also changed to "must" when principal legislation is amended.
SA	Yes.
Tas	"Yes. *Acts Interpretation Act 1931* [s 10A] defines 'must', 'is to' and 'may'."
Vic	"Yes, 1985 (Attorney-General Jim Kennan's insistence), for obligation. Most legislative counsel stopped using 'shall' entirely. But recently use of 'shall' for obligation is re-emerging."
WA	"Shall" is avoided. "Must" or an alternative is used instead sometimes, but not always.
NZ	"Must" or alternative used instead of "shall", except for Royal Warrants and associated regulations for military medals.
Ontario	No. Disagree with Eagleson etc. rationale for change.

5.7.2 Examples: Are they treated as part of the law, or do they have the same status as notes?	
ACT	Yes. Part of the law, non-exhaustive, may extend but not limit meaning of exemplified provision (*Legislation Act 2001*, s. 132). Provision may be an example even if not labelled as such (*Legislation Act 2001*, s. 132 (2)).
Cwlth OLD	Part of a regulation, but subject to *Acts Interpretation Act 1901*,s. 15AD – examples not exhaustive, and if inconsistent with provision exemplified, provision prevails.
Cwlth OPC	Part of an Act, but subject to *Acts Interpretation Act 1901*,s. 15AD – examples not exhaustive, and if inconsistent with provision exemplified, provision prevails.
NSW	Notes (not part of Act). Mainly in technical legislation, e.g. *Duties Act 1987*.
NT	Beginning to be used very sparingly. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of examples. If the Interpretation Act is amended as proposed, likely to be greater use of examples.
Qld	Used sparingly. *Acts Interpretation Act 1954*,s. 14(3) similar to ACT provision but provides that exemplified provision prevails in the event of inconsistency.
SA	Used sparingly—regarded as part of Act (though no statutory provision relating to their use).
Tas	No, but have had to be accommodated [as part of the law] for adoption of interstate laws including them. Notes do not form part of Tasmanian law.
Vic	Yes. Part of the law, non-exhaustive, may extend but not limit meaning of exemplified provision (sections 36(3A) and 36A of the *Interpretation of Legislation Act 1984*). Since then increasing use (though many legislative counsel are yet to use them).
WA	Very rarely used. Not part of the law.
NZ	"Examples are used in 2 ways. Expressions in text "such as" and "for example" are common. Examples in text boxes separate from text itself are rarely used but were used extensively in *Personal Property Securities Act 1999* (PPSA). Under the *Interpretation Act 1999*, examples are among the indications in an Act that may be taken into account in ascertaining meaning (sees. 5). That is subject to any contrary intention. PPSA treats examples as indicative and if there is any inconsistency between example and provision, provision prevails."
Ontario	Not in text, but used in explanatory note.

5.7.3 Are readers' guides, summaries, flow-charts etc. included?	
ACT	Yes, if appropriate. Use not extensive. Flow-charts inserted (rarely) as notes (non-legislative) (*Workers Compensation Amendment Act 2001*).
Cwlth OLD	Yes, if appropriate. Not much used in regulations, where they are inserted as notes. More common in other instruments, where they may appear in a great variety of forms.
Cwlth OPC	Frequently used.
NSW	Not as such. Flow charts rarely (*Health Care Complaints Act 1993*; *Mental Health Act 1990; Evidence Act 1995*). Summaries from time to time (*Taxation Administration Act 1986*).
NT	No. Willing to consider their use in individual cases if appropriate. However, a strong argument would need to be made out for their use in an individual case before approval for use would be given.
Qld	Readers guides: often; flowcharts: occasionally.
SA	Not used.
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	Very limited experiments with tables and flowcharts. No readers' guides or summaries. Sometimes an "outline section" is used (i.e. a summary of the operation of the Act).
WA	No.
NZ	"Overviews and outlines are quite common (see *Personal Property Security Act 1999*, *Animal Products Act 1989*, *Building Act 2004*). Flow-charts are used when appropriate (see *Trade Marks Act 2002*, *Criminal Records (Clean Slate) Act 2004*, *Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004*)."
Ontario	May be supplied by instructors at first reading stage.

