Newsletter

of the

Commonwealth Association of Legislative Counsel

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In this issue—

CALC conference and general meeting: 8 and 9 September 2005

The CALC conference and general meeting held in London last September were a resounding success. Sir Geoffrey Bowman, the CALC President, and his team from the Office of Parliamentary Counsel in London put together a truly excellent program for the conference, with a wide range of topics of relevance to CALC members. Most of the proceedings were held in Beveridge Hall in University College, London, an excellent venue.

A special tribute is due to Linda Fraser and John Gilhooly, who ensured that the proceedings ran like clockwork. But all those who participated in the organisation of the conference and general meeting can be proud of the result.

The conference opened with a most enjoyable reception, which was hosted by the London Parliamentary Counsel Office at Admiralty House in Whitehall.

The following morning, the President formally opened the conference. This was followed by a panel discussion on organising a Parliamentary Counsel Office. The main contributors were two very experienced Parliamentary Counsel from the Antipodes, Don Colagiuri (New South Wales) and George Tanner (New Zealand). In the second session of the day, John Mark Keyes (Canada), Philip Davies (England) and Peter Quiggin (Australia) provided some useful pointers on training in a Parliamentary Counsel Office. This was followed presentations by Peter Quiggin (Australia), Judith Keating (New Brunswick, Canada) and Stephen Laws (England) who spoke on information technology and its importance in modern legislative drafting and on E-laws.

The afternoon session began with papers from Eamonn Moran (Victoria, Australia) and Daniel Greenberg (England), who discussed the nature of legislative intention. The day's formal proceedings ended with presentations from Lionel Levert (Canada), Shahidul Haque (Bangladesh), Ntebaleng Maseela (Lesotho) and John Wilson (Fiji Islands and England) who addressed the challenges involved in drafting legislation in a developing country. Delegates then moved on to a truly delightful reception held in the historic Dover House in Whitehall and hosted by John McCluskie and his colleagues in the Office of the Scottish Parliamentary Counsel.

The third day's proceedings began with the CALC general meeting, details of which appear elsewhere in this Newsletter. This was followed by a session chaired by Sir Edward Caldwell (England) on consolidating, revising and rewriting legislation. Presentations on this topic were given by Neil Adsett (a statute law revision expert from Queensland, Australia), Duncan Berry (Australia and Ireland) and Janet Erasmus (British Columbia, Canada).

After lunch, Dame Mary Arden, Lady Justice of the English Court of Appeal spoke on the operation of the Human Rights Act 1998. John McCluskie (Scotland), Marc Cuerrier (Ottawa, Canada) and Colin Wilson (Scotland) then discussed the problems involved in drafting against a background of differing legal systems. The formal proceedings of the conference ended with closing remarks from the President.[1]

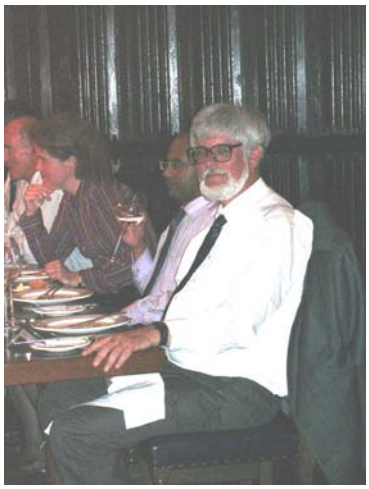
The conference concluded with a truly enjoyable dinner held in the dining room at Lincoln's Inn. The President's after dinner speech appears below.

The following are photos taken at the conference dinner and during the conference.

Lionel Levert

Kamalasamy Viswanathan, India

[1] These remarks are reported elsewhere in this Newsletter.



John Gilhooly

Linda Fraser

Jane Maseela, Sir Geoffrey Bowman and Dame Mary Arden

CALC General Meeting held on 9 September 2005 in the Beveridge Hall, Senate House, University of London

1. Opening of meeting

The President, Sir Geoffrey Bowman, opened the meeting at 9:30 a.m.

2. Present

122 full members and 9 associate members attended the meeting, a record attendance.

3. Apologies and proxies

The Secretary, Duncan Berry, reported apologies for absence from Sir George Engle (England & Wales), Sir Christopher Jenkins (England & Wales), Albert Edwards, Tony Yen (Hong Kong), Dennis Murphy (New South Wales, Australia), Peter Pagano (Alberta, Canada), and Keith Patchett (Wales).

The Secretary reported receipt of a substantial number of proxies, particulars of which were available at the meeting.

4. Minutes of previous CALC general meeting (Melbourne 16 and 17 April 2003)

Printed copies of the minutes of the CALC general meeting held in Melbourne, Australia, on 16 and 17 April 2003 were distributed to members. The meeting unanimously approved the minutes without amendment.

5. Minutes of extraordinary general meeting of 30 January, 15 March and 3 June 2005

Printed copies of the minutes of the extraordinary general meeting held on 30 January, 15 March and 3 June 2005, at which a new CALC constitution was adopted, had been provided to members present. The President expressed special thanks to Duncan Berry, Lionel Levert, Don Colagiuri and all those responsible for drafting and obtaining support for the new constitution. The meeting unanimously approved the minutes of the extraordinary general meeting.

6. Secretary's report

Printed copies of the Secretary's report for the period April 2003-September 2005, prepared in accordance with clause 11 of the constitution, had been provided to members at the meeting. It dealt with membership numbers, the new constitution, publication of the Loophole, meetings and loosely associated local meetings and sale of CALC ties.

The Secretary presented his report[2], which the meeting adopted unanimously.

7. Accounts

John Gilhooly referred members to the report he had prepared on behalf of the Secretary. Copies of his report, and of the CALC HBOS account and the CALC tie account prepared by Michael Yeung, had been provided at the meeting. It was convenient to maintain a separate tie account. The tie account, audited in Hong Kong, had been circulated to the meeting.

The HBOS account, and the accounts for the conference, would be audited by the Internal Auditors of the UK Cabinet Office after the conference was completed.

In conclusion, John Gilhooly drew attention to the recommendations he had made in his report about the control and use of CALC funds.

The meeting unanimously approved the accounts and John Gilhooly's report.

8. Elections of officers and members of CALC Council

Having been duly proposed and seconded, the following members were elected as officers of the Association:

President:	Lionel Levert, QC, (Canada)
Vice President:	Deon Rudman, (South Africa)
Secretary:	Duncan Berry (Australia and Ireland)

The CALC constitution provides for the election of up to a further eight members of the CALC Council. Nine members were duly proposed and seconded. To avoid the need for an election, Colin Wilson (Scotland) generously withdrew his nomination in order to enable the Caribbean region of the Commonwealth to be represented on the Council. The following remaining members were declared to be duly elected as members of CALC Council:

Janet Erasmus (British Columbia, Canada)
Shahidul Haque (Bangladesh)
Lorraine Welch (Bermuda)
Tony Yen (Hong Kong)
George Tanner (New Zealand)
Clive Borrowman (Jersey, Channel Islands)
Jeremy Wainwright (Australia)

7 Arrangements for next CALC conference and general meeting

The Secretary told the meeting that the next Commonwealth Law Conference was to be held in Nairobi, Kenya, in September 2007. Several members asked whether it might be appropriate to sever the connection between the CALC conference and the Commonwealth Law Conference. In the light of this, a straw poll was held to determine how many of those attending the CALC conference were also planning to attend the Commonwealth Law Conference the following week. Although only a few said they did plan to attend that conference, a clear majority of those members present preferred to retain the link between the two conferences if this was feasible.

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[2] A copy of the Secretary's report appears immediately after this summary of the CALC general meeting.

After further brief discussion, the meeting decided that the final decision on where the next CALC conference and general meeting was to be held should be for the incoming CALC Council to make.

8 Any other business

The meeting also discussed the following matters:

(a) *Maximum number of Council members*

Under the new constitution, the maximum number of council members had been increased. It was questioned whether it should be further increased. It was concluded that any increase would require amendment of the new constitution.

(b) *Meetings of Council by conference calls*

Expense and inconvenience might be reduced if the council could hold meetings by telephone through a conference call service.

(c) *Regional groupings of CALC members*

The common interests of a region could make formation of regional groupings of members desirable. Setting up of regional associations was mooted. Members from Bangladesh, Pakistan, Sri Lanka, India and Singapore had already resolved to form an association, formally associated with CALC.

(d) *Subscriptions*

The question of charging a subscription, or differential subscriptions, for CALC membership or of providing for voluntary contributions, was discussed.

(e) *Scholarship fund*

It was suggested that a scholarship fund financed by voluntary contributions be set up, and that the matter be considered in conjunction with the council's consideration as to application of existing CALC funds.

(f) *Uncontactable members*

When addresses of members were not known or were difficult to ascertain it caused administrative problems, particularly for the secretary and for those organising meetings. Some e-mail addresses had been found to be cancelled after lasting for only three weeks. A notice in Loophole about the importance of keeping the secretary informed of current addresses could help. Currently, the only way of terminating membership was by dying or resigning.

(g) *Timing etc of meetings*

The timing of meetings in conjunction with the Commonwealth Law Conference, either directly before or directly after, was considered good. A show of hands at the meeting indicated that a substantial number were attending the Commonwealth Law Conference but that the majority were not.) It was important to consider whether and to what extent the local OPC might be able give support, but CALC should take care to do its own proper work in relation to the meetings and not thrust it upon others. Brunei was mentioned as a desirable venue for a future meeting.

The meeting closed at 11 a.m.

Secretary's report—April 2003 to September 2005 [3]

Introduction

This report covers the period since April 2003, when the last Commonwealth Law Conference (***CLC***), and the associated meeting of the Commonwealth Association of Legislative Counsel (***CALC***), was held in Melbourne, Australia.

The Council

The Council has met as a group only once since the last general meeting of CALC. However, the fact that all 9 members of the Council had access to e-mail has greatly enhanced communication among members of the Council. This has meant that decisions could be made more quickly and efficiently.

Membership

Since the last CALC meeting held in Australia, the membership has continued to grow, with 102 new full members and 11 new associate members joining CALC. This was offset by the resignation of 9 full members and the deaths of 2 full members and one associate member. As at 31 August 2005, the total number of full members was 730 and the total number of associate members was 18.

Communication with members is now much easier than before, with approximately 80 per cent of members being contactable by e-mail. However, as long as there are members who are not accessible by e-mail, it will be important for the Council to remain aware of the needs of such members. In this regard, I should like to express my appreciation to Tony Yen, the Hong Kong Law Draftsman, who made arrangements for the preparation and distribution of hard copies of issues of *The Loophole* and *CALC Newsletters* to those members who cannot be contacted by e-mail.

I continue to have problems contacting many members because they fail to notify me when they change their addresses. Consequently, when I do a mail out to members, it is not uncommon for me to receive as many as 50 non-delivery messages, either because a member's address is no longer valid or because a mail box is full. As the CALC constitution stands at present, CALC membership ceases only if a member resigns or dies. Along with some other members of the CALC Council, I believe that we need to be able to terminate the membership of members who prove to be uncontactable. Accordingly, I should like to recommend an amendment to the constitution to enable a member's membership to be cancelled if the member cannot be contacted. Obviously, safeguards would have to be incorporated in the amendment.

Adoption of new CALC constitution

Members will recall that, at the last CALC general meeting, a new constitution for CALC was considered. As the meeting did not have power to adopt the new constitution, it was decided that the incoming CALC Council should arrange for an extraordinary general meeting to be convened at which a motion for the adoption of the new constitution should be put. An extraordinary general meeting was therefore convened for 30 January 2004, with those members who could not attend the meeting being invited to lodge proxies indicating whether they were for or against the new constitution. Under the original constitution, a majority of two-thirds of all the members of CALC was required in order to pass the motion. As at 30 January 2004, 660 members were eligible to vote. This meant that, to attain the requisite two-thirds majority, the motion had to be supported by at least 440 members. The meeting decided that

[3] This report is prepared in accordance with clause 11 of the CALC constitution adopted in Sydney, Australia, on 3 June 2005.

more time should be allowed for the gathering of proxies. The chairperson, Don Colagiuri, therefore adjourned the meeting until 15 March 2004.

Although many more proxies had been lodged by the time the meeting was resumed on 15 March, those present at the meeting were of the view that further time should be allowed in order to enable those members who had not done so to lodge proxies. The chairperson therefore once again adjourned the meeting, this time *sine die*.

After considering the options, a majority of the CALC Council decided that a further campaign to gather proxies from members should be attempted and that the adjourned extraordinary general meeting should reconvene on Friday, 3 June 2005. Resulting from this campaign, an additional 134 CALC members lodged proxies. When the motion for the adoption of the new constitution was put at the reconvened meeting, the chairperson declared the motion carried. Out of 660 members eligible to vote, 497 were in favour of the motion and none against, which exceeded the number required for a two-thirds majority by a wide margin. There were 163 abstentions.

From a personal point of view, the fact that we were eventually able to get well over two-thirds of the membership to support the adoption of the new constitution was a relief, bearing in mind the enormous amount of time myself and other members of the CALC Council devoted to this matter. I should particularly like to thank Jeremy Wainwright, Janet Erasmus, Clive Borrowman, Tony Yen and Lionel Levert for their help in getting the constitution adopted. I should also like to thank Don Colagiuri for chairing the three sessions of the extraordinary general meeting and John-Mark Keyes for his assistance in canvassing Canadian CALC members.

CALC website

CALC web pages continue to be maintained on the Australian Office of Parliamentary Counsel website. All CALC publications, such as The Loophole and Newsletters, are now posted on the website shortly after publication. On behalf of the CALC Council, I should like to thank Peter Quiggin, First Parliamentary Counsel of the Australian Office of Parliamentary Counsel, for his co-operation and assistance in maintaining these web pages.

It has still proved impossible to remove the old CALC website, which has long since become hopelessly out of date. This is because I have been unable to discover who is responsible for the site.

Publications

Since the establishment of CALC in 1983, the main vehicle of communication has been through *The Loophole*, CALC's journal, which contains articles involving legislation and legislative drafting issues. The other CALC publication is the *CALC Newsletter*, which contains news and information of interest to members.

I had hoped to be able to publish *The Loophole* and the *CALC Newsletter* twice a year, but this has not proved possible, the main reason being the time that I had to spend on dealing with the adoption of the new constitution.

Nevertheless, substantial editions of *The Loophole* were published in June 2004 and in March 2005. I had expected to be able to publish another edition before the 2005 conference, but an editing problem with one of the articles has so far precluded this. The next edition will be published shortly. Editions of the *CALC Newsletter* were published in October 2003 and June 2005.

