



# Newsletter

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If you would like to join CALC, use our [online registration form](#).



Sir James Fitzjames Stephen 1<sup>st</sup> Baronet KCSI (3 March 1829 – 11 March 1894)  
English lawyer, Judge, and writer: <https://doi.org/10.1093/ref:odnb/26375>

## CALC President's Report—September 2018



President  
Commonwealth Association of Legislative Counsel



### 2019 CALC Conference – Livingstone, Zambia, 1 to 3 April 2018

As I have mentioned (often) before, the organisation of our 2019 conference has taken longer than usual due to the complexities involved in securing a venue in Livingstone big enough to accommodate the conference. The foundations are now in place for an excellent conference. As it took such a long time to settle the arrangements with the venue, despite prolonged agitation on our part, the Conference Programme Working Group feels it would be fair, although we have received a sufficient number of proposals for papers to populate a good conference, to extend the deadline for proposals until the end of October. Normally the conference programme would be settled by September, so this hasn't caused a disproportionate delay, given the substantial initial difficulties in securing the venue, which is a wonderful one.

Throughout the past year I have engaged with the organisers of the Commonwealth Association of Law Reform Agencies and I can now confirm that the CALRAS conference will take place on 4th and 5th April 2019. If you have an enquiry about the CALRAS Conference, please contact Mr Michael Sayers ([thesayers@hotmail.com](mailto:thesayers@hotmail.com)). The CLA conference, of course, takes place from Sunday 7th April until Friday 12th April, so there will be a suite of consecutive conferences for dedicated lawyers to attend in one place.

I want to pay tribute to all of the Council and Executive members who have contributed to the organisation of the CALC 2019 Conference so far. My thanks are due particularly to John Mark Keyes who is dealing with the organisation of three conferences (Ottawa, Jersey, and Zambia) concurrently, and to Ross and Katy who are handling the influx of proposals for conference papers and general enquiries about the conference. Our colleagues in Lusaka, particularly Mr Andrew Nkunya, have also been of great assistance in helping us with our planning.

I would urge members to book rooms at the conference hotel, the Avani, as soon as possible as CLA delegates will be booking accommodation for the days preceding their conference. As mentioned in my email to members of 7th September, the Avani has agreed to take bookings without the long promised booking link being in place if booking requests are directed to Lynwin Reid ([lreid@minor.com](mailto:lreid@minor.com)).

I visited Livingstone in April to assess a number of venues and the facilities available in the area. I spent five days visiting hotels, dealing with the conference organisers there. Livingstone is very easy to navigate and the hotel is a short taxi ride from the airport. The town is compact and has an interesting range of museums, shops and markets. People in Livingstone are extremely

friendly and welcoming. I deliberately visited in April to get a feel for the weather and activities available at that time. The temperature was very pleasant and not as hot as I had expected. As Livingstone is close to the border with Botswana, Namibia, and Zimbabwe, I hope that we will have a large number of delegates from those and other African countries.

## **Drafting conferences – London, Canberra, Washington, Ottawa, and Jersey**

One of the top priorities for CALC's President and Council during our 2-year tenure is the involvement of CALC in regional activities.

The Office of the Parliamentary Counsel (OPC) in London hosted a forum for UK drafters on 26 and 27 March 2018. 37 drafters from across the UK visited OPC for two days of drafting discussions and debate. This *CALC Newsletter* edition includes an item on this forum kindly prepared by Lydia Clapinska who organised the forum. It was agreed by the heads of the drafting offices in London, Edinburgh, Cardiff, and Belfast that a drafting forum would be held on a regular basis for the UK offices in the years between the main CALC bi-annual conferences. The plan is to brand these as CALC Europe regional conferences without prejudice, of course, to any other drafting office in the Europe region wishing to hold a CALC regional conference. Organisers of any drafting conference wishing to brand it as a CALC conference should, in the first place, contact Ross Carter so that the proposal can be circulated to the CALC Council for information and approval.

This edition also includes an item on the PCC/CALC (Pacific) Regional Conference held in Canberra from 4-6 April 2018 which (as two reports in this edition show) was very successful.

I enjoyed attending the [Fifth International Conference on Legislation and Law Reform](#) in Washington DC, USA, on 12th and 13th April 2018 and seeing so many of our members there (Council members John Mark Keyes and Michelle Daley, presenters Eamonn Moran, Estelle Appiah and Don Colaguri and others). This was the first time I had attended this conference and I would thoroughly recommend it to members. Madeleine MacKenzie and Rebecca Considine have kindly prepared a paper on the conference for this edition of the *CALC Newsletter*. My department has an office in Washington DC, headed by Norman Houston OBE. Norman very kindly hosted a dinner in his home in honour of Madeleine Mackenzie, Lord Lyon and me, to which he invited leading lawyers, judges, and academics. Madeleine presented Norman and some of the lawyers attending with some copies of her excellent reissue of [Thring's Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents](#). These were very well received and achieved the CALC objective of promoting public promoting public awareness of legislative drafting and those who draft legislation.

Our Treasurer, John Mark Keyes, is co-chairing the [Canadian Institute for the Administration of Justice's 19th Legislative Drafting Conference](#) which takes place this week. Council member Richard Denis is a member of the planning committee and a number of CALC members will give presentations. I look forward to hearing reports of the conference.

In this *CALC Newsletter* we preview the [CALC \(Europe\) Regional Conference](#) which takes place in Jersey on 21st and 22nd September 2018. Lucy Marsh-Smith made such a good job of organising the conference that all the places were booked before the final conference programme issued!

Ever intrepid, Lucy is off to Ottawa this week to attend the CIAJ Conference. She will get home with only a few days to spare before the Jersey Conference. Let's hope Lucy doesn't miss her flights!

## Commonwealth Secretariat activities



I provided input on behalf of CALC to a range of papers relating to the rule of law for the Commonwealth Heads of Government Meeting in London which took place from 16th to 20th April. I was invited to some of the surrounding events where I took the opportunity to make contact with Zambian officials and diplomats who were able to give me plenty of useful information to inform the planning of our 2019 CALC conference. All have offered their continuing assistance. Adrian Hogarth and I have attended a number of meetings with the Secretariat which have given us useful ideas for further CALC activities. Adrian has been dealing with the Secretariat for a long time and is well known and respected by officials there. It is extremely helpful that he is able to attend meetings arranged at short notice.

I prepared a report for the Secretariat on the activities that CALC has undertaken over the past year that contribute to good law making across the Commonwealth. I also drafted a paper for the Senior Officers of Law Ministries of Commonwealth Countries on CALC's activities and how they support the rule of law. I hope to have an opportunity to present this to senior officials and ministers in October. We are keen to assist the Secretariat in any way they would find useful and in particular to help them in any way we can with the newly established [Office of Civil and Criminal Justice Reform](#) which is a promising initiative.

## Progress on other CALC activities

At the beginning of my term of office, I set out the priorities for the incoming President and Council. Our main priority was to have at least one regional conference and/or a conference in Africa or the Caribbean. We sought expressions of interest in having a regional conference and Lucy Marsh-Smith took the initiative to take this forward in relation to the Europe Region. This conference has been very well supported and I would encourage members from other regions to approach us if you are interested in holding a conference. It takes a good deal of effort to initiate and organise a conference but you will be supported by Council members. The organising committee for Jersey includes Lucy, John Mark Keyes, Adrian Hogarth, Ross Carter and me, as Council members, as well as local Legislative Counsel. The CALC Pacific Region Conference in April was co-hosted with the Australian PCC and future UK Drafting Forums will bear the CALC brand.

I am delighted that we are having our bi-annual conference in Africa so we will be able to achieve both of our aims in terms of conferences over the course of our term of office. We also wanted to build on our links with other organisations which have interests similar to those of CALC and we have increased our links with the Commonwealth Secretariat, and the IAL which has helped publicise the Zambian conference.

Another priority was increasing awareness of, and membership of, CALC. I am very pleased to report that CALC membership has increased over the past year. In 2017 CALC had 1822 members. On 20th April 2018, CALC had a total of 2058 members.

## **And finally . . .**

My thanks again to Ross Carter for producing another engaging, informative and colourful issue of the *CALC Newsletter*. The production of the *CALC Newsletter* and *The Loophole* are demanding activities, carried out willingly by Ross and John Mark Keyes respectively. My thanks also go to all the members of the Council for their continuing work on CALC activities. Our work will intensify within the next few months as the date our 2019 conference approaches. I will keep members up to date with progress and look forward to seeing as many of you as possible in Livingstone in April.



**Brenda King**

CALC President, September 2018





**UK Primary Legislation Group meeting at UK National Archives, June 2018**

Left to right:

- **Jeff James**, Chief Executive of The National Archives, Queen's Printer of Acts of Parliament and Queen's Printer for Scotland and Keeper of Public Records
- **Matt Bell**, Head of Legislation Services at The National Archives
- **Andy Beattie**, Chief Parliamentary Counsel for the Scottish Government
- **Dylan Hughes**, Y Prif Gwnsler Deddfwriaethol (First Legislative Counsel), Welsh Government
- **Elizabeth Gardiner**, First Parliamentary Counsel, OPC, London
- **Brenda King**, First Legislative Counsel, Northern Ireland, CALC President

## CALC Conference — April 2019, Livingstone, Zambia



The 2019 CALC Conference will be held in Livingstone, Zambia, from 1 to 3 April 2019.

**Programme**—Members have now received an email outlining the programme.

**Registration**—Details will be available soon, both by email to members and at [www.calc.ngo](http://www.calc.ngo).

**Accommodation**—Members should book accommodation directly with the [Avani Hotel](http://www.avanihotel.com). It is essential that you quote CALC when booking and ask the hotel to note this on the booking. Lynwin Reid, who is looking after our conference booking, will book rooms manually if booking requests are directed to him. Lynwin's address is [lreid@minor.com](mailto:lreid@minor.com). Members are advised to book accommodation as soon as possible as rooms are booking up quickly.



## UK Drafters' Forum, OPC (London), 26–27 March 2018



Office of the Parliamentary Counsel



### REPORT OF THE UK DRAFTERS' FORUM 2018

The Office of the Parliamentary Counsel in London (OPC) hosted the UK Drafters' Forum 2018 at 1 Horse Guards Road on the 26th and 27th March 2018.

The Forum offered a rare opportunity for us to gather together as a community of drafters, with representatives from drafting offices in England, Wales, Scotland, Northern Ireland, Jersey, Guernsey, the Isle of Man and Gibraltar.



The Forum was opened by OPC's First Parliamentary Counsel, Elizabeth Gardiner CB. She spoke passionately of the current challenges we face as drafters, not least in our role of crafting legislation to facilitate the UK's withdrawal from the EU.

Elizabeth introduced our keynote speaker, the Rt. Hon. Lord Justice Sales, who spoke powerfully and persuasively about the contribution of legislative drafting to the rule of law.



The main conference programme consisted of 6 sessions which took place over the course of Monday afternoon and Tuesday morning.

The first session brought together OPC's Second Parliamentary Counsel, David Cook, along with Daniel Jenkins from the Government Legal Department Statutory Instrument Hub and Kelby Harmes from Cabinet Office Legal. The session was chaired by Lucy Marsh-Smith, the head of the Law Draftsman's Office in Jersey. The theme of the session was "Legislating Brexit: primary and secondary perspectives". The speakers provided a fascinating and unique insight into the latest developments in Brexit-related primary and secondary legislation, the devolution aspects and the challenges and lessons learned so far.

For the second session, Bernadette Walsh (OPC) presented an immaculately researched paper entitled "The kindness of judges and other stories: a drafter's reflections on judicial approaches to inconsistency in legislation". The session was chaired by the head of the Guernsey drafting office, Jon McLellan.

