



Newsletter

November 2022

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Publication details:

- **Online** at calc.ngo/publications/newsletters
- Published in Canberra, Australia, by the Commonwealth Association of Legislative Counsel

Editor: Kate Hannah, c/- Legislative Drafting Office, Morier House, St Helier, Jersey.

✉ : k.hannah@gov.je

CALC President's Report – November 2022

Andy Beattie, November 2022

Greetings

I am delighted to provide CALC members with my first Newsletter report as President. It is a genuine privilege to have the opportunity to lead CALC into its fifth decade.

I am strongly committed to advancing CALC's constitutional aim of securing better co-operation among members and to representing CALC strongly in wider forums. I have spent my initial few months as President doing both things with as much energy as I can muster.

I have had many enjoyable and productive discussions and communications with members in every region and have made some good connections with related associations and bodies. I particularly enjoyed attending recent legislative conferences in Ottawa and Washington as these were the first international gatherings I have attended since the CALC Conference in Zambia and it was wonderful to meet many CALC members and legislative colleagues from even further afield. As well as hearing fantastic presentations, both events offered welcome opportunities to reinforce old friendships and form plenty of new ones.

There is undoubtedly great enthusiasm across the legislative community for maintaining and strengthening the bonds between us and it is a real privilege to be able to work with the new CALC Council to play our part in doing just that.

The CALC Council

We all owe the outgoing Council, led by now immediate past President Geoff Lawn, tremendous gratitude for guiding CALC through the tumultuous pandemic period, a challenge they could not have countenanced when first assembling during the 2019 Conference in Zambia. As drafting offices everywhere demonstrated outstanding capability and resilience to rise to the legislative and personal challenges arising from the pandemic, the Council maintained momentum by publishing Newsletters and Loopholes and building a valuable repository of Covid related legislation produced around the Commonwealth.

While significant efforts to hold and then reschedule the CALC Conference planned for the Bahamas were scuppered, the Council found new ways to keep members connected. CALC's first ever online events were held, including a unique event for legislative editors and translators, and the Council concluded their time by pulling off the remarkable feat of arranging online elections and a multi-time zone AGM and Conference across two very long days in July. All Conference materials are available to members on CALC's website and a fuller report follows in the Newsletter.

Geoff and fellow Executive members Katy Le Roy, John Mark Keyes and Ross Carter all stood down at the AGM. They have been magnificent CALC stalwarts for as long as most of us can remember and CALC has benefited greatly from their sagacity, enthusiasm and tireless dedication over many years and I would like to pay particular tribute to them, to all other Council members and to everyone else who helped ensure that our elections, AGM and Conference were a great success.

The new CALC Council took office following the virtual AGM. All new Council members have my congratulations on being elected and gratitude for volunteering to serve. Your new Council represents the membership effectively with some experienced hands being joined by new members in each region and it is excellent to have legislative editors on Council for the first time. More details and short biographies of the members of the new Council follow later in this Newsletter.

The Council met in August and agreed that CALC should, as a priority—

- plan and hold in-person Conferences

- continue to seek ways to encourage and facilitate wider co-operation among CALC members
- consider and if appropriate propose amending CALC's constitution and election rules
- seek to update CALC's membership information, and the CALC website, to enhance CALC's ability to connect with members

We also have a few ideas for new initiatives which should start to bear fruit as CALC enters its 40th year and, as ever, we very much welcome ideas and contributions from across the membership on how to take the association forward. Please feel free to make any proposal or raise any CALC matters with any Council member.

Future CALC Conferences

CALC's Conferences and events have been its lifeblood for many decades and are the kernels from which so much learning, collaboration and friendships have sprouted. I very much echo the sentiments expressed by Geoff on this as he concluded his Presidency and share his fervent hope that CALC will be able to hold in-person conferences in the not too distant future. The new Council have begun the work of arranging future gatherings as soon as practicable and we hope that these will provide a springboard from which greater collaboration among members can flourish.

Initial planning is for the next full CALC Conference to be held in early 2024. With the cancellation of the Bahamas Conference it remains quite some time since CALC last held a Conference in the Americas so Vice-President Michelle Daley has begun to scope out possible venues in the Caribbean for our next full gathering.

While our biennial major Conference will remain CALC's showpiece event, previous regional events have given more members the opportunity to gather and meet colleagues without having to wait for the main Conference to return closer by. By holding more regular and accessible events, CALC can provide members with more frequent opportunities to connect with our wider community. I am delighted that feasibility planning has begun for a number of regional events in mid-2023 and more detailed plans for these will hopefully be announced soon.

Loophole and Newsletter

John Mark Keyes may have relinquished CALC's purse strings but his long service to CALC continues as he remains editor-in-chief of our flagship publication the Loophole. The Conference provided rich material for the recently published edition and John Mark and his editorial team will continue to produce future editions relying, of course, on members to keep up the flow of high quality material that has populated previous editions.

New CALC secretary Kate Hannah has produced this newsletter with the same vigour as applied by Ross Carter in recent times. Many of you have emphasised to me how valuable and entertaining the Newsletter has become and I hope it continues to be an excellent way for us to share information.

Please don't underestimate the hunger your fellow members have for learned articles and for stories, gossip and updates. The CALC Council will continue to collate as much news as we can from across the membership but please do share any items relating to your own drafting offices or legislatures, or about your own legislative work, that may be of interest to colleagues. Any CALC Council member will gratefully receive contributions for future Loopholes and Newsletters.

Commonwealth connections

I have met with Dr Tawanda Hondura, head of Rule of Law Division at the Commonwealth Secretariat, and we agreed to explore a number of ways in which CALC members can collaborate with the Commonwealth Secretariat on legislative projects.

I have been invited by Commonwealth Secretariat to attend the Commonwealth Law Ministers Meeting in Mauritius and I intend to use that opportunity to update Ministers on CALC activities and

to seek their ongoing support for CALC initiatives. My update to Ministers will be published on CALC's website after it is presented.

I have also been pleased to engage with a number of other organisations, including the Commonwealth Lawyers Association, the World Health Organization and the International Association of Legislation, with a view to creating opportunities for collaboration on legislative initiatives.

CALC Council – meet the members

At the CALC conference in July, after the first ever use of electronic voting by CALC, the members below were chosen to form the new CALC Council.

Aleksander Hynnä

Role: Regional Rep, Americas

I am legislative counsel with the federal Department of Justice in Canada, working mostly on primary legislation. I regularly provide training to legislative counsel on a number of different topics. I love learning about how other jurisdictions deal with the challenges that we all face as drafters.

Favourite pastimes include reading as well as cross-country skiing, canoeing and the great outdoors in general. I look forward to meeting as many members as I can and generally to contributing to CALC.



Albert B.W. Edwards, CD

Role: Regional Rep, Americas



As a Caribbean regional technocrat in the legal sector, I have spent nearly 40 years honing legislative drafting and management skills and techniques to enable the development of effective legislation. Between 2007 and 2015 I served as Chief Parliamentary Counsel for Jamaica and concurrently as a Commissioner of Law Revision, and subsequently was a Commonwealth consultant, serving as Deputy Solicitor General for Legislative Drafting in Belize.

Passionate about facilitating professional development at the individual and organizational levels, I have assisted in developing and contributing to legislative training initiatives, at both the national and regional levels, that have enhanced capacity building in the public and private sectors. Over the years I have presented at various seminars on parliamentary and legislative matters for senior public officials in the Caribbean. Currently, I operate as a legislative consultant who seeks to balance an enduring love for the musical keyboards with my functions on the computer keyboard.

Felicity !Owoses

Role: Regional Rep, Africa

I am currently the Acting Executive Directive of the Ministry of Justice and the Chief: Directorate Legislative Drafting Ministry of Justice, Namibia and have 19 years' experience in policy and drafting of Bills, and delegated legislation such as regulations and rules. I hold B. Juris and Bachelor of Laws (LLB) degrees from UNAM. I served as Commissioner on the Land Reform Advisory Commission and Commissioner on the Law Reform and Development Commission of Namibia. I have also lectured in Legal Research, Writing and Statutory Interpretation at Faculty of Law: UNAM, and guest lectured on Namibian Law in Germany: Wurzburg.



I have published with Juta Law South Africa a book titled "Planning Law in Namibia". I have also published a number of academic articles on children's rights, family law, constitutional and statutory interpretation, planning and environmental law. My work can be accessed on Academia.Edu or on LinkedIn.

I love horseback riding, nature and writing poetry and dancing and treasure spending time with my family, children and partner.



Yen Mascarenhas

Role: Regional Rep, Australasia/Pacific

I am a Senior Legislation Officer at the Parliamentary Counsel's Office, Western Australia.

I have a background in commercial legal publishing, where I developed my passion for proofreading and improving written work through the editorial process. My focus is on quality assurance and process efficiency - finding the place where these intersect and the technological tools which can assist legislative drafters and editors to maintain work at this place.

Richard Hughes

Role: Regional Rep, Australasia/Pacific

I have been a member of CALC since July 2019. I joined the Office of the Chief Parliamentary Counsel in Victoria, Australia as an Assistant Parliamentary Counsel in June 2019 and I have been a Parliamentary Counsel since November 2021. I hold a Bachelor of Arts and a Juris Doctor from the University of Melbourne, Australia.



