THE LOOPHOLE

The Newsletter of the Commonwealth Association of Legislative Counsel (C A L C)

Please ensure that a copy of this issue is circulated to each CALC member in your jurisdiction

Table of Contents

1. Comments from the Secretary
2. Speech notes of Right Honourable David Lange, C.H.
3. Agenda & Minutes of General Meeting
4. Minutes of Council Meeting
5. News about Drafters
6. Papers delivered at CALC

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"The Loophole" is the newsletter of the Commonwealth Association of Legislative Counsel established on September 21, 1983, in the course of the 7th Commonwealth Law Conference held in Hong Kong.

The constitution of the Association provides for an elected council. The present council consists of:

Mrs. V.S. Rama Devi (President)	INDIA
Mr. Denis Murphy (Vice-President)	AUSTRALIA
Mr. Peter J. Pagano, Q.C (Secretary)	CANADA
Mr. Arthur Buluma (African Member)	KENYA
Mr. D.L. Mendis (Caribbean Member)	ST. KITTS-NEVIS
Mr. Walter Iles (Pacific Member)	NEW ZEALAND
Mr. N.S. Abeyesekere (Asian Member)	SRI LANKA

COMMENTS FROM THE SECRETARY

1. This issue of "The Loophole" contains the proceedings of the General Meetings of the Association held in New Zealand last April. Included are:

(a) the speech notes of the Right Honourable David Lange CH, Attorney-General of New Zealand, in opening the proceedings of CALC in Auckland on Monday, April 16, 1990;

(b) the agenda and minutes of the general meeting of CALC that was held in Auckland on Thursday, April 19, 1990;

(c) the Report to Council;

(d) the minutes of the meeting of the Council of CALC that was held in the offices of the Auckland City Council at 9:00 a.m. on Friday, April 20, 1990;

(e) the papers delivered at the CALC meetings.

2. I would like to bring to your attention the following resolutions that were passed in New Zealand:

A. That "The Loophole" be sent to the head of the Drafting Office in each jurisdiction and that it be the responsibility of the head of that office to distribute copies of "The Loophole" to other members of the Association within that jurisdiction provided that in the case of a Federal State the copies of "The Loophole" be sent to the head of the Drafting Office in each State in the federation and that it be the responsibility of the head of the Parliamentary Counsel Office in each State to distribute copies of "The Loophole" to other members of the Association within that State.

[Previously, in addition to each drafting office, "The Loophole" was also being sent to each CALC member who is not a member of a drafting office.]

B. That the cost of a CALC tie would be £6.50 and a scarf £7.50.

[Previously there was a dual price system depending on whether the article was being sent within or outside the U.K.]

C. That the Council be asked to consider, in relation to the proceedings of CALC to be held at the next Commonwealth Law Conference, whether the proceedings of CALC could be held over 2 days, one within the week of the Conference and the other at the beginning or the end of that week.

D. That the Council should consider the manner in which "active" [membership] was to be defined and the manner in which "inactive" members were to be removed from the mailing lists.

[The Council passed a motion authorizing the Secretary or the regional representative to write to the members indicating whether they wished to continue to be active members. If they didn't they would be put on an inactive list.]

3. The next issue will contain an updated membership list.

I would like to include phone numbers, FAX numbers and TELEX numbers for each drafting office or member. Please send me the information as soon as you can so that I can publish them in the next issue. With that information the membership list would be an even more useful document for members.

4. Some members of Council met in Edmonton, Alberta, Canada on September 17 and 18. Unfortunately there was not a quorum so no resolutions were passed, however some ideas for generating more interest in the Association were discussed.

A. Regional Drafting Meetings - A suggestion was made that regional meetings of legislative drafters be held from time to time. For example on November 22 and 23, 1990 in Ottawa, Canada the Canadian Institute for the Administration of Justice will be holding a Conference aimed at legislative drafters. In Canada we hope to have this organization plan conferences every 2 years.

The Council would like to encourage all regions to hold regional meetings. Drafters from other regions could also be invited.

B. Exchange Programs - We would like to publish in "The Loophole" a list of jurisdictions that would be interested in participating in some form of reciprocal exchange of legislative drafters. If a jurisdiction is interested please advise me by indicating any minimum or maximum periods and any other terms or conditions. I will publish from time to time any submissions that I receive.

C. Listing of Universities and other Institutions - The Council thought that a listing of those universities or other institutions that teach legislative drafting could be published from time to time in "The Loophole". What we are looking for are post-graduate programs such as those being taught at the University of Edinburgh in Scotland and the University of Ottawa in Canada.

D. Calendar of Events - We would also like to publish a calendar of events. If any conferences, meetings or seminars that may be of interest to drafters are being held in a jurisdiction, please let me know. I will gladly publish information about them.

5. Since our mailing costs may be lower I will try to publish "The Loophole" more often but I will need material to publish.

SPEECH NOTES
RT HON. DAVID LANGE CH
ATTORNEY-GENERAL

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL
MONDAY 16 APRIL 1990
WAITEMATA BALLROOM, SHERATON HOTEL, AUCKLAND

Mr. President, members of a much misunderstood branch of a much maligned profession, I greet you all and welcome you to this conference of the Commonwealth Association of Legislative Counsel.

I must say as a politician I consider that a meeting of parliamentary counsel is a dream audience.

Your training, your experience, your practise, perhaps even your breeding, incline you to sit, to listen, and to write everything down.

What more could I ask?

When I perused the list of those attending this conference, I was a little chastened to find how few were coming all this way to hear me speak - and, of course, to take part in the conference.

Auckland is awash with judges, counsel, and officials at this time - but few of your ilk are here. I asked your President why this should be so.

He assured me that the common experience throughout the Commonwealth was that if Judges, Counsel, or officials were away for a week or two, things kept going reasonably well.

But let a single Parliamentary Counsel's pen cease its labours for even an hour ... Mr. Iles was unable to describe the consequences, so ghastly were they.

I offer no comment on his view. He is entitled under our system of law to be judged by his peers. The verdict is yours - he is confident of the outcome. I simply note in passing that he plans to be in Auckland all week.