Bernadette considered what judges do in the face of arguments based on inconsistency in legislation and concluded by considering what the analysis of the caselaw tells us about the extent to which there are shared understandings between judges and drafters.

The third session was chaired by David Bermingham, the head of the drafting office on the Isle of Man. Catherine O'Riordan and Polly Walton (OPC) hosted an interactive session where delegates were asked to discuss a few knotty drafting issues in small groups and then provide immediate responses to a series of quickfire drafting questions. The voting round was good fun and sparked a number of interesting debates about different drafting approaches.

Those conversations spilled over amiably into the drinks reception and the Forum dinner which more than 50 delegates attended.

The following morning kicked off with the fourth session of the conference: “Consolidation and the Sentencing Code”. The session was chaired by Paul Peralta, head of the Office of Parliamentary Counsel in Gibraltar. Alison Bertlin (OPC) provided an introduction to consolidations in the context of her ongoing work with the Law Commission on a new Sentencing Code.

Paul Bedding from the Office of the Legislative Counsel in Northern Ireland then shared some thoughts on setting up a programme of consolidation. The speakers were then joined by Dylan Hughes, head of the Office of the Legislative Counsel in Wales, and Jessica de Mounteney (OPC) for a panel discussion.

The fifth session was on pattern languages and was chaired by the Chief Parliamentary Counsel in Scotland, Andy Beattie.

Justin Leslie (OPC) & James George of the Office of the Legislative Counsel in Wales described an on-going project which aims to identify commonly occurring legislative solutions to commonly occurring policy problems. This is a project that is being undertaken jointly between the UK, Scottish, Northern Ireland and Welsh drafting offices.



The final session of the conference was “Layers of interpretation: Scots law, Welsh law and the devolved interpretation Acts - what does it mean for the UK statute book(s)?” The session was chaired by Brenda King and the speakers were Neil Martin of the Office of the Legislative Counsel in Wales and Madeleine MacKenzie (Parliamentary Counsel to the Office of the Advocate General for Scotland).

The Welsh Government has published its plans for a Welsh Interpretation Act. This raises interesting questions about how to manage the potential for competing interpretations in one jurisdiction, how to ensure clarity for users of legislation (both reserved and devolved) and how to deal with new challenges surrounding Welsh language text in UK legislation.

The Scottish Government has dealt with similar issues in the context of the Interpretation and Legislative Reform (Scotland) Act 2010, albeit in the context of a separate Scottish jurisdiction. This session considered the advantages of devolved rules of interpretation and how the policy can best be put into practice in the context of a shared UK statute book.

Elizabeth Gardiner closed the conference with warm words. The event was hailed as a great success. The feedback was overwhelmingly positive. The heads of the UK drafting offices were inspired to speak about holding a similar event every two years. We are already looking forward to Cardiff 2020!

Lydia Clapinska (OPC)

25 July 2018



*Dylan Hughes, Paul Peralta, Lucy Marsh-Smith, David Bermingham  
Andy Beattie, Elizabeth Gardiner, Brenda King, Jon McLellan*

## **PCC / CALC (Pacific) Regional Conference – “Drafting for the 21<sup>st</sup> Century” – 4–6 April 2018 Canberra, Australia**



This joint (Australasian Parliamentary Counsels’ Committee (PCC) and CALC (Pacific) Regional) Conference was held in April 2018, in Canberra, Australia. The theme was “Drafting for the 21<sup>st</sup> Century”. The program included an exciting array of presentations, plus social events, and a range of weekend activities in the Australian Capital Territory (ACT).

The Gang-gang Cockatoo is a distinctive and appealing bird that is the faunal emblem for the Australian Capital Territory (ACT), and was incorporated into the logo for the conference.



### **PCC Australasia and CALC (Pacific) Drafting Conference 2018**

4 - 6 April, Hotel Realm, Canberra

SPECIAL THANKS, FOR THIS REPORT, TO ATTENDEES FROM THE PCO OF WESTERN AUSTRALIA

On 4 April 2018, over 160 delegates gathered at the Hotel Realm in Canberra for the 8<sup>th</sup> Australasian and CALC (Pacific) Drafting Conference. The conference was co-hosted by the Australian Office of Parliamentary Counsel and the Australian Capital Territory Parliamentary Counsel’s Office, on behalf of the Australasian Parliamentary Counsel’s Committee (PCC) and the Commonwealth Association of Legislative Counsel (CALC).

Delegates included drafters and other representatives from Australia, New Zealand, Hong Kong, Singapore and the Pacific Islands, with distances travelled ranging from a short 350 metre stroll (for those from the Australian Office of Parliamentary Counsel) to a journey of over 7,000 kilometres (for those from the Hong Kong Department of Justice).

Delegates were greeted with clear blue skies and wonderfully warm weather, and after a welcome lunch, the conference soon got underway.



After a didgeridoo performance by Chaydin Reid, from Dunghutti and Gamilaori country, Peter Quiggin (First Parliamentary Counsel, Australian Office of Parliamentary Counsel) formally welcomed everybody to Canberra and commenced the conference with some opening remarks.



Session 1 of the conference explored the impact that developments in computer technology are having on legislative drafting. Di Raeburn (Senior Assistant Parliamentary Counsel, Office of Queensland Parliamentary Counsel) spoke about how drafters can draft legislation to accommodate decision-making that is performed by computers. Government agencies are increasingly using computer programs to execute straightforward decisions, and in the future, artificial intelligence may mean that computers can actually reason more complicated decisions. To the relief of delegates, Di noted that large scale changes may not actually be necessary to draft for electronic decision-making, particularly given that the ordinary meaning of many words has evolved to include advances in technology. Beng Ki Owi (Chief Legislative Counsel, Singapore Attorney-General's Chambers) continued the theme by explaining how Singapore is adapting its legislation to deal with the challenges of automated decision-making. Beng Ki noted that under legislation, power to make a decision is invariably given to a person, and that person is ultimately accountable and responsible for the decision. She indicated that there may be a need for explicit authorisation for computer-made decisions, and that Singapore may amend its interpretation legislation to authorise computer-made decisions. Automated decision-making has the advantages of improving efficiency and certainty and being available around the clock,

but to be accurate it requires adequate data sharing within government. It can also be less transparent in that legislation is available to all citizens, but when it is translated into computer code for automated decision-making, the code is not. Beng Ki outlined how Singapore has responded to this challenge in relation to electronic voting, by taking the unusual step of legislating for the scrutiny of the computer code involved before it can be used.

In session 2 of the conference, Toni Walsh (Senior Assistant Parliamentary Counsel, Australian Office of Parliamentary Counsel) spoke of the need for drafters to advocate for their function and for the existence of parliamentary counsel offices themselves. Advocacy and engagement needs to be not only with the immediate stakeholder group (instructors), but also with the political tier of government and with the whole of the public sector. Without advocacy, maintaining a pool of drafters with a pool of drafting expertise in the public sector will be difficult. Alison Ryan (Assistant Parliamentary Counsel, Office of the Queensland Parliamentary Counsel) then drew on her previous experience as a policy advisor to give some unique insights into drafting from the perspective of instructing officers. Alison discussed the ways in which policy officers use legislation, including to achieve policy, and as a tool in policy development. She also offered some suggestions that will undoubtedly be useful to drafters in working with instructors. Importantly, in encouraging drafters to be understanding of their instructors' perspective, context and competing demands, Alison gave an important reminder that instructing is only one of the many tasks that policy officers must complete in order to get legislation passed.

Day 1 of the conference concluded with welcome drinks at The Deck at Regatta Point. Delegates were treated to a beautiful view over Lake Burley Griffin, the National Gallery and Parliament House, which served as the perfect backdrop for delegates from different jurisdictions to get to know one other and strengthen existing connections.



## Parliamentary Counsel's Office

Day 2 of the conference started with a paper by Tim Workman (Principal Clerk (Legislation), Office of the Clerk of the House of Representatives, New Zealand) and Ross Carter (Principal Counsel, Parliamentary Counsel Office, New Zealand) on legislative procedural rules in New Zealand and how these affect the structure and quality of legislation in New Zealand. Tim and Ross noted that while legislative procedural rules can have a significant impact on legislation, negative side effects, or poorly performing rules, can be reformed, with the key to reform being collaboration between jurisdictions and across agencies. Mark Emery (Senior Assistant Parliamentary Counsel, South Australian Office of Parliamentary Counsel) then discussed the effect of electoral and institutional changes on drafting. He noted that the system of Westminster democracy has changed over time in terms of electoral and institutional changes, institutional mechanisms of policy development and implementation and parliamentary makeup. This has brought challenges in relation to the negotiation of the passage of policy agendas through parliament and has resulted in the drafting process tending to be more fluid and liable to changes late in the piece. However, an understanding of the institutional dynamics at play will assist drafters greatly in achieving the legislative objective.

In session 2 of the day, Dan Djurdjevic (Senior Assistant Parliamentary Counsel, Parliamentary Counsel's Office, Western Australia) outlined the differences between Griffith Code jurisdictions and fault element criminal law systems. He explained the basic structure of both, including the function of fault elements, and how the Griffith Code eliminated the need for using them. In respect of the latter, his paper centred on the "double-up" between fault elements and defences such as 'mistake of fact' and 'involuntariness'. Finally, his paper dealt with trends in both systems and the possibility of convergence. Guzyal Hill (Lecturer, Charles Darwin University and PhD candidate) then discussed various aspects of national uniform legislation, including the obstacles to harmonisation, the benefits that can be achieved, and the sustainability of uniformity.

Naomi Carde (First Assistant Parliamentary Counsel, Australian Office of Parliamentary Counsel) spoke about judicial approaches to statutes. Drawing on some very amusing examples, (including Justice Kirby likening the reading of an Act to going into the dentist's chair), Naomi observed that the judiciary tends to favour the common law. She suggested the possibility that the judiciary has a cognitive bias against statute law, which could largely be due to the fact that the judiciary only gets involved in statute law when its meaning is in dispute. Naomi noted that, at times, drafters are criticised by the judiciary for adding unnecessary detail and complexity to a statute. She observed, however, that often the detail and complexity is the result of the particular policy agenda rather than the drafting process. Naomi suggested there is a need to improve the links and dialogue between the judiciary and drafters, and for there to be more focus on teaching statute law in university law schools.

The theme for the fourth session of the day was language in drafting. Theresa Johnson (Law Draftsman, Hong Kong Special Administrative Region) queried whether there is anything left to be done in terms of plain language drafting. Ultimately, she concluded that the final frontier is to test legislative design and content with target user groups - until drafters ask for, and listen to, feedback from users, they cannot truly say that plain language has been done. James Dalmau (Office of the Chief Parliamentary Counsel, Victoria) then looked at whether

there are better ways of deciding whether a contested usage is permissible in legislation. Conventional approaches to contested usages include arguments about style, pragmatics and correctness. James suggested that linguistic research may be able to add something to the argument. In particular, in determining whether a contested usage is permitted, reference could be made to readability and acceptability studies, or evidence about currency, formality and correctness, gained from studies about usage in existing materials. Ultimately, James concluded that the better way of deciding whether a contested usage is permissible, is a way that engages with the relevant sociolinguistic research.

Day 2 of the conference ended with a dinner at the National Arboretum. Delegates enjoyed delicious food, panoramic views over Canberra and a humorous and thought-provoking speech by the Hon Justice Stephen Gageler AC.