Legislative drafting is "in my blood". I made my first (and hopefully not the last!) contribution to *The Loophole* in February 2021. I am a new member of the CALC Council and I am eager to foster connections and to build

the professional capacity of drafters across Australasia and the Pacific. I am looking forward to working with the rest of the CALC Council over the coming years and I am always delighted to hear from other drafters across my region.

Md. Jakerul Abedin

Role: Regional Rep, Asia



I work in the Legislative and Parliamentary Affairs Division (LPAD) at the Ministry of Law, Justice and Parliamentary Affairs of Bangladesh as Joint Secretary. As one of the wing heads of LPAD, I look after legal and legislative businesses of eight ministries and divisions of Bangladesh government and represent the ministry in the governing bodies of different statutory authorities.

After extensive study and teaching in Australia and Bangladesh, now, as an adjunct faculty, I conduct law courses at the North South University in Bangladesh. I regularly review academic and research articles in the area of law and legislative drafting. For the last 24 years I have been working in the area of law as lawyer, legislative counsel, parliamentary counsel, policy analyst, legal researcher, and legal academic. I am an elected executive

committee member of few professional social organisations of Bangladesh and an external research fellow of International Earth Systems Governance.

Since 2004, I have been involved with the activities of CALC, the biggest network of Commonwealth legislative drafters, and was first elected as an Asia Region representative of CALC Council in 2019. I wish to make the Asia region members of CALC more active, vibrant, and involved in CALC activities. I am very much honoured to serve as a member of CALC. I can be contacted at jakerul_abedin@yahoo.com.

Jeanne Lee

Role: Regional Rep, Asia

I am honoured to be one of the representatives for Asia on the CALC Council. By way of introduction, I am currently the Chief Legislative Counsel heading the drafting office in Singapore. We are a small office that drafts and publishes all Bills and subsidiary legislation in Singapore. We maintain the online legislation database and also undertake law revision.

As a small jurisdiction, Singapore has benefited greatly from the collective experience and expertise of CALC. We see the importance of maintaining strong networks with fellow Commonwealth drafting offices as the issues we face tend to be universal and we have much to learn from one another. Various members have been most generous in giving of their time and in sharing knowledge with our office. I have been very privileged to have attended a couple of CALC conferences (the last being the amazing one in Livingstone, Zambia) so that would definitely be something that I would want to help revive. I would like to bring



people together whether online or in person through webinars and events.

When not working, I can be found walking my dog or cooking, attending a concert or enjoying a good meal.

Lucy Marsh-Smith

Role: Regional Rep, Europe



I have been a Europe region rep for CALC for a number of years and am an active member of CALC. I organised a Europe region conference on the theme of Brexit in Jersey in 2018 and last year, with a lot of help from Kate Hannah, Jersey hosted the first ever online forum for editors and translators across all CALC regions. I also assist with the selection of articles for publication in The Loophole and with gathering news for this Newsletter. With the previous Council, I played a role in introducing electronic voting into CALC.

I have headed the Jersey Legislative Drafting Office since 2018 and had 5 years away from Jersey from 2008 heading the Isle of Man office. In both those offices I have been active in introducing new technology to improve the efficiency of drafting and accessibility of legislation to the user.

I have a master's degree in public law from London University and a second LL.M in Jersey law, as well as certification in Strategic Management and Leadership and in Mediation. I am also a tutor on the post-graduate legislative drafting diploma at the University of Athabasca. I enjoy reaching out to drafters across the Commonwealth by visiting different offices and welcoming visits from drafters from other offices.

Neil Martin

Role: Regional Rep, Europe



I am one of the Senior Legislative Counsel in the Office of the Legislative Counsel for Wales. I have worked in OLC for over 8 years, and before that I worked at the Office of the Parliamentary Counsel in London, and as a barrister in England and Wales. I am delighted to be one of the European Region Representatives on the CALC Council (many thanks to those of you who voted for me). As a co-opted member of the last Council, I helped to organise a CALC conference in Cardiff which had to be cancelled due to the COVID outbreak, so I am excited to be working with the rest of the Council on some major "in-person" events for CALC members in the coming months. I look forward to meeting lots of CALC members over the course of 2023 and beyond!

Annalee Murphy

Role: Treasurer



I am delighted to have been appointed as CALC’s Treasurer this year.

I joined CALC when I became a legislative drafter for the Scottish Government in 2013.

I am pleased to be able to assist CALC in meeting its aims in assuming the role of Treasurer – and I am indebted to John Mark Keyes for his assistance with the handover process.

Kate Hannah

Role: Secretary

My focus is on the editorial side of legislation development. I have extensive experience in reviewing draft legislation and maintaining consolidation databases in NSW (Australia) and Jersey, and training people to do those things. I also have strong technical development skills and an interest in providing support and improving drafting and related environments.



I love legislation, and looking at data, and systems, and anything that can support it.

Michelle Daley

Role: Vice-President



I have been involved in the areas of Legislative Drafting, Law Reform and Law Revision for the past 25 years. I fell in love with legislative drafting as, for me, it offers a daily challenge to confront and conquer new areas of the law. More recently, as I have transitioned into more consultant type roles, I am particularly focused on projects that enhance accessibility to law, build legislative drafting capacity and the mentoring of the next generation of drafters.

In relation to CALC, my personal goal is to sensitize our existing members to the benefits of CALC, energize them to want to help the executive to realize our strategic plan goals and to grow membership with a focus towards targeting the next generation of drafters.

Andy Beattie

Role: President

Having drafted legislation for almost a quarter of a century, it is a real privilege to be elected as CALC President.

I joined the Scottish Parliamentary Counsel Office in 1999, and was appointed Chief Parliamentary Counsel in Scotland in 2012. I have a longstanding interest in developing legislative standards internationally and having participated in many projects to improve the overall capability and capacity of Governments and Parliaments to make good law.

I have benefited immensely from the connections and friendships forged at many CALC conferences and will do my utmost to bring the marvellous CALC community closer together after a disruptive few years and to be a powerful advocate for the essential work we all do making the laws that govern our societies.



Also on the Council

- Johnson Okello
Role: Regional Rep, Africa
- Geoff Lawn
Role: Immediate Past President

You can see more extensive biographies of most Council members in their nominations in the [Members' Area of the CALC website](#).

Online sensation: an overview of CALC's Virtual Conference 2022

Katy Le Roy

CALC's first virtual conference, held on 18-19 July this year, attracted a total online audience of over 450 members and featured 17 speakers from around the Commonwealth. While it wasn't quite the same as meeting up in person in an exotic location (as is our wont), we did at least have the pleasure of listening to a fascinating array of papers and engaging in some great discussions.

The conference was run in 3 different streams across 3 different time zone regions:

Zone 1: Asia, Australasia and the Pacific

Zone 2: Africa and Europe

Zone 3: the Americas.

The conference organisers are very grateful to the Zoom hosts in each of the 3 time zone regions, to all the speakers and chairs, and to the dream team that put together the spectacular CALC Conference Quiz.

This overview gives a brief rundown on the papers presented at the conference. If any of the papers mentioned particularly grab your interest, you can find recordings of the conference, as well as papers and slides, on the members-only part of the CALC website: www.calc.ngo

The effects of COVID-19 on legislation and law-making

In Zone 1, the conference opened with a session on legislation and law-making in a global pandemic.

Zhixiang Seow of the drafting office in the Attorney General's Chambers of Singapore examined Singapore's response to the challenges of COVID-19, including the *COVID-19 (Temporary Measures) Act 2020*. That Act included a range of public health and economic measures and was unusual not only in form and content but in the use of rare procedural mechanisms to expedite its passage. Zhixiang also looked at how the law and practice of Parliament changed to ensure Parliament could continue to function safely during the pandemic, including constitutional amendments to enable a sitting of Parliament to be split among multiple locations.

Mohsin Abbas also presented a paper in the opening session, titled 'Virtual Parliament – A case study of the National Assembly of Pakistan during the Coronavirus pandemic'. Mohsin's paper examined recommendations of the Commonwealth Parliamentary Association and of the report of the Inter-Parliamentary Union in terms of ways Parliaments could adapt their rules and procedures to enable them to continue to function while ensuring the safety of members. He also looked at some of the common measures taken by Parliaments around the Commonwealth to provide for parliamentary business to continue safely. Finally, Mohsin proposed legal and procedural reforms that could better equip the National Assembly of Pakistan to continue its important work during a pandemic, including greater use of technology and recognition of 'virtual' sittings.

Innovation

A fabulous session on innovation, which was presented in all 3 time zone regions, included a paper by Kate Hannah and Zoë Rillstone (Jersey) on the nature of innovation, and a paper by Matt Lynch (UK) on the Lawmaker app.

Kate and Zoë provided a case study of an app they developed to assist instructors to provide complete and accurate instructions for fee amendments. Part of the impetus for their app development was a course they undertook at Flinders University in South Australia on 'Coding the Law', designed to help non-coders see the potential of automation and support applications and have a go at designing something practical for real world use. Their paper explained the nature of the problem they identified with poor instructions for fee amendments, and detailed the project design and consultation processes they undertook in developing the app. This app has proven to be a practical way to solve the problem of instructors' lack of knowledge about vires and general disorder in the way instructions on fees were previously provided. And it's been recognised with an innovation award by the Jersey Government!