But I do want to affirm your value. If nothing else, our experience in New Zealand suggests that you have rarity value.

My more rural colleagues constantly tell me how valuable sheep are, and we have 60 million of those. By way of contrast, we have 8 Parliamentary Counsel.

But they are greater producers. I suspect that between them their output on average would fill half a woolsack or so every 2 sessions.

And they are criticised for it. In my more gentle moments I almost feel sorry for Parliamentary Counsel. They are constantly berated by politicians to produce more - and when they do they find a public outcry at the amount of legislation being produced.

But then, as an elder statesman of the Commonwealth once observed, "Life's not supposed to be fair".

Today, of course, the catchery is plain English. Everybody from the academic lawyers up demand that our laws be drafted in plain English.

I rather like the story of one of our Parliamentary Counsel who was asked for his views on this idea. He replied that he was all in favour of plain English - indeed, he and his colleagues used nothing else.

At one time it was considered sufficient if our laws were drafted in language that the Judges could understand, be it Norman-French, Latin or tortuous legalese.

Then one critic suggested that the language should be sufficiently plain that the Judge's wife could understand.

Until the modern plain English movement began, that stood as the ultimate challenge for a draftsman. But recently it has been surpassed.

A definition of plain English has been offered as language so plain that even the author understands what is written!

As this conference proceeds, I invite you to consider whether the authors of the papers to be presented have attained that goal!

Mr. President, members of a high-skilled branch of a very important profession, I have addressed you a fairly light-hearted way. But I do want to affirm the important of what you do.

It is of fundamental importance to our system of law that every citizen can have a basic understanding of his or her rights and duties under the law.

Your work is one of the most important ways by which this is achieved. The quality of your work bears a direct relationship to the quality of the democratic society in which and for which your work is done.

I wish to end with a quote. It has not been easy to find a suitable one. Most of the famous ones are at best derogatory and at worst defamatory. Let those who will, scoff. I take my stand with the psalmist:

> "I have more insight than all my teachers for I meditate on your statutes. Your statutes are my heritage forever; they are the joy of my heart."

Mr. President, ladies and gentlemen, I wish you a good conference, and I have much pleasure is now declaring it open.

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL
AGENDA FOR

General Meeting of the Commonwealth Association of Legislative Counsel to be held in the Waitemata Ballroom of the Sheraton Hotel, Auckland on Thursday 19 April 1990 at 4:00 p.m.

1. Welcome to Association members.

2. Apologies.

3. Introduction of council members and acting Secretary.

4. Proxies.

5. Approval of minutes of General Meeting held on 10 September 1986 at the Americana Hotel, Ochos Rios, Jamaica.

6. Presentation and consideration of the Report of the Council reviewing the activities of CALC since the last General Meeting of the Association.

7. CALC Ties and Headscarves. Consideration of letter of 10 April 1990 from Mr. G.B. Sellers and, in particular, of his suggestion that a flat rate of £6.50 for a tie and £7.50 for a scarf might be appropriate.

8. Consideration of the possibility of hold a CALC meeting separate from the Commonwealth Law Conference.

9. Proposal that the Secretary be empowered to remove from the membership list the names of persons who are retired or otherwise inactive.

10. Election of new Council.

   (a) President or Chairman;
   (b) Vice-President or Vice-Chairman;
   (c) Secretary;
   (d) Four other members.

<u>Notes</u>: (i) Under rule 4(5) of the Constitution of the Association it is provided that "In electing members of the Council, a general meeting of the Association shall, so far as practicable, endeavour to ensure that the membership of the Council reflects the nature of the Commonwealth and diversity of the peoples of the Commonwealth".

(ii) At the last general meeting the election of the President took place first. Then the election took place of an African member, an Asian member, a Caribbean member, and a Pacific member. The final elections were those of the Vice-President and the Secretary.

11. Determination of place where the headquarters of the Association are to be located.

<u>NOTE</u>: Rule 1(2) of the Constitution provides that "The headquarters of the Association shall be at Canberra in Australia, or at such other place as is from time to time determined by a general meeting of the Association".

12. Other business.

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL MINUTES OF GENERAL MEETING HELD ON 19 APRIL 1990, SHERATON HOTEL, AUCKLAND, NEW ZEALAND

Introduction

1. The President, Mr. Walter Iles, welcomed the members of the Association attending the third general meeting of the Association.

Apologies

2. The President informed the meeting that he had received written apologies from -

(a) the Vice-President of the Association, Mr. Justice Nazereth; and

(b) the Secretary of the Association, Mr. Peter Pagano; and

(c) Sir George Engle, the first President of the Association, who particularly asked to be remembered to the members of the Association present at the meeting.

Introduction of Council members and Acting Secretary

3. The President then introduced to the meeting the 3 other persons who were seated with him at the top table. Those persons were Mr. Peter Johnson, who was acting as Secretary of the Association in the absence of Mr. Peter Pagano, and Mr. Arthur Buluma and Mr. Abeyesekere, the other two members of the Council who were present at the meeting.

Proxies

4. The President reported to the meeting that he had received from Mr. Pagano, the Secretary of the Association, a fax setting out the proxies that had been delivered to the secretary before the meeting as required by clause 12 of the Constitution. The President read out particulars of the proxies.

Approval of Minutes

5. The meeting approved the minutes of the general meeting of CALC held on 10 September 1986 at the Americana Hotel, Ochos Rios, Jamaica.

Presentation and consideration of the report of the Council

6. The President presented to the meeting the report of the Council. He explained that the last page recorded the bank balance of the account maintained by the Parliamentary Counsel Office in London in relation to the ties and the scarves. Mr. Buluma pointed out that there was a mistake on page 2 of the report in that the reference to 400 should be a reference to £400. It was agreed that the motion that the report be received be put with that amendment.

The difficulty in obtaining material for "The Loophole" was discussed. It was generally agreed that members should be encouraged to contribute articles.

