

# Newsletter



of the



## Commonwealth Association of Legislative Counsel

March 2016

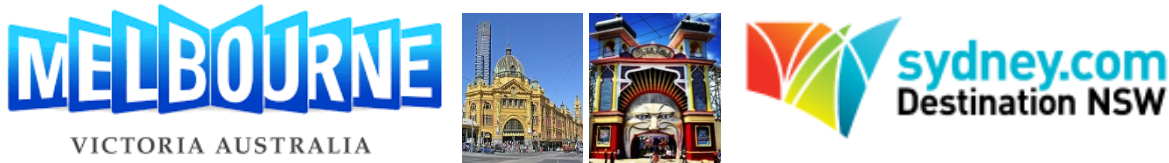
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## CALC President's Report—March 2016

### Next CALC Conference—Melbourne, Australia, March 2017



The next CALC Conference will be held in Melbourne. The conference will run for 3 days starting on Wednesday 29 March.

After the success of the workshop that was held in Belfast after the last conference, it has been decided to include an optional workshop in Sydney on Tuesday 4 April.

More details about the theme for conference, as well as a call for papers, will be sent soon.

We will also send details about the venue, accommodation, and social functions.

I look forward to welcoming CALC members from across the Commonwealth to Australia. Those who are able to attend the conference and the workshop will see two very beautiful, but very different, cities.

### **CHOGM 2015**

In November last year I represented CALC at CHOGM 2015 in Malta. The heads of Government and Foreign Ministers of many Commonwealth Countries attended.

As part of CHOGM, the Commonwealth organisations (like CALC) attended a meeting of all Foreign Ministers. We were also at the official opening by the Queen and were able to mingle with Prime Ministers and others at the reception that followed.

A People's Forum is run just before the main CHOGM meetings. I also attended this. There is also a Women's Forum, and one for young people. The Peoples' Forum had representatives from the broad community that is known as "Civil Society".

I think that it was a useful opportunity to raise CALC's profile, meet with people from the Commonwealth Secretariat, and liaise with people from other organisations that are similar to CALC.

### **Job and work advertisements**

There continues to be a steady flow of [advertisements for jobs on the CALC webpage](#).

The feedback that we have received from those who have advertised on the page is that advertisements of this kind are a very good way of ensuring that information about the jobs goes to the people who are most likely to be qualified for them.

I encourage CALC members to consider using the advertisements service for any positions that they are intending to advertise.

We have also started using the page to notify CALC members about work that is available through the Commonwealth Secretariat.

### **New CALC website**

We have secured a new domain for the [CALC website](#), and we are currently working on designing a CALC webpage. This will replace the page that has been hosted as part of my Office's webpage for a number of years.

I am looking forward to having the new webpage ready to release in the next couple of months.

### **New CALC services**

Elsewhere in this newsletter there is information about 2 new services that CALC is trialling.

The idea for the services was put forward by Dr Duncan Berry and Eamonn Moran QC. I would like to thank them for making the suggestions. They made some other suggestions that are being considered by the CALC Council.

I would like to thank Dr Katy Le Roy and other members of the CALC Council who were involved in the development of the suggestions, and those CALC members who have volunteered to assist with the implementation.



CHOGM  
Malta 2015



*Peter Quiggin PSM  
CALC President  
March 2016*

## Social media for the legislative drafter

*A superb piece on and from the Twittersphere and LinkedIn-sphere – by Justin Leslie, OPC, London*



Office of the Parliamentary Counsel

### ***Unusual & inappropriate?***

- 1 This piece is about how legislative drafters, in their capacity as legislative drafters, might use social media in useful and interesting ways. For many drafters, the idea of using social media in connection with their work might seem unusual or even inappropriate. It might be unusual because legislative drafters can tend to be a retiring bunch. Many seem to prefer the low-light of a study over the limelight of publicity.
- 2 The use of social media might also be seen as inappropriate because as lawyers (and usually civil servants), there has been a traditional tendency towards confidentiality and secrecy. This can encourage us to be rather anonymous figures. In the UK at least, legislative drafters are so well hidden that to tell an acquaintance that your occupation is writing legislation often elicits a blank response (and sometimes requires an explanation of the term “legislation”).
- 3 In my view, the use of social media can be a good way to inform and engage people about legislative drafting and law making processes. I would go further and say we have a *responsibility* to do this sort of thing because how legislation is produced is not generally well understood. If our role is ultimately about the promotion of the rule of law, then we must do what we can to further an understanding of the law. Using social media can be a modest part of that overall project.