5.7.4 Are explanatory notes included?[26]	
ACT	Used often, usually for internal and external cross-references. Not part of the Act (*Legislation Act 2001*, s. 127(1)). Parliamentary Counsel may authorise omission, change or insertion of note in republication (*Legislation Act 2001*, s. 116(1)(m)).
Cwlth OLD	Used frequently by some legislative counsel, rarely by others. Not part of the instrument.
Cwlth OPC	Used fairly frequently. "OPC's view is that the status of notes is unclear, and that it may be desirable for it to be clarified by an amendment to the *Acts Interpretation Act 1901*.".
NSW	Common. Not part of Act.
NT	Beginning to be used very sparingly. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of notes. If the Interpretation Act is amended as proposed, likely to be greater use of notes.
Qld	Used occasionally.
SA	Used by some legislative counsel. Footnotes do not form part of the Act (*Interpretation Act*). A note in the body of the Act would be viewed as part of the Act.
Tas	No.
Vic	Yes, but only by some legislative counsel. Previous practice of printing at end of Act restricted practical utility; use at foot of provision annotated makes them more attractive. Notes at the foot of provisions are part of the Act (*Interpretation of Legislation Act 1984*,s. 36(3A)).
WA	No.
NZ	"PCO legislative counsel do not include explanatory notes in text of Bills or regulations. All government Bills have an explanatory note. The note is in 2 parts, a General Policy Statement which is prepared by agencies and a Clause by Clause Analysis which is written by legislative counsel. Unlike England, these notes are not updated as Bills progress. The explanatory notes do not form part of the resulting Acts. All regulations have an explanatory note which is written by legislative counsel and appears after the regulation but is not part of it."
Ontario	Yes, an explanatory note appears at front of each Bill. The explanatory notes for source laws are retained in e-laws. [But annotations are not inserted throughout the text of laws.]

[26] That is, annotations inserted by the drafter throughout the text of a Bill which are reproduced in official publications of the law as enacted.

	5.7.5 Dictionaries: Are they located at the end rather than as "interpretation" provisions at beginning?
ACT	All new legislation has a dictionary at end (unless there is only a short list of definitions). As part of a regular statute law amendment program, most pre-2001 legislation has been revised to move definitions into a dictionary. However, significant definitions are often inserted in an early part of a Bill as key concepts, or in particular chapters/parts/divisions, with cross-references in the dictionary.
Cwlth OLD	Dictionary at the end for long list. Otherwise, a "definitions" provision is placed at the beginning of the document.
Cwlth OPC	Uncommon, although sometimes used (e.g. *Income Tax Assessment Act 1997*, *Native Title Act 1993*).
NSW	Only if large number of intrusive definitions. "Have rather gone out of fashion".
NT	No.
Qld	Yes (default), but ultimately a matter for judgment (e.g. may be placed at beginning if dictionary would be too remote from body of Bill, or if the Bill is short).
SA	No.
Tas	No, but have had to be accommodated for adoption of interstate laws including them.
Vic	No. Respondent yet to be convinced that this is a plain English practice. Can be difficult if dictionary not literally at the end. Victorian practice of including index in large principal Acts with list of all defined words and page number may be satisfactory substitute.
WA	A Bill for a new Act, or a reprint, usually includes a list of defined terms at the end (terms defined anywhere in the legislation), with reference to provisions. Not part of legislation, can be updated in republications. Dictionaries and glossaries seldom used as a result.
NZ	"All Acts and regulations have interpretation provisions at beginning or near beginning. Some will be included in a Part headed 'Preliminary Provisions'. However, the *Interpretation Act 1999* has 'definitions' near the end, but those definitions apply to legislation generally as well as to that Act and placement is not therefore inconsistent."
Ontario	No. Definitions are located at the beginning.

5.7.6 Are in-text definitions frequently used (tagged term definitions or similar)?	
ACT	"Yes, often. A signpost definition is inserted in the dictionary if the tagged term is used in more than one section. The *Drafting Practice Guide* has recently been revised to include guidelines on the use of these and other relatively unconventional forms of definition."
Cwlth OLD	Frequently used by some legislative counsel, rarely by others.
Cwlth OPC	Frequently used.
NSW	Frequently used (bold italic).
NT	"Yes, if appropriate. Sometimes accompanied by a 'signpost' in the interpretation section at the beginning of the Bill, etc."
Qld	"Yes, often. If an in-text definition is used outside a section, it will be inserted in dictionary or general definition section and signposted."
SA	Becoming more common.
Tas	Occasionally used.
Vic	Sparingly, but increasingly used. "Drafting device" not "plain English" device. Harder to find than normal definitions (thus "anti-plain English").
WA	When helpful. Defined terms are bolded (they are included in the automatically generated list of defined terms – see previous answer).
NZ	These are used with a restricted range, e.g. same section or regulation, Part or proximate provisions. Sometimes used within a section or regulation, although not specifically defined, to avoid repetition, e.g. "person A".
Ontario	No.

