

# Newsletter



of the



## Commonwealth Association of Legislative Counsel

April 2008

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Members who attended the CALC conference held at the Fairview Hotel in Nairobi, September 2007

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## A Message from the President

I feel very honoured to have been elected to the role of President at the general meeting of CALC held in Nairobi, Kenya on 14 September 2007. Following our first ever contested election, a strong team was elected to serve with me as members of the Council. We held a meeting in Nairobi on 15 September 2007 and we have been in regular email contact with each other since then on Council business. This is a very special year for CALC as it marks the 25th anniversary of its establishment at the Commonwealth Law Conference meeting held in Hong Kong in 1983. It is fitting that the next meeting of CALC will also be in Hong Kong, beginning on 1 April 2009. To mark our anniversary the Council is developing a proposal either for a bumper issue of *The Loophole* or a separate publication brimful with articles on different aspects of legislative drafting. We would welcome expressions of interest from any member wishing to write an article for this commemorative publication.

Other matters being pursued by the Council are—

- implementation of a proposal made at the last CALC general meeting for twinning well-resourced legislative drafting offices with less well-resourced ones;
- affiliation for CALC with the Commonwealth Secretariat
- planning the April 2009 CALC Conference.

I should also draw members' attention to the increased range of articles and resources now available on the CALC website kindly hosted by the Commonwealth Office of Parliamentary Counsel in Australia (<http://www.opc.gov.au>).

Thanks to the work of the previous CALC Council, the Nairobi conference was a great success. We now plan to do even better. I urge all members to mark 1 to 4 April 2009 in their diaries and make arrangements to come to Hong Kong. You will not only have a great learning experience but a great social and cultural experience. I look forward to welcoming you to Hong Kong then.

Council members are always keen to hear from members. Our contact details may be found on the CALC website. Please contact us if you have any particular ideas or suggestions to put forward.

I wish to conclude by thanking my predecessor Lionel Levert for all the hard work he did on behalf of CALC since 2003.

Eamonn Moran, President

February 2008

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## CALC's silver jubilee

In September 2008, CALC will be 25 years old. As members will be aware, CALC was established in Hong Kong during the Commonwealth Law Conference held there in September 1983. About 50 legislative counsel from a number of Commonwealth countries and territories attended and became the foundation members of the Association. Sir George Engle, the First Parliamentary Counsel of the United Kingdom Office of the Parliamentary Counsel was elected as CALC's first President. From that relatively small beginning, CALC has grown to an organisation that now has over 800 members from 55 jurisdictions. Two years ago, we had our first member from Mozambique, a former Portuguese colony that joined the Commonwealth not so long ago. Rwanda, a former Belgian colony, joined the Commonwealth recently, so hopefully we will have members from that country before too long. Pakistan has been in and out of the Commonwealth since its independence in 1947, but recently we had our first member from that country.

To mark CALC's silver jubilee, the CALC Council has decided to publish a special issue of *The Loophole* or

some other commemorative publication. So far, the Council has received offers to contribute from three of our members, but more are needed. So if you think you might like to make a contribution to this publication, please contact me or some other member of the Council.

Editor

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### **CALC Conference and Meeting—Nairobi, Kenya, September 2007**

This was an extremely successful conference and meeting and was the first time we had held our conference on the African continent. It was never expected that the turnout would be as high as for the conference held in London 2005. Nevertheless, over 80 CALC members attended and this number did exceed my expectations. However, given that the conference was held in Kenya, it was disappointing not to have any representation from Nigeria, Ghana or Zambia. As in 2003 and 2005, the papers were not only interesting but also engendered considerable healthy debate. As in the case of previous CALC conferences, the papers presented in Nairobi will appear in future issues of our flagship journal, *The Loophole*.

The conference was held at the Fairview Hotel, which proved to be an inspired choice and will be difficult to match in the future. It was one of the nicest hotels I have ever stayed at and the conference facilities satisfied our needs perfectly. Many others who attended the conference have expressed similar sentiments.



CALC members participating in one of the conference sessions

Once again, it was great to meet many old friends and at the same time make some new ones. The social events were a source of great enjoyment to all those who attended. The three events were—

- the pre-conference reception, which was held at the Fairview Hotel;
- the CALC members' dinner, also held at the Fairview Hotel; and
- the excursion to the Nairobi Game Reserve.

After a welcoming address by Lionel Levert, the then CALC President, the conference program proper began with the keynote address, given by Lady Justice Mary Arden, English Court of Appeal, who talked about *The impact of judicial interpretation on legislation*. This was followed by a paper from Enver Daniels on *Judicial Interpretation of the South African Constitution* and a panel discussion, chaired by Lionel Levert, on the keynote address. The panellists were: Lady Justice Mary Arden (England) (*pictured right*); Eamonn Moran

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(Australia); George Tanner (New Zealand); Toby Dorsey (USA); and Enver Daniels (South Africa).

On the following day, the proceedings kicked off with a series of presentations on *quality control mechanisms* (including the involvement of other professionals in the drafting process, such as editorial assistants and jurilinguists). Papers on this topic were presented by Meredith Leigh (Australia, on behalf of Peter Quiggin); Don Colagiuri (Australia); Ingrid Ludchen (Canada); and Jean-Charles Bélanger (Canada). After the coffee break, Eamonn Moran (Australia) and John Moloney (Ireland) presented papers on *enforcement mechanisms* (including alternatives to criminal penalties). This was followed by papers on *Best practices in drafting penal provisions* by Don Colagiuri (Australia) and Eamonn Moran (Australia) and a paper presented by Meredith Leigh (Australia) on *Problems in drafting anti-terrorism legislation*.



The afternoon session began with presentations by David Hull (Jersey) and Edward Stell (England, standing in for Stephen Laws) on the question: *Wordsmith or counsel? What is the true role of the legislative drafter?* Then followed presentations from Colin Wilson (Scotland) and Biliika Simamba (Cayman Is.) (pictured right) on *Managing increasing government expectations with respect to legislation while maintaining quality*.



On the Friday evening, members assembled for what proved to be a most enjoyable conference dinner. Some of the participants partied on until the early hours of Saturday morning. Although the bar closed at midnight, members were able to purchase further drinks by temporarily retreating to their rooms and ordering them through room service!

Cheryl Neblett and Michelle Daley (Cayman Islands) and Clive Borrowman (Jersey)

Saturday's proceedings opened with a Master drafting class, chaired by Don Colagiuri (Australia). Each of the participants, John Wilson (England); Don MacPherson (Bermuda); Gilbert Mo (Hong Kong); and Ben Piper (Australia), produced a draft *Biosecurity (Amendment) Bill*, based on drafting instructions prepared by Janet Erasmus (Canada). Each draft was then commented on and critiqued by members of the audience. After the coffee break, Deon Rudman provided a South African perspective on *The delegation by Parliament of its legislative powers*. Duncan Berry (Australia and Ireland) then gave an exposition on *Reducing the complexity of legislative sentences*. This was followed by a paper by Hon Freddie Ruhindi (Uganda) (pictured right) on *The need for simplicity in legislation and challenges in its attainment*. The morning's proceedings concluded with presentations by Jeremy Wainwright (Australia and Ireland) and Ed Hicks (Canada), whose topics respectively were *Keeping the statute book up to date: a self-help guide* and *One giant leap: the ultimate legislation system, available now*. The outgoing President, Lionel Levert, closed the proceedings by thanking the organisers, speakers, panellists and the excellent staff of the Fairview Hotel for their contributions towards making the conference such a success.



That the conference was so successful was in no small measure attributable to the support provided by my colleague and fellow CALC Council Member, Jeremy Wainwright (pictured right), John Moloney from Dublin, and Sam Keter and Jeremiah Nyegenye, both from Nairobi.



Planning for the next CALC conference, which is to be held in Hong Kong in April 2009, is now well under way. We are hoping to see at least 150 of you there, so set aside the period 1-4 April 2009 for a visit to Hong Kong!

Editor



Participants at the Nairobi conference

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## **Minutes of CALC General Meeting held on 14 September 2007 at the Fairview Hotel, Nairobi, Kenya**

### **1. Opening of meeting**

The meeting was opened by the President, Lionel Levert, QC.

### **2. Present**

A list of the members who attended the meeting is contained in Appendix 1 to these minutes.

### **3. Apologies**

Apologies were received from the following members:

Peter Drew, David Connolly, David Harwood, Steve Berg, Elisabeth Dayot, Paul McFayden, Ian Larwill, Sandra Lawson, Julie Lewis, Michael Batch, Lesley Dutton, Theresa Johnson, Rod Alsop, Dawn Ray, Elisabeth Fedunik, Desiree Grant, Inderjeet Sidhu and, by implication, all those members who appointed proxies.

### **4. Proxies**

The Secretary announced that a number of members had lodged proxies with him within the time limits prescribed by the CALC constitution and that he had prepared a list containing the names and signatures of those members.

### **5. Minutes of previous CALC general meeting**

The minutes of the previous general meeting<sup>1</sup> held in London on 9 September 2005 were confirmed unanimously.

### **6. CALC Council Report**

The Secretary presented the Council's report, which covered the period from September 2005 to September 2007. The Secretary canvassed the report. Among the matters discussed were—

- the procedure under the constitution for striking off uncontactable members
- the CALC Website
- the editing, publication and distribution of The Loophole and the CALC Newsletter.

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<sup>1</sup> Printed copies were made available at the meeting, having previously been published in the last CALC Newsletter.

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The report was adopted unanimously. A copy of the report is contained in Appendix 2 to these minutes.

## **7. CALC accounts**

The Secretary presented to the meeting the CALC accounts for the period since the previous General Meeting. Although at the previous general meeting held in September 2005, it had been decided in principle to sell the HBOS shares that CALC held, the Council had second thoughts after Clive Grenyer (England) had pointed out that the dividends from the shares would produce more revenue for CALC than would be the case if the shares were sold and the proceeds placed on deposit with a financial institution. After the members had had an opportunity to examine the accounts, a motion approving the accounts was put to the meeting. The motion was passed unanimously. A copy of the accounts is contained in Appendix 3 to these minutes.

## **8. Amendment of the CALC constitution**

A number of amendments to the CALC constitution were proposed by the outgoing CALC Council. These amendments included—

- an amendment that would enable CALC to affiliate with other organisations whose objects were similar or complimentary to those of CALC;
- an amendment that would enable the Secretary to terminate the membership of a member whose whereabouts were unknown and could not be discovered after reasonable effort to contact the member had been made;
- an amendment providing for the election of a Treasurer and an additional Council member;
- an amendment providing for the functions of the Treasurer.

After some discussion, the meeting passed unanimously a motion to amend the constitution accordingly. A copy of the consolidated CALC constitution is to be found in Appendix 4 to these minutes.

## **9. Election of officers and members of the CALC Council**

The meeting elected the following officers unopposed:

- President: Eamonn Moran (Australia, Victoria)
- Vice President: Janet Erasmus (Canada, British Columbia)
- Secretary: Duncan Berry (Australia, NSW/Ireland)
- Treasurer: Madeleine MacKenzie (UK, Scotland)

The following members were nominated for election to the CALC Council:

Elizabeth Bakibinga (Uganda)

Therese Perera (Sri Lanka)

Mark Currier (Canada)

Bilika Simamba (Cayman Is)

Michelle Daly (Cayman Is)

George Tanner (New Zealand)

Enver Daniels (South Africa)

Jeremy Wainwright (Australia/Ireland)

Shahidul Haque (Bangladesh)

Tony Yen (Hong Kong).

Lucy Marsh-Smith (Jersey)<sup>2</sup>

Jeremiah Nyegenye (Kenya)

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<sup>2</sup> Now the Isle of Man.



Since there were only eight vacancies for Council members, an election was held, with each full member being required to vote for eight of the candidates. The meeting decided that the eight candidates who obtained the highest number of votes would be elected to the Council. Having fixed the time of election and method of voting, the general meeting appointed two of the associate members present, Toby Dorsey (USA) and John Moloney (Ireland), as returning officers to conduct the election. They were later joined by a third member, Deirbhle Murphy (Ireland).

The returning officers: Toby Dorsey, John Moloney and Deirbhle Murphy

After the voting was completed, the President declared the following candidates to have been elected as Council members:

Elizabeth Bakibinga (Uganda)

Bilika Simamba (Cayman Is)

Enver Daniels (South Africa)

George Tanner (New Zealand)

Lucy Marsh-Smith (Jersey)

Jeremy Wainwright (Australia/Ireland)

Therese Perera (Sri Lanka)

Tony Yen (Hong Kong).

#### **10. Next CALC conference**

It was agreed that the next conference should be held in Hong Kong in April 2009.

#### **11. Any other business**

Although no decisions were taken, other matters discussed included the following:

- provision of logistical support: the secretary pointed out that much good was achieved through informal assistance from different drafting Offices;
- the President reported on the twinning of smaller legislative drafting offices with larger and urged that this trend continue;
- the Secretary urged members to volunteer contributions for both the *CALC Newsletter* and *The Loophole*.

#### **12. Close of business**

The meeting closed at 6.15 p.m.