### **Types of social media**

- 4 There are various different types of social media, but in professional terms the two main services are Twitter and LinkedIn.
- 5 [Twitter](#) is a service which allows you to post public messages of up to 140 characters (a tweet). These can be seen by the world at large (unless you are a 'private' user). You can follow people that interest you, and their tweets will appear as a kind of real time ticker-tape. You can respond to other people's tweets, share those tweets (a re-tweet), or post photos or links to a website. Many people use Twitter as a way of finding news stories, and so clicking on a link might take you to another website that holds the article of interest.
- 6 There are about 305 million active Twitter users.<sup>1</sup> This allows ideas to be communicated rapidly and on a vast scale. When lots of people comment on a particular topic they will often use a label called a hashtag, for example #socialmedia. Clicking on the hashtag will allow you to see all of the tweets on that topic.
- 7 [LinkedIn](#) is a website which allows you to publish what is effectively your CV. So, your profile page may include your name, a photo, details of your education, and your current and past employment. About 414 million people have LinkedIn profiles.<sup>2</sup> You are able to 'connect' with people who are part of your professional network. You can send messages to people or write and publish articles for others to read.
- 8 In contrast to Facebook, which is aimed more at socialising between friends, LinkedIn is aimed at professionals and can be used as a way of networking online. There is also a strong job-seeking aspect to LinkedIn and many corporate and private sector organisations advertise new positions there.

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<sup>1</sup> <http://www.statista.com/statistics/282087/number-of-monthly-active-twitter-users/>

<sup>2</sup> <http://www.statista.com/statistics/274050/quarterly-numbers-of-linkedin-members/>

## **Using social media**

### *In private practice*

- 9 I should come clean at the outset: my initial use of Twitter and LinkedIn was part of an attempt to help me with my legal career. In order to obtain a pupillage in London, I felt it might be helpful to develop an online profile so that when chambers searched for me they would more easily conclude that I was committed to a career in law. As such, it seemed useful for me to use Twitter to pontificate on the latest cases and to use LinkedIn to catalogue my (very modest) achievements. These were not particularly noble aims.
- 10 As it happened, when I obtained a pupillage this was largely unconnected to my use of social media. But by that stage I had become involved with a small band of Twitter-using lawyers in London, and this helped me feel part of the wider legal community more quickly. It was liberating to be able to be part of discussions about new developments in the law with more intelligent and experienced lawyers. I also developed a knack for saying things briefly to conform to the 140 character limit.

### *As a drafter*

- 11 One of the consequences of becoming a civil servant was that I was no longer completely free to proffer my opinion on issues of the day. It is common sense that a government employee should not publicly undermine the government that he or she serves. This is consistent with the core civil service value of being impartial.<sup>3</sup>
- 12 I expected that I would need to close my Twitter account. However, upon arriving at the London Office of Parliamentary Counsel, the then First Parliamentary Counsel Richard Heaton generally encouraged the use of social media.<sup>4</sup> Emboldened by this, I now take to Twitter in order to make points about legislation in general or to shed light on the life of a legislative drafter. This is a relatively niche subject-matter but it has allowed me to engage with lawyers, academics, legal publishers, and law students.
- 13 My use of LinkedIn remains largely unchanged. This is still essentially a curriculum vitae although I also keep a record of the Bills I have been involved with. I am told that this is unusual for a drafter because it peels away a layer of the traditional anonymity afforded

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<sup>3</sup> See the [Civil Service Code](#).

<sup>4</sup> Editor: See <https://mobile.twitter.com/justincjleslie/status/606837467627589632>. New Zealand's PCO has an external publications policy that supports staff participation in writing for external publications, subject to processes and approvals to ensure compliance with applicable legal professional duties and standards in the [Code of Conduct for the State Services](#) (for example, "maintain[ing] the political neutrality required to enable us to work with current and future governments"). In practice, many drafters, with approvals, have written and continue to write for a range of publications.

to drafters. I'm comfortable with this because I am generally happy to be held to account for my output (subject to any security issues that there might be with particularly sensitive pieces of work).

