

Newsletter



of the



Commonwealth Association of Legislative Counsel

February 2009

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Editor: Duncan Berry, 1 Cheapside Street, Rathmines, New South Wales, Australia 2283.

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Message from the President

The term of office of the current members of the CALC Council ends on 2 April 2009 at the general meeting to be held in Hong Kong. Members are, however, eligible for re-election. I would like to take this opportunity to thank Council members for the contribution they have made to the workings of the Council. We have kept in regular email contact with each other since our last physical meeting held in Nairobi in September 2007, discussing many issues relevant to the objects of CALC. Mention should be made of one of those. Recently we resolved to put a motion to the general meeting in Hong Kong to change the basis on which Council members are elected. Details of the motion are contained in this Newsletter. It is the view of the CALC Council that the change to regional representation will better ensure that “the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth” as mandated by clause 9(3) of the CALC Constitution.

I wish to make special mention of the tireless work carried out on behalf of CALC by our Secretary Duncan Berry. In this term of office Duncan has been responsible for publishing 4 Loopholes and 2 Newsletters, a great achievement.

And so onto Hong Kong! I do hope that as many CALC members as possible can attend our 2009 conference. A great learning and cultural experience awaits you with lots of opportunities for growing your network of drafting colleagues and friends.

Eamonn Moran
President

February 2009

Next CALC General Meeting

The next ordinary general meeting of CALC will be held at the 8th floor, Arsenal House, Police Headquarters, 1 Arsenal Street, Wanchai, Hong Kong on Thursday 2 April 2009 at 4.45 p.m. The agenda for the meeting is as follows:

1. Opening
 2. Apologies
 3. Receipt of proxies
 4. Minutes of previous general meeting
 5. Matters arising from minutes
-

6. Secretary's report
 7. Treasurer's report
 8. Motion to amend the CALC Constitution
 9. Election of officers and other members of the CALC Council
 10. General business
 11. Next general meeting
-

Proposed amendments to the CALC Constitution

At the CALC general meeting to held on 2 April 2009, the following motion is to be moved in accordance with a resolution passed by the CALC Council:

THAT the CALC Constitution be amended as follows:

- (a) for clause 9, substitute—

“9. Membership of the Council

- (1) The Council is to consist of a President, a Secretary, a Vice-President, a Treasurer and not more than 10 non-executive members.
- (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) So as to ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth 2 non-executive members are to be elected for each of the following regions:
 - (a) Africa;
 - (b) Asia;
 - (c) Australasia and the Pacific;
 - (d) Europe;
 - (e) the Americas.

- (4) The following rules apply to the conduct of an election—
 - (a) if there are more nominations for an office than the number to be elected, a secret ballot must be held;
 - (b) a full member may vote for the following number of candidates on a ballot paper—
 - (i) for an election for President, Secretary, Vice-President or Treasurer, 1 candidate;
 - (ii) for an election for non-executive members for a region, no more than 2 candidates;
 - (c) if only 1 office of the same kind is to be filled in an election, the candidate with the most formal votes is elected;
 - (d) if 2 offices of the same kind are to be filled, the 2 candidates with the most formal votes are elected;
 - (e) if, in order to determine the outcome of an election, it becomes necessary to resolve a tie, the person presiding at the general meeting must decide which candidate is to be elected by drawing lots.
- (5) The Council may make rules about the conduct of an election that are not inconsistent with subclause (4).
- (6) Members of the Council elected in accordance with this clause hold office until the next ordinary general meeting of CALC and are eligible for re-election.
- (7) 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.
- (8) 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.
- (9) A person ceases to be a member of the Council if the person ceases to be a member of CALC.”;

(b) After clause 12(3)(c) insert—

“(ca) amend, revoke or replace rules made under clause 9(5); and”.

Proxy form for use at the next CALC General Meeting

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

GENERAL MEETING

TO BE HELD AT THE HONG KONG POLICE HEADQUARTERS, WANCHAI,
HONG KONG AT 4.45 PM ON THURSDAY 2 APRIL 2009

APPOINTMENT OF PROXY TO VOTE ON MOTIONS PUT TO THE MEETING

CALC Newsletter

I/We, the undersigned full member(s) of the Commonwealth Association of Legislative Counsel (CALC),
appoint

as my/our proxy¹ at the general meeting of members of CALC to be held on 2 April 2009 to vote on any
motion put to the meeting that is to be decided by ballot.

| <i>Name of member</i> | <i>Signature</i> | <i>Date</i> |
|-----------------------|------------------|-------------|
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Please send the completed form by air mail, fax or e-mail to the Secretary of the Commonwealth
Association of Legislative Counsel at one of the following addresses:

Airmail: Secretary, Commonwealth Association of Legislative Counsel, Department of Justice, 8th floor,
Queensway Government Offices, 66 Queensway, Hong Kong.

Fax: Secretary, Commonwealth Association of Legislative Counsel - +852 2869 1302

E-mail: dr_duncan_berry@yahoo.co.uk

OR

Hand the completed form to the Secretary before the start of the meeting

¹ Note: the proxy holder must be a *full* member of CALC.

OR

Hand the completed form to the person presiding within 10 minutes after the meeting has started.

Minutes of the last 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 members who attended the meeting can be found in Appendix 1 to the original minutes. In addition, three guests of members were present.

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, those members who lodged 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 held in London on 9 September 2005 were confirmed. The meeting confirmed the minutes 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.

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.²

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)

² A copy of the consolidated constitution was attached to the original minutes. The consolidated constitution can be found on the CALC website [www.opc.gov.au/CALC]

- Treasurer: Madeleine MacKenzie (UK, Scotland)

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

| | |
|---------------------------------------|--|
| Elizabeth Bakibinga (Uganda) | Mark Currier (Canada) |
| Michelle Daly (Cayman Is) | Enver Daniels (South Africa) |
| Shahidul Haque (Bangladesh) | Lucy Marsh-Smith (Jersey) ³ |
| Jeremiah Nyegenye (Kenya) | Therese Perera (Sri Lanka) |
| Bilika Simimba (Cayman Is) | George Tanner (New Zealand) |
| Jeremy Wainwright (Australia/Ireland) | Tony Yen (Hong Kong). |

Since there were only eight vacancies for Council members, an election was held, with each CALC 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 CALC 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).

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

| | |
|---------------------------------------|------------------------------|
| Elizabeth Bakibinga (Uganda) | Enver Daniels (South Africa) |
| Lucy Marsh-Smith (Jersey) | Therese Perera (Sri Lanka) |
| Bilika Simimba (Cayman Is) | George Tanner (New Zealand) |
| Jeremy Wainwright (Australia/Ireland) | 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

³ Now the Isle of Man.

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.

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.

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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 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 worth while 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.⁴ 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 Tony Yen, 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.

⁴ 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.

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

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: | £4.29 | £297.68 | |
| LESS: | Expenditure for that period: | | | |
| | Tie money sent to Hong Kong: | £150.00 | | |
| | Bank draft charge: | £10.00 | £160.00 | £137.68 |
| Closing balance (transferred to Edinburgh account on 17 July 2007): | | | | £389.89 |

HBOS account, Edinburgh

Income: Period from 17 July to 4 September 2007

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| Opening balance transferred from London account: | £389.89 |
| Nairobi conference registration fees: | £10151.00 |
| Net bank interest: | £5.52 |
| TOTAL INCOME: | <u>£10546.41</u> |

Expenditure: Period from 17 July to 4 September 2007

| | |
|------------------------------------|-----------------|
| Fairview Hotel, Nairobi – deposit: | £4856.19 |
| Balance as at 4 September 2007: | <u>£5690.22</u> |

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.

CALC conference programme, Hong Kong, 1—5 April 2009: Theme: *Whose Law Is It?*

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| Day 1 - Wednesday 1 April 2009 |
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| Time | Session/Topic | Speaker/Chairperson |
|-------------|---|--|
| 1.30 – 2.00 | Registration | |
| 2.15 – 2.30 | Opening Remarks: Eamonn Moran QC PSM, President, CALC | |
| 2.30 – 3.15 | Session 1—Plain Language and Bilingual Legislation | <p>Speaker: Tony Yen SBS Former Law Draftsman Hong Kong</p> <p>Chairperson: Lionel Levert QC Consultant Legislative Counsel Canada</p> |
| 3.15 – 3.45 | Session 2—A Jurilinguistic Perspective on Whose Law It Is | <p>Speaker: Lise Poirier Jurilinguist, Ottawa, Canada</p> <p>Chairperson: Lionel Levert QC</p> |
| 3.45 – 4.15 | Afternoon tea break | |
| 4.15 – 5.00 | Session 3—The Language of Law | <p>Speaker: Professor Vijay Bhatia City University of Hong Kong</p> <p>Chairperson: Colin Wilson First Scottish Parliamentary Counsel</p> |