At the CALC general meeting held in Vancouver in 1996, it was agreed that as far as possible responsibility for publishing issues of *The Loophole* should be rotated among the different regions of the Commonwealth, as is the case with the journal published by *Clarity*. It is hoped that some progress can be made on this before the next CALC general meeting, which is to be held in September 2007.

Meetings of CALC members

The question of holding more frequent meetings of CALC members has been raised, but despite some attempts to set up such meetings, nothing has come of this. Meetings of legislative counsel have been held in Australia, Canada and Malaysia, but they have not been extended to CALC members as a whole.

A number of regional groupings of legislative counsel have either been established or proposed.[4] In at least one case, a group has expressed interested in being affiliated with CALC. Members may wish to consider whether an amendment to the CALC constitution might be considered with a view to facilitating such affiliations.

CALC funds

Since no subscriptions are currently payable for CALC membership, the Association has only limited funds. These funds were held in an account kept with the Halifax Building Society, in the UK. A few years ago, the Society demutualised and become a bank, the HBOS. As a result, the Association has become a shareholder in HBOS. The value of the shares is shown in the CALC accounts. Members may wish to consider whether it might not be more appropriate for CALC to liquidate these shares.

CALC ties

Sales of CALC ties since the last general meeting have been slow. With the retirement of David Morris as Deputy Law Draftsman in the Hong Kong Department of Justice, the Hong Kong Law Draftsman, Tony Yen, has assumed responsibility of the stock of CALC ties. The ties are sold by CALC at £8 each, plus postage, and are available from Tony Yen at the Department of Justice, Queensway Government Offices, Hong Kong.

The CALC accounts show the number of ties sold so far. Those CALC members who do not already own a CALC tie, and who might have a use for one, are urged to buy one.

Relationship with the Commonwealth Lawyers Association

Because of changes to the constitution of the Commonwealth Lawyers Association, it is now possible for associations like ours to affiliate to that Association. As I understand the position, affiliation would cost around £100. Members may wish to consider whether they think that this is worth pursuing.

Next conference and general meeting

Under the CALC constitution, we are obliged to hold our general meeting and conference in conjunction with the Commonwealth Law Conference. I understand that the next Commonwealth Law Conference is to be held in Nairobi in 2007. In the light of that, members may wish to express their views as to what arrangements should be made for the next CALC general meeting and conference.

Duncan Berry (Secretary)

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[4] E.g. At a meeting held in Malaysia in September 2004, it was agreed in principle to establish a regional grouping for legislative counsel who are working in south and south-east Asian Commonwealth countries.

CALC conference: President's concluding remarks

John McCluskie has just said some very gracious things about the conference and its organisation. And Colin Wilson has said some equally gracious things about the spirit of co-operation that subsists between the Parliamentary Counsel Offices in London and Edinburgh. We in London very much value the relationship we have with our colleagues in Scotland and Northern Ireland. It is gratifying to be able to say that before an audience of drafters from different parts of the world.

And so we come to the end of the first conference of the Commonwealth Association of Legislative Counsel to be held in the United Kingdom.

A couple of years ago I had a telephone call from Australia. Catherine Johnston, one of our drafters, was ringing from Melbourne, where the Commonwealth Law Conference was being held. She was passing on a request for me to be the President of CALC, and very fairly added that it would entail organising a conference in 2005.

It was the sort of offer that I could hardly refuse, especially as it was relayed by Catherine. She is one of the most reasonable and pleasant people I know.

I suspect that I have been one of the less active Presidents of CALC. One reason is that being First Parliamentary Counsel in London is pretty time consuming. Another reason is that I have no wish to impose my views on the members. This is partly through natural disposition. And it is partly through common sense. If running the Parliamentary Counsel Office here in London is like herding cats, what would it be like to try to run CALC with vigour?

But organising a conference is another matter. It needs a lot of time and effort. So I did what any leader would do. I formed a committee. So let me thank Edward Caldwell, Catherine Johnston and Elizabeth Gardiner (who are all drafters). Even more, let me thank John Gilhooly, Peter Moore and Linda Fraser. They are all important members of our support staff, and they have done virtually the whole of the actual organisation.

Quite apart from the committee, many other members of our support staff have helped. I want to thank in particular Sarah, Caroline, Charles, Chris and Charlie. We are all grateful to Duncan Berry, the energetic and dedicated secretary of CALC. It is largely through his efforts that CALC keeps going.

I also want to thank the Institute for Advanced Legal Studies here at London University, and in particular Helen Xanthaki. They have made these premises available to us at a very reasonable cost. We are very grateful. We are also grateful to the caterers, who have refreshed us so efficiently.

I also want to thank the Cabinet Office for funding the reception of Wednesday evening. And I want to thank the Office of the Scottish Parliamentary Counsel for providing the reception of Thursday evening. The Scottish theme and the piper were clearly much appreciated.

I am grateful to all the speakers at the conference, and in fact to everybody who attended it.

I hope you have all gained something from the conference. I certainly have. It has been stimulating to learn about the experiences of fellow drafters. Above all, it has been very pleasant to meet such delightful people.

John McCluskie's speech at the Dover House CALC Reception

Editor's note: The following is an edited version of part of John McCluskie's speech of welcome to CALC delegates attending the reception given in the Scottish Office in Whitehall. CALC members who were present will remember a glorious late summer evening and a lone piper playing on the balconies overlooking Horse Guard's Parade. But they may not recall much of what was said. So here is John McCluskie's speech:

Expert evidence, adultery and legislative drafting

For many years, the Scots lawyers in the Lord Advocate's Department here in London had two, quite different tasks - drafting legislation and assisting the Lord Advocate as the UK government's Scottish Law Officer. Things changed on devolution and nowadays, in devolved Scotland, the jobs of First Scottish Parliamentary Counsel and Legal Secretary to the Lord Advocate are quite distinct.

In that respect, we have reverted to the situation that obtained in Victorian times. The jobs were then separate.

But a certain amount of parliamentary drafting was entrusted to the Legal Secretary to the Lord Advocate.

Perhaps I might say a little about one of my illustrious predecessors who was doing those jobs then.

His name was Donald Crawford. Unlike those who do those jobs now and lead modest, unexamined lives, he became, in his time, quite famous. His fame derived from three, apparently wholly separate, causes. I shall elaborate shortly but itemise now. The first was private opinion publicly uttered. The second was adultery. And the third was parliamentary drafting.

On the face of it, these reasons do not appear to have anything in common; on examination, however, we might be able to find some links.

Let us therefore start with the first: private opinion publicly expressed. And for that, I begin with the evidence given to, and the report made by, the Royal Commission on Housing of the Working Classes. The Commission, which reported in the year 1885, was chaired by Sir Charles Dilke. Sir Charles was the Liberal MP for Chelsea doing roughly what a Minister for Home Affairs might do now. He seems to have been an ambitious, energetic, charismatic, radical with an energetic interest in social reform. And, just in case you are warming to him, I might add that he was an unconstructed Empire Loyalist!

Among those who gave evidence to the Royal Commission was my famous predecessor, Mr. Donald Crawford. His topic was the state of homelessness in Scotland. There was a context: it was widely accepted that large-scale, problem homelessness existed among the working classes in Scotland, and that the prime cause of it was a combination of poverty and drunkenness. Mr. Crawford's evidence about the combined evils of homelessness, poverty and drunkenness was unsympathetic, supercilious and succinct. I quote him directly: "I have never heard of any inconvenience from that cause".

I come now to Mr. Crawford's second claim to fame. Adultery. In the year of publication of the report of his Royal Commission, Sir Charles Dilke was cited as co-respondent in a divorce action. By then he was being tipped for even higher office in the Gladstone administration. He was seen as a likely successor to the great man himself. But, in keeping with the morality of the Victorians, the scandal of the divorce action did for his Ministerial career.

It was bad enough when the lady being sued for divorce admitted to adultery with Sir Charles. But she also claimed that she was only one of two ladies who had been simultaneously engaged in the acts of adultery that were the subject matter of the divorce action. This lady, who doubly shocked Victorian society, was none other that Mrs. Virginia Crawford, the young wife of my famous, but rather unfeeling, predecessor. And, of course, the plaintiff was Mr. Crawford himself.

From the facts we have, we find a hint of how Sir Charles and Mrs. Crawford may have first met. We can assume from those facts that, at some stage in the Commission's inquiry, possibly in what are now known as its "margins", this cold fish of a draftsman had introduced his wife to Sir Charles. It seems that an empathy of like temperaments had developed between them. It is not difficult to conjecture such a development. Mrs. Crawford was young. Much younger than her husband. And, from contemporary accounts, attractive. She was also in favour of social reform. Sir Charles was worldly, urbane, charismatic and interested in other people. We already have a clue about what Mr. Crawford was like.

But so far I have failed to deal with a preliminary question which, by now, must be troubling you. By what mischance did Mr. Crawford find himself appearing as a witness before the Dilke Commission on housing the homeless? What specialist knowledge had poor Crawford - a London based lawyer and drafter of legislation - on the subject of homelessness in Scotland? We do need to know this because it was Crawford's expertise in homelessness that led him to the inquiry. It was that inquiry which led to the introduction to Sir Charles which in turn cost Crawford his wife. It was the adulterous relationship which sprang from that introduction which in turn cost Sir Charles his Ministerial career and a clear change of being Prime Minister of Great Britain at its greatest. It is a pivotal question. I think I have stumbled on the answer.

This will come as no surprise - it is to be found in the Statute Book.

A sequence of housing legislation occurs in the years preceding the Royal Commission.

The original statute to deal with working class homelessness was the Artisans and Labourers Dwellings Act of 1868. It was amended some years later by an amendment Act, helpfully entitled the *Artisans and Labourers Dwellings Act 1868* Amendment *Act 1879*. That amendment Act included provisions about mortgages and expressly provided that those mortgages had to be in the form set out in Schedule 3 to the Act. Due to a perfectly forgivable slip of the draftsman's pen, the Act failed to set out the form of the mortgage referred to in Schedule 3. Equally forgivably, it did not even have a Schedule 3! So it had to be amended.

Third time lucky for the draftsman. He rectified the Amendment Act by a further Act the following year. Its short title, equally helpfully, was the *Artisans and Labourers Dwellings Act 1868 Amendment Act 1879 Amendment Act 1880*. We may, in passing, observe that it was a good example of the rule that if at first you don't succeed try, try again.

And therein, I submit, by coincidence of subject matter and timing, lies the clue to Mr. Crawford's expertise on the subject of homelessness and the reason why he came to be an expert witness to Sir Charles' commission of inquiry. He had been one of the drafters of the succession of homelessness legislation which provided the statutory context to the inquiry.

At this point I stop drawing conclusions. Instead, I invite you to decide which is the greatest of all those classic Victorian scandals. Was it first, Crawford's cold-heartedness; second, his wife's adultery; third, Sir Charles' caddish self-destructive behaviour; fourth, Crawford's poor draftsmanship; or, fifth and perhaps the greatest outrage of all, the length of his short titles.

List of conference delegates

Name of delegate	*Location*

Mark Adler Dorking, England
Neil Adsett Guernsey
Hafiz Ahmed Chowdhury Ministry of Law, Justice & Parliamentary Affairs, Dhaka, Bangladesh
Christopher Anderson Law Draftsman's Office, Jersey
Michael Anderson Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Dame Mary Arden § Court of Appeal, London, England
Dorothy Asiedu* University of London, England
Diggory Bailey § Parliamentary Counsel Office, London, England
Diane Barbirou Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Andy Beattie Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Duncan Berry Office of the Parliamentary Counsel to the Government, Dublin, Ireland
Alison Bertlin Parliamentary Counsel Office, London
Pius Biribonwoha * University of London, England
Clive Borrowman Law Draftsman's Office, Jersey
Sir Geoffrey Bowman Parliamentary Counsel Office, London, England
Keith Bush National Assembly, Cardiff, Wales
Gregory Calcutt, SC Parliamentary Counsel Office, Perth, Western Australia
Sir Edward Caldwell Law Commission London, England
Helen Caldwell Parliamentary Counsel Office, London, England
Charles Carey Parliamentary Counsel Office, London, England
Jonathan Carter Parliamentary Counsel Office, London, England
Gregor Clark Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Don Colagiuri Parliamentary Counsel Office, New South Wales
David Cook Parliamentary Counsel Office, London, England
Ronan Cormacain§ Office of the Parliamentary Counsel, Belfast, Northern Ireland
Jacqueline Crawford Parliamentary Counsel Office, London, England
Marc Cuerrier Department of Justice, Ottawa, Canada
Jessica Da Costa Parliamentary Counsel Office, London, England
Louise DaviesLaw Commission, London, England
Philip Davies Parliamentary Counsel Office, London, England
Richard DenisHouse of Commons, Ottawa, Canada
Richard Dennis Parliamentary Counsel Office, Adelaide, South Australia
David Desborough * Eyre & Spottiswoode Ltd (UK)
Tobias Dorsey * Legislative Counsel Office, House of Representatives, Washington, USA
Albert Edwards Office of Parliamentary Counsel, Kingston, Jamaica
Philip Ember § Parliamentary Counsel Office, London, England

Janet Erasmus	Office of Legislative Counsel, British Columbia, Canada
William Ferrie	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Shirley Fisher	Parliamentary Counsel Office, Adelaide, South Australia
Fiona Ganter	Office of Legislative Drafting and Publishing, Canberra, Australia
Elizabeth Gardiner	Parliamentary Counsel Office, London, England
John Gilhooly	Parliamentary Counsel Office, London, England
Alex Gordon	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Briar Gordon	Parliamentary Counsel Office, Wellington, New Zealand
George Gray	Office of the Parliamentary Counsel, Belfast, Northern Ireland
Daniel Greenberg	Parliamentary Counsel Office, London, England
Clive Grenyer	Kent, England
Gwyn Griffiths	National Assembly, Cardiff, Wales
Kenneth Gumbley	Legislative Drafting Services, Douglas, Isle of Man
Douglas Hall	Parliamentary Counsel Office, London, England
Robyn Hodge	Parliamentary Counsel Office, New South Wales, Australia
Adrian Hogarth	Parliamentary Counsel Office, London, England
Nicola Holt	Parliamentary Counsel Office, London, England
Mark Hudson	Parliamentary Counsel Office, London, England
David Hull	Law Draftsman's Office, Jersey
Eric Ifere*	University of London, England
Walter Iles QC, CMG	Tawa, New Zealand
Ismail Norismizan	Attorney General's Chambers, Brunei
Gale Jamieson	Northern Territory Office of Parliamentary Counsel, Darwin, Australia
Ian Jamieson	Parliamentary Counsel Office, Wellington, New Zealand
Catherine Johnston	Parliamentary Counsel Office, London, England
Chrishan Kamalan	National Assembly, Cardiff, Wales
Judith Keating	Legislative Counsel Office, New Brunswick, Canada
John Mark Keyes	Department of Justice, Ottawa, Canada
Alice Khan	Attorney General's Chambers, Brunei
Tanya Killip	Parliamentary Counsel Office, London, England
Brenda King	Office of Parliamentary Counsel, Belfast, Northern Ireland
Terry Kowal	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Gregor Kowalski	Parliamentary Counsel Office, London, England
Stephen Laws	Parliamentary Counsel Office, London, England
Lionel Levert QC	Department of Justice, Ottawa, Canada
Kirsty Lewis	Tax Law Rewrite Unit, London, England