- 14 I think the tradition of anonymity has previously been justified on the basis that drafters seem to be considered, at least by the courts of England & Wales, as a corporate collective about whom certain presumptions can be made.<sup>5</sup> This means that the courts do not ask what a statute means by reference to the particular individual who drafted it.<sup>6</sup> In any event, I avoid this by not listing the exact provisions that I have worked on. This would be unwieldy on LinkedIn, and does not reflect the fact that provisions are usually the product of intense team-work and scrutiny (even if it was my brain that first thought of the words and my hands that typed them).

### **Twitter: A few examples**

- 15 The following examples give a flavour of what can be done using Twitter:
- a. I have discussed novel drafting styles, for instance a Schedule that “gets rid” of legislation.<sup>7</sup> This has elicited some comments about how drafters could use a more colloquial style.
  - b. I highlighted the first use of a flow-chart in UK legislation.<sup>8</sup> This initiated an interesting discussion about using other similar devices in legislation.
  - c. I raised points about parliamentary procedure, such as where an amendment can be rejected if “offered in a spirit of mockery”.<sup>9</sup>

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<sup>5</sup> See for example, [R \(A\) v Croydon London Borough Council \[2009\] UKSC 8](#) at [16]: “...when parliamentary draftsmen [(Editor, ie, any legislative counsel)] make changes such as this they are normally presumed to have done so deliberately and not by mistake”.

<sup>6</sup> Daniel Greenberg has suggested an alternative, whereby statutes are given a code that would relate to each drafter – see Chapter 4 (Parliamentary Counsel), *Laying Down The Law* (Sweet & Maxwell, 2011) at pages 26–28 (Should Counsel be identified?). Editor: Greenberg says “the courts have resisted invitations to have regard to the drafter’s opinions about what his or her work was intended to mean ... That need not, however, mean that the court should prevent itself from drawing inferences about construction having identified the drafter of a particular measure, that being a process distinct from giving any special status to the stated intentions of the drafter, except insofar as they can be deduced from the language that he or she chose to use”. See also Carter (2011) 32 Statute Law Review 86 at 91 and 92.

<sup>7</sup> <https://twitter.com/justincjleslie/status/677895141210906624>

<sup>8</sup> <https://twitter.com/justincjleslie/status/664904375047950336> Editor: see also NJ Jamieson (1974) NLJ 1096–1098 and 1120–1123, 1122 and 1123, and A Bullôt (1993) 7 Auckland University LR 330, both cited in Carter and Green (2007) 28(1) Statute Law Review 1 at 16. See also Hilary Penfold QC’s paper “[When words aren’t enough: Graphics and other innovations in legislative drafting](#)” and Bates (2010) 36(1) Commonwealth Law Bulletin 107.

<sup>9</sup> <https://twitter.com/justincjleslie/status/527170557595648000>

- d. I provided rolling Tweets on the presentations given at the CALC conference in Edinburgh.<sup>10</sup>
  - e. I have shared points regarding drafting generally – such as the “Flowers Paradigm”<sup>11</sup> or Sir Geoffrey Bowman’s “The Art of Legislative Drafting”<sup>12</sup> – and discussed points about drafting terms such as “gloss” and “carve out”.<sup>13</sup>
  - f. I have done various Tweets about the day-to-day life of a drafter.<sup>14</sup>
- 16 By themselves, none of these Tweets are particularly earth shattering. They may even seem trivial. However, over the few years that I have been composing these Tweets I believe that I have shed at least some light into a world that is otherwise seen as arcane and byzantine. This is a very small contribution to our wider responsibility to promote an understanding of the law that we produce.
- 17 I appreciate that I am unlikely to have convinced ardent sceptics to begin using Twitter or social media more generally. But for those who are tempted I would encourage it because:
- a. Using social media allows you to improve as a lawyer because it provides a focus for your thoughts on various topics. For example, I am writing this article on 29 February 2016. I was curious to know if I could compose a legal (law-related) Tweet on the topic. This led to me to search for uses of the term “leap year” in legislation, which led me to the Calendar (New Style) Act 1750. I learned that this introduced the Gregorian calendar into England and Wales. It would have been unlikely to learn about this without having the purpose of sending out a Tweet.<sup>15</sup>
  - b. Using social media will allow you to connect to people who are of interest to you. As a result of my Tweeting I am in regular contact with lawyers, academics, legislation editors, law reporters, and students. Through this I have been invited to speak at careers events about being a drafter, and give talks about how law is made.
  - c. Third, as I’ve said I think promoting an understanding of the law is inherently worthwhile.
- 

<sup>10</sup> <https://twitter.com/justincjleslie/status/588268009929756672>

<sup>11</sup> <https://twitter.com/justincjleslie/status/517635060775018496>

<sup>12</sup> <https://twitter.com/justincjleslie/status/578531156137771008>

<sup>13</sup> <https://twitter.com/justincjleslie/status/572804970040438784> and <https://twitter.com/justincjleslie/status/572805693448822784>

<sup>14</sup> For example: <https://twitter.com/justincjleslie/status/644462976691531776> and

<https://twitter.com/justincjleslie/status/646089661467750400>

<sup>15</sup> Editor: Justin has also tweeted on the Easter Act 1928 s 2(2), and on the Summer Time Act 1972.



