

Newsletter



of the



Commonwealth Association of Legislative Counsel

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Message from the Secretary



Welcome to the third issue of the *CALC Newsletter* for 2011.

You will notice that there are a number of meeting reports in this issue. CALC's accreditation with the Commonwealth Secretariat (thanks to the tireless efforts of the former CALC Secretary, Dr Duncan Berry) has resulted in a number of invitations to Commonwealth meetings. Elizabeth Bakibinga, CALC Vice-President, and David Noble, Executive Council member for the Pacific region, attended the Commonwealth Law Ministers Meeting in Sydney in July 2011. Although the CALC representatives attended as observers only, their written report and presence has served to increase the visibility of the organisation to Law Ministers. Another meeting that CALC was represented at as a result of its accreditation with the Commonwealth was the Commonwealth Heads of Government Meeting in Perth, Australia in October 2011. Peter Quiggin, CALC President, attended that meeting on behalf of CALC.

Since the last newsletter there has also been an inaugural Asian regional conference organised by Therese Perera and the staff of Sri Lanka's Department of the Legal Draftsman. This conference followed a successful CALC African Regional Conference. From all accounts the Asian regional conference, held in September, was as successful as the African regional conference and was similarly well attended. Hopefully, the practice of holding regional conferences will gain momentum. Such conferences provide additional opportunities for legislative counsel to meet and discuss common issues and concerns relevant to their region.

On behalf of the CALC Council, I would like to welcome all those who have joined the Association since April 2011. CALC membership, both full and associate, continues to increase, as does the number of jurisdictions represented. For the list of new members since April 2011, please see page 22.

I trust everyone will find something of interest in the newsletter. If you have any items you would like to have included in the next newsletter, please email me at fiona.leonard@parliament.govt.nz. I would be particularly interested in receiving profiles of different jurisdictions' drafting offices. Finally, don't forget to factor into your long-term plans the next CALC conference, to be held in April 2013 in Cape Town, South Africa (see page 18—and more on this in the next edition).

Fiona Leonard
CALC Secretary
Wellington, October 2011

What is CALC?

Introduction

Having well-drafted and effective laws is critical to the maintenance of the rule of law. Legislative counsel have a critical role to play in achieving this.

CALC is the professional organisation of legislative counsel across the Commonwealth.

CALC was accredited to the Commonwealth on 20 March 2011.

CALC is very interested in increasing its interaction with the Commonwealth Secretariat. Indeed this is one of the priorities of CALC over the next 2 years. As a large proportion of legislative counsel in the Commonwealth are members of CALC, including most heads of drafting offices, CALC is very well placed to provide information and guidance to the Secretariat on all matters related to the development of legislative drafting across the Commonwealth.

CALC's members have already provided support to the Commonwealth Law Ministers and the Commonwealth Secretariat in addressing issues relating to the legislative drafting and publishing capacity of smaller jurisdictions.

CALC would welcome the opportunity to be more closely involved, in partnership with the Secretariat, in the Secretariat's activities across the Commonwealth in the area of legislative drafting.

This paper provides some information about CALC, its activities and history.

Membership and structure

CALC has over 1,000 members. These members come from most of the Commonwealth countries. Considering the relatively small number of legislative counsel in the Commonwealth, this represents a substantial proportion of all legislative counsel in the Commonwealth.

The CALC Council is made up of 4 office bearers (President, Vice-President, Treasurer and Secretary) and 2 representatives from each of the following regions: Africa, the Americas, Europe, Asia and the Pacific (including Australasia). The current President is Mr Peter Quiggin PSM, who is the head of the Australian Office of Parliamentary Counsel, the Vice-President is Ms Elizabeth Bakibinga from Uganda, the Treasurer is Ms Madeleine MacKenzie from Scotland and the Secretary is Ms Fiona Leonard from New Zealand.

Current activities

A major activity of CALC is the conference that is held in conjunction with the Commonwealth Law Conference. These conferences attract a comparatively high attendance rate of legislative counsel from across the whole Commonwealth. The conference offers participants the opportunity to hear

well-qualified speakers on a range of relevant topics, to participate in formal discussions and to meet and interact with legislative counsel from across the Commonwealth.

In addition to its major conference, CALC has also held some regional conferences in Africa and Asia and is becoming involved in the running of other regional conferences of legislative counsel.

CALC produces a journal, *The Loophole*, which contains papers on a range of drafting-related topics. Generally 3 issues are produced each year.

Over the years, both the number and the quality of the papers published in *The Loophole* have increased.

CALC also produces a *Newsletter* at least twice a year, to keep members informed of news relating to members and legislative drafting offices throughout the Commonwealth as well as other items of interest to members.

The CALC website (www.opc.gov.au/calc/index.htm) contains copies of all issues of *The Loophole* and *CALC Newsletter* as well as a range of other articles related to legislative drafting.

The CALC Council is able to communicate directly by email with the members on its database and provide them with immediate access to each new issue of *The Loophole* or of a *Newsletter* or bring other matters to their attention, including legislative drafting opportunities.

Further, CALC has combined with the Canadian Institute for the Administration of Justice to establish an eForum (www.ciaj-icaj.ca), which enables CALC members directly to raise issues with, seek comments from and generally communicate with other CALC members. There is also a CALC Members group on LinkedIn which serves the same purpose.

The CALC Council has considered the priorities for CALC over the next 2 years and agreed to the following:

- a) Organisation of the 2013 conference, which is to be held in Cape Town;
- b) Publication of *The Loophole* and the *CALC Newsletter*;
- c) Review of the CALC website;
- d) Increased involvement in regional activities;
- e) Increased involvement with the Commonwealth Secretariat;
- f) Increased interaction between legislative drafting offices.

History

CALC was established by a resolution carried at a meeting of legislative counsel held in Hong Kong on 21 September 1983.