Matthew Lynch	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Jimmy Ma *	Legislative Council Secretariat, Hong Kong
Ian Macintyre	Attorney General's Chambers, British Virgin Islands
Madeleine Mackenzie	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Fiona MacMenamin §	Law Draftsman's Office, Jersey
Felicity Maher	Parliamentary Counsel Office, London, England
Richard Marlin	Tax Law Rewrite Unit, London, England
Lucy Marsh-Smith	Law Draftsman's Office, Jersey
Jane Maseela	Legal Draftsman’s Office, Maseru, Lesotho
Nelson Matibe	Department of Justice & Constitutional Development, Pretoria, South Africa
Zandile Matze *	University of London, England
Richard Mbaruku *	University of London, England
John McCluskie	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Paul McFadyen	Office of Queensland Parliamentary Counsel, Brisbane, Australia
Max McGill	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
David McLeish	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Mark Merrington	HM Revenue & Customs, London, England
Gilbert Mo	Department of Justice, Hong Kong
Shahidul Haque	Ministry of Law, Justice & Parliamentary Affairs, Dhaka, Bangladesh
Mohammad Rahman	Attorney General's Chambers, Brunei
John Moloney*	Department of Agriculture & Food, Dublin, Ireland
Helene Moore	Parliamentary Counsel Office, London, England
Eamonn Moran	Chief Parliamentary Counsel’s Office, Victoria, Australia
Stella Moroka	Attorney Genera’s Chambers, Gaborone, Botswana
Sharon Murdock	Office of the Parliamentary Counsel, Belfast, Northern Ireland
Deirbhle Murphy §	Office of the Parliamentary Counsel to the Government, Dublin, Ireland
Noor Zulkhairi	Attorney General's Chambers Brunei
Luke Norbury	Parliamentary Counsel Office, London, England
Alison O'Dwyer	Parliamentary Counsel Office, Western Australia
Catherine O’Riordan	Parliamentary Counsel Office, London, England
Robert Parker	Parliamentary Counsel Office, London, England
Julianne Patterson	Department of Work & Pensions, England
Paul Peralta	Legislation Support Unit, Gibraltar
Therese Perera	Legal Draftsman's Department, Colombo, Sri Lanka
Peter Quiggin	Commonwealth Office of Parliamentary Counsel, Canberra, Australia
Muhammad Rahman	Legislation Support Unit, Gibraltar

Beverley Richardson	Parliamentary Counsel Office, London, England
Kenneth Ring	Legislative Assembly of Saskatchewan, Canada
William Robinson	European Commission, Brussels, Belgium
Hayley Rogers	Tax Law Rewrite Unit, London, England
Deon Rudman	Department of Justice & Constitutional Development, Pretoria, South Africa
Diana Sargent	Office of Legislative Drafting & Publishing, Canberra, Australia
Andrew Scott	Parliamentary Counsel Office, London, England
Richard Spitz	Parliamentary Counsel Office, London, England
Pam Staley §	Law Draftsman's Office, Jersey
Edward Stell	Parliamentary Counsel Office, London, England
Helen Strachan	Parliamentary Counsel Office, London, England
Euan Sutherland	Parliamentary Counsel Office, London, England
Cathryn Swain	Law Commission, London, England
George Tanner, QC	Parliamentary Counsel Office, Wellington, New Zealand
Neil Taylor	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Anne Treleaven	Commonwealth Office of Parliamentary Counsel, Canberra, Australia
Kamalasamy Viswanathan	Ministry of Law and Justice, Delhi, India
Matthew Waddington	UK Ministry of Defence, Cyprus
Jeremy Wainwright	Canberra, Australia
Bernadette Walsh	Parliamentary Counsel Office, London, England
Robyn Webb	Law Draftsman's Office, Jersey
Lorraine Welch	Attorney-General's Chambers, Bermuda
Polly Wicks	Parliamentary Counsel Office, London, England
Colin Wilson	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
John Wilson	Kettering, England
Andrew Yale §	Legislation Support Unit, Gibraltar
Ian Young	Office of Scottish Parliamentary Counsel, Edinburgh, Scotland
Rafal Zakrzewski	Parliamentary Counsel Office, London, England
Shaohong Zhuang	University of London, England

* Denotes associate CALC member

§ Denotes non member-guest

President's after dinner speech

In the Parliamentary Counsel Office here in London there is a cartoon of Lord Thring. He was the first head of the Office when it was founded in 1869. The cartoon is accompanied by a description. It includes the warning that by the time he retired he was "warped into detailed narrowness by a long life of drudgery, spent in the unwholesome drafting of Parliamentary documents". It isn't really like that. It is actually much worse!

I have spent nearly 35 years as a legislative drafter, and the job certainly produces some strange effects. One effect is that I have become quite unable to understand even the simplest sentence. Everything seems to have several meanings or none at all. Insurance proposal forms and income tax returns are a nightmare. To interpret them for me I often have to rely on my family (especially Carol, my wife). I am glad to say that she takes a very robust line, and generally has no problem.

Carol is one of my guests here tonight. I have two other guests. One is Dame Mary Arden, who of course gave us such a stimulating address on human rights at our conference. My other guest is Sir Jonathan Mance. He is in fact Mary's husband and, like Mary, he is a member of the Court of Appeal. Shortly he is to take up an appointment as a Law Lord. And I am sure you will join me in congratulating him.

I believe that one of the most interesting aspects of the drafter's job is trying to discover how people think or express themselves. And in fact, this interest extends beyond the immediate world of legislative drafting. You tend to notice things like the computer that gave the message "keyboard not present" and suggested as a solution "to continue press any key".

At one of the ways out of the House of Commons there are three turnstiles which used to bear the notice, "Use all three exits". If you are on your own, that is difficult.

Or there is this advert:

> "Try our healing service – you won't get better."

Anyway, I think that in the last two days we have all been delighted quite enough by legislative drafting and how thoughts are expressed. So I am not going to say much else about those issues. But I shall indulge myself and say a little about one of my favourite subjects. Some of you will not be surprised to hear that this is not sport. It is in fact history.

First there is this hall, the Old Hall of Lincoln's Inn. It was built between 1489 and 1492, the year that Columbus reached America. I deliberately avoid referring to the year that Columbus "discovered" America. As Dr Hastings Banda is said to have declared in the context of Africa, "There was nothing to discover; we were here all the time".

The Lord Chancellor's court used to be held in this hall. Charles Dickens' great novel "Bleak House" begins here. These are the opening words:

> "London. Michaelmas Term lately over, and the Lord Chancellor sitting in Lincoln's Inn Hall."

It was here that the notorious (though fictional) case of *Jarndyce v Jarndyce* was heard. That of course was in the nineteenth century.

But let us go back some years. From 1616 to 1622, the preacher at Lincoln's Inn was someone better known as one of the metaphysical poets, Dr John Donne. It was in 1622 that Donne addressed members of the Virginia Company. In discussing colonies (then called plantations), he stressed their importance as refuges and starting points for new careers. And for the time that seems pretty advanced thinking.

It is interesting to think that if there had been no empire there would have been no Commonwealth, and no Commonwealth Association of Legislative Counsel. On the other hand, I cannot imagine that the pioneers of the empire ever regarded the creation of CALC as one of their prime objects.

Those pioneers were a formidable lot. Candidates for the Indian Civil Service had to take very difficult exams and (if successful) were sent out a vast distance to administer huge areas. Once the days of flight arrived communications became easier. But even so, life was much tougher than it is for us. For instance, there were about a dozen fuelling stops for a flight from the United Kingdom to India in the 1920s.

Although life was hard for the pioneers of empire there was a good deal of affection for it. There were even many theatres called the Empire.

I suppose that if I were speaking 100 years ago I would quote Milton and talk of England's precedence for teaching nations how to live. But I am certainly not going to do that. No, it seems to me that we all have a lot to learn from each other.

For instance, in his book *Pax Britannica*, James Morris tells us that the first true modern democracy was created in the Isle of Man in 1866 when the franchise was given to every man and woman. And he adds that New Zealand came a close second in 1893.

Let us take another instance. A biography by Philip Ayres of the great Australian judge Owen Dixon was recently published. In a review, Lord Bingham (the senior Law Lord) compares Dixon with Lord Denning. And the great Scots lawyer Lord Reid referred to "Sir Owen Dixon than whom there is no greater authority on questions of legal principle".

It is also interesting to note that another of our great lawyers Lord Atkin was born in Brisbane in Australia, though he regarded himself as Welsh.

There is also a cross-fertilisation of ideas within the Commonwealth so far as legislative drafting is concerned. We do not necessarily agree with each other. But that is no bad thing. There must always be room for development and innovation and improvement. That often involves diversity of views. And there is plenty of that within our Office here in London. At a social function, one of my children once asked Edward Caldwell, "Does my dad laugh much at work?" Edward replied, "Only when he reads other people's Bills."

Here are some personal conclusions I have drawn from our conference. There is the feeling of relief you get when you realise that the problems drafters face are just about the same the world over. There is also the realisation that the severity of the problems is greater for some others than it is for us. But the main memory will be of the social contact with delightful people from other parts of the world. Carol and I shall cherish that memory. Thank you all very much.

And let me repeat my thanks to the staff of the Parliamentary Counsel Office here in London. They have done a wonderful job in helping to make the conference a success. In particular, I want to thank again John Gilhooly for his common sense and optimism in the face of difficulties, Peter Moore for his wise advice, and Linda Fraser for cheerfully undertaking the bulk of the organisation of the conference.

Thank you, everybody, for helping to make this such an enjoyable conference.

Solomon Islands: John Wilson's reminiscences as a legislative counsel

Thirty years ago, I left England to seek fame and fortune as a government lawyer in the service of Her Majesty. In August 1976, after 10 years at the common law Bar in Birmingham I went to Honiara, capital of the British Solomon Islands Protectorate (as it then was) as a Senior Crown Counsel. I went on a 2-year contract - and remained overseas for 28 years. Last November, I had the opportunity to return to Honiara in the course of some drafting work for the Solomon Islands (as it now is).

When I arrived in the Solomons, I knew little about the drafting of legislation. Law students, then - as now - earned little about the process of writing laws. I had never seen a Government Gazette and had only a vague notion of vires and commencement dates. All that changed

rather rapidly in my first few months in the South Pacific. Under the guidance of Patrick Keenan, David Barwick and Terry Donegan, I learned the essentials of drafting statutory instruments and became editor of the *Gazette*.

In 1977, I went as Attorney General to Tuvalu, which was becoming an independent country (formerly part of the Gilbert and Ellice Islands Colony). For the next 2 years, I did all the drafting for a new country of 8,000 people, as well as the other work required of a government lawyer. It was a fascinating time and gave me some insight into the legal needs of small island jurisdictions.

My next post was also as AG in a small tropical island; this time in Montserrat in the West Indies. The challenges and rewards in the Caribbean were much the same as in the South Pacific, and some years later I went back to both the Pacific (Fiji Islands) and the Caribbean (Grenada.) In between, I spent a total of 15 years in Hong Kong, which is a small territory, but with 6 million people.

When I moved to Hong Kong in 1983, the Law Draftsman was Gerry Nazareth, who had been Attorney General in the Solomon Islands. There were 16 legislative counsel, from several Commonwealth countries. When I left Hong Kong in 2004, there were 40 drafting counsel. All but 2 were local. The day of the expatriate legislative counsel seemed to be over.

On setting up as a UK-based consultant legislative counsel in 2004, I found there is still a demand for expatriate drafting expertise in the smaller jurisdictions of the Commonwealth, particularly the Pacific and the Caribbean. My visit to Honiara last year was part of a drafting exercise for the Secretariat of the Pacific Community (SPC). It involves drafting a model *Biosecurity Bill* for all the English-speaking island jurisdictions of the SPC area.

Honiara has a special place in my affections and it was good to see that in many ways it was the same as when I first went. The flame trees still lined Mendana Avenue; the towering anvil-shaped clouds still turned pink at sunset; the carved nguzu-nguzu heads were still for sale. The Attorney General's office had moved from the Parliament and courthouse complex into a 6-story building, a rare sight in Honiara.

John Wilson with John Tebolo

At the time of my visit, there were the Government employed three legislative counsel. My contact was John Tebolo. Much of his time was taken up with law and order legislation suggested by the Australian consultants under the RAMSI project to restore law and order after several years of upheaval in the Solomon Islands. The restoration of the rule of law had produced an interesting piece of legislation, which is attached. It is the *Interpretation and General Provisions (Validation and Indemnity) Bill 2005*. It seeks to correct the oversight of not publishing subsidiary legislation in the Gazette since 1 April 1996. I am not sure if the Bill has been enacted yet, but, disregarding its somewhat antique style, it might be a useful precedent should the same problem arises in other jurisdictions. A copy of the Bill is to be found in the appendix to this article.

Did I say I went overseas to seek fame and fortune? Ah well, it has been fascinating and remains so!

John Wilson (johnfwilson@btopenworld.com; www.lawdrafting.co.uk)

Left: My instructing officers:

Dudley Wate and Francis Samunu

Postscript

My legislative drafting work for the Secretariat of the Pacific Community continues, but my pleasure in having had a chance to return to Honiara is marred by knowing that in March 2006 it was the scene of serious rioting. After the general elections, factions who were unhappy with the result went on the rampage, destroying 90% of the Chinese–owned shops and doing much other damage. Australia and New Zealand both sent in armed units and I understand that order has been restored. But it is sad that a country that seemed to be recovering from years of turmoil should have undergone this experience again. JFW

APPENDIX

THE INTERPRETATION AND GENERAL PROVISIONS (VALIDATION AND INDEMNITY) BILL 2005.

