
Newsletter



of the



Commonwealth Association of
Legislative Counsel

November 2010

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Message from the President

The next ordinary general meeting of CALC will be held in Hyderabad, India on Thursday 10 February 2011, just 3 months away. At that meeting all of the current members of the Council of the Association go out of office. I would like to take this opportunity to thank the members of the Council for all the work that they have done on your behalf since being elected at the last ordinary general meeting held on 2 April 2009 in Hong Kong, China.



A particular responsibility of the Council is organising CALC Conferences. As anyone who has ever been involved in organising a conference knows, this is a time-consuming and often challenging task. I am very grateful to the Council members who agreed to serve on the various sub-committees we established to organise the Hyderabad conference. In particular I would like to thank John Mark Keyes, Peter Quiggin, Fiona Leonard and our treasurer Madeleine MacKenzie.

A valuable initiative put in place during the current term was the establishment, jointly with the Canadian Institute for the Administration of Justice, of an online forum allowing members to post topics and respond to posts. After a deal of initial activity sadly members have failed to make much use of this forum. Perhaps members might like to consider again using <http://www.ciaj-icaj.ca/phpBB2/index.php> as a means of communicating directly with others doing legislative drafting work around the globe.

The inaugural CALC Africa Region Conference was held in Abuja, Nigeria from 6-8 April 2010. Congratulations are due to Estelle Appiah and Elizabeth Bakibinga for putting together this highly successful conference.

Peter Quiggin, and the Australian Office of Parliamentary Counsel, have continued to host and manage the CALC website. Members can find a wide range of material on that site, including all articles published in The Loophole, and I encourage all to access it and make use of all that it has to offer. I am grateful to Peter and his office for all that they do in this regard.

Our indefatigable secretary, Duncan Berry, has continued to produce Loopholes (journals, of course, not legislative lacunas) and Newsletters, manage the membership list and generally attend to CALC affairs. Recently, he has completed the work necessary to seek accreditation for CALC to the Commonwealth. We should all be grateful for the contribution that Duncan has made to CALC over so many years.

By the time of the Hyderabad conference I will have served 2 terms as President. It is time to hand the baton to someone else. I do not intend to seek re-election as President. It has been a great privilege to serve as President and I thank you for your support.

Finally, I would like to encourage you, if you have not already done so, to register by 15 November for our Hyderabad conference. It promises to be a great learning and social opportunity. I, for one, have not ever been to India so I am very much looking forward to this conference. I hope to see you there.

*Eamonn Moran — President, CALC
October 2010*

Notice of CALC General Meeting and agenda

The next ordinary general meeting of CALC will be held at the Taj Krishnan Hotel, Hyderabad at 4 p.m. on Thursday, 10 February 2011. 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. Election of President, Vice-President, Secretary, Treasurer and 10 regional Council members.
CALC Council
9. Election of auditor
10. Funding policies for CALC activities.
11. Purchase of CALC merchandise: consideration of report of subcommittee.
12. General business
13. Next general meeting

Proxy form for 2011 CALC General Meeting

To be held at the Taj Krishnan Hotel, Hyderabad, India, at 4.00 pm on Thursday 10 February 2011

APPOINTMENT OF PROXY TO VOTE ON MOTIONS PUT TO THE MEETING

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

as my/our proxy at the general meeting of members of CALC to be held on 10 February 2011 to vote on any motion
put to the meeting that is to be decided by ballot.

Name of Member	Signature	Date

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: Dr Duncan Berry, Secretary, Commonwealth Association of Legislative Counsel,
c/- Legislative Drafting Department, State Law Office
PO Box 40112, Nairobi, Kenya

Fax: Secretary, Commonwealth Association of Legislative Counsel, c/- Legislative Drafting Department,
State Law Office, Nairobi, Kenya +254 20 221 3956

E-mail: dr_duncan_berry@yahoo.co.uk

OR

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

CALC conference programme, Hyderabad, India, 9 – 12 February 2011

Day 1 - Wednesday 9 February

<i>Time</i>	<i>Session/Topic</i>	<i>Speaker</i>
1.30 – 2.00	Registration	
2.00 – 2.15	Opening Remarks: Welcome to speakers and delegates	Eamonn Moran QC PSM, President, CALC
2.15 – 2.45	Session 1—Keynote address	<i>Speaker:</i> To be announced
2.45 – 3.45	Session 2— Legislative Drafting: Art, Science or Discipline? The conference will begin with this sub-theme, which will be canvassed in quite general terms across a wide variety of jurisdictions with different institutional arrangements for the preparation of legislation.	<i>Speakers:</i> Sandra Markman (Consultant legislative counsel, Dublin, Ireland) Roger Rose (Director of Studies, RIPA International, London, UK) B R Atre (Advocate, Delhi, India) Albert Edwards (Chief Parliamentary Counsel, Kingston, Jamaica)
3.45 – 4.15	Afternoon tea and coffee break	
4.15 – 5.30	Session 3— Role and Efficacy of Legislation Legislation is drafted and enacted for many reasons. Lord Thring famously said that “Bills are made to pass as razors are made to sell”. What did he mean? Is this still true today? Ideally, legislation should accomplish public goals established through democratic processes. Does it always do this? How	<i>Speakers:</i> Doug Bellis (Deputy Chief Legislative Counsel, US House of Representatives, Paul Peralta (Legislative Support Unit, Gibraltar) Ross Carter (Parliamentary Counsel,

	do political processes alter the role of legislation? Is any attention ever paid to whether it accomplishes its supposed purposes?	New Zealand) Sudha Rani (Deputy Parliamentary Counsel, Ministry of Law and Justice, Delhi, India)
6.30 – 8.30	Cocktail Reception	

Day 2 – Thursday 10 February

<i>Time</i>	<i>Session/Topic</i>	<i>Speakers</i>
9.00 – 10.30	<p>Session 4—The wavering line between policy development and legislative drafting</p> <p>The centralized legislative drafting model used most widely in Commonwealth countries is premised on a distinction between policy development and legislative drafting. What are the benefits of this model and the challenges of maintaining it? What are good drafting instructions and how can policy officials be instructed on preparing them?</p>	<p><i>Speakers:</i></p> <p>Paul Salembier (General Counsel, Department of Justice, Ottawa, Canada)</p> <p>Therese Perera (Legal Draftsman, Colombo, Sri Lanka)</p> <p>Elizabeth Grant (Parliamentary Counsel, Parliamentary Counsel Office, Wellington, New Zealand)</p> <p>Daniel Lovric (Parliamentary Counsel, Commonwealth Office of Parliamentary Counsel, Canberra, Australia)</p>
10.30—11.00	Morning tea and coffee break	
11.00 – 12.30	<p>Session 5—Legislative Counsel in Developing Countries</p> <p>This sub-theme covers the dynamic role of legislative counsel in developing countries (the need for legislative counsel to multi-task): due to staffing problems or limitations, legislative counsel are</p>	<p><i>Speakers:</i></p> <p>Malietau Malietoa (Parliamentary Counsel, Western Samoa)</p> <p>Sir Victor Glover (Former Chief Justice, Mauritius)</p>

	<p>normally involved in parliamentary committee work, policy review and legal reform.</p> <p>It also considers role of legislative counsel in the policy development process: the realisation of their contribution, conducting comprehensive needs assessments for offices of legislative counsel and promoting the inclusion of these needs in parliamentary and rule of law country development programmes.</p>	
12.30 – 2.00	Lunch	
2.00 – 3.30	<p>Session 6—Training and Development of Legislative Counsel</p> <p>This practical session covers in-house, distance-learning and conventional training programs for the variety of skills required, including the use of information and communication technology. It also looks at mentoring and twinning programmes and the retention of legislative counsel.</p>	<p><i>Speakers:</i></p> <p>Mark Audcent (Parliamentary Counsel, Canadian Senate, Ottawa)</p> <p>Estelle Appiah (Director of Legislative Drafting, Accra, Ghana)</p> <p>Archie Zariski (Associate Professor, Legal Studies, University of Athabasca, Canada)</p> <p>Lionel Levert (Former Chief Legislative Counsel, Department of Justice, Ottawa, Canada)</p>
	Afternoon tea and coffee break	
4.00 – 5.30	CALC General Meeting	

*** Evening optional activity: Sound and Light Show**

Day 3 – Friday 11 February

<i>Time</i>	<i>Session/Topic</i>	<i>Speaker</i>
9.00 – 10.00	<p>Session 7—Legislating across languages: the challenges of law-making in multi-lingual jurisdictions</p> <p>This sub-theme looks at drafting legislation that is intended to apply in linguistically diverse communities. What are the challenges of preparing multiple versions and ensuring that they say the same thing? How do courts and other interpreters deal with discrepancies if they arise?</p>	<p><i>Speakers:</i></p> <p>Marie-Claude Guay (Legislative Counsel, Department of Justice, Ottawa, Canada)</p> <p>Angie Li (Senior Government Counsel, Law Drafting Division, Department of Justice, Hong Kong)</p> <p>Allen Lai (Senior Government Counsel, Law Drafting Division, Department of Justice, Hong Kong)</p> <p>Vastina Nsanze (Consultant, Kigali, Rwanda)</p>
10.00 – 11.00	<p>Session 8—Emerging trends in improving legislative drafting: Harnessing Information and Communication Technology</p> <p>This sub-theme focuses on development of software and the use of available information technology applications that facilitate information-sharing and cooperative work activities.</p>	<p><i>Speakers:</i></p> <p>Wim Voermans (Professor of Constitutional and Administrative Law, Leiden University, Netherlands)</p> <p>Ed Hicks (Legislative Counsel, Office of Legislative Counsel, Department of Justice, Ottawa, Canada)</p>
11.00 – 11.30	Morning tea and coffee break	
11.30 – 12.30	<p>Session 9—Legislative Drafting: Contemporary Issues, Trends and Challenges</p> <p>This session will cover titles, headings and other aids to understanding a legislative text.</p>	<p><i>Speakers:</i></p> <p>Peter Quiggin (First Parliamentary Counsel, Commonwealth Office of Parliamentary Counsel, Canberra, Australia)</p> <p>Nick Horn (Senior Parliamentary Counsel, Commonwealth Office of Parliamentary Counsel, Canberra, Australia)</p> <p>Paul O’Brien (Deputy Principal Government Counsel, Law Drafting Division, Department of Justice, Hong Kong)</p>

12.30 – 2.00	Lunch	
2.30 – 4.00	<p>Session 10—<i>Legislative Drafting: Contemporary Issues, Trends and Challenges (Continued)</i></p> <p>This session will cover—</p> <ul style="list-style-type: none"> • the implementation of supra-national law in domestic legislation, • provisions for ensuring compliance with legislation, • democratic protections for least developed nations in the drafting international commercial law. 	<p><i>Speakers:</i></p> <p>John Moloney (Legislation Officer, Department of Agriculture and Fisheries, Dublin, Ireland)</p> <p>Dr Duncan Berry (Consultant Legislative Counsel, State Law Office, Nairobi, Kenya)</p> <p>Mateo Goldman (Attorney, New York; formerly associated with UNIDROIT in drafting international commercial laws)</p>
4.00 – 4.30	Afternoon tea and coffee break	
4.30– 5.00	Session 11 —Open forum at which CALC members may raise issues of interest to them.	
5.00	Closing remarks: Eamonn Moran QC PSM, Law Draftsman, Hong Kong	
7.30 – 10.30	Conference Dinner	

The 17th Commonwealth Law Conference

Join the Commonwealth Lawyers Association for the 17th Commonwealth Law Conference in Hyderabad, India, 5-9 February, 2011. The theme of the conference is “Emerging Economies & the Rule of Law - Opportunities and Challenges”.

The Commonwealth Law Conference (CLC) is a prestigious event that brings together legal practitioners from all over the Commonwealth to debate current issues affecting practice and the profession, exchange views and experiences with colleagues and get up to date with the latest commercial products and services.

Keynote speakers include:

- Hon. Chief Justice Iftikhar Muhammad Chaudhary, Pakistan
- Justice B. Sudershan Reddy (India) - Judge Supreme Court of India
- Lord Lester of Herne Hill, QC (UK) - Specialist in Public Law & Human Rights
- Richard Susskind (UK) - Specialist in IT & the Law

Registration is now available, so book today and don't miss out!

Programme

- <<http://paslava.com/fb/82A72060B68C035727157432613A36C33595977D015652120EA7139758E9B8C903838244967EDAD943543DF0EAAF4FFC/show.aspx>>

Registration

- <<http://paslava.com/fb/82A72060B68C035727157432613A36C32ABFB8EED06B12B8A8B694CBD61437158BD57D291E857B99C675A4F710D6A9B2/show.aspx>>
- For further information visit: www.commonwealthlaw2011.org
<<http://paslava.com/fb/C301AF7244783FA2624FCD241BA81170DB4EC33B0F6B94DCE06F2FF9F540C719CE43F56A2CD246F7B24C7E4F21CDE849/show.aspx>>

New CALC Members

On behalf of the CALC Council, I should like to welcome all those who have joined the Association since the publication of the last list of new CALC members. As a result, the Association's membership numbers are now well past the 1,100 mark. Unfortunately, quite a number of applications could not be processed because they were illegible in some respect or were incomplete.

The following is a list of those who have become members of CALC since March 2010.