The Hon. Justice Hilary Penfold PSM QC started the third and last day of the conference with the George Tanner Memorial Address. The address was instituted at the 7th Australasian Drafting Conference to honour the contribution to legislative drafting of George Tanner CNZM QC, a former Chief Parliamentary Counsel in the New Zealand PCO. Justice Penfold discussed various judicial criticisms of the way in which legislation is drafted, and how drafters might address them.

Dan Meagher (Professor, Deakin Law School) then presented a paper discussing Retrospective Lawmaking in Australia. This paper explored the complex spectrum of retrospective law-making and drew a distinction between “strong” retrospectivity, where the legal consequences of prior events are changed from the date of the event, and “weak” retrospectivity, where the legal consequences of prior events are changed only from the date of enactment. The paper questioned the assumption that there is a necessary correlation between retrospective law-making and injustice and discussed the common law presumption against retrospectivity and the necessity for the extent of a statute’s retrospective operation to be expressed with clarity.

The second session of the day focused on information sharing within drafting offices. Rebecca Considine (First Assistant Parliamentary Counsel, Australian Office of Parliamentary Counsel) looked at different ways in which drafting offices share knowledge and discussed the various barriers to knowledge sharing. She offered some helpful suggestions as to how drafters can better share knowledge and importantly, emphasised that knowledge sharing does not need to divert drafters from the main task of drafting, but instead can be part of it.



Robyn Hodge (Deputy Parliamentary Counsel, NSW Parliamentary Counsel's Office) then gave an overview of the wiki system used in the NSW Parliamentary Counsel's Office, including the collaborative efforts of the office to develop it and the unexpected benefits the wiki has had for the social side of the office.

In the last session of the conference, Campbell Duncan (Consultant) spoke about what legislation is good for. He outlined the many purposes of legislation, which include to establish norms, command or control action, confer, refer or cede power and operate on other legislation. Peter Quiggin then spoke about what drafting might look like in 2050, particularly in the context of rapidly developing technology and artificial intelligence. Fortunately for drafters, Peter suggested that given that a fundamental role of drafters is to analyse policy and contribute to policy development, it is unlikely that drafting will ever become fully automated. However, drafters can use technology to make the drafting process more efficient. So while the fundamental role of drafters in thinking and analysing will not change as we approach the second half of the century, the tools that drafters use to do it might change.



**PCC Australasia and CALC (Pacific) Drafting Conference 2018**

4 - 6 April, Hotel Realm, Canberra

## Pacific Island perspectives at the 2018 Australasian PCC and CALC (Pacific) Drafting Conference and Workshop, 4–9 April 2018

For the Pacific Island legislative drafters who attended the 2018 Australasian PCC and CALC (Pacific) Drafting Conference in Canberra, our experience can simply be summarized as: “an eye opener”!

This is because it was the very first time for a good number of Pacific Island legislative drafters attending, together, a Drafting Conference of this kind and of such a size, meeting and networking with a much larger group of drafters from Australasia and neighbouring countries – Australia, New Zealand, Hong Kong, and Singapore.

We travelled from all corners of the **Blue Pacific**: from the South – Papua New Guinea, Solomon Islands, Fiji, Vanuatu, Samoa, Tonga, and Tuvalu; and from the North – Federated States of Micronesia, Kiribati, Nauru, Palau, and the Republic of the Marshall Islands.



Although, for regular attendees of Australasian PCC and CALC conferences, this might have just been another Drafting Conference, the events were a unique and first-time opportunity for the 14 of us from 12 Pacific Island countries. Being newcomers, we naturally gravitated towards the tables at the back of the conference room.



We quietly observed in awe and amazement as the Conference unfolded with the diverse and rich supply of presentations and discussions on the many different areas of legislative drafting – not something our small island drafting offices see or hear on a daily, monthly, annual, biennial, or any regular basis, for that matter!

We were impressed with how each topic was unpacked with a whole great deal of

thinking and analysis. Topics discussed various drafting perspectives relating to computer technology, wiki systems, policy, legislative procedural rules, electoral and institutional changes, Griffith Code jurisdictions and fault element criminal law systems, judicial approaches to statutes, judicial criticisms of the way in which legislation is drafted, plain language drafting, and retrospective lawmaking.

In addition, the messages in Toni Walsh’s paper on the need for drafters to advocate for their function and for the existence of parliamentary counsel resonated loudly with us. While existence

itself was a current challenge for our small drafting offices (most of which do not have PCOs but function from within state law offices), it was interesting that *retaining* existence was also an issue. Guzyal Hill's paper on the various aspects of national uniform legislation also presented parallel features to legislation across Pacific Island countries, which are largely harmonised through model legislation. Finally, moving towards 2050, Peter Quiggin predicted that the tools that drafters use will continue to change, thus presenting a greater challenge for small drafting offices to keep up to pace.

After the conference, we were treated to a **Drafting Workshop** at the Australian Office of Parliamentary Counsel on Monday 9 April from 9.30am – 3pm, with presentations about drafting in small drafting offices, filling gaps in drafting instructions, reducing complexity in legislation, tips for avoiding drafting mistakes, and automation in legislative drafting and publishing. These sessions had very practical and familiar contents, which will no doubt be useful for our day-to-day drafting goals.

We had the opportunity to tour the offices of the Australian OPC and to share lunch with colleagues at the OPC lunchroom, secretly imagining what it would be like to work in such a well-resourced office and with more than one drafter – surely the epitome of the drafting career! Many thanks again to Mr Peter Quiggin PSM and his Office for the great learning and networking opportunity.



Even days after the Conference and Workshop ended, we are still gushing about our experience:

- “The Conference provides an opportunity to all of us to get a glimpse of how drafting will be like in the future” (Jennifer, Vanuatu);
- “... very fortunate to be part of this conference as well as to get to know many intelligent minds in the field of drafting” (Joe, RMI);
- “... greatly enjoyed all the discussions with our colleagues in the Pacific and all the experts working in Australia and New Zealand” (Lauren, Palau);
- “It truly was an amazing experience and an eye-opener for us ... I am still pondering on the experience and I hope that our team can get to experience what I learnt and felt from the conference” (Steffany, Samoa);
- “such a great opportunity for us to really see and learn the in-depth work and experiences of drafters ... It was breath-taking just seeing that many drafters from one particular office and yet my office is still struggling with 1 or 2!” (Josephine, FSM);



- "... grateful for the encouragement and support ... towards building up our growing community of pacific drafters... I appreciate every moment of each day during the conference ... your positive spirits helped make our time together both productive and fun" (Jasmina, Nauru);
- "Thoroughly enjoyed the conference and the workshop" (Glenys, Fiji);
- "... the wonderful opportunity ... still lingers. I'm still amazed at the number of drafters we get to see and able to share some ideas with. I also thank OPC for allowing us to see their office and see how they work in a comforting environment. I just wish that we all have the same setting in the Pacific with many drafters to work with!" (Ereta, Kiribati).

Florence from Solomon Islands felt "fortunate to be part of such an inspiring and motivational conference and workshop. I am still overwhelmed by the wealth of knowledge and experience I've seen, heard and felt all throughout the entire event. We can all agree that the conference, and workshop, were an 'eye-opener' to what the drafting world and career really is. As a newcomer, I found myself being passionate about drafting laws and having the desire to push beyond my limits by engaging more in research and reading ... This I believe is a work in progress ... If we continue working hard and gain more knowledge, skills, and experience, our dreams could be a reality."

Safe to say, the experience has re-inspired and re-ignited our passion for the noble profession we have entered (or more likely stumbled upon!). There is renewed determination to keep moving forward by taking on more opportunities, sharing experiences, and actively advocating with leaders to secure resources for advancement opportunities for Pacific Island drafters.

As for many other issues in our **Blue Pacific** region, collective action is vital for advancing our legislative drafting capacities. How very fitting, albeit coincidental, therefore, it was for us to also have had the opportunity to meet with heads of, and also members of the Council of, Regional Organisations in the Pacific (CROP). They were, it just so happened, also meeting in the Hotel Realm, for a Lowy Institute Public Conference and Panel Debate on *Australia in the Pacific: Enhancing security through regional resilience*.



The CROP regional inter-governmental agencies play a major role in supporting Pacific Island countries on development priorities for the Pacific region. Heads of agencies were delighted to learn that we were there in numbers to attend the Conference.





Further on regional engagement, we got to meet together in the margins of the events as a mini [Pacific Legislative Drafters' Technical Forum](#) to chat about progress on our *Regional Action Plan on Sustainable Legislative Drafting Capacity Building in Forum Island Countries*. We even conducted our very first Drafters' Forum Steering Committee meeting on 5 April during lunch break.

The Pacific Drafters' Forum network is a mini Pacific Islands version of the Australasian network. It provides a platform for networking between drafting offices of 14 small island countries, sharing ideas and lessons, and encouraging each other on our role as guardians of the statute book! The Conference and workshop have given us a lot of great ideas for improving the Drafters' Forum in order to better serve our smaller offices. One such idea being to explore more opportunities to link future Drafters' Forum events with future PCC and CALC events in the region.



Finally, we thoroughly enjoyed playing tourists at all the fantastic side events. Our Pacific Island smiles say it all!



Participating countries are very grateful for the generous funding support of the Australian Attorney-General's Department as well as the keen interest of and engagement with Mr Peter Quiggin and his Office, all of which made the whole experience possible.

By way of final reflections, for us, the Conference and Workshop were not just another overseas trip. Whether we knew it or not, they were probably the much-needed opportunities to spark the next train of thinking for advancing capacities of our small drafting offices.

And to add to the inspiration, we all now have our very own copy (or 2) of Carmel Meiklejohn's book [\*\*Fitting the Bill: A History of Commonwealth Parliamentary Drafting\*\*](#) (Australian Government, OPC, 2012), which will serve as a useful guide for writing our own history, going forward to 2050.



Special thanks to **Nola Faasau**, Legal Drafting Officer, Pacific Islands Forum Secretariat, and CALC Council member (Pacific), for coordinating these fantastic Pacific Island perspectives.



## **Fifth International Conference on Legislation and Law Reform, Washington DC, USA, 12–13 April 2018**



CALC President Brenda King and Members Rebecca Considine (Canberra, Australia) and Madeleine MacKenzie (Edinburgh, Scotland) were among the 100+ delegates descending upon Washington for what proved to be a highly instructive and enjoyable Fifth International Conference on Legislation and Law Reform (see <https://ilegis.org/>).

CALC was well represented, with a number of the Speakers being Members or Associates, including several past and present Council members.

As with our own CALC conferences, the value of such international gatherings derives both from information exchanges and the fostering of new and existing friendships across the worldwide drafting community.

We were particularly delighted to meet each other as our respective offices have a decade-long interconnection. This began with a drafter exchange, when Toni Walsh and Willie Ferrie swapped desks for 6 months. As they have since reported to the CALC audience, this proved to be an educational and instructive experience for them and their host offices.





The conference was held on 12–13 April at the Washington College of Law, American University, in Tenleytown, Washington DC. Happily, this was a mere week after Washington’s famed cherry blossoms reached “peak bloom” for 2018. This day, on which at least 70% of the blossoms flower, is apparently the subject of intense conjecture and amateur forecasting in Washington before being finally settled by an official declaration by the National Park Service.

The conference coincided with Tartan Week, with many celebrations taking place around the city. Brenda and Madeleine were guests at a Reception held on Capitol Hill which was co-hosted by the Washington Saint Andrew’s Society and the Scottish Government. Among the distinguished guests at the event were several Clan Chiefs and the Lord Lyon King of Arms (who is responsible for State Ceremonial, heraldry, coats of arms and the maintenance of Scotland’s public registers of arms and genealogies). A message was read out from President Trump expressing his regret at being unable to attend. It was wonderful to see so much tartan and to hear the skirl of the pipes on “The Hill”.