Matt Lynch gave a great introduction to the Lawmaker app, which is an online service that enables users in the UK and Scotland to draft and manage legislation. Matt explained how the project achieved economies of scale by building one solution that can cater to the common needs of 5 partner organisations: The UK Parliament, the UK government's OPC, the National Archives, the Scottish Parliament, and the Scottish Government's PCO. The 5 principles on which the system was designed give a good insight into the innovative way the system operates. The principles are: a system that users access via a web browser; a system that is intuitive and easy to use; a system based on XML and open standards; a single, shared system for all users; a system that is hosted in the cloud. This session generated a lot of interesting questions and discussion in all 3 time zones.

Rules as Code

Honing in on a particular field of innovation—Rules as Code—a session that occurred in both zones 1 and 2 featured 3 papers: Matthew Waddington (Jersey) presented an excellent paper on how legislative counsel parse drafts for Rules as Code; Adrian Kelly (NZ) spoke passionately about the evolution of digital law; and Bridget Hornibrook and Luke Norbury (UK) gave a fascinating account of a Rules as Code project: the Universal Credit Logic Map.

Matthew's paper examined Jersey's RaC project, taking a minimalist and tech-light approach by starting just with parsing 'if-then' formulations. The long-term aim of the project is to end up with a simple tool for drafters to apply mark-up or coding as they draft to pick out particular logical components of if-then, definitions, and must/not/may. The idea is that this sort of mark-up could feed an app enabling the drafter and instructor to check a draft for consistency, run examples, generate flow charts etc. It could also be used by external software providers to feed into programs/apps they produce to explain legislation or automate some processes with human input. Matthew argued that it is important for drafters to be involved in the development of new tools such as RaC to ensure the tools do the job we need and do it properly.

In his paper on the evolution of digital law, Adrian explained that it is useful to think of digital law as 'authoritative algorithms', and suggested there are 2 key drivers for the evolution of digital law: the first is a growing understanding of what legal algorithms are and what they can do, based on advances in technology; the second is growing acceptance of algorithms as a method of social control, entitlement, etc. Adrian's analysis focused on the second driver, and involved 3 tiers of evaluation. The first tier is public law standing, which involves assessing the evolution of public law to accommodate digital law and recognition of the importance of scrutiny and having a human in the loop (for example, where algorithms are used to automate decision making, rules about when delegation to automation occurs must be consciously made by a human, and the automation tool must be transparent). The second tier is general technology uptake, and Adrian points out the need to consider equality of access to technology as digital law and digitization of services evolve. And the third tier is the need to implement use cases transparently: Adrian argues that 'all implementations [of digital law] must have accuracy and transparency as their objectives' because without accuracy and transparency 'there is no realistic path to constitutional standing or uptake.' Adrian's paper goes on to explain the process of creating an algorithmic law representation, and in particular the importance of using structured language tools such as LogLaw.

Bridget and Luke spoke about their work on creating a logic map of universal credit legislation. The idea behind their project was to create a 'government backed version of laws and regulations in machine-consumable form, which allows rules to be understood and actioned by computer systems in a consistent way'. The benefits of having an 'official version' of machine-readable legislation could include better implementation, better access to law, a reduction in administrative errors arising from automation, and increased reliability and trust of digital services created using the official version. Their paper detailed the evolution of the mapping project from existing legislation, to paper-based diagrams and flow charts, to Loglaw, which is a fully coded and machine readable version of the logical elements of the law.

Legislation in the Courts

The session on legislation in the courts was also a feature of the program in all 3 time zone regions. In this session we were fortunate to have 2 very eminent speakers: Professor Joseph Kimble (USA) and Professor John Mark Keyes (Canada).

John Mark's paper examined the courts' treatment of emergency legislation, noting that the COVID-19 pandemic marked the first time since the two world wars in the 20th century there has been a sustained global emergency resulting in a huge volume of emergency legislation. His paper considered the judicial responses (in the context of judicial review decisions) to COVID-19 legislation and administrative actions taken under it, and also looks at a variety of hurdles to judicial review. John Mark surveys a number of recent cases from Canada, New Zealand, and Australia—most of which involved unsuccessful challenges against COVID-19 legislation—and suggests that courts have applied more rigorous substantive approaches to judicial review than were generally employed in judicial review of wartime emergency legislation. He argues the application of these approaches demonstrates the courts' ability 'to address extraordinary emergency circumstances without sacrificing the principles underlying judicial review.' However, John Mark also notes that there are

questions about public confidence in the legal system and judicial decisions, and that prohibitive costs also make judicial review proceedings inaccessible to most people. These are among the factors that led to protests against COVID-19 measures. John Mark concludes that while ‘the courts have not generally been prepared to second-guess distinctions in COVID-19 measures, this does not mean they will not in future. It is critical to signal this openness to debate about the legality of COVID-19 measures.’

Professor Joseph Kimble, Distinguished Professor Emeritus at Cooley Law School at Western Michigan University, presented a paper titled ‘Dictionary Diving in the Courts: A Shaky Grab for Ordinary Meaning.’ Joe’s paper includes empirical data showing the stark rise in frequency with which the US courts consult dictionaries in deciding cases. The rise started in the late 1980s but has been particularly stark in the last 20 years. Courts do this under the influence of textualism. Joe cites several cases to illustrate some of the common ways courts misuse dictionaries, including defining very simple words and cherry-picking from different dictionaries to find a definition that suits the court’s position. He notes that legal audiences have expressed scepticism about the courts’ ad hoc and subjective use of dictionaries, and argues that the practice is linguistically questionable. Joe quotes with approval Jesse Sheidlower, former editor at large of the American Heritage Dictionary: ‘I think it’s probably wrong, in almost all situations, to use a dictionary in the courtroom. Dictionary definitions are written with a lot of things in mind, but rigorously circumscribing the meaning of words is usually not one of them.’

Invalid legislation

The topic of invalid legislation was covered by Ben Fraser (Western Australia) in his paper titled ‘Dealing with legislation that is “no law at all”: publishing, amending and repealing invalid legislation’, presented in zones 1 and 2. Ben’s paper covered the legal status of invalid laws, whether invalid laws should be published in reprints, and drafting after invalid legislation. The general rule is that an invalid law is of no legal force and is void from the beginning. Invalidation does not amend or repeal a law, but the invalid portion is of no effect. And invalid amending laws do not affect the principal law they purport to amend. Ben noted that judicial decisions declaring invalidity are binding, but also that it is not the judicial pronouncement of invalidity that produces invalidity. If a law is beyond power ‘it is invalid ab initio’ (per Latham CJ in *South Australia v The Commonwealth* (1942) 65 CLR 373 at 408). The second part of Ben’s presentation outlined the legal status of Australian reprints, noting that they are given evidentiary status by legislation. This raises the question of whether reprints should reflect the invalid status of certain laws, given that reprints must reflect laws that are ‘correct’ or ‘in force’. The broad view would suggest that a ‘correct’ or ‘in force’ law means a law that has been passed, has commenced, and is not invalid. But changing reprints to deal with invalid laws is likely to be complicated for reasons including: the risk that decisions about invalidity could be overturned, the lack of guidance offered by ambiguous decisions, and potential political sensitivity. Ben canvassed a number of different ways to reflect invalidity in reprints, such as including a note on the status of the law, removing the invalid law, or showing invalid legislation in a different way in the reprint. The third part of Ben’s presentation noted that the repeal of a void invalid law is not necessary but may often be desirable. And he pointed out that drafting in relation to invalid legislation requires consideration of the legal status of actions taken because of, or under, the invalid law, and that constitutional issues may arise if purporting to validate actions taken under invalid laws.

Sunset and review clauses

Our incoming CALC President Andy Beattie (Chief PC, Scotland) teamed up with one of our regular star presenters Dr Maria Mousmouti (UK) to present a paper on sunset clauses in time zone regions 2 and 3. The dynamic duo gave their paper the evocative title: ‘Emerging from the shadows: Sunset and review clauses – can they really work?’. Their paper and their presentation combined theoretical and practical perspectives on what is required to draft an effective sunset clause. Maria and Andy canvassed the origins and function of sunset clauses, common practical challenges in the use of

sunset clauses (for example, opaque references to what expires, and unclear or complex formulation of expiry dates), and Andy's practitioner's perspective on things a drafter needs to consider when drafting sunset or review clauses. They observed the recent proliferation of sunset clauses in the context of COVID-19-related emergency legislation but noted also that in non-emergency situations it is important to question proposed sunset clauses particularly if the circumstances regulated by the proposed law are not temporary or novel. Maria and Andy conclude that drafting sunset clauses is complex, and that an effective sunset clause must be clear and precise about the subject of sunset and the date of the sunset. The drafter must also consider the most effective way to integrate the temporary law within the existing statute book. And any review clause that accompanies a sunset clause must be precise about the subject of review and who is to conduct it.