- 18 Having said all this, it is important not to use social media for the sake of it. Twitter users can tell people who are there just to sell themselves rather than engage substantively. As well as being time consuming for you, it will be boring for everyone else.
- 19 If, after all this, you do want to get involved on Twitter, please feel free to follow me and I can introduce you to other legal Tweeters. My profile is @justincjleslie



*Justin Leslie  
Office of the Parliamentary Counsel, 1 Horse Guards Road, London  
SW1A 2HQ*

## New CALC service — online drafting advice service

On Monday 28 March, CALC will launch a new service: providing online drafting advice to legislative drafting offices in which we have members. The service is primarily aimed at CALC members in legislative drafting offices in less developed jurisdictions that have limited drafting resources. However, the service is open to all legislative drafting offices that have CALC members.

The service has been developed on the basis of a recommendation made to CALC by Dr Duncan Berry and Eamonn Moran QC. It is a service provided by CALC members, for CALC members, and free of charge.

The service will initially run for a 12-month trial period (28 March 2016 to 27 March 2017).

### The service will operate as follows:

#### 1. Requesting assistance

Any request for advice must be sent through (or with the endorsement of) the head of the drafting office from which the request is coming. Requests for assistance are to be sent to the administrator: [calc.drafting@gmail.com](mailto:calc.drafting@gmail.com)

#### 2. Scope of requests/advice

Requests for advice should be limited to things such as:

- drafting issues relating to particular provisions within a Bill;
- model provisions or precedents for achieving a particular legislative goal; and
- whether a draft provision is fit for a particular purpose.

Requests for advice through this service should not be on matters that require a deep understanding of the law and political, social or economic context of the particular jurisdiction seeking advice. The service is not a mechanism for the free outsourcing of drafting projects. It is important to note that no legal responsibility will attach to assistance provided through this service.

#### 3. Providing advice – panel of experienced drafters

A panel of experienced drafters (generally with at least 10 years' drafting experience) will be available to respond to requests for drafting advice. The service already has 4 drafters on the panel, and we hope to be able to add at least 25-30 further members to the panel in the coming weeks. Panellists are nominated by the head of their drafting office, and appointed by the President.

#### **4. Tools and administration**

Advice will be provided via email exchange, rather than through a website, blog or wiki. One reason for this is that the service is not intended to be in the style of an open forum in which questions and answers are visible to anyone, but rather to be a more targeted, limited and controlled service between a drafting office seeking advice on a particular matter and a member of a panel of experienced drafters. Another is that email is generally available in all jurisdictions, whereas in some developing jurisdictions access to internet platforms beyond email can be difficult, slow and unreliable.

When the administrator receives a request for advice, she will send it to a group of 5-10 panel members, copying the person who made the request. One or more of those panel members will respond to the request, copying the whole group so that other panel members know that the matter has been dealt with, or can add to the response.

During the initial trial period the service will be administered by CALC Vice President Dr Katy Le Roy.

#### **5. Review mechanism**

The new system of providing online advice on drafting issues includes a built-in feedback/review mechanism to assess the demand for the system, the responsiveness of the panel members, satisfaction with the service and usefulness to the developing jurisdictions, as well as the feasibility and sustainability of the system in terms of resource requirements. All those participating directly in the service will be asked to complete feedback forms for this purpose.

We encourage members to make use of this service, and hope that it will prove to be useful to members. Please remember:

- send your requests through or with the endorsement of the head of your office to [calc.drafting@gmail.com](mailto:calc.drafting@gmail.com)
- do not send requests that are outside the limited scope of the service; and
- complete and return your feedback form after using the service.

*Katy Le Roy & Peter Quiggin*

18 March 2016



## New CALC service – office organisation advice service

CALC is launching a new service at the end of March to provide advice on office organisation to legislative drafting offices in less developed jurisdictions. The service has been developed on the basis of a recommendation made to CALC by Dr Duncan Berry and Eamonn Moran QC.