The funding of the Association, and a suggestion that a subscription be payable by members, was discussed. The President pointed out that under the Constitution a resolution imposing a subscription could be moved only on notice but that the incoming Council could consider whether a subscription was desirable if the incoming council were of the opinion that a subscription was desirable, the necessary motion could be moved at the next general meeting of the Association.

Reference was made, in relation to the costs of the Association, to the need to restrict the distribution of "The Loophole" to active members.

The meeting resolved that the report of the Council be received subject to the amendment indicated above in relation to the references to £400.

Distribution of "The Loophole"

7. Miss Penfold of Australia moved the following motion:

> "That "The Loophole" be sent to the head of the Drafting Office in each jurisdiction and that it be the responsibility of the head of that office to distribute copies of "The Loophole" to other members of the Association within that jurisdiction:
>
> > "Provided that in the case of a Federal State the copies of "The Loophole" be sent to the head of the Drafting Office in each State in the federation and that it be the responsibility of the head of the Parliamentary Counsel Office in each State to distribute copies of "The Loophole" to other members of the Association within that State."

This motion, which was seconded by Mr. Kolts, was carried.

CALC Ties and Headscarves

8. The meeting next considered a letter of 10 April 1990 from Mr. G.B. Sellers, and, in particular, his suggestion that a flat rate of £6.50 for a tie and £7.50 for a scarf might be appropriate.

Mr. Jenkins moved that the meeting approve the suggestion of Mr. Sellers that a flat rate of £6.50 a tie and £7.50 a scarf be approved at appropriate prices.

The motion, which was seconded by Sir Henry De Waal, was carried.

Consideration of the possibility of holding a CALC meeting separate from the Commonwealth Law Conference.

9. The President explained that this item arose from a suggestion of Mr. Pagano, the Secretary of the Association, who considered that there was some difficulty in Parliamentary Counsel timing their departure from their respective offices to fit in strictly with the meetings of the Commonwealth Law Conference. There was also the fact that if CALC meets for two days during the Commonwealth Law Conference, as it was doing in Auckland, and not just on the free day as it did in Hong Kong and Jamaica, there is inevitably a clash between the proceedings of CALC and the proceedings of the Commonwealth Law Conference. There may well be papers at the main Conference that members wish to attend on the day of a CALC meeting.

It was generally agreed that total separation from the Commonwealth Law Conference was not a good idea.

Sir Henry De Waal moved that the Council be asked to consider, in relation to the proceedings of CALC to be held at the next Commonwealth Law Conference, whether the proceedings of CALC could be held over two days, one within the week of the conference and the other at the beginning or the end of that week.

This motion, which was seconded by Miss Armstrong, was carried.

Proposal that the names of inactive members be removed from the membership list

10. The discussion of the proposal focused on the fact that the proposal really related to a matter of money and administration as the Association did not have power to cancel the membership of any member.

The meeting was generally agreed that care needed to be exercised about the way in which the term "active" was defined. It was resolved that the Council should consider the manner in which "active" was to be defined and the manner in which "inactive" members were to be removed from the mailing lists.

Election of new Council

11. The President announced that Mr. Pagano was available for re-election as Secretary and that Mr. Buluma and Mr. Abeyesekere were available for re-election to the Council. The President stated that he had been informed by letter by Mr. Justice Nazareth that he was not available for re-election to the Council. The President had no information as to the availability of Ms. Hyacinth Lindsay or Mr. Neil Adsett. Mr. Iles indicated that he was not available for re-election as President.

The election resulted as follows:

President:	Mrs. V.S. Rama Devi, India
Vice-President	Mr. Dennis Murphy, Australia
Secretary:	Mr. Peter J. Pagano, Q.C., Canada
African Member:	Mr. Arthur Buluma, Kenya
Caribbean Member:	Mr. D.L. Mendis, St. Kitts-Nevis
Pacific Member:	Mr. Walter Iles, New Zealand
Asian Member:	Mr. N.S. Abeyesekere, Sri Lanka

Headquarters of the Association

12. It was resolved that the headquarters of the Association be at Edmonton, Alberta in Canada.

A vote of Thanks

13. Sir Henry De Waal moved that the outgoing President, Mr. Walter Iles, be thanked for his work as President of the Association over the past four years and for the manner in which the proceedings of the Association at Auckland had been conducted.

This motion was carried with acclamation.

Assumption of Office

Mr. Iles thanked Sir Henry and the meeting for their approval of the motion and invited Mrs. Rama Devi to assume office as the new President of the Association. Mrs. Rama Devi assumed the Chair and thanked the members for the honour that they had done her in electing her as President of the Association. She then declared the meeting closed.

Confirmed
....
President
Date: ....

REPORT OF THE COUNCIL

I have great pleasure in presenting the report of the Council reviewing the activities of CALC since the last general meeting of the Association, which was held in Jamaica in 1986.

COUNCIL MEMBERSHIP

Over the course of the last 3½ years there were 2 changes on Council. Mr. Gerard Bertrand from Canada resigned as Secretary to the Council when he left the public service of Canada. Mr. Peter Pagano, also of Canada, was appointed in accordance with the Constitution to fill the vacancy.

In addition as a result of the coup in Fiji Mr. George Harre resigned as the Pacific Representative. Mr. Neil Adsett, who had also left Fiji as a result of the coup, was appointed by the Council to fill Mr. Harre's position. Mr. Adsett was in the Kingdom of Tonga at the time of his appointment.

CALC NEWSLETTERS

An attempt was made to publish 2 issues of "The Loophole" each year. The information contained in "The Loophole" came from a variety of sources. The Council would like to take the opportunity to thank all contributors to "The Loophole". Hopefully others will also provide "The Loophole" with material. Approximately 150 copies of each issue of "The Loophole" are mailed. Most are sent to drafting offices where there are a number of members. On occasion, a newsletter is returned because the member or office has moved. It is very important to receive a change of address as soon as possible. The cost of sending "The Loophole" is about £400 a year.

ASSOCIATION MEMBERSHIP

Membership in the Association is now about 440, an increase of about 50 since 1986.