At that meeting, the names of more than 200 people were put forward for membership. At least 38 jurisdictions in the Commonwealth were represented at that meeting.

The establishment of CALC, and the way in which it has grown since its establishment, has made legislative counsel more visible and led to greater recognition of their work.

But more importantly, the opportunities that CALC has provided for meetings of legislative counsel and the sharing of information between them have enhanced their competence at a time of great change in both the use of language and the use of technology.

CALC was created “to promote co-operation in matters of professional interest between persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting”.

On 3 June 2005, CALC’s objects became—

- a) to promote co-operation on matters of common interest among Commonwealth persons and others who are or have been engaged—
 - (i) in legislative drafting; or
 - (ii) in editing or translating draft legislation; or
 - (iii) in training people as drafters of legislation; and
- b) to promote public awareness of and to disseminate information about legislative drafting and the role of those who draft legislation; and
- c) to promote the use of effective legislative drafting practices and techniques.

The idea of holding regular conferences of legislative counsel arose out of comments made at a meeting of Commonwealth Law Ministers, held in London in 1973, where the problems of legislative drafting in developing countries were discussed.

Ministers were concerned about the shortage of competent legislative counsel. Consultants who considered the matter in 1974 recommended, among other things, that “There should be an increased recognition of the status and the central role of the draftsman in the legislative and law reform processes.”

In December 1982, after a range of preliminary work, Geoff Kolts, the First Parliamentary Counsel in Canberra, obtained the agreement of the Australian Attorney-General “to raise the matter [to establish an Association] at the meeting of Law Ministers in Sri Lanka” in February 1983.

The Attorney-General agreed—

- a) to indicate to the Law Ministers that, at the request of the Legal Division of the Commonwealth Secretariat, he had agreed that the Office of Parliamentary Counsel in Canberra should take the initiative in the formation of CALC; and
- b) to ask the Law Ministers to endorse the proposal.

The Attorney-General also agreed that the Office of Parliamentary Counsel would—

- a) provide the Secretariat;
- b) circulate a newsletter;
- c) suggest an inaugural meeting at the Commonwealth Law Conference in Hong Kong in 1983.

On 24 December 1982, Geoff Kolts wrote to Parliamentary Counsel in Australia and overseas to propose the formation of CALC.

In March 1983, the proposal for the formation of the Association received “overwhelming approval” at the meeting of Law Ministers in Sri Lanka and “the relevant item (Preparation of Legislation) attracted a larger number of speakers than any other”.

The inaugural meeting of CALC was held in Hong Kong on 21 September 1983 during the 7th Commonwealth Law Conference.

CALC has moved forward successfully since 1983. Like its inaugural meeting, all of CALC’s ordinary general meetings have been held in conjunction with a Commonwealth Law Conference.

Conclusion

Having well-drafted and effective laws is critical to the maintenance of the rule of law. Legislative counsel have a critical role to play in achieving this.

Legislative drafting is under-resourced in many parts of the Commonwealth and there is a real need to ensure that quality training and development opportunities in this field are available to counsel. Addressing this need will give Ministers across the whole Commonwealth access to efficient and effective legislative drafting services. On this and any other matter related to the development of legislative drafting in the Commonwealth, CALC stands ready to work constructively with the Commonwealth Secretariat.

CALC believes that action by individual governments to establish and properly resource centralised legislative drafting offices is fundamental to addressing the problem of the shortage of legislative counsel and resources in drafting offices within the Commonwealth.

Legislative drafting is not done in isolation. To have a successful legislative project, it is necessary for the legislative counsel to have access to people with good policy development skills who are able to provide proper instructions. This capacity appears to be missing in many countries and is not addressed by many donor-funded projects.

CALC also believes that there would great benefit in a reassessment of the way in which the substantial amounts of donor resources are allocated. CALC considers that donors would save money by pooling the resources that are expended annually on engaging consultants on an ad hoc basis to draft legislation for countries, and using this pool of resources to employ in-house legislative counsel in all such countries. Such in-house legislative counsel could not only draft the legislation that a particular project had in mind, but also draft a lot of other legislation for the same overall cost, helping smaller jurisdictions to clear their backlogs of legislative proposals.

CALC also seeks the support of CHOGM for the activities of CALC and the work of CALC in assisting the development of legislative drafting across the Commonwealth. In particular, CALC invites CHOGM to recognise:

- a) the importance of legislation being drafted properly so as to recognise and strengthen the rule of law;
- b) the utility and desirability of having a centralised and properly staffed legislative drafting office in each Commonwealth jurisdiction;
- c) the nexus between lack of policy development capacity and challenges in legislative drafting and the need for governments (and donors) to understand this nexus;
- d) the serious problems that currently exist with lack of donor co-ordination in the provision of legislative drafting assistance;
- e) that CALC, made up of over 1,000 legislative counsel covering most Commonwealth countries, provides a very substantial network of legislative counsel that can assist with the resolution of these issues.

*Peter Quiggin PSM
CALC President
October 2011*

Meeting reports

[Commonwealth Law Ministers Meeting and follow-up
Australia–New Zealand Scrutiny of Legislation Conference
Annual Joint Meeting of the Association of Parliamentary Counsel in Canada and the Association of
Legislative Counsel in Canada
Inaugural CALC Asian Region Conference
Commonwealth Heads of Government Meeting](#)

Commonwealth Law Ministers Meeting

11–14 July 2011, Sydney, Australia

In July 2011, Elizabeth Bakibinga, CALC Vice-President and David Noble, Executive Council member representing the Pacific region, represented CALC as observers at the 2011 Commonwealth Law Ministers Meeting that was convened at the InterContinental Hotel, Sydney. The Hon Robert McClelland MP, Attorney-General of Australia, welcomed the delegates at the beginning of proceedings and emphasised the role of the rule of law across the Commonwealth. The objective of the meeting was to discuss and provide the strategic vision and direction on law and justice issues of common concern, taking as its theme “Fostering a just and secure Commonwealth”. In doing so, the delegates sought to identify and drive the capacity-building and technical assistance required by



Elizabeth Bakibinga and David Noble

member states to promote the rule of law across the Commonwealth, in order to further enhance and strengthen democracy, good governance and development. Delegates were present from the law offices of the Commonwealth nations, observer organisations and other entities such as the International Criminal Court.