### Operating details for CALC office organisation advice service

#### 1. Who can use the service?

The service will operate in response to requests for advice on office organisation by eligible members. The head of any drafting office (or, if there is no drafting office, the person primarily responsible for legislative drafting) in a less developed jurisdiction or in any jurisdiction with serious resource constraints that could benefit from using the service is eligible to use the service.

#### 2. How do you make a request for advice?

Requests for advice should be sent to the administrator of the service:  
[katy.leroy@parliament.govt.nz](mailto:katy.leroy@parliament.govt.nz)

#### 3. What is the scope of the service?

Requests for advice should be limited to the following matters:

- Organisational structure
- Workforce planning and human resource management, including in particular:
  - effective recruitment, training and succession planning
  - how to develop a solid knowledge base in a drafting office
  - drafting team structure
  - assigning responsibility for training and development
  - identifying and fulfilling corporate service needs
  - performance management
- Workflow planning and management (including particular considerations where a drafting office deals with both primary and delegated legislation)
- Quality assurance mechanisms
- Ways to make the most of limited resources, including ways in which information technology and other tools can be used to improve efficiency
- Ways to optimise organisational culture
- Strategic planning and reporting.

**4. Who provides the advice?**

Advice on office organisation will be provided by members of a panel of advisors. The panel is made up of certain CALC members who are or have been the head of a drafting office or the manager of a drafting office, and by other members with relevant knowledge and experience.

**5. How will the service be administered?**

The administrator will, with each request for advice, send out a general request to all panel members to see who is available. She will then inform the requesting office about which panel members are available and facilitate the provision of advice.

**6. Trial period and feedback/review mechanism**

The system will operate for an initial 12-month trial period (28 March 2016 to 27 March 2017).

During the trial period, everyone who has sought, received or given advice through the service will be asked to provide the CALC President with feedback on their experience and suggestions for ways in which the system could be improved.

Feedback should be sent to the President, rather than directly to the panel, to ensure that feedback can be given without inhibition. The President will then feed this information back to the administrator and the panel as he thinks appropriate, and either prepare or facilitate the preparation for Council of an evaluation of the service. The evaluation will use the feedback to assess the demand for the system, satisfaction with the service, and the usefulness of the service to developing jurisdictions.

*Peter Quiggin & Katy Le Roy*

18 March 2016

## Items of Interest

### London, England, United Kingdom: new (and first ever woman) First Parliamentary Counsel



## Office of the Parliamentary Counsel

Part of [Cabinet Office](#)

- Elizabeth Gardiner took up the post of First Parliamentary Counsel (and Permanent Secretary of the Government in Parliament Group in the Cabinet Office) on 24 November 2015.<sup>16</sup> Elizabeth qualified as a solicitor in Scotland and then in England and Wales. She joined the Office of the Parliamentary Counsel as an Assistant Parliamentary Counsel in 1991, and has spent over 20 years as a legislative drafter working on a full range of legislative projects. This included working on consolidation and law reform projects at the Law Commission, and leading the team drafting tax legislation. On 20 November 2015, the Cabinet Secretary, Sir Jeremy Heywood, said: “I would like to congratulate Elizabeth on her appointment to the position of First Parliamentary Counsel, the first ever woman to hold this post. Her deep experience as a parliamentary drafter as well as her sound judgment and leadership skills will make her an excellent First Parliamentary Counsel”. The Lord President of the Council and Leader of the House of Commons, the Rt Hon Chris Grayling MP, said: “I am delighted Elizabeth ...is taking on this role...she is hugely experienced...this ...has given her a detailed understanding of the area ...and she will provide invaluable leadership in her new role”.<sup>17</sup>

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<sup>16</sup> <https://www.gov.uk/government/people/elizabeth-gardiner>

<sup>17</sup> <https://www.gov.uk/government/news/first-parliamentary-counsel-appointed-elizabeth-gardiner>

