
Newsletter



of the



Commonwealth Association of Legislative Counsel

August 2002

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In this issue—

Secretary's change of address	2
CALC Ties	2
Commonwealth Law Conference—Melbourne, Australia, April 2003	2
Legislative drafting conference in the United States	3
Report on recent Clarity—Statute Law Society joint conference	3
Who are the real drafters!?!	5
Mark Twain on plain language	5
Legislation websites	5
On-line access to NSW legislation	5
News about CALC members	6
The Swedish approach to clear legislation	7
New CALC Members	9
Conference: Drafting to communicate the law: The state of the art	9
Job vacancy	15

Secretary's change of address

I am now back in Hong Kong and will remain there until February 2003. My address is in Hong Kong is Room 832, 8th floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong. My e-mail address there is duncanberry@doj.gov.hk and the fax number is 852 2869 1302. Until further notice, all future communications to the Association should be sent to me at one of those addresses or to Hilary Penfold at the Office of Parliamentary Counsel Locked Bag 30, Kingston, ACT 2604, Australia (e-mail address: hilary.penfold@opc.gov.au)

Duncan Berry (Secretary CALC)

CALC Ties

Two versions of CALC ties are available for purchase. Both versions have the CALC loophole logo in gold on a dark blue background. One version features the letters "CALC" in gold. The other version has no lettering.

I am sorry to say that the ties are not selling well! So if you are a male CALC member and do not have a CALC tie in your wardrobe, how about considering buying one? They cost only £8.00 each (or HK\$90 or AS20) plus the cost of postage. So if you would like to buy a tie, please send your cheque or bank draught to David Morris, Deputy Law Draftsman, Department of Justice, 8/f, High Block, Queensway Government Offices, Hong Kong. David can also be contacted by fax (852 2869 1302) or e-mail (davidmorris@doj.gov.hk).

Commonwealth Law Conference—Melbourne, Australia, April 2003

CALC program (Tuesday 15 April-Thursday 17 April)

<i>Session</i>	<i>Location</i>	<i>Activities</i>	<i>Comments</i>
Tuesday 15 April, 2.00pm-5.00pm		Presentation of papers	
Tuesday 15 April, 7.00pm		Unofficial dinner	One or several restaurants to be identified (depending on CALC numbers), participants choose which (if any) to attend and pay on the night.

Wednesday 16 April, 9.30am- 11.00am	CALC General meeting
Wednesday 16 April, 11.30am- 1.00pm	Panel discussion—operations of drafting offices, including: Recruitment and training Management of workflows IT for drafters
Wednesday 16 April, 1.00pm- 2.30pm	Lunch
Wednesday 16 April, 2.30pm- 5.00pm	Master Class: comparative drafting techniques innovative drafting techniques
Wednesday 16 April, evening	Commonwealth Law Conference Gala Dinner
Thursday 17 April, 9.30am- 12.30pm	Panel discussion—Structure and organisation of legislation, including: use of Schedules location of definitions long and short titles

Legislative drafting conference in the United States

The US House of Representatives Office of Legislative Counsel had planned to hold a legislative drafting conference in Washington in November. However, the House Deputy Chief Legislative Counsel, Doug Bellis has informed me that the conference has had to be called off because of lack of “seed money”.

Report on recent Clarity—Statute Law Society joint conference

On 12-14 July 2002, Clarity (an international plain language organisation) and the Statute Law Society held a joint conference in Cambridge, England. This was the first joint conference between these organisations, and it drew 90 participants from 17 countries.

The conference theme was “The Language of Legislation” a subject central to the interests of both organisations. The objective was to examine the style and purpose of legislation from a

number of different perspectives, with the ultimate aim of “improving” legislation for its different users.

The conference ran for a day and a half, over five sessions. The first session concentrated on the purposes of legislation. At this session, the Rt. Hon Lord Justice Mummery, of the Court of Appeal of England and Wales, spoke about “purpose” from a judge’s perspective. Ms Emma Wagner, Head of Department, Translation Service of the European Commission, gave a perspective from the European Commission.