5.7.7 Are defined terms highlighted (e.g. by asterisk*)?[27]	
ACT	No. Considered too distracting. But cross-reference to definition sometimes included in an explanatory note.
Cwlth OLD	No.
Cwlth OPC	Sometimes (e.g. *Tax Code Acts*). At legislative counsel's discretion.
NSW	No.
NT	No.
Qld	No. Highlighting (bold italic) only at point of definition.
SA	No.
Tas	Definitions bolded and put in quotes [at point of definition; in Tas style, no highlighting of defined terms elsewhere].
Vic	No. Experiments in some regulations. One experiment grouping defined terms at bottom of page (labour intensive, but could be automated). "Generally too distracting".
WA	No. "The Interpretation Act and other external things can also affect the meaning of terms."
NZ	No. However, boldface is used in the definition itself.
Ontario	No.

[27] That is, apart from the definition itself.

5.7.8 Is there any relaxation of the single sentence/single provision rule?	
ACT	No. The single sentence rule is listed as a plain language style rule of thumb (legislative drafters' checklist), despite some plain language advocates who regard the rule as resulting in complexity.
Cwlth OLD	No.
Cwlth OPC	No requirement to draft in single-sentence provisions. But not routinely relaxed.
NSW	Yes, sparingly.
NT	No.
Qld	No.
SA	Very occasionally.
Tas	No.
Vic	No absolute rule – occasionally used. Query whether plain English practice (as such) – used in the past.
WA	Not widely.
NZ	Very occasionally. When done, a semi-colon rather than a full-stop used to separate sentences. However, this practice is not encouraged.
Ontario	Yes, but only in limited circumstances.

5.7.9 Are any limits placed on sentence length and provision length?	
ACT	Yes. No more than 5 subsections/section; 5 paragraphs/subsection; 5 lines/provision. But rules of thumb only (see legislative drafters' checklist).
Cwlth OLD	5-line rule as rule of thumb. Short provisions preferred.
Cwlth OPC	No explicit rules generally. Rules for tax law improvement legislative drafting, however.
NSW	5-line rule, but flexible.
NT	No formal rules, but legislative counsel encouraged to break up chunky provisions whenever possible.
Qld	5 lines maximum without paragraphs. Preference to limit length if possible.
SA	Not particularly.
Tas	No formal rule, but informal policy to keep sentences and sections short.
Vic	No formal rule, but longstanding informal policy that sentence/provision length should not be too long.
WA	Try to keep short, but no inflexible limit.
NZ	Encouraged to break section after 6 subsections. Short sentences preferable, but use of paras/subparas tends to support longer sentences without unduly reducing readability/accessibility.
Ontario	Encourage short sentences and short provisions.

	5.7.10 Are there any other special features (e.g. bias towards rewriting for plain language style when amending rather than minimal textual amendment)?
ACT	"Rewriting when amending is actively pursued (smallest text unit or units rewritten rather than textual amendments), but not for minor and consequential amendments. Depends on the situation (e.g. see OPC comments below). I personally tend to think that a problem with too aggressive a rewriting policy is that it presumes adequate explanatory memoranda and 2nd reading speech material to explain actual change. Unfortunately, however, this presumption is often unwarranted (ACT PCO does not prepare these documents). See Vic comment below.
Cwlth OLD	Plain English rewriting decided on a case-by-case basis. Similar approach to Cwlth OPC.
Cwlth OPC	Plain English rewriting decided on a case-by-case basis. Preference towards rewriting, but depends on instructions and situation (e.g. judicial interpretation, political considerations, e.g. keeping Bill size small).
NSW	Rewriting whenever appropriate and if time permits.
NT	If appropriate and time permits, will re-write the smallest provision rather than making the minimal textual amendment. Encouraging legislative counsel to do more re-writing. Proposed amendments to the Interpretation Act will, if enacted, clarify the status of changes in legislative drafting practice. If the Interpretation Act is amended as proposed, likely to be more re-writing.
Qld	Yes, with authority from instructor.
SA	Some rewriting, as far as reasonably appropriate.
Tas	Usually minimal textual amendment.
Vic	Bias towards rewriting wherever possible. View that it is easier for people to read a complete provision rather than amendments. Rewritten text required to conform to style current at time of rewriting. Free rein over primary Act structures. Explanatory memorandum begun to be published with certain selected Acts, more generally in annual bound volumes. But standard of explanatory memorandums not good. If standard were to improve, could considerably assist readers.
WA	"Usually replace more than the minimal amount if there are multiple changes, but generally would not encourage excessive rewriting based only on stylistic preference."
NZ	Similar to Cwlth OPC. Preference is to rewrite but depends on time, size of Bill, what else may be affected, House time. PCO applies "clean break principle" when amending older legislation so modern style may sit alongside older-style legislative drafting.
Ontario	No clause sandwiches. No law Latin or law French, non-sexist style. Prefer to rewrite when possible.