## Perth, Western Australia, Australia: new Parliamentary Counsel



- Geoff Lawn is the new Parliamentary Counsel for Western Australia. Geoff's appointment was announced on 2 December 2015 by Cheryl Gwilliam, Director-General of the Department of the Attorney-General. Geoff has worked in the Parliamentary Counsel's Office for the past 6 years as the Senior Parliamentary Counsel. "Geoff brings a wealth of experience to this role as he has been drafting legislation for the past 30 years," Cheryl said.
- Geoff graduated from the University of Canterbury, Christchurch, New Zealand in 1978 with an LLB (Hons) (First Class). He was a Junior Lecturer in Law, Victoria University of Wellington, New Zealand, 1979–1980, and a Legal Adviser, Law Reform Division, Department of Justice, Wellington, New Zealand, 1981–1985. Geoff was appointed a Parliamentary Counsel in the New Zealand Parliamentary Counsel Office in 1985, and Deputy Chief Parliamentary Counsel in 1997.
- Geoff was New Zealand PCO Project Director, Public Access to Legislation (PAL) Project, from 2001–08. The project involved the development and implementation of an integrated drafting, publishing, and reprinting system in the PCO, the Office of the Clerk of the House of Representatives, and the Tax Law Drafting Unit of the Inland Revenue Department. A key component of the new system is a website providing free public access to Acts of Parliament, Legislative Instruments, and Bills before the House of Representatives. The new drafting and publishing system was implemented for internal use in the PCO in November 2007, and the new legislation website ([www.legislation.govt.nz](http://www.legislation.govt.nz)) went live in January 2008.
- Geoff worked on secondment to the New Zealand Law Commission as a Senior Consultant in 2008–09, and was appointed a Senior Parliamentary Counsel in the Parliamentary Counsel's Office, Western Australia, in September 2009.

**Brisbane, Queensland, Australia: new Parliamentary Counsel at OQPC**



- Annette O'Callaghan has been appointed Queensland Parliamentary Counsel. Annette was acting in that role from 23 November 2015 to 1 January 2016. Annette was appointed Deputy Parliamentary Counsel in 2010. Annette has a Bachelor of Laws Degree from the Queensland University of Technology and began her legal career in Queensland at Crown Law. Annette is a Solicitor and first joined OQPC in 1993, before performing senior drafting and leadership roles in Victoria and New South Wales, where she drafted significant legislation on behalf of the Australasian Parliamentary Counsel's Committee. As Deputy Parliamentary Counsel, Annette had responsibility for delivering the legislative program for a number of agencies, and responsibility for OQPC's business systems, including information systems and an eLegislation project.

**Wellington, New Zealand: bilingual Te Reo Māori (Māori Language) Bill**



**Te Pire mō Te Reo Māori**  
**Māori Language (Te Reo Māori) Bill**

Te Pire a Te Kāwanatanga/Government Bill

- A Parliament webpage [news item](#) reports the Māori Affairs Committee has presented to the House the Committee's report on the [Māori Language \(Te Reo Māori\) Bill](#). A complete Te Reo Māori translation of the English text has been inserted into the Bill. This is only the second time a Bill has been translated this way. It also contains an historic first for the Māori language in legislation. Both the Māori and English texts would be of equal authority. The Te Reo Māori text would prevail in the event of a conflict in meaning between the two language versions.



## New Zealand: High Court rejects challenge to 2010 prisoner voting ban legislation



- The High Court of New Zealand, in a decision dated 4 March 2016, rejected a challenge to 2010 prisoner voting ban legislation. A main base of the challenge was that the 2010 Amendment Act effecting the ban was inconsistent with the Electoral Act 1993 s 268(1)(e) requirement of a 75% majority for enactment of a repeal or amendment of specified provisions “so far as those provisions prescribe 18 years as the minimum age for persons qualified to be registered as electors or to vote”, read in light of (1) the New Zealand Bill of Rights Act 1990, s 19, freedom from discrimination; and (2) the Treaty of Waitangi; and (3) the United Nations Declaration on the Rights of Indigenous Peoples: [Taylor v Attorney-General \[2016\] NZHC 355](#). The decision follows a 2015 [decision](#) in which the High Court issued a declaration of inconsistency.

