

Duncan Berry: a full life in progress¹



John Moloney²

Duncan Elmslie Berry was born in Derby, England on 6 February 1936, the youngest of three children. His family boasts of Scottish heritage from the area of Aberdeen. A precocious child, Duncan surprised the congregation at his christening by advocating a plain language service and subsequently made the case for the inclusion of purpose clauses in *Ladybird* books, a series of popular children's books of the period.

He was educated at the local Grammar school before studying law at Nottingham University from which he graduated with an honours LL.B in July 1957. He was an active member and sometime captain of the University cycle club. At various times Duncan worked on the buses in Manchester and did his national service in a cosy billet at Catterick in Yorkshire.

University life whetted his appetite for academic distinction and he was called to the Bar of England and Wales at Gray's Inn in 1962; at various stages, he has added membership of the Bars of New Zealand (1966), New South Wales (1975), Tasmania (1979) and Hong Kong (1999) to his list of distinctions. Indeed, it can be truly said of Duncan Berry that he has never faced a bar that he did not work hard to conquer.

Duncan found himself in the position of many a young barrister: "an impecunious party". He emigrated to New Zealand and took up a position in the Land Registry in July 1962, a stage in his career which ended in August 1965 with his leaving the exalted position of District Land Registrar and District Registrar of Companies at Gisborne. Duncan trenchantly denies any suggestion that he was "a ten pound pom". As pubs in New Zealand closed, in those days, at 6 p.m., he picked up a Masters degree in Laws from Victoria University, Wellington in May 1964.

On 6 August 1965, "a terrible beauty was born" and Duncan began his term drafting legislation in the New Zealand Law Drafting Office. The young Assistant Law Draftsman prepared what became the New Zealand Veterinary Surgeons Act, which was one of the first precedents consulted by the present writer when preparing Irish legislation in this area some 35 years later.

In 1971, after five and a half years of preparing, negotiating and settling Bills and subordinate legislation in New Zealand, Duncan moved to Hong Kong as Crown Counsel. This first tour of duty in Hong Kong was followed by three years in the New South Wales Parliamentary Counsel Office from August 1975 to August 1978.

¹ A light-hearted account of Duncan's life up to 2011.

² A drafter in the Irish Department of Agriculture, Fisheries and Food and long-time associate of Duncan Berry.

In September 1978, he moved to Hobart as Chief Parliamentary Counsel of Tasmania before returning to Sydney in January 1984 where he remained until November 1995; he also found time to serve in Lesotho between January and August 1992 where he worked on a revised Constitution and Electoral law.

There are unfounded rumours that, in November 1995, Duncan retired. We may now put this scurrilous libel to rest. The following month he was reincarnated as Deputy Principal Government Counsel in the Law Drafting Division of the Department of Justice in Hong Kong and briefly acted as Deputy Solicitor General of Hong Kong.

Duncan, through “effluxion of time”, became a consultant in Hong Kong in 1999 where he remained until he came to Ireland in March 2001 to fill a similar position before again returning to Hong Kong for nearly a year (July 2002 to February 2003). Meanwhile, he found time to obtain for himself the degree of Doctor of Juridical Science from the University of Technology, Sydney, for which he presented a dissertation entitled ‘Designing usable legislative texts’.

Otherwise, Duncan’s twenty-first century has been spent largely working in the Emerald Isle where in August 2005, he celebrated his 40th Anniversary as a draftsman and newly elevated to the rank of SCD (“superannuated colonial drafter”) outside Bantry with a memorable meal comprising mainly leg of lamb and red wine and red wine and red...

Duncan spent one more stint in Hong Kong culminating in a memorable CALC Conference in 2009 before returning to Dublin where he remained working until March 2010.

By then, the call of Africa (via a short teaching assignment in Kuala Lumpur) proved too much for him and he went to work in Nairobi which had been the venue of another successful CALC conference (in 2007).

Duncan’s wide ranging membership of varied organisations is enough to give the vapours to the late Tail Gunner Joe McCarthy and J. Edgar Hoover. These include varied Inns of Court and Bar Associations as well as Amnesty International, where he has held office. But first and foremost comes CALC of which he is a founding member and long suffering secretary and editor of *The Loophole*.