The second session considered legislation from the user’s perspective. In this session, Edward Nugee QC, a leading Chancery practitioner, gave a barrister’s perspective. Martin Cutts, Head of the Plain Language Commission, spoke from the perspective of an expert in the use of plain legal language.

Session three was entitled “Producing Legislation: Lessons from Experience”. In this session, Peter Knowles CB, Parliamentary Counsel in the English Parliamentary Counsel Office, spoke from his background as an experienced parliamentary drafter. Lady Beryl Mustill spoke from her background as head of a large governmental body charged with reforming the law and practice of the financial services industry.

Session four dealt with “Effective Drafting Techniques”. In this session, two experienced legislative drafters considered modern legislative drafting styles. Kieran Mooney, Chief Parliamentary Counsel of the Office of the Attorney-General, Ireland, discussed parliamentary drafting techniques in Ireland and surveyed plain language developments in a number of countries, particularly those who had made their drafting manuals available through the Internet. David Elliott, a Canadian lawyer specialising in drafting, spoke of the importance of plain language in legislation and techniques for achieving it.

At the end of the first full day of the conference, the Hon Mr Justice Michael Kirby gave an entertaining and illuminating after-dinner speech, “Statutes and Contracts: Towards a Grand Theory of Interpretation”.

The fifth session, running from 9.30 to 1 p.m. on the second day of the session, was a master class in legislative drafting. In it, five drafting specialists spoke about their approach to drafting, and drew on their expertise to redraft selected clauses “on the run”. The five “masters” were Sir Edward Caldwell (First Parliamentary Counsel in the English Parliamentary Counsel Office), Mark Adler (solicitor and former Chairperson of Clarity), Professor Joseph Kimble (Thomas M Cooley School of Law, Michigan), Christopher Balmford (solicitor and head of Words and Beyond, Sydney), and Philip Knight (Clarity Journal Editor and plain language consultant, Vancouver). With its informal and interactive approach, many delegates regarded it as the highlight of the conference.

It is expected that several of the key papers delivered at the conference will be published in the journals of the Statute Law Society and Clarity, namely the *Statute Law Review* and *Clarity*. Mr Justice Kirby's address will also be published.

As was hoped, the conference provided an excellent opportunity for the delegates to meet with like minds from the two societies, in the inspiring ambience of Peterhouse, Cambridge University's oldest college.

Peter Butt

Who are the real drafters!?

A question put at a recent seminar held in Hong Kong was: "Which organisation drafts Hong Kong's legislation?" The participant's answer was "The Legislative Council". The participant was a law student!

Mark Twain on plain language

Around 1870, Mark Twain sent the following message to a schoolboy:

"I notice that you use plain, simple language, short words and brief sentences. This is the way to write English—it is the modern way and the best way. Stick to it; don't let fluff and flowers and verbosity creep in."

Legislation websites

One of our members, Ian Gray, has asked whether I could include details that provide the co-ordinates for websites that contain the official versions of statutes for member countries. I use the World Law website (www.worldlii.org) more than any other one and it has links to all common law jurisdictions including the US. It also allows you to search multiple legislation databases at the same time. What more does one need?

On-line access to NSW legislation (www.legislation.nsw.gov.au)Features

This is an authoritative, up-to-date, new source site for NSW legislation developed by the Parliamentary Counsel's Office. The website contains a dynamic, up-to-date collection of NSW Acts and subordinate legislation, including environmental planning instruments, and provides status information and advanced searching facilities. Historical and repealed versions of legislation are retained on the site for those seeking to establish the law as it was at a certain

point in time. A second major feature of the website is an archival collection of NSW legislation as it was originally made. This contains over 6,000 instruments including Acts and items of subordinate legislation going back to 1990 and is added to on a progressive basis as new legislation is made.

What's on the site?

On the launch date, 27 June 2002, the website will contain all NSW Acts and some subordinate legislation (the balance of the subordinate legislation will be added over the next 3 months). The site will be further developed over the next two years and feedback and suggestions from users are encouraged. Training seminars for specialist user groups on how to use the site will be available from the staff of the Parliamentary Counsel's Office throughout the next 3 months.