The meeting examined various issues, including the Feasibility Study on Extra Budgetary Funding for Legislative Drafting and A Simple but Effective Legislative Drafting System for Commonwealth Jurisdictions: Software Development.

Under the Legislative Drafting agenda items, the Ministers agreed to the Commonwealth Secretariat continuing to have a “clearing house” role in respect of applications for financial assistance for drafting from funds other than those provided through the Commonwealth Fund for Technical Co-operation.

Although not specifically mentioned in the [communiqué](#), Ministers made reference in the discussion to the role that CALC could play in assisting the Secretariat in delivering its additional function of encouraging the formation of regional networks of drafting offices and co-ordinating a “network of networks” (see paragraph 36(d)).

Finally, paragraph 36(e) emphasises the importance Law Ministers attach to developing well-structured drafting offices which can sustain a continuity of drafting resources. It remains a little unclear what role the Secretariat is to play in developing the measures to ensure that this is delivered.

In relation to the development of software and technical resources to assist legislative drafting, the Ministers discussed the recommendations in the Secretariat paper. Concerns were expressed that the Secretariat should not “reinvent the wheel” but work on the basis of existing systems which have already been developed – and reference was specifically made to the systems developed in Nauru and Vanuatu using non-Commonwealth funding which, in effect, could be considered to be pilot examples. A number of ministers spoke enthusiastically in favour of the recommendation to implement a legislation management system as a pilot and volunteered to be in the pilot. Equally, a number of countries made the point that using a single uniform system will not suit the variations in drafting requirements, resources and parliamentary processes in different member countries and others (including some smaller states) pointed out that they had already developed such systems so would not be looking to utilise this approach. Comments were also made that the proposed cost (US\$200,000) was “doubtful” given that there would be cheaper alternatives based upon developing existing models from the United Kingdom, New Zealand, Australia and Canada and from those developed with smaller states’ requirements in particular.

Paragraph 37 of the communiqué records an amendment to the original recommendation prompted by interventions from a number of member countries. Sub-paragraph (d) approves the setting up of

an Advisory Group drawn from experts including those in CALC to assist the Secretariat in the development of the drafting and publishing software.

The meeting received and noted (along with a number of other reports) the report from CALC (as the newest partner organisation represented at the meeting).

The CALC delegates took the opportunity to meet and discuss matters of mutual interest with Attorneys-General, Ministers and other leading figures in the legal fraternity, including Judge Sang-Hyun Song, President of the International Criminal Court, and Ambassador Lyn Parker, his Chef de Cabinet, and officials of the International Legal Assistance Branch Africa Section, Australian Government Attorney-General's Department. The International Criminal Court is keen on working with CALC on any activities relating to the domestication of the ICC Statute, among others. Discussions with the Attorneys-General and Law Ministers of most of the African countries present yielded promises of increased support for activities of CALC. As a result of discussions between Ms Bakibinga and representatives of the Sydney Law School, more legislative counsel from Africa are to participate in a six week legislative drafting programme, funded by AusAID through the Australian Leadership Awards Fellowship (ALAF).

This being the first Commonwealth meeting at which CALC attended as partner organisation in an observer status, it was clear that both the written report and the presence of CALC's representatives served significantly to increase the visibility of the organisation to Law Ministers in particular and to member country delegations in general. The addition of CALC as part of the advisory group in relation to the development of legislative software systems was certainly viewed by other observers at the meeting as a significant achievement. Co-ordination within CALC, between members and the Council, will also be critical in ensuring that CALC's engagement, as an association, with the Secretariat is both constructive and fruitful.

Particular thanks go to Don Colagiuri and his deputy Marion Pascoe in the New South Wales Parliamentary Counsel's Office for their assistance in rapidly producing copies of the CALC comments on the two papers which were provided to the Commonwealth Secretariat at the meeting.

The final communiqué from the meeting is available at http://www.thecommonwealth.org/document/238332/clmm_2011.htm.

Follow-up meeting of partner organisations with the Commonwealth Secretariat September 2011, London

This was chaired by Akbar Khan, Director of the Commonwealth Secretariat's Legal and Constitutional Affairs Division, and was attended by a number of representatives from other partner organisations such as the Commonwealth Lawyers Association and International Red Cross. David Noble was able to represent CALC at this meeting. The Commonwealth Secretariat outlined the new mandates, including the two relating to law drafting. These mandates will have to await the outcome of the Commonwealth Heads of Government meeting in Perth before formal funding allocations can be

agreed by the Secretariat. It is also clear that the Secretariat will be looking to strengthen evaluation and assessment of results from all its work programmes. Lead responsibility for taking forward the two mandates on legislative drafting will be with the Head of the Justice Section in the Legal and Constitutional Affairs Division, who expressed his desire to work closely with CALC on those mandates.

Elizabeth Bakibinga
CALC Vice-President

Australia–New Zealand Scrutiny of Legislation Conference

26–28 July 2011, Brisbane, Australia

Since the early 1980s, every 2 years, parliamentary committees from Australia and New Zealand, with the occasional involvement of committees from similar jurisdictions (such as Canada and Pacific Island nations), meet to discuss the “technical” scrutiny of legislation by parliamentary committees. In 2011, the conference was held in Brisbane, hosted by the Queensland Parliament. The theme for the conference was “Legislative scrutiny in an era of convenience”.