Duncan has missed only one CALC conference since the founding of the Association, and that was someone else’s fault. He is an inveterate traveller, whether on cruises down the Nile or up the Rhone, to South America or on visits to friends on four (or is it five?) continents. One is guaranteed that each journey will bring its own digest of stories; it is not a case of if something goes wrong but when... and how... and he always comes out ahead.

Duncan, in his time in Ireland, has been a rock upon which is built the “Reilly’s school of Drafting”, an advanced seminar that meets on most Fridays of the year in the eponymous premises. A mixed bag of Parliamentary counsel, civil servants, advisory counsel and “miscellaneous provisions” gather and discuss matters of import or interest in a convivial atmosphere. I must depart...word has gone out—“the Dunc. Is back...see you in Reilly’s later”. This command cannot be ignored.

Duncan’s publications, listed in the Appendix to this account, reflect his passion for communicating the law, whether to the affected citizen or to younger drafters. Rather than merely reflecting instructions, Duncan always questions techniques and approaches – seeking improvement.

Long may his pen hold ink.

Appendix – Legislative publications of Duncan Elmslie Berry³

- 1972 Book review of *Legislative Drafting* (1972), G.C. Thornton, 1st ed., New Zealand Law Journal.
- 1987 *Legislative drafting: Could our statutes be simpler?* Statute Law Review (1987): 8(2), 92-103.⁴
- 1988 *Should we have an Acts Restatement Act?* The Loophole (February 1988), 49-53.⁵
- 1990 *Developing the training function in a Parliamentary Counsel Office*, The Loophole (November 1990), 104-125.⁶
- 1993 *Crown immunity from statute: Bropho v. The State of Western Australia*, Statute Law Review (1993):14(3), 204-222.
- 1995 *Speakable Australian Acts*, Information Design Journal (1995): 8(1), 48-63.
- 1995 *A content analysis of legal jargon in Australian statutes*, Clarity 33, (July 1995), 26-39.
- 1997 *When does an instrument made under primary legislation have ‘legislative effect’?* The Loophole (March 1997), 14-30.
- 1997 *Techniques for evaluating the quality of draft legislation*, The Loophole (March 1997), 31-47.
- 1997 *Use of the present tense in legislation*, Clarity 38, (January 1997), 33-34.
- 2000 *Audience Analysis in the Legislative Drafting Process*, The Loophole (June 2000), 61-68.
- 2001 *The importance of getting savings and transitionals right: Two contrasting cases*, The Loophole (December 2001), 43-54.
- 2005 *Legislative drafting training in the Hong Kong Department of Justice*, The Loophole (March 2005), 13-19.
- 2005 *Are Australian judges retreating from adopting a purposive approach to judicial interpretation?* CALC Newsletter (June 2005), 20-1.
- 2006 *Plain language versions of UK Parliamentary Bill*, CALC Newsletter (August 2006), 44-6.
- 2007 *Legislative and Regulatory Reform Act 2006 (UK)*, The Loophole (March 2007), 64-70.
- 2007 *The effect of poorly written legislation in bilingual legal systems*, The Loophole (March 2007), 88-92.
- 2007 *Keeping the Statute Book up-to-date – A personal view*, The Loophole (October 2007), 33-49.
- 2009 *Reducing the complexity of legislative sentences*, The Loophole (January 2009), 37-76.

³ This list excludes unpublished material including Dr Berry’s doctoral thesis as well as his editor’s notes published regularly in *The Loophole* and *CALC Newsletter* since he took over the mantle of editor of *The Loophole* in 1999.

⁴ Also published in *The Loophole* (February 1988), 30-48.

⁵ Pagination in early issues of *The Loophole* is erratic and a quaint reminder of more innocent days. Some items are individually paginated and then given page numbers within the journal. I have preferred to follow the manuscript pagination inserted later in the copies on the CALC website (<http://www.opc.gov.au/loophole.htm>) for consistency.

⁶ See note 4.

- 2010 *Do communications between parliamentary counsel and their 'clients' attract legal professional privilege?* CALC Newsletter (March 2010), 14-19.
- 2010 *Ignorance of the law is no excuse, but what if you can't access it?* CALC Newsletter (March 2010), 19-21.
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