Full members

Kellie Bailey <hr/> [12.10.2010]	Anguilla	Attorney General's Chambers Box 60, The Valley AI2640
Dawne Richardson <hr/> [12.10.2010]	Anguilla	Attorney General's Chambers Box 60, The Valley AI2640
Mellanie Adams <hr/> [12.10.2010]	Australia Commonwealth	Office of Legislative Drafting and Publishing, Attorney- General's Department, 3-5 National Circuit, Barton, ACT 2615
Paul Argent <hr/> [1.6.2010]	Australia Commonwealth	Office of Parliamentary Counsel Locked Bag 30, Kingston ACT 2604
Nils Baumgartner <hr/> [1.6.2010]	Australia Commonwealth	Office of Parliamentary Counsel Locked Bag 30, Kingston ACT 2604
Lauren Brennan <hr/> [1.6.2010]	Australia Commonwealth	Office of Parliamentary Counsel Locked Bag 30, Kingston ACT 2604
Samara Zeitsch <hr/> [18.8.2010]	Australia Commonwealth	Office of Parliamentary Counsel 2 nd Floor, MTA House 39 Brisbane Avenue, ACT 2600
Bronwyn Livermore <hr/> [1.6.2010]	Australia Commonwealth	Office of Parliamentary Counsel 2 nd Floor, MTA House 39 Brisbane Avenue, ACT 2600

<u>Johanna Lynch</u> [12.10.2010]	Australia Commonwealth	Office of Parliamentary Counsel, Locked Bag 30, Kingston, ACT 2604
<u>Madeleine Macdonald</u> [1.6.2010]	Australia Commonwealth	Office of Parliamentary Counsel 2 nd Floor, MTA House 39 Brisbane Avenue, ACT 2600
<u>Michael Knight</u> [12.10.2010]	Australia New South Wales	New South Wales Parliamentary Counsel's Office Level 23, AMP Centre, 30 Bridge Street Sydney NSW 2000
<u>Simon Gill</u> [12.10.2010]	Australia South Australia	Office of Parliamentary Counsel Level 8, Riverside Building North Terrace, Adelaide SA 5000
<u>Susan McInnes</u> [12.10.2010]	Australia Victoria	Office of the Chief Parliamentary Counsel MacArthur Street, Melbourne
<u>Yashin Dujon</u> [12.10.2010]	Belize	106 South Street Belize City
<u>Zulkhairi (Hj Md) Noor</u> [12.10.2010]	Brunei	Attorney General's Chambers, Bandar Seri Begawan
<u>Marie-Claude Guay</u> [12.10.2010]	Canada Federal	Office of Legislative Counsel Department of Justice 275 Sparks Street, Room 4123 Ottawa, Ontario K2C 444
<u>Philippe Hallée</u> [3.11.2010]	Canada Federal	Office of Legislative Counsel Department of Justice 275 Sparks Street, SAT 4003 Ottawa, Ontario K1A 0H8
<u>Archie Zariski</u> [17.8.2010]	Canada Alberta	Department of Legal Studies University of Athabasca Athabasca

<u>Ian Brown, Ian</u> [12.10.2010]	Canada, Saskatchewan	Saskatchewan Justice and Attorney General Legislative Drafting Services 8 Floor, 1874 Scarth Street, Regina, Saskatchewan Canada S4P 4B3
<u>Jane Chapco</u> [12.10.2010]	Canada, Saskatchewan	Saskatchewan Justice and Attorney General Legislative Drafting Services 8 Floor, 1874 Scarth Street Regina, Saskatchewan Canada S4P 4B3
<u>Karen Pflanzner</u> [12.10.2010]	Canada, Saskatchewan	Saskatchewan Justice and Attorney General Legislative Drafting Services 8 Floor, 1874 Scarth Street Regina, Saskatchewan Canada S4P 4B3
<u>Lee Anne Schienbein</u> [12.10.2010]	Canada, Saskatchewan	Saskatchewan Justice and Attorney General Legislative Drafting Services 8 Floor, 1874 Scarth Street Regina, Saskatchewan Canada S4P 4B3
<u>Sandra Schnell</u> [12.10.2010]	Canada, Saskatchewan	Saskatchewan Justice and Attorney General Legislative Drafting Services 8 Floor, 1874 Scarth Street Regina, Saskatchewan Canada S4P 4B3
<u>Lisa Sobotkiewicz</u> [12.10.2010]	Canada, Saskatchewan	8 Floor, 1874 Scarth Street Regina, Saskatchewan Canada S4P 4B3
<u>William Kosar</u> [17.8.2010]	Canada & Southern Sudan	Ministry of Legal Affairs & Constitutional Development Airport Road, Juba, Southern Sudan
<u>Andrew Miller*</u> [12.10.2010]	Fiji Islands	Attorney General's Chambers Suva
<u>Julian Stargardt*</u> [18.8.2010]	Hong Kong	16D On Hing Building 1 On Hing Terrace, Central Hong Kong
<u>Duane Allen</u> [17.8.2010]	Jamaica	Office of the Parliamentary Counsel 1 st Floor, NCB North Tower Oxford Road, Kingston 8

<u>Theresa Graves</u> [17.8.2010]	Jersey, Channel Islands	Legislative Drafting Office Morrier House, Halkett Place St Helier JE1 1DD
<u>Roselyne Aburiei</u> [12.10.2010]	Kenya	Ministry of Justice and Constitutional Affairs, Nairobi
<u>Eunice Gichangi</u> [17.8.2010]	Kenya	Kenya National Assembly Parliament Buildings, Parliament Road, Nairobi
<u>Ilani binti Mohammad Ibrahim</u> [17.8.2010]	Malaysia	Attorney General's Chambers Legislative Drafting Division Government Administrative Centre Putrajaya
<u>Michael Frindt</u> [12.10.2010]	Namibia	Ministry of Justice Private Bag 13302 Windhoek
<u>Ogundiran Olusola Olubunm</u> [5.11.2010]	Nigeria	Legal Services Department, National Assembly, Three Arms Zone, Abuja
<u>Adrian Kelly</u> [1.11.2010] [3.11.2010]	New Zealand	Legislative Drafting Unit Policy Advisory Division Inland Revenue Department PO Box 2198, Wellington
<u>Jillian Penn</u> [18.8.2010]	New Zealand	Maritime New Zealand PO Box 27-006 Wellington 6414
<u>Blanche Vitata</u> [12.10.2010]	Papua New Guinea	Department of Justice & Attorney General PO Box 591, Waigani NCD
<u>Kurum Chughtai</u> [17.8.2010]	Pakistan	78-B Moznang Road Lahore 54000
<u>Farzana Jumaye</u> [17.8.2010]	Seychelles	National House Victoria, Mahé
<u>Piliswa Ngcwabe</u>	Republic of South Africa	Independent Communication Authority of South Africa

[12.10.2010]		164 Kathrine Street Pinmill Farm, Block C Sandton
<u>Ryan Awai</u> <u>[17.8.2010]</u>	Trinidad & Tobago	Ministry of the Attorney General Cabildo Chambers 23-27 Vincent Street Port of Spain
<u>Jonetta Maynard</u> <u>[17.8.2010]</u>	Trinidad and Tobago	Office of the Chief Parliamentary Counsel, Ministry of the Attorney-General Cabildo Chambers, Port of Spain
<u>Andrea Reyes</u>	Trinidad and Tobago	Office of the Chief Parliamentary Counsel, Ministry of the Attorney-General Cabildo Chambers, Port of Spain
<u>Bucyana Allen</u> <u>[12.10.2010]</u>	Uganda	Directorate of First Parliamentary Counsel Ministry of Justice and Constitutional Affairs Plot 1, Parliament Avenue, P.O. Box 7183, Kampala, Uganda
<u>Rachel Lutalo</u> <u>[21.4.2010]</u>	Uganda	Ministry of Justice and Constitutional Affairs Plot 1, Parliament Avenue, P.O. Box 7183, Kampala, Uganda
<u>Rita Nansasi</u> <u>[18.8.2010]</u>	Uganda	Ministry of Justice & Constitutional Affairs PO Box 7183 Kampala
<u>Philip Ember</u>	United Kingdom, England	Office of the Parliamentary Counsel 36 Whitehall, London WC2
<u>Andrew Mwansa</u> <u>[12.10.2010]</u>	Zambia	Pensions and Insurance Authority Lusaka

* Entitled to full membership by virtue of being Commonwealth citizens.

Associate members

<u>_____</u> Maria Mousmouti <u>_____</u> [12.10.2010]	Greece	43 Atimadias Street Athens 10672
<u>_____</u> Peter Sze <u>_____</u> [17.8.2010]	Hong Kong	Department of Justice Law Drafting Division 9th Floor, High Block Queensway Government Offices 66 Queensway, Admiralty
<u>_____</u> Flora Tay <u>_____</u> [12.10.2010]	Hong Kong	Legislative Council Secretariat Hong Kong Legislative Council 8 Jackson Road, Central
<u>_____</u> Denis Healy <u>_____</u> [12.10.2010]	Ireland	Parliamentary Counsel Office Office of the Attorney-General, Upper Merrion Street Dublin 2
<u>_____</u> Chris Moll <u>_____</u> [12.10.2010]	Netherlands	Lange Voorhout 62 Den Hague
<u>_____</u> Tonye Jaja <u>_____</u> [18.8.2010]	United Kingdom, England	Institute of Advanced Legal Studies Charles Clore House Russell Square London W1C 5DR
<u>_____</u> Lim Jaejoo <u>_____</u> [21.4.2010]	South Korea & USA	2450 Massachusetts Ave., N.W. Washington, D.C. 20008, USA
<u>_____</u> Sandra Strokoff <u>_____</u> [12.10.2010]	United States	Office of the Legislative Counsel House of Representatives 136 Cannon Building Washington DC
<u>_____</u> Roselyn Hanzi <u>_____</u> [12.10.2010]	Zimbabwe	6th Floor, Beverley Court, 100 Nelson Mandela Avenue, Harare
<u>_____</u> Irene Petras <u>_____</u> [12.10.2010]	Zimbabwe	6th Floor, Beverley Court, 100 Nelson Mandela Avenue, Harare

CALC Ties

Four versions of CALC 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 also be available for purchase at ‘CALC 2011’ in Hyderabad next February.

The price for a terylene tie is HK\$90 (or £8.00) and for a silk tie HK\$150 (or GBP13.00).

News from the European region

Quality of European Union Legislation

The Lisbon Treaty aims, amongst other things, to improve the rights of citizens and businesses and to promote transparency, democratic accountability and judicial scrutiny. Those aims are increasingly important in a Union with 27 Member States and almost 500 million citizens.

It is now appropriate to look at European Union (EU) legislation to see how it fits in with those aims.

EU legislation has been criticised for being poorly thought out, badly drafted, unworkable, inconsistent, confused and over burdensome. Some of the charges may be unfounded and merely reflect Euroscepticism but some must be taken seriously.

I suggest that a group of suitably-qualified, independent persons look at all aspects of EU legislation to consider what problems it poses, whether it could be improved and, if so, how.

To some extent this would repeat the process conducted in the late 1990s when a committee under former European Court of Justice Judge Koopmans produced a report on EU legislation. That report was followed by a conference at Scheveningen which laid the basis for a Declaration on the quality of drafting of EU legislation adopted by the Amsterdam Intergovernmental Conference in 1997. The EU institutions adopted an Inter-institutional Agreement on drafting in 1998 and another on better lawmaking in 2003.

Aspects that might be considered by the new group include:

- Preparation of EU legislation: impact assessments, consultation;
- Technical drafting matters: formal structure, linguistic quality;
- Publication: paper and internet versions, how findable are they?
- Stability: amendment and consolidation;
- Effectiveness: are the rules workable and do they work?

- Evaluation after adoption;
- Interpretation of EU legislation.

The group should produce a report based on broad consultations of all interested circles. That report could be discussed at a conference of representatives from the Member States and the EU institutions to consider measures to improve the quality of EU legislation.

Measures already adopted following the Amsterdam Intergovernmental Conference include drafting guidelines and manual, earlier involvement in the drafting process of legal revisers, and basic drafting training.

The effectiveness of those measures could be reviewed and other measures considered such as specialised drafting units, formal training for all those involved in drafting, computer-assisted drafting, a mechanism for reviewing EU legislation before adoption or at the time of adoption, a binding requirement that EU legislation be of good quality, and an interpretation act.

With internet and modern communications, the process could be more open than was possible in the 1990s and more inclusive, less focused on insiders from the EU institutions. It could involve citizens and consumer interests and embrace experts in communications, computer technology and plain language.

A role should be played by academic bodies, such as the Institute of Advanced Legal Studies and the European Academy for Law and Legislation, and specialist associations, such as the Statute Law Society and the International Association for Legislation.

Ideally the outcome should be structures that bring a lasting improvement to EU legislation and perhaps even a system that is capable of healing itself in future.

William Robinson

Sir William Dale Visiting Fellow, Institute of Advanced Legal Studies, Russell Square, London

william.robinson.eu@live.co.uk

News of members from European jurisdictions

Jersey

Clive Borrowman left the Jersey Legislative Drafting Office in July after more than 11 years' service. Clive is moving to Tasmania but does not yet plan to retire as he expects to work under contract in other jurisdictions. Clive's post in Jersey has been taken by Theresa Graves who has come from the Government Legal Service in the United Kingdom.

Gibraltar

Significant changes to the arrangements of the drafting of legislation have occurred recently in Gibraltar. Two units now deliver Gibraltar's legislative drafting services. The first, the Legislation Support Unit (LSU), is staffed by Kevin Warwick and Nadia Sisarello and is located on 5th Floor of the Treasury Building, 23 John Macintosh Square, Gibraltar. At the moment, there is presently no head of the LSU.

The second one, the European Union and International Department, comprises Paul Peralta (who heads the unit), Dr Muhammad Rahman, and Dina Suisi, and is located at 6 Convent Place (Annex), Gibraltar.

It was great to see Dr. Muhammad Rahman (who heads one of the legislative drafting units in Gibraltar) in Ottawa recently at the CIAJ legislative drafting conference. Muhammad has made a remarkable recovery from a usually fatal form of cancer. He now seems to be in excellent health and on behalf of all CALC members I should like to wish him well in the future. [Ed] Now some sad news from 'The Rock'. A former Gibraltar legislative counsel, James Rosado died suddenly and tragically on 14 October.

Isle of Man

One of the Isle of Man legislative drafting staff members, Melissa Hedqvist, is currently on maternity leave. Her post has been taken on a temporary basis by Ian Beale, Deputy Parliamentary Counsel from the Queensland Office of Parliamentary Counsel, on special leave from his usual post.

News from the African region

Kenya Attorney General seeks foreign legislative counsel to help with drafting constitutional Bills

According to newspaper reports, the Kenya Attorney General, Amos Wako, is seeking to recruit a number of foreign legislative counsel to assist in drafting some of the 49 Bills required to be passed for the new Kenyan Constitution to be given full effect. Schedule 5 to the Constitution prescribe deadlines for the enactment of these Bills and it is clear that if those deadlines are to be met, the current resources of the Attorney General's Office will need to be supplemented. Mr Wako went on to indicate that some of the Bills would be challenging for the drafters because they emanate from new provisions in the Constitution.

It is understood that the Commonwealth Secretary General, Kamallesh Sharma, has sent his representative, Ayow Oke, for talks with Mr Wako and has promised to provide the required legislative counsel should the need arise. It is also understood that the British and US Governments have undertaken to second

legislative counsel from their jurisdictions. Mr Wako said that only five out of the 12 legislative counsel in his Office had the experience needed to draft the Bills. These counsel will apparently be joined by counsel from the Parliament who have legislative drafting experience and from the Kenya Law Reform Commission to form a team that will be supplemented by foreign legislative counsel. It is understood that, of the six counsel in the Parliament, four have the required experience and that the Law Reform Commission has three.