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| 5.00 – 5.45 | Session 4—Legalese and Plain Language | <p>Speaker: Mark Adler Former President of Clarity United Kingdom</p> <p>Chairperson: Colin Wilson</p> |
| 6.30 – 8.30 | Cocktail Reception | |
| Day 2 – Thursday 2 April 2009 | | |
| Time | Session/Topic | Speaker/Chairperson |
| 9.00 – 9.30 | Session 5—The Difficulties of Teaching Legislation to Students | <p>Speaker: Professor John Burrows Commissioner New Zealand Law Commission</p> <p>Chairperson: George Tanner Former Chief Parliamentary Counsel New Zealand</p> |
| 9.30 – 10.15 | <p>Session 6—Consistency v Innovation: How Much Guidance Do Drafters Need?</p> | <p>Speaker: Stephen Laws CB First Parliamentary Counsel United Kingdom</p> <p>Chairperson: George Tanner</p> |
| 10.15 – 10.45 | Morning tea break | |
| 10.45 – 1.30 | Session 7—Professional Obligations of Legislative Counsel | <p>Speaker: John Mark Keyes Chief Legislative Counsel, Canada</p> |

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| | | Chairperson: Peter Quiggin PSM |
| 11.30 –12.00 | Session 8—Legislative Drafting, Sri Lanka Style | Speaker: Therese Perera Legal Draftsman, Sri Lanka Chairperson: Peter Quiggin PSM |
| 12.00 –12.45 | Session 9—The Long March from Drafting Office to Publishing Office | Speakers: Don Colagiuri SC & Michael Rubacki Parliamentary Counsel’s Office New South Wales, Australia Chairperson: Peter Quiggin PSM |
| 12.45 – 2.15 | Lunch | |
| 2.15 – 2.45 | Session 10—Accessibility through LENZ: Opportunity for the public to shape the law as it is made | Speaker: Melanie Bromley Parliamentary Counsel Office New Zealand Chairperson: Stephen Laws CB |
| 2.45 – 3.30 | Session 11—Access to Legislation: The Drafter’s Role | Speaker: Daniel Greenberg Office of Parliamentary Counsel United Kingdom Chairperson: Stephen Laws CB |
| 3.30 – 4.15 | Session 12—Purpose clauses: Why they are good for both users and drafters | Speaker: Dr. Duncan Berry Consultant Legislative Counsel Australia Chairperson: Stephen Laws CB |
| 4.15 – 4.45 | Afternoon tea break | |
| 4.45 | CALC General Meeting | |

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| * Evening optional tours: A tour of Victoria Peak or a cruise of Victoria Harbour | | |
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| Day 3 – Friday 3 April 2009 | | |
| Time | Session/Topic | Speaker/Chairperson |
| 9.00 – 10.00 | Session 13—Legislative Drafting: A Judicial Perspective | Speaker: The Hon. Mr. Justice Bokhary Court of Final Appeal, Hong Kong Chairperson: David Noble Chief Parliamentary Counsel New Zealand |
| 10.00 – 10.45 | Session 14—Comparative Analysis of Statutory Adjudication Provisions: A User’s Perspective | Speaker: N.A.N. Ameer Ali University of Auckland, New Zealand Chairperson: David Noble |
| 10.45 – 11.15 | Morning tea break | |
| 11.15 – 12.00 | Session 15—Legislative Drafting: A Lawmaker’s Perspective | Speaker: Dr. Hon. Margaret Ng Member of the Hong Kong Legislative Council Chairperson: Eamonn Moran QC PSM |
| 12.00 – 1.00 | Session 16—Scrutiny of Drafting by the Legislature | Speakers: Jimmy Ma JP Legal Adviser, Hong Kong Legislative Council Stephen Argument Office of Legislative Drafting and Publishing Canberra, Australia |

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| | | Chairperson: Eamonn Moran QC PSM |
| 1.00 – 2.30 | Lunch (Including at 1.40 – 2.00 a talk ‘Full Circle: Whose Law Is It Really?’ by John Wilson, Consultant Legislative Counsel) | |
| 2.30 – 3.00 | Session 17—Keepers of the Statute Book: Lessons from the space-time continuum | Speaker: Janet Erasmus Chief Legislative Counsel British Columbia, Canada Chairperson: John Mark Keys |
| 3.00 – 3.30 | Session 18—Legislative Drafting Using Coherent Principles | Speaker: Daniel Lovric Senior Assistant Parliamentary Counsel Canberra, Australia Chairperson: John Mark Keys |
| 3:30 – 4.00 | Session 19—Legislative drafting without legislative counsel: a trend? | Speaker: Laura Hopkins Senior Counsel Ministry of the Attorney General Ontario, Canada Chairperson: John Mark Keys |
| 4.00 – 4.30 | Afternoon tea break | |
| 4.30 – 5.00 | Session 20—Consultation on Legislation | Speaker: Peter Quiggin PSM First Parliamentary Counsel Commonwealth of Australia Chairperson: Don Colagiuri SC Parliamentary Counsel New South Wales, Australia |
| 5.00 – 5.15 | Session 21—Open Forum | Chairperson: Don Colagiuri SC |
| 5.15 – 5.30 | Closing Remarks: Eamonn Moran QC PSM, Law Draftsman, Hong Kong | |

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| 7.30 – 9.30 | Conference Dinner |
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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 close to the 1,000 mark. For the first time, we now have members from Guyana, Gambia, St Helena and the Falkland Islands.

The following is a list of those who have become members of CALC since April 2008.

Full Members

| <i>Name</i> | <i>Country or territory</i> | <i>Location</i> |
|--------------------------------|-----------------------------|--|
| Abdulliahi Zuru | Fiji Islands | |
| Adam Bushby | Australia [Victoria] | Office of the Chief Parliamentary Counsel Level 2, 1 Macarthur Street Melbourne 3002 |
| Agnes Naakwale Quartey-Papafio | Ghana | Ministry of Justice and Attorney General's Office PO Box MB60, Ministries, Accra |
| Alicia Elias | Guyana | 15-16 America St, Newtown, Georgetown |
| Alison John | Australia (Commonwealth) | Office of Parliamentary Counsel 39 Brisbane Avenue, Barton ACT 2600 |
| Angela Theodoropoulos, | Australia (Commonwealth) | Office of Parliamentary Counsel Locked Bag 30 Kingston ACT 2604 |

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| <i>Name</i> | <i>Country or territory</i> | <i>Location</i> |
|-----------------------------|---|---|
| Anwaar Hussain | Pakistan | Office No. 509 Al-hafeez Shopping Mall, Main Boulevard Gulberg III, Lahore, 54700 |
| Ben Callinan | Australia [Victoria] | Office of the Chief Parliamentary Counsel Level 2, 1 Macarthur Street Melbourne 3001 |
| Bianca Kimber | Australia [Australian Capital Territory] | ACT Parliamentary Counsel Office GPO Box 158, Canberra City 2601 |
| Brahm Avtar Agrawal (Dr) | India (Central Govt) | Legislative Dept, Ministry of Law and Justice 4th Floor, A' Wing, Shastri Bhavan Dr Rajendra Prasad Rd, New Delhi 110 011 |
| Carol Bathis | Australia [New South Wales] | Parliamentary Counsel's Office GPO Box 4191 Sydney 2001 |
| Catherine Oh | Canada [Ontario] | Office of Legislative Counsel Suite 3600, Whitney Block, 99 Wellesley St West, Toronto ON M7A 1A2 |
| Cherno Marenah | Gambia | Department of State for Justice Banjul |
| Chipo Nduna | Namibia | Ministry of Justice Private Bag 13302, Windhoek 9000 |
| Claire Bendzulla | Australia [Tasmania] | Office of the Parliamentary Counsel GPO Box 1409 Hobart Tas 7001 |
| Clare James | Australia [Australian Capital Territory] | ACT Parliamentary Counsel Office GPO Box 158 Canberra City ACT 2601 |
| Daniel Lovric | Australia (Commonwealth) | Office of Parliamentary Counsel Locked Bag 30 Kingston ACT 2604 |

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| <i>Name</i> | <i>Country or territory</i> | <i>Location</i> |
|-----------------|---|---|
| David Noble | New Zealand | Parliamentary Counsel Office PO Box 18070, Wellington |
| Eleanor Furniss | United Kingdom [England] | Office of the Parliamentary Counsel 36 Whitehall, London SW1A 2AY |
| Elizabeth Grant | New Zealand | Parliamentary Counsel Office PO Box 18070, Wellington |
| Felicity Owoses | Namibia | Ministry of Justice Private Bag 13302 Windhoek, Namibia 9000 |
| Fiona Baker | Australia [New South Wales] ⁵ | Office of the Parliamentary Counsel Government Buildings, Upper Merrion St, Dublin2 |
| Francis Wastell | St. Helena | Legal and Lands Department Essex House, Main Street Jamestown STHL 122 |
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⁵ Currently living and working in Ireland.

