

## Short History of the Commonwealth Association of Legislative Counsel



***Walter Iles, QC***<sup>1</sup>

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

At that meeting the names of more than 200 people were put forward for membership. They represented no less than 80 jurisdictions in the Commonwealth and at least 38 of those jurisdictions were represented at that meeting.

It was a most unusual, and most probably unprecedented, gathering of Commonwealth law drafters. Their work, like that of most law drafters, is performed mainly in backrooms. Their essential contribution to law-making often goes unremarked.

That, to a large extent, is still the case. But the establishment of CALC, and the way in which it has grown since its establishment, has, while not putting law drafters into the limelight, made drafters more visible and led to greater recognition of their work.

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

The object of CALC was then “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”.

CALC’s objects became, on 3 June 2005—

- (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.

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<sup>1</sup> Former Chief Parliamentary Counsel, New Zealand.

The establishment of CALC and the adoption of its constitution in September 1983 were the result of a great amount of preliminary work. It is useful to record how that work came to be performed and who performed it.

The 1960s and 1970s were years in which there was growing interest in legislation and the way in which it was drafted and expressed.

There were two landmark publications, *The Language of the Law* by Professor David Mellinkoff, published in 1963, and *Legislative Drafting* by Garth Thornton, first published in 1970. Garth Thornton first started work on his book in Tanzania in 1967.

Other significant books were *The Fundamentals of Legal Drafting* by Reed Dickerson (published in 1965) and *The Composition of Legislation* by Elmer Driedger (published in 1957).

The Statute Law Society was established in England in 1968.

The Commonwealth Law Bulletin, first published in 1974 by the Legal Division of the Commonwealth Secretariat, drew attention to a variety of legal matters, including legislation passed in Commonwealth countries.

But the genesis of the idea to hold regular conferences of law drafters was the 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 law drafters. 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 1977, Geoff Kolts, the First Parliamentary Counsel in Canberra, wrote to Mr Kutlu Fuad of the Commonwealth Secretariat, stating that it seemed to him “that it would be desirable to establish a Commonwealth Association of Parliamentary Counsel.” He sought the assistance of the Commonwealth Secretariat.

The idea to establish an Association was partly nurtured by John Ewens, who, in 1972, had retired as First Parliamentary Counsel in Canberra. His work was continued by a subsequent First Parliamentary Counsel, Bronte Quayle, who retired 2 years before CALC came into existence.

In 1978, Geoff Kolts sought the assistance of the Statute Law Society in running a conference, but that Society was unable to assist.

There was some further correspondence with the Commonwealth Secretariat and in October 1982, the Director of the Legal Division of the Commonwealth Secretariat (Jeremy Pope) wrote to Geoff Kolts suggesting that “the time might be opportune for a ‘Commonwealth Association of Parliamentary Counsel’ to be established along the lines of other professional organisations of the Commonwealth.” The letter also sought support from Australia in “providing the President/Secretary or whatever officer such an Association might have.”

In November 1982, Geoff Kolts wrote to the Secretariat suggesting that the proposals for the establishment of an Association be “endorsed by the Law Ministers at their forthcoming meeting in Sri Lanka and then for

CALC to be got off the ground ... during the Commonwealth Law Conference in Hong Kong in September 1983.” He also suggested that future meetings could be held concurrently with those conferences.

In December 1982, Geoff Kolts, obtained from the Australian Attorney-General his agreement, “to raise the matter [to establish an Association] at the meeting of Law Ministers in Sri Lanka” in February 1983.

The Attorney 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 also agreed to the Office of Parliamentary Counsel—

- (a) providing the Secretariat;
- (b) circulating a *newsletter* (to be edited by Hilary Penfold);
- (c) suggesting 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.

He received supportive replies from Garth Thornton (Western Australia), Fiji, Hong Kong, Singapore, Victoria, Malaysia, various West Indies jurisdictions, Canada, India, Sri Lanka, Kiribati, Zimbabwe, Swaziland, Ghana, Nigeria and Lesotho.

Hong Kong offered to “gladly host the inaugural meeting and provide a venue.”

George Engle, the First Parliamentary Counsel in the United Kingdom, said that he had forwarded Geoff’s letter to the UK Attorney-General whose office advised that “He is delighted to offer you his support for the proposal”.