Papers unique to time zone region 3: the Americas

Parliamentary review

Charlie Feldman, Parliamentary Counsel at the Senate of Canada, gave a fascinating paper in zone 3 on parliamentary review provisions and practice in Canada. He notes that federal lawmakers in Canada are increasingly adopting statutory provisions that foresee the future review of legislation by a parliamentary committee. Charlie's research looked at the past 20 years of enactments, including commonalities and differences in review provisions and whether they achieved their desired effect. He found that reviews are hit-and-miss, many are years behind schedule or do not occur at all, and there are procedural hurdles in the way. Charlie observed that it is nobody's job to remember and remind committees of statutory requirements to conduct a review, and there are no parliamentary or legal consequences for failing to conduct a review. Still, the trend of including review provisions continues, because 'Parliamentarians presently serving think it's important for parliamentarians in the future to revisit certain questions'. Even though, as Charlie notes in his conclusion, 'time is the legislature's most precious resource.'

Agricultural legislation

Time zone region 3 was treated to a paper by Jessica Vapnek (USA) of the UC Hastings College of Law on agricultural legislation. Jessica's paper grapples with the complexity of conceptualising and organising agricultural legislation, given that various jurisdictions have different conceptions of agricultural law and that agriculture is a nexus for such a diverse range of subjects. Based on her extensive experience in agricultural legislation, including drafting legislation for the UN's FAO, Jessica proposes a new taxonomy for agricultural legislation, or a 'roadmap' to help policy makers and drafters navigate this area. Jessica divides agricultural legislation into 4 categories:

- Legislation regulating agricultural inputs (eg: seeds, fertilisers, etc);
- Legislation regulating natural resources (eg: land, water, fisheries, genetic resources, etc);
- Legislation establishing sanitary and phytosanitary measures (eg: those covering animal health, plant health, and food safety); and
- Legislation regulating agricultural institutions (eg: to facilitate commodity marketing, to empower an agency, or to streamline regulatory authority).

Jessica concludes by noting that a potentially controversial issue in the field of agricultural legislation is the need to balance conflicting interests in and demands on natural resources. She argues that success in this balancing act is more likely when legislative proposals are the fruit of collaboration between legal and technical experts, and where all affected stakeholders can participate in the process. This can help to ensure that 'agricultural legislation embodies international standards, reflects the scientific consensus, and is appropriately tailored to the national context.'

Access to government legislation

Dr Camille Stoll-Davey (Cayman Islands) presented a paper in zone 3 on 'Tools for facilitating access to government information in small and developing Commonwealth countries.' Camille began with an overview of the importance to democracy of access to legislation and related information. She

then detailed the recent Cayman Islands experience of making current and historical legislation freely accessible through the development of a new legislation website: <https://legislation.gov.ky>. Camille's paper finished by advocating a role for the Commonwealth (and CALC) to draw on the experiences of its members to give guidance and support to members in other jurisdictions that may be embarking on or considering projects to make legislation more accessible.

The CALC Conference Quiz

The final session in each of the 3 time zone regions was the CALC Conference Quiz – our first foray into trying to do something a bit social in a virtual conference. The conference organisers put together a dream team of legislative drafters from various jurisdictions Down Under to prepare something marvellous, and they accomplished their mission admirably. Big thanks to Megan Frost (Queensland), Ben Fraser (Western Australia), Paul O'Brien (Victoria) and Jennifer Roan (New South Wales) for their masterful work. And congratulations to the winners in each of the time zone regions who were crowned 'supreme genius' of their region, and each received a spectacular certificate to prove their cleverness: Mark Gobbi (New Zealand), Dylan Hughes (Wales) and Charlie Feldman (Canada).

What's next?

As mentioned at the outset, you can find the conference papers and slide presentations, as well as Zoom recordings for each zone, on the members' part of the CALC website. Many of the papers were published in the October edition of the Loophole, and more will be published in coming editions.

Thank you to everyone who participated in the conference. And stay tuned for details from the new CALC Council about the exciting events they have in store for you over the next couple of years.

Commonwealth Law Conference and CALRA event

The next [Commonwealth Law Conference](#) is due to take place in Goa on 5 to 9 March 2023.

The previous CALC Council had ascertained significant waning enthusiasm for linking the CALC Conference with the CLC and the CALC Council, also taking into consideration that the most recent CALC AGM was held in July, has resolved in accordance with clause 12(1) of the Constitution that it would be impractical to hold our next general meeting in conjunction with the Commonwealth Law Conference.

The current Commonwealth Lawyers Association President, Brian Speers, has discussed the CLA's Conference with CALC President Andy Beattie. The CLA has most certainly planned a spectacular, high calibre event in India. There are plenty of great sessions that will be of interest to CALC members, including one on clarity in legal drafting involving former CALC President Dame Brenda King. CALC members are most welcome to attend.

The Commonwealth Association of Law Reform Agencies is also organising a one day Conference on the eve of the Commonwealth Law Conference. CALC members have been invited to this free to attend event separately.

The CALC President will attend both events in Goa to represent CALC and will be pleased to meet up with any other CALC members who choose to attend either Conference. Please let Andy know if you are planning to do so (contact: <mailto:chiefparliamentarycounsel@gov.scot>) as it may well be possible to arrange a gathering of CALC members on the fringes of the Conference.

2022 ILANZ Award Winners: Law Drafting Group, Parliamentary Counsel Office *PwC Public Sector In-house Team of the Year Award*

Citation for the award (see <https://www.ilanz.org/about/awards/>):

New Zealand's public health response to the COVID-19 pandemic is widely regarded as world-leading. Government lawyers have played a key part in that success, and none more so than Parliamentary Counsel Office. During 2021, the progression of the pandemic was complex, with almost every COVID-19 initiative requiring some kind of legislation. The year saw the arrival of new variants, the delivery of the vaccine, new testing requirements, the start (and stop) of quarantine free travel, the switch from alert levels to traffic lights, and everchanging border settings, to name only a few. Almost all these initiatives required the services of Parliamentary Counsel Office, partnering closely with other government lawyers.

Over the past year, Parliamentary Counsel Office played a proactive leadership role - performing under immense pressure, always collaborating, innovating, and seeking continuous improvements. This has been crucial to both the quality of the response and the rule of law in New Zealand.



Left to right: Megan Cucerzan (Parliamentary Counsel), Andrew Springett (Parliamentary Counsel), Melanie Bromley (Drafting Team Manager, Infrastructure), Richard Wallace (Deputy Chief Parliamentary Counsel (Drafting)), Christy Harcourt (Parliamentary Counsel, and former Drafting Team Manager, COVID-19 Team), and Leigh Talamaivao (Parliamentary Counsel).

Reunited and It Feels So Good¹

Corinne Swystun, KC

2022 Secretary for the Associations of Parliamentary Counsel and Legislative Counsel in Canada



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After more than 2 years of missing actual face to face meetings, the Annual Joint Conference of the Association of Parliamentary Counsel in Canada and the Association of Legislative Counsel in Canada took place in person from August 10 to 13, 2022, in la belle ville of Quebec City, Quebec, Canada, marking the 40th anniversary of this fundamental conference of Canadian heads of offices. For some members, it was their

first attendance at this annual joint conference and for many it was their first travel outside of their province's or territory's borders in years. It was, to say the least, a most interesting reunion, a somewhat emotional and joyful "return to normal" for some and a most important opportunity for new heads of offices to convene with their jurisdictional counterparts engaged in the niche areas of legislative and parliamentary practice in Canada.

Canada is a vast and diverse country and this conference is an important way for our many offices to monitor trends, share knowledge, guide Canadian best practices and provide the best support possible for lawmaking in Canada. This conference brings together the heads of drafting and parliamentary offices of each of the 13 provinces and territories of Canada and of the Senate, the House of Commons and the federal government's drafting office, as well as a few additional delegates and presenters from the attending jurisdictions. In addition to the annual jurisdictional reports from each of these offices, attendees appreciate and benefit from the annual update by our special invited guest, Saira Salimi, Speaker's Counsel, UK House of Commons. Another special invited guest whom our CALC friends will know was John Mark Keyes. Until recently John Mark was the treasurer for CALC's Council and he is Editor in Chief of the *Loophole*. John Mark is well known to our Canadian colleagues as a former Chief Legislative Counsel to the Government of Canada. He is now a Sessional Professor with the Faculty of Law, University of Ottawa, and he is also with the Uniform Law Conference of Canada.

Topics of lively discussion and interest this year covered a broad range: changes and challenges to operations made as a result of the pandemic and other states of emergency, including safe return to work in the office, technological innovations, human resource implications of hybrid workplaces, importance of emotional and mental health support systems, training and onboarding innovations, teamwork, building greater collaboration; promotion of interoffice work exchanges; mobility rights

¹ Song lyrics borrowed from Peaches and Herb, 1979, "Reunited"

and accessibility; parliamentary and other reviews following the Ottawa “freedom convoy” (a.k.a. the “Trucker Protests”); exercise of parliamentary committees’ powers to compel the production of persons, papers and things; new and novel legislation, including, among many other things, the regulation of snowmobiles (doesn’t get more Canadian than that, eh?); updates on the revision of the Uniform Law Conference of Canada’s Drafting Conventions; an annual review of Canadian and international jurisprudence on the law of parliamentary privilege.

So much ground to cover and so many new challenges lie ahead but it is evident in all of the smiling faces in the conference photograph that Canadian colleagues are energised and fortified by the collegial support and knowledge sharing brought by the Annual Joint Conference of the Association of Parliamentary Counsel in Canada and the Association of Legislative Counsel in Canada.