Members of the new CALC Council

**Appendix 1—CALC Members who attended the 2007 general meeting**

<i>Name</i>	<i>Organisation</i>	<i>Country</i>
Abisai, Denis	State Law Office	Kenya
Awuonda, Gad	State Law Office	Kenya
Bakibinga, Elizabeth	Parliament of Uganda	Uganda
Barahomoka, Sarah	Attorney-General's Office	Tanzania
Bélanger, Jean-Charles	Department of Justice, Ottawa	Canada
Berkowitz, Nathalia	Gibraltar Government	Gibraltar
Berry, Duncan	Secretary, Commonwealth Association of Legislative Counsel	Australia and Ireland
Borrowman, Clive	Law Draftsman's Office	Jersey
Botha, Hendrina	Legislative Development Branch, Department of Justice, Pretoria	South Africa
Chaturvedi, Kameshwar (Dr K.N.)	Legislative Department, Ministry of Law and Justice	India
Cheung, Arthur	Legislative Council Secretariat	Hong Kong
Chilume, Yvonne	Chilume & Co., Gaborone	Botswana
Colagiuri, Don	New South Wales Parliamentary Counsel 's Office	Australia
Cuerrier, Marc	Department of Justice, Ottawa	Canada
Dache, Joash	Law Reform Commission	Kenya
Daley, Michelle	Legislative Drafting Department,	Cayman Is
Daniels, Enver	Department of Justice	South Africa
Davies, Huw	Office of the Welsh Legislative Counsel, Cardiff	Wales
Dorsey, Toby	Office of the Legislative Counsel, United States House of Representatives	USA
Haque, Anwarrul	Ministry of Law, Justice and Parliamentary Affairs	Bangladesh
Haque, Shahidul	Ministry of Law, Justice and Parliamentary Affairs	Bangladesh
Hicks, Edward	Lims, Irosoft Inc., Montreal,	Canada
Hull, David	Consultant Parliamentary Counsel	Jersey
Ip, Fanny	Law Drafting Division, Department of Justice	Hong Kong
Kakuli, Geoffrey	Advocate, Nairobi	Kenya
Karuru, Michael	State Law Office	Kenya
Keay, Graeme	Legislative Solutions Pty Ltd	Queensland, Australia
Keter, Sam	State Law Office	Kenya
Kimanzi, Mathew	Law Reform Commission	Kenya
Kingston, Paula	Department of Justice	Canada
Landry, Christine	Department of Justice	Canada

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Leahy, John	Qatar Financial Centre Regulatory Authority	Qatar
Leigh, Meredith	Office of Parliamentary Counsel	Australia
Levert, Lionel	President, Commonwealth Association of Legislative Counsel	Canada
Ludchen, Ingrid	Department of Justice, Ottawa	Canada
MacPherson, Donald	Parliamentary Counsel Office	Bermuda
Makhene, Bonisiwe	Department of Justice	South Africa
Makhobole, Dinah	Parliamentary Counsel Office	Lesotho
Marsh-Smith, Lucy	Law Draftsman's Office	Jersey
Maseela, Jane	Parliamentary Counsel Office	Lesotho
Matibe, Nelson	Legislative Development Branch, Department of Justice	South Africa
Matlakala, Daphne	Attorney General's Chambers	Botswana
McGill, Max	Office of the Scottish Parliamentary Counsel	Scotland
M'Inoti, Kathurima	Law Reform Commission	Kenya
Mkuye, Rehema	Ministry of Justice and Constitutional Affairs	Tanzania
Mo, Gilbert	Law Drafting Division, Department of Justice	Hong Kong
Moloney, John	Department of Agriculture and Food	Ireland
Moran, Eamonn	Chief Parliamentary Counsel's Office	Victoria, Australia
Munyao, Catherine	Law Reform Commission	Kenya
Murila, Linda M	State Law Office	Kenya
Murphy, Deirbhle	Office of the Parliamentary Counsel	Ireland
Musyimi, Peter	Kenya Law Reform Commission	Kenya
Mwenesi, Stephen		Kenya
Ndawula, Margaret Rose	Parliament of Uganda	Uganda
Ndombu, James	State Law Office	Kenya
Neblett, Cheryl	Law Reform Commission	Cayman Islands
Ngema, Pinky	Department of Justice	South Africa
Norbury, Luke	Office of the Parliamentary Counsel, London	England
Rukimara, Nsanze (Vastina)	Uganda Law Reform Commission	Uganda
Nyegenye, Jeremiah	National Assembly	Kenya
O'Brien Kenney, Brian	Office of the Parliamentary Counsel	Ireland
Okello, Johnson	Law Reform Commission	Kenya
Perera, Therese	Legal Draftsman's Department	Sri Lanka
Piper, Ben	National Transport Commission	Australia
Robinson, Evelyn	Office of the Parliamentary Counsel	Ireland

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Rudman, Deon	Legislative Development Branch, Department of Justice	South Africa
Ruhindi, Fredrick (Hon.)	Ministry of Justice and Constitutional Affairs	Uganda
Sargent, Diana	Blake Dawson Waldron, Solicitors	Australia
Sasagah, Godfrey	Parliament of Uganda	Uganda
Segopolo, Motlalepula	Attorney General's Chambers	Botswana
Simamba, Bilika	Legislative Counsel Office	Cayman Is
Sinyo, Josephine	Law Reform Commission	Kenya
Stell, Edward	Office of the Parliamentary Counsel	England
Strachan, Helen	Office of the Parliamentary Counsel	England
Tanner, George	New Zealand Law Commission	New Zealand
Tauakipulu, Leigh	Parliamentary Counsel Office	New Zealand
Thuo, Elizabeth	Law Reform Commission	Kenya
Wainwright, Jeremy	Office of the Parliamentary Counsel	Ireland
Wilson, Colin	Office of the Scottish Parliamentary Counsel	Scotland
Wilson, John	Consultant legislative counsel	UK England

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## Appendix 2—Council's report—September 2005 to September 2007

### *Presented by the Secretary*

#### *Introduction*

This report covers the period of 2 years from September 2005, when the last Commonwealth Law Conference (CLC), and the associated meeting of the Commonwealth Association of Legislative Counsel (CALC), was held in London.

#### *The CALC Council*

The Council met in London immediately after the CALC general meeting. This is the only occasion on which the current Council has met as a group. However, the fact that all 9 members of the Council had access to e-mail has greatly enhanced communication among members of the Council. This has meant that decisions could be made relatively quickly and efficiently.

#### *Membership*

Since the last CALC general meeting in September 2005, the membership has continued to grow, with 97 new full members and 9 new associate members joining CALC. On the debit side, 3 full members resigned and 2 others died. As at 31 July 2007, the total number of full members was 827 and the total number of associate members was 29.

Communication with members is now much easier than before, with approximately 85 per cent of members



being contactable by e-mail. However, as long as there are members who are not accessible by e-mail, the need to provide facilities for the distribution of hard copies will continue. In this regard, I should like to express my appreciation to members of staff of the Law Drafting Division of the Hong Kong Department of Justice for continuing to make the necessary arrangements for preparing and distributing hard copies of issues of *The Loophole* and CALC Newsletters to those members who cannot be contacted by e-mail. In this regard, I should like to thank the former Law Draftsman, Tony Yen, his acting successor, Gilbert Mo, and Mr H.H. Lui.

I continue to have problems contacting many members because they fail to notify me when they change their addresses. Consequently, when I do a mail-out to members, it is not uncommon for me to receive as many as 50 non-delivery messages, either because a member's address is no longer valid or because a mail box is full. As the CALC constitution stands at present, CALC membership ceases only if a member resigns or dies. Consequently, the CALC Council believes believe that it should be possible to terminate the membership of members who prove to be uncontactable. To address this problem, an amendment to the CALC constitution has been prepared. This will allow the Secretary to terminate the membership of those members who, despite all attempts, can no longer be located.

### **CALC website**

CALC web pages continue to be maintained on the Australian Office of Parliamentary Counsel website. All CALC publications, such as *The Loophole* and Newsletters, are now posted on the website shortly after publication. With the agreement of the members in general meeting, I propose to publish on the website a list of members and the jurisdictions where they are located.

On behalf of the CALC Council, once again I should like to thank Peter Quiggin, First Parliamentary Counsel of the Australian Office of Parliamentary Counsel, for his co-operation and assistance in maintaining these web pages.

It has still proved impossible to remove the old CALC website, which has long since become hopelessly out of date. This is because I have been unable to discover who is responsible for the site.

### **Publications**

Since the formation of CALC in 1983, the main vehicle of communication has been through *The Loophole*, CALC's flagship journal, which contains articles involving legislation and legislative drafting issues. The other CALC publication is the CALC Newsletter, which contains news and information of interest to members.

For technical reasons, it was not possible to publish an issue of *The Loophole* during 2006. However, two issues have been published this year and a further issue will be published during September. This issue will be produced by Janet Erasmus and her colleagues in Victoria, British Columbia. I should like to thank Jeremy Wainwright for his assistance in producing the first of the 2007 issues and George Tanner and Ross Carter (Parliamentary Counsel Office, Wellington, New Zealand) for their work in producing the second of those issues. One issue of the CALC Newsletter was published during 2006.

### **New initiatives**

At the last Council meeting, two new initiatives for CALC were suggested. One was to 'twin' well-resourced legislative drafting offices with less well-resourced ones. I believe this to be an excellent proposal, which is certainly in keeping with CALC's primary objectives. Should I be re-elected to the position of secretary, one of my first endeavours will be to approach the heads of legislative drafting offices in the 'old Commonwealth' to find out to what extent they are prepared to provide back-up services to less well-resourced legislative drafting offices.

Next year CALC will be 25 years old. The President has suggested that we should produce a book of essays

on aspects of legislative drafting to mark the occasion. I believe this to be a very worthwhile project and, with the agreement of the general meeting and the incoming Council, propose to approach members with a view to obtaining contributions for inclusion in such a book.

### ***Meetings of CALC members***

The question of holding more frequent meetings of CALC members has been raised, but despite some attempts to set up such meetings, nothing has come of this. Meetings of legislative counsel have been held in Australia, Canada and Malaysia, but they have not been extended to CALC members as a whole.

A number of regional groupings of legislative counsel have either been established or proposed.<sup>3</sup> In at least one case, a group has expressed interest in being affiliated with CALC. The Council has proposed an amendment to the CALC constitution in order to facilitate such affiliations.

### ***CALC funds***

Since no subscriptions are currently payable for CALC membership, the Association has only limited funds. These funds were held in an account kept with the Halifax Building Society, in the UK. A few years ago, the Society demutualised and become a bank, the HBOS. As a result, the Association has become a shareholder in HBOS. The value of the shares is shown in the CALC accounts. After deliberating on the matter at some length, the Council decided not to liquidate these shares for the time being. The main reason for this is that the shares produce a better return than if the proceeds of the shares were placed on deposit.

### ***CALC ties***

Sales of CALC ties since the last general meeting have continued to be slow. With the retirement of Tony Yen as the Hong Kong Law Draftsman, Gilbert Mo has assumed responsibility of the stock of CALC ties. The ties are sold by CALC at £8 each, plus postage, and are available from Gilbert Mo at the Department of Justice, Queensway Government Offices, Hong Kong.

The CALC accounts show the number of ties sold so far. CALC ties will be available for purchase at the Nairobi conference, so those male CALC members who do not already own a CALC tie are urged to buy one. Should there be sufficient interest, I would very pleased to arrange for the acquisition of CALC scarves for female CALC members.

### ***Relationship with the Commonwealth Lawyers Association***

Because of changes to the constitution of the Commonwealth Lawyers Association, it is now possible for associations like ours to affiliate with that Association. An application for affiliation with that Association is currently pending.

Duncan Berry, Secretary  
21 August 2007

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<sup>3</sup> E.g. At a meeting held in Malaysia in September 2004, it was agreed in principle to establish a regional grouping for legislative counsel who are working in south and south-east Asian Commonwealth countries.

**Appendix 3—Statement of CALC accounts as at 4 September 2007**

**HBOS account, Strand, London**

Balance as at 4 July 2005:			£252.21
ADD: Income for period from 5 July 2005 to 17 July 2007:			
	Sale of 20 CALC ties (£7.50 ea.):	£150.00	
	Share dividends:	£143.39	
	Net bank interest:	<u>£4.29</u>	£297.68
LESS: Expenditure for that period:			
	Tie money sent to Hong Kong:	£150.00	
	Bank draft charge:	<u>£10.00</u>	<u>£160.00</u>
Closing balance (transferred to Edinburgh account on 17 July 2007):			<u><b>£389.89</b></u>

**HBOS account, Edinburgh**

*Income: Period from 17 July to 4 September 2007*

Opening balance transferred from London account:	£389.89
Nairobi conference registration fees:	£10151.00
Net bank interest:	<u>£5.52</u>
<b>TOTAL INCOME:</b>	<u><b>£10546.41</b></u>
<i>Expenditure: Period from 17 July to 4 September 2007</i>	
Fairview Hotel, Nairobi – deposit:	<u>£4856.19</u>
<b>Balance as at 4 September 2007:</b>	<b>£5690.22</b>

**Additional information:**

- 1 The Edinburgh bank account is a Treasurer's account with HBOS. It is operated jointly by Colin Wilson and Madeleine MacKenzie on the instructions of the CALC Council.
- 2 The CALC tie account is operated by Tony Yen in Hong Kong.
- 3 CALC has 185 shares in HBOS plc. On 31 August 2007, the value of the holding was £1626.15 (share price of 879p).

Colin Wilson, First Scottish Parliamentary Counsel  
 Madeleine MacKenzie, Scottish Parliamentary Counsel  
 Office of the Scottish Parliamentary Counsel, Edinburgh, Scotland.

## Appendix 4—CALC Constitution—consolidated amended text

As recorded in the minutes of the 2007 CALC general meeting, a number of amendments were made to the CALC constitution. The following is a consolidated version of the constitution:

### Constitution of the Commonwealth Association of Legislative Counsel

(As in force on 4 April 2008<sup>4</sup>)

#### 1. Continuance of CALC

The association called the Commonwealth Association of Legislative Counsel is continued by this Constitution.