It is very exciting to see such an interest in the Association. There is a lot to be learned by each and every member from the experiences of others. Membership in the Association is an excellent way to learn from others.

The procedure to have the Secretary approve applications for membership is working very well. There are some occasions, however, where an applicant does not indicate his or her qualifications. In most cases it is quite obvious since the applicant is a member of a drafting office however there are situations where it is not evident.

TIES AND SCARVES

The Office of the Parliamentary Counsel in London has been handling the sale of the ties and scarves. The Council wishes to thank them, in particular Mr. Geoffrey Sellers, for the time taken in handling this matter.

There are approximately 50 ties and 15 scarves in stock. The current price is

(a) if mailed in U.K. £5.50 (tie), £6.50 (scarf);

(b) if mailed outside U.K. £6.50 (tie), £7.50 (scarf).

According to Mr. Sellers if the account is to continue to be self-financing, it is necessary to set a price which reflects the likely cost of the next re-order (which may not be for several years). Most of the sales have been in the U.K. which may indicate that the extra cost of shipping may be a disincentive. Possibly a flat rate might be appropriate. The financial statements as of April 9 are attached to this Report.

PAPERS FOR CALC SESSIONS AT NEW ZEALAND CONFERENCE

The Council thanks those who prepared papers for the CALC sessions at the New Zealand Conference.

RELATIONS WITH COMMONWEALTH SECRETARIAT

Very good relations continue between the Association and the Commonwealth Secretariat. It has been an extreme pleasure to work with the Secretariat in particular with Jeremy Pope and Richard Nzerem. We are fortunate to have such an organization.

Minutes of Council meeting held on Friday 20 April 1990 at 9 a.m. in the offices of the Auckland City Council, Auckland, New Zealand

In attendance were:

Mrs. V.S. Rama Devi (President)	INDIA
Mr. Denis Murphy (Vice-President)	AUSTRALIA
Mr. Peter Johnson (Acting Secretary)	CANADA
Mr. Arthur Buluma (African Member)	KENYA
Mr. D.L. Mendis (Caribbean Member)	ST. KITTS-NEVIS
Mr. Walter Iles (Pacific Member)	NEW ZEALAND
Mr. N.S. Abeyesekere (Asian Member)	SRI LANKA

Introduction

1. The President, Mrs. Rama Devi, opened the meeting and welcomed the members of the Council.

Papers for the Conference

2. The President inquired about the way in which the papers for the conference were decided on. Mr. Iles, in reply, referred to the provision of the Constitution under the which the President is required to conduct dealings with the Commonwealth Secretariat. He and Mr. Pagano had taken that provision as meaning that it was the role of the President to try and set up the arrangements for the conference and general meeting. Mr. Iles stated that he had approached a number of people and asked them to present papers. Mr. Pagano had backed this up by asking in "The Loophole" for suggestions for papers for the conference. Mr. Murphy suggested that each member of the Council should try and encourage people within their own jurisdiction to write papers for the conference. This was agreed by consensus.

<u>Distribution of "The Loophole"</u>

3. At the general meeting, which was held on the previous day, it was generally agreed that copies of "The Loophole" should be distributed only to active members. The general meeting had asked the Council to devise an appropriate scheme for determining who were the active members of the Association.

4. Mr. Iles suggested that the Council pass a resolution along the following lines:

"(1) The Secretary, for the purpose of keeping the list of members of the Association up to date, be empowered to send to any member of the Association a letter inquiring whether that member wishes to continue as an active member of the Association and asking that member to confirm by a specified date (which shall not be sooner than 6 months after the posting of the letter) either -

"(a) That the member wishes to continue as an active member of the Association; or

"(b) That the member wishes to resign.

"(2) If the member -

(a) Fails to respond to the letter by the specified date; or

(b) Indicates that the member no longer wishes to play an active part in the affairs of the Association, -

the name of the member may be placed by the Secretary on a list of inactive members.

"(3) Where the name of a member is on the list of inactive members, the name of that member shall not be included on the list of members posted out or included with "The Loophole" and copies of "The Loophole" shall not be sent to that member.

"(4) Where a member whose name is on the list of inactive members of the Association informs the Secretary in writing that the member wishes to be treated as an active member of the Association, the Secretary shall delete the name of that person from the list of inactive members of the Association.

"(5) Nothing in paragraph (4) of this resolution shall prevent the Secretary from sending to a member whose name has been deleted from the list of inactive members a further letter under paragraph (1) of this resolution."

5. Mr. Iles explained that this really left it in the hands of the member himself or herself to determine whether that member wishes to be an active member of the Association. He suggested that this overcame the constitutional objections that were raised at the general meeting.

6. Mr. Murphy, in commenting on the suggested resolution, pointed out that people don't like to be asked to be invited to resign from organizations. Mr. Murphy suggested it would be better to simply ask members whether they wished to be regarded as active members. This was agreed by consensus.

7. Mrs. Rama Devi inquired about the position of members of the Association who retired from office as Parliamentary Counsel. It was noted in reply that under the Constitution retirement from office as a Parliamentary Counsel does not deprive a person of membership in the Association.

8. Mr. Abeyesekere considered that where an inactive member informed the Secretary that the member wished to be regarded as an active member the draft resolution should make provision not only for the deletion of the member's name from the list of inactive members but for the restoration of the member's name to the list of active members. This was agreed by consensus.

9. Mr. Murphy noted that the resolution would apply only for the purposes of the distribution of "The Loophole" and that members on the active list would remain members for all other purposes. Mr. Murphy suggested that consideration could possibly be given to amending the constitution to provide for categories of active and inactive members and to provide that only active members would be included in any correspondence.

10. Mr. Johnson suggested that the proposed resolution might result in a mind-boggling quantity of correspondence for the Secretary. That, in his opinion, raised the question of whether the Secretary should undertake this correspondence or whether the local representative should do it.

11. Mr. Murphy suggested that both the Secretary and the local representative should be empowered to do it.

12. Mr. Iles pointed out that the resolution was expressed in an empowering fashion and that it would be open to the Secretary to simply continue mailing "The Loophole" out if that is what the Secretary wished to do.