A
BILL
ENTITLED

AN ACT TO VALIDATE AND CONFIRM ALL ACTS DONE IN GOOD FAITH BETWEEN THE 1ST DAY OF APRIL 1996, AND THE COMMENCEMENT OF THIS ACT IN THE PURPORTED EXERCISE OF THE JURISDICTION CONFERRED ON CERTAIN PERSONS UNDER SUBSIDIARY LEGISLATION MADE UNDER ANY ACT OF PARLIAMENT.

WHEREAS section 61 of the Interpretation and General Provisions Act requires that all subsidiary legislation made shall be published in the Gazette:

AND WHEREAS further section 62 of the said Act requires that all subsidiary legislation made under the Act shall be laid before Parliament:

AND WHEREAS the provisions of the aforesaid sections of the Act were not strictly complied with, especially since the compilation and publication of the Revised Edition of the Laws of Solomon Islands, which contained all subsidiary legislation in force in Solomon Islands on the 1st day of March 1996:

AND WHEREAS under the erroneous impression that the subsidiary legislation was validly made, certain persons in good faith exercised certain functions and powers:

AND WHEREAS it is desirable to validate and confirm all acts done in good faith by certain persons in the purported exercise of certain functions and powers conferred upon them by said subsidiary legislation.

NOW THEREFORE BE IT ENACTED by the National Parliament of Solomon Islands.

Short title	1. This act may be cited as the Interpretation and General Provisions (Validation and Indemnity) Act 2005.
Cap 85 validation and indemnity	2. Notwithstanding the provisions of section 61 and 62 of the Interpretation and General Provisions Act, all acts done in good faith between 1st day of April 1996 and the commencement of this Act, by any persons in the purported exercise of the jurisdiction and powers conferred upon, and vested in them, are hereby declared to have been validly, properly and lawfully done and hereby confirmed; and the aforesaid persons are hereby freed, discharged and indemnified from and against all consequences whatsoever, by reason of any default in complying with the requirement of the aforesaid sections, and those requirements shall be deemed to have been duly compiled with as if the Regulations had been laid before Parliament and published in the Gazette.

THE INTERPRETATION AND GENERAL PROVISIONS (VALIDATION AND INDEMNITY) BILL 2005.

Objects and Reasons

The Interpretation and General Provisions Act (Cap. 85) makes provisions for the interpretation of laws and certain general provisions with regard to laws enacted by Parliament.

Part X, which deals with subsidiary legislation, requires that all subsidiary legislation be published in the Gazette and that such legislation be laid before Parliament.

This requirement has not been strictly complied with in the recent past due to various reasons. However, the non-compliance has been regularized by the publication of the revised edition which contains all subsidiary legislation made up to the 1st March, 1996. Since 1996 and more recently during the period 1998 – to date there has been a marked increase in non-compliance, mainly due to financial constraints, and the state of the Solomon Islands Printers Ltd, the printer authorised to print on behalf of the Government.

The non-compliance may give rise to legal challenge at some point in time. It is, therefore, considered that measures be taken to rectify the situation.

This Bill, therefore, seeks to validate all subsidiary legislation that have not complied with sections 61 and 62 of the Act.

News of CALC members

Lionel Levert QC

Lionel, who is currently President of CALC, will be retiring from the Canadian Department of Justice on 1 September. Lionel joined the Department in 1980, and during his career has served as Secretary to the Statute Revision Commission, Deputy Chief Legislative Counsel, Acting Associate Deputy Minister, Civil Law and Legislative Services, and Chief Legislative Counsel. During the past 5 years, Lionel has participated in the work of the Canadian International Co-operation Group. The Group has been responsible for the development and implementation of a number of projects that Canada provides in supporting the efforts of foreign countries in reforming their systems of justice. Lionel has been responsible for directing the implementation of all legislative drafting projects involved in the Group's activities. In this capacity, he has been closely involved with the development of legislative drafting services in Bangladesh, where he spent much of his last 6 years.

Lionel's immediate successor as Chief Legislative Counsel, Kathie MacCormick, is believed to have retired. She has since been succeeded, in an acting capacity at least, by John Mark Keyes, who is well known not only for his book *Executive Legislation* and his many erudite contributions to CALC conferences and *The Loophole*, but also for his conduct of the LL.M legislative drafting course at the University of Ottawa.

Sir Geoffrey Bowman, QC, KCB

Geoffrey, who is the immediate past President of CALC, retired as First Parliamentary Counsel of the UK Parliamentary Counsel Office on 31 July this year. He read law at Trinity College Cambridge, where he obtained two degrees in law (both firsts) and was a senior scholar. He gained a major scholarship at Lincoln's Inn, and was called to the Bar in 1968. He joined the Parliamentary Counsel Office in 1971, having practised at the Chancery Bar for the 2 previous years.

Geoffrey was appointed First Parliamentary Counsel in 2002 and in the same year became a bencher of Lincoln's Inn. In 2004, he was knighted (KCB). He has drafted legislation on a wide range of subjects, including legislation dealing with trade unions, chemical weapons, elections, local government, the National Health Service, education, and proceeds of crime. However, his main speciality has been Finance Bills for which he was principally responsible from 1991 to 1995.

Geoffrey was twice seconded to the English Law Commission, the second as head of the legislative drafting section. He drafted law reform Bills on damages, perpetuities and accumulations, psychiatric illness, corruption and the hearsay rule. He also drafted two consolidation Acts, the Sale of Goods Act 1979 and the Magistrates' Courts Act 1980.

Geoffrey is a leading exponent of a legislative style which combines precision, simplicity and clarity. Although legislative concepts are often intrinsically difficult, Geoffrey strongly believes that parliamentary counsel should constantly be looking to express them as clearly as possible. An example of his work is to be found in the provisions of the Finance Act 1996 creating the landfill tax. These are generally regarded as a model of clarity, and they have been described as an example of what good legislation should look like.

As First Parliamentary Counsel, Geoffrey successfully expanded the Office to meet the demands of Ministers for an ever increasing legislative programme and to ensure that adequate drafting resources would be available for the foreseeable future. As First Parliamentary Counsel, he gave legal advice to the Cabinet Office, the Prime Minister's private secretary and others on sensitive constitutional issues, such as the appointment of Ministers, the machinery of government and elections.

Geoffrey has given a number of seminars on modern drafting techniques to legislative counsel in London, Edinburgh and Guernsey. He has also championed the role of legislative counsel by explaining to various audiences, such as judges, academics, politicians and officials, what legislative drafting entails. His efforts in this regard have helped to create a bridge between government and others (including the legal profession).

He was president of CALC from 2003 to 2005. It was of course during his tenure of office that the last CALC conference and general meeting were held. This was the first time the conference had been held in London and, as all who attended the conference know, it was a huge success.

Geoffrey is an active bencher of Lincoln's Inn. He is a member of the library committee. And he has given several talks to audiences containing judges, practitioners and students.

Stephen Laws CB

Sir Geoffreys' successor as First Parliamentary Counsel is Stephen Laws. Stephen was educated at St Dunstan's College, Catford, and Bristol University. He worked as a lecturer in

law at Bristol University from 1972 to 1973 and was called to the Bar in 1973. From 1975 to 1976, Stephen was a legal assistant at the Home Office and in 1976 joined the Office of the Parliamentary Counsel in. From 1980 to 1982, and again from 1989 to 1991, he was seconded as a draftsman to the Law Commission, and in 1991 was appointed as a Parliamentary Counsel. He was involved with drafting the Finance Bill from 1991 to 1999 and was in charge of the Bills for the Finance Acts from1996 to1999. More recently, he was responsible for drafting the Communications Act 2003, the Energy Act 2004, the Railways Act 2005, the Identity Cards Act 2006 and many other pieces of legislation.

Stephen is the author, together with Peter Knowles, of the Statutes title in Halisbury's Laws of England (4th Edition). He has a keen interest in information technology and has been chairperson of the PCO's IT Group for several years.

Sir Edward Caldwell, KCB

Another long-standing CALC member, Edward Caldwell, also retired on 31 July this year. Edward was the First Parliamentary Counsel of England and Wales from 1999 to 2002, having joined the Office of Parliamentary Counsel in 1969. Edward was also Secretary of CALC from 1992 to 1999.

After briefly practising as a solicitor, he joined the Law Commission soon after it was established. Since 'retiring' from the Office of Parliamentary Counsel, he has returned to do valuable work for the Commission. Edward, who was born in Singapore and grew up in Australia and Singapore, plans to retire to his new house in Oxfordshire, which I gather has spectacular views of the Chiltern Hills and their environs. He plans to spend his retirement cruising the Oxfordshire lanes on his motor bike! Edward is also a member of the committees of Clarity and the Statute Law Society, which will no doubt enable him to keep in touch with legislative drafting in the future.

John McCluskie QC, CB

John, who was a founder member of CALC in 1983, recently retired after serving as First Scottish Parliamentary Counsel for over 17 years. He was born on 1 February 1946 in Glasgow and was educated at Hyndland School, Glasgow and Glasgow University, where he obtained an honours degree in law. In 1972, he was appointed to the London Office of the Lord Advocate's Department as Assistant Legal Secretary and Assistant Scottish Parliamentary Draftsman[5]. John was the first solicitor to join the Department, his predecessors all being advocates. But he did not remain a solicitor for long! In 1974, he was admitted to the Faculty of Advocates (Scottish Bar). Although he was allowed to undergo a shortened period of devilling, it was only on condition he did not actually practise at the Bar!

In 1989, John was appointed Legal Secretary to the Lord Advocate and First Scottish Parliamentary Counsel at the early age of 43. At the same time, he was appointed as a Scottish Queen's Counsel.

On the creation of the Scottish Parliament in 1999 and the devolution of legislative powers to that Parliament, the Lord Advocate's Department ceased to exist and John and five of his

[5] The title reflects the dual functions of the job: legislative drafting (Scottish Bills and Scottish provisions of GB and UK Bills); and assisting the Scottish Law Officers (the Lord Advocate and the Solicitor General for Scotland) in their role as the UK Government's chief advisers on Scots Law.

colleagues moved to Edinburgh to establish the Office of the Scottish Parliamentary Counsel.[6] 1999 also saw John appointed as Companion of the Order of the Bath.

Under John's leadership, the office expanded rapidly and when he retired in 2005 year, comprised 16 Parliamentary Counsel.

According to "Who's Who", John's hobbies are "watching mogs, walking dogs, cutting logs". But clearly, those interests have not been enough to sustain him since his retirement because he has recently taken up an appointment as Consultant Parliamentary Counsel in the Irish Office of Parliamentary Counsel.

Colin Wilson

Appointed to succeed John McCluskie as First Scottish Parliamentary Counsel, Colin Wilson is the first solicitor to hold that office. Colin, who was born on 4 January 1952, was educated at Glasgow High School and Edinburgh University where he graduated bachelor of laws with honours.

He joined the Lord Advocate's Department in London on 1 April 1979 as Assistant Legal Secretary and Assistant Scottish Parliamentary Draftsman, having been recruited as part of a planned expansion of the office to deal with the likely effects of Scottish devolution. On that occasion, however, the referendum failed to secure the necessary majority for devolution.

Geoff Hackett-Jones, QC

Geoff recently retired as Parliamentary Counsel of South Australia after holding the position for over 20 years. However, the lure of legislative drafting was too much for him and he has just taken up the position of Parliamentary Counsel in the Northern Territory to fill the vacancy created by Gail Jamieson who now works in the Western Australian Parliamentary Counsel Office. Geoff is renowned for his rapier (some would say acerbic) wit, his tenacity in the face of fierce opposition, his succinct drafting style and his legal erudition. His shoes will be hard to fill! In addition to his legislative drafting skills, Geoff is a talented exponent of the oboe.

John Leahy, SC

John has recently retired as head of the Australian Capital Territory Parliamentary Counsel Office. Before that, he was Chief Parliamentary Counsel of Queensland, where he gained a reputation for bringing 'plain language' to Queensland statutes. I understand that John has taken up a 3 year appointment in Qatar. He was recently appointed as a Senior Counsel.

Walter Iles, QC, CMG

Walter, who is another founder member of CALC, finally discarded his legislative drafting tools last year. Walter who is a former Chief Parliamentary Counsel of New Zealand handed over the reins to George Tanner, a current member of the CALC Council, several years ago, but continued to work in the New Zealand Parliamentary Counsel Office as a consultant. Many CALC members will have known Walter well from his regular attendance at CALC conferences and general meetings. Walter was of course for several years a Vice-president of CALC.

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[6] The Office is responsible for the drafting of all Scottish Executive Bills for the Scottish Parliament. Members of the office also act as Scottish Parliamentary Counsel (UK) and as such are responsible for drafting Scottish material for the Westminster Parliament.

David Hull

David Hull, who is currently number 2 in the Jersey Legislative Drafting Office, has announced that he will be retiring this coming October. David has the most varied career of any lawyer I have ever met. His legal career began in Wellington, New Zealand, where he practised as a barrister and solicitor before being appointed a Crown Counsel in Hong Kong. He then joined the New Zealand Parliamentary Counsel Office, but soon moved on to Western Samoa, where he was the Attorney-General. After another stint in the New Zealand Parliamentary Counsel Office, he was appointed Attorney-General of Gibraltar. After serving in that capacity for several years, he moved over the judiciary, successively holding appointments as High Court Judge in the Cayman Islands and in Bermuda and as Chief Justice of Swaziland. In 1996, he gave up the judiciary and returned to the legislative drafting fold. He must have lost his wanderlust then because he has now been with the Jersey Legislative Drafting Office for over 10 years.

David is one of only two members to have resigned from CALC and then rejoined! Although David is retiring from the Jersey Office, I understand that he has plans for continuing to work in the legislative drafting field.

Michael Orpwood QC

I am sad to report that the former Deputy Parliamentary Counsel of New South Wales, Michael Orpwood, died in Sydney on 16 December 2005 after a sudden illness. He retired from the New South Wales Parliamentary Counsel's Office in February 2004 where he had worked for over 30 years and had been Deputy Parliamentary Counsel for half of that time. Following his retirement, he served as Chancellor of the Anglican Archdiocese of Sydney, a position that he held at the time of his death. Michael was well known for his robust views on plain language and had provided a highly spirited presentation on this topic at the Australasian Drafting Conference in August 2005. He was one of the pioneers of the use of plain language in legislative drafting. A prime example of his work is to be found in the *Local Government Act 1993*.