CALC Newsletter

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| Mary Mandville | Canada (Newfoundland and Labrador) | Office of the Legislative Counsel Department of Justice PO Box 8700, St John's, NL A1B 4J6 |
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| Olufemi Folarin | Nigeria (Federal) | National Assembly (Legal Service Department) PMB 141, Abuja |
| Patricia Pledge | Canada (Federal) | Department of Justice (Legislative Services Branch Advisory and Development Services Section) 275 Sparks Street, Ottawa Ontario K1A 0H8 |
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| Zafar Gondal | Afghanistan | IDLO Programme Office (Programme Legal Counsel) Kilula Poshta Rd, First Road on the Left, Chara-e-Ansari, Kabul |

Secretary's change of address

Once again, I am on the move. I have now left Hong Kong. However, you can continue to contact me at dr_duncan_berry@yahoo.co.uk or at duncan_e_berry@yahoo.com.au. All future communications to the Association should be sent to me at one of those addresses or to the CALC President, Eamonn Moran, at the Department of Justice, 8th floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong (e-mail address: eamonnmoran@doj.gov.hk)

Duncan Berry (Secretary CALC)

CALC Ties

A fresh batch of CALC ties was recently acquired. Four versions of these ties are available. Two of the versions have the CALC loophole logo in gold on a dark blue background (no lettering). Of those versions, one is made from silk the other is made from terylene. The other two versions feature the letters “CALC” in gold. As with the unlettered version, one of the lettered versions is in silk, the other is in terylene.

If you would like to buy a tie, please send your cheque or bank draught to Eamonn Moran, Law Draftsman, Department of Justice, 8/F, High Block, Queensway Government Offices, Hong Kong. Eamonn can also be contacted by fax (852 2869 1302) or e-mail eamonnmoran@doj.gov.hk. The ties will of course be on sale at ‘CALC 2009’ in April.

The price for a terylene tie is HK\$90 (or GBP8.00) and for a silk tie HK\$150 (or GBP13.00), plus postage.

News about CALC members

Dennis Morris—Legal draftsman extraordinaire

I first met Dennis Morris when I returned to work in the Law Drafting Division of the Hong Kong Legal Department in 1995. He had an immediate impact on me! As both Kieran Mooney and James Collins (below) make clear, Dennis had an opinion (almost invariably controversial) about anything and everything. His views on any issue were usually diametrically opposed to mine. This usually led to heated debate, but despite this we became good friends to the extent that we kept in touch right up until his death.

The stories about Dennis are legion, but I do not want to steal Kieran and James’s thunder, so I will leave it to them to regale you with some of them. Suffice to say that he was the only Catholic Unionist⁶ I have ever encountered!

But before I do that, I should like to say a few words about Dennis’s contributions to the legal literature outside legislative drafting. Apart from drafting laws, Dennis’s writing was both prodigious and prolific. He wrote extensively both for CALC’s journal, *The Loophole*, and for the Statute Law Review.

Among his many contributions to *The Loophole* was an article on Henry VIII clauses, which if my recollection is correct is probably the longest article ever published in *The Loophole*. His original manuscript for that article was almost twice as long as the published work! Although Dennis was a man

⁶ I.e. the union between Great Britain and Ireland.

of considerable scholarship, he could not resist tilting at his proverbial windmills en route, including his pet hate, the European Common Market. As these digressions were not relevant to the main point of his thesis, as editor I had no choice but to jettison them. By such pruning I and my editorial assistants were able to get his articles down to a reasonable (and hopefully digestible) length!

Among his contributions to the Statute Law Review were: Interpreting the Hong Kong Bill of Rights (a magnum opus comprising four parts); Establishing Statutory Corporations: Mere Scissors and Paste?; *Multilingualism and legislation: dominance or equality?*; *'Resident': a cautionary tale (and) a draftsman scorned?*; *A Tax By Any Other Name*; *Some Thoughts on Money Bills and Other Taxing Measures*; *Section 38 of the Police (Northern Ireland) Act 2000 as it Applies to Beliefs and Traditions: Will it Do?*; *Multilingualism and legislation: dominance or equality?*; and *The Human Rights Act 1998: too many loose ends?* And his literary efforts did not stop there; Dennis was also a frequent contributor to the letter pages of the [London] *Times*, where he loved to pontificate on the controversial political issues of the day.

Dennis was also a keen student of the French language. In Hong Kong, he joined the Alliance Francaise and it was there at the mature age of 59 that he met his wife, Maria, who was a French language teacher at the institute.

Dennis was of one life's delightful eccentrics. Whatever you might say about Dennis, he was never boring! He was also, despite⁷ his relatively diminutive stature, extremely pugnacious. A few years ago, two muggers (far larger than Dennis) demanded his wallet while he was travelling on the Paris Metro. True to character, Dennis not only refused to give it to them but resisted them when they assaulted him. The men took the wallet anyway, leaving poor Dennis with several broken ribs for which he had to be treated in hospital.

I for one regret his passing: I do not expect to meet his like again ... He was unique.

Editor

Dennis Morris: An Irish and Kingstown memory⁸

When I entered the Irish Parliamentary Draftsman's Office⁹ in 1981, I was aware that it was then retaining the services of a number of retired drafters, some of whom were quite venerable in age. A person I took to be the doyen of this group was a man of moderate stature, hunched shoulders and a band of scraggy grey hair running backwards from ear to ear topped by perfect baldness. He exuded a belonging to a different era preferring to examine legal texts with his magnifying glass rather than use glasses. His

⁷ Some might have said "because of"!

⁸ By Kieran Mooney First Parliamentary Counsel, Office of the Parliamentary Counsel to the Government of Ireland.

⁹ Now called the Office of the Parliamentary Counsel to the Government.

comments on contemporary happenings were invariably time-warped to opinions more appropriate to a more distant era. However, I was quite wrong as to who or what he was. This was no former high office old retainer (his relative agility on his feet should have given that away to me) but it was Dennis Morris an Assistant Parliamentary Draftsman – the second highest position in the then named Parliamentary Draftsman’s Office. He was one of a very small handful of drafters responsible for the provision of entire legislative drafting services to the Irish State in the late 1960’s and throughout the 1970s.

Then only in his very early 50s when I first met him, Dennis had the ability to affect and exude the aura of a dumpy old man without being either old or plump. As I got to know him better, I realised that he affected that aura because he enjoyed it. It was as if his quick mind compensated for the drafter’s drudgery and often dull monotone complexity of the written legal word by the use of his verbal skills. He loved to poke fun at and shake sacred shibboleths but always from the perspective of a man from a bygone era. He would invariably refer to the harbour just south of Dublin as Kingstown (so named because King George IV landed there in 1821) rather than by its original name (re-instated in 1921 just before independence) of Dun Laoghaire (the Fort of Laoire). The train line from Dublin City to Dun Laoghaire (now the DART line – the Dublin Area Rapid Transit Line) he called “the Kingstown Railway Line” (its original 1834 name). He had ample opportunity to refer to it in the Office as he daily travelled on it to the Office from his home in Booterstown. But Dennis’s use of “Kingstown” was no monarchist sentiment. He expressed sceptical views of authority whether secular or religious, historical or contemporary. In that sense one might be forgiven for regarding him as a verbal anarchist rooted in times past, not necessarily because he believed in what it was not politic to say but because he enjoyed seeing how others reacted to his saying it. But he had the ability to laugh at himself (or rather silently chuckle as his eyes would let you know) when some preposterous phrase or utterance of his was trounced or deflated by a colleague. On those rare occasions when a colleague did verbally better Dennis, it seemed to act like a stimulant to recharge his eccentricity. And for that upstaging, the colleague’s stock would, in hindsight, appear to go up in the estimation of Dennis and never ended up as a grudge. In truth such colleagues were, perhaps unknowingly, pushing Dennis’s active mind to strive to even better things for his next batch of eccentric remarks. His ad lib comments were invariably mischievous but never said with malicious intent. In short, one was always entertained but never bored when in his company.

His drafting style, like that of many if not most legislative drafters, had its roots in past precedents. But it is true to say that Dennis’s style was far more rooted in the past than that of most of his contemporaries. He would have taken exception if I said otherwise. While legal soundness would be paramount for Dennis no matter how complex the result was, clarity was not uppermost in his mind. On one occasion in a Bill I suggested defining “the Minister” (the definite article was used in such cases in those days). “It’s defined in the Principal Act with which the Bill is to be construed together as one” was his retort. “But Dennis, the Minister’s title has been altered several times by Government Orders since the Principal Act was passed” I said, adding “and surely it would assist the reader to define the Minister by the present title”. “It’s the responsibility” replied Dennis “of the reader to check up for all alteration of titles orders. It’s not our job to hold his hand”.

Dennis was a man of independent means, not least courtesy of the estates of aunts long departed this life, as Dennis himself would admit. He bitterly resented ending up with, in his words “two months gross salary a year after paying all taxes”. Such was the financial state of Ireland in the early 1980s. The introduction of a residential property tax was the last straw for him. He decided to sell up and leave Ireland. He took an active part in redrafting the house contents catalogue prepared by his auctioneer. He had many choice antiques which sold well on the day of the sale but took the greatest pleasure in the relatively modest amount he achieved for a metal sundial. It had years before been stuck in an old stone pillar and placed in his immaculately kept garden. Dennis had waxed eloquently in the catalogue, but not misleadingly, about the sundial and its base. “These two well-heeled women” Dennis chuckled with glee when he reported back to the Office after the auction “just could not stop bidding against each other until they pushed the price to an outrageous level”. He knew the value of his drafting.