London, England, United Kingdom: Joint enterprise and undoing judge-made law – *R v Jogee*



## Accessories and Abettors Act 1861

[1861 c. 94 \(Regnal. 24 and 25 Vict\)](#) ▶ As to abettors in misdemeanors: ▶ Section 8

- The UKSC on 18 February 2016 gave judgment in [2 cases](#) about secondary party liability for criminal offending. The decision resulted from a hearing in October 2015, in which the same UKSC Judges also sat as the Judicial Committee of the Privy Council. The judgment has been described as “landmark” in its effects – including revisiting JCPC authority in the 1984 Hong Kong case of [Chan Wing-Siu](#).
- Francis FitzGibbon QC, who acted for 1 of 2 interveners,<sup>18</sup> has commented in the 3 March 2016 [LRB](#) (vol 38 No 5, page 26): “It remains to be seen whether there will be a torrent of historic appeals by people who believe they have been wrongly convicted under the old law. The Supreme Court has not given them carte blanche. They will have to show that they have suffered ‘substantial injustice’, even though judges faithfully applied the law as it was previously understood. Some cases of murder may have to be reclassified as manslaughter. And yet, the Supreme Court has had the integrity to look at 32 years of law and say it was wrong. It rejected the idea that this was a matter for Parliament to deal with: it said that as the judges had made the error, it was up to the judges to put it right. There is something admirable about our imperfect legal system that has shown enough self-confidence to admit and put right its own mistakes.”
- The 31 March 2016 [LRB](#) (vo 38 No 7) contains this letter headed: “As a Non-Lawyer...”: “Francis FitzGibbon describes the fiasco in which a senior judge, later promoted to the House of Lords, got the law wrong in 1984 and it took more than thirty years to spot the mistake and put it right, leaving countless murder convictions open to question, with all the consequences that implies both for those convicted and for the families of the victims (LRB, 3 March). Having done so he concludes that the story shows ‘something admirable’ about our legal system. As a non-lawyer I see it differently. I remember being taught as a civil servant many years ago that I should never attempt to draft language to be included in legislation, because only a lawyer could choose his [or her] words in such a way that dangerous ambiguity would be avoided. It seemed sensible advice at the time.  
Oliver Miles[,] Oxford”

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<sup>18</sup> Francis Fitzgibbon QC acted for the intervener Just for Kids Law, a charity that provides legal representation to children and young people. The other intervener was campaign group JENGBA (Joint Enterprise Not Guilty by Association), which supports prisoners and their families.

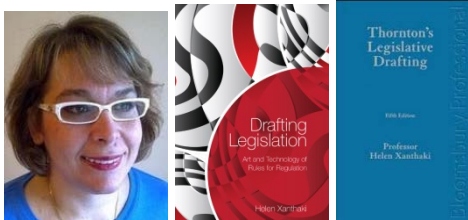
## Trinidad and Tobago: Retrospectivity and infringing on judicial function



### No. 15 *Administration of Justice (Indictable Proceedings) 2012 (Amendment)*

- Counsel may also find of interest and use the JCPC's 25 January 2016 [decision](#) on related cases, affected by retrospective legislation, from Trinidad and Tobago: *Ferguson, Maritime Life (Caribbean) Ltd v The Attorney General of Trinidad and Tobago (Trinidad and Tobago)* [2016] UKPC 2. Lord Sumption's reasons discuss when retrospective legislation contravenes unacceptably the rule of law and separation of powers by controlling the courts' discretion or judgment in specific criminal cases.

## Wellington, New Zealand: visit by Professor Helen Xanthaki



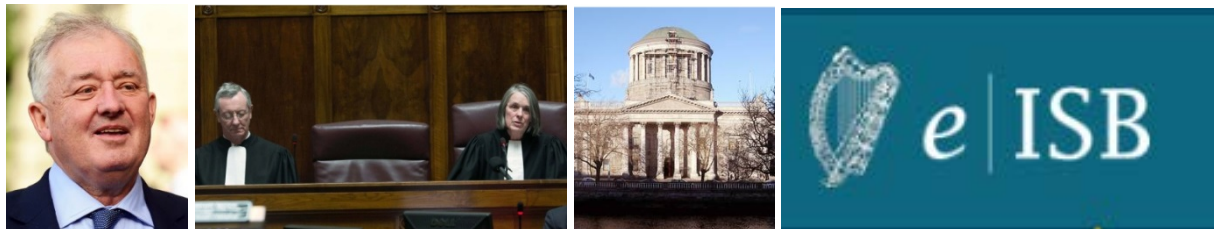
- Law Professor [Helen Xanthaki](#), author and editor of 2 recent legislative drafting books, and Director—International Postgraduate Laws Programmes at the University of London, recently visited Wellington, New Zealand. During her visit, Professor Xanthaki discussed legislative drafting with both tertiary subordinate legislation drafters in New Zealand, and the New Zealand PCO (which drafts most New Zealand legislation).