Bills and legislative information publications

Bills introduced into Parliament will continue to be available on the Parliament House website www.parliament.nsw.gov.au. Information guides about legislation, including the Weekly Bulletin e-mail service, will continue to be available from the Parliamentary Counsel's Office corporate website www.pco.nsw.gov.au

Contacts for further information

For further information about the website, training seminars or data supply, please contact the Parliamentary Counsel's Office on 61 2 9228 7139 or e-mail parliamentary.counsel@pco.nsw.gov.au

News about CALC members

Congratulations to Edward Caldwell who received a knighthood earlier this year. Sir Edward is of course the First Parliamentary Counsel at the English Office of Parliamentary Counsel and was secretary of CALC from 1993 to 1999.

Congratulations also to George Tanner, who was recently appointed as a Queen's Counsel. As most members will know, George is the Chief Parliamentary Counsel in the New Zealand Parliamentary Counsel Office and is currently a member of the CALC Council.

One of newest members, Edward Bacon (known to all as 'Laney') recently reached a major milestone when earlier this month he completed 50 years legislative drafting service in the Irish Office of Parliamentary Counsel. Laney, who was formerly the Chief Parliamentary Draftsman, now works in that Office in a consultancy capacity. Does any one know of any legislative drafter who has longer service?

Berk Maddaford and Jamie Scott recently retired from the Law Drafting Division of the Hong Kong Department of Justice. Berk has now returned to his native British Columbia, but Jamie, who is the Asian representative on the International Rugby Board, is planning to divide his time between Hong Kong and New Zealand.

Claire Reilly retired from the British Columbia Legislative Counsel Office at the end of 2001 and is now working as a consultant in the Irish Office of Parliamentary Counsel. Other noteworthy moves are those of Peter Barrett, formerly of the New South Wales Parliamentary Counsel's Office, and Mark Spakowski, formerly of the Nunavut Legislative Counsel Office in Canada. Both are now engaged in drafting legislation for the Kenyan Government. John Wilson, a regular contributor to CALC's journal, the *Loophole*, has just rejoined the Law Drafting Division of the Hong Kong Department of Justice after legislative drafting stints in Tuvalu, Fiji and Granada.

The Swedish approach to clear legislation¹

A modern Swedish Act – how is it drafted?

A modern Swedish Act is normally divided into chapters, with chapter headings and informative sub-headings. The very first article of the Act contains a survey of the contents of the whole Act. Sometimes, the following chapters start with a summary of their contents, according to the principle "from the general to the specific".

The structure of an Act depends on how it is used and by whom. As Swedish legislation is divided into three different groups (Acts, Ordinances and Regulations), the most detailed provisions are usually contained in subordinate legislation. Swedish drafters normally abide by the following principles:

- Each article should have no more than three paragraphs.
- Each paragraph should complete a certain line of reasoning.
- The paragraphs should also be clearly connected logically and linguistically.

If it is necessary to make cross-references to a provision, these should be formulated in such a way that the reader gets a fair picture of what the provision is about. Informative headings are sometimes phrased in the form of a question, as in the following example:

How much rent must the tenant pay?

Drafters use a normal sentence structure, with the subject, verb and object of a sentence being placed as near to each other as possible. The word order used is the same as in ordinary Swedish. Lists are often used, such as when various conditions are enumerated in a paragraph

¹ This note is an edited extract taken from "The Swedish Government promotes clear drafting" produced by the Ministry of Justice in Stockholm.

or an article. Drafters will only use the passive voice is when the agent is unknown or unimportant. They do use archaic or misleading words or phrases. The “ Black List” and other guidelines help drafters to find the exact equivalents of archaic expressions.

The Swedish approach—modernising and simplifying the language

The Swedish way is to start at the very top – to modernise and simplify the language used in legislation. It all started more than 30 years ago, when a Cabinet Minister began to vet prospective legislation. Although the Minister’s actual task was to make the final draft revision from a legal and constitutional point of view of all Bills before they were submitted to the Swedish Parliament, he also began to deal with linguistic matters. The idea was that if legislation were to be written in clear language, it would have an impact on the language used in all administrative documents written at non-senior levels of government.