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Change and Its Challenges: A Report from the CIAJ Legislative Drafting Conference 2022

Andrew Mason (new CALC Member)

Legislative Counsel, Justice Canada, Ottawa

The Canadian Institute for the Administration of Justice (CIAJ) held its 21st Legislative Drafting Conference on September 8-9, 2022, in Ottawa. A large group of legislative counsel and others with an interest in the craft attended this successful and thought-provoking event in person, with more joining in online. John Mark Keyes, to whom CALC members should need no introduction, chaired the event.² The theme of the conference, developed across various panels and a workshop, was change and the challenges it presents for legislative drafting. The conference brought together counsel and officials from Canada’s federal, provincial, and territorial governments, drafters working for Canada’s House of Commons and Senate, academics, and representatives of the National Centre for Truth and Reconciliation. The event also had an international dimension, featuring a presentation

² John Mark is currently Editor-in-Chief of the Loophole and is Sessional Professor with the Faculty of Law – Common Law Section, University of Ottawa.

by the First Assistant Parliamentary Counsel in the Australian Commonwealth Office of Parliamentary Counsel, Dr Daniel Lovric, and a brief address by CALC's President, Andy Beattie. People attended in person from as far afield as the Channel Island of Jersey and Singapore.

On the first day of the conference, panels discussed the shifting environment of legislative drafting and the evolving role of legislative drafters. We covered wide-ranging ground, from Henry Thring, the godfather of Commonwealth drafting (who worked directly with Gladstone and Disraeli in the nineteenth century), to Premier Lougheed's efforts to re-vitalize drafting in Alberta in the 1970s. We also learned about the momentous and ongoing changes brought about by technological change (e.g., coding and AI), increased commitment to equity and inclusion (e.g., non-gendered language), and the pandemic (e.g., remote work). Dr Lovric reminded us that, despite changes, legislative drafters must strive to be trusted advisors. This requires us to understand policy goals, maintain a deep substantive knowledge of the statute book and case law, and to provide sophisticated solutions to complex problems. While panelists took the view that the shift to increased remote working had not itself negatively affected the quality of drafting, some concern was expressed, for example, about the effect of telework on workplace collegiality and about increasing demands for very quick turnarounds from instructing officers. We heard that the pandemic accelerated the adoption of new approaches and technology, and that the new tools, such as drafting via video conference, will likely continue to be used in the future. We also received practical drafting tips and strategies from counsel. For example, while instructing officers are responsible for policy and legislative counsel are naturally responsible for transforming that policy into law, the drafting process can often resemble a negotiation. As such, when appropriate, counsel should be prepared to be flexible and to deliver the product requested of them. At the end of the first day, in-person attendees enjoyed a reception at the Supreme Court of Canada, where Justice Nicholas Kasirer of that Court gave an address on legislative drafting and the importance of an evolving and contextual approach to the law.

The reception at the Supreme Court on Day 1 (with thanks to Aleksander Hynna)



The second day of the conference opened and closed with hands-on practical sessions. In the morning attendees joined workshops to consider how best to balance following precedents (and maintaining consistency) with the need to improve legislative texts. In the afternoon, experienced counsel provided us with best practice tips for dealing with instructing officers. For example, we should be both confident and humble and we should understand policy objectives and the existing regime to pose appropriate and probing questions. For the balance of the day, we had the opportunity to engage in detail with one of the most significant ongoing policy challenges for legislative drafting in Canada (and elsewhere), namely reconciliation with Indigenous peoples. We first considered the legislative impact of the implementation, in Canada, of the UN Declaration on the Rights of Indigenous Peoples. A second panel used the context of Indigenous family and child services to demonstrate the importance of engaging with, and entrenching, Indigenous legal

traditions. Thomas Ahlfors, the Chief Legislative Counsel of the Government of Nunavut, discussed differences within Canada with respect to incorporating Indigenous law through legislation. Ghislain Otis, Canada Research Chair on Legal Diversity and Indigenous Peoples at the Faculty of Law – Civil Law Section of the University of Ottawa, addressed the broader issue of legal pluralism in the context of Canada's *Act respecting First Nations, Inuit and Métis children, youth and families*. Finally, Sarah Morales, Associate Professor at the Faculty of Law of the University of Victoria, provided a fascinating case study of the Cowichan Tribes' child and family wellness legislation. We were reminded that respect for Indigenous rights, ongoing consultation, and cultural sensitivity are all vital when drafting legislation.

In short, the topics covered in the Conference were both interesting and timely and the ensuing discussions lively. The proceedings paused for a sombre and reflective moment when the death of the Queen was announced, but, despite this sad event, the conference provided us with an excellent opportunity to re-engage with one another after the long pandemic, to meet new colleagues from around the world, and to consider key issues relating to our profession in these changing times.

PCC IT, Publishing and Governance Forum

Aasha Swift

General Manager Publishing, OPC, Canberra, Australia

After a 3 year break of meetings, a one day, 'light touch' PCC IT, Publishing and Governance Forum was held in Canberra at the end of July with representatives from all the Australian offices, NZ, Ireland and Matt Lynch from the Scottish Office who is on secondment to The National Archives in the UK. The pandemic has made us more adept at different ways of meeting and for the first time attendance at the Forum was a mix of in person and video conference attendance.

Some of the highlights of the day included a presentation about the Lawmaker drafting tool that enables the drafting and management of legislation. The project is particularly complex in that it is



being built to serve five different organisations — Office of the Parliamentary Counsel (UK Government), House of Commons and House of Lords, Parliamentary Counsel Office (Scottish Government) and

The National Archives who while similar also have their differences that all need to be taken into account. It was fascinating to hear from Aengus O'Hanrahan from the Irish Office and to gain an insight into how their office is set up and the technology used to draft and manage legislation in Ireland. The impact of COVID was a definite theme. Most offices were impacted by an increase in demand for COVID related drafting and publishing as well as dealing with a sudden need to shift staff to working from home and all that that entails.

There was as a lot to pack into one day but it was fantastic to catch up and hear about developments across the jurisdictions and talk about shared issues of which there are so many.

Legal Hackathon Wales / Hacathon Cyfreithiol Cymru, July 2022 (online)

Dylan Hughes

Y Prif Gwnsler Deddfwriaethol, Cymru / First Legislative Counsel, Wales

The Office of the Legislative Counsel in Wales and the Legal Innovation Lab Wales (part of the Hillary Rodham Clinton School of Law at Swansea University), recently jointly hosted a “hackathon” to consider how emerging technology could be used to make legislation more accessible. The intention was to bring together experts from two distinct fields: legislative drafters and data and digital experts.

Following the hackathon model, the event was spread over 5 days and combined informative presentations from specialist speakers with practical workshops. The workshops consisted of two days of teamwork and problem solving based on five pre-set challenges based on the following themes:

- Challenge 1 – the language and structure of legislation
- Challenge 2 – finding legislation
- Challenge 3 – devolution and territorial extent

(Full details of the Challenges, in English and Welsh, can be found in [Hackathon Challenges BILINGUAL.pdf](#))

Nearly 40 delegates attended from which two teams were asked to select a challenge, consider and work on a proposed solution, and make a presentation to a judging panel.

Whilst the hackathon did not provide any magic answers to what are complex problems, it was a very worthwhile exercise using a model that clearly has the potential to identify workable solutions in the future.

We are very grateful to all who took part, in particular those from the Europe region drafting offices.



South Africa: Parliament warned to be more proactive in law making

Ms Telana Halley-Starkey

Parliamentary Legal Adviser, Legislative Drafting Unit, Parliament of the Republic of South Africa

Over the recent years, the Constitutional Court of South Africa has on more than one occasion warned South Africa’s Parliament that it should take steps in being more proactive in law making. This is evident from the two most recent judgments of *Speaker of the National Assembly and Another v New Nation Movement NPC and Others [2022] ZACC 24* (“the New Nation judgment”) and *Women’s Legal Centre Trust v President of the Republic of South Africa and Others [2022] ZACC 23* (“Women’s Legal Centre judgment”).

The New Nation judgment followed upon the Constitutional Court’s earlier decision in 2020 that declared the Electoral Act, 1998 (Act No. 73 of 1998) (“the Electoral Act”) invalid insofar as the Act did not allow independent candidates to stand for elections. The Constitutional Court’s declaration of unconstitutionality was prospective with the effect from the date of the order, however its

operation was suspended for 24 months to afford the South African Parliament an opportunity to remedy the defect that gives rise to the unconstitutionality.

In 2022, with the deadline approaching and Parliament still in the process of finalising the Electoral Amendment Bill, Parliament approached the Constitutional Court seeking an extension of the suspension period for another six months until the 10th of December 2022. Parliament argued that it had not been lethargic in giving effect to the order of the Constitutional Court, as when the Minister of Home Affairs (who was the Executive Department tasked with drafting the amendment) failed to introduce the Electoral Amendment Bill according to the agreed timetable, a number of letters were sent to the Minister to urgently request the Electoral Amendment Bill to be introduced. Parliament further argued that only when the Electoral Amendment Bill was introduced by the Minister before the National Assembly would it be in a position to assume control over the passage of the Bill.