Mr Wako said that the foreign legislative counsel would fall into two categories: those engaged on one or two year contracts and those engaged to draft specific Bills.

New Constitution for Kenya

In August, the people of Kenya passed a referendum for a new Constitution. The Constitution came into force on the 27th of that month. The Constitution contains 18 chapters and six Schedules. The chapters deal with the following topics:

- The sovereignty of the people of Kenya
- The declaration of the Republic of Kenya, including the relationship of the State towards religion and vice versa
- Entitlement to citizenship and how people can acquire, retain and lose that citizenship
- A Bill of Rights, setting out the rights and fundamental freedoms of the people of Kenya
- Land and environmental matters
- Conduct of State officials
- The electoral system and its conduct
- The Legislature (which comprises the Senate and the National Assembly)
- The Executive (including the functions and powers of the President and other public office holders, and the election of office of the President)
- The Judiciary (which includes the Supreme Court, Court of Appeal and the High Courts as well as subordinate courts and Kahis' Courts)
- The devolution of central government to county governments
- Public finance
- The Public Service
- National security (including the establishment of a National Security Council and the establishment of the Kenya Defence Forces, the National Intelligence Service and the National Police Service)
- How the Constitution can be amended and how it is to be interpreted.

Article 261 of the new Constitution provides that if the Kenyan Parliament fails to enact within the prescribed period any of the 49 Bills necessary to implement the Constitution, any person can petition the High Court on the matter. That Court can, in determining the matter, make an order directing the Parliament and the Attorney General to take steps to ensure that the necessary legislation is enacted within the prescribed period and to report progress to the Chief Justice.

The Constitution further provides that if Parliament fails to comply with the order, the Chief Justice is required to advise the President of Kenya to dissolve the Parliament. Thus, failure to enact the Bills within the required timeframe could open the door to the dissolution of Parliament.

The Minister for Justice has expressed concern that unless the Parliament speeds up the process, it will be impossible to meet the timeframes set out in the Constitution. One of the key Bills is the one providing for the establishment of the Commission on Implementation of the Constitution and the Minister's concern arises from the fact that that Commission has to be established by 27 November 2010, 90 days after the Constitution was promulgated. The Bill to establish the Commission has been introduced into the Parliament amid concerns that it had been tabled without following the correct procedure. Nevertheless, the Speaker of the House has allowed it to proceed.

Two other Bills necessary to implement the new Constitution have already been published prior to being introduced into Parliament. These are the Judicial Services Commission Bill and the Vetting of Judges and Magistrates Bill. They are now awaiting the formation of the Implementation of the Constitution Commission. The Judicial Services Commission Bill is also supposed to be enacted within 90 days of the promulgation of the Constitution, but given the time constraints, it is difficult to see how this can happen.

Report of the Africa Region Conference of the Commonwealth Association of Legislative Counsel

Theme: Towards Uniformity of Legislation in the Commonwealth

Held at the Transcorp Hotel, Abuja, Nigeria 7-8 April 2010

Introduction

The Commonwealth Association of Legislative Counsel (CALC) Africa Region Conference was a new and unprecedented process. It was a new experience for one hundred and thirteen participants with a component of ninety-eight African participants and seven foreign participants. The representation from the Commonwealth African countries included Botswana, Gambia, Ghana, Malawi, Nigeria and Uganda. Representation from the Commonwealth outside of Africa included legislative counsel from Australia and the Director, Division for Constitutional and Legal Affairs of the Commonwealth Secretariat, UK. Other foreign participants were from the United States of America and the Netherlands.

The Conference, held at the Transcorp Hilton Hotel from the 7-8 April 2010, was organised with substantial support from the Nigeria National Assembly.

The aims of the conference were to share experiences of the Commonwealth countries on pertinent issues that affect legislative counsel in terms of translating policy into legislation with a view to harmonising drafting trends on topical issues to achieve uniformity.

Secondly, the conference provided a forum for African legislative counsel to discuss salient issues affecting their participation in the activities of CALC and an opportunity to chart the way forward.

The Honourable Attorney-General and Minister for Justice, Ghana, Betty Mould-Iddrisu was very grateful to the Nigerian Assembly for hosting the conference and for its immense support given to make the conference a success. She also noted the kind cooperation of the officers of the Nigerian National Assembly who directed the course of activities with decorum and efficiency. The lively participation amongst the participants was also greatly appreciated.

This report represents a synopsis of the panel presentations of the conference and the recommendations emanating from discussions related to the presentations and proceedings of the conference within the Africa region for legislative counsel.

Preparatory Arrangements

A challenge was posed to the preparatory arrangements by the fact that the organisers of the Conference, the two African representatives of the CALC Council were resident in Uganda and Ghana whilst the venue of the conference was Abuja, Nigeria. Thus the two representatives Estelle Appiah of Ghana and Ms. Elizabeth Bakibinga of Uganda could not be present on site to supervise and co-ordinate the Conference arrangements.

Secondly, this being the first time that such a conference was being held, it was difficult to estimate the number of participants expected.

This challenge was overcome by the rapport and co-operation established through consultation largely by e-mail between Estelle Appiah and the Clerk of the Nigerian National Assembly.

The Nigerian National Assembly took up the responsibility of on-site organisation and provided the venue for the Conference and reception facilities including bus service and escorts in an excellent fashion. Indeed, the Nigerian National Assembly as the host went the extra mile to make participants comfortable and hosted the participants to a couple of receptions. There were no difficulties whatsoever with the arrangements for the Conference.

DAY 1

Opening of the Conference

The Conference was opened by Estelle Appiah on behalf of Betty Mould-Iddrisu, Minister for Justice and Attorney-General of Ghana.

A speech to welcome participants to the Conference was read on behalf of the Attorney-General of the Federal Republic of Nigeria. Goodwill messages were also delivered by a representative of the Speaker of the Nigerian House of Representatives and Akbar Khan, Director, Division for Constitutional and Legal Affairs of the Commonwealth Secretariat, U.K.

The key note address “*Legislative Drafting, a Developing Discipline*” by Justice V.C.R.A.C. Crabbe, was delivered by Estelle Appiah on his behalf because he was in Mauritius on an engagement to train draftspersons. The keynote address highlighted ancient instances of legislative drafting like the codification of the public and private law of Rome between 451 and 452 BC in the Twelve Tables which became the statute law of Rome. That codification, it was said, introduced simplicity and uniformity into the law and became the foundation of legal education in Rome. Other instances like the Institutes of Gaius and Justinian both in relation to Roman law were also referred to. Preceding these laws were the Codes of Hammurabi of ancient Babylon which were written in 1752 BC and which consisted of 282 statutes.

In relation to legislative drafting practice, the address emphasised that “Words were the tools of our trade – the basic units of expression in any language”. The address cautioned draftspersons to “appreciate the correct use of words” and to be particular about the choice of words in order not to be unwittingly the source of distress or the cause of deprivation to persons affected by the law.

On the subject of language and legislation, the address advised draftspersons to be interested in language and ensure clarity in the use of language. The address also considered legislative drafting as a means of communication which lays down the rights, obligations, powers, privileges and duties of persons affected by the law. It added that legislation is a command or a series of commands in many respects. In that regard the address stressed the need for legislation to be clear and unambiguous and to conform to the principles that govern language.

In relation to Parliament, the address dealt with issues of the supremacy of Parliament in a country like the United Kingdom which has a largely unwritten constitution and Parliament as an institution subject to the *grund norm*, the supreme law of the land in countries with written constitution which define the powers and functions of Parliament.

As regards punctuation, the address discussed the various views on punctuation. One earlier view was that punctuation played no part in legislation. However, the address went on to show that a number of writers on legislative drafting were of the view that punctuation marks in a language were symbols that gave meaning to what was written.

The address concluded by pointing out that legislative drafting had made much progress but was still developing.

Session 1 – Panel Presentation

Sub theme: Strategies for Uniformity of Legislation.

This session was chaired by Juliet Ibekaku, Legal Advisor, Commonwealth and the Inter-Governmental Action Group against **Money Laundering** in West Africa (**GIABA**), Dakar, Senegal. The theme for this session was “*Strategies for Uniformity of Legislation*”.

First presentation

The first paper for this session, “*Shaping Policy into Law - A Strategy for Developing Common Standards*”, presented by Nick Horn, Senior Assistant Parliamentary Counsel, Office of Parliamentary Counsel, Commonwealth of Australia examined the role of the legislative counsel in the composition of legislation. The paper advocated a shift from the concept of the legislative counsel as a wordsmith who finds the right words and puts them in the right order to one in which the legislative counsel plays a more active role in shaping policy and effecting change.

The paper acknowledged the difficulty of achieving this paradigm shift in the light of the tradition and fixed institutional roles but nevertheless it took the position that “the legislative counsel must take proper responsibility for policy as well as formal technical matters”. It added that the legislative counsel who concentrated on *wordsmithing* at the expense of taking an active role in shaping policy “run the risk of drafting beautifully expressed laws that are not fit for purpose”.

The paper introduced a “drafting plan” or “blueprint” as a working document developed by the Australian Office of Parliamentary Counsel (“OPC”) to encourage legislative counsel to be aware of their role as translators of policy and to manage the drafting process. The presentation explained that the drafting from a “blueprint” approach was developed by the OPC in 1991 and had been used by most OPC legislative counsel since then for medium and large scale projects. This approach, according to the paper, enabled the legislative counsel to focus on the real problem to be solved and to develop a sound and simple solution at the conceptual level.

The presenter on the basis of the work of Professor Ann Seidman and the other authors of “Legislative Drafting for Social and Democratic Change” and their proposal for a “default”, outline for structuring a Bill, was of the view that the classification and ordering of the topics in a legislative plan could serve as a gem for developing a uniform standard or starting point for shaping amorphous schemes into effective legislative frameworks. He proposed the following basic generic template:

- Framing provisions (title, commencement, definitions, etc);
- Primary rules (“a law part that prescribes the primary role occupants’ behaviour”);
- Implementation rules (the “part that prescribes the behaviour of the implementing agency”);
- Compliance rules (not separately identified in Seidman et al). These include inspection, monitoring and reporting rules designed to not only encourage compliance but also to support enforcement action where necessary. Such rules are a subset of the implementation rules, but they have something in common with enforcement rules. In my experience it is very often useful to set them apart as a separate group of provisions “in between” those falling into the other two topics;

- Enforcement rules (“A sanctions part that provides for penalties or other direct conformity inducing measures with regard to the prescribed behaviours”.);
- Dispute settlement rules (for example, administrative and judicial review, or conciliation);
- Finance rules (the “part that provides for resources i.e. the necessary funds to implement the bills provision);
- Miscellaneous provisions (e.g. powers to make subordinate instruments; other executive powers; provisions safeguarding constitutional validity; possibly definitions in a “dictionary” at the end of the Bill).

Issues arising from the presentation—

An issue arose concerning why the templates that were attached to the presentation had not been adopted by the OPC for use by legislative counsel considering the usefulness of the template approach to the legislative plan. An explanation was provided to the effect that the attached templates were from a paper prepared by a colleague Louise Finucane and another by Adrian van Wierst (a former OPC Parliamentary Counsel) and the templates were yet to be officially endorsed for use by the OPC.

Second presentation

The second presentation, “*Lobbying as a Strategy towards Uniform Legislation, the Mental Health Bill of Ghana*”, was presented by Estelle Appiah, Director of Legislative Drafting in the Attorney-General’s Department of Ghana traced the history of mental health legislation in Ghana emphasising that the current enactment on mental health dates back some thirty-eight years thus the need for a new enactment on mental health to address the current problems associated with the delivery of mental health care and to incorporate the World Health Organisation Principles for mental health care into the domestic law. It further outlined the steps taken so far to get a new Mental Health Bill passed into an Act of Parliament with particular emphasis on lobbying as a tool to get the Bill passed.

The first enactment on Mental Healthcare in Ghana was the *Lunatic Asylum Ordinance* Cap 79 of 1888 and it was followed by the construction of the first mental asylum in 1906. It was not until some sixty-six years later that the current enactment on Mental Healthcare, the Mental Health Act was enacted to provide a shift from the concept of lunacy to one of mental health.

The paper pointed out that many developments had taken place after the enactment of NRC 30. The World Health Organisation had in 1996 published its ten principles on mental health which principles provided for promotion of mental health; access to basic mental healthcare; mental health assessments; provision of least restrictive type of treatment, self determination, right to be assisted for self-determination; review procedure, automatic periodic review, qualified decision maker and respect of the rule of law. Besides these principles, there had been a development in Ghana in which mental health was increasingly considered a spiritual problem and in which mental health patients were sent to spiritual centres, where they were chained and subjected to various abuses and denial of their human rights.

These developments led to a review of the current enactment on mental health. In this review it was found out that the current enactment—

- was hospital oriented;

- did not sufficiently address human rights concerns;
- did not provide for spiritual or herbal treatment;
- did not recognise special care for particular groups, children, women and the aged;
- did not recognise community based care; and
- did not help remove stigma.

The review process also identified the country's principal health disorders, mapped mental health related laws, studied international conventions and the World Health Organisation Resource Book and helped build consensus on the need for a new law on mental health. Lobbying was identified as one of the principal means to get the new law on mental health enacted.

The lobbying took the form of meetings with the Minister of Health; the inclusion of mental health in the national development plan and the Ministry of Health's five year programme beginning in 2009; and presentations on radio and television. The support of religious leaders was also enlisted and Non Governmental Organisations engaged in awareness creation and sensitisation of Parliamentarians with the Minister of Health being asked questions on mental health by Parliament.

The lobbying led to the establishment of partnerships with human rights activists, formation of pressure groups and project work on mental health, the inclusion of mental health in the manifesto of the ruling party and preparation of a TV documentary as well as a print media blitz. The draft Mental Health Bill is almost ready to be submitted to Parliament.

Issues arising from the presentation—

Participants deliberated upon whether giving of financial packages (bag loads of money) could be considered a legitimate means of lobbying and the possibility of having uniform mental health legislation or other legislation in the Commonwealth.

It was the view of the presenters and the chair that lobbying should be lawful and bribery which is unlawful should not be adopted as a means of lobbying.