*Brenda with Lyon*

The conference was organised by a group of lawyers that included United States legislative counsel, academics and attorneys in private practice. It is the latest in a series of conferences focusing on how laws are written in the United States and around the world, both at the national level and at regional levels. The next in the series is likely to be held late next year.

The Program featured a mix of plenary and break-out sessions which covered aspects of law-making in the United States as well as jurisdictions as diverse as Korea, China, the Netherlands, Ethiopia and Ghana. Sessions dealt with specific issues for law drafting and law-making in developing countries and post-conflict situations.

In addition, numerous sessions focused on drafting issues of interest to CALC members, many of whom were among the roughly two-thirds of attendees who indicated (on a show of hands at a plenary session) that they were either legislative drafters or connected with drafting legislation.

Of these sessions, an early highlight was the session co presented by Wade Ballou, [Office of the Legislative Counsel of the U.S. House of Representatives](#), and Matt McGhie, [Office of the Legislative Counsel of the United States Senate](#). Wade talked about “Being a Tortoise Among

the Hares: Addressing Compressed Time Frames for Drafting”, while Matt proposed “A Reasoned Response to Unreasonable Deadlines: A United States Perspective”. The issues they identified will be familiar in all jurisdictions with CALC members. It is valuable to name these issues and understand their many causes, but between them Wade and Matt were also able to propose ways for the tortoise (guess who) to try to influence the hare’s behaviour! This would better suit the tortoise’s needs, manage the hare’s demands and promote the success of their joint endeavour.



*Rebecca and Brenda with Wade*

Other sessions of particular interest for drafters included:

- Don Colagiuri on Australian arrangements for developing legislation that is consistent across all Australian jurisdictions;
- Elizabeth Bakibinga-Gaswaga on applying a fitness for purpose test in legislating for development;
- Eamonn Moran on how consistency and conformity within a drafting office, and making drafter’s methods more visible, can improve drafting outcomes;
- Estelle Appiah on the transformation of policy into law using the case study of the development of Ghana’s social policy legislation;
- Jeannine Bednar-Giyose on implementing international standards in financial sector legislation;
- Jerry Payne on the problems with lists;

- Sarah Lawsky on using techniques to formalise statutes to identify and eliminate common kinds of ambiguities and test for loopholes and avoidance opportunities;
- Sean Kealy and Lou Rulli on teaching legislative drafting.



*Eamonn Moran's session*

Brenda had a short slot in the programme and used it to raise awareness of CALC, encourage applications for membership and promote next year's conference in Zambia.



*Brenda with CALC Council members Michelle Daley and John Mark Keyes*

Both days were busy and offered many thought-provoking sessions. Delegates were also able to meet and mingle at the early bagel-and-cream-cheese breakfasts, the two lunches (including one in the student cafeteria which offered such memorable dishes as the Tater Tot bowl) and the Thursday night reception hosted by a sponsor law firm. Given the wide range of jurisdictions and legal roles represented at the conference, these opportunities were particularly rewarding.



*Tater Tot bowl*

Having found so much of interest at this fifth annual conference, we would expect the next conference to be equally full of material that will be of interest to CALC members.



*Estelle Appiah, Michelle Daley, Brenda King, Elizabeth Bakibinga-Gaswaga*





*Conference delegates*

During our time in Washington, we had the pleasure and privilege of visiting both of the local drafting offices.

Before the conference, Rebecca joined Matt McGhie, a conference organiser and Speaker, and colleague Katie Bonander in the Office of the Legislative Counsel of the United States Senate, where they discussed arrangements for drafting in the US Congress and working practices in that office. Among many interesting details, Matt supplied some fascinating numbers about the drafting requests made by the Senate during the 114th Congress (2015-2016).

After this meeting, Sean Kealy, Clinical Associate Professor of Law at Boston University School of Law, addressed an audience consisting of Matt and his colleagues and other guests including Brenda and Madeleine. While listening to the lecture, we enjoyed an all-American lunch of pizzas and sodas! It was a warm, welcoming and informative start to our visit to Washington.

After the conference, we visited the Office of the Legislative Counsel of the U.S. House of Representatives. Our visit was hosted by the head of the office, Wade Ballou, and we very much appreciated the time that he and his colleagues spent with us. A highlight was the several hours we spent in animated discussion with Wade, Sherry Chriss, Fiona Heckscher, Noah Wofsy, Brady Young and Alison Hartwich. Topics covered were those of perennial interest to drafters and included: quality of instructions; time available for drafting; efficient management of workload peaks; and use of emergent technologies.

Our final stop on a tour of the office was the portrait of Joseph P. Chamberlain, founder of the Legislative Drafting Research Fund of Columbia University. § According to legend, the office owes its existence to a chance encounter in 1919 in a London pub between Mr Chamberlain and First Parliamentary Counsel (London, UK).



It was a fitting end to the formal stage of a trip during which we discovered that, despite different institutional arrangements for drafting in the United States, there are many more similarities than differences in the day-to-day work of drafters for Congress and our home jurisdictions of Australia and Scotland. We hope to see more of these Federal drafters and their State counterparts at future CALC gatherings.

§ Editor – see also [“about our office: history and charter”](#) and [Columbia Law School Legislative Drafting Research Fund](#); Douglass Bellis ([Nov 2011](#)) 4 *The Loophole* 13; M. Douglass Bellis (2001) 22(1) Stat LR 38; Charles B. Nutting “Department of Legislation: The Columbia Triumvirate” ([May 1965](#)) Vol 51 *American Bar Association Journal* 493 and 494; John M. Kernochan “A University Service to Legislation: Columbia's Legislative Drafting Research Fund” ([1956](#)) 16 *La. L. Rev.* 623; and F P Lee “The Office of Legislative Counsel” ([1929](#)) 29 *Colum. L. Rev.* 381.

No visit to Washington would be complete without a visit to the White House. In our case, thanks to the generosity of Jeannine Bednar-Giyose, CALC Member and Speaker, we were able to visit the White House Gardens. Given that his workplace is adjacent to the White House, we were not surprised to run into Toby Dorsey, one of the conference organisers. Nor were we surprised, when having our photograph taken in the gardens by a young intern, to discover that his uncle works in the same building in Belfast as our President; and to find later that she knows him! These and other friendly encounters left us with a desire to return to this great city.



**Rebecca Considine**, [Australian] Office of Parliamentary Counsel, Canberra, Australia

**Madeleine MacKenzie**, [Scottish] Parliamentary Counsel Office, Edinburgh, Scotland



## **CALC (Europe) Regional Conference — “Delivering Brexit: Legislative Sprint or Marathon?” 20 and 21 September 2018, Jersey, UK**



### **Delivering Brexit: Legislative Marathon or Sprint – Conference Jersey 20-21 September 2018**

This first CALC Europe region conference is to take place in Jersey mid-September 2018 (20 and 21 September 2018).

Related optional social activities will take place in the weekend 22 and 23 September 2018.

For programme information, see [calc.ngo/conferences](http://calc.ngo/conferences).

*Registrations are full (the Conference is at maximum capacity), but there is a waiting list.*





## Legislative Drafting Office Jersey – A changing office for a changing Island



Lucy Marsh-Smith succeeded Pam Staley as Jersey's Law Draftsman in February 2018. Lucy first joined the Office in 1996, from the UK Government Legal Service, as an Assistant Law Draftsman.



Lucy was Chief Legislative Drafter in the Isle of Man from 2008, before returning to her post in Jersey in 2014. Last year, Lucy obtained her second Master's Degree, this time in Jersey law, and more recently a post-graduate qualification in strategic management and leadership. She is currently one of the representatives on the CALC Council for the Europe region. In that capacity, Lucy has led the organising of the first ever CALC conference for the region, on the theme of Brexit, and taking place in September. She outlines her change programme for Jersey's [Legislative Drafting Office](#).

As reported in the last CALC Newsletter, I took over as Jersey's Law Draftsman on 1 February, and have now embarked on a programme of many changes for the Office. These changes come at a time when the whole of the Jersey Civil Service, under the new leadership of Chief Executive Charlie Parker, is undergoing a radical series of reforms designed to promote efficiency and break down the silo culture inherent in working within strict departmental boundaries. My appointment follows a long period of uncertainty, because it was decided to delay the appointment of a permanent head of office until the conclusion of an office review.

One of the first things I did was to change our job titles. We are no longer the Law Draftsman's Office. I think the tide has turned in favour of gender-neutral job descriptions, but it was more about removing the word "Assistant" from the title of my very able team members which was affecting morale. They are now Legislative Drafters and I am the Principal Legislative Drafter, assisted in the management of the office by my Deputy, Liz Walsh, to whom I am grateful for leading us during the review period. The [Legislative Drafting Office](#), currently 7 drafters and one legislation clerk with a legal assistant helping with Brexit work, has now moved, in terms of its reporting line, from what was the Chief Minister's Department to the States Greffe, Jersey's Parliamentary Office. We have always been physically co-located, but now we have returned to

a position where we are a semi-autonomous unit in the States Greffe, reflecting the close nexus between our work and that of the legislature, the States Assembly.



States of Jersey  
States Assembly



États de Jersey  
Assemblée des États



Periods of uncertainty undoubtedly have an effect on morale, and I realized, early on, I needed closer engagement with my team. Simple things like leaving one's door open can help, but I introduced weekly meetings to discuss matters of mutual interest, and a turning point was our first annual away day in the wilds of St. Ouen, on the west coast of Jersey. Here we devised a vision statement, and discussed our purpose, and how it related to States of Jersey core values. We also thrashed out some matters relating to our new Style Guide. Another of my initiatives is to promote uniformity, readability, and a drafting style reflecting plain English. But probably the most valuable part of the day was a long guided walk led by a member of the National Trust for Jersey, teaching us about the birds of the wetland habitat, and the rare orchids in a protected field. Sitting down to lunch afterwards, I realised that this time spent together on non-drafting matters was the turning point in our moving from being a collection of individual drafters to becoming a cohesive team.



I rejigged our budget to give greater opportunities for drafters to attend CALC conferences and other relevant events, which are almost always off-Island. I believe that engagement with the



wider drafting community is hugely important to drafters' development. But this year, we are fortunate to have a drafting conference on our doorstep. The CALC Jersey Brexit conference has had to be expanded slightly after reaching its expected maximum capacity early in August. We have an impressive array of speakers, as well as attendees from much further afield than I expected. We will be assured of a good conference if the dreaded Jersey fog does not intervene (it wouldn't dare!)

I also reflected on the structure of the office, which over recent years has moved from being an eclectic mix of drafters from across the Commonwealth to the majority of drafters having been recruited from the UK Government legal service. Everyone on the team has experience from private practice or other areas of Government, all of which adds to the Office's collective

experience, and though I value my colleagues' experience of Whitehall, I am mindful of recent comments made by one of our politicians in another context about the dangers of importing a culture. I therefore hope in future to make greater use of contract drafters from elsewhere in the Commonwealth. The cross-fertilization of ideas from recruits from a variety of drafting offices will in future be balanced by efforts to train home grown drafters from local lawyers able to demonstrate a flair for this work. The bulge in work attributable to Brexit has already enabled a secondment of an assistant legal adviser from the Law Officers' Department, a move that I hope will be a first step breaking down barriers between our office and that of the larger team of lawyers who serve Jersey's Attorney General. Secondly I have back-filled the usual position of our Brexit lead, Matthew Waddington, via a CALC advertisement which produced an overwhelming response. I am delighted to have recruited Aleks Hynnä who joins us from the Department of Justice in Ottawa in September. I hope to recruit 1 or possibly 2 local trainee Assistant Legislative Drafters to be in post by the turn of the year, a first for Jersey. Sadly, we are shortly to lose Karen Stephen Dalton, who has been the mainstay of financial services drafting for Jersey, when she returns to live in Cayman. She will be greatly missed.