#### 2. Definitions

In this Constitution—

**amend** includes omit, substitute and add to;

**CALC** means the Commonwealth Association of Legislative Counsel;

**Commonwealth** means the Commonwealth of Nations;

**Commonwealth person** means a person who is a citizen or permanent resident of, or is domiciled in, a country that is a member of the Commonwealth or a dependent territory of such a country;

**Council** means the Council of the Association;

**members of the Council** means the Officers, and the other members of the Council, elected or appointed under clause 9;<sup>5</sup>

**Officer** means the President, Vice-President or Secretary;

**President** means the President of CALC, and includes a member of CALC who is acting as President;

**Secretary** means the Secretary of CALC, and includes a member of CALC who is acting as Secretary;

**special resolution** means a resolution—

- (a) notice of which not less than 1 month's notice of intention to move the resolution at a general meeting of CALC has been given as referred to in clause 16(1)(a) or (b), and
- (b) that is passed by a majority of at least two-thirds of the votes cast at the meeting by full members voting in person or by proxy;

**Vice-President** means the Vice-President of CALC, and includes a member of CALC acting as Vice-President.

#### 3. Headquarters of CALC

The headquarters of CALC are to be located—

- (a) at such place in Canberra, Australia, as the Council decides, or

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<sup>4</sup> This constitution was adopted at an extraordinary general meeting of the Association, which was initially held on 30 January 2004 and adjourned on the same date; was resumed on 15 March 2004 and adjourned on the same date; and was again resumed on 3 June 2005. It was amended at an ordinary general meeting of the Association held on 14 September 2007.

<sup>5</sup> Definition substituted 14.09.07.

- (b) if a general meeting of CALC decides that the headquarters should be located at some other place in Australia or in another country, at that other place.

#### **4. Objects of CALC**

- (1) The objects of CALC are—
  - (a) to promote co-operation on matters of common interest among Commonwealth persons and others who are or have been engaged—
    - (i) in legislative drafting, or
    - (ii) in editing or translating draft legislation, or
    - (iii) in training people as drafters of legislation, and
  - (b) to promote public awareness of and to disseminate information about legislative drafting and the role of those who draft legislation, and
  - (c) to promote the use of effective legislative drafting practices and techniques.
- (2) To achieve the objects of CALC, the activities of CALC may include all or any of the following:
  - (a) promoting the sharing of information among members of CALC with respect to—
    - (i) the preparation and publication of legislation, and
    - (ii) the recruitment and training of people to draft legislation and the retention of those already engaged in legislative drafting;
  - (b) encouraging the sharing among members of CALC of comparative legal materials and precedents;
  - (c) providing members of CALC with information and assistance with respect to legislation and legislative drafting;
  - (d) co-operating with appropriate organisations on matters of common interest;
  - (e) affiliating with other bodies having objects that are similar, or complementary, to those of CALC.<sup>6</sup>

#### **5. Full membership of CALC**

- (1) A person is eligible to be a full member of CALC if the person is a Commonwealth person who is or has been engaged—
  - (a) in drafting legislation, or
  - (b) in editing or translating draft legislation, or
  - (c) in training people as drafters of legislation.
- (2) A person who claims to be eligible for full membership of CALC may apply in writing to the Secretary to be a full member of CALC.
- (3) If, on receiving an application for full membership of CALC, the Secretary is satisfied that the applicant is clearly eligible to be a full member of CALC, the Secretary must approve the application on behalf of the Council.
- (4) If not satisfied that an applicant for full membership is clearly eligible to be a full member of CALC, the Secretary must refer the application to the Council.
- (5) If, on the referral of an application to the Council, the Council is satisfied that the applicant is eligible to be a full member of CALC, it must approve the application, but if not so satisfied, it must refuse the application.

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<sup>6</sup> Paragraph added 14.9.2007.

- (6) If an application for full membership is refused because the applicant is ineligible for that membership but the applicant is eligible to be an associate member of CALC, the Council may, with the agreement of the applicant, approve the person as an associate member of CALC.
- (7) As soon as practicable after—
  - (a) an application for full membership of CALC is approved under subclause (3) or (5), or
  - (b) such an application is refused under subclause (5), or
  - (c) an applicant is approved as an associate member under subclause (6),the Secretary must notify the applicant in writing of the decision approving or refusing the application or approving the applicant as an associate member.
- (8) A full member of CALC may at any time, by notice in writing to the Secretary, resign from full membership of CALC.
- (9) A person who is a full member of CALC does not cease to be such a member only because the person has ceased to be a Commonwealth person.

## **6. Associate membership of CALC**

- (1) A person is eligible to be an associate member of CALC if the person—
  - (a) is a Commonwealth person who claims to have an interest in legislative drafting but is not eligible to be a full member of CALC, or
  - (b) is not a Commonwealth person but is or has been engaged—
    - (i) in drafting legislation, or
    - (ii) in editing or translating draft legislation, or
    - (iii) in training people as drafters of legislation.
- (2) A person who claims to be eligible for associate membership of CALC may apply in writing to the Secretary to become an associate member of CALC.
- (3) If, on receiving an application for associate membership of CALC, the Secretary is satisfied that the applicant is clearly eligible to be an associate member of CALC, the Secretary must approve the application on behalf of the Council.
- (4) If not satisfied that an applicant for associate membership is clearly eligible to be an associate member of CALC, the Secretary must refer the application to the Council.
- (5) If, on the referral of an application to the Council, the Council is satisfied that the applicant is eligible to be an associate member of CALC, it must approve the application, but if not so satisfied, it must refuse the application.
- (6) As soon as practicable after an application is approved under subclause (3) or (5) or is refused under subclause (5), the Secretary must notify the applicant in writing of the decision approving or refusing the application.
- (7) An associate member of CALC may at any time, by notice in writing to the Secretary, resign from associate membership of CALC.
- (8) An associate member of CALC has the same rights and privileges as a full member, except that an associate member is not—
  - (a) entitled to vote, or to move or second motions, at general meetings of CALC, or
  - (b) eligible for election as a member of the Council.

**7. Membership fees**

- (1) A general meeting of CALC may, by special resolution, require members of CALC to pay a membership fee covering such period as is specified in the resolution.
- (2) Such a resolution must specify—
  - (a) the amount of the fee and the currency in which it is payable, and
  - (b) the time by which it is to be paid, and
  - (c) how and to whom it is to be paid.
- (3) A member who fails to pay a membership fee in accordance with a resolution that complies with subclause (2) ceases to be a member of CALC after the expiry of—
  - (a) 30 days after the date on which the resolution is notified in a publication of CALC, or
  - (b) 30 days after the date on which the fee becomes payable in accordance with the resolution,  
whichever is the later.
- (4) A resolution under this clause may specify differential membership fees by reference to such matters as classes of membership and the costs associated with maintaining contact with members, but not so as to discriminate unfairly between members.

**7A. Termination of membership**

- (1) The Secretary may terminate a member's membership in accordance with this clause if the member has not responded to the Secretary after the Secretary has made such efforts to contact the member as are reasonable in the circumstances.
- (2) Those efforts must include—
  - (a) sending a notice to the member using such contact details as are known to the Secretary, and
  - (b) circulating a notice generally amongst the membership giving the member's name and last known address, stating that the member's membership may be terminated unless the member informs the Secretary that the member wishes to remain a member and provides the Secretary with sufficient information to enable the member to be contacted in the future.
- (3) A person's membership of CALC is terminated when the Secretary circulates a notice generally amongst the membership giving notice of the termination.
- (4) Nothing in this clause prevents the person whose membership has been terminated from subsequently rejoining CALC.<sup>7</sup>

**8. Council of CALC**

- (1) CALC is to have a Council.
- (2) The Council is responsible for managing the affairs of CALC, subject to any directions or guidelines given by resolution passed at a general meeting of CALC.
- (3) The Council has power to do everything necessary or convenient for or in connection with carrying out the objects of CALC and managing the affairs and activities of CALC.

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<sup>7</sup> This clause was inserted on 14.09.2007

**9. Membership of the Council**

- (1) The Council consists of a President, a Secretary, a Vice-President, a Treasurer and not more than 8 other members.<sup>8</sup>
- (2) Except in the case of a casual vacancy, the members of the Council are to be elected at an ordinary general meeting of CALC from the full members of CALC.
- (3) In electing members of the Council, a general meeting of CALC must, so far as practicable, ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth.
- (4) Members of the Council elected in accordance with subclause (2) hold office until the next ordinary general meeting of CALC and are eligible for re-election.
- (5) A member of the Council may at any time resign from office as a member of the Council—
  - (a) in the case of the Secretary—by notice in writing to the President; or
  - (b) in any other case—by notice in writing to the Secretary.
- (6) In the event of a casual vacancy in the membership of the Council, the remaining members of the Council may appoint a full member of CALC to hold the vacant office. A member so appointed holds that office until the next ordinary general meeting of CALC.
- (7) A person ceases to be a member of the Council if the person ceases to be a member of CALC.

**10. Proceedings of the Council**

- (1) Unless it is impracticable to do so, the Council must meet immediately after each general meeting of CALC. The Council may hold such other meetings as it thinks necessary or desirable.
- (2) The Council may meet not only in person but also by means of a video or telephone link, provided the participating members are able to hear each other speak.
- (3) At a meeting of the Council, the President or, in the absence of the President, the Vice-President is to preside or, in the absence of both the President and the Vice-President, the members of the Council participating must elect one of their number to preside.
- (4) The following provisions apply to a meeting of the Council:
  - (a) a quorum is constituted by at least 3 members of the Council (including at least one of the Officers);
  - (b) questions arising at the meeting are to be decided by consensus, but, if necessary, a question may be decided by a resolution passed by a majority of those members of the Council who are participating in and voting at the meeting;
  - (c) each member of the Council participating in the meeting has one vote.
- (5) The Council may also transact business by circulating a motion among its members. A motion agreed to in writing by a majority of the members of the Council has the same effect as if it were a decision of the Council made at a meeting of the Council.

**11. Functions of Officers**

The functions of the President are as follows:

- (a) in consultation with the Secretary, to convene general meetings of CALC and of the Council;

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<sup>8</sup> Subclause substituted 14.09.2007.

- (b) to preside at general meetings of CALC and at meetings of the Council;
  - (c) to represent CALC in its dealings with the Commonwealth Secretariat and any other organisation;
  - (d) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.
- (2) The functions of the Secretary are as follows:
- (a) to carry out the day-to-day administration of CALC;
  - (b) when requested to do so by the President, to give notice of meetings of CALC and of the Council and to make arrangements for the holding of those meetings;
  - (d) to send to members of CALC minutes of general meetings of CALC, minutes of meetings of the Council and notices of decisions made by the Council;
  - (e) to keep a list of the names and addresses of the members of CALC;
  - (f) to take all such steps as are reasonably practicable to deal with requests for information and assistance made by members of CALC;
  - (g) to send to members of CALC from time to time, whether by means of a newsletter or otherwise, any information in the Secretary's possession that the Secretary considers might be of interest to those members; and
  - (h) to prepare the report referred to in subclause (3) and, if the Council so directs, to perform on behalf of the Council any function that the Council is required to perform under clause 13;
  - (i) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.
- (3) The Secretary must—
- (a) present to each general meeting of CALC a report reviewing the affairs and activities of CALC during the period since the last preceding general meeting, and
  - (b) circulate to members of CALC such other reports on the affairs and activities of CALC as the Council considers appropriate, or as are required by a resolution of a general meeting of CALC.
- (4) In performing functions on behalf of CALC, the Secretary is required to give effect to any relevant directions given by the Council.
- (5) The functions of the Vice-President are—
- (a) to act as President during any period when—
    - (i) the office of President is vacant, or
    - (ii) the President is for any reason unable to undertake the responsibilities of that office, and
  - (b) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.
- (6) The functions of the Treasurer are—
- (a) to manage and administer the financial assets and liabilities of CALC as directed by the Council;
  - (b) to maintain proper accounts for CALC and to present them for audit as required by the Council;
  - (c) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.<sup>9</sup>

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<sup>9</sup> Subclause added 14.09.07.

**12. General meetings of CALC**

- (1) The Council must, if practicable, ensure that an ordinary general meeting of CALC is held in conjunction with each Commonwealth Law Conference, and must in any event ensure that such a meeting is held within 5 years after the last ordinary general meeting of CALC.
- (2) The President must convene an extraordinary general meeting of CALC—
  - (a) on being requested to do so by written notice signed by not fewer than one-sixth of the members of CALC, or
  - (b) on a resolution of the Council requiring the convening of such a meeting.
- (3) A general meeting of CALC may—
  - (a) confirm, with or without modification, the minutes of the last preceding general meeting, and
  - (b) receive, consider and adopt, with or without modification, or reject, any report presented by the Council to that general meeting, and
  - (c) approve or vary any proposals recommended by the Council, and
  - (d) resolve any points of difficulty concerning the affairs of CALC referred to it by the Council, and
  - (e) give directions or guidelines to the Council with respect to the management of the affairs of CALC.
- (4) The President or, in the absence of the President, the Vice-President is to preside at a general meeting of CALC. However, if both the President and the Vice-President are absent from such a meeting, the full members of CALC who are present must elect one of their number to preside.
- (5) The Secretary must give at least 3 months' notice in writing to all members of the date and place of a general meeting of CALC.
- (6) The following provisions apply to a general meeting of CALC:
  - (a) a quorum is constituted by the full members present;
  - (b) except for a motion that can be passed only by special resolution, every motion put to the meeting is to be decided by consensus, but, if necessary, such a motion may be passed by a majority of the full members voting in person or by proxy;
  - (c) each full member of CALC has one vote.