After Dennis went to the then Colony of Hong Kong he could not resist the temptation in addressing his first letter from there to me “Ireland, British Isles”. This was totally, and knowingly, a politically incorrect reference by him (as the holder of an Irish Passport) to the Irish State. I am sure he had a little silent chuckle when I ambiguously addressed my envelope back to the “Crown Colony of Hong Kong, Kowloon, and the leased territories, Peoples Republic of China”.

When I heard of his death, and it fell to me to email his former colleagues in the Dublin Office, I wrote:

“Those who knew him will remember his unique sense of wit and humour including always playing the role of an older man from another generation (mischievously always referring to Dun Laoghaire as Kingstown). Sadly that role has now caught up with him.”

Dennis’s presence was our gain and his passing is our loss.

As the Irish saying goes “Ní fheicimid a leithéid ann arís” (we will not see his like again).

Memories of Dennis Morris¹⁰

I came to know Dennis Morris at a fairly late stage in both our professional careers, although he was my senior in years by a decade, and very much my senior in both knowledge and wisdom. He had recently forsaken his native Ireland and punitive taxation and become a legislative draftsman (Dennis would never have countenanced the contemporary preference for ‘drafter’!) in the Hong Kong of the closing years of British rule; I, a refugee from academia, had lately joined the then Attorney General’s Chambers to do advisory work which fell, in due course, mainly in the constitutional field. My work brought me into close and daily contact with the law drafting team, amongst them Dennis. It was for me a stroke of the greatest intellectual good fortune for which I shall ever be grateful.

¹⁰ By James Collins, a Hong Kong Barrister and a former Deputy Principal Crown Counsel, Hong Kong Legal Department.

Despite a diminutive and positively unathletic physique, Dennis never failed to dominate any company in which he found himself, at least if it was composed of minds which were the least receptive to his quixotic tilts at the many windmills of the modern world which excited his critical contempt. His weapons were words, of which he was truly a master. Ireland is, of course, renowned for gifts of the tongue, but his native talent excelled even among the legion of the excellent. He often remarked of himself that he was a 'wordsmith and not a mere scrivener'. It was a self-description, delivered it is true, with a twinkle of conscious conceit, which was nevertheless wholly justified. There could have been no other career but law drafting for a man of his verbal talents supported by a mind of quite exceptional acuity.

If Dennis could be accused of exhibiting an affectation it was his conscious commitment to appearing 'old-fashioned'. Unlike most affectations, this was, however, no more than an endearing eccentricity: policemen were for him always 'peelers' and the government of his homeland was still in the grip of 'Fenians'. His conservatism was of the very bluest hue, and he would frequently refer reverentially, and regretfully, to the 'Blessed Margaret' whose reign in 'No. 10' had recently ended.

But the pretence of archaicism was no more than that. In fact, Dennis was as attuned to the contemporary world as any one could be, though the world of King Henry VIII and his anti-papist machinations was as alive and consequential to him as the events of yesterday, as was, of course, the history of his native Ireland and its severance from the Union. But his idiosyncratic perspectives of current affairs, and the solutions he offered to its problems, were invariably unconventional and sometimes even tending to the bizarre. His contempt for politicians was unbounded, as was his treatment of manifestations of the contemporary fad for political correctness.

The modern tyranny, as he regarded it, of the 'Common Market' was a particular target for Dennis's polemical utterances. After his retirement to Portugal, these utterances, with characteristic length and discursiveness, frequently filled the pages of his letters and e-mails to his old drafting cronies. They never failed to raise a chuckle and a knowing nod when read out at our Friday-evening gatherings in the Legal Department mess in Hong Kong when absent friends are remembered and current legal gossip is recounted over a glass or three of wine.

Essentially, Dennis Morris was a romantic. Indeed, romance of one kind entered his life late in the day, when he met Maria. Dennis, keen to enhance his French language skills, joined the Alliance Francaise (French language institute), soon after arriving in Hong Kong. Maria was a teacher at the institute. As Christmas approached, the institute decided to hold a Christmas party and so asked for contributors. As both Dennis and Maria were accomplished pianists, they were invited to play a duet together. They clicked and, as the saying goes, the rest was history! Their life thereafter was a duet of the purest harmony which ended only with her death just a year before his own after a prolonged and tragic illness through which he nursed her with unfailing devotion. But if ever Dennis had his master¹¹ it was Maria!

My abiding memory of Dennis will be of elevenses in the mess when he would hold forth on some current topic of controversy in the Department or the world in general. The prospect of this feast of outrageous

¹¹ Not his 'Mistress'? [Ed.]

opinions made it a diurnal event to be anticipated eagerly, rendering indifferent coffee tolerable. His provocative barbs were always delivered with a glint of mischief and humour in the eye which invited – and consummately enjoyed – a robust response.

For Dennis was never truly malicious, though he could sometimes be uncompromising, even in social situations. He was too full of an impish sense of fun to be hurtful. However, it is related by an ear witness that on one occasion when a colleague who was not high in his esteem bade him a cheerful ‘good morning’ in the lift up to the office, Dennis, in a sombre contemplative mood, made no reply. The colleague, charitably thinking Dennis was perhaps troubled by deafness, repeated the greeting rather more audibly, only to receive the sharp retort: “I heard you the first time”! After which he resumed his silence and was not disturbed again.

Dennis was a unique personality. Much of what he was had its roots in his quintessential Irishness. But his make-up was much more complex than that, full of contradictions and surprises. His adherence to fundamental legal principles in the execution of legislation was a strict and religious observance; his enthusiasm for drafting total and enduring, following him long into retirement. He was the very antithesis of a departmental apparatchik or time-server.

Dennis will be sorely missed by those who knew him and had the privilege, though sometimes also the vexation, of working with him. We who did, salute his memory with admiration and gratitude!

Dennis Morris: born in Dublin, Ireland 1930; died in Cascais, Portugal, 2008

Sydney Horton (Yukon, Canada)

Sydney Brunswick Horton of Whitehorse, Yukon, Canada, passed away in August 2008. Sydney had retired from the Yukon Government's Department of Justice in June of 2007 after 30 years of service as legal counsel. He had been instrumental in the establishment of the Yukon's Legislative Counsel Office of the Legal Branch and served as its chief for many years.

His contributions to the administration of justice in the Yukon were vast not only in his role as legislative counsel in which he drafted countless pieces of legislation dealing with all areas of government activity but also in his role as legal advisor to the Yukon Government over his three decades of service. There are few public servants who witnessed and contributed to the evolution and development of the institutions of the Yukon Government as Sydney did over the years. He also played a key role in mentoring many lawyers in the Department of Justice throughout his career.

In his private life, Sydney had a wide variety of interests including music, classical guitar, languages (learning to speak Spanish and Mandarin), and cross country skiing. His approach to life and work were influenced by his readings of western and eastern philosophies and he lived his life with a level of thoughtful grace and depth. He is sadly missed by family, friends and colleagues.

Happenings at the Office of the Scottish Parliamentary Counsel

Edinburgh – Canberra exchange

The Office of the Scottish Parliamentary Counsel, which was established in Edinburgh following devolution in 1999, is currently experiencing its first-ever drafter exchange. Toni Walsh, of the Australian Commonwealth Office of Parliamentary Counsel, is spending the first half of 2009 working in Edinburgh, while Willie Ferrie is working in the Australian Commonwealth OPC.

It will be no surprise to CALC readers to learn that Toni and Willie have discovered that drafting skills are eminently portable. Each has already found the exchange a valuable learning experience. Differences in drafting style, in use of technology and even in the degree of standardisation between the two offices have led to insights for both. Toni and Willie are so far very much enjoying the experience of working in another jurisdiction.

Weather-wise, the contrast could hardly be greater. Toni has seen Edinburgh's fourth snowfall of the year; and Willie has had to drive the short distance to work each day as he is (as yet) unaccustomed to the 40C heat.

Alex Gordon put on a Burns Supper for Toni and her family. A member of the Irish Office of Parliamentary Counsel, Michael Murphy, who happened to be in Edinburgh that weekend also attended the supper. Former First Scottish Parliamentary Counsel, John McCluskie, was there to give the Address to the Haggis. As might be expected, John was in excellent form. He's spending most of his time walking his dogs and cutting logs but he is also doing some legislative drafting work for the Scottish Parliament.



Toni Walsh making a snowman outside the Scottish OPC in Edinburgh!

Happenings at the Office of Welsh Legislative Counsel

The Office of Welsh Legislative Counsel in Cardiff was established in 2007 to deliver the legislative programme of the Welsh Assembly Government. It is responsible for the drafting of all government

sponsored Measures and Legislative Competence Orders, the orders in council which confer powers upon the National Assembly for Wales to legislate.

There are currently four drafters working in the Office - Professor Thomas Glyn Watkin (First Welsh Legislative Counsel), Huw Davies (Senior Welsh Legislative Counsel) and two other legislative counsel - Ed Mitchell and Nia Evans. They are assisted in their work by Nigel Rendell from the Office of the Parliamentary Counsel in London and supported by Sara Dodd, PA to First Counsel.