The conference was opened by the Governor of Queensland, Her Excellency Ms Penelope Wensley AC. The opening address was followed by a paper from the Chief Justice of the Supreme Court of Queensland, the Hon Paul de Jersey AC. The focus of the Chief Justice’s paper was the importance of the accessibility of legislation and, more broadly, how the oversight provided by legislative scrutiny committees can enhance the operation of democracy. The Chief Justice said:

There has long been recognition, by parliamentarians, lawyers and drafters alike, that legislation must not only be comprehensive, but equally importantly, comprehensible.

To that end there has since the 1970s been a substantial move towards “plain English” drafting, with rejection of the legalese commonly derided inside and outside the legal community. The perceived benefit is of course greater comprehensibility, thence accessibility.

Consistently, a number of Commonwealth statutes have been largely revised, in the areas of sales tax (1992), corporations law (1995–2000), income tax (1995–2000), aged care (1997) and the public service (1999).

I would not pretend to favour all examples of plain English legislative drafting, but as with a number of my colleagues I would applaud most of these thrusts towards greater clarity.

The reality is, however, that the precise expression of difficult concepts sometimes necessitates the use of less than straightforward terminology. The ultimate challenge is to match exactitude with brevity.

The Chief Justice also discussed the Queensland case of *R v Sillery*,¹ and the issue of ambiguity in offence provisions.

The keynote address for the conference was given by Sir Gerard Brennan AC KBE, a former Chief Justice of the High Court of Australia. In his address, entitled “Scrutiny’s role in the rule of law”, Sir Gerard gave a fascinating exposition on the development of the rule of law, before turning to the role of Parliament and legislative scrutiny committees in the rule of law. Sir Gerard said:

Although the common-law rule of interpretation does not restrict legislative power, yet it provides a continuing reminder that legislative interference with fundamental principles, individual rights and the general system of law—the very elements of the rule of law—requires “clear and unequivocal language for which the Parliament may be accountable to the electorate”. As the Parliament is accountable for both Acts of the Parliament and subordinate legislation, it is the role of the Parliament to ensure that enacted law does not infringe these interests without a compelling necessity to protect the common good. Thus the Parliament has a crucial role to play in maintaining the rule of law.

The appointment of scrutiny of bills committees and subordinate legislation committees has been a necessary step in providing Parliaments with an opportunity to take account of the interests protected by the rule of law.

Outside of the opening and keynote addresses, there were perhaps 2 dominant themes for the conference. The first theme was a concern, shared by committees from various Australian jurisdictions, about the increasing use of “national scheme” legislation in Australia and suggestions that there was a tendency for national scheme legislation to result in “skeletal” primary legislation, with much of the important detail of such national schemes left to subordinate legislation. This theme was explored in an excellent paper by the Hon Adele Farina MLC, Chair of the Uniform Legislation and Statutes Review Committee of the Western Australian Legislative Council. This topic was also explored in another paper entitled “Leaving it to the Regs” presented by the author of this report coming at the issue from a different angle.

It was significant that, on the motion of the Hon Adele Farina, the conference passed a resolution to establish a committee of the chairs of the Australian and New Zealand scrutiny committees to review issues associated with uniform legislation and skeletal legislation, with a view of establishing improved legislative processes to protect the scrutiny role of parliaments across Australia and New Zealand.

While there have been similar committees established previously (see <http://www.aph.gov.au/Senate/Committee/scrutiny/natschem/index.htm>), the motion demonstrates a shared (and ongoing) concern about the issues raised in relation to national scheme legislation.

¹ [1981] HCA 34; (1994) 180 CLR 353 (26 June 1981).

The second theme was the use of subordinate legislation (and, in particular, the use of “Henry VIII” clauses) in emergency situations. Again, an excellent paper was presented by Tim Macindoe MP and the Hon Lianne Dalziel MP, from the Regulations Review Committee of the New Zealand Parliament, on New Zealand’s legislative response to the disastrous Canterbury earthquakes, in 2010 and 2011. This response involved quite extraordinary regulation-making powers. Again, coincidentally, similar experiences were shared with the conference by Queensland parliamentarians, including the Hon Judy Spence MP, Parliamentary Secretary for Parliamentary Reform and Leader of the House, on Queensland’s recent experience with catastrophic floods and Queensland’s legislative response to those floods.

Among other excellent papers, I would also draw attention to a paper by Professor Mark Aronson, from the University of New South Wales. Professor Aronson spoke to the conference as an “outsider” but offered some interesting insights into the use of subordinate legislation, as well as making some suggestions for improvements in the way that subordinate legislation is scrutinised by parliamentary committees.

The conference papers can be found at <http://www.parliament.qld.gov.au/work-of-committees/former-committees/SLC>.

The next conference is scheduled to be held in Perth, Western Australia, in 2013.

Stephen Argument

Legislative Drafter, Commonwealth Office of Legislative Drafting and Publishing and Legal Adviser (Subordinate Legislation) to the ACT Standing Committee on Justice and Community Safety (performing the duties of Scrutiny of Bills and Subordinate Legislation Committee)

Annual Joint Meeting of the Association of Parliamentary Counsel in Canada and the Association of Legislative Counsel in Canada

10 August 2011, Whitehorse, Yukon, Canada

On August 10, 2011, the Annual Joint Meeting of the Association of Parliamentary Counsel in Canada and the Association of Legislative Counsel in Canada was held in Whitehorse, Yukon. Yukon is a territory in Canada’s north bordering the Province of British Columbia and the Northwest Territories in Canada and the US state of Alaska. The venues for the annual meetings rotate annually to different parts of Canada. The primary focus of the meeting is to promote co-operation between parliamentary counsel and legislative counsel and to discuss issues of common interest.

The Association of Parliamentary Counsel was founded in 1982. Parliamentary Counsel provide legal services to the House of Parliament or to the legislative assembly of a province or territory. The Association of Legislative Counsel was founded in 1994 and consists of legal counsel who are primarily responsible for drafting the government’s legislative agenda. In some jurisdictions in Canada, legislative counsel provide legal services to both the government and the legislative assembly.