13. Mr. Murphy suggested that the draft resolution be amended to give the power both to the Secretary and to the head of the local jurisdiction. This was agreed by consensus.

14. The Council accordingly resolved, by consensus, as follows:

"(1) The Secretary, or the Chief Legislative Counsel in any country, State, or province, may, for the purpose of keeping the list of members of the Association up to date, be empowered to send to any member of the Association a letter inquiring whether that member wishes to continue as an active member of the Association and asking that member to confirm by a specified date (which shall not be sooner than 6 months after the date of the posting of the letter) that the member wishes to continue as an active member of the Association.

"(2) If the member -

"(a) Fails to respond to the letter by the specified date; or

"(b) Indicates that the member no longer wishes to play an active part in the affairs of the Association, -

the name of the member may be placed by the Secretary on a list of inactive members.

"(3) Where the name of a member is on the list of inactive members, -

(a) The name of that member shall not be included in the list of members published in or with "The Loophole"; and

(b) Copies of "The Loophole" shall not be sent to that member.

"(4) Where a member whose name is on the list of inactive members of the Association informs the Secretary in writing that the member wishes to be treated as an active member of the Association, the Secretary shall -

(a) Delete the name of that person from the list of inactive members of the Assocation; and

(b) Restore the name of that member to the list of active members of the Association.

"(5) Nothing in paragraph (4) of the resolution shall prevent the Secretary, or the Chief Legislative Counsel in any country, State, or province, from sending to a member whose name has been deleted from the list of inactive members a further letter under paragraph (1) of this resolution."

Advantages of Membership

15. The President initiated a discussion on the advantages of membership of the Association. The main advantages, in between general meetings, are -

(a) The right to get a copy of "The Loophole";

(b) The right to be invited to the general meeting and conference;

(c) The right to receive notice of any of the resolutions to which clause 11 of the Constitution applies.

One of those resolutions is a resolution that a subscription be payable in respect of membership of the Association.

A general discussion on the advantages and disadvantages of having a subscription followed. It was agreed that there would be a great deal of administrative work in collecting subscriptions. It was also agreed that the main need for funds arose in relation to the general meeting and conference held at the time of the Commonwealth Law Conference.

It was pointed out that some of the special interest groups that held special meetings at the time of the Commonwealth Law Conference had collected money from their members to cover some of the costs. The general practice however had been that the host country or the host organization met the cost.

In the case of the conference held in Auckland, the costs had been met by the New Zealand Government. This included the cost of the lunch provided on the two days.

It was agreed by consensus that a subscription should not be imposed.

Next Commonwealth Law Conference in Cyprus

17. A general discussion took place about the arrangements that needed to be made for the general meeting of the Association to be held in Cyprus at the time of the next Commonwealth Law Conference.

18. The first question was who would host the meeting of our Association. The Association does not have any members in Cyprus. It was agreed that inquiries should be made of the Legislative Draftsman in Cyprus as to the prospects of a meeting of our Association being hosted there at the time of the next Commonwealth Law Conference. Mr. Mendis said that there are many large hotels in Cyprus and many large conferences are held there. Mr. Johnson inquired whether it was necessary for the Association to hold its conference at the same time and place as the Commonwealth Law Conference or whether it would be possible for the Association to hold its conference while members were either enroute to or from the Commonwealth Law Conference. London was suggested as a possible venue.

Mr. Iles pointed out that the Constitution says that the Association is required to meet at the time of the Commonwealth Law Conference but that it would appear to be possible to separate the CALC general meeting (which would be obliged to be held in Cyprus) from the CALC conference which could be held in some other suitable place such as London.

It was agreed by consensus that there were a number of issues that needed to be explored. For example, the Association does not know the proposed timetable for the next Commonwealth Law Conference, nor does it know that the Parliamentary Counsel in London would be prepared to host a meeting there. Other possible venues mentioned where Malta and Gibraltar.

It was agreed by consensus -

(a) That information should be sought in the first instance from the Legislative Draftsman or the appropriate Ministry in Cyprus and from the Commonwealth Secretariat in London; and

(b) That efforts should also be made to find out what other specialist groups, such as law reform agencies, are proposing to do and whether the Commonwealth Secretariat is in a position to supply information and assistance.

Communication between members of the Counsel and between members of the Association

19. A discussion took place in regard to the advantage of fax machines in communicating between members of the Council and members of the Association. It was agreed that it would be useful if the Secretary held telephone numbers and fax numbers for all members of the Council and for the heads of the various jurisdictions. It was noted that all members would not have fax machines but Mr. Johnson pointed out that they are becoming more common and that it can be cheaper to send documents by fax than to communicate by telephone or send documents by mail. In the case of a large document, it may still be cheaper to use mail.

Notice of the next general meeting

20. The President raised the question of the notice that was required to be given of the next general meeting of the Association. Under rule 7(6) of the Constitution the Secretary is required to give at least 6 months notice in writing to all members of the date and place of each general meeting of the Association. One concern was to ensure that at the next Commonwealth Law Conference papers of interest to legislative counsel are included, if possible, on the agenda for the main conference. Mr. Iles noted that the agenda for these conferences is set in effect by the host country. It was agreed by consensus that topics should not be too narrow but that there were some that were of

particular interest to legislative counsel while also being of wide interest to other lawyers.

Mr. Murphy commented on the way in which legislation has mushroomed in recent times.

Mr. Iles commented on the revision of the criminal law that was under way in New Zealand with a Bill before the New Zealand Parliament.

Mr. Johnson commented on the importance to legislative drafters of developments in the field of administrative law.

It was agreed by consensus that in the case of the Commonwealth Law Conference held in Auckland some of the topics that were of interest to legislative counsel were added to the main agenda too late for them to have any influence on the attendance of legislative counsel at that conference.