Ian Hurrell

I am also sad to report the death of a former New Zealand Parliamentary Counsel, Ian Hurrell. He joined the New Zealand Parliamentary Counsel Office[7] from the Ministry of Works in 1965 and served in that Office for almost 30 years before retiring through ill-health in the early 1990s. Ian died at his home in Lower Hutt last October after a long illness. Apart from his not inconsiderable drafting skills, Ian was a well-known rugby referee in Wellington. He will be particularly remembered for his cheerfulness and fortitude in the face of considerable adversity.

Eric Wright

I am also sad to report the death of a former Australian Drafter, Eric Wright. He joined the Attorney-General's Department in Canberra in 1965. Eric was a very able lawyer and highly competent legislative drafter. His success in this specialised field was reflected by promotions that eventually saw him as a branch head, then a divisional head, within the Attorney-General's Department. For the last few years of his career he held a statutory office as a Second Parliamentary Counsel in the Office of Parliamentary Counsel. By the time he retired Eric could claim an enormous amount of experience and expertise in drafting Commonwealth and Australian Capital Territory laws. Eric was a highly respected drafter who will be missed by his many friends and colleagues.

News of other members

[7] At the time when Ian joined the Office, it was called the 'Law Drafting Office'.

Peter Barrett, the peripatetic drafter from New South Wales, is currently assisting the Cayman Islands Government with the preparation of financial legislation. Michelle Daley has also recently relocated to the Cayman Islands recently, having bid farewell to the Law Reform Commission in the British Virgin Islands. She is now working in the Legislative Drafting Department of the Cayman Islands Government.

John Hogg, a stalwart of the British Columbia Legislative Counsel Office, recently retired, but not for long! Like John McCluskie, he found that legislative drafting was in his blood and so recently joined the Irish Office of Parliamentary Counsel as a Consultant Parliamentary Counsel. Jeremy Wainwright, former Principal Legislative Counsel of the Australian Office of Legislative Drafting and Publishing in Canberra and a current member of the CALC Council, is also scheduled to join the Irish Office of Parliamentary Counsel in November.

And finally, the degree of Doctor of Laws was recently conferred on Nigel Jamieson, a former New Zealand Parliamentary Counsel and currently a senior lecturer in the Otago University Law Faculty, in recognition of his extensive legal writing, much of which related to legislation and legislative drafting.

New CALC members

On behalf of the CALC Council, I should like to welcome all those who have joined the Association since the publication of the last list of new CALC members. As a result, the Association now has over 800 members from 53 different legal jurisdictions.

The following is a list of those who have become members of CALC since the beginning of 2005.

NEW CALC MEMBERS 2005/2006

Full members

Australia (Commonwealth)

Stephen Fagg* [3/11/2005]	*Office Address* Office of Legislative Drafting & Publishing Robert Garran Offices National Circuit Barton ACT 2600	*E-mail:*
Helen Cormack* [15/11/2005]	*Office Address* Office of Legislative Drafting & Publishing Robert Garran Offices National Circuit Barton, ACT 2600	*E-mail*:
Magdalene Starke [30/4/2006]	*Office Address* Robert Garran Offices National Circuit Barton, ACT 2600	*E-Mail*:

Australia (Victoria)

Duncan Campbell* [3/8/2005]	*Office Address* Duncan Lawyers, Level 5, 105 Queen Street Melbourne Vic 3000	*E-mail:*
Andrew Jones [26/9/2005]	*Office Address* Office of the Chief Parliamentary Counsel Level 2, 1 Macarthur Street, Melbourne 3002	*E-mail:*

Bermuda

Lorraine Welch [9/9/2005]	*Office Address* Attorney General's Chambers Global House, Hamilton HM 12	*E-mail:*

Botswana

Gogontle Gatang* [24/07/2005]	*Office Address* Attorney General's Chambers Private Bag 009, Gaborone	*E-mail:*
Graeme Keay [26/9/2005]	*Office Address* BURS, Private Bag 0013, Gaborone	*E-Mail:*
Daphne Matlakala [3/8/2005]	*Office Address* Attorney General's Chambers, Private Bag 009, Gaborone	*E-mail:*
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Canada (federal) – Alison Small

Canada, British Columbia – Claire Reilly

The birth of a new baby: the Asian Association of Legislative Counsel

On March 19, 2006, a regional grouping of legislative counsel (to be known as the "Asian Association of Legislative Counsel" or "AALC") was established. The official signing of the of AALC's Constitution was held in Dhaka, Bangladesh, in the presence of the Bangladeshi Minister of Law, Justice and Parliamentary Affairs and the State Minister for Law, Justice and Parliamentary Affairs, as well as the Canadian High Commissioner to Bangladesh and representatives from the various High Commissions concerned. The Constitution was signed by representatives from the drafting offices of all five founding member countries, namely Bangladesh, India, Pakistan, Singapore and Sri Lanka. Immediately after the signing ceremony, representatives of the member countries met to officially elect their first Executive Committee, and this Committee immediately held its first meeting to establish its priorities for the immediate and medium term future.

AALC's Constitution is largely based on CALC's Constitution, and its objectives are essentially the same as CALC's, only on a regional basis.

The Government of Canada, through its Legal Reform Project in Bangladesh, was instrumental in promoting the creation of this new regional association. The Project, headed by the CALC President, Lionel Levert, QC, provided necessary funding for holding an earlier activity, namely the *Regional Conference on Institutional Harmonization in Legislative Drafting*, in September 2004, in Dhaka. In addition to Bangladeshi participation, five other countries had sent representatives to that conference, namely India, Malaysia, Pakistan, Singapore and Sri Lanka. The concept of establishing a regional association for legislative counsel had then been discussed and agreed to in principle, subject to official approval being provided by each of the respective countries concerned.

On 19 March, this year, the same countries were again gathered, except for Malaysia, to officially launch the Asian Association of Legislative Counsel. Malaysia will likely be joining the Association at a later date, when other jurisdictions, such as Hong Kong and Brunei, may also be joining the new organization. The founding countries want the organization to be open for participation to other Asian countries as soon as possible, and not necessarily just to Commonwealth countries.

Lionel Levert attended the founding meeting. On behalf of CALC, he welcomed the new Association in the larger family of Commonwealth legislative counsel. He also extended all possible support from CALC. He talked about a possible amendment to CALC's Constitution that would allow for official recognition of affiliate organizations around the world. He expressed the hope that this would be the first of a series of regional associations to be created across the Commonwealth.

The new Association's President is Kazi Habibul Awal, Additional Secretary, Legislative Drafting Wing, Ministry of Law of Bangladesh. The Vice-President is Kim Cheu Ter, Parliamentary Counsel of Singapore. The Secretary is Shahidul Haque, Joint Secretary, Legislative Drafting Wing, Ministry of Law of Bangladesh. Mr. Haque is also a CALC Council member. The Executive Committee also has five other members, one from each member country.

CALC extends its best wishes for a long and fruitful life to this new organisation.

Rule of law in the 21st century

I have included the following items because, as legislative counsel, we play a central role in the process of maintaining the rule of law. Most of us at least work in democratic systems. Our efforts are crucial to creating certainty in the law, and ensuring that it is legally effective and is effectively communicated to the legislators who legitimise the law as democratically elected representatives of the people and to those audiences that it purports to effect.

The first item is the full text of the a speech given by the British Attorney-General, Lord Goldsmith, at the London School of Economics on 22 February 2006, as part of a series of lectures sponsored by the LSE Law Department and Clifford Chance on the rule of law, organised in conjunction with Justice.

The second item is a about “signing statements” made by US Presidents in respect of legislation enacted by the US Congress. Under the US Constitution, the President has a power to veto legislation passed by Congress. However, the President also claims to have power to identify particular provisions of federal legislation that the US Government will not implement, even though it has been signed by no less the President himself. It seems astonishing to me that such action could be taken in a democracy, such as the United States, particularly when it does not seem to be supported by any of the provisions of its Constitution. As for the United Kingdom and other Commonwealth countries, not since the days of King James II have we seen a head of State or a head of government acting in such a high-handed manner and it is surely now unthinkable that a head of government under a Westminster system of government could issue “signing statements” of the kind described in the New York Times article. As the Bill of Rights Act 1689 makes clear the pretended power of suspending the laws or the execution of laws by regal authority without consent of Parliament, and the pretended power of dispensing with laws or the execution of laws by regal authority, are illegal.

Editor

Government and the rule of law in the modern age

The Right Hon. Lord Goldsmith, Attorney-General

When last year Parliament passed the Constitutional Reform Act much time had been spent debating and finally agreeing its first clause. The Act itself is of course very important in terms of the establishment of a Supreme Court distinct from Parliament and in attenuating, if not completely abolishing, the traditional role of the Lord Chancellor in key areas especially the selection of judges.

However, I propose to concentrate this evening on the significance of the very first provision of the Act, and indeed the only provision within Part 1. It provides that the Act "does not adversely affect:

(a) the existing constitutional principle of the rule of law , or

(b) the Lord Chancellor’s existing constitutional role in relation to that principle".

This certainly illustrates the importance attached to the rule of law in the modern age, even if it does not much elucidate what the rule of law is, how it works and who is supposed to police it.

I want to take the opportunity this evening to focus on three themes.

First, why is the rule of law so important that it needed its existence to be underlined in the course of other constitutional change?

Second, who polices the rule of law? Is it only the judges and the courts? What is the role of Parliament?

Thirdly, does the rule of law mean the rule of lawyers? And if it does not, how we do avoid the impression that this is what is actually happening?

I approach these topics from the experience of nearly 5 years as Attorney General, the most senior law officer responsible for the most sensitive legal advice to Government and for the public prosecution authorities.

I start with the question of what is the rule of law.

If you rely on the press, I think you would pick up two messages about the rule of law. The first is that it is some sort fight-to-the-death battle between the judiciary and executive. So, in 2004, the Guardian reported "the rule of law is under threat to an extent unprecedented in recent times, the judges believe". Not much has changed since then. Marcel Berlins, writing at the beginning of this year, commented: "who would have thought, only a few years ago, that our much maligned conservative, allegedly out-of-touch, government lackey judiciary would be the main defenders of our liberties and the rule of law against an executive (Labour, what's more) hell-bent on destroying them?".

But the rule of law also crops up in the press as being something which defines our society. We cling to the rule of law in the face of the terrorist threat. Thus the Queen speaking after the bombings of 7 July [2005] said: "atrocities such as these simply reinforce our sense of community, our humanity, our trust in the rule of law". And regimes which engage in abhorrent practices such as torture are condemned for their failure to respect the rule of law.

Many judges and academics have grappled with the nature of the rule of law and why it matters. I do not intend to attempt this evening some learned analysis of my own as to what it means in theory. I do not embark on that for two reasons. First, my own attempts at a philosophical and historical analysis would be poor compared to the excellent existing academic work and would add little, if anything. Second, I want to concentrate today on what I, as Attorney-General, see as the practical implications: the rule of law in practice.

It is sufficient therefore if I emphasise three perhaps obvious but nonetheless important points about the rule of law.

The first is that the rule of law applies to Government. "Be you never so high, the law is above you," said Lord Denning memorably in Gouriet v Union of Post Office Workers. That was of course said in relation to the refusal by my predecessor Sam Silkin to grant consent to a relator action. The action was one which Mr Gouriet wanted to bring to obtain an injunction against the Union of Post Office Workers to stop them calling a boycott of all post between the UK and South Africa in a protest against apartheid. Silkin had argued that his decision was not subject to review by the courts.

I cannot resist pointing out in fairness to Sam Silkin that, despite the resonance of Lord Denning's remark (which he used to justify his conclusion that the Attorney's decision was justiciable), the House of Lords in fact agreed with Silkin, noting that in this case the Attorney General was accountable to the public for the exercise of his public interest powers through Parliament and not through the courts.

Let me be clear. Some of these issues are difficult. The great challenge for free and democratic states is how to balance the need to protect individual rights with the imperative of protecting the lives of the rest of the community. This balance is not easy and it would be foolish to pretend that in all cases everyone agrees with the balance which the Government has struck. Of course, there is controversy but it is not through Government failing to consider its legal obligations.

But, whilst emphasising that Government must be subject to the rule of law, we need to recall that so too is everybody else. A key part of Government is, therefore, to enforce the law with vigour and rigour. As Attorney General, I have responsibility for how public prosecutions occur. I will return to that issue.

The second point to make about the rule of law is that it is not simply about rule by law. Such a proposition would be satisfied whatever the law and however unfair, unjust or contrary to fundamental principles, provided only that it was applied to all. Instead, it seems to me clear that the rule of law comprehends some statement of values which are universal and ought to be respected as the basis of a free society.

This is why I have previously expressed the view that even when emergency or time of war permit some modification to, or even derogation from, certain rights, there are some rights so fundamental that there can be no compromise on them. Certain rights (for example the right to life, the prohibition on torture, on slavery) are simply non-negotiable.

As regards the prohibition on torture, the Government has been accused in some quarters of seeking to undermine this fundamental right. This is in the context of seeking to deport foreign nationals who pose a risk to national security to countries where they may face torture. But it is precisely because the Government cares about the rights of these individuals that it has sought to negotiate Memoranda of Understanding with the countries concerned to guard against risks such as torture. I do not accept the charge that such Memoranda will never be worth the paper that they are written on. As the Liberal Democrat peer and QC, Lord Carlile of Berriew, said in a recent report: "It really is a counsel of despair to suggest that no verifiable or satisfactory agreement can ever be reached with apparently recalcitrant countries."

There are other rights such as the presumption of innocence or the right to a fair trial by an independent and impartial tribunal established by law, where we cannot compromise on long-standing principles of justice and liberty, even if we may recognise that there may sometimes be a need to guarantee these principles in new or different ways. These principles are not just short-term objectives – they are the permanent foundations of a free society.

The third point is that the rule of law has universal application. There should be in modern society no outlaws; no people to whom the law does not apply who can ignore its constraints and to whom therefore anything can be done. They should be bound by the law and held rigorously to account in accordance with the law when they do not uphold it, but the law should not treat them as non-persons either. Some would not accept this. It is a bitter pill to swallow for those who have seen and experienced the devastation that results from terrorist outrages to see systems established to protect the legal rights of those they believe responsible for them. And those who are responsible, let it be admitted, do not have a single shred of concern for the legal or human rights of those they would kill, maim and terrorise. So why should we care, some would say, about theirs? There is much attraction in this line of attack. But the response to it is one of principle and pragmatism.