**13. Finances of CALC**

- (1) The Council must ensure that the funds of CALC (if any) are spent only for purposes connected with carrying on the affairs and activities of CALC.
  - (2) The Council must also ensure—
    - (a) that CALC's funds (if any) are kept at a bank, and
    - (b) that such of those funds as are not immediately required to meet the expenses of CALC are placed on deposit with a bank or are invested in readily realisable securities, and
    - (c) that proper accounting records are kept in respect of CALC's funds and of its income and expenditure.
  - (3) The Secretary must include in the Secretary's report presented to each ordinary general meeting of CALC—
    - (a) a statement stating whether CALC had any funds at any time during the relevant accounting period, and
    - (b) if it had, an audited statement of the income and expenditure of CALC for that period
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and of its assets and liabilities as at the end of that period.

- (4) The Council must not enter into a commitment to spend any funds of CALC unless satisfied that CALC will have sufficient funds available to meet each payment under the commitment as and when the payment becomes due.
- (5) The relevant accounting period in relation to an ordinary general meeting is the period beginning—
  - (a) in the case of the first ordinary general meeting after the adoption of this Constitution—on 13 March 2003, and
  - (b) in any other case—on the day immediately following the relevant accounting period for the last preceding ordinary general meeting, and ending 6 weeks before the day fixed for the commencement of the first-mentioned meeting.

#### **14. Amendment of this Constitution**

This Constitution may be amended only by a special resolution passed at a general meeting of CALC.

#### **15. Dissolution of CALC**

CALC may be dissolved only by a special resolution passed at a general meeting of CALC. The assets of CALC are to be disposed of as directed by the resolution.

#### **16. Notice of certain resolutions**

- (1) A special resolution has no effect unless it is passed at a general meeting of CALC in consequence of—
  - (a) a motion moved at that meeting by a member of the Council in accordance with a resolution of the Council notice of which was sent to all members of CALC not less than 1 month before that general meeting, or
  - (b) a motion moved at that meeting by a member of CALC in accordance with a notice that was—
    - (i) signed by not fewer than 10 members of CALC, and
    - (ii) given to the Secretary not less than 6 weeks before that general meeting, being a notice a copy of which was sent by the Secretary to all members of CALC not less than 1 month before that general meeting.
- (2) As soon as practicable after the Council has passed a resolution referred to in subclause (1)(a), the Secretary must send a notice giving details of the resolution to all members of CALC.
- (3) As soon as practicable after receiving a notice referred to in subclause (1)(b), the Secretary must send copies of the notice to all members of CALC.

#### **17. Proxies at general meetings of CALC**

A full member of CALC may, in writing signed by the member, appoint another member of CALC as a proxy to attend and vote instead of the member at a general meeting of CALC. However, such an appointment is not effective unless the document of appointment is lodged—

- (a) with the Secretary before the start of the meeting for which the appointment was made, or
- (b) with the person presiding within 10 minutes after the start of that meeting.

**18. Sending of documents**

- (1) For the purposes of this Constitution, a notice or other document is sent to a member of CALC if the Secretary sends the notice or other document—
    - (a) to the member's last address as shown on the membership records kept by the Secretary; or
    - (b) to another member who the Secretary reasonably believes is readily able to forward the notice to the member.
  - (2) For the purposes of this clause, **address** includes a fax number and an e-mail address.
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**Minutes of the CALC Council Meeting held on 15 September 2007—Held at the Fairview Hotel, Nairobi, Kenya**

- 1. The meeting opened at 7.55 p.m.
- 2. *Present:*

Eamonn Moran (President), Duncan Berry (Secretary), Elizabeth Bakibinga, Lucy Marsh-Smith, Therese Perera, Bilika Simamba, and Jeremy Wainwright.

Apologies:

Enver Daniels and George Tanner

*Absent:*

Janet Erasmus, Tony Yen and Madeleine MacKenzie
- 3. *Twinning*

The CALC general meeting<sup>10</sup> had agreed in principle to twinning well-resourced legislative drafting offices with less-well-resourced legislative drafting offices. The general meeting had left the implementation of this initiative to the incoming CALC Council.

After some discussion, the Council decided that the initiative should be implemented by individual Council members on a regional basis, so that Lucy Marsh-Smith would monitor European legislative drafting offices; Bilika Simamba would monitor Caribbean countries and Bermuda; Janet Erasmus would monitor north American legislative drafting offices; Elizabeth Bakibinga would monitor central, east and west African legislative drafting offices; Enver Daniels would monitor southern African legislative drafting offices; Therese Perera would monitor south Asian legislative drafting offices; Tony Yen would monitor east and south-east Asian legislative drafting offices; Jeremy Wainwright would monitor PNG and Australian legislative drafting offices; and George Tanner would monitor New Zealand and Pacific

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<sup>10</sup> Held in Nairobi on 14 September 2007.

legislative drafting offices. The Council decided that the following approach should be adopted. The responsible Council member would approach less well-resourced legislative drafting offices in his or her region to ascertain what the needs of those offices are. After ascertaining those needs, the Council member would report his or her findings to the Council, which would then approach well-resourced legislative drafting offices to ascertain to what extent they are able and willing to meet those needs.

4. *The Loophole*

The Council agreed that, as far as possible, publication of '*The Loophole*' would be rotated among those members of the Council who were willing to undertake the editing of the journal.

5. *Regional groupings*

The Council discussed the question of regional groupings. It was agreed that the establishment of these groupings and their affiliation to CALC should be encouraged. It was noted that there were already regional groupings in Canada, Australasia and south and south-east Asia and that moves were afoot to establish such a grouping in West Africa.

6. *Conduct of future CALC conferences*

The view was expressed that not enough time was allowed for participants to discuss issues arising from the presentation of papers. The Secretary said that this would be taken into account when the conference programme for the 2009 CALC conference was being prepared.

7. *Preparation of legislative drafting instructions*

Bilika Simamba said small and less well-resourced legislative drafting offices had a need for manuals and training courses for the preparation of drafting instructions. Some members of the Council said they had access to electronic versions of such manuals. The Council decided that the feasibility of having these versions placed on the CALC website should be explored.

8. *Relations with the Commonwealth Secretariat*

The Council discussed the question of communication with the Commonwealth Secretariat. The Secretary undertook to contact the relevant people within that organisation with a view to information on matters of mutual interest.

9. *Striking-off inactive members*

The Council discussed the implementation of the constitutional amendment by virtue of which the membership of inactive members could be terminated. The Secretary said that, if it appeared that a communication to a member had been returned undelivered, he would send a letter to the residential address (if known) of the member asking the member whether he or she wished to continue to be a CALC member. If the member replied that he or she did not wish to continue to be a member or failed to reply to the letter within 6 weeks after it was sent, the Secretary would publish a notice in a CALC Newsletter to the effect that the member's membership would be terminated unless, within 6 weeks after the publication of the Newsletter, the Secretary received an intimation that the member wished to continue his or her membership of CALC. If the Secretary received no such intimation within that period, he would proceed to terminate the member's membership by making an appropriate entry in the membership records.

10. *Publication of list of members*

The Secretary announced that he planned to publish in a forthcoming CALC Newsletter a list of current full and associate CALC members. In order to protect members' privacy, the list would comprise only members' names and the names of the countries where they reside or are employed.

11. *Circulation of membership list*

The Secretary told the meeting that the membership records were currently being reformatted so as to make them easier to use. He said that, when the work on this was finished, he would distribute copies to all the members of the Council for them to use in their capacity as Council members.

12. *Call for papers for the next CALC conference*

The President said that, because the next CALC conference was little more than 18 months away, there was a need to call for conference papers early in the New Year. The Secretary said he would include in the next CALC Newsletter an item announcing the dates of the conference and inviting members to present papers at the conference.

13. *CALC scarves*

The question as to whether a batch of CALC scarves for female members should be ordered was once again discussed. The Secretary said that he had canvassed the membership on this issue when the last batch of CALC ties had been purchased about 8 years ago. On that occasion, none of the female members had expressed any interest in buying a CALC scarf. Nevertheless, he undertook to include an item in the next CALC Newsletter asking whether, if CALC were to purchase a batch of CALC scarves, members would buy one.

14. *Scholarships*

The question of providing scholarships to enable at least one CALC member from a less well-resourced legislative drafting office to attend a CALC conference had been discussed at the general meeting. The Council considered how the money for such a scholarship might be raised. One suggestion was that money could be raised by imposing a levy on conference registration fees.

The meeting closed at 8.45 p.m.



Council members who attended the CALC Council meeting in Nairobi:  
[l to r] Jeremy Wainwright; Elizabeth Bakibinga; Lucy Marsh-Smith  
Bilika Simamba; Duncan Berry; Therese Perera; and Eamonn Moran.

## New CALC Members

On behalf of the CALC Council, I should like to welcome all those who have joined the Association since the publication of the last list of new CALC members. As a result, the Association's membership numbers are now well past the 800 mark.

The following is a list of those who have become members of CALC since July 2007.

### Full members

#### Antigua and Barbuda

Sandra Markman      Attorney General's Chambers      E-mail:  
Ministry of Legal Affairs  
Parliament Drive, St. John's

#### Australia (Commonwealth)

Donna Buck      Office of Legislative Drafting and Publishing,      *Email* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton ACT 2600

Paula Chadderton      Office of Legislative Drafting and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton ACT 2600

Alison Forster      Office of Legislative Drafting and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton ACT 2600

Olivia Gossip      Office of Parliamentary Counsel      *Email:* \_\_\_\_\_  
39 Brisbane Street  
Barton ACT 2600

Janice Larkin      Office of Legislative Drafting and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton ACT 2600

Fiona Matthews      Office of Legislative Drafting and Publishing,      *Email:* \_\_\_\_\_  
63 Denison Street  
Deakin ACT 2600

Gabrielle Price      Office of Legislative Drafting and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton ACT 2600

Katherine Scrafton      Office of Legislative Counsel and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton, ACT 2600

Grant Selmes      Office of Legislative Counsel and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton, ACT 2600

Susannah Webb      Office of Legislative Counsel and Publishing,      *Email:* \_\_\_\_\_  
Robert Garran Offices, National Circuit,  
Barton, ACT 2600

### Australia (Queensland)

Luke Geurtsen                      Office of the Queensland Parliamentary  
Counsel, Floor 17, 111 George St,  
Brisbane, Queensland 4000                      *Email:* \_\_\_\_\_

Allison Riding                      Office of the Queensland Parliamentary  
Counsel, Floor 17, 111 George St,  
Brisbane, Queensland 4000, Queensland 4000                      *Email:* \_\_\_\_\_

### Australia (Victoria)

Christopher Balmford                      Cleardocs.com  
PO Box 2225  
Hawthorn Vic 3122                      *Email:* \_\_\_\_\_

Catherine Schipano                      Office of the Chief Parliamentary Counsel  
Level 2, 1 Macarthur Street  
Melbourne, Victoria 3002                      *Email:* \_\_\_\_\_  
\_\_\_\_\_

### Australia (Western Australia)

Helen Kurz                      Parliamentary Counsel's Office  
Level 11, 141 St George's Terrace  
Perth WA 6000.                      *Email:* \_\_\_\_\_

### Botswana

Shabani Chikanda                      Legislative Drafting Division  
Attorney General Chambers  
PO Box 009, Gaborone                      *Email:* \_\_\_\_\_

Mavis Morris                      Legislative Drafting Division  
Attorney General Chambers  
PO Box 009, Gaborone                      *Email:* \_\_\_\_\_

### Cook Islands

Paul Lynch                      Office Address:  
Crown Law Office  
Main Road, Rarotonga                      *Email:* \_\_\_\_\_

John McFadzien                      A Professional Law Corporation  
PO Box 514, Avarua  
Rarotonga                      *E-mail:* \_\_\_\_\_

### Fiji Islands

Elsie Hudson                      Fiji Islands Revenue and Customs Authority  
Scott Street, PMB Suva                      *Email:* \_\_\_\_\_





### Uganda

Fredrick Ruhindi (1) Ministry of Justice & Constitutional Affairs PO *Email:* \_\_\_\_\_  
Box 7183, Kampala

### United Kingdom (England & Wales)

Jeremy Hodges Ministry of Justice *Email:* \_\_\_\_\_  
Second Floor, Selborne House,  
54-60 Victoria Street  
London, SW1E 6QW

Thomas Watkin Office of the Welsh Legislative Assembly *Email:* \_\_\_\_\_  
Cathays Park, Cardiff CF103NQ

### United Kingdom (Northern Ireland)

Maria Dougan, Office of the Legislative Counsel, *Email:* \_\_\_\_\_  
Parliament Buildings, Stormont  
Belfast, BT4 3XX

Julie Groves Room 225, Parliament Buildings *Email:* \_\_\_\_\_  
Stormont Estate  
Upper Newtownards Road  
Belfast BT4 3XX

### United Kingdom (Scotland)

Jonathan Brown Office of the Scottish Parliamentary *Email:* \_\_\_\_\_  
Counsel  
Victoria Quay  
Edinburgh, EH6 6QQ

### Associate members

#### Afghanistan

Zafar Iqbal Gondal Programme Legal Counsel *Email:* \_\_\_\_\_  
IDLO Programme Office  
Kilula Poshta Road  
First Road on the Left  
Chara-e-Ansari, Kabul, Afghanistan

#### Ireland

Deirbhle Murphy Office of the Parliamentary Counsel to the *Email:* \_\_\_\_\_  
Government  
Government Buildings  
Upper Merrion Street, Dublin 2

Note (1): Musalia Mwenesi and Fredrick Ruhini were CALC members prior to the reorganisation of the CALC membership records in 2000. It is acknowledged that they have never ceased to be CALC members during the period 2000-2007.