Presentations at the meeting included the following topics:

Pamela Muir (Yukon) delivered a PowerPoint presentation on “Evolution of Self-Government in the Yukon”

Peter Pagano (Alberta) delivered a presentation on “Omnibus Bills”

Peter Pagano (Alberta) delivered a presentation on “Regulatory Review Processes: Cross-Canada Update”

Steve Chaplin (House of Commons) delivered a presentation on “Legislatures Holding Governments to Account Responsibly”

Mark Audcent (Senate) delivered a PowerPoint presentation on “Ethics for Parliamentary Table Officers”

Michael Carpenter (UK) and Willoughby G. “Tim” Sheane, Jr (US) delivered a presentation on “International Perspectives”

Catherine Morin (Québec) delivered a presentation on “Développements judiciaires au Québec en matière de privilège parlementaire” (“Judicial Developments in Quebec Affecting Parliamentary Privilege”)

Rob Reynolds (Alberta) delivered a PowerPoint presentation on “The Use and Abuse of Hansard by the Courts”

A Round Table Discussion took place on “Public Consultation about Draft Bills”

Peter Pagano (Alberta) delivered a presentation on “Role of Legal Advisors in the Development and Drafting of Legislation”

Peter Beaman (Justice Canada) delivered a PowerPoint presentation on “Performance Evaluation and Reporting by Legislative Offices: How Well Are We Doing”

Melanie Mortensen (Senate) provided the “Annual Review of Parliamentary Case Law (2010 and 1999–2001)”

Claude Lesage (Justice Canada) delivered a PowerPoint presentation on “Redéfinir les balises du partage des compétences fédérales–provinciales” (“Shifting the Yardsticks on the Federal–Provincial Division of Powers: The Supreme Court of Canada References on the *Assisted Human Reproduction Act* and the *Securities Act*”)

*Peter J. Pagano QC
Chief Legislative Counsel, Department of Justice
Alberta, Canada*

Inaugural CALC Asian Region Conference

28–30 September 2011, Colombo, Sri Lanka

Introduction

1 At the CALC Conference in Hyderabad there was some discussion about the desirability of holding a regional conference for CALC members in Asia.

2 After that conference, Therese Perera (one of the Council members representing Asia) volunteered to organise a conference in Colombo, Sri Lanka. A small working group consisting of Therese, me (as CALC President) and Eamonn Moran (the other Council member representing Asia) was formed and it was decided to hold the conference in late September.

3 Therese was able to obtain extremely generous support from the Sri Lankan Government, which covered all of the conference costs in addition to providing accommodation for all overseas conference delegates for the duration of the conference.

4 She also obtained support from the Commonwealth Secretariat, which enabled us to pay for the airfares for delegates from a number of countries.

5 This support meant that some delegates who would otherwise not have been able to attend were able to participate. I would like to record my thanks, and those of CALC, to the Sri Lankan Government and to the Commonwealth Secretariat for their generous support.

Attendance

6 In total, 69 people registered for the conference. The following Asian countries were represented at the conference:



- Sri Lanka
- India
- Pakistan
- Brunei
- Malaysia
- Singapore
- Hong Kong

7 This represents all of the Asian Commonwealth countries with CALC members other than Bangladesh.

8 A CALC member from Qatar also attended.

9 CALC members from Nauru and Australia also attended and spoke at the conference.

10 Mr Jarvis Matiya from the Commonwealth Secretariat also attended.

Programme

11 The conference opened with the traditional lighting of the lamp ceremony which was accompanied by drums and dancing. The conference was then opened by Hon Sarath Amunugama (Senior Minister to the Cabinet of Ministers and Advisor to the President on Economic Affairs) who spoke on behalf of the President of Sri Lanka.

12 There was a very full programme of sessions with drafters from all of the Asian countries attending and participating as speakers or panel members on sessions. Topics covered included:

- Drafting in small jurisdictions
- Powers to make editorial amendments to legislation
- Legislative responses to transnational crime
- Training of drafters
- Statutory interpretation
- Legislating for development
- IT resourcing
- Adaption of laws in Pakistan.

13 There was also a session on the role of CALC and that of the Commonwealth Secretariat.

14 A highlight was a drafting masterclass in which teams from a number of jurisdictions produced drafts that they prepared to give effect to a common set of instructions. Teams from Hong Kong, India, Malaysia and Singapore each presented a draft. It was very interesting to see how different four drafts based on the same set of instructions could be.

15 A number of other events were included in the programme including a conference dinner and a cultural performance.

16 The first two days of the conference were held in Colombo. To enable delegates to see a bit more of Sri Lanka, the sessions for the third day were held at Ahungalla which is about 60km south of Colombo on the coast.

17 To get us there quickly, Therese was able to organise a police motorcycle escort and also get us access to the yet-to-be-opened motorway that goes south. This is a very impressive road that is part of the extensive infrastructure development that we saw whilst in Sri Lanka.

Conclusion

18 The conference was a wonderful success. The venue and the facilities were outstanding. The quality and range of speakers and presenters were excellent.

19 The conference provided an opportunity for legislative counsel from across the region to get together and discuss matters of common interest and concern.

20 The attendance of a representative of the Commonwealth Secretariat provided the opportunity for discussion about how CALC and the Secretariat can work together on matters related to legislative drafting.

21 My thanks and congratulations go to Therese Perera and all of the staff of the Department of the Legal Draftsman who did a magnificent job in organising the conference and making all of the visiting delegates feel so welcome.

*Peter Quiggin
CALC President
October 2011*

Commonwealth Heads of Government Meeting

24–30 October 2011, Perth, Australia

As a result of CALC being accredited with the Commonwealth, CALC received an invitation to attend the Commonwealth Heads of Government Meeting (CHOGM).