At the same time, I feel there is a need to address what I see is an imbalance in the ratio of drafters to our single administrator. There is clearly work that could be more appropriately handled by a more senior administrator. I decided also to bid for a new post: Legislation Editor. As well as undertaking a legal editing role on the lines of the posts common in Canadian drafting offices, this person would also manage the legislation database and undertake straightforward drafting projects under the supervision of a drafter. We have a system of peer review which I have already modified, but it would be better if drafters concentrated on drafting points, and left the more general proof-reading function to the editor. The office will run more efficiently if we delegate aspects of our work that do not need to be done by senior drafters, and the new office structure with the editor and the trainees should streamline our work.



## LEGISLATIVE DRAFTING OFFICE

*Turning policies into Jersey law*



Technology is an essential part of drafting offices today. I hope to have in place by next year a document management system that will obviate the need for paper filing and enable easy retrieval of all relevant information relating to each law drafting project, as well as providing a useful management tool for me. Our drafting template has served us very well, but we are looking to upgrade it soon too. However, the major change will be the move from the annual revised edition (which is available on [www.jerseylaw.je](http://www.jerseylaw.je)) to keeping the statute book up to date and accessible on the website. We hope to introduce a 'point in time' facility and to show forthcoming changes too, building on a project begun by Liz Walsh that provides consolidated versions of amended legislation in the meantime.

I have introduced a new appraisal system that involves my meeting with each of my team 3 times a year. The new process is designed to involve me in the larger drafting projects so I can support the drafters at all stages, ensuring that they have the best possible working

relationships with instructors and helping them manage expectations of politicians and others. I intend to launch a new training programme for instructors later in the autumn. Though it will be accompanied by a guidance and procedures manual, the aim of the full-day course will be practical exercises in preparing instructions and reviewing drafts.

The political arena is vitally important when it comes to setting priorities for legislation, especially when resources are so tight. So, as the new civil service structure emerges, I will want to ensure not only that our priorities are clearly endorsed by the Council of Ministers, but also that I have a mechanism to engage with policy officers – so that we can best serve each other's needs. I established a network in the Isle of Man which worked very well, and enabled me to filter useful information on a regular basis, as well as encouraging a cross-departmental working by officers with responsibility for new legislation.

I could not achieve all I set out to do without the support of my team. For each of my initiatives I have nominated a drafter to lead or work with me, and progress is always reported to the whole team at our weekly team meetings. My line manager, Greffier of the States Mark Egan, offers his guidance when needed, and takes a keen interest in what I do. I must also acknowledge the huge amount I learnt from my time heading the excellent team of drafters in the Isle of Man, and the legislation officers there who so enthusiastically embraced the change programme I devised then. Finally, I thank my past colleagues in Jersey for their wisdom, as well as those in the CALC drafting community for giving me so much advice and encouragement and sharing their own experiences. I am still in the early part



of my journey to making Jersey the dynamic and forward-looking drafting office I wish it to be. I hope that I may have the opportunity, when we meet again in Zambia, to reflect on the outcomes of my recent endeavours, and to share some of my recent learning on these matters.

Jersey's [Legislative Drafting Office](#) consists of Lucy Marsh-Smith, Principal Legislative Drafter, Liz Walsh, Deputy Principal Legislative Drafter, Legislative Drafters, Matthew Waddington, Theresa Graves, Jackie Miller, Jane Reed, Karen Stephen Dalton and (shortly) Aleks Hynnä. They are assisted by Heather Mason (Assistant Legal Adviser (Legislation)) and by Anita Le Monnier, Legislation Clerk.





## Items of interest

### ***Canada: Canadian Department of Justice: Appointments to roles of Chief Legislative Counsel and Director of the Legislation Section***

Two senior positions in the Legislative Services Branch of the Canadian Department of Justice have been recently filled.



**Jean-Charles Bélanger** has been appointed Chief Legislative Counsel. He was previously the Director of the Legislation Section (responsible for drafting government bills) for 16 years. As Chief Legislative Counsel he will provide expert practitioner leadership and legal advice in the area of legislative drafting and strategic legislative policy. He will also continue to develop key relationships both inside and outside of government.

**Jacqueline Kuehl** has been appointed Director of the Legislation Section. She has extensive legislative drafting experience within the Branch and most recently worked in the Office of Law Clerk and Parliamentary Counsel of the Senate, assuming the position of Law Clerk and Parliamentary Counsel in September of 2017. Her proven leadership skills will serve her well as Director of the Legislation Section.

## ***UK: Brexit: European Union (Withdrawal) Act 2018 and related events***

This UK Act got Royal assent on 26 June 2018. Explanatory notes to this UK Act are available at <http://www.legislation.gov.uk/ukpga/2018/16/notes/contents>. Various provisions of this UK Act are brought into force by the [European Union \(Withdrawal\) Act 2018 \(Commencement and Transitional Provisions\) Regulations 2018](#), made on 3 July 2018.

The Attorney-General and Advocate General for Scotland have referred the Scotland and Wales Brexit/continuity Bills to the UKSC for a ruling on whether they are within devolved legislative powers: <https://t.co/AxAq7xlq9G> The UKSC heard the reference or appeal on 24 and 25 July 2018: <https://www.supremecourt.uk/cases/uksc-2018-0080.html> For some commentary on the hearing, see—

- M. Hannan 'UK's lawyers stress 'sovereignty of Westminster' as crucial power grab case begins', The National, 25 July 2018 <http://www.thenational.scot/news/16374358.uk-lawyers-stress-sovereignty-of-westminster-as-crucial-power-grab-case-begins/>
- M. Hannan, 'Lawyers from all three nations stand united against Westminster power grab', The National, 26 July 2018 <http://www.thenational.scot/news/16377823.lawyers-from-all-three-nations-stand-united-against-westminster-power-grab/>
- B Karemba, 'Brexit, the Reference Jurisdiction of the UKSC and the New Separation of Powers', U.K. Const. L. Blog (30th Jul. 2018) (<https://ukconstitutionallaw.org/>)

At the end of the hearing, Lady Hale hinted there could be some time before a judgment is issued as she spoke of “this complicated matter”. For commentary on the UK Act, further related UK legislation, and any deal with the EU, see—

- J. Segan, 'The European Union (Withdrawal) Act 2018: Ten Key Implications for UK Law and Lawyers', U.K. Const. L. Blog (26th Jul. 2018) (available at <https://ukconstitutionallaw.org/2018/07/26/james-segan-the-european-union-withdrawal-act-2018-ten-key-implications-for-uk-law-and-lawyers/>)
- M. Elliot, 'Legislating in the dark: The Government's White Paper on the Withdrawal Agreement Bill', Public Law for Everyone July 27, 2018: <https://publiclawforeveryone.com/2018/07/27/legislating-in-the-dark-the-governments-white-paper-on-the-withdrawal-agreement-bill/>
- P Crerar, "Brexit: Theresa May confident of reaching Brexit deal, sources say" *Guardian* 5 August 2018: <https://www.theguardian.com/politics/2018/aug/05/theresa-may-confident-of-reaching-brexit-deal-sources-say>

## ***Bermuda: repeal of same sex marriage law and new Domestic Partnership Act 2018 – June 2018 Supreme Court ruling to be appealed***

Bermudans were granted the right to same-sex marriages after a Supreme Court [ruling](#) in May 2017.

The ruling was disagreed with by a majority of voting Bermudans in a 2016 referendum (invalid because only 46.89% -- so less than 50% -- of Bermudans voted).

So Bermuda's [Domestic Partnership Act 2018](#) (DPA), assented to by His Excellency the Governor Mr John Rankin, CMG, on 7 February 2018, provides domestic partnerships open to same sex couples (and also to heterosexual couples), and also provides as follows:

### *Provisions relating to marriage*

#### **Clarification of the law of marriage**

53 Notwithstanding anything in the Human Rights Act 1981, any other provision of law or the judgment of the Supreme Court in *Godwin and DeRoche v The Registrar General and others* delivered on 5 May 2017, a marriage is void unless the parties are respectively male and female.

#### **Saving for certain same sex marriages**

54 (1) In this section—

"pre-commencement same sex marriage" means a marriage entered into under the Marriage Act 1944 or the Maritime Marriage Act 1999 during the transitional period by two people of the same sex;

"relevant law" has the meaning given in section 36(2);

"transitional period" means the period beginning on 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) and ending immediately before the commencement date.

(2) Notwithstanding sections 48(2) and 53, nothing in this Act affects the validity of a pre-commencement same sex marriage.

(3) Notwithstanding sections 38, 48(2) and 53, nothing in this Act prevents the recognition in Bermuda of a marriage lawfully entered into and registered in an overseas jurisdiction under the relevant law before or during the transitional period by two people of the same sex if—

- (a) both parties met all requirements necessary to ensure the formal validity of the marriage under the relevant law; and
  - (b) at the time of the marriage each party was domiciled in Bermuda or had capacity to enter into the marriage under the place of his domicile,
- provided that both parties were over 18 years of age at the time of the marriage.
- (4) In relation to—
- (a) a pre-commencement same sex marriage; and
  - (b) a marriage falling within subsection (3),
- any reference in any enactment to marriage, the parties to marriage or the dissolution of marriage shall be read with the necessary modifications.
- (5) No action shall lie against any person for any act or omission before the commencement date relating to any failure to recognise a marriage falling within subsection (3).

Bermuda's Domestic Partnership Act 2018 came into operation on 1 June 2018.

A Supreme Court challenge against the new law was, however, heard by Chief Justice Kawaley on 21 and 22 May 2018. The challenge sought to have the legislation declared void by the court on the basis that it is inconsistent with his fundamental rights as set out in the Constitution.

In a [landmark ruling](#) on 6 June 2018, Chief Justice Kawaley struck down parts of the DPA on constitutional grounds, having found the DPA was inconsistent with the rights to freedom of conscience and from discrimination on the basis of creed. A summary of the judgment is [here](#).

The Bermuda Government is, however, to appeal the 6 June ruling. (The court agreed to an application by the Attorney-General to stay the ruling by 6 weeks, to allow to government to consider an appeal.)

The [appeal](#) against the 6 June ruling was confirmed on 5 July 2018 by Walton Brown, the Minister of Home Affairs.

Mr Brown said the ministry looked forward to taking the case to the Court of Appeal.





## ***New Zealand: Domestic Violence—Victims' Protection Bill / Act***



A [member's Bill](#) implementing employment-related measures in response to domestic violence was on 27 June 2018 reported back to the House by a committee of the whole House. The Bill was passed in July 2018, became law in August 2018, and commences on 1 April 2019.

The Bill was in the name of Green Party MP, and Parliamentary Under-Secretary for Justice (Sexual and Domestic Violence Issues), Jan Logie.

The Bill will enhance legal protection in the workplace for people affected by domestic violence. It aims to support victims to stay in paid employment, which is a critical step to limiting the effects of domestic violence. Secure employment enables victims to maintain economic stability, which helps them find a pathway out of violence to successfully rebuild their lives.

For employers, the Bill aims to reduce recruitment and training costs and maintain workplace productivity.

The Bill will make it easier for victims of domestic violence to get assistance, access more flexible working arrangements, take paid leave, and be protected against adverse treatment in employment on the ground that they are or are suspected to be affected by domestic violence.