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### CALC conference 2009

The next CALC conference and CALC general meeting will be held in Hong Kong from 1-4 April 2009. The theme of the conference will be "Whose law is it?" This is designed to cover a range of matters relating to legislation and legislative drafting. For example, how do drafters ensure that legislation is effective, consistent with legal principles and relevant rights based legislation? To what extent is legislation able to withstand judicial and (in the case of delegated legislation) parliamentary scrutiny? How can we ensure that legislation

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is clear to all those who are engaged by it, whether as legislator or user? The theme would also cover accessibility. As regards the latter, there have been significant advances in the way in which legislation is published both in print and electronically. By no means all legislative drafting offices have a publishing responsibility, but it is nevertheless critically important that governments ensure that legislation is accessible not only to the judiciary and the legal profession, but to all those who could be affected by it. As legislative counsel, we need to keep abreast not only of the latest computer technology to ensure that legislation is produced in an up to date form, but we also need to review the effectiveness of indexing, revision, consolidation, and other updating methods.

If you feel you have a contribution to make on any of these issues, whether as a presenter or a panellist, please contact the President, Eamonn Moran, or me and we will include you in the 2009 conference program as a speaker or panellist. However, even if you would like to make a contribution on some other aspect of legislation or legislative drafting, still contact us and we will try to include you in the program.

The conference will begin with a reception on the evening of Wednesday, 1 April. This has yet to be finalised but could take the form of a cruise on the magnificent Hong Kong Harbour. The main business sessions of the conference will start the following day with the presentation of papers. After the afternoon break, the CALC general meeting will be held. Other business sessions involving the presentation of papers will follow on the Friday. On Friday evening, a CALC dinner will be held. On the Saturday, participants will be invited to join a trip by junk to Lamma Island, where we will stop for a sumptuous seafood banquet.

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### **Legislative drafting conference in Ottawa, Canada, September 2008-03-26**

“Who Really Writes the Law?” is the theme for the next conference of the Canadian Institute for the Administration of Justice on legislation. Planning is well under way for the conference, which is to be held in Ottawa on 11-12 September this year.

The conference will focus on the intersecting roles of those involved in determining the wording of legislative texts (statutes and regulations). This group most obviously includes legislative drafters whose task is to turn drafting instructions into text. But it also includes those responsible for developing drafting instructions and their underlying policy, whether acting within the government as policy officials or legal advisers or outside government on behalf of interest groups. Draft texts are also often further processed by yet another constituency that includes translators, editors, jurilinguists and bijuralists.

Finally, parliamentarians and subordinate legislative authorities are involved in reviewing, amending and adopting draft texts that are presented to them. The multiplicity of participants in lawmaking processes poses the question that forms the title of the conference:

Who really writes the law? What are the distinctive roles of drafters and other participants in these processes? What influence can they have over the resulting law? Are there overlaps or conflicts in their roles? Are their roles evolving in response to changes in the political culture or environment for lawmaking? Conference participants can expect to come away with a better understanding of the legislative landscape and, if not a definitive answer to the main question, at least a point of view.

Conference topics include:

- The Drafting Team: Roles and Responsibilities, Expectations and Challenges
- Best Practices for Developing Drafting Team Expertise
- Legislative Drafting and the International Scene
- Drafting Workshops (English and French)

- The Drafting Dynamic: Drafting Instructions and the Drafting Process
- Building Accessibility For People with Disabilities into our Legislation
- From Drafting Instructions to Judicial Decisions and Back Again

Registration fees are C\$595 for CIAJ members and C\$695 for non-members.

For more information, see the Calendar portion of the CIAJ website at: <http://www.ciaj-icaj.ca/>

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## News about members

### Former Parliamentary Counsel appointed to Supreme Court

Hilary Penfold PSM QC has been appointed to the Supreme Court of the Australian Capital Territory. Hilary was First Parliamentary Counsel of the Australian Office of Parliamentary Counsel from 1993 to 2004 and President of CALC from September 1999 to April 2003.

After leaving the Office of Parliamentary Counsel, Hilary was the inaugural head of the Department of Parliamentary Services which is responsible for the running of Australia's Parliament House.

It will be interesting to see the influence of such a skilled and experienced legislative drafter on the Court's approach to statutory interpretation.

### New Law Draftsman in Hong Kong; new Chief Parliamentary Counsel in Victoria (Australia)

In January 2008 Eamonn Moran PSM QC resigned as Chief Parliamentary Counsel of the Australian State of Victoria to take on the role of Law Draftsman in the Hong Kong Department of Justice. Eamonn, a long-time CALC member and currently the CALC President, joined the Victorian Chief Parliamentary Counsel's Office in 1977, after a stint of just over two years in the Northern Ireland Parliamentary Counsel Office.

In March 2008, Gemma Varley, a CALC member, was appointed to replace Eamonn as Chief Parliamentary Counsel of the Australian State of Victoria. Gemma joined the Victorian Chief Parliamentary Counsel's Office in 1978.

### New appointments in the Isle of Man and Jersey

Lucy Marsh-Smith has recently moved from Jersey to another small island, the Isle of Man, where she has taken over as head of the legislative drafting office there. As many readers will already know, Lucy was elected as a member of the CALC Council at the last CALC general meeting held in Nairobi last September. She has been joined in the Isle of Man by another CALC member, Howard Connell, who until recently worked in UK Revenue and Customs. The rest of the Isle of Man legislative drafting team consists of David Bermingham, recently promoted to legislative drafter, and Melissa Hedqvist (nee Warrilow), recently promoted from trainee to assistant legislative drafter on David's promotion.

Matthew Waddington, who until recently has been doing legislative drafting work in Cyprus, replaces Lucy Marsh-Smith in the Jersey Law Draftsman's Office in early April

### New Zealand Chief Parliamentary Counsel

The former New Zealand Parliamentary Counsel, George Tanner QC, retired from the position in June 2007. George, who has been a member of the CALC Council since 2003, has since been appointed as member of the New Zealand Law Commission.

His successor is an Englishman, David Noble, who was formerly the Legal Director and Chief Legal Adviser in the Department for Education and Skills in London, a position he held from 2004 to 2007. He was called to the Bar of England and Wales in 1981.

### **Chief Legislative Counsel of Canada**

After serving in an acting capacity for over 2 years, John Mark Keyes has been appointed as Chief Legislative Counsel of Canada. John Mark, who was formerly Senior Counsel in the Legislative Section of the Canadian Department of Justice, is well known for his articles on legislation and legislative drafting, including several that have been published in *The Loophole*. But perhaps his most significant contribution to the legal lexicon has been his book 'Executive Legislation', dealing with delegated law making by the Executive branch of Government. John Mark is also well known for his role in conducting the legislative drafting training program at the University of Ottawa, which led to the award of a Master of Laws degree.

### **Retirement in Northern Ireland**

Kenneth Jones retired from a senior position in the Office of the Legislative Counsel in Northern Ireland in April 2008. Having worked there since 1973, he drafted through the various constitutional upheavals and disturbances that beset Northern Ireland. He dealt with a wide variety of subjects from health services and housing to taxation and taxis. He will now have more time to cultivate his garden, play the classical guitar and listen to jazz. It has been noted that he will be sorely missed by departments in search of their policies. Pending advertising of the position, members interested in drafting work at a high level in Belfast are invited to contact George Gray (First Legislative Counsel) at [George.Gray@ofmdfmni.ovv.uk](mailto:George.Gray@ofmdfmni.ovv.uk) or on +44 28 9052 1307.

### **Impending change in the Northern Territory of Australia**

Geoffrey Hackett-Jones, better known as for his long-term occupancy of the office of Parliamentary Counsel in South Australia, has recently announced his intention of retiring in August from his present position as Parliamentary Counsel of the Northern Territory.

### **Recent developments in the Cayman Islands**

The Cayman Islands are currently carrying out what the government has called the Constitutional Organisation Initiative. To that end the government has prepared a discussion paper under the title *The Cayman Islands Constitution: A Reflection of Who We Are* which was launched on 12 January 2008 at Pedro St James Castle on Grand Cayman. Soon the Cayman Government will be reviewing its published proposals in the light of public input. The proposals will be taken to a national referendum in May 2008 although there are suggestions to postpone that date to allow for more consultation. The referendum will ask voters to say whether the Government of the Islands should enter into negotiations with the United Kingdom Government on specific areas that will have been identified. While the Islands wish to remain an overseas territory of the United Kingdom, the Government wishes to have greater autonomy under the proposed constitution.

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## **Obituaries**

### **Lord Renton—advocate of plain language in the law**

Most legislative counsel will have heard of Lord David Renton, KBE, TD, QC, politician and lawyer. David Lockhart-Mure Renton was born on 12 August 1908 and died on 31 May 2007, aged 98. He was the United Kingdom's longest-serving parliamentarian, spending more than 60 years in Parliament. David Renton was a

lawyer-politician. He was throughout his political and legal career a strong advocate of the use of plainer language in legislation.

After schooling at Stubbington and Oundle, he read law at University College, Oxford, where he was president of the University Liberal Club. Called to the Bar as a member of Lincoln's Inn in 1933, he practised on the South-Eastern Circuit. He was commissioned as a territorial into the Royal Engineers in 1938. Later he transferred to the Royal Artillery and was eventually promoted to the rank of major.

After the Second World War, David Renton was elected as Member of Parliament for Huntingdonshire in 1945, while at the same time continuing to practise at the Bar. After Anthony Eden was appointed as the British Prime Minister in 1955, he became a junior minister at the Ministry of Fuel and Power, where he was involved in fuel rationing made necessary by the Suez crisis. Later, he moved to the Home Office.

David Renton's training in jurisprudence convinced him that Parliament must observe the highest operational standards if it was to serve democracy properly. He devoted himself to such an unglamorous job as chairing the Select Committee for the Revision of Standing Orders. As a Home Office minister, he piloted his first Bill, the controversial Commonwealth Immigration Bill, through the House of Commons. His speeches on the Bill were characterised by lucidity and precision,

An important dimension of the Renton's family life was that one of their three daughters suffered from a rare chromosomal abnormality, Rett syndrome, which left her profoundly disabled, unable to walk or talk, and utterly dependent on the care of others. He became associated with Mencap and was president from 1982 to 1988. His wife set up an organisation called Demand (Design and Manufacture for Disablement), to provide furniture for people with special needs. In 1993, Mencap created the Renton Foundation to promote leisure activities for people with learning disabilities.

Having been elected to the general council of the Bar in 1939, he went on in his legal career to become a Bencher of Lincoln's Inn in 1962 and a Recorder from 1963 to 1971. He served as vice-chairman of the Council of Legal Education 1968-70 and had three spells on the Senate of the Inns of Court.

A combination of legal distinction with extensive parliamentary experience, made an obvious choice to chair the Committee on the Preparation of Legislation, which for the first time in a century looked at the way laws are drafted. The report on the *Preparation of Legislation* [the Renton Report], which was widely admired then and since, criticised "the tendency of all governments to rush too much weighty legislation through Parliament in too short a time". The report included 10 pages of cases from the 1950s and 1960s in which judges had found the statutes on which they were supposed to base their decisions too difficult to understand. On the other hand, the Renton Committee's recommendation on general principles drafting reflects the difficulty of balancing the aims of simplicity and precision:

"The adoption of the 'general principle' approach in the drafting of our statutes would lead to greater simplicity and clarity. We would, therefore, like to see it adopted wherever possible. We accept, however, that this approach to a large extent sacrifices immediate - though not eventual — certainty and places upon the courts a heavier responsibility in identifying the intention of the legislature when applying legislation to particular circumstances. We recognise that this is unlikely to be acceptable to the Executive and the Legislature in certain types of legislation, particularly fiscal and other public law which defines the rights and obligations of individuals in relation to the State, and we consider that it would in any event be unreasonable to draft in principles so broad that the effect of the statute could not be assessed without incurring the expense of litigation to determine an issue."<sup>12</sup>

David Renton believed that a law should state, clearly and early, its main purpose. In 1979 he wrote, "In Britain the drafting of legislation remains an arcane subject. Those responsible do not admit that any problem

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<sup>12</sup> The Renton Committee report, *The Preparation of Legislation* (1975), para 10.13.

of obscurity exists. They resolutely reject any dialogue with statute law users. There is resistance to change, and to the adoption (or even investigation) of new methods. The economic cost of statute law is enormous, yet official interest has been lacking.” David Renton lived long enough to see some of the resistance crumbling. He remained a stalwart of the Statute Law Society and a member of the Statute Law Review's editorial board.

He became a life peer in 1979. The House of Lords, he believed, were better equipped in this field than the Commons, because “there is more expertise and experience among us”. Unfortunately, they were confronted with legislation that was often indigestible (and dare one say unintelligible) and “required much improvement in form and substance”. That, he argued, was why the House of Lords made an average of 2,000 amendments a year to government bills and sometimes had to sit even longer hours than the House of Commons.

David's wife, Claire (nee Duncan) died of cancer in 1986. Two of his three daughters survive him.

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### **Miles Pepper**

In the morning of 12 September 2007, Miles Pepper, a well-known and well-respected Canadian legislative drafter, died away after a long illness.

Miles began his career in the private sector. In August 1970, he joined the Legislation Section of the Department of Justice of Canada where he remained as a drafter until 1978 when he became the head of the Regulations Section (the “Privy Council Office-Justice”, as it was then known) of the Department of Justice. He left that position temporarily to teach the legislative drafting course at the University of Ottawa from September 1981 to April 1982, and then returned to the Regulations Section. In 1985, he moved to Winnipeg where he became Assistant Deputy Attorney General and Chief Legislative Counsel of Manitoba. His duties included the re-enactment of all public Acts and regulations in English and French as a result of the Supreme Court of Canada's decision that Manitoba legislation enacted in English only was invalid. In 1988, he returned to Ottawa to work as Secretary to the Statute Revision Commission.