I attended CHOGM on behalf of CALC.

The organisations such as CALC that are accredited with the Commonwealth are described as “Civil Societies”. These cover a wide range of groups such as those representing trade unions, sight-impaired people, women, indigenous groups, town planners and architects amongst many others.



Before the formal CHOGM meetings involving heads of government, there are a range of activities involving Commonwealth Civil Societies and Foreign Ministers.

We were able to provide a paper about CALC that was distributed to the delegations from all of the countries attending as well as to the other Civil Societies.

I was also able to participate in a roundtable with Foreign Ministers and the Civil Societies. This consisted of a session in which Civil

Societies were able to raise points and then the Foreign Ministers responded. Nearly all Foreign Ministers were in attendance.

This was a very productive session and it is clear from comments that were made that the relationship between the Civil Societies and the Ministers has matured and improved over the years.

In addition to the formal sessions, there was the opportunity to network with representatives from other Civil Societies and from various governments.

A highlight was the opening ceremony. The representatives of the Civil Societies (including CALC) were given front-row seats, so we had a wonderful view. I must say that most representatives were surprised to have been given such good seating.

Being able to attend CHOGM and raise the profile of CALC and of legislative counsel generally is a further benefit of obtaining accreditation with the Commonwealth.

Peter Quiggin
CALC President

Call for volunteers

The Legislative Drafting Clinic, at the Sir William Dale Centre for Legislative Studies, Institute of Advanced Legal Studies, School of Advanced Study, University of London

In preparation for its official launch in October 2011, the IALS Drafting Clinic invites drafters, IALS alumni, IALS Research Fellows, PhD students, and LLM students (including distance-learning students) to register as volunteers for pro bono work at the Drafting Clinic. The IALS Legislative Drafting Clinic was established in December 2010. Its aim is to assist NGOs or governments in need while at the

same time offering applied learning cases for the student cohort. For full details of the Drafting Clinic, please visit our webpage at: <http://ials.sas.ac.uk/postgrad/LDclinic/LDclinic.htm>.

Volunteers may be called upon to review existing legislation, respond to drafting instructions, and assist with drafting in co-operation with local experts. The Clinic matches volunteers to drafting projects on the basis of their qualifications, local knowledge and understanding of the client's legal system, and interests. Matched volunteers may opt in or out of any project. Volunteers are listed in the webpage of the Clinic.

For further details and to request a volunteer's registration form please contact: Dr. Helen Xanthaki, Sir William Dale Centre for Legislative Studies, Institute of Advanced Legal Studies, 17 Russell Square, WC1B 5DR, London, UK, or by e-mail: Helen.xanthaki@sas.ac.uk; or the Secretary of the IALS Drafting Clinic, Mr. Tonye Clinton Jaja at Tonye.Jaja@postgrad.sas.ac.uk.

CALC Conference and Meeting 2013

Cape Town, South Africa

Just a reminder that the next CALC conference is to be held in Cape Town, South Africa. The date is yet to be confirmed but will be immediately before or after the Commonwealth Law Conference to be held 14–18 April 2013.

The conference and meeting provide a great opportunity to discuss and explore issues that confront legislative counsel throughout the Commonwealth. It is also a fantastic social and cultural experience. The theme of the conference will be decided early in 2012 and a call for papers made during that year.

If you have any suggestions regarding a theme, council members are keen to hear from you. Our contact details may be found on the CALC website (<http://www.opc.gov.au/CALC>).

Drafting office profiles

Nauru Office of Parliamentary Counsel

Staff structure and numbers

The Office of Parliamentary Counsel (OPC) is housed in the Parliament Building and is under the authority of the Speaker of Parliament. The office has only two legislative drafters: the Parliamentary

Counsel (Katy Le Roy) and the Assistant Parliamentary Counsel (Catriona Steele). The office also has two dedicated administrative staff in the newly established Legal Publication Unit: a Legal Publication Officer (Serenaid Debao) and a Legal Publication Assistant (Francilia Akubor). The Parliamentary Counsel is the head of the office and is responsible for recruitment of the other staff. The Speaker recruits the Parliamentary Counsel.

Scope of drafting work and its volume

Nauru OPC is responsible for drafting legislation, subordinate legislation and, occasionally, other legislative instruments. For most legislation, OPC also prepares explanatory memoranda and second reading speeches. The office has a large volume of drafting work relative to the size of the office, with around 60 bills and 10 proposed regulations on the drafting list at any given time. The number of bills completed and introduced varies significantly each year, depending on the political situation and the scope of the legislative initiatives.

Because Nauru is a very small jurisdiction with limited financial and human resources, OPC fulfils a number of functions additional to legislative drafting, including the provision of legal and procedural advice to the Speaker, parliamentary committee work, drafting reports on behalf of government to fulfil international treaty reporting obligations, chairing the Working Group on Treaties, managing major legal projects (such as constitutional review and consolidation of legislation), maintaining the Parliament website, and assisting in the financial and general administration of Parliament. Owing to a lack of policy development capacity in the public service, OPC often leads the policy-making process, including sitting on working groups and drafting Cabinet submissions on policy matters.

Language(s) in which drafting is done

Drafting is done exclusively in English. Nauru has an indigenous language (Nauruan), which is an oral language. Nauruan does not have a standardised written form, although the Government of Nauru is proposing to develop a language policy and to standardise the language (which will probably include the production of an official Nauruan dictionary).

Drafting tools utilised

Until the end of 2008, Nauru OPC did not have any legislative drafters, or even lawyers. Until 2009, OPC did not utilise any drafting tools. In 2009, the office adopted a plain language drafting policy, and began work on the development of a drafting manual. In 2010, the office developed templates for Bills, consolidated Acts and subordinate legislation. The office uses Microsoft Word and does not have any specialised legislative drafting software.

How drafters are trained

There is no formal training programme for drafters within Nauru OPC. The office endeavours to employ drafters who have experience in other jurisdictions, and to share experience within the office.