The Bill was introduced in the 51<sup>st</sup> Parliament on 1 December 2016. It was read a first time and referred to the Justice and Electoral Committee on 8 March 2017. The Bill was reinstated in the 52<sup>nd</sup> Parliament, with a report-back date of 10 May 2018.

The Justice Committee (8 members split evenly between 2 parties) was, however, unable to agree whether the Bill should proceed. So the Bill, as introduced, was discharged from that Committee on 10 May 2018 without any of the recommended amendments considered by the Committee.

The Committee even so made to the House, on 10 May 2018, a report about the Committee's consideration of the Bill. The report attached, in an Appendix, amendments supported by some of the members of the Committee. The Bill was read a second time on 13 June 2018. It was also [reported from the committee of the whole House](#), with amendments, on 27 June 2018.

The main Opposition party, the National Party, supported the Bill at first reading (while that party was still in Government early in 2017), but dropped their support at second reading. The party's justice spokesman, Mark Mitchell, has [said](#) the Bill would be too onerous for small and medium-sized employers. He proposed 2 amendments on 27 June 2018 that were rejected by the Government parties, ensuring National would vote against the Bill at third reading.

Ms Logie also led, recently, New Zealand's delegation to the examination of New Zealand's [2016 8th periodic report](#) on CEDAW, the United Nations Convention on the Elimination of All Forms of Discrimination against Women. The [examination](#) took place on 12 July 2018 in Geneva, Switzerland. A report on 17 July 2018 says the UN committee questioned Ms Logie for 5 hours, asking its most pointed questions around domestic and sexual violence:

[Logie said](#) it was the toughest workday she'd had.

"The questions they were asking showed that we had regressed when it comes to the rights of women," she said. "Overall it painted quite a bleak picture of where we have got to... you could see people's shock."

Poverty, the housing crisis and domestic violence effect women disproportionately, Logie said. Around 95 per cent of solo parent beneficiaries are women, and around 70 per cent of those on Housing New Zealand waitlists.

Asked if this Government planned to start from scratch yet again, Logie said it was committed to "continuing and strengthening" the work of the previous National-led Government.

The Budget had seen \$2 million given to establish a central agency responsible for driving change and aggregating more accurate data, and Logie hoped to see this happen by December.

The UN Committee's recommendations for the New Zealand Government are [here](#).

The Act resulting from the Bill is [here](#).

## New Zealand: Prime Minister and partner have first child



### Magazine

#### Interview: Jacinda Ardern, the pregnant prime minister of New Zealand



The world leader on Trump, trade — and giving birth while in office

[Read the full story](#)

#### Jacinda Ardern baby: New Zealand PM gives birth to girl

21 June 2018

Share



New Zealand Prime Minister Jacinda Ardern posted a picture on Instagram of her with her new baby.

New Zealand's Prime Minister Jacinda Ardern has given birth to her first child, a girl weighing 3.31kg (7.3lb).

New Zealand Prime Minister Jacinda Ardern and her partner, Clarke Gayford, [announced](#) on 19 January 2018 that they were expecting their first child in June 2018.

Their baby was born on 21 June 2018. The birth attracted [international headlines](#).

On 24 June 2018, Ardern announced that the baby was named Neve Te Aroha Ardern Gayford. Neve is an anglicised form of the Irish name Niamh, meaning "bright"; Aroha is Māori for "love", and Te Aroha is a mountain in the Kaimai Range, near Ardern's home town of Morrinsville.

Prime Minister Ardern is on 6 weeks of maternity leave, with Deputy Prime Minister Winston Peters serving as Acting Prime Minister in the interim, until early August 2018. However, on 3 July 2018, Ms Ardern [discussed](#) a key government policy from her couch at home, "going live on her Facebook page".



## ***Northern Ireland: Court of Appeal decision on Civil Servants' powers***

On 6 July 2018, the Court of Appeal concluded that a Senior Civil Servant did not have power to act without approval from an Executive Government Minister: [Buick's application for judicial review \[2018\] NICA 26](#).

The collapse, since January 2017, of a power-sharing Executive Government in Northern Ireland has resulted in an absence of Ministers to oversee the running of Stormont's departments.

The court case concerned planning approval for a proposed waste incinerator in County Antrim.



When the appeal to the incinerator case was announced, the head of the Northern Ireland civil service, David Sterling, said it was important to get clarity on the powers available to civil servants in the absence of ministers.

On 14 May 2018, in the Queen's Bench Division, Keegan J held the approval by the Permanent Secretary was ultra vires the Northern Ireland Act 1998 (NIA) and the Departments (Northern Ireland) Order 1999: [Re Buick's Application for Judicial Review \[2018\] NIQB 43](#).



The Court of Appeal's decision concluded similarly that "Any decision which as a matter of convention or otherwise would normally go before the minister for approval lies beyond the competence of a senior civil servant in the absence of a minister." Relevant to that conclusion is another that the decision was "cross-cutting" or, because of its environmental and political significance, involves several departments, and so would normally be reserved for a minister to sign off on, or would be required to be brought to the entire executive to get the green light.

Some politicians and businesses have responded to the decision by turning their attention to the Secretary of State Karen Bradley, urging her to step in and bring in direct rule ministers from Westminster so that big decisions on similar projects can be taken both promptly and lawfully.

A commentator, Anurag Deb (Paralegal, KRW LAW LLP (Belfast) and BPTC student (University of Law)), posted on 16 July 2018 this [analysis](#):

Keegan J began with the statutes and only referred to the GFA [(Good Friday Agreement)] for context, whereas the Court of Appeal looked to the GFA itself for understanding the constitutional framework of Northern Ireland. This difference may seem trivial in circumstances where the NIA was enacted to implement the GFA (as above) but is in fact of major constitutional significance. . .

. . . the finding of unlawfulness of the DFI [(NI Department for Infrastructure)] grant of planning permission was, given the particular constitutional framework in Northern Ireland, unavoidable for both courts. However, in light of the apparent blurring of the constitutional principle of treaty justiciability in *Buick 2*, coupled with the considerable difference in approach to the grounds of challenge between the two courts, the conclusion of unlawfulness is somewhat bereft of judicial heft. In debates surrounding the passage of the Northern Ireland Budget (No. 2) Bill on 9 July 2018, Northern Ireland Secretary Karen Bradley MP [stated](#) that the government is "considering the position" when asked by Lady Hermon MP whether *Buick 2* would be appealed. If the decision is appealed, the [UK] Supreme Court must grapple with one of the most important questions facing Northern Ireland today: who governs with no government?

Northern Ireland Secretary Karen Bradley MP also [stated](#) on 9 July 2018 that "the Government stand ready to take whatever decisions are necessary".

## ***Ireland: Dublin: June Reardon appointed Chief Parliamentary Counsel***

June Reardon has been appointed as Chief Parliamentary Counsel, Ireland.



## ***Australia: Annette O'Callaghan appointed NSW Parliamentary Counsel***



**New Parliamentary Counsel  
appointed**

Premier Gladys Berejiklian today [10 May 2018] [announced](#) leading public sector executive Annette O'Callaghan as the new NSW Parliamentary Counsel.

Ms O'Callaghan replaces Don Colagiuri – known to many as 'The Don' – a legend of the public sector who has served the public for a whopping 46 years.

The role of Parliamentary Counsel is vital for democracy because it involves drafting legislation for introduction to Parliament. While often working behind the scenes, the Parliamentary Counsel touches the lives of everyone in NSW.

"Well drafted legislation and advice is integral to a strong Parliament," Ms Berejiklian said.

Ms O'Callaghan takes the job after 25 years in the Offices of the Parliamentary Counsel in New South Wales, Victoria and Queensland. She starts in June [2018].

"Ms O'Callaghan's extensive experience in management and legislative drafting make her well placed to lead the Office of the Parliamentary Counsel," Ms Berejiklian added.

Tim Reardon, Secretary of the NSW Department of Premier and Cabinet, added, "Annette is a highly regarded, polished and proven leader of a Parliamentary Counsel's office – I look forward to her leading our world class NSW drafting office."

The Premier paid tribute to Mr Colagiuri's exceptional service and leadership.

"Mr Colagiuri earned universal praise over his long and productive career. He built a statute book unrivalled in its accessibility – a vital legacy for NSW," Ms Berejiklian added.

He has been drafting legislation since 1972, first in the Chief Secretary's Department and then from 1974 in the NSW Parliamentary Counsel's Office - an organisation he has led since 2001.

For more information on the Office of Parliamentary Counsel and its responsibilities in government visit [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au) (external link).

***Australia: Queensland: OQPC: DCPC – Sandra Lawson, Katy Le Roy***



Congratulations to **Sandra Lawson** and **Katy Le Roy** on their appointments as Deputy Chief Parliamentary Counsel at the Office of Queensland Parliamentary Counsel.

***Guyana: Joann Bond is new Deputy Chief Parliamentary Counsel***



The [Attorney General's Chambers and Ministry of Legal Affairs](#), Guyana, has [announced](#) the promotion of Joann Bond to the position of Deputy Chief Parliamentary Counsel.

***UK: OPC and OLC:***

***Hayley Rogers CB, for services to preparation of legislation***

***George Gray CB, for services to legislation and constitutional law***

Companion of the Order of the Bath

Hayley Rogers – Parliamentary Counsel, Office of the Parliamentary Counsel. For services to the Preparation of Legislation (Chelmsford, Essex)

George Thomas Alexander Gray – For services to legislation and constitutional law.



## **Gerald Paul (Gerry) Nazareth, CBE (27 January 1932–13 August 2018)**

Gerald Paul (Gerry) Nazareth died on 13 August 2018. He was a leading figure in the establishment of CALC when it was founded in late 1983 in Hong Kong, where he was then Law Draftsman. "Gerry Nazareth, the head of the Law Drafting Division in Hong Kong made a wonderful host and chaired the inaugural meeting in an exemplary fashion. He stood down as chairman once the [first] President [of CALC, George Engle] was elected . . . [Gerry Nazareth was elected as an inaugural CALC Committee member, and was among those who] . . . played a significant part in bringing CALC into being": Walter Iles CMG, QC "Short History of CALC" *The Loophole*, Feb. 2011 (2011.1), p 10 at p 14. <http://www.calc.ngo/sites/default/files/loophole/feb-2011.pdf>. More details of Gerry Nazareth's remarkable career and achievements, thanks to *Wikipedia*, Dr Duncan Berry, and John Wilson:

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### [GERALD NAZARETH \(From Wikipedia, the free encyclopedia\)](#)

Gerald Paul Nazareth, CBE, GBS (Chinese: 黎守律) was a senior judge in Hong Kong and Bermuda.

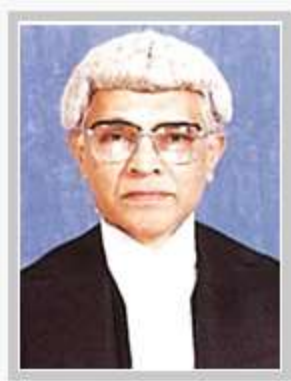
Gerald Nazareth was born in Kenya on the 27th of January, 1932. He was educated at the Catholic Parochial School in Nairobi and St. Xavier's College and Government Law College in Mumbai. Nazareth joined the Kenyan Public Service in 1954, as a prosecutor. He rose to the position of Senior Counsel.

Nazareth was called to the English Bar at Lincoln's Inn in 1962 and moved to the British Solomon Islands in 1963 to take up the appointment of Assistant Attorney General. He subsequently became the Solicitor General and then Attorney General to the British Western Pacific High Commission. Nazareth also became a member of the island's Legislative and Executive Councils and was Deputy Governor for a short time.