In December 1989, Miles assumed the duties of Director, Legislation Division, Department of Justice, in the Northwest Territories where he oversaw the preparation of a bilingual revision of the statutes and regulations that had been first enacted in English only. He held that position until his appointment as Assistant Deputy Minister (Attorney General) in February 1993, a position he held until his retirement in September 1995.

One point of interest is that Miles was likely the only member of the Canadian drafting fraternity to work on statute revision projects for three bilingual Canadian jurisdictions: the federal government, Manitoba and the Northwest Territories. He was involved in the creation of the original French version of the statutes of Manitoba and the Northwest Territories.

Miles was an excellent lawyer. He had a good sense of humour and his laugh was quite distinctive. He loved the arts and culture and was an accomplished traveller. He took up parachuting late in life, when he was in the North-west Territories. When asked by one of his former legislative drafting students why he had taken up parachuting, he simply replied: “I couldn't have done this in my 20's when I had all of life before me. I couldn't have done it in my 30's and 40's when I was a family man. But now that I'm in my 60's, where is the downside risk? It's great fun!”

Miles will be missed by all of us who knew him.

Lionel A. Levert, QC.<sup>13</sup>

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<sup>13</sup> Former Chief Legislative Counsel of Canada and former President of CALC

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## Radical simplification of EU law: confirmation of the tangible results for business and citizens

On 30 January 2008, the European Commission adopted a Commission Working Document, providing a comprehensive stocktaking and up-date of the Commission's rolling simplification programme. The Commission has overall adopted 80 per cent of its 2007 simplification programme and more than half of the total 2005-2009 initiatives have been delivered. In fact since October 2005 the Commission has already put forward about 400 legal acts for repeal, modification or replacement. As a result, about 300 legal acts representing about 5000 pages in the Official Journal will be removed from the Community statute book.

### What is simplification?

In the general context of Better Regulation, the European Commission is cutting red tape so that businesses can be more productive, public services more efficient and citizens freed from bureaucracy. The Commission is thus critically reviewing the existing body of legislation in the most ambitious simplification programme ever undertaken for the period covering 2005-2009. The objective is to ensure that Community legislation is clear, understandable, up-to-date to technological progress and user-friendly.

A simplification strategy has been set up in October 2005 defining an initial batch of about 100 simplification initiatives with a dynamic schedule so that every organization and individual can reap the rewards of better regulation. A total of 43 new initiatives were added in November 2006 and a further 16 in October 2007, widening the scope of the simplification exercise to all policy areas and extending the timetable to 2009. The programme uses legislative techniques such as repeal, codification and recasting.

### Simplification in various policy areas

The Commission's efforts to modernize and streamline the *acquis*<sup>14</sup> are already starting to yield their first results, with a total of 91 initiatives tabled to date since the launch of the programme.

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### Is it time to reform the treason laws?<sup>15</sup>

The former British Attorney-General, Lord Goldsmith, QC, recently published a report, "Citizenship: Our Common Bond", in which he recommended that the laws of treason should be reformed, with a view to making the citizen's duty of allegiance to the United Kingdom "more relevant to modern conditions". There is little doubt that the treason laws of the United Kingdom are seriously outdated. There are a number of Acts relating to treason, but the primary one is the Treason Act 1351. But not only is it an Act of the United Kingdom but it is also the law of many former British colonies and dependencies that inherited British treason laws. Hong Kong is one of these former colonies that still relies on these old British treason Acts, with certain modifications of course! Not so long ago, the Hong Kong government tried to introduce a Bill into the Hong Kong Legislative Council to reform these laws, but there was such an outcry from the local community that the Government was forced to abandon the Bill, even though looking at it from an objective point of view the Bill was from being draconian, particularly after the government had made a number of significant concessions.

The Treason Act 1351 provides that a person who "levies war against the Sovereign" or who is "adherent to the Sovereign's enemies" is guilty of treason. Also guilty of treason is a person who "compasses or imagines the death of the Sovereign". But not only is the legislation nearly 700 years old, but the language is not English as

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<sup>14</sup> The terms '*acquis communautaire*' and '*EU acquis*' are used in European Union law to refer to the total body of EU law accumulated thus far.

<sup>15</sup> It is acknowledged that some of the ideas for this article were derived from an article by Professor Gary Slapper that recently appeared in the Times. Professor Slapper is Director of the Centre for Law at The Open University in the United Kingdom. Editor.

we know it today, but in a medieval language which lawyers call “Law French” (or Norman French). It clearly makes no sense to have serious criminal laws, such as those relating to treason, to be written in Norman French, a language that even most lawyers would now have difficulty in understanding.

The laws also cover deal with attempting to do anything by which the sovereign's life may be endangered or conspiring to do that. And it also treasonable to murder the Lord Chancellor, or to violate (i.e. to have sexual intercourse with) the Sovereign's eldest unmarried daughter or the wife of the Sovereign's eldest son and heir. Until 1998, a person convicted of treason could be sentenced to death, because the abolition of the death penalty for murder in 1965 did not extend to treason, arson in a Royal dockyard and a couple of other somewhat arcane offences.<sup>16</sup> However, as a result of the enactment of the *Crime and Disorder Act 1998*, treason is now punishable by life imprisonment. At one time the sentence for treason was the rather gruesome punishment of being ‘hung, drawn and quartered’.<sup>17</sup>

There were some infamous treason cases during the 20th century. Perhaps the best known treason trial from those times was that of Sir Roger Casement, the Irish patriot, who is sometimes said to have been “hanged by a comma”. During World War 1, Casement was convicted of conspiring with the Germans to further an Irish insurrection. His conviction depended on how a relevant provision of the Treason Act is punctuated. In the Casement case, the location of a particular comma affected the meaning dramatically. Take for example, the expression ‘eats shoots and leaves’, which means something quite different from ‘eats, shoots, and leaves’. At the Casement trial, a comma appeared in the relevant provision of some of the versions of the 1351 Act, but not in all of them. The court decided that a comma should be read in the text, crucially widening the sense so that “in the realm or elsewhere” meant where acts were done and not just where the “King's enemies” may be. After an unsuccessful appeal against the death sentence, he was hanged at Pentonville Prison in London on 3 August 1916

Another infamous case was that of William Joyce (generally known as “Lord Haw-Haw”). He was an American citizen who lived in various countries and gained a British passport after making a false representation. During the war, Joyce broadcast Nazi propaganda on the radio from Germany. In sinister tones, he urged the British public to surrender. At the end of the war, he was captured by British forces, brought back to England and charged with treason. On the dubious basis of having once held a British passport, he was found to have aided the King’s enemy’s while ‘owing allegiance to the Crown” and was hanged for treason in 1946.

Before the crime of treason can be redefined, it’s necessary for to determine how the relationship between the citizen and the state is to be defined. To what entity is a citizen expected to owe allegiance? Without first defining “allegiance”, it is not possible to define what treachery is. What duties of allegiance do citizens owe to the state? The British Government’s consultation paper, *The Road to Citizenship*, is currently considering these issues.

How the treason law is defined is vital because it rests on whatever duties are owed by citizens to the state. A modern law of treason would be focused on issues such as using force or threats to overthrow the democratically elected government and using force or threats to subvert the democratic process and would not be concerned with sexual encounters with the wife of the heir to the British throne.

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<sup>16</sup> At the inquest into the death of Diana, Princess of Wales, five men were named as having been her lovers: James Hewitt (a former Army officer), Will Carling (the former England Rugby captain), Oliver Hoare (an art dealer), James Gilby (a PR executive), and Barry Mannakee (a bodyguard). In 1996, she was divorced from the heir to the British throne, Charles, Prince of Wales, but if any of these men had ‘violated’ Diana before then, he would have not only have committed treason but would also have been liable to be sentenced to death.

<sup>17</sup> This penalty was only abolished by the *Treason Act 1914*.

## Book Reviews

### Legislative Drafting—Shaping the Law for a New Millennium (T.K. Viswanathan<sup>18</sup>)

New edition, 2007<sup>19</sup>; Reviewed by Lionel Levert, QC<sup>20</sup> (pictured at right)

In addition to updating the original edition of the book and bringing it in line with recent trends prevailing across the Commonwealth in both areas of legislative drafting and statutory interpretation, the author of this new publication has added four new chapters to the book: *History of Statute Law in England* (Chapter II), *Origins of Office of Parliamentary Counsel in England* (Chapter III), *Reasons for Complexity of Legislation* (Chapter VII), and *Plain Language Drafting* (Chapter VIII). The book now covers a much wider range of topics that are of particular interest for legislative drafters, including a detailed analysis of, and a very useful discussion on, the need to simplify legislation in order to facilitate public access to the laws, which are to be applied by the public.



I really enjoyed reading this book, and as I progressed through all fourteen chapters, I kept thinking that legislative drafters (and others of course) who will have the opportunity of referring to this book in their daily work will have access to a wealth of information and useful pieces of advice relating to the history of statute law and legislative drafting, the origins of centralized legislative drafting services, the legislative process, constitutional considerations, numerous drafting issues along with possible solutions, principles of statutory interpretation. All of this to be found in one single volume!

The book offers a good balance between theoretical matters and practical issues, problems and possible solutions. It is of course important for drafters to have access to information relating to the history of statute law, the influence of Jeremy Bentham, considerations on the division of legislative powers in the Indian Federation, principles of statutory interpretation or the importance of the role of the drafter, but it is even more important for a drafter to be offered practical information and advice on day-to-day drafting and statutory interpretation issues, and this book covers both of these aspects very well.

I would now like to comment more specifically on certain parts of the book and on some particular issues that are discussed by the author. Chapter III, for instance, contains an interesting discussion on the origins of centralized drafting offices and the advantages offered by such arrangements. Having myself been involved, both as a drafter and a manager, in legislative drafting for most of my thirty-year career in the public service here in Canada, I remain a strong supporter of centralized (i.e. drafting for the whole government) and specialized (i.e. drafting done by professional drafters) legislative drafting services. In my opinion, there is no better or more efficient way of achieving consistency and uniformity and meeting the highest quality standards in the drafting of legislation.

Another aspect of legislative drafting that, in my view, cannot be overemphasized is the need for independent scrutiny of legislative drafts, as discussed in Chapter VI of the book. Every legislative drafting office, it seems to me, ought to put in place various quality control mechanisms that allow, at various stages of the drafting process, for the review of the drafters' work either by other drafters or some review committee, or by legislative editors or linguists. There will always be a need for a "fresh eye" to go over the work prepared by colleagues, regardless of the level of experience acquired by the person whose work is being revised. As is discussed in this book, drafters work under tremendous pressure and have to deal with all kinds of competing demands and priority changes, and they have very little time at their disposal to do their drafting work and respect the

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<sup>18</sup> Former Law Secretary, Ministry of Law and Justice, India.

<sup>19</sup> Former Law Secretary, Ministry of Law and Justice, India.

<sup>20</sup> Former Chief Legislative Counsel of Canada and President of the Commonwealth Association of Legislative Counsel 2005-2007.

government's legislative agenda. In those circumstances, they are bound to make mistakes and to lose track at times of certain key elements of their work. That is why the addition of a reviewing officer or some review process by other colleagues is so important, and I am happy to see that this book does insist on the need for independent scrutiny of Bills.

Turning now to Chapters VII (*Reasons for Complexity of Legislation*) and VIII (*Plain Language Drafting*), I would like to offer the following comments. These two chapters are valuable and interesting additions to the first edition of the book. They both deal with a fundamental principle, namely that, in any society governed by the Rule of Law, citizens ought to be able to understand the laws that are enacted by their Parliament and which they are expected to respect and obey. Explanations are provided as to why the laws are sometimes so complex and how these complexities can be alleviated in various ways (e.g. simplification of the legislative language, drafting in clearer language, avoiding referential legislation whenever possible, drafting shorter sentences, greater use of purpose clauses). Chapter VIII offers a good discussion on the pros and cons of the so-called "traditional drafting style" (usually very precise), on the one hand, and the advantages and disadvantages of an opposite style that consists in drafting in general terms (concentration on general principles). Regardless of the style adopted by any given drafting office, there is no doubt in my mind that, in this day and age, every effort should be made in order to draft legislation that is as simple and clear as possible. As is so rightly pointed out in Chapter VIII, even when a drafter has to deal with concepts that are "inherently complex", the fact that the subject matter dealt with is complex does not necessarily call for "complicated convoluted language". There will always be a way to simplify a complex draft, but it takes time, and time, unfortunately, is generally a rare commodity in a legislative drafting environment.

In my view, from a drafter's perspective, four of the fourteen chapters of this book really stand out as being of particular interest. They are Chapters IX (*The Structure of an Act – The Form of a Law and its Constituent Parts*), XI (*Principles of Interpretation of Statutes*), XII (*The General Clauses Act, 1897*) and XIII (*Statutory Forms*). Singling out these four particular chapters that deal with various key aspects of legislative drafting, on the one hand, and statutory interpretation, on the other hand, should not come as a surprise, as legislative drafting and statutory interpretation are so intimately related to one another. Elmer Driedger, a well known Canadian legislative drafting expert, used to tell his students attending the legislative drafting program of the University of Ottawa (I had the privilege of being one of his students and I am quoting from my notes dating back to January 1974) that "the draftsman must be familiar with all so-called 'rules of construction' by which his work will be measured."

Chapters IX and XIII, even if they do not follow sequentially, are closely linked to one another, as is noted by the author in Chapter XIII. The two chapters provide theoretical and very practical information to drafters with respect to the structuring of an Act of Parliament, its constituent parts, and the possible form or wording that ought to be given to a variety of recurring legislative provisions. In both chapters, but more particularly in Chapter XIII, useful tips and pieces of advice are provided to the drafter as to how to structure a good piece of legislation and how to draft particular provisions that can subsequently be used as precedents. These two chapters will greatly benefit any drafter, whether junior or more senior.