Ever since then, the main source of initiative for plain language in legislation has been the Cabinet Office. The Director-General for Legal Affairs of the Cabinet Office is responsible for ensuring “high quality in the legislation and the administration” and for ensuring that “the language in Acts and other decisions is as clear and simple as possible”.² Since 1976, a team of linguists and lawyers fulfils this task. This team comprises the Division for Legal and Linguistic Draft Revision at the Swedish Ministry of Justice. The Division has a key role in the legislative drafting in the ministries and no Government Bill, Ordinance or Committee terms of Reference can be sent for printing without the Division’s approval.

In carrying out the final revision, the Division checks the quality of the texts. However, revision alone does not guarantee lucid laws that are easy to read and understand. Because at the final revision stage, the linguists can only deal with actual linguistic problems or errors, the Division has also developed other methods. These include—

- offering training sessions for legal drafters,
- writing handbooks, guidelines and articles on clear writing,
- giving advice by telephone or e-mail, and
- taking part in the work of law commissions that are appointed by the Swedish Government to redraft legislation.

With such preventive work, the Division is able to develop and carry out new strategies for making laws and other important texts more readable. These strategies include using a more user-orientated structure and more informative headings.

New models for decisions, Bills and reports

As writing is governed by tradition, the linguists have also focused on altering inefficient writing habits and text structures. In recent years, they have developed new text models concerning for

² Ordinance concerning the Duties of the Government Office, 26§.

example the explanatory part of the Bills, Government Commission Reports and Government Administrative Decisions.

Instead of telling the story in chronological order, which is the traditional outline of most governmental texts, the drafters now have to focus on the result (the proposal or the decision) made by the Government or the Commission. They then have to argue for that result in a way that gives the readers a clear picture of what they have to decide or act upon. Summaries and informative headings are used to guide the readers through the text.

The development of new text models has had an effect on the drafting internally and the use of these models is now gradually spreading outside of the ministries. It is obvious that if the Government sets a good example, others will follow. Last year, for instance, Parliament carried out a new model for the reports produced by the parliamentary committees, following these principles.

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 500 mark. For the first time, we now have members from Bangladesh, South Africa and Gibraltar. Also for the first time we have a member from Mozambique, which became a member of the Commonwealth only within the past decade and several parliamentary counsel from the Irish Office of Parliamentary Counsel to the Government have also joined the Association as associate members.

[The list of new members including personal information about them has been omitted for privacy reasons.]

Canadian Institute for the Administration of Justice
Institut Canadien d'Administration de la Justice

CONFERENCE

DRAFTING TO COMMUNICATE THE LAW: THE STATE OF THE ART

Parliament Buildings, Ottawa, Canada—12 and 13 September 2002

A WRITING TOOLS EXHIBITORS' SHOWCASE is featured in collaboration with
Ms. Nicole Fernbach, Jurilinguist, President, Juricom, Montreal

PROGRAM

THURSDAY, SEPTEMBER 12

8:30 a.m. **REGISTRATION**

9:00 a.m. **WELCOME AND CONFERENCE OPENING**

Conference Co-Chairs

Peter J. Pagano, QC, Chief Legislative Counsel of Alberta, Alberta Justice, and CIAJ Legal Drafting
Committee Chair, Edmonton

and

Richard Tremblay, Co-ordinator, Legislative Development and Training Group, Government
Legislation Branch, Quebec Department of Justice, Quebec City

9:15 a.m. **The Impact of the Internet on Communication**

*A review of the legal theory, social theory and trends in Internet use and the use of electronic
publications.*

Introduction

Philippe Hallée, Senior Counsel, Legislative Services Branch, Department of Justice Canada,
Ottawa

Speakers

Christian Vandendorpe, Director, Writing Centre, University of Ottawa, Ottawa

David Howes, Professor, Department of Sociology and Anthropology, Concordia University,
Montreal

Question Period

10:30 a.m. **BREAK**

11:00 a.m. **The Needs of the Legislator**

Introduction

Rob Walsh, Law Clerk and Parliamentary Counsel, House of Commons, Ottawa

Speaker

The Hon. Peter Milliken, MP, Speaker of the House of Commons, Ottawa

12:00 p.m. **LUNCH BREAK**

1:15 p.m.