First, in confronting terrorism we are fighting for the safety of our citizens but also for the preservation of our democratic way of life, our right to freedom of thought and expression and our commitment to the rule of law; for the liberties which have been hard won over the centuries and which we hold dear. These are the very liberties and values which the terrorists seek to destroy, not only through mass murder and destruction of property but also through the climate of fear that their actions create, and are intended to create, and which threaten those values and our way of life.

This is why it is important, as Defence Secretary John Reid made clear the other day, not to allow respect, sympathy and understanding for the position in which our soldiers find themselves, which we all naturally share, to be treated as a call for British forces to operate outside the law. As he rightly said, bending the rules or avoiding them altogether is not an option because these are the very principles we are fighting to defend. It is right therefore that where there are credible accusations of criminal behaviour involving our armed forces or anyone else, they should be properly investigated and, where there is sufficient evidence to

prosecute and the public interest so requires, there should be prosecutions. And any such prosecutions will be brought under British law in a British court. It is precisely because our servicemen and women are subject to British law in this way that they need have no fear of being brought before the International Criminal Court in the Hague, which has jurisdiction only when states are "unable or unwilling" genuinely to carry out an investigation or prosecution.

Second, determining if a particular person is or is not a terrorist requires more than mere assertion on the part of an authority, however genuine and well-intentioned that authority may be. Our tradition requires such an assertion to be subject to testing by an independent and competent tribunal.

So the rule of law is essential, it is fundamental and it is, or should be, of universal application. Who then enforces it? And what indeed is the role of the Attorney General in this field?

For many the assumption is that this is the role of the courts. That was Lord Denning's assumption in Gouriet. Many other judges have seen it the same way. Lord Justice Laws, for example, in an important judgement expounding the limits of judicial intervention in the International Transport Roth case, sees the maintenance of the rule of law as something that lies particularly within the constitutional responsibility of the courts.

No-one would take issue with the idea that the courts are responsible for upholding the rule of law. But from my experience as Attorney General, I would disagree with anyone who suggested that the courts have a monopoly on seeing that the rule of law is observed, that the courts alone are responsible for upholding it.

This is surely not the case. Who would want to live in a society where the executive could act in defiance of the rule of law safe in the knowledge that the courts would right all wrongs in the end? A society where an individual could be detained at will by the executive on the reassurance that once his case was heard by the court, he would be freed.

In my view, all the organs of state – the executive, legislature and judiciary – have a shared responsibility for upholding the rule of law. This is not to down play the responsibility of the courts – they provide the critical long-stop guarantee – but the rule of law will only have real meaning in practical terms in a society in which all organs of the state are mindful of their obligations to respect it.

This is all the more important as there are areas where rightly the courts do not enter. Despite the astounding rate of expansion of judicial review - in 1981 there were 558 applications for judicial review; by 2001 the number had jumped to nearly 5000 applications, almost 10 times as many – there are still no-go areas for the courts, referred to by Lord Phillips as "forbidden areas". One such area relates to certain decisions taken under the prerogative, such as to whether or not to go to war. Thus, in the CND challenge seeking a declaration in advance of the Iraq conflict in 2003 Mr Justice Richards said:

> "In my view it is unthinkable that the national courts would entertain a challenge to a Government decision to declare war or to authorise the use of armed force against a third country. That is a classic example of a non-justiciable decision".

Although that proposition has been followed since by the Court of Appeal, some lawyers obviously do not consider it unthinkable at all. So, as I speak the House of Lords are seised with appeals by anti-war protestors seeking to establish that this is an arena into which the Courts should step. The Government remains clearly of the view that this is not a matter for the Courts. So we await the decision of the House of Lords.

But the exclusion of the courts is not limited to the exercise of certain prerogative powers. To take another example. The classic and well-established doctrine is that international treaties do not form part of English law unless and until incorporated specifically. So, subject to limited exceptions, English courts have no jurisdiction to apply them.

Even where the courts do have jurisdiction, the doctrine of deference or judicial restraint means that they will be very circumspect about overriding the decisions of the democratically elected bodies. As Lord Woolf put it in a lecture in Oxford in 2003, "there are situations where the national legislature or the executive are better placed to make difficult choices between competing considerations than the national courts".

For all these reasons it is critical that we in Government do not abdicate our own responsibility for ensuring respect for the rule of law simply leaving it to the courts.

The Government and its machinery do recognise the importance of the rule of law. That in a sense is in part what the controversy about my legal advice relating to the Iraq conflict was about. It is well illustrated by the now well-known request by the then Chief of the Defence Staff for a clear statement – yes or no – as to whether the use of armed force would be lawful. As he has since put it, he needed "an unambiguous black-and-white statement saying it would be legal for us to operate if we had to". Rightly, the armed services – as did the civil service - needed to know that they were covered by a clear statement of lawfulness.

But in general, what are the mechanisms other than judicial supervision for ensuring the rule of law within Government? I want to refer particularly to three.

First, there are the internal mechanisms. The principal of these is the internal validation of proposals with our domestic and international legal obligations. I regard this as a critical safeguard for the rule of law and one I see first hand at work day in day out. It has been given added force by the requirement under section 19 of the Human Rights Act for the Minister in charge of a Bill to make a statement to Parliament as to ECHR compatibility. (Although not a requirement of the Act, it is now expected that a similar statement should accompany any statutory instrument which is subject to mandatory debate in Parliament or which amends primary legislation.) Before this obligation existed of course, there was consideration whether the proposal breached any legal obligation. But section 19 has deepened the analysis and intensified the consideration in a very strong way. It is actually this, in my opinion, which has had the greatest impact on bringing respect for fundamental rights sweeping through Whitehall's corridors – rather than the power of the court to rule on non-compliance. It is not generally understood that proposals are modified, dropped or sometimes never even see the light of day because they would not otherwise be lawful. But any Government lawyer would confirm it.

I should add that the way that section 19 certificates are given is most certainly not to preclude good proposals just because they might arguably be non-compliant. But nor is it that a statement of compatibility can be given just because it is arguable that the provision is ECHR compliant. The practice which has been followed is that the Minister giving the certificate needs to be satisfied that it is more likely than not that the courts will uphold the proposal as compliant. The Minister's judgment is necessarily made on the basis of legal advice. That advice comes from departmental lawyers, sometimes supplemented by external advice or advice from the Law Officers. The Law Officers will normally only be called upon to advise in the most difficult or sensitive cases. But called upon, we are.

We also see the memoranda of ECHR compatibility which each Department now produces to accompany a Bill. These are produced by Departmental lawyers and explain why, in relation to every relevant provision, they consider the ECHR issues to fall on the right side of the line. Any issues of concern are brought to the attention of me or the Solicitor General. Sometimes Parliamentary Counsel too will bring matters of concern to our attention. If such concerns cannot be resolved before introduction of the Bill, the provision in question must be dropped until the Law Officers have had a chance to look at the matter in detail.

The auditing of proposals to ensure compliance with legal obligations is not limited to new legislation. It applies in every area of activity, executive and legislative, domestic and international including, of course, starting military action and the way war is waged. Targeting decisions, for example, are subject to legal clearance. There is testament to how well this is dealt with, not just by the lawyers but by military commanders too, by the rejection by the Chief

Prosecutor of the International Criminal Court of complaints concerning military operations in Iraq.

So respect for the rule of law does not depend on whistleblowers; it is a part of the everyday business of Government.

Here the Law Officers play a key role as advisers on the most sensitive and difficult issues; as scrutineers of departmental analysis of ECHR compliance; and as superintending ministers for the legal services provided in Government. I superintend, for example, the Treasury Solicitor the largest provider of legal advice to Government outside prosecutions. So I regard one of my responsibilities as Attorney General to uphold the rule of law.

It was interesting therefore to note that when it came to the debates on the Constitutional Reform Act little attention was given by many to this aspect. Given that it is no part of the Lord Chancellor's role to advise Government, the role of the Law Officers – who are regarded as the final authorities on legal issues in Government – deserved perhaps greater note.

But my role in protecting the rule of law is not limited to the provision of legal advice. The greatest threat we currently face is terrorism. The aim of the terrorists is to destroy our way of life and everything we hold sacred, including the rule of law. As superintending minister for the prosecuting bodies, I regard it as one of my key tasks to ensure that the criminal law is used as effectively as possible to combat terrorism, thus safeguarding the rule of law. Obviously, we need to focus on terrorists who bomb and kill. But it is critical we also target those who are one degree removed, those who use words to incite the men of action. The recent conviction of Abu Hamza was a welcome result, but in my view, we need to do more to target this group, building on the very effective work of the CPS and police in using the criminal law to target another group who once saw themselves as beyond the law, the animal rights extremists. We need too to continue to ensure the tools of prosecution do not lag behind an ability to identify threats. That is why I am pleased Charles Clarke made clear recently that there is serious work in train to determine whether we can use intercept evidence in court without compromising our vital interests.

The second extra-judicial mechanism is the growing use of independent commissioners and reviewers to ensure that the law is upheld.

I will cite two examples:

> The *Regulation of Investigatory Powers Act 2000* created both an Intelligence Services Commissioner and an Interception of Communications Commissioner. In an area rife with secrecy for essential reasons of national security and in which there is little judicial involvement, these Commissioners play a vital role in ensuring that the law is being applied and reassuring the public of this fact.
>
> The other example relates to the field of terrorism where there has long been use of an independent reviewer of terrorism legislation. The present reviewer is of course Lord Carlile of Berriew to whom I have already referred. He is responsible for reviewing the working of the *Terrorism Act 2000* and the *Prevention of Terrorism Act 2005*. While it was in force, he was also responsible for reviewing Part 4 of the Anti-terrorism, *Crime and Security Act 2001*. His latest report was highly significant in the recent carrying forward of the provisions of the *Prevention of Terrorism Act 2005*. He looked at the control orders made, praised the quality of decision making by the Home Secretary and the preparation by officials and other authorities involved and concluded that he would have reached the same conclusion as the Home Secretary in every case before him.

The third element of protection for the rule of law is the one that actually is the most important because it oversees all that the others are doing. That is Parliament itself.

Parliament provides a high degree of scrutiny of the effectiveness of legislation and Government action but also of its lawfulness. It is Parliament to whom the declarations of compatibility under the Human Rights Act are made. It is Parliament who debate the legality of provisions proposed. It is Parliament who receives reports of independent reviewers such as Lord Carlile. It is to Parliament that Sam Silkin and the House of Lords said the Attorney General was accountable – not to the courts.

Parliamentarians are well-informed on these issues. They are assisted too in many ways: by the briefing of NGO's such as Justice, the Law Society and Bar Council; by the work of the Joint Committee on Human Rights which, although still only a baby in terms of the life of the Mother of Parliaments, is proving a vital force in these areas of debate; by the work of other Select Committees which examine these issues – I would single out the Home Affairs Select Committee of the House of Commons in domestic affairs, and the European scrutiny committees of both Houses.

I should mention too the work of the Joint Committee on Statutory Instruments. This sounds a dull old body but Government lawyers who draft such instruments shake with fear at the prospect of having their instrument publicly criticised by the Committee. It is highly unlikely that the courts will strike down any one statutory instrument out of the myriad created every year. The possibility of being criticised by the Joint Committee is, on the other hand, a very real one. In the case of statutory instruments, therefore, I would suggest that Parliament plays a more important role in keeping the Government on the straight and narrow than do the courts.

I have left mention of Parliament till last not because it is the least important of these safeguards for the rule of law. But for quite the opposite reason – that its role is of fundamental importance. It is something that lawyers would do well to remember – that democracy and the liberties which we now take for granted were fashioned by parliamentarians far more than by the courts.

That leads me to my final issue: is the rule of law the same as rule by lawyers?

In Alconbury, Lord Hoffman said that: "The *Human Rights Act 1998* was no doubt intended to strengthen the rule of law but not to inaugurate the rule of lawyers."

There are many who think that, however, it is exactly the rule by lawyers which has been inaugurated. Melanie Phillips described it as now "an industry which threatens to usurp the democratic process itself" and where law had become a "kind of secular religion, with lawyers the new priesthood."

Whilst I do not agree that this is an accurate picture of our present position, I believe there are serious points here which deserve consideration.

There is a risk that some lawyers express themselves with an arrogance which suggests that law is the only morality. This is a dangerous proposition. It is dangerous because the law can be uncertain and dependent on a final adjudication which does not make those who took a different view of the law immoral. Take for example the decision in relation to Part IV of the Anti-Terrorism Crime and Security Act. The outcome of that case was not certain. Quite the contrary. Although the decision of the House of Lords was strong, at least one member took a different view as had the whole of the Court of Appeal, presided over by Lord Woolf. This did not mean in my view that the Government and Parliament had been acting immorally in settling on the policy which ultimately the House of Lords struck down.

That case also illustrates that the Government, even when disappointed with the result, acts to comply with the law. It moved swiftly to remove the legislation, even though it was not obliged to under the structure of the Human Rights Act. I know that the solution sought has been controversial but it has been a solution attempting to comply with the law and balance the rights of the individual against the rights of the many.

But the proposition that the law is the only morality is also dangerous because it risks playing down or even ignoring the importance of other reasons why it might be wrong to do something. A course of action needs to be right as well as lawful. Being lawful is a necessary but not a

sufficient condition to taking that course of action. And whilst lawyers may have the final say on whether something is lawful, it is for others to decide whether it is right to do it. The recent cartoon furore is a case in point: it was right that the debate centred principally on whether the newspapers who carried the cartoons did so responsibly or wisely, whether they should have realised the offence – and perhaps more - that their actions would bring, rather than whether they had the legal right to print the cartoons. Lawyers have no greater wisdom on the former question though they have something to say on the latter. Even there the role of the lawyer is more limited than some would acknowledge – because the right of freedom of expression can, like many other rights, be curtailed where the interests of a democratic state requires it. Why should lawyers have some monopoly of determining what the interests of a democratic state require? On the contrary, their views are likely to be less informed and valuable than that of others – especially democratically elected politicians. This is why courts recognise that in their appreciation of these areas they must pay great respect to the views of Parliament and Government.

Lawyers must therefore be wary of losing sight of this important fact. Indeed, otherwise there is a real risk that law becomes a weapon of choice in what are in reality political debates.

As I have been arguing this evening, it is not lawyers alone who are responsible for maintaining the rule of law. Nor does good government depend on the rule of law alone. Good government requires a much wider debate and all of us, but perhaps especially lawyers, must remember that, even while we celebrate the newly elevated status of the law in public life.