The view was also expressed that there could be some uniformity of substance when laws derive their substance from the same source as in the case of international conventions. Some core drafting principles could also provide the ground for uniformity.

Third presentation

John King, Senior Assistant Parliamentary Counsel, Office of Parliamentary Counsel, Commonwealth of Australia made the third presentation "***Achieving Uniformity of Legislation in the Commonwealth of Australia: Strategic Issues***".

The paper discussed the nature of legislation in the Commonwealth of Australia and the role of the Constitution in demarcating the areas of legislation for the federation as a whole and for the individual States. Four different kinds of uniform effect legislation were identified by the presenter. These were "mirror laws", "model laws", "applied laws" and "referred powers laws".

“Mirror laws” refer to the situation in which the same provisions are enacted in different jurisdictions. The presenter was of the view that the different legal environments in which laws operate made it almost impossible for truly mirrored laws to have the same legal effect.

In relation to “model laws”, the paper pointed out that model laws are not made for any particular jurisdiction but are developed as a guide to jurisdictions on the understanding that jurisdictions will tailor them to suit their legal environment. They may however result in what are essentially mirror laws. The paper cited *the Commonwealth Criminal Code (The Criminal Code of the Commonwealth of Australia)* as an example of a model law. Australia has seven other model laws.

“Applied laws” refer to a situation in which the laws of one State are applied in another. Differences in the legal environment of the State applying the laws would often require that the law is applied with the necessary modifications. Modification does not however get rid of the difficulties created by different legal environments entirely. In some cases legal environments have been borrowed in order to address the problem of differences in legal environment. The *Research Involving Human Embryos Act 2002* of the Commonwealth of Australia and the *Research Involving Human Embryos (New South Wales) Act 2003 No. 21* are cited as examples of applied laws.

“Referred powers laws” describes the situation in which one jurisdiction makes laws for another jurisdiction. In Australia paragraph 51 (xxxvii) of the Constitution allows the Commonwealth of Australia to make laws with respect to “matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the laws shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law”.

The presenter was of the view that in Australia, referred powers laws to the Commonwealth swept away the problem of different legal environments. In spite of this, only six referring powers laws are listed in Australia. The paper expressed the view that “uniform style legislation” which is practised in the Commonwealth of Australia, promotes accessibility and is useful in two main ways. It helps users of legislation to know what to expect and where to find things and thus enables them to discover and understand the law more quickly and accurately. For legislative counsel, uniform legislation is useful because it helps them know how a piece of legislation is to be set out, where headings are to go and how provisions are to be numbered. In that regard, the Office of Parliamentary Counsel of the Commonwealth of Australia uses:

- uniform templates and text styles for Bills;
- standard amending forms; and
- standard provisions in certain circumstances.

In addition, the office—

- trains legislative counsel using an “apprenticeship” model, which helps them to develop and maintain an office style; and
- gets Bills to be scrutinised by other government agencies and checked by specially trained editorial staff of the office.

- Drafting Directions are issued by the office from the First Parliamentary Counsel to deal with specific topics in relation to style.

Issues arising from the presentation—

The meaning of the word “uniform” in the context of the theme for the Conference was not clear to some of the participants. Some of those participants questioned whether uniformity in relation to form and content was attainable.

Participants agreed that there could be some uniformity in relation to core drafting principles and form but uniformity in substance could only be achieved when the source of the drafting instructions were the same as in the case of international conventions. However, even with international conventions, the right to make reservations and the need to adapt the conventions to peculiar national circumstances undermined uniformity.

Fourth presentation

“*The Introduction of Common Legislative Drafting Guidelines for Africa*” by Prof. V.C.R.A.C. Crabbe was presented on his behalf by Henry Tackey, a Principal State Attorney of the Attorney-General’s Department of the Ministry of Justice in Ghana.

The Guidelines were prepared under the aegis of the Pan African Parliament with the support of the Africa i-Parliament Action Plan, a project funded by the United Nations Department of Economic and Social Affairs. The document was prepared with advice from Justice V.C.R.A.C. and was edited by Christo Botha, Tobias Dorsey, Monica Palmirani and Giovano Sattor. In the preparation of the document, assistance was also received from the European Union which allowed their drafting Guide – “Joint Practical Guide: Guide of the European Parliament and the Council and the Commission for Persons Involved in the Drafting of Legislation within Community Institutions” to be used and provided advice as well as undertaking a number of revisions of the draft. The senate of France, the House of Lords of the United Kingdom and the National Assembly of Portugal also gave support and advice. The National Assembly of Egypt assisted with the translation in Arabic and the National Assembly of Tanzania supported the translation into Swahili.

The common *Drafting Guidelines for Africa* define the common structural elements of legislation according to principles of good legislative drafting and legislative informatics. The Guidelines aim at providing African Parliaments with a shared approach to better legislation. It was hoped that the adoption of the Guidelines can contribute to the quality of African Legislation, the harmonisation of African laws and the development of advanced legislative information services in Africa. The Guidelines, in the words of Prof. Crabbe, “are presented – not as a command, not as dogma to any country but as a guide to guard against the pitfalls and inform us all in our work of legislative drafting for the benefit of Mother Africa”.

Session 2 – Panel Presentation

Sub theme: Drafting and Harmonization of Regional Anti-Money Laundering, Combating of the Financing of Terrorism Legislation

The chairperson for the session was Norman Sixth Wokoma, Director, Nigerian Financial Intelligence Unit and GIABA National Correspondent and the speakers were Hon. Justice Abdullahi Mohammed Liman of the Federal High Court, Lagos, Nigeria; Hon. Justice Ackbuleumola Banjoko, Federal Capital Territory, High Court, Abuja, Nigeria and Juliet Ibekaku, Legal Advisor, Commonwealth/GIABA, Dakar, Senegal.

First presentation

Juliet Ibekaku spoke on the role of GIABA to ensure compliance with international standards in relation to anti-money laundering and financing of terrorism among Economic Community of West African States (ECOWAS) and the assistance in re-drafting relevant laws to conform to international standards.

Second presentation

Honourable Justice A.M. Liman, in his presentation, pointed out the need to examine and evaluate the extent to which provisions of the model law on anti-money laundering and counter terrorism financing could be applied across the board. He expressed the view that the offences provided in the model law should be enhanced to include other offences which impact on money laundering. He believed the adoption of the model law would assist the adopting countries to bring their laws on the subject to international standards and to provide the needed clarity in relation to the subject. This was because in his view the model law provides needed clarity in relation to anti-money laundering and terrorist financing laws.

Third presentation

Honourable Justice Banjoko identified various laws and conventions guiding anti-money laundering. Among the conventions identified were the United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances also known as the Vienna Convention; the Convention against Transnational Organised Crime, 2000; and the United Nations Convention against Corruption, 2003. She further identified the Forty plus Nine Recommendations of the Financial Action Task Force on Money Laundering. Honourable Justice Banjoko informed the Conference that in April of 2009, the United Nations Office on Drugs and Crime (UNODC) in collaboration with the Commonwealth Secretariat and the International Monetary Fund drew out model provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime for the Common Law Systems which provided a starting point for the evaluation of the measures contained in the provisions which could be incorporated into the domestic law to combat money laundering, financing of terrorism and proceeds of crime. The measures provided for prevention, detection and effective sanctions and recommended their inclusion in the domestic laws to help those laws conform to International Standards and Best Practices.

According to Justice Banjoko, the provisions suggested an approach to confiscate through criminal procedure and forfeit through civil action, instrumentalities and terrorist property. The provisions also included measures against Cross-Border Transportation of currency and bearer instruments, the establishment of Financial Intelligence Units, Non-Conviction Based Asset Recovery and a Recovered Assets Fund.

The presenter recognised the difficulties to harmonisation of domestic laws in relation to the provisions. She was of the view that most African societies especially West African societies have cash based payment systems which made capturing and monitoring of financial transactions difficult and enabled

money laundering to thrive without detection. Lack of appropriate technology, equipment and qualified human resource and financial resources were also identified as factors that hampered the effort to combat money laundering and comply with international standards. Endemic poverty was also another factor because it made it difficult to disseminate information to create public awareness and encourage whistle blowers. These factors were aggravated by the existence of parallel banking units and “Black” markets which were anonymous, unmonitored and which promoted criminality.

The paper examined the state of the law on money laundering in African countries like Nigeria, Kenya, Ghana, Gambia and Sierra Leone. The paper was of the view that if the harmonisation of Regional Legislation was to be achieved, a centralised and a representative task force of legal draftspersons from all the countries in the region would have to be assembled to bring to bear on the legislation the peculiarities of their jurisdictions to ensure that the problems of their countries are reflected in the legislation. There would also be the need for a definition section which would take into account the cultural diversity of the societies in the region and to accommodate the terms which are specific to each country. The paper anticipated that after the adoption of these measures, there would still be inconsistencies, conflicts and drafting errors that would have to be addressed.

Session 3 – Panel Presentation

Sub theme: Transformation of Treaties

The session was chaired by Honourable Justice Abdullahi Liman of the Federal High Court, Lagos. The speakers were Anna Kotzeva of the Peace and Justice Initiative and Mavis Amoa, a Chief State Attorney of the Attorney-General’s Department, Ministry of Justice, Ghana. A third speaker, Christine Akello Echokit, Senior Legal Counsel, National Environment Management Authority, Uganda who was expected to deliver a paper on “Drafting Environmental Legislation – A Regulator’s Perspective”; was unable to attend the Conference.

First presentation

Anna Kotzeva, presenting on “*The Statute of the International Criminal Court and its Effective Implementation into National Law*”, revealed that worldwide one hundred and eleven States out of a total of one hundred and ninety-two [192] States (58%) had acceded to the International Criminal Court (ICC) Statute. Seventeen (17) out of nineteen (19) Commonwealth African countries (89%) were among those who had acceded to the Statute. The Commonwealth African countries which had not signed the Statute were Swaziland and Zimbabwe. Among the Commonwealth African countries which had signed the Statute, Botswana, Lesotho, Malawi, Mauritius, Sierra Leone, Tanzania and Zambia had ratified the Statute but are yet to implement it. Gambia, Ghana, Namibia, Nigeria and Uganda had prepared draft implementing legislation and South Africa and Kenya had implementation legislation. The presentation focussed on admissibility and implementation of ICC at national level.

Under the Statute, provision is made for issues of admissibility in Article 17. The Court is obliged in the preamble and article 1, to determine the issue of inadmissibility under specified circumstances. The circumstances include the investigation or prosecution of the case “by a State which has jurisdiction over the case unless the State is unwilling or unable genuinely to carry out the investigation or prosecution”.

The two key requirements in the Statute for national investigations and prosecutions, according to the presentation, are the domestic criminalisation of the core crimes and the modes of criminal responsibility. The core crimes are Genocide, Crimes against Humanity and War Crimes and they are required to be defined and criminalised in the domestic law by the Statute. The core crimes can be made part of the domestic law either by incorporation by reference or by enacting definitions in Articles 6 to 8 of the Statute which are on Genocide, Crimes against Humanity and War Crimes respectively. The Statute requires that in respect of crimes, the domestic law should adopt a single regime for international armed conflict and non-international armed conflict. An act is a War Crime if that act is an infringement of a rule of international humanitarian law and the rule is customary in nature or is under a treaty law and satisfies all the conditions. The act which constitutes the infringement must be of a serious nature and entail under customary or conventional law, the individual criminal responsibility of the person whose act it is.

Although the Statute draws a distinction between commanders and superiors in relation to war crimes, that distinction is not required when incorporating the Statute in domestic legislation. Other benchmarks that have to be observed in the incorporation of the Statute in domestic law are the comparison of the scope of the definitions in the domestic law with those of the Statute and the use of the expression “knew or should have known” for both military and non-military superiors.

Second presentation

Mavis V.A. Amoa’s presentation, “*The Legislative Trend of Mutual Legal Assistance in Ghana*”, provided an insight into the historical and current measures adopted in relation to legislation to combat crime in accordance with treaties and conventions. Mutual legal assistance according to the paper refers to the legal assistance provided by one State to another State where the State which is given the assistance is unable to conduct an investigation into or prosecute a crime that affects it without the assistance of the other State.

The paper highlighted the various pieces of legislation that relate to mutual legal assistance as well as the Mutual Legal Assistance Bill. In highlighting the enactments, the paper discussed those provisions that permit mutual legal assistance as well as the obstacles to mutual legal assistance contained in those enactments.

Article 73 of Ghana’s Constitution is considered by the paper as providing a suitable premise for the enactment of legislation on mutual legal assistance which enables government to conduct its international affairs in consonance with the accepted principles of public international law and diplomacy in a manner consistent with the national interest. However, since this broad framework for the conduct of international affairs does not provide for the specifics of mutual legal assistance, a vacuum is created which can only be filled by a comprehensive legislation on the specific subject.

The enactments which were highlighted were Narcotic Drugs (Control Enforcement and Sanctions) Act, 1990 (PNDCL 236); the Security and Intelligence Act, 1996 (Act 526); the Human Trafficking Act, 2005 (Act 694); Transfer of Convicted Persons Act, 2007 (Act 743); Anti Money Laundering Act, 2008 (Act 749); and the Anti Terrorism Act, 2008 (Act 762). The Narcotic Drugs Act provides the procedure for responding to mutual legal assistance requests on drugs offence cases and the co-operation and assistance to foreign authorities who request for assistance as regards drugs related offences in the foreign country. The assistance to be provided is broad and includes assistance with the service of processes or documents

from a requesting country; transmission of copies of statements or records or results of investigation in Ghana to the requesting foreign authority; and examination of a person specified in a request from a foreign authority as regards a drug related offence.

The *Security and Intelligence Act* provides a minimal measure of international co-operation since its thrust is to ensure that national security is effectively maintained. The Human Trafficking Act focuses on protection against trafficking and seeks to satisfy international standards for combating modern trends in trafficking.

The *Transfer of Convicted Persons Act* facilitates the transfer of a convicted person from the Republic to a foreign country and from a foreign country to the Republic for the purpose of serving a prison term. The transfer is based on a reciprocal arrangement between the Republic and a foreign government. The Act provides for the adaption and adoption of a foreign order which imposes a prison sentence and which is consistent with a similar offence under a law in Ghana. It further provides for transit of persons and cost sharing.