Membership

21. A general discussion took place on the practices with regard to membership of the Association. Some offices encouraged junior members of their offices to join the Association, others do not. The discussion focused on clause 2(2) of the Constitution which provides as follows:

"(2) For the purpose of carrying out the object of the Association, the activities of the Association may include -

"(a) Encouraging the sharing of information between members of the Association with respect to -

(i) The preparation and publication of legislation; and

(ii) The recruitment and training of persons to engage in legislative drafting and the retention of persons engaged in legislative drafting;

"(b) Encouraging the sharing between members of the Association of comparative legal materials and precedents;

"(c) Dealing with requests by members of the Association for information and assistance; and

"(d) Cooperating with appropriate organizations on matters of common interest."

The main question was whether the Association should be doing more. Mr. Murphy expressed the view that, while the Association has been circulating "The Loophole", the Association has not been doing much else.

It was generally agreed that members should do what they can to see that interesting material and interesting pieces of information are supplied to the Secretary so that they can be published in "The Loophole". This may lead to a greater exchange of information between members to the benefit of all the members of the Association.

Future meetings of the Council

22. The President raised the question of having at least one Council meeting before the next general meeting of the Association. It was agreed by consensus that this would be a good idea but it was pointed out that under the Constitution an attendance of four members was required to constitute a quorum.

Photograph

23. Mr. Johnson took a photograph of the other Council members.

Closure

24. The President then declared the meeting closed at approximately 11:00 a.m.

Confirmed

....
President
September 1990

NEWS ABOUT DRAFTERS

Information on notable awards received by and promotions and changes in employment of Drafters.

- **MR. ILYK** is now the Assistant Manager at the Civil Aviation Authority in Canberra, Australia. Joining hime are **MR. MCMILLAN** from the Parliamentary Counsel Office in Canberra and **Mr. SANSONI** from the Legislative Counsel Office in Canberra.

- **MR. KEN MARTIN** is the new Parliamentary Counsel for Queensland, Australia.

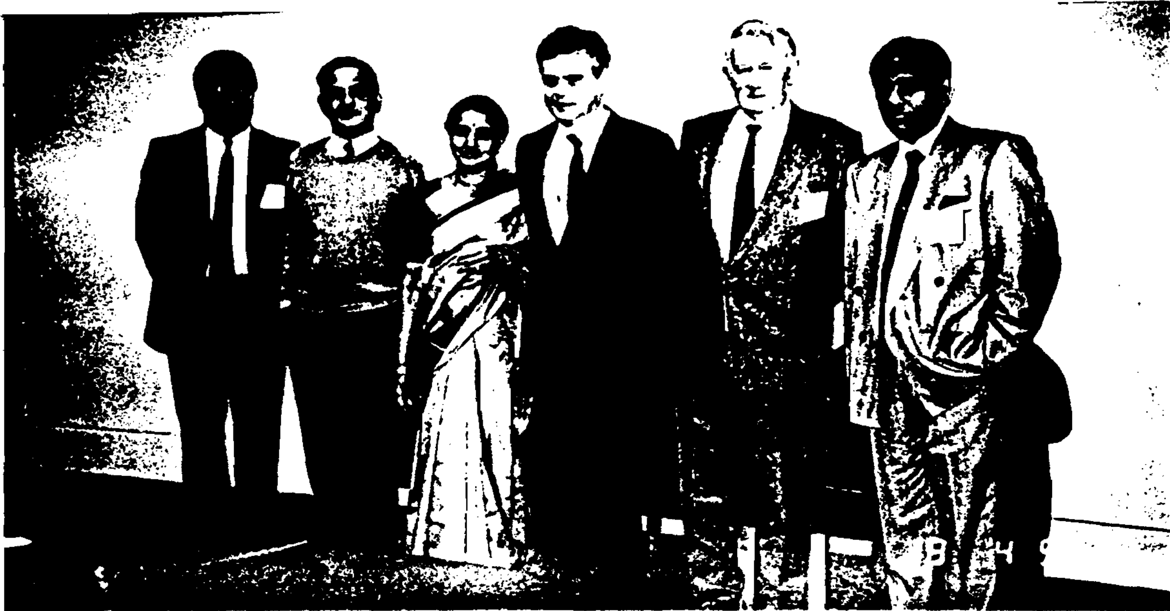
- **MR. MILES PEPPER** is now the Chief Legislative Counsel for the Northwest Territories in Canada.

- **MR. S. MILLER** is now the Chief Parliamentary Counsel for Trinidad and Tobago.

- **MR. J.C. MCCLUSKIE** is now the Parliamentary Draftsman for Scotland. He succeeds **MR. N.J. ADAMSON, CB, Q.C.**

A listing of new members and an inactive list will be published in the next issue.

Following is a photograph of some of the Council members elected at the General Meeting:



Mr. Buluma, Mr. Mendis, Mrs. Rama Devi, Mr. Murphy, Mr. Iles, Mr. Abeyesekere

LEGISLATIVE DRAFTING PROGRAM AT THE UNIVERSITY OF OTTAWA

MEDALS IN LEGISLATIVE DRAFTING

The first Medals in Legislative Drafting given at the University of Ottawa to graduates of the Diploma Program in Legislative Drafting were presented by the Chief Justice of Canada, the Right Honourable Antonio Lamer, at a reception held in the University Law School on October 30, 1990.

Receiving the awards for the 1989 academic year were Sonia Beaulieu (French Program) and Lt. Col. Allen Fenske (English Program). For the 1990 academic year, the awards were made to Isabelle Grenier (French Program) and Paul Salembier (English Program).

The Medals are awarded to the students achieving the highest overall standings in each of the Programs. The awards were established by the School in 1989 as a result of funding provided by Mr. Justice Alban Garon (former Director of the French Program), Me Gerard Bertrand, Q.C. (Director of the French Program) and Hilton McIntosh, Q.C. (Director of the English Program).