Involvement, if any, in consolidating and publishing law

OPC is nearing the completion of a 12-month project to consolidate and electronically publish all the laws of Nauru. The project is managed by the Parliamentary Counsel with assistance from two consultants, and funded by New Zealand AID. This will be the first consolidation of the laws of Nauru since 1966.

As part of the project, OPC has established the Legal Publication Unit (LPU), which will be permanently housed within OPC. The LPU will be responsible for publishing consolidated reprints of laws as soon as they are amended, and for maintaining the new online legal database that will contain Acts in force, subordinate legislation in force, Acts as passed, subordinate legislation as made, point-in-time versions of Acts, repealed legislation, government Gazettes and Supreme Court decisions. Legislation will be published in electronic form only. There is no government printer in Nauru.

It is envisaged that in 2011, Parliament will establish OPC as a statutory office, with express responsibility for the consolidation and publication of legislation.

Interaction with CALC

Drafting in a very small office without ready access to other drafters presents challenges that could be overcome by greater use of online resources to share knowledge among CALC members. The CIAJ-ICAJ forum would be an ideal platform for this if participation in the forum increased.

A major problem in our region is the engagement (by donors, at great expense) of non-drafters on drafting assignments. This stems from a lack of understanding of the role of qualified drafters, and it affects the quality of legislation across the region. OPC could work with CALC members in the region (and perhaps in other developing countries) to increase awareness, among donors and governments, of the role of drafters, the importance of engaging legislative drafters for drafting assignments and the importance of communicating with the drafting offices in the relevant jurisdiction in preparing terms of reference for such assignments.

The staff of our recently established LPU would benefit enormously from training opportunities within a larger office.

Items of interest

New Zealand Parliamentary Counsel Office's Pacific Island desk

The New Zealand Parliamentary Counsel Office's (PCO) Pacific Island desk has been operational since 1 July 2011. The Pacific Island desk provides legislative drafting assistance to Pacific Island countries,



Richard Wallace, first incumbent of the Pacific Island Desk

with priority given to the countries within the Realm of New Zealand (the Cook Islands, Niue, and Tokelau). Assistance will be extended to other countries if resources permit.

The Pacific Island desk is a three-year programme funded by the New Zealand Ministry of Foreign Affairs and Trade through the New Zealand Aid Programme.

One senior PCO drafter is seconded to the Pacific Island desk for up to 12 months at a time. Each drafter who is seconded to the desk is based in the PCO's Wellington office, but is likely to visit relevant countries in order to—

- receive instructions on the legislation that is to be drafted; and
- meet with government officials and on-island stakeholders; and
- gain a broader understanding of the needs and concerns that need to be addressed and the context within which the proposed legislation is to operate; and
- present draft legislation to the government or its officials and to make final changes to it.

Legislative priorities are determined by each Pacific Island country, not the Pacific Island desk. The aim is to work alongside solicitors in the relevant Attorney-General's or Solicitor-General's office in order to provide assistance as and when this is needed, and as directly and usefully as possible.

The assistance that the Pacific Island desk provides also includes on-the-job training in legislative drafting for government lawyers, and the creation of legislative templates and Solicitor-General's drafting directives (setting out minimum standards and style and formatting requirements for legislation) if this is considered helpful by the countries concerned.

Since its establishment, the Pacific Island desk has been inundated with work and requests for assistance.

The NZ PCO is enjoying working alongside its Pacific Island neighbours to assist them as best it can in the PCO's area of specialist knowledge and expertise.

If the Pacific Island desk is successful and receives support within New Zealand and from Pacific Island countries, then the PCO hopes to be able to secure funding to continue this programme.

*Richard Wallace
Parliamentary Counsel
Wellington, New Zealand*

Angela Kaunda: A Malawian's experience in New Zealand



Angela Kaunda, a Legislative Counsel in the Ministry of Justice and Constitutional Affairs in Malawi for one year, has recently been undertaking work experience at the Parliamentary Counsel Office in New Zealand. Her secondment at the Parliamentary Counsel Office was from 15 September to 11 November 2011. On arrival at the NZ PCO Angela was assigned an experienced Parliamentary Counsel as a supervisor. They worked together on a number of drafting assignments. Angela also had the opportunity to observe the parliamentary process in New Zealand.

Angela is looking forward to sharing what she has learned in New Zealand with her colleagues in Malawi. She also hopes that the 2 offices will continue to interact and offer technical assistance to each other in the future.

Membership

New CALC members

The following have been recorded as members of CALC since the publication of the last *CALC Newsletter* in April 2011.

Name	Country
Abdel Hadi, Fouz	Canada
Abeywickrama, Akmeemana Kankanamlage Dona Gishani	Sri Lanka
Ahmad, Norhayati binti	Malaysia
Akinsanya, Tola	Nigeria
Akinyemi, Aderonke	Nigeria
Alias, Sohaini binti	Malaysia
Alli-Balogun, Omotayo	Nigeria
Amos, Augustina	Nigeria
Aris, Lidawati binti Mohd	Malaysia
Audet, Julie	Canada
Atilade-Ladejobi, Adedamola	Nigeria
Azib, Aziana binti	Malaysia
Azmi, Nur Dahlia binti	Malaysia
bin Mazlan, Yahya	Malaysia