In his letter of February 1983 supporting the proposal, Mu’azu Abdul-Malik (Legal Draftsman) in Lagos (Nigeria) suggested that “Legislative” rather than “Parliamentary” be used in CALC’s name because of the various constitutional governance systems in which drafters in the Commonwealth operated.

In February 1983, Geoff Kolts wrote to all Parliamentary Counsel Offices in Australia and overseas. He advised them of the meeting to be held in Hong Kong, which was to be hosted by Gerry Nazareth (the head of the Law Drafting Division in Hong Kong). Geoff suggested “Commonwealth Association of Parliamentary Counsel and Law Draftsmen” as CALC’s name.

The meeting of Law Ministers held in Sri Lanka in March 1983 had before it two papers relating to the selection, training and retention of “draftsmen”. One of those papers was prepared by Gerry Nazareth. The other was prepared by John Ewens, a very experienced law drafter who had retired as First Parliamentary Counsel in Canberra in 1972. The contents of those papers are described in an article written by John Ewens and published in the October 1983 issue of the *Australian Law Journal* (pages 567-570).

In March 1983, Gerry Nazareth informed Geoff Kolts that the proposed 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.”

That approval was seen as giving CALC the “kiss of life”.

Gerry Nazareth referred to Jeremy Pope’s offer to produce a first draft of CALC’s Constitution and suggested that it should be circulated well in advance of the Hong Kong meeting.

The final communiqué issued by the Law Ministers Conference in Sri Lanka stated that the Law Ministers supported the early formation of a Commonwealth Association of Parliamentary Counsel and Law Draftsmen proposed to promote co-operation amongst draftsmen. It continued “They saw CALC as being a non-governmental body run by the draftsmen themselves ... The meeting accepted with gratitude the offer by Australia to act as headquarters for CALC and to provide editorial services for a regular *newsletter* for CALC.”

In March 1983, George Engle suggested to Geoff Kolts the title “The Commonwealth Association of Parliamentary Draftsmen” instead of Geoff’s suggestion, which George described as “a frightful mouthful”.

In March 1983, Jeremy Pope sent a draft Constitution to Geoff Kolts. Jeremy’s covering letter of 15 March 1983 states “I am enclosing a Draft Constitution, which is very much a first effort and which I tender with some trepidation to be torn apart by those much more experienced than myself. Basically the idea is to maintain as loose a structure as we can get away with.”

On 29 March 1983, Geoff Kolts wrote to George Engle “I shall be writing to you again in about a week or so seeking your comments on a draft of a constitution for CALC”. Geoff suggested as a title “Commonwealth Association of Legislative Counsel”, a title which had already been suggested and which avoided the sexist word “Draftsmen”. That title, he said, “seems to overcome the problems mentioned in your letter and has a more easily pronounced acronym”.

Also, in late March, Geoff Kolts wrote to Jeremy Pope thanking him for his work on the draft constitution. He said “My colleagues and I have worked to produce a revised version and I have circulated it for comment”. Geoff appears to have sent to the heads of all Commonwealth drafting offices a letter setting out information about CALC and enclosing a draft constitution.

In April 1983, George Engle wrote to Geoff Kolts stating “The draft constitution strikes me as generally sensible and commendably unfussy, and I agree with all the assumptions set out in your letter of 29 March. I enclose, for what they are worth, such comments as have occurred to me. Please read them as no more than constructive suggestions. You obviously can’t please everybody, and I would not mind if you politely ignored them all.”

Not surprisingly (given its audience) Geoff Kolts received many other comments and suggestions on the draft.

The First Parliamentary Counsel in Kenya noted that “there is legislation in most English speaking African countries forbidding the use of the title ‘President’ except by the head of state/head of government, the commonly accepted substitute being ‘chairman’”. In his reply of 30 June 1983, Geoff Kolts said that the issue could be dealt with at the inaugural meeting.

On 17 June 1983, Geoff Kolts sent to proposed members a revised constitution.

On 7 July 1983, Geoff Kolts sent to Parliamentary Counsel offices a draft agenda. One of the items proposed for discussion was “developments in methods of drafting, such as use of word processors, computer type-setting, information retrieval systems, etc”.