5.8—Any other comments about your office legislative drafting practice (e.g. peculiarities of your jurisdiction, or any reforms that are underway)	
NSW	NSW has moved away from the emphasis on the amending or principal Bill in printed form and is placing more emphasis on— (a) focusing attention (in accordance with plain language principles) on the readability of black letter law text (rather than devices that explain or reinterpret the black letter law), and (b) the law in force (as amended by a Bill) and its delivery, use and comprehension on-line (in this area there is significant experimentation and development).
WA	The WA parliamentary counsel's office provides revision-tracked versions of Acts proposed to be amended, but only when the amending Bill has been introduced, and if the PC considers it warranted.
NZ	A revision tracking system (redlining) to show amendments is used to assist Parliamentary select committees. This has become the established method of amending Bills and has proved popular with Members. The PCO recently engaged Michèle Asprey, an Australian lawyer and consultant on the use of plain language by lawyers, to undertake a review of NZ legislative drafting practices from a plain language perspective. The Office is in the process of considering her suggestions.
Ontario[28]	In 2002, Ontario also introduced a revision tracking system to show the amendments made to Bills in committee between the second and third reading stages.

[28] Author's note.

Commonwealth Association of Legislative Counsel

MEMBERSHIP APPLICATION FORM FOR NEW MEMBERS

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6/F, Office of the Attorney General, Government Buildings, Upper Merrion Street, Dublin 2, Ireland§

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In September 2005, the Commonwealth Lawyers Association and the Law Society of England and Wales will host their first ever combined conference in London—*Commonwealth Law 2005*.

The conference will be the golden jubilee event of the Commonwealth Lawyers Association—it will be the first time the Commonwealth Law Conference has been held in London since it was launched here 50 years ago. The event will also include *Solicitors 2005*—the Law Society Annual Conference.

As many as 1,500 lawyers are expected to attend the prestigious event, sponsored by Barclays, which will be held at the Queen Elizabeth II Conference Centre in Westminster. Highlighting the four-day gathering will be several keynote addresses, including a speech from Lord Bingham of Cornhill, the former Lord Chief Justice of England and Wales and now the senior Law Lord.

Colin Nicholls QC, President of the Commonwealth Lawyers Association, said:
"In the last 50 years, the conference has established itself as the premier legal event in the Commonwealth. All branches of the legal profession—judges, magistrates, public and private sector lawyers, academics, paralegals and executives of the Commonwealth's law associations—meet to discuss vital issues affecting the Commonwealth's law and its legal profession.

"The theme of this year's conference; *Developing Law and Justice*, embraces the momentous issues facing the Commonwealth's lawyers today: globalisation and the environment, security and freedom, corporate social responsibility, discrimination and the protection of the under-privileged, family law and the child, access to justice, and the future of the legal profession itself. There are also sessions on HIV/AIDS, disaster relief, Islamic law and banking."

In addition to keynote speeches, the programme also will feature workshop streams covering: human rights; criminal law and practice (including constitutional law); the judicial officer; and the law and small states.

Specialist topics will include: environmental law; liabilities at sporting events; freedom of information and the regulation of the media; legal issues arising out of natural disasters; and liabilities of public authorities for exercise of statutory powers.

The social programme includes a welcome reception and dinners, as well as an accompanying guest programme.

Delegates can benefit from the early booking discount by registering before 30 April 2005

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