Name	Country
bin Abideen, Kamarolzaman	Malaysia
bin Abd Ghani, Al-Muhammad, Mukmin	Malaysia
Black, Linley	Australia
Bodude, Ooreoluwatomi	Nigeria
Brinsmead, Faye	Australia
Burnstein, Jessica	Canada
Chan, Henry Ngai Him	Hong Kong
Chintapanti, Adithya Krishna	India
Choo, Lee Lay	Malaysia
David, Kehinde	Nigeria
Daya, Raj	South Africa
Dayarathna, Lankika	Sri Lanka
De Silva, Ginige Gunaseela Dharmawansa	Sri Lanka
De Silva, Godawattege Sarath Aruna Shantha	Sri Lanka
De Silva, Beruwalage Kalindi Namal	Sri Lanka
Diannee, Ningrad binti Nor Azahar	Malaysia
Dissanayake, D M Kumudini Dammika Kumari	Sri Lanka
Duncan, Catriona	Australia
Elliott, Lydia	St Lucia
Erikson, Sue	Australia
Fadase, Oluwaseyi	Nigeria
Fakunmoju, Owolabi	Nigeria
Farah, Aquilah binti Ahmad Fuad	Malaysia
Fatah, Hamidun bin Datuk Haji Abdul	Malaysia
Fernando, Jayantha	Sri Lanka
Filion, Sibylle	Canada
Francis, Lauren Renee	Bermuda
Gahizi, Sibbo	Rwanda
Garusinghe Arachchige, Shamila Krishanthi	Sri Lanka
Gasana, Raoul Amrani	Rwanda
Gough, Fraser	Scotland
Gwada, Clifford Odhiambo	Kenya
Gyimah, Kwasi Anokye	Ghana
Hajimajid, Asmah	Brunei
	Darussalam
Hapuarachchi, Ruvani Yasoja	Sri Lanka
Harun, Lailatul Zuraida bt Harron	Malaysia
Hevavithana, Gangana Kamalinda	Sri Lanka
Hill, Guzyal Julia	Australia
Hjismail, Zunaidah	Brunei
	Darussalam
Hughes, Dylan M	UK
Huws, Catrin	UK
Ibrahim, Dato Ilani Binti Mohamad	Malaysia

Name	Country
Illesinghe, Chathuri Bagya	Sri Lanka
Imhanobe, Sylvester Omoregie	Nigeria
Isa, Junaidah binti Mohd	Malaysia
Izza, Munirah binti Mansor	Malaysia
Jaye Snr, Andrew BW	Kenya
Kassim, Abdul Rani bin Megat	Malaysia
Kassim, Wan Jeffry bin	Malaysia
Kaunda, Angela Tamanda Hazel	Malawi
Kealy, Sean J	USA
Kodithuwakku, Ruwanmali Priyadarshika	Sri Lanka
Kokoro, Kelebileng	Botswana
Komugisa, Janet	Uganda
Kuku, Remi	Nigeria
Kularathna, Mawaththage Padmini	Sri Lanka
Kumarajeewa, Deepani Sandhya Hewa	Sri Lanka
Kwayke, Chris Aomako	Ghana
Laditan, Adekunle	Nigeria
Landford, Elizabeth	Australia
Latif, Farah Azlina binti	Malaysia
Leitch, James Harold	Canada
Lemoine, Marie-France	Canada
Magara-Barigye Mweheire, Patricia	Uganda
Malietoa, Malietau	Samoa
Maundu, Samson Davies	Kenya
Medagoda, Arachchige Kalani Apsaravi	Sri Lanka
Mitchell, Edward Andrew	UK
Modimakwane, Bonno Refilwe	Botswana
Moore, Alison	Ireland
Mugire Rwanfizi, Joseph	Rwanda
Muhia, Elizabeth	Kenya
Mulitalo, Lalotoa Sinaalamaimaleula	Australia
Munirah, binti Shamsudin Baharum	Malaysia
Naganathan, Sivahumaran	Sri Lanka
Namayanja, Frances	Uganda
Nayacalevu, Seruwaia Mataitini	Fiji
Nigro, Albert	Canada
Nor Akhmal, binti Hasmin	Malaysia
Nuridin, Noor Ruwena binti Dato' Md	Malaysia
Okunbanjo, Akinyemi Oluseye	Nigeria
Olubanjo, Omolara	Nigeria
Oshikoya, Olatunji Tajudeen	Nigeria
Paczkowski, Paul	Australia
Padzil, Munirah binti Muhamed	Malaysia
Paul-Samuel, Samantha C Jn	St Lucia

Name	Country
Payne, Jery	USA
Punchihewa, Lochana Gardiye	Sri Lanka
Rahman, Nurul Husni binti Ab	Malaysia
Ramadevi, V S Dr	India
Rehman, Riaz Ur	Pakistan
Rosenbaum, Pauline Andrea	Canada
Samaraweera Arachchige, Dilrukshi	Sri Lanka
Sapukotana, Upeksha Madukalpani	Sri Lanka
Schuh, Cornelia	Canada
Sivasooriyam, Mirthulakumari	Sri Lanka
Smith, Kaydian Alecia	Jamaica
Tahir, Allauddin bin Mohd	Malaysia
Tan, Chai Wei	Malaysia
Thalayasingam, Fatima Rita Chandravathana	Sri Lanka
Tunde-Faduola, Funke	Nigeria
Uben, John	Sweden
Vijayakumar, Pearl Dharsha	Sri Lanka
Visuvanathapillai, Vimalleswaran	Sri Lanka
Vithanage, Chethika Udayani	Sri Lanka
Vranckx, Sarah N	Namibia
Vtharanage, Sujeewa Thushari	Sri Lanka
Warden, Bradley	Canada
Weerakkody, Devika Dilani	Sri Lanka
Weeramuni, Namei	Sri Lanka
Wharam, Alexander	UK
Wickramarachchi, Wickramarachchige Ruwini	Sri Lanka
Rathnalankara	
Zin, Nor Rajiah binti Mat	Malaysia

Correction

CALC Newsletter April 2011: Election of non-executive members of the CALC Council, Australasia and the Pacific (page 16): David Noble was nominated by Ross Carter, not Peter Quiggin.

Secretary contact details

If you wish to contact the CALC Secretary, Fiona Leonard, regarding membership or any other CALC matters, her email address is:

fiona.leonard@parliament.govt.nz