Although the Constitutional Court granted the extension to the 10 December 2022, it held that Parliament should have taken steps to introduce a bill, without the reliance on the Minister, as it was evident that there was a delay from the Minister. Parliament failed to take the necessary steps, and could have introduced the Bill itself. Specifically, the Constitutional Court criticised Parliament in that it held that *“Parliament still attempts to escape accountability by alleging that it did not introduce the Bill because it was waiting for the Minister to do so. Compliance with this Court’s order rests with Parliament. If the Minister is dilatory, Parliament will not be excused from its duty to meet the deadlines imposed by a court order.”*³

In the Women’s Legal Centre judgment, the Women’s Legal Centre brought an application concerning the non-recognition of marriages in accordance with the tenets of *Sharia law* (Muslim marriages), which therefore resulted in the infringement of fundamental rights of parties to Muslim marriages. The Constitutional Court declared that certain sections of the Marriage Act, 1961 (Act No. 25 of 1961) (“the Marriage Act”) and the Divorce Act, 1979 (Act No. 70 of 1979) were inconsistent with the Constitution, and the declaration of unconstitutionality was suspended for a period of 24 months to enable the President and Cabinet, together with Parliament to remedy the defects in the Acts that gave rise to this unconstitutionality.

The Constitutional Court held that section 7 (2) of the Constitution, places an obligation on the state to respect, promote and fulfill the rights in the Bill of rights, however the duty to legislate and whether legislation constitutes reasonable and effective means of ensuring that the state fulfills its constitutional obligations, is dependent on the particular facts of each case. In this instance, the Court referenced the Supreme Court of Appeal, in that Parliament has a responsibility to make laws, the President and Cabinet merely have a discretionary power to prepare and initiate legislation. Therefore, ordering the state to enact legislation on the basis of section 7(2) alone would be an infringement of the separation of powers doctrine. The Supreme Court of Appeal held that section 85 of the Constitution vests the executive authority with the power to prepare and initiate legislation, but sections 43 and 44 of the Constitution make it plain that the national legislative authority is exclusively in the hands of Parliament.⁴

³ *National Assembly and Another v New Nation Movement NPC and Others [2022] ZACC 24* at para 63

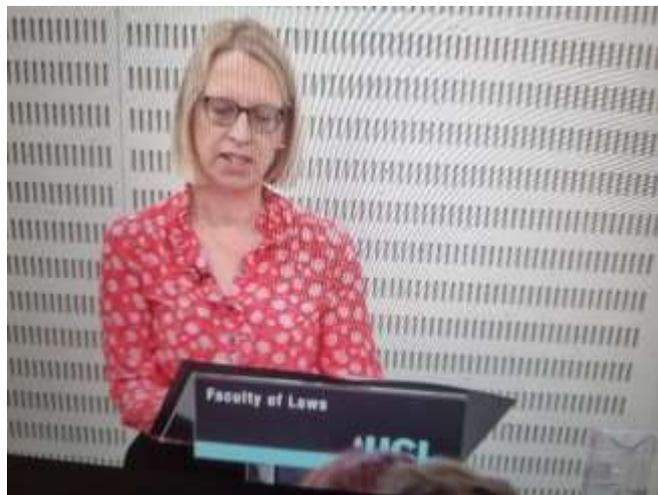
⁴ *Women’s Legal Centre Trust v President of the Republic of South Africa and Others [2022] ZACC 23* at para 25

Improving the Statute Book: A Legislative Drafter's viewpoint

Alison Bertlin

*Parliamentary Counsel, UK Office of the Parliamentary Counsel
& Statute Law Society Council member*

It is almost 50 years since the Renton Committee was appointed to consider how to achieve greater simplicity and clarity in statute law. What might the Committee say about the state of today's statute book? What recommendations might they make for reform?



Dame Elizabeth Gardiner delivers the Renton Lecture

Dame Elizabeth Gardiner, First Parliamentary Counsel at the Office of the Parliamentary Counsel in London, gave the [Statute Law Society's](#) Renton Lecture on 9 November. The annual lecture is named after Lord Renton, who chaired the Committee that published the highly-regarded Report on the Preparation of Legislation in 1975.

In her lecture, Elizabeth reflected on what the Renton Committee might say about the state of today's United Kingdom statute book. She hoped that they would welcome the strides that had been made, both in drafting, by the use of plain language and

textual, rather than non-textual, amendment, and in the development of an online database of legislation.

But she also recognised the difficulties a reader has in navigating the statute book, with legislation on a given topic potentially ranging across numerous Acts (not always easily identifiable from their titles) and secondary legislation. Two changes since the Renton Report, devolution and Brexit, have had major effects on the statute book that have added to the difficulty of finding and interpreting legislation. More complexity comes from techniques such as partial commencement and the lack, to date, of free access to a fully up to date version of the statute book, though work on this continues.

Elizabeth suggested ways of improving the position, from departments "mapping" both the legislation and related material, such as directions and guidance, in their fields, to more emphasis on consolidation, where a significant programme could have scope for real improvement over time.

Thanking her for "a tour de force", the Chairman, Sir Neil Garnham, was impressed particularly by the drafter's desire, so evident from Elizabeth's talk, to keep improving the statute book.

Elizabeth's lecture will be published in The Loophole early next year.

Establishing a legislative drafting office for the Verkhovna Rada

Andy Beattie

CALC President Andy Beattie has been engaged throughout 2022 on work to help establish a legislative drafting office for Ukraine's Parliament, the Verkhovna Rada. This is being undertaken as part of a long running project operated jointly by USAID and the Westminster Foundation for Democracy to help make the Rada a modern, effective institution that promotes accountability and democratic development in Ukraine (the Rada Next Generation project (RANG)).

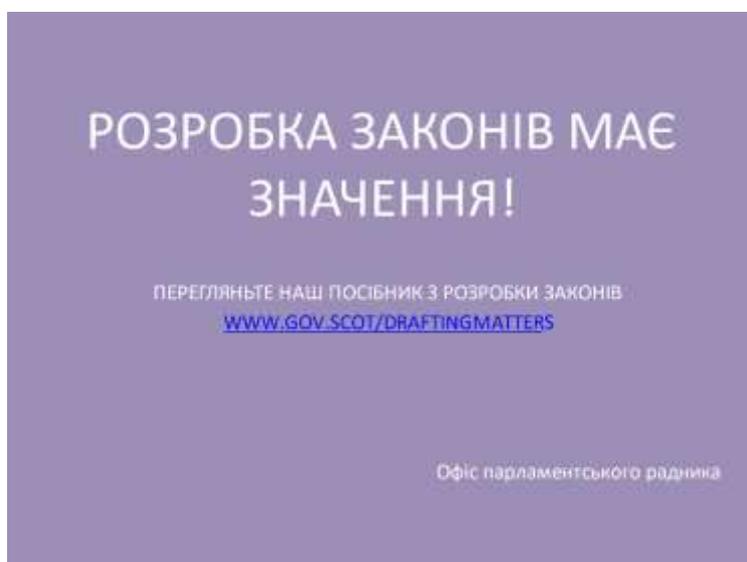
RANG activities started last year and colleagues based in Ukraine have pressed ahead with the project despite the outbreak of war and the ongoing terrible situation that they face from Russian invasion. The RANG team identified legislative quality as one of the issues that needs to be addressed with Ukraine’s legislation assessed as being only moderately predictable, consistent and accessible. Amendments to existing legislation have been characterised as being “adopted too often, unpredictably” with legislative drafting commonly done by individuals with no special training.

A proposed improvement is the establishment of a Legislative Drafting Office for the Rada “to facilitate the development of high-quality legislation to be adopted by the Parliament in accordance with best practices, requirements and standards in the field of legal drafting”. Andy worked with the project to advise on pros and cons of the different models that could be used, drawing on the variety of models adopted in common law jurisdictions.

Heads of drafting offices across the Commonwealth and beyond have very kindly provided substantial information on their office structures and functions to help Andy to form this advice, and the co-operation provided demonstrated CALC’s ability to collectively support and assist jurisdictions seeking to enhance legislative capability. Information provided was translated into Ukrainian and used to help inform the project team’s consideration of the best model for the Rada. Special mention is due to Canadian colleagues who embraced the project with particular enthusiasm and generosity. A previous Canada – Ukraine project on legislative standards produced voluminous material in the early noughties and John Mark Keyes kindly provided copies of that material for consideration.

A local expert, Mila Vasylieva, provided similar advice on arrangements in civil law jurisdictions near to Ukraine, and both Andy and Mia were able to Zoom in to Kyiv in late September to report directly to Rada representatives on their findings. Andy invited fellow CALC member Charmaine van der Merwe, head of the Legislative Drafting Unit for South Africa’s Parliament, to join the presentation. Delegates at CALC Zambia will recall Charmaine’s fabulous presentation on establishing a legislative drafting service for members and she was able to bolster Andy and Mia’s advice by providing Rada representatives with informative, practical insight into the establishment and operation of a drafting office serving members directly.

Many of you will be familiar with the Drafting Matters! initiative produced by Scotland’s Parliamentary Counsel Office, and Andy was very tickled to see this motto set out in Ukrainian, although he has no idea whether the dual meaning survived the translation!