All of the Measures they produce are drafted bilingually. The Office is supported in their bilingual work by the Legislation Translation Unit, headed by Dr. Richard Crowe, which unit also helps produce the bilingual subordinate legislation made by the Welsh Ministers. While the drafters themselves perform the legal equivalence checks between the two languages for Measures, for SIs this is done by a dedicated Legal Text Editor, working within the Legislation Management Unit, to which post Gruff Lewis has recently been appointed in succession to Siwan Daniel, who has moved on to become a trainee solicitor in Legal Services.

As part of its remit in producing bilingual legislation, the Office is scoping the possibility of developing a postgraduate qualification in legal translation, which study is being funded by the Centre for Welsh-Medium Higher Education. Alexandra Edwards has recently joined the office as the Project Officer for this work, which is expected to be completed by the summer of 2009.

New Chief Legislative Counsel in British Columbia



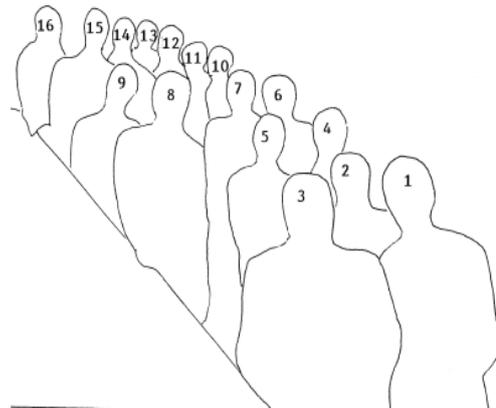
Congratulations to CALC Vice President, Janet Erasmus, on her recent promotion to Chief Legislative Counsel for British Columbia. She replaces Brian Greer who has stepped down after giving sterling service in that position for almost 20 years.

Janet is passionate about the application of plain language writing principles to legislation and to government communications generally, writing and presenting on the topic as the opportunity arises. Before becoming a lawyer, Janet's life was varied. After a first degree in English and Biology, Janet spent the next 12 years working in a number of diverse occupations including park naturalist, drilling jade, high school teaching, professional dancing and oceanographic chemistry technician. One wonders how on earth she found time to study law!

In addition to her legislative drafting role, Janet has served on the Board of Governors for the University of Victoria and acted as general counsel for the British Columbia Chief Electoral Officer. Outside the BC Legislative Counsel Office, Janet enjoys teaching folkdance, ornithology, and supporting her son's water polo and of course making a more than useful contribution to the workings of CALC.

Retirement of prominent Australian Parliamentary Counsel

Greg Calcutt retired as Parliamentary Counsel in Western Australia on 9 January 2009. Following a stint in the army, Greg started as a legal officer in the Parliamentary Draftsman's Office on 2 February 1971. He was appointed Deputy Parliamentary Counsel in 1985 and Parliamentary Counsel in 1989. In the course of his 38 years in the office Greg was involved with many items of controversial legislation including the Aboriginal Land Bill 1985, the One Vote One Value Bill 1995 and the Acts Amendment (Abortion) Bill 1998. As Parliamentary Counsel he also made an immense contribution to the work of the Australasian Parliamentary Counsel's Committee, a fact recognised at the retirement dinner held by the Committee in his honour in Sydney on 30 October 2008. As can be seen from the photograph below, many past and current members of that Committee were in attendance. Greg was made a Member of the Order of Australia in January 2003 and appointed Senior Counsel in Western Australia in November 2004.



Greg Calcutt's retirement dinner:

1. Greg Calcutt
2. Gemma Varley (Chief Parliamentary Counsel, Victoria)
3. Don Colagiuri (Parliamentary Counsel, New South Wales)
4. Peter Drew (Parliamentary Counsel, Queensland)

5. Rowena Armstrong (former Chief Parliamentary Counsel, Victoria)
6. Eamonn Moran (CALC President and Hong Kong Law Draftsman)
7. George Tanner (CALC Council Member and former Chief Parliamentary Counsel, New Zealand)
8. Garth Thornton (former Parliamentary Counsel, Western Australia)
9. Hilary Penfold (former CALC President and Former First Parliamentary Counsel, Australian Commonwealth)
10. John Clifford (Parliamentary Counsel, Australian Capital Territory)
11. Walter Iles (former CALC President and former Chief Parliamentary Counsel, New Zealand)
12. Peter Quiggin (First Parliamentary Counsel, Australian Commonwealth)
13. Dennis Murphy (former CALC President and former Parliamentary Counsel, New South Wales)
14. James Graham (Office of Legislative Drafting and Publishing, Australian Commonwealth)
15. Peter Conway (Chief Parliamentary Counsel, Tasmania)
16. Dawn Ray (Parliamentary Counsel, Northern Territory)



Geoff Hackett-Jones retired as Parliamentary Counsel of the Northern Territory of Australia in August 2008, having retired a few years earlier as Parliamentary Counsel of South Australia, a position to which he was appointed in 1978. Geoff thus spent 30 years as head of a drafting office and as a member of the Australasian Parliamentary Counsel's Committee. At a retirement dinner held in his honour by that Committee in Sydney on 25 August 2008, Don Colagiuri SC (NSW Parliamentary Counsel and Secretary to the Committee) referred to Geoff's "passion for clarity, elegance and uncompromising logic" in drafting and to the immense legacy that he has left in the Australian statute book. Don

recalled some of the phrases Geoff was fond of using in commenting on drafts such as sheer gobbledegook, hopelessly overcomplicated, absurd truism, wearisome catalogue and "the policy is up the creek". In proposing a toast he described Geoff as "a prince among drafters". Geoff excels not only in the drafting field but in the musical field with the oboe.

New Parliamentary Counsel in Australia's Northern Territory

Congratulations also to Dawn Ray, who has succeeded Geoff Hackett-Jones as Parliamentary Counsel of the Northern Territory. Dawn, a long-time CALC member, was formerly a senior parliamentary counsel in the Office of Queensland Parliamentary Counsel.

Role of United Kingdom Counsel in relation to policy-making¹²

In the context of the different strengths of the United Kingdom Office of the Parliamentary Counsel¹³ and departmental teams, questions sometimes arise about the role of parliamentary counsel in policy-making. It is important for departments to understand what is likely to be the default position of the OPC team. It will be one of cautious detachment. It may be possible, however, in the case of a particular project for something different to be worked out between the OPC team and the departmental team where that seems appropriate.

Even in their normal default role, parliamentary counsel will often be able to make a significant contribution to policy-making. Their professional expertise and experience can help them to identify and test the consistency and coherence of different policy options, to analyse proposed legislative structures and to identify factual permutations, avoidance possibilities and technical solutions for particular problems. Their insight into the parliamentary process and into the practice of the courts when interpreting and applying legislation may also be of value in this process. So they may be able to draw attention to a proposal that is likely to attract particular difficulties either in Parliament or the courts.

One way in which parliamentary counsel can sometimes help departments is by pointing out that innovative or direct legal solutions about which a department might otherwise have felt inhibitions are permissible and draftable after all. This is why it is often helpful to involve parliamentary counsel in a project early on, and why instructions should explain the reasoning behind a decision to reject an apparently attractive or obvious solution.

Departments need to establish an understanding with parliamentary counsel that enables both Counsel and the department to know the contribution to policy-making which the department expect from Counsel and would like. Parliamentary counsel and the department then need to respect the agreed parameters.

Where a greater than usual contribution to policy-making is sought from parliamentary counsel, there needs to be a clear understanding that enables the department to know in what capacity points are being

¹² The text of this item was produced in the UK Office of Parliamentary Counsel and is reproduced here with the approval of that Office.

¹³ The 'OPC'.

made at different times, that is when parliamentary counsel are giving authoritative advice and when they are merely adding a perspective as a fellow team member.

So, for example, where a parliamentary counsel identifies an uncatered for permutation in the instructions, that should not be taken as necessarily constituting policy advice that the permutation must be dealt with. It is likely to be no more than advice, given in the parliamentary counsel's "challenge" role, that the permutation needs to be thought about in the context that will result from the Bill.

So, whether to make provision for a permutation identified by parliamentary counsel is a question of policy. It will depend on the circumstances whether parliamentary counsel can contribute any experience or expertise to making that decision, and whether a contribution is wanted by the department. Parliamentary counsel may want to point out the impact of dealing with the permutation on the simplicity of the legislative scheme. But that is unlikely to be determinative. The decision may also depend on matters of which parliamentary counsel has no knowledge eg an assessment of risk based on a knowledge of practice on the ground. Assessing the risk and how to deal with it is an area where it will be appropriate for the departmental team to deploy their particular strengths.

The principle is that parliamentary counsel will attempt, so far as possible, to help the department wherever counsel's specialist perspective or obligation to the integrity of the statute book is relevant. Parliamentary counsel will be careful not to arrogate policy-making functions to themselves, particularly in areas outside the area of their specialism. Parliamentary counsel may be willing to go further than this; but they will not wish to accept an invitation to participate in policy-making where its acceptance would put at risk their ability to discharge their primary function of securing the robustness of the policy by the provision of independent challenge. The value of such challenge is a significant part of the justification for involving parliamentary counsel in the process. Where parliamentary counsel feel the need to hold back on these grounds, they will explain their reasons to the department.