DRIEDGER-PIGEON FELLOWSHIP IN LEGISLATIVE DRAFTING

The Department of Justice of Canada has awarded eight Fellowships in Legislative Drafting tenable at the Faculty of Law at the University of Ottawa for the academic year 1990-1991. The recipients of the Fellowships were:

French Program	English Program
Philippe Ducharme, Ottawa	Ralph Armstrong, Yellowknife
Serge Castonguay, Quebec	Scott Burke, Charlottetown
Suzanne Foy, Montreal	Gordon Carnegie, Winnipeg
Nathalie Marceau, Ottawa	Debra Hathaway, Winnipeg

The Fellowships were named after the first Directors of the Program, Dr. Elmer Driedger, Q.C. and the Honourable Louis-Philippe Pigeon. Applicants must be residents of Canada, have a degree in law from a Canadian law school and general average sufficient for admission to Graduate Studies at the University of Ottawa. The value of each Fellowship is $11,160.

The Legislative Drafting Program is offered in English and French and is open to persons residing outside Canada who hold a law degree from a recognized university and a general average sufficient for admission to Graduate Studies at the University of Ottawa.

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

PAPERS FOR CONSIDERATION AT THE MEETINGS OF THE ASSOCIATION

TO BE HELD AT
AUCKLAND, NEW ZEALAND
ON 16 AND 19 APRIL 1990

CONTENTS

Page

Programme for Specialist Meetings of Commonwealth Association of Legislative Counsel ... 1

The Printing of Legislation Recent Developments in New South Wales by Dennis Murphy, Q.C., Parliamentary Counsel, NSW ... 3

The Printing of Statutes in Singapore by Koh Eng Tian, Solicitor-General, Singapore ... 11

The Printing of Legislation Recent Developments in New Zealand by Walter Iles, Q.C., Chief Parliamentary Counsel and Compiler of Statutes ... 16

The Current Practices and Problems in Drafting Legislation relating to Multilateral Treaties: Commonwealth Experience by D.L. Mendis, Legal Expert, United Nations, St. Kitts-Nevis Legal Drafting Project ... 35

Database Systems for Legislation Developments in Western Australia by Greg Calcutt, LL.B, Parliamentary Counsel, Western Australia ... 48

Hong Kong's Loose Leaf Laws ... 64

Law Revision in the Pacific Region by Neil Adsett, Law Revision Commissioner, Tonga ... 70

Hong Kong's Bilingual Database and Computer System ... 85

Avoidance of "sexist" language in legislation ... 87

Topics that may be discussed at the panel discussions on 16 April or 19 April ... 91

REVISED STATUTES OF CANADA ... 92

Programme for Specialist Meetings of Commonwealth Association of Legislative Counsel to be held at Auckland in the Waitemata Ballroom of the Sheraton Hotel on 16 and 19 April 1990

Monday, 16 April 1990

9.45 a.m.	Official welcome The Right Honourable David Lange, Attorney-General, will open the proceedings of CALC
10.00 a.m. - 10.30 a.m.	Morning tea
10.30 a.m. - 11.30 a.m.	Formal session: The printing of legislation (including matters arising from the privatisation of Government Printers) A paper on Recent Developments in New South Wales will be presented by Mr Dennis Murphy, Q.C., Parliamentary Counsel, New South Wales. A paper on The Printing of Statutes in Singapore by Mr Koh Eng Tian, Solicitor-General, Singapore will be circulated. A paper on Recent Developments in New Zealand will be presented by Mr Walter Iles, Q.C., Chief Parliamentary Counsel, New Zealand.
11.30 a.m. - 12.30 p.m.	A round table discussion on current drafting practices and problems
12.45 p.m. - 2.00 p.m.	Lunch (to be provided at the Sheraton)
2.15 p.m. - 3.15 p.m.	Continuation of round table discussion on current drafting practices and problems. A paper on Current Practices and Problems in Drafting Legislation relating to Multilateral Treaties: Commonwealth Experience will be presented by Mr D.L. Mendis, Legal Expert, United Nations, St. Kitts - Nevis Legal Drafting Project.

	Other topics may also be discussed.
3.15 p.m. - 3.45 p.m.	Afternoon tea
4.00 p.m.(approximately)	Bus to Aotea Centre for the opening ceremony of the Commonwealth Law Conference at 5 p.m.

Thursday, 19 April 1990

9.00 a.m. - 10.15 a.m.	Formal session - Database systems for Legislation A paper on Database Systems for Legislation - Developments in Western Australia will be presented by Mr Greg Calcutt, Parliamentary Counsel, Western Australia.
10.15 a.m. - 10.45 a.m.	Morning tea
10.45 a.m. - Noon	Formal session - Revisions and Consolidation of Statutes *A paper on the recent Statute Revision in Canada will be presented by Mr Peter E. Johnson, Q.C., Chief Legislative Counsel, Canada. A paper on Hong Kong's Loose Leaf Laws will be presented by Mr John F. Wilson, and Mrs Spring Fung, Hong Kong. A paper on Law Revision in the Pacific Region by Mr Neil Adsett, Law Revision Commissioner, Tonga.
12.30 p.m. - 2.00 p.m.	Lunch (to be provided at the Sheraton)
2.15 p.m. - 3.15 p.m.	Panel discussion on specific drafting practices and problems
3.15 p.m. - 3.45 p.m.	Afternoon tea
3.45 p.m. - 5.00 p.m.	General meeting of Commonwealth Association of Legislative Counsel.

*This paper will be distributed at the meeting.

Commonwealth Association of Legislative Counsel

16 April 1990

THE PRINTING OF LEGISLATION

Recent Developments in New South Wales

Dennis Murphy QC, Parliamentary Counsel, NSW

In June 1989 the closure of the Government Printing Office of New South Wales was announced, and took effect within four weeks. It goes without saying that this action had profound implications for the Parliamentary Counsel's Office and for the preparation and printing of legislation.

It also marked the end of a long relationship between the Government Printer and the Parliamentary Counsel, going back well into the nineteenth century.

Background

In addition to its principal function of drafting legislation, the Parliamentary Counsel's Office for many years has had the major and complex function of publishing legislation. This activity is a logical extension of the Office's drafting role and its accumulated knowledge and expertise in preparing extremely accurate documents to very short deadlines. Many but not all counterpart organisations in other jurisdictions also perform this publishing function.