Victorian steps towards treaty with First Nation peoples

Some Australian jurisdictions are moving towards treaty discussions with First Nation peoples. Part of this process is a legislative framework to support the negotiations. For an overview of how this process is working in Victoria (Australia), see this article from Lexology: [Victoria introduces bill to establish treaty negotiating body](#).

Since the article, the Act has been made and come into force, and you can see it here: [Treaty Authority and Other Treaty Elements Act 2022](#).

News from the Crown Dependencies

Lucy Marsh-Smith

The main news from the Isle of Man is that Legislative Drafter Theresa Graves has been promoted to Chief Legislative Drafter. Theresa was previously a Legislative Drafter in Jersey and before that was part of the Government Legal Profession in the UK.

Another development of interest, this time from Guernsey is that their States (Parliament) have adopted anti-discrimination legislation. The Prevention of Discrimination (Guernsey) Ordinance 2022 will introduce a prohibition on discrimination on the grounds of a person's disability, race, carer status, sexual orientation or religion or belief. The prohibition will apply to employers, those who provide goods and services, schools and education providers, clubs and associations and accommodation providers. The Ordinance also introduces a positive duty on those groups to make reasonable adjustments for a disabled person who is employed by them or uses the services they provide. Commencement is staggered, with most provisions coming into force next October.

Jersey had a general election in June and drafters found themselves exceptionally busy both before and after the election. 2 additional trainee drafters are due to start in 2023. They are Heather Mason, currently the Legislation Editor, and Advocate Eloise Layzell, formerly in private practice. This follows the retirement of Jane Reed and the stepping back of Deputy Head, Matthew Waddington who hopes to focus on Rules as Code, a project on which he is already a world leader. No announcement has yet been made as to Matthew's successor. The increase in workload generally, but particularly in the areas of financial services/financial crime and road traffic and transport, are expected to lead to additional recruitment of experienced drafters in 2023 and 2024. In the new year the office will welcome back its first trainee drafter, Advocate Jackie Harris, from secondment to the Office of Parliamentary Counsel in London and will bid farewell to Ed Burrows who returns to that office from his year's secondment to Jersey. Finally on staffing, a new Legislation Editor, Graham Halpin, takes up his appointment in November and it is hoped that the editorial team will be further expanded by another half post being added.

Along with colleagues in the States Greffe, Jersey's LDO has put well-being firmly on its agenda, with 2 half day workshops over the summer and by placing it as a standing item at staff meetings. The occasion of Office Head Lucy Marsh-Smith's 60th birthday led to a Friday afternoon boat trip along the south coast for those in the office who could make it along with a few family members. The boat skipper was even the spouse of one of the drafters.

As part of her commitment to reach out to drafters in the wider Commonwealth, Lucy recently hosted Nigerian drafter Rahila Olu Silas for 10 days, to learn about drafting in Jersey. The Jersey office generously all gave up time to talk to Rahila. Rahila currently has a wide-ranging job as secretary to the Plateau State Internal Revenue Service and the Jersey drafters were struck by what a challenge it must be for Rahila to wear several hats, as well as being a drafter. Rahila saw how much Jersey expected of instructing officers, having attended one of their training days, and how fortunate Jersey is, as a small jurisdiction, in having a comparatively sophisticated drafting template and document management system. This is what CALC is all about, making connections with different offices and sharing our challenges and solutions.



Jersey staff and family rugged up for the boat trip



Jersey Legislative Drafting Office staff (including two on screen), with Rahila Olu Silas immediately to the left of the screen

“Planning Law In Namibia” cited by Supreme Court of Namibia

Felicity !Owoses

The Supreme Court of Namibia recently referred to some principles set out in the book, *Planning Law in Namibia*, written by CALC Council member Felicity !Owoses. The case *Auas Valley Residents Association v Minister of Environment and Tourism ([2022] NASC 24)* is a great step toward developing the Namibian jurisprudence on land use planning.

Planning Law in Namibia was the first Namibian law book to be published by Juta & Co of South Africa, the well-known academic book publisher. Mr Wayne Staples, law marketing manager for Juta & Co, stated that it was an honour and a privilege for Juta & Co to publish a timeless book of this nature.

Felicity’s book focuses on the emerging discipline of town planning in terms of law and practice in a Namibian context. It unveils the interdisciplinary nature of town planning with its links to land-use planning, urban design, transport and infrastructure planning, the environment, policy making and implementation.

The various chapters of the book deal with the history, principles as well as legal principles related to town/urban planning, the Chapters include:

- Situational analysis
- Definition, sources and history of planning law
- Town planning
- Township establishment and subdivision of land
- Amendment or removal of restrictive conditions
- Planning and the environment
- Regulation of town and regional planners

Another great example of a legislative drafter helping shape the law of the land in innovative ways!

The role of drafters of legislation

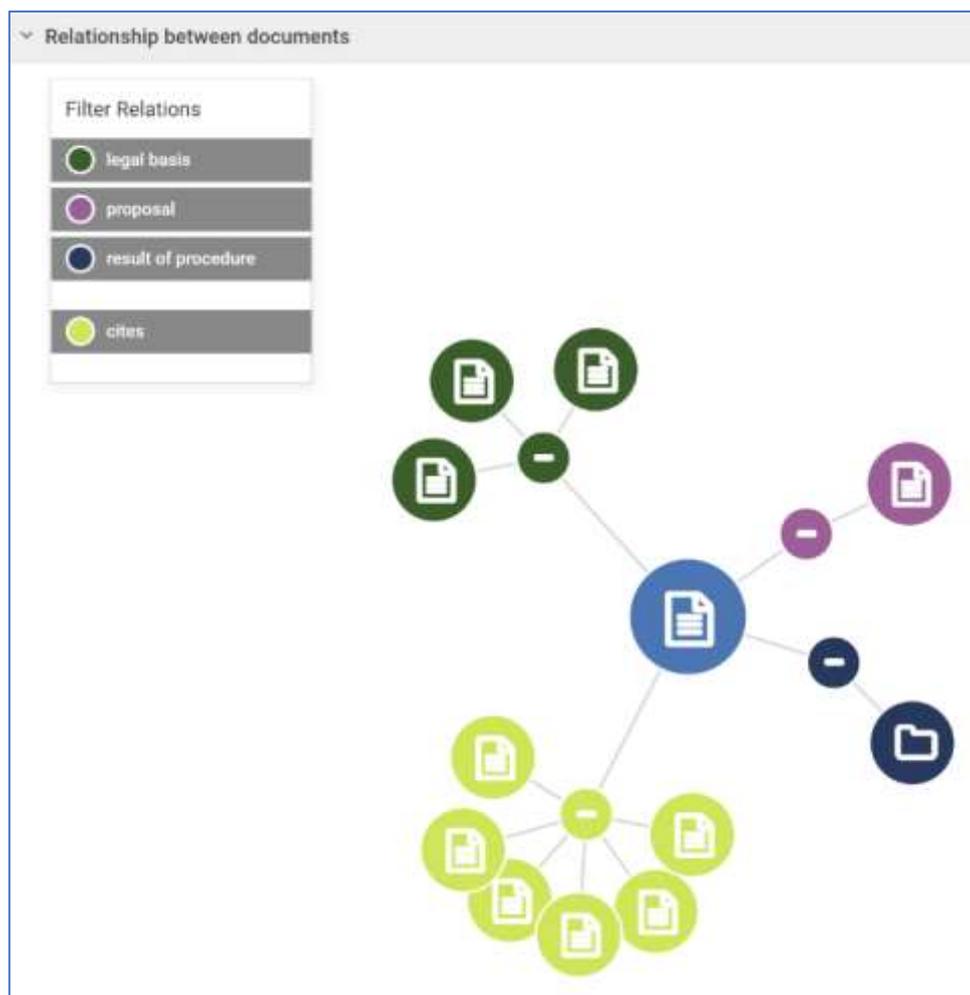
For an overview of the role of drafters in New Zealand, including the effect of the Covid-19 pandemic on drafting decisions, Bill of Rights and Te Tiriti assessments, and the role of CALC, see the article “The role of drafters of legislation” by former CALC Secretary Ross Carter in [At The Bar – October 2022](#).

EUR-Lex relationship map

Kate Hannah

The European [EUR-Lex site](#) contains huge amounts of documents and data. The challenge with any system like this is not just to put the information in, but to get it out again. The team at the [Publications Office of the European Union](#) have made available some exciting new views into the data.

Try out some of their beta features, including a relationship map showing connections to other documents and enabling the user to click through to those. This example is from [Regulation \(EC\) No 1523/2007](#).



Some features are still in beta mode and can affect the performance of the site, but you can select them by using the option at top right of the screen.



Try it out for a serious case of data envy.

Announcement - Chief Legislative Counsel of Canada / Annonce - Première conseillère législative du Canada

Nancy Othmer

November 2022 / Novembre 2022

I am pleased to announce that Riri Shen, Deputy Assistant Deputy Minister of the Public Law and Legislative Services Sector, will also assume the title of Chief Legislative Counsel of Canada effective immediately.



In addition to managing the Legislative Services Branch, Riri will continue, as Chief Legislative Counsel of Canada, to provide functional direction for the law and practice relevant to the provision of legislative services. She will also serve as the liaison between the Department of Justice and other federal departments, agencies and organizations, including the House of Commons, the Senate and the Canada Gazette, as well as Provincial, Territorial and Commonwealth counterparts to support the quality and consistency of drafting and publication practices for Government bills and regulations.