Parliamentary counsel's expertise is obviously likely to be more useful to policy-making where the policy is directed primarily at a legal outcome, rather than at a practical one. Clearly, all Bills are supposed to produce legal outcomes; but in the case of some they merely provide the framework for facilitating the implementation of policy by practical means, while, for others, the legal outcomes are the main point of the exercise.

Even where purely legal outcomes are sought, it is still comparatively rare for drafting considerations to dictate a particular policy solution. Where a decision has to be made about the correct balance in policy making between comprehensiveness and simplicity, that is likely to involve an element of policy judgement, as well as drafting. Most solutions are draftable, even if the result in some cases may be presentationally unacceptable. So a drafter is rarely going to be able to answer the question "Which policy is easier to draft?" in a way that will facilitate the policy-making process.

Departments are sometimes uncertain about whether elements of the detail of the policy are for them or for parliamentary counsel to determine eg on the form of enforcement or of parliamentary control for SIs. However matters of technical detail of this sort which involve a choice are all ultimately matters of policy

for the department. Parliamentary counsel will certainly be able and willing to contribute to the decision on the detail by identifying both the options and some or all of the factors that the department will wish to take into account in choosing between them; but it is for the department and their Ministers to make the decision about what is wanted.

All these considerations mean that parliamentary counsel are likely to doubt the legitimacy of straying beyond the challenge role without an express invitation, and are likely to feel more comfortable and more useful when confining themselves to that role. On the other hand, departments should feel able to ask parliamentary counsel for whatever help they need.

Finally and importantly, parliamentary counsel will always accept a responsibility to contribute what they can to the solution of the problems they themselves have identified.

Some more very odd laws¹⁴

In the last CALC Newsletter, I included a compendium of some very strange bits of legislation. Here for your amusement are a few more:

- Under the United Kingdom Tax Avoidance Schemes Regulations 2006, it is illegal not to tell tax inspectors anything you don't want them to know (though you don't have to tell them anything you don't mind them knowing)!
- A British naval ship that enters the Port of London must provide a barrel of rum to the Constable of the Tower of London.
- In the United Kingdom, a pregnant woman can legally relieve herself anywhere she wants. And if she so requests, she can even do this in a constable's helmet.
- In the United Kingdom, a man who feels compelled to urinate in public can do so only if he aims for his rear wheel and keeps his right hand on his vehicle.
- In Lancashire, England, a person who is asked to stop by a constable on the seashore is prohibited from inciting a dog to bark. In England, every male over the age of 14 years of age must carry out two hours of longbow practice a day.
- In London, a Freeman is permitted to take a flock of sheep across London Bridge without being charged a toll. A Freeman can also drive geese down Cheapside (an ancient London street).
- In the English city of York, it is legal to murder a Scotsman within the ancient city walls, but only if he is carrying a bow and arrow.

¹⁴ This compilation is drawn from one compiled by Professor Gary Slapper, a regular contributor to the *Times Law Supplement*. Professor Gary Slapper is Director of the Centre for Law at The Open University.

- In London, it is illegal for a person who has the plague to flag down a taxi. It is also illegal for a cab in the City of London to carry rabid dogs or corpses.
 - The head of any dead whale found on the British coast is legally the property of the King; the tail, on the other hand, belongs to the Queen. Apparently this is in case she needs the whalebones for a corset!
 - It is illegal for a person to die in the British Houses of Parliament.
 - In the United Kingdom, it is an act of treason to place a postage stamp bearing the British monarch upside down.
 - A Welshman is prohibited from entering the English city of Chester before sunrise and from staying after sunset.
 - In Alabama, USA, it is illegal for a driver to be blindfolded while driving a vehicle.
 - In Ohio, USA, it is illegal for a person to get a fish drunk.
 - In Miami, Florida, USA, it is illegal to skateboard in a police station.
 - Also in Florida, an unmarried woman can be sent to prison for parachuting on a Sunday.
 - In Kentucky, USA, it is illegal for a person to carry a concealed weapon that is more than 6 feet long.
 - In Colorado, USA, it is illegal to kill a bird within the city limits of Boulder; it is also illegal to “own” a pet, because, legally speaking, the city’s citizens are merely “pet minders”.
 - In Vermont, USA, a woman must obtain written permission from her husband to wear false teeth.
 - In Indonesia, the penalty for masturbation is decapitation.¹⁵
 - In Bahrain, a male doctor may legally examine a woman’s genitals but is forbidden from looking directly at them during the examination; he may only see their reflection in a mirror.
 - In San Salvador, a drunk driver can be sentenced to death by a firing squad.
 - In France, naming a pig Napoleon is illegal.
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¹⁵ I have not checked to ascertain whether this is limited to males!

United Kingdom Office of the Parliamentary Counsel recommendations and policies on legislative drafting matters¹⁶

Introduction

This paper summarises recommendations made by the United Kingdom Office of Parliamentary Counsel ('OPC') Drafting Techniques Group. It also contains material that reflects policies and other agreed approaches adopted by the OPC as to legislative drafting matters. The recommendations and policies set out below are intended to apply to all Bills drafted by the OPC. But it is recognised that there will be times when parliamentary counsel consider that, in the circumstances of the case, it would be appropriate to depart from a recommended approach.

“Above” and “below”, etc.

“Above” and “below”

This relates to the use of “above” and “below” to indicate that, for example, a section referred to is a section of the Act in which the reference occurs.¹⁷

- Do not use “above” and “below” in this way unless it is appropriate to do so for the purpose of achieving certainty or internal consistency.
- The convention that amendments should follow the style of the Act amended does not need to be followed in connection with the use of “above” and “below”, particularly in the case of substantial insertions of new text.

“to this Act”

This relates to the use of references to Schedule X “to this Act”.¹⁸

- The recommendations relating to the use of “above” and “below” apply equally to the use of “to this Act”.

“of this Act”, “of this section”, “of this Schedule”, etc

¹⁶ This item has been included with the approval of the UK Office of Parliamentary Counsel. It is understood that the OPC is already giving effect to the recommendations and policies set out in this item. It is, however, recognised that there will be times when an individual parliamentary counsel will consider that, in particular case, it is not appropriate to follow one or more of the recommendations. [Ed.]

¹⁷ This practice was never followed in most other Commonwealth jurisdictions, including Australia and New Zealand, [Ed.]

¹⁸ This kind of phrase was dropped from statutes in most Australian States in the 1970s [Ed.]

This relates to the use of “of this Act”, “of this section” and “of this Schedule”, etc. in connection with references to sections, subsections and paragraphs of a Schedule etc.

- As a general rule, use of these expressions should be avoided.
- But they may serve a useful purpose:
 - (a) in contexts where “above” or “below” might otherwise be used (see above): there may be reasons of symmetry or emphasis that mean that, for example, “of this Act” is to be preferred to “above” or “below”;
 - (b) where there is a reference in a Schedule to “this Part” or “Part 2” and both the Schedule and the Act containing it are divided into Parts: it may be desirable to add “of this Act.” or “of this Schedule” to make clear which Part of what is being referred to;
 - (c) where there is a reference to a Chapter of the Part in which the reference occurs and another Part of the Act is also divided into Chapters: it may be desirable to add “of this Part” to the reference in the interests of clarity.

Bodies corporate: plural or singular?

This relates to the issue whether local authorities and other bodies corporate should be treated as plural or singular nouns.¹⁹

- In general a local authority or other body corporate should be treated as a singular noun.
- But when textually amending an Act that uses the plural, it may be necessary to follow suit in order to avoid confusion.

Channel islands, etc

This relates to the agreed formulations to be used in provisions providing for an Act to extend to the Channel Islands or the Isle of Man.

- In the case of a power to extend the Act to the Islands, the agreed formulation is—

“Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.”

¹⁹ Most Commonwealth jurisdictions, including Australia and New Zealand, always used the singular verb in relation to committees, councils, bodies corporate, etc. [Ed.]

- In the more unusual case where the Act is to extend to the Islands but is to be capable of being modified so far as it so extends, the agreed formulation is:

“This Act extends to [the Channel Islands], subject to such modifications as Her Majesty may by Order in Council provide.”

Commencement

Royal Assent commencement

This relates to Acts some or all of whose provisions are to come into force immediately.

- The provisions that are to come into force on Royal Assent should be identified expressly.
- The form of words used to bring such provisions into force should normally be designed to attract section 4(a) of the Interpretation Act 1978. For example: “Sections X and Y come into force *on the day on which this Act is passed*.”
- Very exceptionally the desired policy may involve specifying a particular time at which immediate commencement is to occur.

Postponement for fixed period

This relates to the wording to be used where commencement of an Act, or particular provisions of it, is to be postponed for a fixed period after Royal Assent.

- The recommended standard form of words is.