On 20 July 1983, Geoff Kolts sent out to Parliamentary Counsel Offices a list of countries that had expressed interest in CALC, the names of persons who had indicated their intention to attend the inaugural meeting and the names put forward expressly, or by implication, for membership of CALC. He did not then see it as necessary for every member of every drafting office to become a member of CALC. He thought it would be adequate if one or two members of each office were nominated.

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

The 53 persons who notified their attendance at the meeting included:

- 15 from Africa (Nigeria, Zimbabwe, Kenya, Swaziland, Tanzania, Uganda, The Gambia, and Malawi)
- 12 from Hong Kong
- 8 from Australia
- 4 from the West Indies (Guyana, Trinidad and Tobago, Barbados, Cayman Islands)
- 2 from each of the UK and Sri Lanka
- 1 from each of the Cook Islands, Western Samoa, Scotland, New Zealand, India, Canada, Brunei, Malaysia, the Isle of Man
- 1 representative of the Commonwealth Secretariat

Jeremy Pope, the Director of the Legal Division of the Commonwealth Secretariat, addressed the meeting.

The arrangements made in Hong Kong for the inaugural meeting were first class. Guests at the lunch held on the day preceding the meeting included the Lord Chancellor. Gerry Nazareth, the head of the Law Drafting Division in Hong Kong made a wonderful host and chaired the inaugural meeting in an exemplary fashion. He stood down as chairman once the President was elected.

After adopting the Constitution, the inaugural meeting elected the following officers:

President (or Chairman):	George Engle
Vice president (or Vice-Chairman):	Monica Barnes, Trinidad and Tobago
Secretary:	Sandra Power, Australia
Committee members:	David Zamchiya, Zimbabwe Peri Nasti, India Anthony Mananangi, Pacific Gerry Nazareth, Hong Kong

A notable absentee was Geoff Kolts, who was prevented by his duties from attending the inaugural meeting.

On 23 September 1983, George Engle, in his capacity as the first President of CALC, said in a letter to Geoff Kolts from Hong Kong “I must thank you for all you have done to bring CALC into being. It is a splendid achievement for which you will long be remembered round the world.”

George Engle himself, and others such as Jeremy Pope and Gerry Nazareth, had all played a significant part in bringing CALC into being, but the tribute that George Engle paid to Geoff Kolts, the driving force, was well-deserved.

Later Geoff Kolts became Secretary of CALC.

CALC has moved forward successfully since 1983. All of CALC's ordinary general meetings have, like its inaugural meeting, been held in conjunction with a Commonwealth Law Conference. At those general meetings the members have elected the following Presidents and Secretaries:

<b>Location</b>	<b>Date</b>	<b>President Elected</b>	<b>Secretary Elected</b>
Ocho Rios, Jamaica	10 September 1986	Walter Iles, New Zealand	Peter Pagano, Canada
Auckland, New Zealand	19 April 1990	Mrs Rama Devi, India	Peter Pagano, Canada
Nicosia, Cyprus	5 May 1993	Mrs Rama Devi, India	Edward Caldwell, United Kingdom
Vancouver, Canada	26 & 27 August 1996	Dennis Murphy, Australia	Edward Caldwell, United Kingdom
Petalang Jaya, Malaysia	September 1999	Hilary Penfold, Australia	Duncan Berry, Australia
Melbourne, Australia	16 & 17 April 2003	Geoffrey Bowman, United Kingdom	Duncan Berry, Australia
London, England	9 September 2005	Lionel Levert, Canada	Duncan Berry, Australia
Nairobi, Kenya	14 September 2007	Eamonn Moran, Australia	Duncan Berry, Australia
Hong Kong, China	2 April 2009	Eamonn Moran, Hong Kong, China	Duncan Berry, Australia

Over the years both the size and the quality of the papers published in *The Loophole* and the papers delivered at CALC conferences have increased.

So have the CALC conferences themselves, culminating with the successful conference that was held in Hong Kong in April 2009.

When CALC was first formed, its conference took place on a free day in the middle of the Commonwealth Law Conference.

The disappearance of that free day and the increase in the size of the CALC Conference imposed difficult choices on those attending both conferences.

The Council of CALC accordingly decided to have the CALC conference immediately before the Commonwealth Law Conference. This had two advantages. Those attending both conferences could participate in both programmes. Those wishing to attend only the CALC conference could obtain the benefit of that conference at a lower cost in both time and money.