The Impact of Electronic Law

Are the audiences for legislation changing as a result of the electronic publication of the law? Are their needs changing? Is the way in which they access or use statutes changing?

Introduction

Donald L. Revell, Chief Legislative Counsel of Ontario, Ministry of the Attorney General of Ontario, Toronto

Speaker

Teresa Scassa, Associate Dean, Faculty of Law, and Associate Director, Law and Technology Institute, Dalhousie University, Halifax

Question Period

2:00 p.m.

Things that might happen, could happen, should happen

Is it really THE END for the paper publication of legislation? Systems design as a drafting issue; Ontario's e-law project – issues and experiences; other legal and technical issues, e.g. official status of electronic publications. Matters of structure, formalism, controlled language, precision vs. generalisation will be examined. Alternative bill formats.

Panel Chair

Janet Erasmus, Legislative Counsel, Ministry of the Attorney General of British Columbia, Victoria

Panel

BILLS - Style and Substance: The Australian Approach **Nick Horn**, Principal Assistant Parliamentary Counsel, Australian Capital Territory, Canberra

Changing How Drafters Draft - The Impact of Electronic Systems on Document Creation (with references to the impact of systems such as ENACT)

Marilyn Leitman, Legislative Counsel, Attorney's General Office of Ontario, Toronto

LIMS Project

Rémi Massé, Legislation Access Manager, Legislative Services Branch, Department of Justice Canada, Ottawa

3:00 p.m.

BREAK

3:15 p.m.

Statutory Interpretation: Embryonic Trends with Intriguing Implications

Electronic access to law permits approaches to statutory interpretation that hint at a radical evolution in the area of law. This session will explore some of the possibilities and some implications for theories of law generally.

Introduction

Laura Hopkins, Legislative Counsel, Ministry of the Attorney General of Ontario and Adjunct

Professor, Faculty of Law, University of Toronto, Toronto

Speaker

Ruth Sullivan, Professor, Faculty of Law (Common Law section), University of Ottawa, Ottawa

4:00 p.m.

Formalism and Access to Laws: Drafting Quality Legislation

The origins of formalistic drafting, its manifestations and its effects. Is the Canadian legal context receptive to legislative drafting that avoids formalistic approaches? Some paths for the clear and effective communication of legislative messages.

Introduction

Philippe Hallée, Senior Counsel, Legislative Services Branch, Department of Justice Canada, Ottawa

Speaker

Richard Tremblay, co-ordinator, Legislative Development and Training Group, Government Legislation Branch, Department of Justice, Quebec City

Question Period

5:15 p.m.

RECEPTION in *HALL OF HONOUR*
PARLIAMENT BUILDINGS (CENTRE BLOCK)

FRIDAY, SEPTEMBER 13

9:00 a.m.

The Impact of Globalisation on National Autonomy, in General, and on Drafting, in Particular

Introduction:

Mark Audcent, Law Clerk and Parliamentary Counsel, Senate of Canada, Ottawa

Speaker:

Daniel Turp, Professor, Faculty of Law, Université de Montréal, Montreal

9:45 a.m.

BREAK

10:00 a.m.

The Role of a Drafting Office in a Changing Environment

Is the role of the drafting office changing? - guarding the statute book; Are the responsibilities of the drafting office to its clients changing? Will members of the drafting team need different skills? Additional skills? Professional Development Issues; What are we

trying to achieve with centralised drafting? Does it still make sense to think of the Statute Book as a coherent, unified body of text with a consistent style and uniformity of expression.

Introduction

John Mark Keyes, Director, Legislative Policy & Development, Department of Justice
Canada, Ottawa

Panel:

Katharine MacCormick, Chief Legislative Counsel of Canada, Ottawa

Donald Revell, Chief Legislative Counsel of Ontario, Toronto

Judith Keating, Chief Legislative Counsel of New Brunswick, Fredericton, Legal and
Legislative Affairs, Government of Québec, Quebec City

12:00 p.m.