Legal group says Bush undermines law by ignoring select parts of Bills[8]

By Robert Pear

WASHINGTON, 23 July— The American Bar Association said Sunday that President Bush was flouting the Constitution and undermining the rule of law by claiming the power to disregard selected provisions of Bills that he signed.

In a comprehensive report, a bipartisan 11-member panel of the bar association said Mr. Bush had used such “signing statements” far more than his predecessors, raising constitutional objections to more than 800 provisions in more than 100 laws on the ground that they infringed on his prerogatives. These broad assertions of presidential power amount to a “line-item veto” and improperly deprive Congress of the opportunity to override the veto, the panel said.

In signing a statutory ban on torture and other national security laws, Mr. Bush reserved the right to disregard them.

The Bar Association panel said the use of signing statements in this way was “contrary to the rule of law and our constitutional system of separation of powers”. From the dawn of the Republic, it said, presidents have generally understood that, in the words of George Washington, a president “must approve all the parts of a Bill, or reject it in toto”.

If the president deems a Bill unconstitutional, he can veto it, the panel said, but “signing statements should not be a substitute for a presidential veto”.

The panel’s report adds momentum to a campaign by scholars and members of Congress who want to curtail the use of signing statements as a device to augment presidential power.

At a recent hearing of the Senate Judiciary Committee, the chairman, Arlen Specter, Republican of Pennsylvania, said Mr. Bush seemed to think he could “cherry-pick the provisions he likes and exclude the ones he doesn’t like.” Senator Patrick J. Leahy of Vermont, the senior

[8] The New York Times, 24 July 2006.

Democrat on the committee, said the signing statements were “a diabolical device” to rewrite laws enacted by Congress.

Justice Department officials dismiss such criticism as unjustified. “President Bush’s signing statements are indistinguishable from those issued by past presidents,” said Michelle E. Boardman, a deputy assistant attorney general. “He is exercising a legitimate power in a legitimate way.”

Michael S. Greco, the president of the bar association, who created the study panel, said its report highlighted a “threat to the Constitution and to the rule of law”.

At its annual meeting next month, in Hawaii, the association will consider several policy recommendations, including a proposal for judicial review of signing statements.

The panel said, “Our recommendations are not intended to be, and should not be viewed as, an attack on President Bush.” The panel said it was equally concerned about the precedents being set for future chief executives.

The panel acknowledged that earlier presidents, including Andrew Jackson, Ulysses S. Grant, Theodore Roosevelt and Franklin D. Roosevelt, had occasionally asserted the right to disregard provisions of a law to which they objected. Under Bill Clinton, the Justice Department told the White House that the president could “decline to execute unconstitutional statutes.”

But the panel said that Mr. Bush had expressed his objections more forcefully, more often and more systematically, “as a strategic weapon” to influence federal agencies and judges.

In his first term, the panel said, Mr. Bush raised 505 constitutional objections to new laws. On 82 occasions, he asserted that he alone could supervise, direct and control the operations of the executive branch, under a doctrine known as the “unitary executive”.

Whenever Congress directs the president to furnish information, Mr. Bush reserves the right to withhold it. When Congress imposes mandates and requirements on the executive branch, the president often says he will read them as advisory or “precatory”.

When Congress tries to define foreign policy — for example, on Russia, Syria, North Korea or Sudan — Mr. Bush objects. Even if he agrees with the policy, he asserts that the Congressional directives “impermissibly interfere with the president’s constitutional authority” to conduct foreign affairs.

Whenever Congress prescribes qualifications for presidential appointees, Mr. Bush complains that this is an intrusion on his power, even if Congress merely requires that the appointee know about the field for which he will be responsible.

When Congress requires outreach or affirmative action for women or members of certain racial or ethnic groups, the president demurs, saying such provisions must be carried out “in a manner consistent with the requirements of equal protection under the Due Process Clause of the Fifth Amendment to the Constitution”.

The panel said Mr. Bush’s signing statements often used the same formulaic language, with “no citation of authority or detailed explanation”. It urged Congress to pass a law requiring the president to “set forth in full the reasons and legal basis” for any signing statement in which he says he can disregard or decline to enforce a statute.

In another recommendation, the panel suggested legislation to provide for judicial review of signing statements. It acknowledged that the Supreme Court had been reluctant to hear cases filed by members of Congress because lawmakers generally did not suffer the type of concrete personal injury needed to create a “case or controversy”. But the panel said that “Congress as an institution or its agents” should have standing to sue when the president announces he will not enforce parts of a law.

The issue has deep historical roots, the panel said, noting that Parliament had condemned King James II for non-enforcement of certain laws in the 17th century. The panel quoted the English [*sic*] Bill of Rights:

"The pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of Parliament, is illegal."

The panel was headed by Neal R. Sonnett, a criminal defense lawyer in Miami. Members include former Representative Mickey Edwards, Republican of Oklahoma; Bruce E. Fein, a Justice Department official in the Reagan administration; Harold Hongju Koh, the dean of Yale Law School; William S. Sessions, a former director of the Federal Bureau of Investigation; Kathleen M. Sullivan, a former dean of Stanford Law School; and Patricia M. Wald, former chief judge of a federal appeals court.

Plain language versions of UK Parliamentary Bills

Traditionally, all Bills are introduced into the legislature as a single document, usually accompanied by an explanatory memorandum. However, an interesting innovation was tried recently when the *Coroner Reform Bill* was introduced into in the Westminster Parliament. According to press reports, what was novel was inclusion of a purportedly plain language version opposite the text of each provision.

The innovation was apparently requested by Harriet Harman, the UK Minister for Constitutional Affairs. According to the Minister, "It was time that the public could read the laws passed in their name". Since many Members of Parliament (including Ministers) found Bills in their current form hard to understand, she could not see how the public could be expected to understand them.

The Bill, which is designed to thwart the occurrence of another case like that involving Dr. Harold Shipman, will entitle relatives to ask a coroner for a second opinion if they disagree with the doctor's conclusion on the death certificate.

According to press reports, the plain language text of the Coroner Reform Bill, which was prepared by Parliamentary Counsel, "translates the 81 clauses and 10 schedules of the 128-page Bill".

The new-style Bill sets out all the relevant sections and schedules in the traditional way but the accompanying plain language text is designed to provide a complete picture of the 'legal' text for the benefit of the non-expert user. By using the services of parliamentary counsel to prepare the plain language text as well as the 'legal' version, the Minister hoped to avoid accusations that the plain language version amounted to government spin. Because they were concerned that an accurate clause-by-clause translation might not be possible, parliamentary counsel involved in drafting the Bill were, it seems, initially reluctant to try to create a plain language version of the Bill. However, it is understood that they were pleased with the outcome.

The Minister said that the move would help ministers as much as members of the public and predicted that it would not be long before every Bill would include its own plain language version. According to the Minister, all of her colleagues want their Bills in the new form.

Some blame the English system of common law and case law for the complexity of legislation. With the meaning of words and phrases being carefully defined either in the legislation or by judicial decision, it is often hard for those outside the legal profession to elicit the meaning that a Bill is intended to convey. Others claim that that arcane legal language (or legalese) survives because judges are responsible for interpreting legislation that is the language they understand. Whatever the reason, all the evidence is that legislation is becoming increasingly impenetrable and daunting to users. However, it has not always been that way. The *Sale of Goods Act 1893* is a model of clarity. Even if it has been the subject of much judicial interpretation over the past

100 years or so, the Act has largely stood the test of time, not only in the United Kingdom but in many other Commonwealth countries where its provisions have been adopted.

Bad habits seem to have crept in during the 20th century, particularly during the era of the Wilson Governments of the 1960s and 70s. They were renowned for "massive tomes" of legislation as regulation was thought to be the most effective way to control industry. The current British Government's predilection for sweeping "framework" Bills, which can be easily supplemented by subordinate legislation, has added to the complexity.

The *Campaign for Plain English* has welcomed the innovation, saying that it was a "great step forward". On the other hand, lawyers, who make their living from explaining complex legislation to clients, could lose from the innovation if it were to be adopted universally. But according to the Minister, "If this means businesses and the public can download a Bill from our website and find out for themselves how they abide by it, that is a huge step forward and highly democratic".

The inclusion of a plain language text is not the end of the story it seems. The Minister also intends to arrange for the Bill to be reviewed by a panel of 15 members of the public who have had recent direct involvement in a coronial inquest. She pointed out that that, unlike health and education issues, not all Members of Parliament come into contact with bereaved families who have had experience of coronial inquests, since only 29,000 cases end up there each year. She felt therefore that, "It is extraordinarily important we hear what they have to say". "It means we are not just relying on the views of the professionals and pressure groups, important though those views are. "They might say 'this is rubbish'. That is a risk, but we need to hear that before we go any further."

The Public Parliamentary Panel will sit in session for two days in Westminster, where Members of Parliament, peers and the media will be invited to listen to their discussions as they deliberate on the draft Bill before it goes to the Commons for debate.

Another, more controversial, provision will provide for the proceedings of family courts to be open to public scrutiny.

The Bill will also be subject to a new initiative. Pending the enactment of the Bill, a court practice direction will allow family courts to admit the press and public. The drafters of the Bill will then take into account family courts' experience as a result of the direction.

Yet a further innovation will be to subject the new family courts legislation to "post-legislative scrutiny". This will provide for Ministers and other Members of Parliament revisiting the legislation after it has been in force for a period to find out whether the legislation is working as intended or whether any changes are needed. What now happens is the Parliamentary Select Committees scrutinise the operation of legislation and occasionally a sunset clause provides for an Act to expire after a specified period or on a specified date. As the Minister pointed out, "Neither of those let Ministers and MPs assess how the Bill is functioning with a view to amending it. Post-legislative scrutiny will do that." These are welcome developments.

Returning to the *Coroners Reform Bill*, the Bill most certainly has a more pleasing look about it, although I have to admit a preference to the formats used in many Canadian and Australian jurisdictions. The Bill is set out so that is as easy to understand as possible. It begins with an overview of the contents followed by a list of the Bill's measures. This overview (or summary) will surely be helpful to both lawyers and non-lawyers. On the other hand, the phrase "as the case may be", which appears extensively in the provisions of the Bill is either redundant or avoidable and its use is more likely to confuse now-lawyers that to help them. And it is noted that gender-neutral language is not used, although such language is now commonplace in other common law jurisdictions.

Some of the claims made by the Minister about the Bill are not really substantiated. The purportedly "easy-to-understand interpretation" and "simultaneous translation" opposite the text of each provision is really no more than what one would expect to find in explanatory notes of the kind that are to be found in Bills prepared in other common law jurisdictions. However, the placement of these notes opposite the text of the Bill's 'legal' provisions is novel and I believe

will indeed help the user, particularly is it is understood that the notes will be updated to cater for amendments made to the Bill during its passage through the legislature and will appear as part of the text when the Bill is enacted.

Editor

Jargon gone?

The following (which relates to the previous item) is the text of a humorous editorial published in the London Times on 7 June 2006.

Why official English must be for ever plain

> Be it enacted by the Queen's most Excellent and relatively pithy Majesty, by and with the advice and consent of the Lards Spiritual, Temporal and self-stupefied by virtue of their own stupendous prolixity, and Commons, in this present pompous Parliament assembled, and by the authority of the same, as follows:
>
> 1. (1) All laws, Bills, treaties, grand plans and ministerial doodles passing themselves off as same that are brought before these Houses shall henceforth, in the interests of the public good and in spite of any diminution of the self-esteem of these Houses' members or of the legal profession broadly defined, be simultaneously translated, for publication in parallel columns in all official documents for rapid reference by whomsoever chooses to peruse them, into the language known, by latter-day campaigners but also by Edward VI, who practically slit his wrists rather than wade through all the stuff he had to sign into law, as plain English.
>
> (2) Without prejudice to the generality of subsection (1) above, a scheme under this section will provide for the payment of grants to: (a) legislative draftspeople willing to adapt to their changed circumstances and seeking courses in English as a foreign language; (b) those same drafts people unwilling to adapt and seeking retraining as plumbers; and (c) the winner of an annual prize for the most perspicacious reminder of the value of intelligible language in public life.

An example is given hereinafter. Get on with it. (What took you so long?) Write laws that we can all understand even if there is a purpose to be served in leaving us completely confused!

Clarity: journal of the international association promoting plain legal language

The latest issue (55) of 'Clarity' was published in May and includes several articles of interest to legislative counsel. Among the contents are the products of a master class in legislative drafting held at Clarity's conference "Writing the Law in Plain Language" in Boulogne-sur-Mer in July 2005. The three participants, Don Macpherson (Canada), Robin Dormer (England) and Ben Piper (Australia) (all CALC members incidentally) drafted differing versions of a Bill to regulate queuing (or as the Americans would have it 'standing in line'). Vicki Smolka (Canada) produced a critique of the classes: 'Drafting Master Classes: Plain Language Styles are not consistent'.

Other articles include 'Plain language developments in Australia' (Neil James); Plain Language in the Senate of Chile' (Claudia Olmedo); 'Plain language in Spain' (Cristina Gelpi); 'What's on

in plain Swedish' (Anne-Marie Hasselrot); Recent plain-language progress in the UK (Sarah Carr)'; and 'Plain language in the United States Government' (Annetta Cheek).

Catherine Rawson produced 'You can fix your own English', while Sarah Carr wrote 'Technical jargon: An approach, an idea and an offering'. The issue concludes with a piece by Mark Adler 'Taking an overview: three rules of thumb'.

Next CALC Conference and General Meeting

The next CALC conference and general meeting will be held in Nairobi, Kenya, in September 2007. The conference will be held either immediately before or immediately after the next Commonwealth Law Conference, which is scheduled to be held on 9-13 September 2007. The actual dates will depend on the outcome of negotiations currently taking place with the Commonwealth Lawyers' Association for the use of one of its facilities.

Members who would like to present papers at the conference or participate in panel discussions are cordially invited to indicate expressions of interest. Members are also invited to suggest topics for inclusion in the conference programme. One possible topic is "enforcement mechanisms" and techniques for drafting them. Another possible topic is "drafting anti-terrorism legislation".

Cutting edge communication?

Here is a road sign that, if taken seriously, seems almost entirely self-serving.

If the prohibition on touching its edges is because of the danger posed by their sharpness, it might be thought to be too wide. To prevent the mischief, it might be enough to prohibit only the kind of contact which, characterised by its pressure, angle of approach or directness, is likely to be harmful.

Is it right to couple a cautionary sign with a prohibition? Or is the negative statement merely advisory? How can we tell? Is there statutory or other legal authority for the sign?