The *Anti-Money Laundering Act* established a Financial Intelligence Centre which is required to: cooperate with investigation authorities, supervisor bodies, revenue agencies, intelligence agencies and foreign counterparts to combat money laundering activities; assist in the identification of proceeds of crime and exchange information with other similar bodies in foreign countries. The Act on the whole provides a broad framework for concerted action both at the national and international levels.

The *Anti-Terrorism Act* does not expressly provide for mutual legal assistance but rather provides for universal jurisdiction for the prosecution of offences considered as terrorist offences. It however, indirectly provides for international co-operation through the creation of a forum for the prosecution of offenders by virtue of the universal jurisdiction.

According to the paper, although the enactments highlighted represented steps taken towards a regime of mutual legal assistance, they nevertheless fell far short of providing a comprehensive scheme of mutual legal assistance. The Mutual Legal Assistance Bill was therefore the culmination of all the efforts to establish an extensive and comprehensive mutual legal assistance regime. The Bill, which was introduced in Parliament in May 2009, seeks to intensify international co-operation through more formalised channels. It is also intended to cover the widest measure of mutual legal assistance in criminal matters. Various international conventions have been relied on to develop the enactments that relate to mutual legal assistance.

Day 2

Session 4 – Panel Presentation

Sub theme: Drafting and Harmonisation of Regional Anti-Corruption and Related Financial, Banking and Penal Legislative Frameworks

The session was chaired by Professor Osita Eze, a Professor of Law and Director-General of the Nigerian Institute for International Affairs.

The speaker was Chukudi Ojukwu, a Reader of the Nigeria Law School who presented a study he had conducted on the banking laws of the Commonwealth States which showed dissimilarities. He

recommended that if harmonisation of the banking laws of these States was to be achieved, then a lot more would have to be done in synchronising these laws.

Focusing on the Nigerian experience he pointed out that large sums of money were kept outside the banking system and that there were huge cash transactions in spite of the limitations on cash transactions imposed by the law. He added that the Nigerian cultural, social and economic environment which permitted the transfer of huge sums of money outside the formal banking sector made it difficult to enforce the limitations imposed by law on cash transactions and to regulate commercial transactions involving cash.

Session 5 – Panel presentation

Sub theme: Capacity Building for Legislative Counsel and the Role of Development Partners

The session, chaired by Chukudi Ojukwu had three speakers: Akbar Khan, who is the Director of Legal and Constitutional Affairs Division of the Commonwealth Secretariat in London; Neha Pandya who is a Deputy Director of Programmes and Special Projects of the International Law Institute-African Centre for Legal Excellence, Kampala; and Professor Ann Seidman of the Boston University School of Law.

First presentation

Akbar Khan's presentation on capacity building for legislative counsel emphasised the long and sustained tradition of the Commonwealth Secretariat's engagement in this important area of work through institutional building which could be traced back to the early 1970's and the first Secretary-General of the Commonwealth, Arnold Smith. He mentioned the importance of the role of the legislative draftsman in the national context in promoting and maintaining the rule of law and ensuring that political values cherished by the Commonwealth were properly translated and reflected in a "Commonwealth of Laws". In this regard, he noted that high quality legislative drafting resources were essential to the quality of and public confidence in, justice systems and so to the maintenance of the rule of law itself. He however regretted that resources for training and recognition for the legislative counsel did not match up to the real value and visibility that they deserved.

In spite of the relatively large number of legislative draftsmen trained by the Commonwealth over the years, the speaker noted that there were still challenges of ensuring an adequate number of trained legislative counsel against the bleak reality of not enough lawyers being trained to replace those leaving the field, under resourced offices, poor remuneration and other terms and conditions of service; isolation in the performance of their work and their being overworked as they were required to multi-task and carry out duties other than drafting. Another challenge identified was the lack of awareness among law graduates of legislative drafting as a viable career option.

Specific examples of Commonwealth Secretariat sponsored continuous training over the years were given. These included the drafting programme established by the University of the West Indies (UWI) at Cave Hill, Barbados to train Parliamentary Counsel from across the Commonwealth. This programme had as at 1993, trained 445 draftsmen. The distance learning methods by which academic institutions like the Vista University in South Africa, University of Papua New Guinea and the University of the West Indies were licensed to offer training within a defined region was another example of this training. Since 2003 the Commonwealth Secretariat has adopted a Commonwealth Curriculum developed by Professor Patchett for short term training and practical drafting exercises. The curriculum has been applied in two regions,

Africa and the Caribbean. In Africa a twelve week course has been organised in Ghana since 2005 for all the 17 Commonwealth countries in the region. In the Caribbean, a three month course has been held in Guyana since 2007. There had been an attachment programme for three graduates of the programme in the Caribbean.

The Commonwealth Secretariat, it was said, was likely to continue to be engaged in filling the gaps in legislative drafting across the Commonwealth in the foreseeable future. However, given its limited resources, the Commonwealth may have to more closely align its resources to ensure a timely and sustainable fulfilment of its goal of achieving sustainable legislative capacity.

Second presentation

Ms. Neha Pandya presenting “*Drafting, the African Superhighway*”, contended that the continuing investment in physical infrastructure of African nations needed to be supported by strong legal infrastructure in the form of effective legislation, judicial systems, law enforcement procedures, mechanisms for monitoring and evaluation and the local capacity to build and maintain these systems. The establishment of strong legal infrastructure would ensure that development was accountable, sustainable and enjoyed by all.

The emphasis for development in Africa, according to the paper, had been on physical infrastructure projects like the construction of dams, railways and highways which promote job creation and constitute development that could be seen and touched. The paper however adds that for sustainable development to be fully realised in Africa, the construction of physical infrastructure would have to work in tandem with a strong legal framework. Development of a strong legal framework, would according to the paper consist of—

- revising laws and establishing regulations that create an enabling business environment for private sector development;
- regularly training draftspersons engaged in the drafting of bills and revision of laws in their respective countries; and
- reforming legal education curricula to mandate an introductory course in legislative drafting for LLB students.

In this regard, the International Law Institute – African Centre for Legal Excellence

(ILI – ACLE) had contributed substantially in building Africa’s legal infrastructure through capacity building of public and private sector professionals engaged in development throughout sub-Saharan Africa and through the provision of technical assistance and advisory services in government and multilateral donor funded projects. As part of the capacity building process, the institute hosts, annually professionals in certification seminars as well as a three-month diploma programme in legislative drafting at its training centre in Kampala, Uganda.

The Institute also provides programmes in legislative drafting to supplement training that had previously been offered at the University of the West Indies and the University of Edinburgh for Commonwealth participants. The Institute has through these training programmes, contributed towards the creation of a sustainable pool of local experts to build the legal framework for African countries.

The Institute conducted two diploma programmes in 2007 on legislative processes and parliamentary systems for Members of Parliament from two States in Sudan. The training was conducted in Arabic and English and provided the parliamentarians with a set of basic tools to support them in effectively passing legislation and was designed to help guide parliamentary administration and resolve policy issues crucial to the successful implementation of the Comprehensive Peace Agreement.

In spite of the numerous interventions, the paper acknowledged that there was still an urgent need to further strengthen the capacity of lawyers in legislative drafting both at the law school level and in their professional capacity.

Third presentation

The third paper, “*Using Africa Parliamentary-Knowledge Network Clinics to Build Africa’s self-restraint legislative drafting capacity*”, was by Prof Ann Seidman of Boston University School of Law on behalf of her husband and herself. The paper postulates that the potential role of law was to change problematic behaviours and thus transform society. Law, according to the paper, constituted a government’s primary tool for achieving people-oriented development and good governance.

In order for the law to serve the purpose that the paper contended it should serve, the paper advocated for the purpose of the law making process, the adoption of a four step problem solving methodology which it termed *Institutionalist Legislative Theory and Methodology* (ILTAM). This methodology is intended to guide the legislative counsel to prepare logically a structured research report which provides an evidence-based justification for a Bill’s prescriptions. With the evidence-based justification, it is expected that support for the Bill could be obtained both from those of the proponents political persuasion and the rational sceptics on the other side of the aisle. The methodology would enable the legislative counsel to organise the available evidence logically in a research report to demonstrate that the new law’s detailed provisions would work to help resolve a targeted social problem.

Using this methodology, the first step in the law-making process requires the legislative counsel to state the social problem that requires resolution. The statement of the problem will require the description of the social problems, superficial appearance, the repetitive social behaviours (i.e. by definition, the institutions) that contribute to it, including the behaviours of the primary role occupants and the relevant implementing agencies.

As a second step, the legislative counsel is required to use ROCCIPI categories to generate tenable explanatory hypotheses to organise the available evidence to establish the hypotheses as the causes of the problematic behaviours identified in Step 1. For the purpose of this second step, ROCCIPI stands for—

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|--------------|---|
| Rule: | The “cage” of existing laws that supposedly prescribe a set of role occupants’ relevant behaviours. |
| Opportunity: | The Circumstances in the role occupants’ environment which permit or restrict their obedience to the Rule. |
| Capacity: | The role occupants’ skills and resources (or the absence of them) which make it possible for them to behave as the Rule requires. |

Communication:	The extent to which the law-makers have communicated the law's prescriptions to the relevant role occupants.
Interest (Incentive):	The role occupants' interest in conforming with or violating the Rule.
Process:	The decision-making process by which the role occupants, as members of a complex organisation, decide how to behave.
Ideology:	The values, attitudes and beliefs that influence the role occupants' problematic behaviours.

The legislative counsel is required in the third step to demonstrate that the Bill's detailed provisions are logically likely to alter or eliminate the cause of the existing problematic behaviours and indulge new ones which could be implemented in a cost effective manner to achieve the desired impact. The legislative counsel is finally required in the fourth step to include in the Bill an adequate provision for monitoring and evaluating the laws implementation and effect after its enactment in order, if necessary, to revise the enactment.

The legislative counsel is also required to prepare a logically structured research report which would serve as a quality control measure. The report should provide facts in a logically organised manner to demonstrate to the law makers and their constituents that logically the Bill's detailed provision would alter or eliminate the relevant problematic behaviours and induce appropriate new ones. The report should be well published.

The paper provided examples of the successful application of this method of drafting in participatory learning process in the universities of Zimbabwe, Tanzania and Zambia. The paper noted the increase in the number of African universities and the growth in the student population of these universities and the resultant multiplication of the "human capital" potentially available to engage in an evidence based approach to legislation.

The presenter expressed hope that that African universities working with local, national and regional governments and non-governmental agencies will establish legislative policy and drafting clinics to draft evidence based Bills and reports.

The paper concluded with the information that the Boston University School of Law had introduced a program to enable its BU-Ai-P clinic graduate students to work as interns or externs under local supervision in African universities or ministries (at no cost to African institutions) to participate in establishing and strengthening self-reliant drafting capacity within Africa.

Session 6 – Panel Presentation

Sub theme: Emerging Trends, Issues and Experiences in Legislative Drafting

This session was chaired by Akbar Khan of the Commonwealth Secretariat in the United Kingdom. The speakers were Hilary Onwe, a legislative drafting consultant and lecturer in Legislative Drafting; Hon. Frederick Ruhindi, Deputy Attorney-General and Minister of State for Justice and Constitutional Affairs for Uganda; Henry Tackey, a Principal State Attorney of the Attorney-General's Department of Ghana; and Soji Awagobade, an environmental lawyer, international consultant and a partner and the head of the environmental practices group AELEX Legal Practitioners and Arbitrators in Lagos in Nigeria.

First presentation

The first presentation by Hilary Onwe was on “*Myth and Mystique of Legislative Counsel Influence on Legislation - The Nigerian Legislative counsel in Focus*”. This paper examined the position of legislative drafting in relation to the practices of law and expressed the view that there was doubt as to whether legislative drafting constitutes practice of law. The paper cited a couple of jurisdictions in which legislative drafting was not recognised as legal practice.

The paper stated various views held on the nature of the work of the legislative counsel. Those views ranged from the legislative counsel being a “wordsmith who puts pen to hand and reduces ideas to a written text”, being a technical expert or a traditional dictation taker. The qualifications required for drafting was also touched on by the paper. The paper was of the view that the legislative counsel need not be a lawyer or have a specialised training in legislative drafting since training could be acquired by experience on the job.

The paper posed a number of questions which were aimed at identifying the persons to whom the legislative counsel may be said to be professionally responsible. The legislative counsel in civil or public service could claim to work for the public while those engaged in drafting documents in a private law firm were primarily responsible to their clients.

The difficulties that sometimes confronted the legislative counsel were also highlighted. One such difficulty could be a situation in which a legislative counsel was instructed to draft a Bill which was illegal, immoral or bound to cause hardship and public outcry. For the presenter the legislative counsel could resolve this difficulty by adopting the “lawyer’s ethics” of fully informing the client of the implication of the request and possible options and letting the client be the ultimate decision-maker. An alternative approach to resolving the difficulty especially if the legislation would result in legislation that would violate basic human rights or promote genocide, would be for the legislative counsel to refuse to accept the instructions.

The paper stated that some of the persons indicted to face trial by the International Criminal Court in The Hague in relation to the war crimes in Bosnia were indicted for being involved in drafting legislation.

The paper also examined the role of the legislative counsel in relation to policy. The first view dating from Sir Henry Thring in 1869 was that legislative counsel do not deal with policy or substance but rather deal with form. The other view was that legislative counsel are translators of policy and they appear to have some links with the policy process. The presenter’s own view was that the expertise required for legislative drafting and certain principles of legislative drafting placed legislative counsel in a position to significantly influence the wording of legislation. The principle of legality requires the legislative counsel to ensure that legislation complies with the constitution. Legislative counsel also have to ensure consistency and logical cohesiveness and further ensure that legislation is effective or meaningful. All these interventions by legislative counsel contribute to shaping the legislation.

The paper also considered the position of Nigerian legislative counsel and concluded that they were not any different from legislative counsel elsewhere. However, the peculiar circumstances of the Nigerian social and economic environment and the political history of that country, such as long periods of military rule, influenced the work of those counsel.

The paper concluded that despite every other consideration, the legislative counsel had a higher responsibility to professional integrity.

Second presentation



The second presentation “*Transition from a professional legislative counsel to a policy and law maker: Experiences from Uganda*” by Hon. Frederick Ruhindi, traced the presenter’s history and transition from a professional to a policy and law maker in Uganda and compared the two positions in relation to their impact on the making of legislation.

The paper was of the view that the life of a legislative counsel who had gone on to become a law maker was a colourful one, rich with experiences and reflected what to many were challenges and opportunities in that area of legal practice.