In 1976, he was transferred to Hong Kong and joined the Hong Kong Legal Department as Assistant Principal Crown Counsel. In 1977, he was promoted to Principal Crown Counsel. Nazareth served as Law Officer between 1979 and 1985. He was appointed Queen's Counsel in 1981. He served as a judge in Hong Kong from 1985. He retired to London in 2000, however he continued to be a non-permanent Judge of the Court of Final Appeal in Hong Kong and in Bermuda as he had been since 1997, until 2012.

[Gerald Nazareth passed away peacefully in on the 13th of August 2018, aged 86. He is survived by his wife and three daughters.]

### *Judicial career*



Gerald Nazareth was appointed a Judge of the High Court in Hong Kong in 1985. He became a Justice of Appeal on the Court of Appeal in 1991. Nazareth helped draft the Sino-British Joint Declaration and played a key part in arranging the swearing in of judges within hours of the handover of Hong Kong in 1997. [He was one of the non-permanent judges of the Court of Final Appeal in Hong Kong from 1997 to 2012.](#)

### *Honours*

For his dedicated and distinguished service to the Crown and the British Overseas Civil Service, Mr Justice Nazareth was presented with the OBE in 1975 and the CBE in 1985.

In 2000, he received the Gold Bauhinia Star honour for serving the Hong Kong judiciary for more than 24 years in excellence.

Justice Nazareth's legacy includes the following in CALC's publications:

- 'Legislative drafting: could our statutes be simpler?', *The Loophole*, Sept. 1987 (2.1), p 96.
- 'Legislative draftsmen: their training and retention', *Newsletter*, Nov. 1983 (No. 1), p 2 (summary of paper by GP Nazareth, Commonwealth Law Minister's meeting, Feb. 1993).

## ***Professor V.C.R.A.C Crabbe (29 October 1923–7 September 2018)***

Eminent jurist, Supreme Court Judge, and authority on legislative drafting Professor Vincent Cyril Richard Arthur Charles (V.C.R.A.C.) Crabbe, is [reported](#) to have died, aged 95 years, on 7 September 2018:



"Renowned legal luminary, Vincent Cyril Richard Arthur Charles Crabbe, popularly known as V.C.R.A.C. Crabbe is reported dead.

The former Supreme Court judge died Friday morning after a short illness.

He was 95.

V.C.R.A.C. Crabbe was Special Commissioner to the 1968 Constitutional Commission; Legislative Draftsmen to the 1969 Constituent Assembly which drafted the 1969 Constitution of Ghana. He was the Chairman of the 1979 Constituent Assembly and drafted the 1979 Constitution of Ghana.

He worked with the Constitutional Review Commission of Kenya and was Leader of the group of Draftspersons who drafted the Kenya Constitution. He did work the Zambian Constitutional Commission for the drafting of the Zambian Constitution as well with the Fiajoe Review Commission for the review of the 1992 Constitution of Ghana.

He was a Professor of Law at the University of West Indies and was recently engaged as a Professor of Law at Mountcrest University College in Accra, Ghana.

Justice Crabbe was born on October 29, 1923 at Ussher town in Accra and had his early education at the Government Junior and Senior Boys Schools in Accra.

He attended Accra Academy for his Cambridge Junior and Senior School certificates and went to London to study Economics at the City of London College Moorgate from 1950 to 1952."

See also [15 interesting facts about the late Justice VCRAC Crabbe](#).

Justice Crabbe's writing includes [three often-quoted books on legislative drafting](#) and the following in CALC's journal: 'Shorter parliamentary enactments and longer executive regulations—pros and cons', *The Loophole*, Sept. 1987 (2.1), p 67.

'How not to train legislative draftsmen: "The Legislative Drafting (Training) Course Bill, 1987"', *The Loophole*, Feb. 1988 (2.2), p 39, is a bill composed, tongue-in-cheek, by trainees to show their appreciation to Justice V.C.R.A.C. Crabbe, course director of a legislative drafting course sponsored by the Commonwealth Fund for Technical Cooperation.

## ***Nigeria: Yoyo Marie Gom – EUPADRA Scholarship for LLM 2018–2019***



CALC member Yoyo Marie Gom, from the National Assembly, Nigeria, is a delegate who attended the 2017 CALC Conference in Melbourne, Australia.

Congratulations to Yoyo on her success in applying for, and being awarded, a [EUPADRA scholarship](#) for an LLM in legislative law and drafting starting on 3 October 2018 in Rome, Italy.

Other CALC members extend their best wishes to Yoyo for the LLM programme and scholarship.

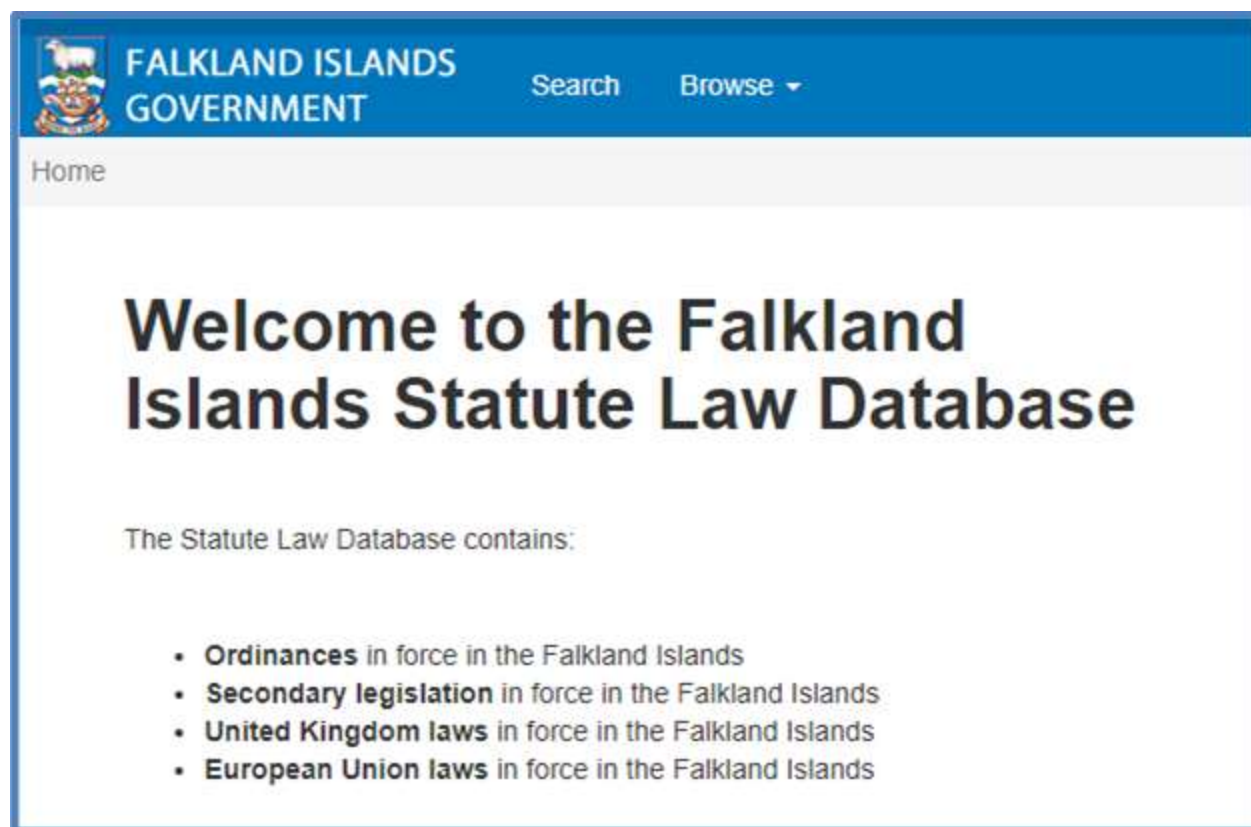
The scholarship, funded by the European Commission, was notified to all CALC members in December 2017 thanks to Professor Helen Xanthaki, Director, International Postgraduate Laws Programmes, UoLondon, and President, International Association for Legislation.

EUPADRA is the European Commission (Erasmus + Programme) Joint Masters Program in Parliamentary Procedures and Legislative Drafting. It is an intensive post-graduate course offered by 3 top-ranked European academic institutions: LUISS Guido Carli (Rome, Italy), Complutense Universidad (Madrid, Spain) and University of London (London, UK).



## ***Falkland Islands Statute Law Database***

The [laws of the Falkland Islands](http://www.legislation.gov.fk) can now be freely accessed via: [www.legislation.gov.fk](http://www.legislation.gov.fk)



A press release on 31 July 2017 advised:

This important publication achieves the Government's Islands Plan object to improve access to the law, and reflects a vital commitment to uphold the rule of law in the Falkland Islands. The publication will ensure that the fundamental rights and freedoms protected by our Constitution are supplemented by access to the law which compares favourably with the highest international standards.

Attorney General, David Brown, stated: "*Publication of the statute law database is the culmination of a two year project which delivers long overdue accessibility to the laws of the Falkland Islands. Respect for the rule of law and access to the law go hand in hand. Access to the law also provides the basis for a range of strategic and economic benefits to the Falkland Islands; a more effective legislature, more effective access to justice, fairer government and a more efficient economy.*"



## ***India: Supreme Court rules on validity of law criminalizing gay sex***



In July 2018 in India, the Supreme Court heard a petition arguing that India should scrap a colonial era law (section 377 of the Indian Penal Code) criminalising gay sex between consenting adults:

“ . . . the 20-year-old legal battle to legalise gay sex received a boost when the government told judges that the decision was up to them and it will not contest the petitions.

The decision is significant given that the ruling Bharatiya Janata party upholds a conservative Hindu cultural ethos in which traditional values are paramount. This development greatly increases the probability that the court will move to abolish the law.

Even before this move, the court seemed likely to rule in favour of legalising sex between consenting adults. Last year, it gave a landmark ruling that guaranteed the constitutional right to privacy, saying that a person’s sexual orientation was “an essential attribute of privacy”. This, many lawyers said, laid the path for the court to abolish the law.

Lawyers have been deploying every possible weapon in their arsenal to convince the five judges. They have invoked the culture of antiquity, previous legal precedents in other countries, the animal kingdom, the fact that homosexuality is innate and not a matter of choice, the relativity of moral values from age to age and ancient Indian temple sculptures.”: Amrit Dhillon [“A better life': India moves a step closer to legalising gay sex”](#) *The Guardian* 13 July 2018.

See also—

- “India on brink of biggest gay rights victory as Supreme Court prepares to rule on gay sex ban” – [www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html](http://www.independent.co.uk/news/world/asia/india-gay-rights-lgbt-homosexuality-supreme-court-decision-section-377-a8447361.html)
- “Section 377: SC on verge of decriminalising gay sex, govt leaves it to ‘wisdom of judges’” – <https://timesofindia.indiatimes.com/india/sc-on-verge-of-decriminalising-gay-sex-govt-leaves-it-to-wisdom-of-judges/articleshow/64953750.cms>
- “SC to hear woman who wants to book husband under Section 377 IPC” <https://www.thehindu.com/news/national/sc-to-hear-woman-who-wants-to-book-husband-under-section-377-ipc/article24488009.ece>

In September 2018, the Court gave [judgment](#), ruling discrimination on the basis of sexual orientation is a fundamental violation of rights:

**'Cheers and tears as India makes gay sex legal**

India's Supreme Court has ruled that gay sex is no longer a criminal offence.

Members of India's lesbian, gay, bisexual and transgender communities celebrate a historic decision to legalise gay sex. The ruling overturns a 2013 judgement that upheld a colonial-era law, known as section 377, under which gay sex is categorised as an "unnatural offence". The court has now ruled discrimination on the basis of sexual orientation is a fundamental violation of rights.