“[This Act] comes into force at the end of the period of [2 months] beginning with the day on which it is passed.”

Commencement by order

This relates to the wording of provisions allowing commencement by order.

- In general, “appointed day” provisions are to be preferred to provisions for commencement in accordance with provision made by order.
- An “appointed day” provision should take the form of a positive statement along the lines that provisions are to come into force on such day as X may by order appoint (rather than that they do not come into force until such day as X may by order appoint).

Conjunctions between paragraphs

General

This relates to the use of conjunctions at the ends of paragraphs of a subsection, sub-paragraph etc.

- Ensure that it is clear whether the paragraphs are intended to operate cumulatively or instead as alternatives.
- Often it will be sufficient to put the appropriate conjunction at the end of the penultimate paragraph and rely on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction.²⁰
- If that approach would not provide sufficient certainty, consider dispensing with conjunctions and spelling out the intended effect in the words before the paragraphs (e.g. “each of the following” or “either or both of the following”).
- Also consider using this last approach where putting a single conjunction towards the end of a long list of paragraphs might cause difficulties for the reader.
- In contexts where normal English usage would dictate the inclusion of a conjunction in un-paragraphed text, and its inclusion would not disturb the intended meaning, the conjunction should be included.
- There should not be a mixture of conjunctions, i.e. different conjunctions at the ends of different paragraphs in the same provision.
- Definitions should not be separated by conjunctions.
- The practice is not to use conjunctions in lists such as those of specific heads of *vires*.
- See also “or” below.

Repeals and amendments

This relates to the approach to be taken where a paragraph that is being repealed or amended is followed by a conjunction.

- The recommended starting point is that the conjunction does not form part of the paragraph.

²⁰ The practice in many Australian jurisdictions is to insert the relevant conjunction at the end of each paragraph or subparagraph, the reason being that the insertion of the conjunction at the end of each paragraph is thought to be helpful to readers, particularly when there is a large number of paragraphs or subparagraphs. This practice also facilitates amendment. [Ed.]

- The key question in a case where the fate of the conjunction is relevant (e.g. is it being repealed by an entry in a repeal Schedule?) is whether its fate will be clear to the reader.
- In cases where its fate would not otherwise be sufficiently clear, the position should be clarified by adding to the reference to the paragraph being repealed words such as “(together with the “and” following it)” or “(but not the “or” following it)”. (In some cases it may be desirable to insert “immediately” before “following” in order to ensure that the relevant conjunction is clearly identified.)

Dates

This relates to the use of the endings *st*, *rd* and *th* in conjunction with figures for dates.

- These endings should not be used in the body of an Act (Royal Assent dates are inserted by the House of Lords Public Bill Office).²¹
- The different requirements of the style adopted by e.g. the House of Commons will need to be borne in mind when preparing documents to be considered by that House.

Final provisions

This relates to the running order of the final provisions of a Bill, i.e. the provisions of a general nature that appear towards the end of a Bill and deal with, for example, subordinate legislation, financial matters, commencement and extent.

- The running order in the Annex should be used as a starting point when it comes to deciding the running order for the final provisions of a Bill.
- Where there is to be a single clause introducing Schedules containing minor and consequential amendments, transitional provisions and savings, and repeals, the clause should deal with those topics in that order.
- Although the Annex deals with extent, commencement and short title separately, a Bill may be so short that it would be better to deal with all 3 topics in a single clause.
- Any index of abbreviations/defined terms should be contained in the last Schedule of the Bill. .
- If a single cross-heading is used to cover all the final provisions of a general nature, “General” should be used rather than “Supplementary”, for example.

²¹ These endings were dropped from most Australian legislation in the 1970s and 1960s. [Ed.]

Financial provisions

This relates to the drafting of provisions of Bills dealing with effects on public expenditure and to the headings for the clauses in question. It also relates to the drafting of the corresponding provisions of money resolutions.

- It is recommended that the usual provision dealing with such effects should refer to the payment out of money provided by Parliament of—
 - (a) any expenditure incurred under or by virtue of the Act by [the Secretary of State], [a Minister of the Crown], [a person holding office under Her Majesty] [or by a government department], and
 - (b) any increase attributable to the Act in the sums payable under any other Act out of money so provided.
- This wording can then be reflected in the associated money resolution.
- The heading for clauses dealing with effects on public expenditure should be “Financial provisions” whatever the precise nature of those effects.

Gender neutral drafting

The OPC has the following policy as to gender-neutral drafting,²²

- Government Bills are to take a form which achieves gender-neutral drafting so far as it is practicable, at no more than a reasonable cost to brevity or intelligibility. It is recognised that in practice a flexible approach to this change will need to be adopted (for example, in at least some of the cases where existing legislation is being amended): see the statement of the Leader of the House of Commons on 8 March 2007.
- See further “The implementation of a policy of gender-neutral drafting” (paper of 19.6.07 by First Parliamentary Counsel, available on secondary legislation site on LION).

Hereby, etc.

This relates to the use of “hereby” and other “here-” words.

²² The policy first applied to Bills drafted for presentation to Parliament in the Session 2007-08. Gender neutral drafting is, in general, stated United Kingdom Government policy: see the Leader of the House’s Written Ministerial Statement on 8 March 2007, HC Deb. Vol. 457, col. 147WS. Gender neutral drafting policies were adopted in most Australian jurisdictions in the 1980s [Ed.]

- “Hereby” should not be used unless there is a particular reason for concluding that the inclusion of the idea conveyed by “hereby” would or might serve a useful purpose.²³
- Even then, consider using words such as “by this subsection” instead.
- Other “here-” words should not be used.

Laying documents before Parliament

This relates to references to the laying of subordinate legislation and other documents before Parliament.

- Section 1(1) of the *Laying of Documents before Parliament (Interpretation) Act 1948* means that such references are to laying documents before each House of Parliament (unless the contrary intention appears).
- Section 1(1) should normally be relied on whenever it will produce the correct result. But see the suggested wording in connection with affirmative instruments under *statutory instruments* below.

Non-textual modifications

This relates to the wording of non-textual modifications in a way that serves to distinguish them from textual amendments.

- Formulations commonly used for textual amendments should be avoided.
- For example, this should be avoided.

(1) Section 3 applies to fine defaulters as to offenders but with the following modifications.

- (a) in subsection (1) for “offence”, substitute “default”; and
- (b) in subsection (2) for “6 months” substitute “3 months”.

- This wording²⁴ can be used instead:

“(1) Section 3 applies to fine defaulters as to offenders but as if—

- (a) in subsection (1) the reference to an offence were to a default; and
- (b) in subsection (2) the reference to 6 months were to 3 months”.

²³ Most Australian jurisdictions had abandoned the use of such words by the 1990s. [Ed.]

²⁴ This is a modified form of the wording originally recommended.

Numbers

Cardinal numbers

This relates to the use of words or figures for cardinal numbers. What follows amounts to a set of guidelines only: considerations of clarity or style may require different approaches in different circumstances.

- Figures should normally be used for all numbers above ten.²⁵
- Figures should also normally be used for numbers up to and including ten that relate to sums of money, times or periods of time, ages, dates, units of measurement or in quasi-mathematical contexts.
- In other contexts, numbers up to and including ten should either be spelt out or be expressed as figures depending on what seems more natural or appropriate in the contexts concerned.
- But a number that begins a sentence should normally be spelt out.
- And mixing words and figures referring, in a single context, to things of the same kind should be avoided.

Ordinal numbers

This relates to the use of words or figures for ordinal numbers other than dates. (Dates are dealt with above.) What follows amounts to a set of guidelines only: considerations of clarity or style may require different approaches in different circumstances.

- Numbers above ten should not be spelt out.
- The question of whether numbers below 11 should or should not be spelt out should be decided in the light of what seems more natural or appropriate in the contexts concerned.

“Only”

This relates to the placing of “only” in a legislative sentence. Care should be taken to avoid placing “only” where it will produce ambiguity or mislead the reader. This apart, the placing of “only” may vary according to context and individual judgement (though drafters should bear in mind that there is an orthodox placing of “only”).

²⁵ In most (if not all) Australasian jurisdictions figures are used even for the numbers 1 to 10.

“Or”

This relates to the exclusive and inclusive uses of “or”.

- The recommended starting point is that “or” is normally read in an inclusive, rather than an exclusive, sense (so a power to impose conditions relating to cats, dogs or rabbits would normally allow conditions relating to one or more of these).
- Sometimes it will be desirable to spell out that both of two alternatives are a permissible option (e.g. in a penal provision allowing the imposition of a fine or imprisonment or both).

Paragraphing

General

This relates to the drafting device of paragraphing material in a legislative sentence.

- Long unparagraphed sentences should be avoided.
- Clause sandwiches (sentences consisting of introductory text, paragraphs and then more text) should be avoided if difficulties would be caused for the reader as a result of e.g. the separation of the introductory text from the final text or the separation of the subject of the sentence from the verb.
- Provisions involving one set of paragraphs, some full-out text, and then another set of paragraphs should be avoided.

Punctuation at the end of paragraphs

This relates to the use of punctuation at the end of paragraphs in legislative sentences (apart from paragraphs ending sentences).