The paper pointed out that the legislative counsel often faced challenging conditions but added that policy makers also faced numerous challenges. According to the paper, the challenges faced by legislative counsel and policy makers across Africa were to a large extent similar. Among the challenges in respect of the draftsman cited as examples, were shortage of time and inadequate drafting instructions; lack of appreciation of the effort, nature of planning and thinking that went into drafting; lack of adequate training opportunities and career prospects; lack of library facilities; and delays in passage of Bills by Parliament.

The paper expressed the opinion that policy or law makers hardly appreciate the challenges legislative counsel faced in the execution of their work.

On the role of the legislative counsel, the paper quoted Professor Crabbe to the effect that legislative counsel were officers in government and of government who had the required expertise and experience to ensure that government policies were effectively translated into law for the benefit of society as a whole. In the quotation, legislative counsel were described as architects, in a large measure, of social reform and social structures because they were experts in the design of frameworks of collaboration for all kinds of purposes. The quotation also considered legislative counsel as specialists who weighed the past, considered the present and projected their minds into the future to enable a piece of legislation on the statute book to be of great assistance to both those who governed and those who were governed. In spite of this, the paper asserted that legislative counsel were not principally involved in policy formulation and strategy which was the preserve of administrators and law reformers. A legislative counsel could not identify legislative concerns and needs as the legislative counsel was normally used as a mechanism for delivering the policy in an implementable form as law. In comparing policy and law makers to legislative counsel, the paper stated that the former retained the liberty to initiate policy even after a Bill had been passed.

The paper continued the comparison further by stating that the legislative counsel was never able to initiate anything but only received instructions after policy had been approved by Cabinet, whilst the policy maker on the other hand could develop proposals initiated individually by lobbyists or by constituents and push them to Cabinet or other relevant level. Law makers could sponsor a Bill but this could not be done by a legislative counsel and additionally policy makers and legislators had more ownership of the legislative process from introduction, through consideration and final enactment. Another difference between legislative counsel and policy makers was that the legislative counsel would

guide players at all stages of the legislative process and was more concerned with ensuring compliance with legal and constitutional requirements, whilst the policy maker was more likely to pursue political positions and correctness which would sometimes border dangerously on unconstitutionality.

The paper made more comparisons and added that in the matter of interpretation, when all arguments failed, politicians and judicial officers at times blamed the legislative counsel that the Bill was badly drafted.

The paper also discussed the challenges of incorporating international conventions into domestic law and cited the case of the conversion of the Rome Statute in relation to the International Criminal Court into the domestic law in Uganda as an example.

The paper ended with an exhortation to legislative counsel to be meticulous with and to take pride in their work.

Third presentation

The third paper was presented by Henry Tackey on the topic “*Legislative Expression and Purity of Language – Some Random Thoughts*”. The paper considered the importance of language and grammar in drafting and expressed the view that some of the difficulties and misconceptions in drafting were as a result of non-adherence to the strict rules of conventional grammar.

The paper considered the debate over the use of the modal auxiliaries “shall” and “must” to express the mandatory, imperative or obligatory in the legislative sentence. In relation to this debate, the paper expressed the view that both modal auxiliaries, “must” and “shall” are used in expressions which are not mandatory, imperative or obligatory. Thus in regard to the two auxiliaries having other meanings, there was nothing to choose between them.

However, the paper expressed the opinion that if “shall” was used in accordance with the strict rules of conventional grammar to express futurity only when used in the first person, then there will be no confusion as to the use of “shall” in the legislative sentence. This is because the first person is not used in the legislative sentence and so the use of “shall” in the legislative sentence cannot be construed as expressing mere futurity.

Another aspect of language discussed by the paper was the placement of modifiers in a sentence. The rule is that modifiers should be placed as near as possible to the word they modify. In complex sentences with multiple modifiers, this rule becomes hard to follow and this sometimes results in ambiguity. The paper citing Reed Dickerson, Elmer Driedger and V R A C Crabbe as authorities was of the view that the issue of syntactic ambiguity could be resolved by breaking up the sentence into separate provisions.

The paper however, pointed out that sometimes strict adherence to the rules of conventional grammar could result in the syntactic ambiguity known as the “squinting modifier”. This is caused by sticking strictly to the rule that the auxiliary (in the case of the legislative sentence, the modal auxiliary) should not be separated from the main verb. This approach would not permit the expression: “The President shall, in accordance with article 195 appoint ...” because it separates the modal “shall” from the main verb “appoint” and yet this expression is permissible in drafting.

The paper also dealt with the division of legislation into parts and stated that Lord Thring and Sir Courtenay Illbert insist that legislation should be divided into parts only if each part was capable of

standing on its own as an enactment. Driedger disagrees with this position and gives various other instances in which legislation could be divided into parts. The paper agreed with the position of Driedger.

The paper concluded by pointing out the need for draftspersons to pay more attention to the rules of grammar without being regimental about the application of these rules.

Fourth presentation

Soji Awogbade on “*Emerging Trends in Legislative Reforms in Africa: The Oil and Gas Industry Example.*” examined international conventions and resolutions and laws that relate to the oil and gas industry. The presentation started with background information on the shift from the Middle East to Africa as a major source of hydrocarbons and how that shift had been influenced by kicked-up demand from India, China and other South East Asian countries which were willing to invest in the development of oil and gas reserves.

The paper noted that currently Africa accounted for thirteen percent of global oil supply but proper management of the oil resources had been the bane of most of the oil-producing countries in Africa.

According to the paper the current legal regimes for petroleum are based on United Nations conventions and resolutions, the constitutions of the oil producing countries, the domestic petroleum laws and Regulations and host government contracts in the form of concessions and licences, production sharing agreements, joint venture agreement and service contracts.

With respect to United Nations conventions and resolutions, the Charter on Economic Rights and Duties of States established the right of every State to freely exercise full and permanent sovereignty including possession, use and disposal over all its wealth, natural resources and economic activities. UN Resolution 1803 of 1962, however, requires the right of sovereignty over natural wealth and resources to be exercised in the interest of the national development and well being of the people of the State concerned.

The constitution of most African States including Ghana vests ownership of natural resources in the State. The domestic laws on oil of most oil producing jurisdictions in Africa have been shaped by post colonial nationalism in respect of resource control. These laws appeared to have given little consideration for the economic implications of the laws and made no effort to relate to and address the host communities of oil exploitation. Other difficulties to oil production in these countries included the external influence exerted by OPEC in relation to supply control and the absence of local skill for oil production.

The paper observed that the current reality of the oil industry was that it was characterised by vanishing reserves, reserves in difficult terrain, limited investment resources, the emergence of new petroleum provinces, environmental concerns, emergence of skilled workforces, development of local industry and issues of sustainability among others.

Set against the current situation in the oil industry, most host States had their own set of goals regarding the oil industry which goals differed from those of the investors in the industry. Host State goals include obtaining direct foreign investment in exploitation, ensuring transfer of technology in petroleum exploration to indigenes, ensuring local content in petroleum contract and the use of gas to generate power. Investors goals centred on ensuring profitable operations and being guaranteed security of supply and operatorship rights.

New developments in the oil and gas industry had led to the development in most oil producing jurisdictions of a comprehensive petroleum policy and extensive consultations with stakeholders including investors, host communities, industry professionals and civil society. A number of these jurisdictions have established Regulatory authorities and licensing regimes which define eligibility. They have also set up simple, clear and fair fiscal regimes and clearly set out national content requirements. Environmental, health and safety standards have also been established.

In spite of these measures put in place, in some of the oil producing countries, there was still the need in most of these countries to provide for a comprehensive and integrated regulation, independent regulatory authority, transparency in award of blocks, new fiscal regime, matters of confidentiality and environmental and safety issues among others.

The paper recommended that consideration would have to be given to regional control in matters of water quality and air quality among others.

Session 7—Plenary with discussions and recommendations

Under the chairmanship of Hon. Fredrick Ruhindi, the delegates discussed salient issues, made observations and recommendations on the way forward for CALC Africa.

Salient Issues raised by the Executive Council Members for Africa

There is need to establish focal points to act as a quasi-Secretariat at the regional level when it comes to promoting and organising CALC activities. The focal points would be expected to promote CALC activities within their institutions (registration and participation in events); endeavour to have CALC activities on the list of budget items in their offices and foster inter-drafting office co-operation.

Effective communication is crucial to this process and it is important for members to provide accurate email addresses during registration for membership. Eventual development and promotion of information exchange through list serves or internet groups would be helpful.

General Observations from the delegates

1. Delegates were generally of the view that the conference was successful, having been well organised and with a high level of participation. The CALC Conference was viewed as the beginning of periodical conferences alike with increased participation of other legislative counsel. In effect this conference should not be a single event but a process. The process ought to be sustained at various levels to ensure continuous participation.
2. Given the level of participation, delegates were of the view that the Conference should be used as a platform for legislative counsel to communicate with each other on pertinent issues that affect their work. Currently there are no key focal contact persons in drafting offices of legislative counsel for effective communication. Hence the Conference has provided the opportunity for this initiative to be taken. However, this initiative should not be left to the respective departments of the Attorney-General. All drafting offices, including those in the National Assemblies/Parliaments, Law Reform Commissions and private entities, should further the initiative.
3. Delegates were of the view that, not much attention is given to CALC activities and in the same vein, funding for its activities has been limited.

4. It was observed that some African countries are left out of the CALC conferences though not deliberately. More participation should be encouraged from these countries, for example South Africa. If participation at the African level is increased then one could also look beyond Africa to other Commonwealth countries.
5. Some delegates also remarked that the timeframe from invitation to the CALC Africa conference to when it was held was very short and therefore prevented some colleagues from participating in the conference since funding had to be sourced first. Furthermore, invitations by electronic mail do not suffice as evidence to obtain sponsorship and CALC should endeavour to communicate officially to the Attorney General and heads of institutions hosting legislative counsel. It was suggested that, more publicity should be given to CALC events to create the necessary awareness. Further comments on invitations related to how restricted they were to particular cities within a country. For example, in Nigeria, all the federal states should have been invited.
6. It was observed that the agenda for the CALC Africa region Conference, though with very interesting topics, was too ambitious and that the number of presentations should be reduced in future to make the conference even more fruitful.

Conclusion

The conference ended on a very positive note, with a number of participants volunteering to be the focal points for CALC in their offices or institutions.

Way forward

Even though some key actors, such as United Nations agencies, the Inter-Parliamentary Union, the East African Legislative Assembly and the Pan African Parliament had been identified during the organisation of the Conference and were contacted and/or invited to the Conference, more will have to be identified to enable a broader participation in future conferences.

The invitation process should be improved and not limited to the website. Personal invitations to various Ministries of Justice would be sent out in future.

There should be national focal persons for purposes of communication. In this regard, it was suggested that persons interested could submit their names for future contact. It was noted that it would not be possible to establish regional offices for CALC since the funding for this is not available. Work related to CALC is voluntary.

Small groups of legislative counsel should be formed to discuss and exchange ideas on topical issues affecting Commonwealth countries both in substantive areas and also the practice of legislative drafting. The following are pertinent substantive issues which the conference brought to the fore and which delegates felt should be addressed by CALC:

- How to deal with witness protection in matters of financial crimes;
- Domestication of the International Criminal Court Statute;
- Reservations regarding treaties;
- tackling corruption and the initiation of the development of stringent laws to combat corruption;
- Harmonisation of laws within the Commonwealth and the strategy for this;
- Retention of legislative counsel among others.

The conference was closed after the recommendations were adopted.

Participants list

Registration of Participants, CALC African Region Conference, Abuja, April 7th and 8th 2010

African Participants

Nigeria National Assembly	75
Others from Nigeria	3
Ministry of Justice, Nigeria	3
Ministry of Justice, Ghana	2
Ministry of Justice Gambia	1
Ministry of Justice, Uganda	1

Parliament, Ghana	1
Parliament, Uganda	3
Malawi Law Commission	2
Attorney-General's Dept Botswana	2
Deputy Attorney-General, Uganda	1
Uganda Law Reform Commission	1
International Law Institute, Uganda	1
Executive of Commonwealth Association of Legislative Counsel	2

Foreign Participants

Australia Office of Parliamentary Counsel	2
Australia accompanying guest	1
Dutch NGO	1
USA Boston University	1
USA Accompanying guest	1
Commonwealth Secretariat	1

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Total number of participants 105

List of Participants

<i>Name</i>	<i>Organization</i>	<i>Country</i>
King, John	Parliamentary Counsel's Office for the Australian Capital Territory	Australia
Horn, Nick	Parliamentary Counsel's Office for the Australian Capital Territory	Australia
Gatang, Gogontle	Attorney General's Chambers	Botswana
Mothoka, Nametso	Attorney General's Chambers	Botswana
Any, Ceaser	Ministry of Justice	Gambia
Joof, Awa	Ministry of Justice	Gambia

Waguel, Eva		Germany/Australia
Djietror, Ebenezer	Parliament of Ghana	Ghana
Appiah, Estelle	Ministry of Justice	Ghana
Tackey, Henry	Ministry of Justice	Ghana
Amoa, Mavis	Ministry of Justice	Ghana
Nyirongo, Chizaso	Malawi Law Commission	Malawi
Hiwa, Gertrude	Malawi Law Commission	Malawi
Kotzeva, Anna	The Peace and Justice Initiative	Netherlands/ UK
Ojukwu, Chidi	National Assembly of the Federal Republic of Nigeria	Nigeria
Sani-Omolori, M. A.	National Assembly of the Federal Republic of Nigeria	Nigeria
Adem , Daniel	National Assembly of the Federal Republic of Nigeria	Nigeria
Danjuma, Lois	National Assembly of the Federal Republic of Nigeria	Nigeria
Ibrahim, Yusuf	National Assembly of the Federal Republic of Nigeria	Nigeria
Dauchi, Deame	National Assembly of the Federal Republic of Nigeria	Nigeria
Dauda, Michael	National Assembly of the Federal Republic of Nigeria	Nigeria
Ademola, Abiola	National Assembly of the Federal Republic of Nigeria	Nigeria
Onyekafor- Aja	National Assembly of the Federal Republic of Nigeria	Nigeria
Ben-Stowe, Olubusola	National Assembly of the Federal Republic of Nigeria	Nigeria
Abubakar, Saleh	National Assembly of the Federal Republic of Nigeria	Nigeria
Omoge, Stephanie	National Assembly of the Federal Republic of Nigeria	Nigeria
Adedeji, Adekunle	National Assembly of the Federal Republic of Nigeria	Nigeria
Aneke, Adaora	National Assembly of the Federal Republic of Nigeria	Nigeria