As for chapters XI and XII, they deal with the interpretation of legislation in a very detailed and practical way. Chapter XI provides a most useful explanation of the numerous rules of statutory interpretation that have been developed by the courts over the years, while Chapter XII offers a very good analysis of the purposes and advantages of an *Interpretation Act* such as India's *General Clauses, 1897*, and explains, based on an abundant list of court decisions and a good bibliography, why it is that an Interpretation Act is often described and considered as the drafter's Act. The author even makes a number of useful suggestions for improvements to the current General Clauses Act, 1897 (i.e. possibility of adding provisions to that Act relating to the effect that ought to be given to examples and illustrations that are sometimes resorted to by the drafter in order to facilitate the understanding and application of certain Acts; possibility of inserting new provisions dealing with the significance of marginal notes and punctuation marks, or the effect of the expiration of temporary Acts).

Finally, I would like to offer a general comment. This book, it should be noted, is particularly well researched and documented. Luminaries such as Ilbert, Bentham, Coode, Blackstone, Montesquieu, Lord Thring (who was the first person to head the Parliamentary Counsel Office, in London, after it was established in 1869) and others are often and extensively quoted. Modern legislative drafting experts such as Reed Dickerson, Francis Bennion and Elmer Driedger, as well as numerous court decisions, are also heavily relied upon in support of the explanations and ideas that are formulated in this volume. And most chapters contain a useful bibliography for anyone who would like to pursue even further their research on any of the issues that are discussed in the book.

I believe it can honestly be said that, in spite of the fact that this book is primarily intended for drafters, it will provide interesting and useful reading, not only to drafters, but also to any public servant who has a role to play in the legislative process, to judges who are called upon to interpret the laws of their country, to private sector lawyers who, on a daily basis, provide advice to their clients on the application of various Acts of Parliament, to law professors, law students, or anyone who wishes to learn more about the history of statute law or the origins of centralized legislative drafting services across the Commonwealth, or the challenges associated with the drafting and interpretation of legislation, and the law-making process generally.

Legislative drafting is an art and a highly specialized discipline that requires publications such as this one in order to flourish. Unfortunately, one must recognize that the amount of literature that is available on the topic of legislative drafting is rather limited. Therefore whenever a new book or article is published on the subject matter of legislative drafting or statutory interpretation, or on both subject matters, as is the case here, it is an occasion to celebrate! In this particular instance, the event is even more special as it constitutes for all drafters, and other readers of this book as well, a unique opportunity to benefit from Mr. Viswanathan's years of experience as a drafter and as the leader of a large drafting office.

I welcome this publication. I truly hope and trust that this tool will greatly benefit, not only the Indian legislative drafting community, but all legislative drafters across the Commonwealth and beyond.

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### **The Irish Statute Book; a guide to Irish Legislation<sup>21</sup> (Brian Hunt)**

Reviewed by John Moloney (*pictured at right*)

Before examining the substance of this work, let us be clear as to what it is not. Dr Hunt's work is not a guide to the Irish Statute Book, despite the title. The person who searches this book for a road map to the Irish Statute Book will search in vain. Rather, the immense amount of research contained in this volume attests to the near impossibility of trying to guide anyone, no matter how well informed and equipped, through the legislative morass that comprises the Irish Statute Book.



We are faced with a welcome and overdue clarion call for reform. This call is expressed in trenchant terms and, whether one agrees or not with individual recommendations made (and I take issue with many), the cry out of the wilderness for a debate on the Irish Statute Book as the expression of the laws of a democratic society is more than welcome. The work is firmly based on the historical evolution of how laws are made in Ireland and these aspects were, for this reader, some of the more interesting aspects of the book. The work rate of our predecessors was admirable but, while they did not have the benefits of technology, they did not have to worry about management theory.

I suspect that, in common with other post-colonial societies, too much attention has heretofore been paid in Ireland to precedent; precedent is a good friend but a cruel, stupid and inflexible mistress (who sits in her

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<sup>21</sup> Published by First Law, Dublin, 2006.

dusty room sharing regrets with Miss Havesham) and the only person to willingly awake beside such a mistress is a bureaucrat who places career and position above the public interest.

Recognise a basic fact – there is little interest (and less kudos) to be gained outside a small body of like-minded oddities from trying to reform the Statute Book. Most citizens spend their lives without directly impacting with the law. A person is born, marries, buys a house, pays a parking ticket, pleads guilty to driving under the influence but avoids direct confrontation with legal matters; who can blame this person who has been on the Clapham omnibus, the Manly ferry or (in Dublin) the Luas<sup>22</sup>? This well-travelled person knows that the law is to be avoided; otherwise, it costs money.

The law is written in terms that cannot be understood; if a citizen thinks he understands what it is about, some obscure provision that he could not possibly know about appears out of a dark alleyway and mugs him; I have little doubt that the guilty party is Fred Flintstone; Fred is ably assisted by Wilma, Pebbles and the Rubbles – the ambitious parents want their children to go to Law School. Stone Age mentality combines with eighteenth century language to obscure life in the twenty-first century.

We need resources to reform the Statute Book; this is the constant cry of legislative drafters. Unfortunately, despite public statements calling for regulatory reform, it has to be recognised that resources — in the form of experienced legislative drafters and money — will never be available in the quantities needed. It seems to me that an approach based on the different streams in which law now flows may be a realistic way forward. Constant amendment (whether by direct or referential amendment) serves only two purposes — to convince an official of how smart he (or she) is and to prevent democratic examination of real issues that affect the citizen. Outside the corridors of power neither naval gazing nor obfuscation is a laudable objective.

However, a welcome addition of resources may be awaiting discovery as an unanticipated benefit of the Irish Government's decentralisation programme. A large number of specialist civil servants and older officers in the General Service are unwilling to move when their jobs do so. There are some among this group who could be put to work — whether under the aegis of individual Departments, the Office of Parliamentary Counsel or the Law Reform Commission seems unimportant.

Dr Hunt rightly recognises the central role of the Office of Parliamentary Counsel to the Government in the Irish legislative system; indeed, he dedicates over 100 pages, nearly one third of the book, to the origins and functions of that Office and the individual drafter. However, I am not certain that sufficient attention is paid to either the legislature or wider executive although dealt with in passing. On the legislature, silence seems most appropriate.

The legislation that is passed by the Oireachtas<sup>23</sup> is shaped not only by the Government of the day but, more fundamentally, by the permanent civil service. While I am unaware of any scientific study of civil service attitudes to legislation, it seems to me that there is a widespread fear of legislation and with that fear a determination to minimally interfere with the Statute Book. The result is a fractured vessel with numerous amendment acts, referential amendments and little coherence or structure.

If there is a reform of the Statute Book and it is to be accessible, I suspect that the mentality described above will have to be overcome long before the resource issue is resolved.

One area where I take serious issue with Dr Hunt is in his treatment of statutory instruments as “an adjunct to the Statute Book”; here I declare an interest as I earn my daily bread and an occasional glass of wine drafting secondary legislation. In this short review I would make two points. Firstly, there are some 900 statutory instruments made every year as against 40-45 Acts of the Oireachtas; when one examines the make-up of the Acts and disregards hardy annuals like the Finance Bill, Appropriations Bill and Social Welfare Bill the picture becomes starker. Now, consider that many of the statutory instruments are made to give effect to obligations

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<sup>22</sup> The Luas is Dublin's light rail network.

<sup>23</sup> The Irish Houses of Parliament.

of EC membership. This draws one to the conclusion that the law in so far as it affects the citizen is contained in Regulations made by the executive rather than Acts of the Oireachtas. Secondly, Regulations made under the European Communities Act 1972 are said to have “statutory effect”; effectively they have the same standing as an Act. One may decry this trend (and I share the author’s discomfort) but must recognise the fact.

While lavishly foot-noted and full of informative references, it is an irritant that, in common with many legal texts, there is no bibliography to this book.

I would warmly commend this book to civil servants and anyone who is interested in the Irish statute Book, its evolution, chronic health as of today and revitalisation.

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### **The tribulations of working in the Irish Parliamentary Draftsman’s Office in the 1970s**

The author of this letter, Vincent Grogan, was at the relevant time head of the Statute Law Reform and Consolidation Office in the Irish Office of the Attorney General. The “Establishment Officer” was a, generally, formidable figure who was later transformed into a Personnel Officer or Director of Human Resources. Also, one wonders if the Observer would be the favoured reading material in the throne room today.

26 August 1970

The Establishment Officer  
Department of Lands

I have to draw your attention to the state of the toilets on the ground floor of No. 2 Merrion Square which the male staff in this office shares with your staff.

They are a chronic source of annoyance and embarrassment. Some time ago, they were repainted and two new toilet seats were fitted. Deterioration has set in rapidly. The toilet seats have come adrift from their moorings. This may be an illustration of the plumber’s adage that one cannot put new seats on old bowls, or it could be due to the fact that the equipment was not up to Irish Standard specifications in the first place. The result is unsettling.

The linoleum is old, worn and stained.

If ashtrays were provided one might be spared (assuming they were used) the rather disgusting sight of stubbed cigarette butts and spent matches. Some more effective, and less ugly, device might be provided on the window to obstruct the view of passers-by than the present paint on the glass, which tends to wear away. A Cancer Campaign poster, warning of the dangers of smoking, would serve a dual purpose.

The anteroom is equipped with a liquid soap dispenser. This has been broken and empty for a very long time. In its stead, there was (until yesterday) a piece of greasy soap, which was interesting as an example of early Dublin soap manufactory. (Another square of soap has just arrived: sursum corda.) Under the hand basins there is a permanent exhibition of newspapers. The Observer of 9 August, 1970 is presently on display. Under one of the hand basins a grimy bucket serves to catch some of the leakage (the overflow is soaked up by the newspapers) and as a repository for cigarette butts and matches for which no space can be found on the toilet floor.

In view of the above, it would be over-fastidious to complain that the roller-towel is not replaced with sufficient regularity.

If one found the like conditions in a public house one would not care to drink there a second time.

This office occasionally holds conferences attended by visitors from other countries, as well as judges and

other prominent citizens. In order to accommodate them - and, indeed, myself - I have been obliged to recourse to the Mont Clare Hotel, at the cost of no little expenditure on gin and tonic. Sometimes, as is in the nature of things, such recourse is not practicable, to my great embarrassment as officer in charge of a Government office.

Our clerk-typist is condemned to work in a tiny room under the ladies' toilet. There is an overflow from that room, which I do not feel free to investigate. It results in putting the ceiling light out of action from time to time. This needs remedying as a matter of urgency.

The *Office Premises Act, 1958* (No. 3) applies to the State (section 4). May I direct your attention to section 13 (sanitary conveniences)? Section 2 (facilities for sitting) may also be relevant.

Director

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### Legislative drafting style in the 16th century

The following is an extract from a statute repealing an earlier statute prohibiting the “bringing in of Scots, retaining of them, and marrying with them”. Perhaps the Parliament of the day was indeed prescient in thinking that one day the Scots would overrun their neighbours in England and take over the running of the government there!

*The eleventh, twelfth and thirteenth Years of James I.*

A. D.1612

CHAP. VI.

*An act for Repeale of one Statute made against bringing in of Scots, retaying of them,  
and marrying with them.*

WHEREAS by an act of Parliament, made in the third and fourth years of the reigns of the late King Philip and Queen Mary, entituled, An Act against bringing in of Scots, retaining of them, and marrying with them, it is ordeyned, “That if any person or persons, at any time after the end of that Parliament, do procure the comming of Scots, being men of warr, into this realm or Ireland, or do bring into this realm any Scots being men of warr, or do give any Scot or Scott being within this realm, and men of warr, any wages, bonaghts, soreive, or any other intertainment, or hyre for service in war, that every such offence and offences shall be adjudged high treason, and the offender or offenders therein, their procurers, abbettors and counsaylors, and every of them, being thereof convicted or attainted, according to the lawes and statutes of this realm, shall be deemed and adjudged high traytors, and that if any persor or persons, born within this realm of Ireland, doe, without the licence of the lord deputie of this realm, sealed with the great seal of this realm, contract matrimonie, or marrie with any Scottishman, woman, or maiden, that then every such offence or offences shall be deemed and adjudged felonie, and the offendor or offenders therein, their abbettors, procurers and counsaylors, being thereof convicted and attainted, according to the laws and statutes of this realm shall be deemed and adjudged felons,” as by the said act more at large appeareth. Forasmuch as the cause of the makeing of the said act is utterly taken away by the happy uniting of the kingdoms of England, Scotland and Ireland under one imperiall crown. Be it enacted by the authority of this present Parliament, That the said act against bringing in of Scots, retaining of them, and marrying with them, and all and every branch, clause and article therein contained, be repealed and made utterly voyde and of non effect, to all intents and purposes.

Repeal of stat. 3 and 4 P. & M. 15. against bringing in, retaining of, or marrying with Scots.

The cause of making the same ceasing from the union of the three kingdoms.

## Drafting Shanghai style

The following is an extract from a rather quaintly drafted set of rules governing the use of a park in Shanghai:

### Shanghai Public Parks

#### Rules for Visitors

Pursuant to the 'Regulations of Shanghai Municipality on Administration of Public Park', visitors are advised to observe the following:

1. Parks are accessible to be public during the 'open' hours; admission tickets or relevant identity documents, where desired, are to be presented at entrance; children below 1.2 meters in height, mental patients are admitted only under custody;
2. Ethic and moral codes should be duly honored; visitors are expected not to urinate or shit, post ads or posters, and write or carve around in the park, nor to remove or harm any facility or equipment in the park; exposing one's top, lying about, washing and airing clothes, scavenging or begging from others is unallowable; climbing artificial hills, or playing or swimming in the pond or lake is objectionable; ball games and kite-flying are impermissible (unless in a designated area);
3. Visitors are not supposed to tease, scare, or capture bird, cricket, fish and shrimp, or cicada (except those for commercial purposes); no animal is allowed to enter the Park ....