- Semi-colons may be more appropriate than commas where paragraphs are in effect a list setting out matters that have no particular affinity with each other.
- Commas should be used at the end of every paragraph of a provision if the paragraphs are followed by full-out text that is effectively a continuation of the proposition contained in the text preceding it.

Percentages

This relates to whether a percentage should be indicated by “per cent” or “%”.

- “%” should be used rather than “per cent”.

“Shall”

The OPC has a policy of seeking to minimise the use of the legislative “shall”.²⁶

The Drafting Techniques Group has put forward a number of alternatives to “shall” that can be used in implementing this policy. They are:

- “must” in the context of obligations (although “is to be” and “it is the duty of” may also be appropriate alternatives in certain contexts);
- “there is to be” in the context of the establishment of new statutory bodies etc.;
- use of the present tense in provisions about application, effect, extent or commencement;
- “is amended as follows” in provisions introducing a series of amendments;
- “is repealed” in the context of free-standing repeals;
- “is to be” in the context of provisions relating to statutory instruments (and, if appropriate, “may not” as an alternative to “shall not”).

A reason for not departing from “shall” might be that it would appear in text to be inserted near to existing provisions that use “shall” in the same sense, or that use of an alternative might raise a real doubt that a different meaning was intended in an existing provision.

Statutory instruments

Attracting section 1 of the Statutory Instruments Act 1946

This relates to the wording used where orders etc. are to be made by statutory instrument.

- To attract section 1 of the 1946 Act it is sufficient to say: “Orders/regulations [made by the relevant Minister] under this Act are to be made by statutory instrument”.
- It may sometimes be neater to roll up the attraction of section 1 with the power itself, for example: “The Secretary of State may by order made by statutory instrument provide...”

Attracting the negative resolution procedure

²⁶ This policy applies to the drafting of Bills for presentation to Parliament in the 2008-2009 session and subsequent sessions. Most Australian jurisdictions moved from “shall” to “must” in the 1990s. [Ed.]

This relates to the wording used where orders etc. are to be subject to the negative procedure.

- To be consistent with section 5 of the 1946 Act, the statutory instrument containing the order/regulations (rather than the order/regulations) should be expressed to be subject to annulment.
- For example: “A statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.”.

Attracting the affirmative resolution procedure

This relates to the wording used where orders etc. are to be subject to the affirmative procedure.

- To be consistent with the recommended approach for negative instruments (above) - and with the wording of section 6 of the 1946 Act - the required approval should relate to a draft of the statutory instrument containing the order/ regulations (rather than a draft of the order/regulations).
- For example: “A statutory instrument containing an order under section X may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”.

“Combined instruments”

This relates to the wording used where it is to be possible for a statutory instrument to contain a mixture of provisions subject to the negative procedure and provisions subject to the affirmative procedure.

- If the intention is expressly to authorise the making of instruments containing both sorts of provisions, it may be helpful to use the formulation suggested above with the addition of “(whether alone or with other provision)”.
- For example: “A statutory instrument containing (whether alone or with other provision) provision made under section X may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”.

Statutory references

Use of Arabic rather than Roman numbers when referring to Parts etc.

This relates to the switch in 2001 from using Arabic rather than Roman numbers for Parts and Chapters and Parts of Schedules.

- Use Arabic numbers when referring to Parts and Chapters of pre-2001 Acts and Parts of Schedules to such Acts.²⁷
- When inserting or substituting text in a pre-2001 Act use Arabic numbers even if that leads to a mixture of Arabic and Roman in the text of the Act.
- But, if Roman numbers currently appear in text which needs to be identified for the purposes of amendment, refer to the text as it stands.

Citations in textual amendments

This relates to references to Acts contained in textual amendments.

- The agreed practice is not to include citations for Acts referred to in textual amendments.

Textual amendments: numbering conventions

Re-using numbers

This relates to re-using for new provisions the numbering of provisions that are being replaced or have been repealed.

- When substituting a complete subdivision of text (e.g. a subsection), the numbering of the old provision should generally not be used for the new provision unless (as will frequently be the case) the subject matter of the new provision corresponds to that of the old provision.
- When inserting a complete subdivision of text (e.g. a subsection) in a place where a corresponding sub-division has been repealed, the numbering of the repealed provision should generally not be used for the new provision.
- Occasionally the drafter may decide that there is good reason to depart from the above approaches (e.g. where a repealed provision was repealed many years ago).

Adding provisions at the beginning of a series

This relates to inserting a provision at the beginning of an existing series of provisions (e.g. a subsection at the beginning of a section or a Schedule before the first Schedule).

- New sections inserted before the first section of an Act are preceded by a letter, starting with “A”.

²⁷ Most Australian jurisdictions had moved from Roman to Arabic numerals by the 1990s. [Ed.]

- The same approach is taken in relation to all other divisions of text (other than lettered paragraphs). Thus the *Insolvency Act 2000* inserted a Schedule A1 before Schedule 1 to the *Insolvency Act 1986*, and the *Enterprise Act 2002* inserted a new Schedule B1 after Schedule A1.
- A provision inserted before “A1”(or “ai”) is “ZA1” or (“zai”).
- In the case of lettered paragraphs, new paragraphs inserted before paragraph (a) are (za), (zb) etc.
- And paragraphs inserted before (za) are (zza), (zzb) etc.

Adding provisions at the end of a series

This relates to adding a provision at the end of an existing series of provisions of the same kind (e.g. a subsection at the end of a section or a Schedule at the end of the Schedules).

- The numbering should continue in sequence.

Inserting whole provisions between existing provisions

This relates to inserting whole provisions between existing provisions.

- New provisions inserted between “1” and “2” are “1A”, “1B”, “1C” etc.
- New provisions inserted between “1A” and “1B” are “1AA”, “1AB”, “1AC” etc.
- New provisions inserted between “1” and “1A” are “1ZA”, “1ZB”, “1ZC” etc. (and not “1AA” etc.).
- New provisions inserted between “1A” and “1AA” are “1AZA”, “1AZB”, “1AZC” etc.

Do not generate a lower level identifier unless you have to.

- A new provision between “1AA” and “1B” is “1AB” not “1AAA”.
- But a new provision between “1AA” and “1AB” is “1AAA”.

The above recommendations apply equally to sub-paragraphs with roman numerals and lettered paragraphs.

- New sub-paragraphs between sub-paragraphs (i) and (ii) are (ia), (ib), (ic) etc.
- New paragraphs between paragraphs (a) and (b) are (aa), (ab), (ac) etc.²⁸
- New paragraphs between paragraphs (a) and (aa) are (aza), (azb), (azc) etc.

²⁸ This is an addition to the original recommendation.

Insertions resulting in a series of more than 26 new sections into an Act

This relates to the rare occasions when the insertion of new sections into an Act would result in a series of more than 26 new sections.

- After “Z” use “Z1”, “Z2”, “Z3” etc.

So in the *Capital Allowances Act 2001* section 360Z is followed by sections 360Z1 to 360Z4.

Insertions resulting in series of more than 26 lettered paragraphs

This relates to the rare occasions when the insertion of new paragraphs into a section would result in a series of more than 26 lettered paragraphs.

- After paragraph (z) insert paragraphs (z1), (z2), (z3) etc.

Thereafter, thereby, etc.

This relates to the use of “thereafter”, “thereby” and other “there-” words.

- “Therefrom” and “therewith” are archaic and should not be used.²⁹
- Other “there-” words should only be used where the advantages of doing so outweigh their old-fashioned ring and there is no obvious more modern alternative.

ANNEX

Final provisions: running order

- General provisions about offences (bodies corporate, unincorporated associations)
- Order and regulations (including parliamentary procedure)
- Directions
- Notices/service of documents
- Interpretation

²⁹ Most Australian jurisdictions had abandoned the use of such words by the 1990s. [Ed.]

- Amendments, transitional provisions and savings, repeals
 - Financial provisions
 - Crown application
 - Devolution
 - Application to Scillies/Isle of Man/Channel Islands
 - Extent
 - Commencement
 - [Index]
 - Short title
-

Further information relating to the CALC Silver Jubilee

The last issue of *The Loophole* contained an item about the silver jubilee of CALC. Since then further information has come to light. It has been brought to my attention that it was the former First Parliamentary Counsel of the Australian Commonwealth Office of Parliamentary Counsel, Geoff Kolts, who first conceived the idea of establishing an association of Commonwealth parliamentary and legislative counsel. From information provided by Peter Quiggin, the current First Parliamentary Counsel of that Office, it is apparent that Geoff was extensively involved in the drafting of the original CALC constitution. I should like to take this opportunity of acknowledging Geoff's contribution to the establishment of our Association.

In the item, mention was made of the various CALC members who had served as President of the Association. Omitted from those mentioned was the former Chief Parliamentary Counsel of New Zealand, Walter Iles, who was CALC President at the time of the 1990 CALC conference held in Auckland, New Zealand. Walter has also pointed out that the first two day CALC conference was not the one held in Melbourne in 2003, but the one held in Auckland in 1990.