Is the reference to the bridge being "out ahead" a direction sign or a warning sign? If the latter, is the bridge available for use by horse riders, cyclists, motorcyclists and truck drivers?

Are pedestrians and car drivers prohibited, or is it just that there is no crossing for them?

Are there other kinds of road users not mentioned in the last two sentences?

Perhaps we should not be too hasty in our criticisms. Do we ever fall into similar traps when drafting? Do we ever declare that a provision has effect for a stated purpose when that purpose is wholly self-evident? Do we ever prohibit stated conduct, or require it, and provide no proper

sanction for breach or failure? Or, having prohibited it, go on to make it an offence when all that is necessary is the latter? Do we ever fail to notice that we have used ambiguous language? Do we ever, by over-particularising, mistakenly exclude other members of the class? Has the writer of the sign left anything else hanging? Has the writer of this commentary exposed any irrational prejudices or attributed any of his own mistakes to the signwriter?

John McCluskie

Frenzied law making?

More than 3,000 new criminal offences have been created in the United Kingdom during the past 9 years (and that is without taking into account offences specific to Scotland and Northern Ireland). This represents almost one for every day that the current Government has been in office. This astonishing total has drawn criticism of a "frenzied approach to law-making" that boggles the mind.

The British Government has come under considerable criticism for creating so many offences. In total, 3,023 offences since have been created since May 1997. They comprise 1,169 introduced by Parliament and 1,854 by subordinate legislation.

Nick Clegg, the Liberal Democrat home affairs spokesman, who uncovered the figures, said: "Nothing can justify the step change in the number of criminal offences invented by this Government. This provides a devastating insight into the real legacy of nine years of New Labour government - a frenzied approach to law-making, thousands of new offences, an illiberal belief in heavy-handed regulation, an obsession with controlling the minutiae of everyday life. He accused Ministers of failing to grasp the simple truth that "weighing down the statute book" with new laws was "no substitute for good government".

Although many of the new offences are uncontroversial and are likely to have widespread support (such as those involving the sale of contaminated food or violent crime), one has to wonder about some of the others. For example, it is now illegal to sell grey squirrels, impersonate a traffic warden or offer Air Traffic Control services without a licence or to create a nuclear explosion. (If there was a nuclear explosion, it is highly unlikely that there would be anyone left to prosecute the offence let alone try it!) Occupiers of dwellings who fail to nominate a neighbour to turn off their alarm while they are away from home will also commit an offence. And it is an offence for a ship's captain to carry grain unless there is a copy of the International Grain Code on board.

The recent flood of Criminal Justice Bills should be compared with the first nine decades of the 20th century when on average only one such Bill was introduced into Parliament per decade.

The Chief Constable of Dyfed-Powys in Wales has accused the past two Home Secretaries of making policies "on the hoof" in response to media pressure over serious crime problems, foreign offenders and the immigration service. Similar criticisms have been leveled by a former Chief Inspector of Prisons, who has urged restraint for the sake of stability in the criminal system and one has to ask how those involved in law enforcement can keep up with the plethora of new offences.

Apart from the Home Office, almost every British Government Department has been involved in the creation of new offences. For example, 640 new offences affecting the Department for Environment, Food and Rural Affairs have been created, the vast majority being by subordinate legislation. The Department for Trade and Industry has been responsible for another 592, and the Foreign Office and the Office for the Deputy Prime Minister 277 each. These are of course in addition to the vast number of offences that are already on the statute book. Even the British Attorney General's Office seems to have no idea how many offences exist. When asked about

this, all a spokesperson could say was that "there are thousands and thousands." But as we legislative counsel already know, to legislate does not itself solve a public policy problem; it is only a means to solving the problem, and then only if the legislation has been properly thought through.

According to Shami Chakrabarti, Director of human rights group Liberty, the figures demonstrated that politicians were becoming addicted to law making. She suggested that: "The next time the cry goes up to legislate our way out of a crisis, a deep breath from the Home Office might just be more inspiring than further statutory graffiti". In similar vein, Enver Solomon, Deputy Director of the Centre for Crime and Justice Studies at King's College London, asked whether a range of social harms that are now criminalised might not be better dealt with outside the criminal justice system.

The following are examples of some of the recently created offences:

- *Nuclear Explosions (Prohibition and Inspections) Act 1998*: Causing a nuclear explosion.

- *Scallop Fishing Order 2004*: If a boat breaches the restrictions in articles 3, 4 or 5, the master, owner and charterer are each guilty of an offence.

- *Measuring Instruments (Automatic Rail-weighbridges) Regulations 2006*: A person shall be [*sic*] guilty of an offence if he uses for trade an automatic rail-weighbridge to which there is affixed a disqualification sticker.

- *Scotland Act 1998 (Border Rivers) Order 1999*: Unauthorised fishing in the Lower Esk River.

- *Apple and Pear Orchard Grubbing Up Regulations 1998*: Any person who (a) intentionally obstructs an authorised person in the exercise of the powers conferred on him by regulation 10 above, or a person accompanying him and acting under his instructions or (b) without reasonable excuse, fails to comply with a requirement under regulation 10 above, shall be guilty of an offence.

- *Protection of Wrecks (RMS Titanic) Order 2003*: A person shall not enter the hull of the Titanic without permission from the Secretary of State.

- *Merchant Shipping (Crew Accommodation) Regulations 1997*: Failure to provide adequate facilities for crew members.

- *Transport Act 2003*: A person commits an offence if he provides air traffic services in respect of a managed area.

- *Polish Potatoes (Notification) (England) Order 2004*: No person shall, in the course of business, import into England potatoes which he knows to be or has reasonable cause to suspect to be Polish potatoes.

- *Learning and Skills Act 2000*: Obstructing an inspection by the Adult Learning Inspectorate.

- *Care Standards Act 2000*: Obstructing the work of the Children's Commissioner for Wales.

- *Vehicles (Crime) Act 2001*: Knowingly etc selling plates which are not vehicle registration plates.

- *London Underground (East London Line Extension) (No 2) Order 2001*: Any person who, without reasonable excuse, obstructs any person acting under the authority of the Company in setting out the lines of the scheduled works, or in constructing any authorised work or who interferes with, moves or removes any apparatus belonging to any such person shall be guilty of an offence.

- *Courts Act 2003*: Assaulting and obstructing court security officers.

- *Clean Neighbourhoods and Environment Act 2005*: Part 7 of the Act makes it an offence to fail to nominate a key-holder where an audible intruder alarm is present.

- *Merchant Shipping (Miscellaneous Amendments) Regulations 2002*: If any officer appointed in accordance with regulation 30(1) reports to the master or other officer in charge of the bridge a door to be closed and locked when it is not in fact closed and locked he shall be [*sic*] guilty of an offence.

- *Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005*: Offence to fail without reasonable excuse to attend a hearing held by an adjudicator, or to produce any document to an adjudicator.

- *Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) Regulations 1997*: Offence to fail to rigorously separate the accounts of ground-handling activities from the accounts of other activities in accordance with current commercial practice.

- *Natural Environment and Rural Communities Act 2006*: In relation to certain invasive non-native species such as the grey squirrel, ruddy duck or Japanese knotweed, offence to sell any animal or plant, or eggs or seeds.

Apart from the question of whether all of the new offences are in fact needed, there seems to be a lack of uniformity of approach to creating offences. Why not simply: “A person who does X commits an offence and is liable on summary conviction to a fine not exceeding €0000”?

International Conference: “Drafting for Diversity: A Singular Challenge”

CANADIAN INSTITUTE FOR THE ADMINISTRATION OF JUSTICE: NATIONAL CONFERENCE

14 and 15 September 2006—Library and Archives Canada Auditorium, 395 Wellington Street, Ottawa, Canada

PROGRAM OUTLINE: THURSDAY, 14 SEPTEMBER

Welcome and conference opening

- John Mark Keyes, acting Chief Legislative Counsel of Canada, Department of Justice Canada, and Chair, CIAJ Legal Drafting Committee, Ottawa

- Judith Keating, QC, Chief Legislative Counsel, Government of New Brunswick, Fredericton, New Brunswick

Keynote address:

- David Lepofsky, Counsel, Office of Crown Law - Criminal, Ontario Ministry of the Attorney General, Toronto, Canada

A writing tools exhibitors' showcase

Drafting to reach your audience

- Nicole Fernbach, President, Juricom, Montreal, Quebec, Canada

- Catherine Bergeal, Maître des Requêtes, Conseil d'état, Director of Legal Affairs, Ministry of Defence, Paris, France.

The contribution and limitations brought by codification. To the clarity of the law: what may be learned from French Practice? Madam Bergeal deals with a new paradox between the purposes of codification, the comprehensibility of the legislation and the consequences of codification, and the growing difficulty to understand the law. While exploring the causes of this situation, she will analyze its consequences and the solutions to be found.

- Philippe Hallée, a/director, Legislative Policy and Development, Legislative Services Branch, Department of Justice, Canada

- George Gopen, Professor, Faculty of Law, Duke University, Durham, North Carolina, USA.

"if the reader is to grasp what the writer means, the writer must understand what the reader needs". Using the lessons of classical rhetoric and stylistics, Professor Gopen aims at raising awareness among lawyers about the expectations of the reader by analyzing barriers to understanding. Professor Gopen will present his theory about the construction of the written message that is applicable to legislative drafting.

Beyond the statute book: Communicating the law in a culturally diverse society

Laws are written in the official language or languages of a Jurisdiction. It is questionable if the law, as it appears in the statute book, is accessible to many native speakers of the official version even when the plainest language is used. If this is correct, then in a culturally diverse society, how do we reach beyond the statute book to communicate the law to non-native speakers?

- Donald Revell, former Chief Legislative Counsel of Ontario, Toronto, Canada

- Aracely Rosales, Clear Language Group, Philadelphia, Pennsylvania, USA

Drafting workshops

Practicalities of drafting legislation - experienced legislative counsel will discuss recurrent drafting issues in English and French workshops and present their own solutions.

- Lynn Douglas, Senior Drafter, Department of Justice Canada

- David Elliot, lawyer and freelance legislative drafter, Edmonton, Alberta, Canada

- Jean-Paul Chapdelaine, Senior Drafter, Department of Justice, Canada

- Richard Tremblay, Senior Drafter, Department of Justice, Québec, Canada

Legislative drafting in a bilingual environment

Eight out of the fourteen legislatures in Canada enact bilingual legislation. However, the approach taken to prepare these texts in both official languages varies significantly from one legislature to another. Speakers from diverse backgrounds will present their approaches, highlighting the advantages and disadvantages, including the particular challenges they present to drafters and linguists.

- Philippe Hallée, Acting Director, Legislative Policy and Development, Legislative
- Nicole Fernbach, President, Juricom, Montreal, Québec, Canada
- Michel Moisan, Director, French Legislative Services, Office of Legislative Counsel, Toronto, Ontario, Canada

Reception in hall of honour, Parliament Buildings (Centre Block)

PROGRAM OUTLINE: FRIDAY, 15 SEPTEMBER

Diverse legal systems

- Pierre Charbonneau, Notary, Legal and Legislative services Branch, Department of Justice, Québec, Canada
- Judith Keating, QC, Chief Legislative Counsel, Government of New Brunswick, Fredericton, New Brunswick, Canada
- Donald Poirier, Professor of law, University of Moncton, New Brunswick, Canada
- Nicholas Kasirer, Dean, Faculty of Law, McGill University, Montréal, Québec, Canada
- France Allard, General Counsel, Comparative Law Specialist, Legislative Services Branch, Department of Justice, Canada

International legal diversity

- John Mark Keyes, acting Chief Legislative Counsel of Canada, Department of Justice, Canada, and chairperson, CIAJ legal drafting committee, Ottawa
- Joanna Harrington, Associate Professor, Faculty of law, University of Alberta, Edmonton, Alberta, Canada.
- Yves Le Bouthillier, president, Law Commission of Canada, Ottawa.

Drafting for diversity through private Member's Bills

Speakers will describe the process for private member's bills, assess their impact and explain how executive governments monitor them.

- Rob Walsh, Law Clerk and Parliamentary Counsel, House of Commons, Ottawa
- Mark Audcent, Law Clerk and Parliamentary Counsel, Senate, Canada

- Richard Denis, Deputy Law Clerk and Parliamentary Counsel, House of Commons, Canada
- Selena Beatty, Privy Council officer, Legislation and House Planning, Privy Council Office, Canada
- Peter Pagano QC, Chief Legislative Counsel, Government of Alberta, Edmonton, Alberta, Canada

First nations' laws

This panel will consider the emergence of first nations' lawmaking institutions, the linguistic and cultural dimensions of First Nations' laws and how they interact with federal, provincial and territorial laws.

- Brian Greer, QC, Chief Legislative Counsel of British Columbia, Victoria, British Columbia
- Mary Hatherley, Legislative Counsel, Government of Newfoundland and Labrador, St John's, Newfoundland and Labrador
- Brad Morse, Professor, Faculty of Law (Common Law Section), University of Ottawa, Canada
- Tracey Fleck, in-house legal counsel, Nisga'a Lisims Government, New Aiyansh, British Columbia

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Registration: if you wish to attend this conference, please complete the registration form and return it together with your cheque to: Canadian Institute for the Administration of Justice, Faculty of Law, University of Montréal, PO box 6128, station "centre ville", 3101 Chemin de la Tour, room 3421, Montréal, Québec, Canada H3C 3J7

A copy of the registration form is available on the CIAJ website: http://www.ciaj-icaj.ca

The CIAJ can be contacted by e-mail at ciaj@ciaj-icaj.ca

The registration fee for CIAJ members is C$ 595 and for non members C$ 685

Commonwealth Association of Legislative Counsel

MEMBERSHIP APPLICATION FORM FOR NEW MEMBERS

The Secretary, Commonwealth Association of Legislative Counsel
6/F, Office of the Attorney General, Government Buildings, Upper Merrion Street, Dublin 2, Ireland§

I, ……

wish to apply to become an individual member/associate individual member* of the Commonwealth Association of Legislative Counsel.

(signed) …… Applicant

***Note:** Persons are eligible to become individual members of CALC if they are or have been engaged in legislative drafting or in training persons to engage in legislative drafting and are Commonwealth persons. A "Commonwealth person" is a person who is a citizen or a permanent resident of, or who is domiciled in, a country or territory that is a member of the Commonwealth of Nations. Persons who have been so engaged but who are not Commonwealth persons are eligible to become associate members of CALC.*

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§ Please include your country and area codes.

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