LUNCH BREAK

1:30 p.m.

The Australian Approach in the New Drafting Environment

How is Australia implementing improvements to drafting practices? Is it a top-down approach with the head of the drafting unit giving and telling others what to do or do we follow a collegial model of policies arrived at by consensus? How do we recruit and train drafters and those who work with them? What kind of people are we looking for? Where do we look for them? What are the challenges here? What are some good practices? What do editors, translators, instructing officials, departmental legal counsel, ministerial staff and parliamentarians do and how does it affect the end product?

Introduction

Nick Horn, Principal Assistant Parliamentary Counsel, Australian Capital Territory,
Canberra

Speaker

Hilary Penfold, First Parliamentary Counsel for the Commonwealth of Australia

2:30 p.m.

Responses to Australia's Model

Panel

Response from the US

Willoughby Sheane Jr., retired drafter, House of Representatives, US Congress,
Washington, D.C.

Response from Canada

Peter Pagano, QC, Chief Legislative Counsel of Alberta, Edmonton

3:30 p.m.

Questions & Answers

4:00 p.m.

CONFERENCE ADJOURNMENT

REGISTRATION FORM

Drafting to Communicate the Law: The State of the Art

12 and 13 September 2002, Parliament Buildings, Ottawa

TO REGISTER, please complete and return this form together with your cheque to: Canadian Institute for the Administration of Justice, Faculty of Law, University of Montreal, PO Box 6128, Station "Centre Ville", 3101 Chemin de la tour, Room 3430, Montreal, Quebec, H3C 3J7

(Tel.: 1-514 343-6157 Fax: 1-514 343-6296, e-mail: ciaj@ciaj-icaj.ca URL: <http://www.ciaj-icaj.ca>)

Surname: _____ First Name: _____

Title to appear on name tag _____

Address: _____

Postal Code: _____ E-Mail _____

Telephone: _____ Fax: _____

I am fluent in English ____ in French ____ in both ____

(Simultaneous translation is provided throughout the conference.)

Registration fee: C\$540 (Thursday's reception, plus conference materials included)

Payment by cheque, Visa or MasterCard

Acct No. _____ Exp. Date _____

Signature _____

ACCOMMODATION: A block of rooms has been reserved at The Suites Hotel, 130 Bessemer Street, Ottawa, ON, K1N, 9M9 [Tel. 1 - 800 - 267-1989 or (613) 232-2000, Fax (613) 232-1242, (www.les-suites.com)] at \$149 single or double occupancy (taxes not included) for one-bedroom suites.

CANCELLATION FEE: Requests for refunds must be submitted in writing to CIAJ. A handling fee of \$50 will be withheld on any cancellation.

Job vacancy

Deputy Parliamentary Counsel—Department of the Chief Minister, Office of the Parliamentary Counsel, Darwin

The Office of the Parliamentary Counsel is responsible for providing high level of legislative drafting services to the Northern Territory Government and to local government bodies in the Northern Territory. The Office is also responsible for consolidating and publishing Northern Territory legislation in both hard copy and electronic form.

The Position

The Deputy Parliamentary Counsel provides high level legislative drafting services and assists the Parliamentary Counsel to manage the Office. The Deputy Parliamentary Counsel has the following key responsibilities:

- To draft independently legislation with a high degree of complexity, urgency or sensitivity.
- To supervise and train junior parliamentary counsel.
- To oversee the reprinting of legislation and the maintenance of legislation databases.

Eligibility

The successful applicant must be admitted or qualified for admission as a legal practitioner of the High Court of Australia or the Supreme Court of a State or Territory of the Commonwealth of Australia.

Terms of appointment

An executive contract for up to 4 years may be offered. An attractive remuneration package will be negotiated based on experience and proven ability.

Enquiries

Enquiries may be directed to Mrs Gale Jamieson, Parliamentary Counsel, by telephoning (08) 8999 7409. A copy of the job description and selection criteria may be obtained by telephoning 1300 659 247 or by web site www.nt.gov.au

Quote Vacancy Number: 5125:

Closing Date

30 August 2002