Campaigners outside the court cheered and some broke down in tears as the ruling was handed down. Although public opinion in India's biggest cities has been in favour of scrapping the law, there remains strong opposition to homosexuality among religious groups and in conservative rural communities. But this ruling from the top court is the final say in the matter and represents a huge victory for India's lesbian, gay, bisexual and transgender (LGBT) communities.

One activist outside the court told the BBC: "I hadn't come out to my parents until now. But today, I guess I have."

The unanimous decision was delivered by a five-judge bench, headed by India's outgoing chief justice Dipak Misra. "Criminalising carnal intercourse is irrational, arbitrary and manifestly unconstitutional," Mr Misra said.

Another judge, Indu Malhotra, said "history owes an apology" to LGBT people for ostracising them. Justice DY Chandrachud said the state had no right to control the private lives of LGBT community members. Denying the right to sexual orientation was the same as denying the right to privacy, Mr Chandrachud said.

The ruling effectively allows gay sex among consenting adults in private. The overturned law, section 377, was a 157-year-old colonial-era law, which criminalised certain sexual acts that were punishable by a 10-year jail term.

The law punished "carnal intercourse against the order of nature with any man, woman or animal". While the statute criminalised all anal and oral sex, it largely affected same-sex relationships. Human rights groups say police have used the statute to harass and abuse members of the LGBT communities.

Campaigners are describing the verdict as a "new dawn for personal liberty".':

<https://www.radionz.co.nz/news/world/365905/cheers-and-tears-as-india-makes-gay-sex-legal>

For more details, see—

<https://www.bbc.com/news/world-asia-india-45429664>

<https://thewire.in/law/supreme-court-scraps-section-377-majoritarian-views-cannot-dictate-rights-says-cji>

<https://www.theguardian.com/world/2018/sep/06/indian-supreme-court-decriminalises-homosexuality>

<https://www.nytimes.com/2018/09/06/world/asia/india-gay-sex-377.html>

## ***UK: Commas that cause misery to people***

Daniel Greenberg's 13 June 2018 [evidence](#) to the [HL's Constitution Committee's inquiry into Legislative process](#) is typically forthright: "There is no such thing as a comma in legislation that does not have the potential to cause misery to somebody, and the fact that the usual channels have agreed to take Clauses 1 to 7,000 in the next half-hour is exactly what worries me." Video of the meeting is [here](#).

## ***Theory and Practice of Legislation (TPLEG) journal: articles of interest***



An international academic journal dedicated to legislation, [Theory and Practice of Legislation \(TPLEG\)](#), has made 2 articles available free for 1 year to CALC members:

### ***Pauline Westerman, "The rule of law as export product" (2017) 5(2) Theory and Practice of Legislation 171***

**Author:** Pauline Westerman, a Professor at the University of Groningen, in the Netherlands

**Abstract:** The Rule of Law is not only a set of requirements for national legislation but also functions as export-product, requiring the governments of fragile or failed states to establish an independent judiciary, separation of powers and the like. This article contains a philosophical analysis of how the Rule of Law is conceptualized in this context, and develops some hypotheses concerning the way in which relations between donor countries and receiving countries risk achieving the opposite of what is intended.

url: <https://doi.org/10.1080/20508840.2017.1389472>

### ***Ronan Cormacain, "Legislation, legislative drafting and the rule of law" (2017) 5(2) Theory and Practice of Legislation 115***

**Author:** Ronan Cormacain, a Doctor, consultant legislative counsel, and member of CALC.

**Abstract:** The concept of legislation against the rule of law only makes sense if there is a nexus between legislation and the rule of law. There is a duality to the rule of law. It is the principle that we are all subject to law, as well as the set of values that the ideal legal system ought to possess. Legislation is the most effective and important source of law. If the rule of law is to have effect, it must be reflected in the form and content of legislation. Those charged with drafting legislation have the skills, the opportunity and the ethical obligation to give effect to the rule of law in legislation.

url: <https://doi.org/10.1080/20508840.2017.1394045>

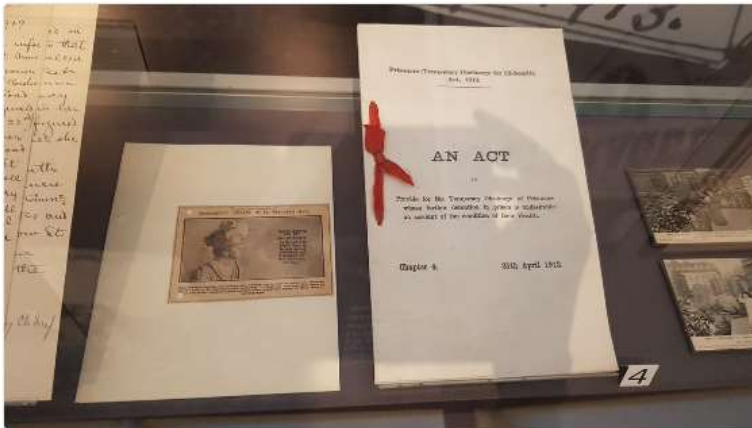
## UK: "Cat and Mouse Act" – assent copy on display – Voice and Vote



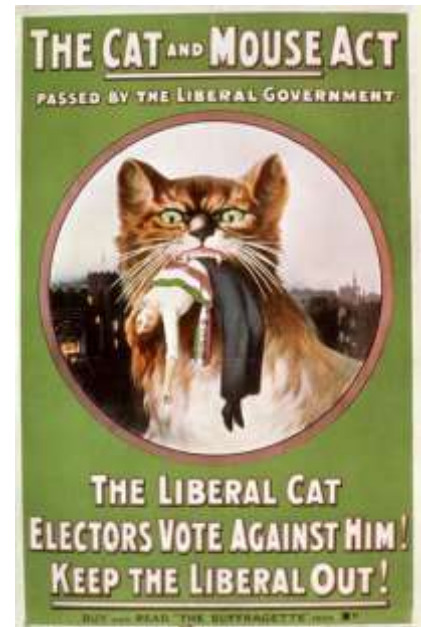
Elizabeth Gardiner  
@1ParliCounsel

Follow

Royal Assent copy of the "Cat and Mouse"  
Act on display #VoiceandVote  
@HouseofCommons Interesting to think of  
@ParliCounsel\_UK drafting this 100 + years  
ago and later producing the laws conferring  
voting right on women.



6:47 AM - 3 Aug 2018



For more on the Prisoners (Temporary Discharge for Ill Health) Act 1913 (UK), see

<https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/womenvote/unesco/cat-and-mouse-act/>

<https://www.theguardian.com/theguardian/from-the-archive-blog/2013/may/03/suffragette-force-feeding-1913>

<https://www.parliament.uk/about/living-heritage/transformingsociety/electionsvoting/vote-100/the-work-of-vote-100-/>

**UK: 100 years, 100 women – fascinating blog by Elizabeth Gardiner, First Parliamentary Counsel: brilliant, resilient women, in command**



As part of a fascinating blog series celebrating women in public life, and showcasing the wonderful variety of jobs women do as civil servants, the UK's first woman First Parliamentary Counsel (since that post was set up in 1869) talks about the incredible experiences of her colleagues & their past exposure to "fatuous, masculine behaviour":

<https://100years100women.blog.gov.uk/2018/08/28/elizabeth-gardiner/>



## New CALC members

### New members since March 2018

The following have been recorded as members of CALC (a) since the publication of the last edition of the *CALC Newsletter* (in March 2018), and (b) as at 31 August 2018.

Name	Country
Shamumoyo, Habraham Jacob	Tanzania
Benjabutr, Montana	Australia
Fu, Viola	Australia
Gamble, Bambie	Australia
Hamilton, Amy	Australia
Kapel, J	Australia
Long, Claire	Australia
McIntyre, Nicole	Australia
Pope, Katie	Australia
Tzotzis, Anastasia	Australia
Zivak, Sonja	Australia
Bosi, Elena	Canada
Santori-Sansfacon, Stefanie	Canada
Takinana, Florence Merle	Fiji
Facey, Camika	Jamaica
Chege, Max	Kenya
Walden, Jennie	New Zealand
Ali, Carla	Trinidad and Tobago
Smith, Dharlene	Trinidad and Tobago
Chriss, Sherry	United States
Faith, Kimberly	United States
Forzley, Michele	United States
McGhie, Matthew	United States
Mokgatle, Andy	Namibia
Monare, Tshepang	South Africa
Ssemogerere, Karoli	Uganda
Ballinger, Lindsay	Canada
Mundilo, Rachel Tuyeimo	Namibia
Muller, Heinrich Sebastian	South Africa
Rennie, Ronald Ian Mackay	Canada
Cammock, Nassoma	Jamaica
Sealey-Browne, Petrona	Jamaica
Igwebuike, Patricia	Nigeria

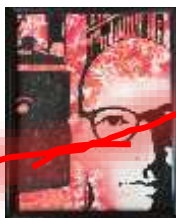
<b>Name</b>	<b>Country</b>
Heydon, Matthew	United Kingdom
Wade, Cilma	Montserrat
Yasmin Ferdausi, Rumana	Bangladesh
Himanshu, Vijay	India
Kang'ong'a, Josephine	Kenya
Braithwaite, Jessica	New Zealand
Mecredy, Kieran Ryan	New Zealand
Murray, Beverly	New Zealand
Onom, Nathan Palem	Papua New Guinea
Doyle, Megan	Trinidad and Tobago
Ballou, Wade	United States
Akumchi, Simon	Canada
Leonard, Sarah	Canada
Laibuta, Kibaya	Kenya
Williams, Sharmaine	Trinidad and Tobago
Adera, Sylvia Nasambu	Kenya
Mohamed, Abdulrahmen	Kenya
Chuwa, Goodluck Peter	Tanzania
Driscoll, Madelyn	Canada
Attinuru, Jyothirmayi	India
McCarthy, Maria	Ireland
Louis, Judith	Seychelles
Zawisza, Yan	Canada
Bogombari, Johnny	Papua New Guinea
Endicott, Gary	United States
Maloba Were, Joseph	Kenya
Ntele, Kipambi	Kenya
Oburu, Joan	Kenya
Samich, Chelangat	Kenya
Simiyu, Olivia	Kenya
Li, Ming Fung	Hong Kong
Williams, Sheena	Saint Vincent and The Grenadines
Caune, Robert	Australia
Griffith, Deshon	Barbados
Lutta, Sussane	Kenya
Wafula, Timothy	Kenya
Green, Belinda	New Zealand
Singh, Anirood	South Africa
Aryal, Himal C	Nepal
Stone, Edwin	Australia
Chilume, Yvonne Kose	Botswana
kwofie, chris	Ghana
Kamau, Wambui	Kenya

Name	Country
Serabele, David Rampuoane	Lesotho
Pheleni, Kizito None	Malawi
Du Bruyn, ILouise	South Africa
Bedding, Paul	United Kingdom
burke, warren	United States
Hamubi, Mukangisi	Zambia
Mukuka, Leah Chileshe	Zambia

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## Secretary Contact Details

To contact CALC's Secretary, Ross Carter, about membership or any other CALC matters (for example, to suggest or send items for this *CALC Newsletter*), email: [ross.carter@pco.govt.nz](mailto:ross.carter@pco.govt.nz)



**REFORMATIVE LEGISLATION. NEW LEGISLATION.**

**Much Needed Legislation. ADVANCED LEGISLATION.**

(Old New Zealand newspaper headlines — courtesy of [Papers Past](#))