The first conference held in accordance with the Council's decision was the 2005 CALC conference in London. It was held on Thursday 8 and Friday 9 September, immediately before the Commonwealth Law Conference, which began on Sunday 11 September.

Under the constitution, the Council must, unless it is impracticable to do so, meet immediately after each general meeting of CALC. That is usually the only occasion on which the members of the Council meet in person. The constitution enables the Council to transact business by other means.

The “generally sensible and commendably unfussy” constitution adopted in 1983 worked well but eventually required amendment. Amendment proved difficult. The major problem was obtaining the necessary majority required by the Constitution as the number of members of CALC was much greater than originally envisaged. The original expectation was that only one or two drafters from each office would become members.

The necessary majority was eventually obtained by the very arduous task of obtaining sufficient proxy votes and a new constitution was adopted at an extraordinary general meeting held in Sydney on 3 June 2005. That meeting was actually the second resumption of a meeting held on 30 January 2004 and adjourned twice. The collecting of the proxy votes was organised by Don Colagiuri, the Parliamentary Counsel in New South Wales.

Amendments to the new Constitution were made in 2007 and 2009.

A person is eligible to become a full member of CALC if the person is a Commonwealth person who has been engaged—

- (a) in drafting legislation; or
- (b) in editing or translating draft legislation
- (c) in training people as drafters of legislation.

A “Commonwealth person” is a person who is a citizen or a permanent resident of, or who is domiciled in, a country that is a member of the Commonwealth of Nations or a dependent territory of such a country.

A person is eligible to be an associate member of CALC if the person—

- (a) is a Commonwealth person who claims to have an interest in legislative drafting but is not eligible to be a full member of CALC; or
- (b) is not a Commonwealth person but is or has been engaged in any of the activities mentioned in paragraphs (a) to (c) above.

Under the 1983 Constitution the headquarters of CALC were located in Canberra. They are still located there even though, under the Constitution, it is possible to change that location.

The generosity of the Government of the Commonwealth of Australia in kick-starting CALC and in continuing to support its activities is well-known. CALC’s *newsletter*, *The Loophole*, is currently published from Canberra and CALC’s website is hosted in Canberra by the Office of Parliamentary Counsel.

For a long time, CALC had no funds other than a tie fund of very modest amount. CALC is supported by the goodwill of both its members and the governments by which those members are employed. Honorariums are not paid to officers of CALC. Members who attend a CALC conference must pay a fee to cover the costs of the conference but the governments of countries that have hosted CALC conferences have often helped by providing venues and other assistance.

Just as Geoff Kolts was a very significant figure in the establishment of CALC, so Duncan Berry has been a very significant and constant figure in the administration of CALC since he was elected Secretary of CALC in 1999.

Duncan Elmslie Berry was born in England. He emigrated to New Zealand after graduating LL.B at the University of Nottingham in the United Kingdom and performing his National Service. He joined the New Zealand Public Service in 1962 and was the District Land Registrar at Gisborne (on the East Coast of the North Island) before being appointed an Assistant Law Draftsman in August 1965. In that same year he had graduated LL.M from the Victoria University of Wellington.

He can be said to have served his apprenticeship as a law drafter in the New Zealand Law Drafting Office (now the Parliamentary Counsel Office). In February 1971 he joined the Law Drafting Division of the Attorney-General's Chambers (now the Department of Justice) in Hong Kong. He worked in that Division until April 1975.

In May 1975, he joined the Parliamentary Counsel Office in New South Wales as a Senior Legislative Draftsman. Most of the law drafting he did in Australia was done in that Office but he was, from September 1978 to January 1984, Chief Parliamentary Counsel in Tasmania. He retired from the New South Wales Parliamentary Counsel Office in November 1995.

In his very active retirement he has continued to draft in Hong Kong and Dublin. He was elected Secretary of CALC in 1999 and has been re-elected to that position at every subsequent general meeting. He has contributed many papers to CALC Conferences and *The Loophole*.

Throughout his law drafting life, Duncan's interest in law drafting and in training law drafters has never flagged. He was awarded the degree of Doctor of Juridical Science by the University of Technology Sydney in May 2003. John Ewens is recorded as saying that "Once a competent draftsman has been found, he should be encouraged to make this his life's work." Duncan has not, since 1965, needed encouragement to make law drafting his life's work. That has been very much to the advantage of CALC.

CALC and Duncan are still going strong.

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