Olugbemi, Philomena	National Assembly of the Federal Republic of Nigeria	Nigeria
Obaji, Vincent Ogbonna	National Assembly of the Federal Republic of Nigeria	Nigeria
Abdulkadir, Sadiya	National Assembly of the Federal Republic of Nigeria	Nigeria
Idris, Lauratu	National Assembly of the Federal Republic of Nigeria	Nigeria
Muhtar, Asiya	National Assembly of the Federal Republic of Nigeria	Nigeria
Gom, Marie	National Assembly of the Federal Republic of Nigeria	Nigeria
Adaba, Rita	National Assembly of the Federal Republic of Nigeria	Nigeria
Ezema, Grace	National Assembly of the Federal Republic of Nigeria	Nigeria
Adebanjo Ademola	National Assembly of the Federal Republic of Nigeria	Nigeria
Fofah , Florence	National Assembly of the Federal Republic of Nigeria	Nigeria
Adewale, Rotimi	National Assembly of the Federal Republic of Nigeria	Nigeria
Eze, Osita	Nigeria Institute of International Affairs	Nigeria
El –Ladan, Ibrahim	National Assembly of the Federal Republic of Nigeria	Nigeria
Paukuwo, Adeboye	National Assembly of the Federal Republic of Nigeria	Nigeria
Umar, Judge	Federal High Court of Nigeria	Nigeria
Oyewumi, Biola	National Assembly of the Federal Republic of Nigeria	Nigeria
Banjoko, Adebukunola	Federal High Court of Nigeria	Nigeria
Liman, Mohammed	Federal High Court of Nigeria	Nigeria
Areomiye, Olusola	National Assembly of the Federal Republic of Nigeria	Nigeria
Yabani, Bala	National Assembly of the Federal Republic of Nigeria	Nigeria

Abdulkadir, Amina	National Assembly of the Federal Republic of Nigeria	Nigeria
Salman, Zainab	National Assembly of the Federal Republic of Nigeria	Nigeria
Adeagbo, Bukola	National Assembly of the Federal Republic of Nigeria	Nigeria
Umar, Zandan	National Assembly of the Federal Republic of Nigeria	Nigeria
Ikott, Aniekan	National Assembly of the Federal Republic of Nigeria	Nigeria
Hassan, Mohammed	National Assembly of the Federal Republic of Nigeria	Nigeria
Icha, Ignatus	National Assembly of the Federal Republic of Nigeria	Nigeria
Ikezam ,Stephen	National Assembly of the Federal Republic of Nigeria	Nigeria
Nwenyi, Pius	National Assembly of the Federal Republic of Nigeria	Nigeria
Akubueze, Chinedu	National Assembly of the Federal Republic of Nigeria	Nigeria
Tamuno, Williams	National Assembly of the Federal Republic of Nigeria	Nigeria
Ogundiran, Olusola	National Assembly of the Federal Republic of Nigeria	Nigeria
Mohammed, Lawal	National Assembly of the Federal Republic of Nigeria	Nigeria
Adebona, Adebisi	National Assembly of the Federal Republic of Nigeria	Nigeria
Baba, Dorcas	National Assembly of the Federal Republic of Nigeria	Nigeria
Anigbogu, Chika	National Assembly of the Federal Republic of Nigeria	Nigeria
Berabon, Donatus	National Assembly of the Federal Republic of Nigeria	Nigeria
Yoila, Charles	National Assembly of the Federal Republic of Nigeria	Nigeria
Toyo, Olorunfemi	National Assembly of the Federal Republic of Nigeria	Nigeria

Obaje, Agim	National Assembly of the Federal Republic of Nigeria	Nigeria
Sani, Mohammed	National Assembly of the Federal Republic of Nigeria	Nigeria
Mijin, Yawa	National Assembly of the Federal Republic of Nigeria	Nigeria
Mohammed Umar	National Assembly of the Federal Republic of Nigeria	Nigeria
Folarin, Olufemi	National Assembly of the Federal Republic of Nigeria	Nigeria
Ahmed, Aminu	National Assembly of the Federal Republic of Nigeria	Nigeria
Ibrahim, Usman	National Assembly of the Federal Republic of Nigeria	Nigeria
Bello, Samuel	National Assembly of the Federal Republic of Nigeria	Nigeria
Galadima, Muhammad	National Assembly of the Federal Republic of Nigeria	Nigeria
Umoru, Cyprian	National Assembly of the Federal Republic of Nigeria	Nigeria
Nwokohu, Leslie	National Assembly of the Federal Republic of Nigeria	Nigeria
Azih, Jude	National Assembly of the Federal Republic of Nigeria	Nigeria
Abba, Saidu	National Assembly of the Federal Republic of Nigeria	Nigeria
Onwe, Hilary	National Assembly of the Federal Republic of Nigeria	Nigeria
Nwome, Emmanuel	National Assembly of the Federal Republic of Nigeria	Nigeria
Gaku, Kwagh	National Assembly of the Federal Republic of Nigeria	Nigeria
Abubakar, Nasir	National Assembly of the Federal Republic of Nigeria	Nigeria
Ushama, Ahmed	National Assembly of the Federal Republic of Nigeria	Nigeria
Tebira, Sara	National Assembly of the Federal Republic of Nigeria	Nigeria

Umar, Bala	National Assembly of the Federal Republic of Nigeria	Nigeria
Iliya, Navati	National Assembly of the Federal Republic of Nigeria	Nigeria
Pwajok, Dorcas	National Assembly of the Federal Republic of Nigeria	Nigeria
Udo, Udofia	National Assembly of the Federal Republic of Nigeria	Nigeria
Anyigor, Chidiogor	National Assembly of the Federal Republic of Nigeria	Nigeria
Ogbonanya, Kalu	National Assembly of the Federal Republic of Nigeria	Nigeria
Chollom, Pam	National Assembly of the Federal Republic of Nigeria	Nigeria
Danzaria, Yahaya	National Assembly of the Federal Republic of Nigeria	Nigeria
Wakombo, Nguyilan	National Assembly of the Federal Republic of Nigeria	Nigeria
Germans, Enudi	National Assembly of the Federal Republic of Nigeria	Nigeria
Okpa, Otobha	National Assembly of the Federal Republic of Nigeria	Nigeria
Awogbade, Olusoji	AELEX, Lagos, Nigeria	Nigeria
Dede, Napoleon	National Assembly of the Federal Republic of Nigeria	Nigeria
Habiba, Ahmed	National Assembly of the Federal Republic of Nigeria	Nigeria
Ibekaku ,Juliet	The Intergovernmental Action Group against Money Laundering in West Africa (GIABA)	Senegal
Wood, Gina	The Intergovernmental Action Group against Money Laundering in West Africa (GIABA)	Senegal
Pandya, Neha	International Law Institute – African Centre for Legal Excellence	Uganda
Aceng, Florence	Parliament of Uganda	Uganda
Mutebi, Kalifan	Parliament of Uganda	Uganda
Ruhindi , Fredrick (Hon)	Ministry of Justice, Uganda	Uganda

Awori, Nancy	Ministry of Justice, Uganda	Uganda
Kakooza, Joseph (Prof.)	Uganda Law Reform Commission	Uganda
Biribonwoha, Pius	Parliament of Uganda	Uganda
Bakibinga, Elizabeth	CALC Council member	Uganda
Khan, Akbar	Legal and Constitutional Affairs Division, Commonwealth Secretariat	United Kingdom
Seidman, Ann (Prof)	Boston University/International Consortium on Law and Development	USA
Makgetla, Tumi	Princeton University, USA	USA/South Africa

News from Canada

2010 Annual Joint Conference of the Canadian Association of Parliamentary Counsel and the Canadian Association of Legislative Counsel

In Canada, two national associations annually bring together representatives of parliamentary and legislative counsel offices at the federal, provincial and territorial levels:

- the Canadian Association of Parliamentary Counsel, whose members provide legal services, including drafting and other legislative services, to parliamentary bodies such as the House of Commons, the Senate and the provincial and territorial legislative assemblies;
- The Canadian Association of Legislative Counsel, whose members provide legislative services to the federal, provincial and territorial governments.

The 2010 conference was jointly hosted in Ottawa by the Canadian Senate, House of Commons and Department of Justice. It was chaired by the presidents of each association: Rob Reynolds, Law Clerk of Alberta, and Kim Hawley George, Legislative Counsel, Newfoundland and Labrador. The agenda encompassed a wide range of topics that generated some lively debate, notably:

- ethics and social media in the parliamentary and legislative workplaces (Mark Audcent, Senate),
- a national survey of drafting office practices (Peter Pagano, Alberta and Cornelia Schuh, Ontario),
- the powers of parliamentary committees to send for persons and papers (Rob Walsh, House of Commons and John Mark Keyes, Justice Canada),
- legal and jurisdictional issues surrounding accountability for members expenses (Steve Chaplin, House of Commons),

- fixed election dates, (Jean-Charles Bélanger, Justice Canada and Doug Stoltz, House of Commons),
- an annual review of parliamentary case law (Mark Audcent and Suzie Seo, Senate),
- parliamentary privilege as it applies to journalists (René Chrétien, Québec),
- drafting support for the Uniform Law Conference of Canada (Valerie Perry, Manitoba)
- drafting and policy development (Paul Salembier and Philippe Hallée, Justice Canada)
- the confidentiality of draft legislation (Brian Greer, British Columbia),
- the incorporation by reference into legislation of documents available only in electronic media (Peter Pagano).

The conference also included updates from each jurisdiction on its work and events of general interest and a visit to the official residence of the Speaker of the House of Commons in Gatineau Park.

Finally, the associations also elected the following officers for 2011-12:

- Canadian Association of Parliamentary Counsel—
 - President: Mark Audcent, Law Clerk, Canadian Senate;
 - Secretary: Parliamentary Counsel: Sheila MacPherson, Law Clerk, Legislative Assembly of the Northwest Territories
- Canadian Association of Legislative Counsel—
 - President: Ian Brown, Chief Legislative Counsel, Saskatchewan
 - Secretary: Peter Pagano, Chief Legislative Counsel, Alberta.

The next conference will be held in Whitehorse, Yukon in August 2011.

Legislative Drafting Conference of the Canadian Institute for the Administration of Justice “Re-Imaging the Law: Legislative Drafting Redefined”—Held in Ottawa 13 and 14 September 2010

Re-imaging is a term of quite recent origin. It has at least two distinct meanings. The first is associated with marketing and has to do with creating a new image for a product or business. The second arises in the world of computing and involves reinstalling the operating system and applications on a computer, in other words formatting the hard disk and starting from scratch.

What then does it mean to re-image the law? The 2010 Drafting Conference of the Canadian Institute for the Administration of Justice took up this question over two days in Ottawa on September 13-14, 2010. The conference focused on how the evolving legal concepts of a diverse community are redefining legislative drafting and invited participants to consider

- the value and contributions of the legislative drafter to the intricate fabric of legislation;

- the professional and ethical dimensions of the drafter within a modern, complex work environment;
- the evolving legal, cultural and language issues that must be considered and integrated into legislation; and
- how all of these elements are redefining the way legislative counsel draft.

The conference was chaired by Philippe Hallée, Deputy Chief Legislative Counsel of Justice Canada and Laura Hopkins, Legislative Counsel in the Office of Legislative Counsel for Ontario.

Don Revell, former Chief Legislative Counsel of Ontario and drafter emeritus, opened the conference with his reflections on a career in legislative drafting that has seen considerable legislative re-imagining in Canada. Examples he noted were the transition to gender neutral drafting, more attention to the audience that laws address, computerized word-processing, on-line publication of laws and client-centred drafting. He then presented a series of proposals for dealing more effectively with the changing world of legislative drafting, including, greater standardization of drafting practices (particularly a review of the Legislative Drafting Conventions of the Uniform Law Conference of Canada) and training programs, greater use of paralegal support and a consideration of whether there are any lessons to be learned from de-centralized and contract drafting as alternative approaches to providing drafting services.

The conference then moved on to consider ethical and professional responsibilities relating to legislative drafting as a subject that itself demonstrates how the drafting world has, like others in the public sector, become subject to increasing scrutiny and demands for transparency. Mark Audcent, Law Clerk of the Senate of Canada chaired a panel consisting of Brad Wendell from Cornell University, Robyn Hodge, Assistant Parliamentary Counsel in the New South Wales Parliamentary Counsel Office and John Mark Keyes, Chief Legislative Counsel of Justice Canada. They provided a variety of perspectives on these changes and challenged the participants with a practical problem that provoked considerable discussion if not soul-searching.

The re-imagining theme was then taken up in the context of the evolution of Aboriginal legal concepts and language and their integration into Canadian and New Zealand legislation. Naomi Metallic of Burchells LLP in Halifax, Nova Scotia and Mark Aitkin, Chief Legislative Counsel of the Northwest Territories, chaired a panel that included Jacinta Ruru from the University of Otago in New Zealand, Lorena Fontaine from the University of Winnipeg, Susan Hardy, Director of the Legislation Division of the Government of Nunavut, and André Samson, a legal translation consultant. They provided insight into the intersection Aboriginal language and legal concepts with more generally applicable systems of law that operate at a national, provincial or territorial level. This panel discussion was followed up by a workshop directed by Maxime Lamothe and Sarret Smit, legislative counsel of Justice Canada dealing with the integration of Aboriginal words and writing scripts into English and French legislative texts. It brought a very practical dimension to this form of re-imagining of the law.

The next panel, chaired by Judith Keating, Chief Legislative Counsel of New Brunswick and Pierre Charbonneau, Legislative Counsel of Quebec looked at how the harmonization of legal regimes around the world is reshaping legislation. Kathryn Sabo of Justice Canada, Frédérique Sabourin, Advocate in the Department of Justice of Quebec and Edwin Smith of Bingham, McCutcheon in Boston examined the Uniform Law Conference of Canada commercial law experience as it relates to the integration of non

Canadian norms into Canadian legislation, the harmonization of those norms within Québec civil law, as well as the American experience in that regard.

The second day of the conference began with Gary Coglianese of the University of Pennsylvania examining how the introduction of management-based regulations is changing traditional drafting methods. He described how regulated corporate entities engage in their own planning and internal rule making so as to achieve specific public goals. Recent examples of these regulations relate to food safety, environmental protection, mine safety and occupational health and safety.