## New Zealand: Government Legal Network: Legislation Practice Group



- Developing legislation often involves multi-disciplinary teams, including lawyers across Government. To that end, New Zealand Government lawyers, via their legal network, have recently established a Legislation Practice Group. The group's activities and connections will enable legislative counsel to link and work better with other government lawyers who work on and around legislation. The Practice Group has a shared online workspace webpage for sharing activities information and resources. The group's current convenor is Michael Cameron, Lead Legislation Solicitor, National Office, at the Department of Corrections. Michael is an award-winning government lawyer (Public Sector In-house Lawyer on the Year in 2015), and was closely involved in the development of the law to ensure smoke-free prisons and the introduction of a TV rental scheme in prisons. One of the legislation practice group's aims, Mr Cameron says, is to help government lawyers to draft high-quality "tertiary" legislation (that is, subordinate legislation not drafted by, or with involvement of, the New Zealand PCO).

## Ireland: curial call for more clarity and coherence



- In Ireland, a recent Court decision (about whether a person accused of drink driving can inspect the specific machine used to take the person's breath alcohol sample) calls stridently for more clarity and coherence in legislation.
- In [Oates v District Judge Browne \[2016\] IESC 7](#) (29 February 2016), Mr Justice Hardiman's judgment contains "A note on Statutes" which states "The statutory provisions about drink driving offences are needlessly complex and confusing...The effect of [the amendment approaches taken, in Acts including the [Road Traffic Act 2010](#)] is to make statutory provisions extremely difficult for a layman to access, and to understand which of the myriad statutory provisions on any particular subject represent the present

law or the law as it was at any particular past time. This tends to make a nonsense of the important legal principle that everyone is deemed to know the law. . . In an attempt to mitigate the confusion caused by these arcane drafting practices, I have set out in Appendix A to this judgment the evolution of the statutory formulations in the Road Traffic Acts of the offence originally constituted by s.49 of the Road Traffic Act 1961 and of the offence originally constituted by s.29 of the Road Traffic Act 1968 (the original excess alcohol in blood or urine offence)".

- The Judge adds that "The present position on FOI requests to the Bureau is governed in an opaque and convoluted way by the Freedom of Information Act 2014 ... the Bureau is in fact exempted from Freedom of Information by a process so contrary to transparency and to the ordinary use of language as almost to defeat non-professional enquiry."
- Sadly, Mr Justice Adrian Hardiman, a published writer and broadcaster, passed away soon afterwards.<sup>19</sup> The Supreme Court sat briefly on 7 March 2016 to commemorate the Judge, described by the Chief Justice, Ms Justice Susan Denham, as "a colossus of the legal world" and by the Taoiseach Enda Kenny as "one of the great minds of our time".<sup>20</sup>

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<sup>19</sup> <http://www.independent.ie/irish-news/news/supreme-court-judge-mr-justice-adrian-hardiman-passes-away-34517352.html>

<sup>20</sup> <http://www.rte.ie/news/2016/0307/773092-adrian-hardiman-dies/> and see also <http://www.irishtimes.com/news/crime-and-law/adrian-hardiman-a-unique-courtroom-voice-falls-silent-1.2563641> and <http://www.irishexaminer.com/viewpoints/analysis/adrian-hardiman-ebullient-colleague-who-held-strong-opinions-but-no-grudges-386117.html> and <http://www.belfasttelegraph.co.uk/news/republic-of-ireland/highprofile-judge-adrian-hardiman-dies-34517553.html>

## Membership

### New CALC members

The following have been recorded as members of CALC from November 2015.

<b>Name</b>	<b>Country</b>
Sheridan, Norman	United Kingdom
Sitali, Masiliso Tabitha	Zambia
Chenoweth, Rosslyn Anne	Australia
Kayis-Kumar, Ann	Australia
Woods, Camilla	United Kingdom
Johnston, Andrew	United Kingdom
Bernard, Jennine Judith	Grenada
McLellan, Jon	Guernsey
Ng Wuheng, Philip	Singapore
Otieno, Antonny	Kenya
Williams, Catherine	Cayman Islands
Mwakio, Mariam Shigadi	Kenya
Lange, Sian	Barbados
Wry, Jill	Canada

### Secretary Contact Details

If you wish to contact the CALC Secretary, Ross Carter, regarding CALC membership or other CALC matters (for example, to suggest or send items or ideas for this *CALC Newsletter*), his email address is:

[ross.carter@parliament.govt.nz](mailto:ross.carter@parliament.govt.nz)