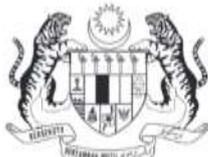
J'ai le plaisir d'annoncer que Riri Shen, sous-ministre adjointe déléguée du Secteur du droit public et des services législatifs, assumera le titre de première conseillère législative du Canada à compter d'aujourd'hui.

En plus de gérer la Direction des services législatifs, Riri continuera, en tant que première conseillère législative du Canada, de fournir une orientation fonctionnelle pour le droit et la pratique en matière de prestation des services législatifs. Elle continuera également de servir de liaison entre le ministère de la Justice et d'autres ministères, organismes et organisations fédéraux, y compris la Chambre des communes, le Sénat et la Gazette du Canada, ainsi que leurs homologues des provinces, des territoires et du Commonwealth, afin d'assurer la qualité et l'uniformité des pratiques de rédaction et de publication des projets de loi et des règlements du gouvernement.

Quiz – legislation crests

The recent [online CALC Conference](#) included a trivia quiz. Due to time constraints, there was a question left over. Here it is, courtesy of Paul O'Brien from the Office of the Chief Parliamentary Counsel, Victoria, Australia.

Can you match the jurisdiction to the crest used on its primary legislation?

1 AUSTRALIA	2 BARBADOS	3 GUYANA	4 ISLE OF MAN	5 LESOTHO
6 MALAYSIA	7 NAMIBIA	8 SINGAPORE	9 SRI LANKA	10 TONGA
A	B	C	D	E
				
F	G	H	I	J
				

Answers [at the end of this Newsletter](#).

Your CALC membership details

Did you know you can update your CALC membership details? Have you checked your contact details recently?

Keeping your details up-to-date means we can reach you with information and plan events.

You can check and update your details by logging in, and then clicking on your name at top right:



Here is a summary of your details.



Click Edit to view more information and to change your details.

CALC occasionally sends emails out to tell you about job vacancies, new editions of the Newsletter and Loophole and other items of interest. You can opt in or out of these email messages at the bottom of the membership information page. In the Edit page, scroll down to 'Mass contact settings' and tick or untick the box according to what you want to do. Then click Save.



You can still receive updates about conferences, jobs, publications and other CALC activities even if you opt out of the emails. How? Through RSS feeds (also called Atom feeds). These links can send alerts to a specific RSS email folder, or to an RSS reader in your browser or anything else set up to read them. You can set up an RSS feed for whichever part of the site interests you – see the options on the right at the end of all the main pages on the [site](#):



Right click on one of the links and copy it to add it to your preferred RSS service.

What if you cannot log in?

- ◆ If you cannot remember your password, click “Forgot your password?” at the top of the website and then follow the prompts.



- ◆ If you cannot remember the email address that you used for your login, or no longer have access to it, contact CALC Secretary Kate Hannah (k.hannah@gov.je) who will update your email for you.

New CALC members

The following new members have joined CALC since 23 May 2022 (when the last update was published). Welcome to all!

Want to join these members? Use the [online registration form](#).

Name	Country
Layla Jones	British Virgin Islands
Heidi Richards	Australia
Marah Walter	Dominica
Winnie Tsuma	Kenya
Larry Shapiro	United States of America
Catherine Davidson	United Kingdom
Cheryl Seah	Singapore
Taiwo Bonnie	Nigeria
Bruno Falardeau	Canada
Niharika Bapna	Canada
Eugene Eric Makwe	Nigeria
George James	Seychelles
Agho Oliver Bamenju	Cameroon
Christabel Kaiwa	Kenya
Jamari Wilson	Trinidad and Tobago

Name	Country
Megan Victoria Lee	Canada
Tamara Dookran	Trinidad and Tobago
Kafeisha Francis	Barbados
Natasha Summerfield	Canada
Shayna Horne	Canada
Emma Barz	Canada
Rivi Lake	Saint Kitts and Nevis
Ian Stewart Davis	Channel Islands
Sodiq Olayanju	Nigeria
Vincent-W Roy	Canada
Jean-Felix Robitaille	Canada
Thomas Cormie	Canada
Marie-Claude Whitty	Canada
Bryn Evans	Canada
Ewa Holender	Canada
Sarah Hipworth	Canada
Aliza Amlani	Canada
James Nowlan	Canada
Jean-François Morin	Canada
Adelle Farrelly	Canada
Andrew Mason	Canada
Mel Sater	Canada
Chloe Burnett	Australia
Jocelyn Leclerc	Canada
Isaac Mok	Australia
Mohanad Jasim Aleessawi	Iraq
Cameron Byrne	Isle of Man
Sophie Moys	United Kingdom
Brian Dorrian	Canada
Ira Komaisavai	Fiji
Jessica Allen	Australia
David Yuwa	Papua New Guinea
Jake Harms	Canada
Grace Chigala Ajaegbo	Nigeria
Ihunda Oroma Omodu	Nigeria
Olosegun Samson Alo	Nigeria
Ngabisa Nkambule	Swaziland
Tin San Leon Qiu	United Kingdom
Nicola Busch	Australia
Laura Tsakmakis	Australia
Masauko Daniel Chijere	Malawi
Edward Libendi	Kenya
Morlette Johnson	Bahamas
Margaret Sandra Munthali	Malawi
Justice Banda	Malawi
Susan Katono	Uganda

Name	Country
Vaidehi Subramanyan	Australia
Brenda De Louche	Jersey
Stefan Volkmann	United Kingdom
Éliane Boucher	
Charles Feldman	Canada
Malia Koletti Halapio	Samoa
Mutum Mwape	Zambia
Elisa Montalvo	Belize
Metua Okotai	Cook Islands
Tim Jones	United Kingdom
David Hennessy	Ireland
Maria Cobona	Fiji
Charlotte Cheetham	United Kingdom
Ana Fusipala Michelle Tupou	Tonga
Amy Short	Canada
Marc-Antoine Guay	Canada
Ajay Ramkumar	Canada
Lucy Baines	United Kingdom
Olva McKenzie-Agard	
Vania Marimba	Seychelles
Stanley Banda	Zambia
Connie Bradnock	New Zealand
Cassie Nicholson	New Zealand
Christina Wasyliv	
Rachel Haack	Canada
Evlogi Kabzamalov	United Kingdom
Pamela Avell	Australia
Denise Yasmine Eixas	Namibia
Frances Bell	United Kingdom
Lucy Sargeson	Australia
Veronica Sahadeo	Trinidad and Tobago
Rehema Katuga	Tanzania, United Republic of
Farina Khan	Australia
Eleanor Chrispin	United Kingdom
Victoria Griggs	United Kingdom
Anthony Vickers-Collins	United Kingdom
Ross Marriott	United Kingdom
Nicole Doshi	United Kingdom
Michael Mendel	Australia
Yolande Wilkinson	Trinidad and Tobago
Gabrielle Whitehall	Barbados
Shireen Khan-Hyder Ali	Trinidad and Tobago
Skye Ferson	Australia
Gena O'Brien	Australia
Giacomo Rotolo-Ross	Australia
Shanii Palmer	Australia

Name	Country
Karina Louise Dearden	Australia
Charlene Taylor-Basso	Trinidad and Tobago
Nia James	
Greg Chambers	United Kingdom
Yohana Ouma	Germany
Julie Ladouceur	Canada
Wukatwe Charles Wakji	Nigeria
Anil Thapa	Australia
Moshood Aliyu	Nigeria
Grace Lim	Australia
Bonnievollo Ecoma	Nigeria
Kokilavani Murugesan	India
Akeila Rigsby	Montserrat
Chukwuma Onyekwelu	Nigeria
Boitshwarelo Nkawana	Botswana
Natasha Munjoma	Zimbabwe

Newsletter contact details

A huge thank you to everyone who contributed to this Newsletter – articles, pictures, news, a helping hand.

Do you have an item you would like included in the next edition of the Newsletter? Contact CALC's Secretary, Kate Hannah: k.hannah@gov.je.

You can also ask about membership, or any other CALC matter.

Coming up

Constitutional Kōrero 2022



A one in 10 year conference to look at constitutional transformation, Constitutional Kōrero 2022 has the objective to “bring international thought-leaders on constitutions and Indigenous peoples together with Aotearoa-based thought-leaders to generate transformative, practical and robust options for constitutional transformation in Aotearoa”.

21-23 November 2022, in person or online.

www.constitutionalkorero.co.nz

Commonwealth Law
Conference 2023
5-9 March 2023, Goa,
India

<https://www.clc-goa2023.com/>

See also article earlier in the Newsletter about this event and CALRA and CALC involvement.



For more information any time about upcoming conferences and other events, go to the CALC conferences page: <https://calc.ngo/conferences>

Quiz – answers

Here are the answers for which jurisdiction uses which crest on its primary legislation:

A7 B6 C1 D2 E4 F5 G10 H9 I3 J8

or

1C 2D 3I 4E 5F 6B 7A 8J 9H 10G

A NAMIBIA 	B MALAYSIA 	C AUSTRALIA 	D BARBADOS 	E ISLE OF MAN 
F LESOTHO 	G TONGA 	H SRI LANKA 	I GUYANA 	J SINGAPORE 