The rest of the text (as photographed) was not decipherable!

In part, this extract illustrates the difficulty of translating the written Chinese language into English and vice versa, but the drafters of the rules might have at least used a spell check before promulgating them!

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## Some legal oddities

Gary Slapper<sup>24</sup>

A meticulous collector of amusing and curious anecdotes from the world of law, Professor Gary Slapper's Case Notes column has long been a staple of The Times' Law section. The following are a selection of Professor Slapper's collection of legal oddities.

### The world's weirdest cases

- In 2004, Timothy Dumouchel, from Fond du Lac, Wisconsin sued a television company for making his wife fat and transforming his children into "lazy channel surfers". He said: "I believe the reason I smoke and drink every day and my wife is overweight is because we watched the TV everyday for the last four years". The case kept at least two of America's then 1,058,662 lawyers occupied for a while but the case did not go to the Supreme Court.
- In 2005, a Brazilian woman sued her partner for failing to give her orgasms. The 31-year old woman from Jundiai asserted in her case that her 38-year old partner routinely ended sexual intercourse after he reached an orgasm. After a promising start the action ended in something of an anticlimax for the claimant when her case was rejected.

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<sup>24</sup> Professor Gary Slapper is Director of the Centre for Law at The Open University. His new book, *How the Law Works*, is published by HarperCollins

- In 2004, a German lawyer, Dr Juergen Graefe, acted for an elderly pensioner from St Augustin, near Bonn, who was sent a tax demand for €287 million, even though the woman's income was only €17,000. Dr Graefe fixed the problem with one standard letter to the authorities, but as German law entitles him to calculate his fee based on the amount of the reduction he obtained, his fee came to €440,234 (£308,000). It will be met by the state. There is no evidence that he pushed his luck by writing a thank-you letter.

### **The world's strangest laws**

- Did you know it's illegal in France to name a pig Napoleon?

### **Weirdest workplace disputes**

Last week, the Employment Appeal Tribunal celebrated its 30th anniversary. We marked the occasion by trawling the archives and dusting off some of the more colourful UK employment disputes from the past few years.

- In 1972, at Wakefield Crown Court in Yorkshire, Reginald Sedgwick was prosecuted for stealing Cleckheaton railway station. The defendant, a demolition contractor, was alleged to have destroyed the disused stone building and cleared the site of 24 tons of track with dishonest intentions. He admitted the deed, explained that it was done for an untraced third party, and his lawyer demolished the prosecution's case, securing an acquittal.
- In 2005, the Massachusetts Appeals Court was asked to rule on when a sexual technique was dangerous. Early one morning, a man and woman in a long-term relationship were engaged in consensual intercourse. During the passionate event, and, without the man's consent, the woman suddenly manoeuvred herself in a way that caused him to suffer a penile fracture. Emergency surgery was required. The court ruled that while "reckless" sexual conduct may be actionable, "merely negligent" conduct was not. It dismissed the man's case.
- In 2005, Marina Bai, a Russian astrologer, sued NASA for £165 million for "disrupting the balance of the universe". She claimed that the space agency's Deep Impact space probe, which was due to hit a comet later that year to harvest material from the explosion, was a "terrorist act". A Moscow court accepted Russian jurisdiction to hear the claim but it was eventually rejected.
- In 2007, a court in India was asked to decide whether a vibrating condom is a contraceptive or a sex toy. The condoms contain a battery-operated device, and, for the avoidance of doubt, are marketed as "Crescendo". Opponents argue it's a sex toy and thus unlawful in India, whereas the manufacturer says it's a contraceptive and promotional of public health.
- In 2006, a young man from Jiaxing, near Shanghai, found himself in legal trouble after failing to take advice before putting his soul up for sale on an online auction site. The posting was eventually removed by the auctioneer and the seller was told that the advert would be reinstated only if he could produce written permission to sell his soul from "a higher authority".
- In 2004, Frank D'Alessandro, a court official in New York, sued the city for serious injuries that he sustained when a toilet he was sitting on exploded leaving him in a pile of porcelain. He claimed \$5 million compensation. Reflecting on the demanding physical therapy in which he must now engage every morning before work, D'Alessandro declared: "It's a pain in the ass to do all this stuff."
- A Las Vegas law prohibiting strippers from fondling customers during lap dances was ruled by the Nevada Supreme Court in 2006 to be valid. The issue was whether the local law was

unconstitutionally vague and therefore unenforceable. The law states that “no attendant or server shall fondle or caress any patron” with intent to arouse him. Lawyers discussed at length whether grinding (of dancers’ bottoms into men’s laps) amounted to a fondle or caress, and whether the brushing of breast into patrons’ faces was prohibited conduct. The local law was declared valid because the court thought enforcers would be able to know a fondle or caress if they saw one.

- In 1964, the Exchequer Court of Canada was asked to decide whether the expenses of running a “call girl” business in Vancouver were deductible from gross income for the purposes of income tax. The madam and seven call girls were all convicted and imprisoned. And then taxed. Claims for tax deductions in respect of the ordinary parts of the business, such as phone bills, were allowed. Other types of expenses were disallowed because the business couldn’t prove them with receipts, including \$2000 for liquor for local officials and \$1000 paid to “certain men possessed of physical strength and some guile, which they exercised when set to extricate a girl from difficulties”.
- In a notorious case heard by Baron Huddleston in November 1884, Captain Thomas Dudley and Edwin Stephens were prosecuted for the murder of a cabin boy, Richard Parker. When the yacht they were sailing from Southampton to Sydney capsized, they found themselves on a dinghy 1,600 miles from shore. After 20 days adrift, they killed Parker, eating his liver and drinking his blood to survive. They were rescued four days later by a German vessel and were convicted of murder at Exeter Assizes, although their death sentences were later commuted to six months imprisonment without hard labour. Their defence of “necessity” was rejected.
- Cathy McGowan, 26, was overjoyed when a DJ on Radio Buxton told her that she had correctly answered a quiz question and had won the competition prize: a Renault Clio. Ecstasy collapsed into despair, however, when she arrived at the radio station and was presented with a 4-inch model of the car. In 2001, she sued and a judge at Derby County Court ruled that the now defunct station in Derbyshire had entered into a legally binding contract with Miss McGowan and ordered its owners to pay £8,000 for the real vehicle.
- In 2005, Pavel M., a Romanian prisoner serving 20 years for murder, sued God, founding his claim in contract. He argued that his baptism was an agreement between him and God under which, in exchange for value such as prayer, God would keep him out of trouble.
- In May, 2004 in Connecticut, Heather Specyalski was charged with the homicide of Neil Esposito. He was thrown from a car that prosecutors said was being driven by Specyalski when it spun out of control and crashed. The defendant argued that she couldn’t have been driving because she was in the passenger seat performing oral sex on Esposito, whom she alleged was at the wheel. Esposito was found with his trousers down but prosecutors argue this could have been because he was “mooning” or urinating out of the car window while in the passenger seat. The jury acquitted Specyalski of manslaughter, sparing her a possible 25-year prison sentence.
- Sentencing a young woman at the Magistrates’ Court in Port Adelaide, Australia, in 2003, a magistrate said:

“You’re a druggie and you’ll die in the gutter. That’s your choice... I don’t believe in that social worker crap. You abuse your mother and cause her pain. You can choose to be who you are. You can go to work. Seven million of us do it whilst fourteen million like you sit at home watching Days of Our Lives smoking your crack pipes and using needles and I’m sick of you sucking us dry”.
- He then concluded:

“It’s your choice to be a junkie and die in the gutter. People couldn’t give a toss, but you’re going to kill that woman who is your mother, damn you to death.”

He gave the woman a prison sentence, unaware that that was unlawful in the type of case in question. Her appeal was successful.

- In 1874, Francis Evans Cornish, while acting as a magistrate in Winnipeg, Canada, had to try himself on a charge of being drunk in public. He convicted himself and fined himself five dollars with costs. But then he stated for the record: “Francis Evans Cornish, taking into consideration past good behaviour, your fine is remitted”.
  - In 1980, Lord Justice Ormrod, Lord Justice Dunn and Mr Justice Arnold ruled in the UK’s Court of Appeal that a wife from Basingstoke who rationed sex with her husband to once a week was behaving reasonably. Lord Hailsham later revealed that the ruling had provoked some newspapers to try to interview the wives of all the judges in the case.
  - A father from Zhengzhou, in China, was refused legal permission to name his son “@” after the keyboard character. Permission was declined on the legal basis that all names must be capable of being translated into Mandarin.
  - In September, 2004, Judge A K M Patabendige, in Walasmulla, Sri Lanka, jailed a man for a year for yawning in court. N V P Ajith, a defendant in a criminal case, stretched out and yawned in a way that so infuriated the judge, the punishment for contempt was immediate.
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## Disorder in the American Courts

The following exchanges are from a book called *Disorder in the American Courts*, and are utterances that people actually made in court, word for word, taken down and now published by court reporters who had the torment of staying calm while these exchanges were actually taking place:

Attorney: Are you sexually active?  
Witness: No, I just lie there.

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Attorney: What gear were you in at the moment of the impact?  
Witness: Gucci sweats and Reeboks.

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Attorney: This myasthenia gravis, does it affect your memory at all?  
Witness: Yes.  
Attorney: And in what ways does it affect your memory?  
Witness: I forget.

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Attorney: What was the first thing your husband said to you that morning?  
Witness: He said, 'Where am I, Cathy?'  
Attorney: And why did that upset you?  
Witness: My name is Susan!

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Attorney: Do you know if your daughter has ever been involved in voodoo?  
Witness: We both do.  
Attorney: Voodoo?  
Witness: We do.  
Attorney: You do?  
Witness: Yes, voodoo.

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Attorney: Now doctor, isn't it true that when a person dies in his sleep, he doesn't know about it until the next morning?

Witness: Did you actually pass the bar exam?

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Attorney: The youngest son, the twenty-year-old, how old is he?

Witness: Uh, he's twenty-one.

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Attorney: Were you present when your picture was taken?

Witness: Are you taking the mickey out of me?

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Attorney: She had three children, right?

Witness: Yes.

Attorney: How many were boys?

Witness: None.

Attorney: Were there any girls?

Witness: Are you kidding me? — Your Honor, I think I need a different attorney Can I get a new attorney?

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Attorney: How was your first marriage terminated?

Witness: By death.

Attorney: And by whose death was it terminated?

Witness: Now whose death do you suppose terminated it?

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Attorney: Can you describe the individual?

Witness: He was about medium height and had a beard.

Attorney: Was this a male or a female?

Witness: Guess.

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Attorney: Is your appearance here this morning pursuant to a deposition notice which I sent to your attorney?

Witness: No, this is how I dress when I go to work.

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Attorney: Doctor, how many of your autopsies have you performed on dead people?

Witness: All my autopsies are performed on dead people. Would you like to rephrase that?

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Attorney: ALL your responses MUST be oral, OK? What school did you go to?

Witness: Oral.

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Attorney: Do you recall the time that you examined the body?

Witness: The autopsy started around 8:30 p.m.

Attorney: And Mr. Denton was dead at the time?

Witness: No, he was sitting on the table wondering why I was doing an autopsy on him!

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Attorney: Are you qualified to give a urine sample?

Witness: Huh....are you qualified to ask that question?

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And the best for last:

Attorney: Doctor, before you performed the autopsy, did you check for a pulse?

Witness: No.

Attorney: Did you check for blood pressure?

Witness: No.

Attorney: Did you check for breathing?

Witness: No.

Attorney: So, then it is possible that the patient was alive when you began the autopsy?

Witness: No.

Attorney: How can you be so sure, Doctor?

Witness: Because his brain was sitting on my desk in a jar.

Attorney: I see, but could the patient have still been alive, nevertheless?

Witness: Yes, it is possible that he could have been alive and practising law.

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# Commonwealth Association of Legislative Counsel

## MEMBERSHIP APPLICATION FORM

The Secretary, Commonwealth Association of Legislative Counsel,  
Department of Justice, 8/F High Block, Queensway Government Offices, 66 Queensway, Hong Kong.

I, ....., wish to apply to become an individual  
member/associate individual member\* of the Commonwealth Association of Legislative Counsel.

(signed) ..... Applicant

*\*Note: Persons are eligible to become individual members of CALC if they are or have been engaged in legislative drafting or in training persons to engage in legislative drafting and are Commonwealth persons. A “Commonwealth person” is a person who is a citizen or a permanent resident of, or who is domiciled in, a country or territory that is a member of the Commonwealth of Nations. Persons who have been so engaged but who are not Commonwealth persons are eligible to become associate members of CALC.*

Please specify—

- (a) the name and address of your place of employment.....  
.....  
..... Post code .....
- (b) your home address .....  
..... Post code .....
- (c) your office telephone no. § ..... your home telephone no. § .....
- (d) your office fax no. § .....
- (e) your e-mail address(es) .....

I have no objection to having/do not wish to have\* my home address and telephone number being included in the publication list of members. [\*Delete the words that you do not want to apply to you.]

§ Please include your country and area codes.  
Instead of sending the completed form by post, you can send it by fax or e-mail if you wish. The fax no. is +852 2869 1302 and the e-mail address is [duncanberry@doj.gov.hk](mailto:duncanberry@doj.gov.hk) or [dr\\_duncan\\_berry@yahoo.co.uk](mailto:dr_duncan_berry@yahoo.co.uk).