The next session involved separate workshops in English and French allowing participants to focus on the practical challenges encountered in drafting and the opportunity to put some of the concepts learned during the conference into practice. The English workshop was led by Brenda MacKenzie, legislative counsel of Justice Canada and Laura Hopkins, legislative counsel of the Office of Legislative Counsel for Ontario. The French workshop was led by Jean-Paul Chapdelaine, Senior Legislative Counsel of Justice Canada and Jacques Lagacé of the Department of Justice of Quebec.

The conference concluded with Janet Erasmus, Chief Legislative Counsel of British Columbia, reprising the presentation on the durability of law that she gave at the 2009 CALC Conference in Hong Kong. It formed a fitting conclusion to a conference, reminding the participants of the enduring effect of the work that legislative counsel do and their critical role in designing laws to withstand the test of time.

The conference papers are available on the CIAJ Website (<http://www.ciaj-icaj.ca/>).

Planning has begun for the next CIAJ Conference in September of 2012. Mark it in your calendars.

New edition of “Executive Legislation”

Author: John Mark Keyes; Publisher Lexis Nexis Canada; Approx 400 pages; Retail price C\$145.

The definitive text on executive legislation in Canada



Eighteen years since the release of the first edition, Chief Legislative Counsel John Mark Keyes has produced an update of Canada’s definitive textbook on legislative instruments made by governmental authorities – *Executive Legislation*. This volume is the product of the author’s 25 years of experience of legislative drafting, teaching and writing in this vital, but often overlooked area of law. The book



begins with a threshold examination of what constitutes executive legislation (which embraces instruments most commonly referred to as “regulations” or “orders in council”) in the context of the legal system that authorizes and delimits its effect as law. It then considers how it is made and operates within this context and provides a comparative law perspective ranging not only throughout Canada, but also across Commonwealth jurisdictions (the UK, Australia and New Zealand).

Topics Covered

- Distinguishing characteristics of executive legislation and its relationship to other legal instruments for implementing governmental policy objectives;
- Constitutional constraints on executive legislation;
- Requirements governing the way executive legislation is made;
- Substantive scope of authority to make executive legislation and the provisions it may contain;
- Requirements to make or include content in executive legislation;
- Mechanics of how executive legislation operates as well as the process for its review by parliamentary, judicial and quasi-judicial bodies.

New in this edition

- Substantial update on developments over the past two decades, including new case law and legislation and emerging issues relating to matters ranging from Aboriginal rights to taxation;
- Thoroughly re-organized and expanded to increase research efficiency, going from three parts in the first edition, to five parts for the new edition;
- Updates on the application of legal principles and rules that cut across all substantive legal areas in relation to government regulations and other executive legislation.

A review of the book will appear in a future edition of *The Loophole*.

Vale Harry Rossiter QC AO—Former New South Wales Parliamentary Counsel



Harry Rossiter passed away on 23 June 2010 aged 87 years. He retired as chief Parliamentary Counsel for New South Wales in 1982, having held that office since his appointment in 1971. There is no doubt about it—he was a giant of a man in his time. He had a strong presence, an excellent speaking voice, with a commanding grasp of language. He was highly intelligent, often exhibiting remarkable feats of logic with an insight that confounded the officials he was dealing with. His verbal skills were legendary. To hear him in full flight was to experience a veritable deluge of logical thought. Ministers were known to quail.

It was my privilege to work with him since 1960, much of it as his Deputy, and so I was able to observe him closely and learn from him. He orchestrated a then unprecedented expansion in the size of the Parliamentary Counsel's Office, recognising the need for a larger office to respond to the expanding legislative program and the increasing expectations of government.

He was capable of producing prodigious amounts of legislation, which he did with considerable flair. He was very interested in technology and ensured that the Office had the latest equipment. In the latter portion of his career he actively promoted computerised legal information retrieval systems and was instrumental in their early development and acceptance, something he did with his usual passionate enthusiasm.

As a person, he was interested in everyone and everything. He enjoyed family, the camaraderie of friends, good food and wine, and a wide variety of entertainment. At one stage he had visited Europe, one feature of which involved going to the opera followed by late dinner. This appealed to him and on his return he insisted that my wife Ann and I join him and his wife Jo at a series of operas followed of course by dinner. It was the early 1970s and Sydney was not then renowned as a place for late fine dining, but I well remember my long-suffering wife enduring this and arriving home at 1am or 2am even though she must have been exhausted as the mother of small children! Nevertheless it was a memorable experience.

In his early days in the Office he enjoyed smoking a pipe while earnestly discussing some point or other. On one occasion, while discussing something with me, he lit his pipe and as usual flipped the match into the waste paper basket, which caught fire. This did not in the slightest deter his flow of words and he simply put his foot in the basket – where it got stuck with the flames leaping around his shoe. Unabashed and still talking, he finally doused the flames, impressing me with his *sang-froid* and effectively compelling me to ignore the debacle! He spent his working life as a loyal public servant but found his life's vocation in the Parliamentary Counsel's Office. He was a great man and a great chief Parliamentary Counsel. There is no doubt he would have excelled in any field within or outside the law, but he was devoted to the task of legislative drafting and legislative counsel until his retirement in 1982. He is survived by his wife Jo, children Jann and Neil, and four grandchildren.

Dennis Murphy QC

Former Parliamentary Counsel of New South Wales

Malaysian Legislative Drafting Course—Drafting Financial Provisions

In September, the *Institut Latihan Kehakiman Dan Perundangan Malaysia* [ILKAP] organized a course on drafting financial legislation for 30 legislative counsel and lawyers, who with three exceptions were from the Malaysian Attorney General's Office. Two of the remaining three participants were from Brunei and the other was from Singapore.

The course was convened and organized by Mohan Veeriah of ILKAP and conducted by Dr Duncan Berry (Australia, NSW) and Corinne Swystun (Canada, British Columbia). The aim of the course was to provide the participants with some knowledge and expertise of how to tackle the drafting of—

- legislation dealing with public finance (including public accounts);
- legislation imposing taxes and levies;
- legislation to regulate banks and other financial service providers; and
- legislation designed to prevent money laundering.

After being given an outline of the course, participants were given a résumé on the role and function of legislative drafting teams, the importance of co-operation between legislative counsel, instructing officers and other Government officers; the need to have a good knowledge of constitutional issues that are likely to impact on the drafting of other legislation; the role and significance of interpretation legislation.

The course then went to deal with public finance. Among the topics covered under this head were—

- supply expenditure;
- statutory (fixed) expenditure;
- provision for expenditure in legislation;
- parliamentary control; and
- public accounting officers and the role of the Comptroller and Auditor General.

The next area to be considered was the regulation of banks and other financial service providers. Topics covered under this head included—

- the establishment of financial regulating bodies;
- the functions and powers of those bodies;
- examination, inspection and enforcement powers;
- the role financial services ombudsmen in addressing consumer complaints; and

On day 2, the course went on to deal with the drafting of taxing legislation. Aspects covered were—

- the imposition, payment and collection of tax;
- identifying who is liable to pay the tax;
- the need to ascertain what is subject to the tax;

- whether there is a need to establish a ‘tax period’ (e.g. in relation to income taxes and goods and services taxes);
- the need to identify how much tax is payable (i.e. rates of tax);
- registration for tax purposes: how taxpayers become registered, and how and in what circumstances registration can be cancelled ;
- the need for taxable persons to keep records;
- whether taxpayers are to be entitled to deductions and, if so, the need to establish criteria for determining and quantifying those deductions and the applicable limits;
- the need to provide for what happens if two taxable entities merge.

On day 3, the areas addressed were legislation involving the finances of public authorities (including borrowing by public authorities and the provision of financial accommodation; keeping public accounting records; and auditing public accounts). The course then went on to deal with money laundering legislation. After lunch, participants were given advice on alternative techniques for drafting legislative provision involving calculations and other complex ideas. The afternoon session ended with an overview of the principles, approaches and methods used by the courts in interpreting fiscal legislation.

The course concluded with a legislative drafting exercise, in which groups of participants were asked to draft a Bill providing for the imposition of a levy on plastic bags provided at supermarkets and other retail shops. Participants’ returns were then critiqued.

The following legislative counsel and other lawyers participated in the course: Chan Seong Gnoh; Normaszli binti Abdul Rahim; Farahana binti Rabadin; Zuraidah binti Muhammed Rais; Jessica Daimis; Nik Nur Ashiha binti Ismail; NurJihan binti Mohd Aznan; Adis Yazliney binti Yazik; Nor Azzera binti Mohamed Noor; Roslinda binti Mohd Shafie; Nur Atina binti Markiman; Lailatul Zuaida binti Haroon@Harun; Farah Azlina binti Latif; Mazli binti Naw; Mohd Haziq Dhiyauddin bin Razali; Norfiza binti Bainon; Johari bin Hassan; Iren Tan Ai Ling; Mazuin binti Hashim; Norakhamar binti Mohd Sani; Dorah binti Abdul Kadir; Siti Nur Ikhlas binti Bustami; Zarifah Zul Ghaffar; and Wafa Aliah binti Abdullah (all from Malaysia); Lee Chuan Huei (Singapore); and Norismizan binti Haji Ismail and Zuraidah binti Haji Sidek (Brunei).



Course participants Lee Chuan Huei, Siti Nur Ikhlas Bustami, Jesseca Daimis, and Chan Seong Gnoh, with Corinne Swystun and Duncan Berry (course presenters) and Mohan Veeriah (course convenor and co-ordinator)

New Zealand lawyer appointed chief legislative draftsman for Fiji

New Zealand lawyer Robert Miller has been appointed Chief Legal Draftsperson in the Attorney-General's Chambers.

Miller was admitted as a Barrister and Solicitor in Auckland in 1965 and over a professional career of 45 years, developed a substantial legal practice that included legal drafting, law review, and law reform.

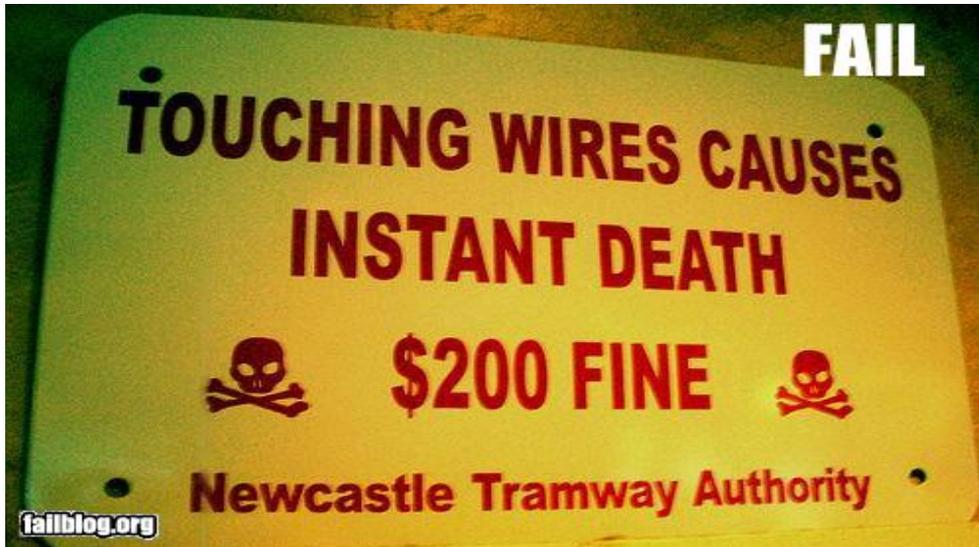
He has worked in a number of different jurisdictions around the world, including New Zealand, the Cook Islands, Bermuda and Malaysia and for 23 years he worked at different times for the New Zealand, Northern Territory (Australia), Hong Kong and Brunei Governments.

From 2000 to 2006 he worked for the Ministry of Finance in Brunei where he was the Head of Supervision and was responsible for drafting a number of important laws for which he received an award from the Sultan of Brunei.

Before accepting the position of Chief Legislative Counsel and moving to Fiji, Miller worked as a Barrister in New Zealand doing mainly advisory and international and trust financial work.

According to Fiji Solicitor General, Christopher Pryde, the Attorney General's Chambers is fortunate to have such a highly qualified and experienced lawyer to join the legal drafting team.

How *not* to draft a sign!



Weird case—Nothing says forever like a bad tattoo

Gary Slapper

When a 25-year old man from Bundamba in Queensland, Australia, returned home, took off his shirt and showed his girlfriend his back she said: "I don't think it's the tattoo you were after."

Her evaluation of the situation was pretty accurate as the new permanent tattoo did not depict the "Yin and Yan symbol with some dragons" that the young man had requested of his tattooist. Instead, it depicted an erect 16-inch penis and a misspelt slogan related to gay sex.

The tattooist has now been charged with two counts of occasioning actual bodily harm and an offence under the state's Public Safety Act because he was not professionally licensed to give tattoos, and hygiene regulations were evidently violated.

His case is set to be heard at Ipswich Magistrates' Court on 15 November 15.

The unusual events began when the alleged victim went to the tattooist's house.

"Somehow in the course of conversation," Detective Constable Paul Malcolm said afterwards, "the subject of tattoos came up."

During the conversation the host persuaded his guest to get a tattoo. Because of something the guest said to the host, the young men then had a very heated and acrimonious argument but it eventually subsided and the guest allowed himself to be tattooed by the man whom moments earlier he had been verbally abusing.

So the guest voluntarily rolled on to his stomach and while the tattooing was being done, a third man in the room who was watching made supportive comments such as “Mate, it’s looking really good”.

At the end of the tattooing procedure, the guest was told to keep the tattoo out of the sun for two weeks and not to show it to anyone during that time. He was then, he says, subjected to the unusual post-tattooing treatment of being punched several times in the face before being ejected from the house.

Where an alleged victim consents to a physical procedure such as being tattooed but gets an image different from the one that he stipulated there is a clear breach of contract. Whether, though, it is also a form of criminal assault will be a nice point for the magistrates.

There have been several civil actions for misspelt tattoos including one from a gangster whose tattoo said “villain”. If you were the tattooist for that client, you’d probably want to settle that claim with a generous payment fairly promptly.

The prize, though, for indelible ink error goes to the teenager whose tattooed arm now urges everyone he meets to “F**k the system”.

The author is Professor of Law at *The Open University*. His book [Weird Cases](#) is published by Wildy, Simmonds & Hill