The NSW Parliamentary Counsel's Office had and continues to have the advantage of having a number of editorial staff with substantial skills and an interest in legal publishing, encompassing experience in both the public and private sectors and a knowledge of similar activities in a number of other jurisdictions.

The publishing process

The primary function of the Parliamentary Counsel's Office is to draft Bills and subordinate legislation. But when the drafting process is completed, this material has to be converted into typeset quality documents and mass produced - for introduction into Parliament (or publication in the Gazette, in the case of subordinate legislation) and distribution to subscribers and to the public.

The standard practice in NSW for many decades had been to pass draft documents (typed or handwritten) to the Government Printer for typesetting and mass production. This activity involved the passage to and fro of proofs and revisions so that the author could ensure the editorial and typographical accuracy of the final document.

Until 1985 the Parliamentary Counsel's Office sent typed manuscript to the Government Printing Office, which then re-keyed the document using hot metal printing technology. Rough galley proofs were produced by the compositors, read and revised by Government Printing Office readers and finally sent as page proofs to the Parliamentary Counsel's Office. Editorial staff at the Parliamentary Counsel's Office re-read the proofs, sought revised proofs until the documents were perfect and then ordered the final printing.

In 1985 the Government Printing Office installed a mini computer based word processing system in the Parliamentary Counsel's Office which was maintained by Government Printing Office personnel who were compositors trained to use computerised typesetting methods and equipment. Word processing staff and senior drafting officers in the Parliamentary Counsel's Office were also trained to use this system to prepare drafts of all new legislation.

The equipment was linked to a much larger system at the Government Printing Office, Ultimo, located a couple of kilometres from the centre of Sydney. The system was chosen for its compatibility with the Penta typesetting system.

Draft legislation was duplicated on the system in the Parliamentary Counsel's Office and transmitted to Government Printing personnel working on site (two operators, day and evening shifts) for formatting with Penta typesetting commands. The formatted documents were transmitted by the same staff via a Telecom line to the larger computer at Ultimo where pagination and related procedures were performed before the documents were proofed using a photo-typesetter.

Proofs were transmitted back to the Parliamentary Counsel's Office via a laser printer in the Office which emulated the photo-typesetter at Ultimo. Revises were passed back and forth until the document was perfect. At that stage it would be ordered to be printed by the Parliamentary Counsel. That final process involved traditional graphic reproduction techniques and large-scale printing presses requiring scores of Government Printing Office personnel working shifts - often around the clock. The end product was a printed pamphlet copy of a Bill or other document, clearly recognisable as a professionally produced publication.

The Government Printing Office personnel fully maintained the system installed at the Parliamentary Counsel's Office, ran back-up copies and performed routine maintenance procedures.

The typeset data resided on the larger computer at Ultimo and the majority of printing and publishing functions were conducted there. The main advantage of the new technology for the Parliamentary Counsel's Office was the speed of proof production, the provision of a sophisticated word processing system and the removal of the need for double keystroking.

In addition to preparing Bills to the final published stages, the Parliamentary Counsel's Office also drafts subordinate legislation (regulations, rules, by-laws, proclamations and ordinances). These were keystroked in the Office by word processor operators and legislative drafters and then passed to the in-house Government Printing Office staff for formatting with typesetting commands. These documents were transmitted to Ultimo where they were stored to await instructions from agencies regarding their publication in the Gazette. A range of ancillary publications such as update sheets and monthly tables were also prepared in the Office and either physically sent to the Government Printing Office, Ultimo for typesetting/formatting or were first processed by the in-house Government Printing Office staff.

The major publishing function (in terms of volume or pages per year) of the Parliamentary Counsel's Office is the reprinting program. This involves editorial staff updating a master copy of each item of principal legislation (approximately 700 Acts and 800 regulations etc. - a total of approximately 45,000 printed pages) to incorporate amendments made and to record information about how and when the amendments occurred. In the 1988-9 financial year, the Parliamentary Counsel's Office achieved, in conjunction with the Government

Printing Office, the publication of some 186 updated titles consisting of about 8,500 pages.

Other legislative publications, such as newly assented to Acts, new regulations etc. and annual volumes of statutes and regulations were produced by the Government Printing Office, with the Parliamentary Counsel's Office providing editorial and advisory functions and also ensuring (or attempting to ensure) that reasonable turnaround times and availability were maintained.

The publishing/printing technology already in place in 1989, together with the considerable fund of editorial and publishing experience accumulated within the Parliamentary Counsel's Office, made the objective of a stand-alone publishing capacity readily attainable. The Office, in conjunction with the Government Printing Office, had spent at least 2 years considering word processing/publishing enhancements which would provide a manageable database of all NSW legislation and enable an efficient reprinting program. This developmental work did not, however, envisage an entirely stand-alone publishing and printing capacity for all products.

The closure of the Government Printing Office

The closure of the Government Printing Office in July 1989 left the Parliamentary Counsel's Office with a sophisticated word processing system which it had never had to maintain, virtually no in-house expertise in computerised typesetting and no means of mass producing finished documents. Consideration had to be given to many of the activities associated with legislative publishing such as providing copies of Bills, Acts and regulations to the public or handling the various stages required during the legislative process itself (including the preparation of fresh prints of Bills amended in the House, and vellums for presentation to the Governor).

The first major concern of the Office was to ensure that the special sittings of Parliament planned for late July and early August would be properly served with printed legislation. With only a few weeks available, the Parliamentary Counsel's Office, assisted by the Attorney General's Department, ensured that emergency equipment, staffing and accommodation needs were met.

The July sittings proved to be extremely intense in terms of the volume of legislation required for introduction - 41 Bills consisting of 1100 pages were introduced in 6 sitting days.

The short-term solution

The first objective was to obtain staff to operate the existing computer system in the Parliamentary Counsel's Office, and four Government Printing Office staff were redeployed for this purpose in July. These operators were experienced compositors who had a working knowledge of legislative publishing and computerised typesetting, and had had extensive experience of working on-site in both the Parliamentary Counsel's Office and the Government Printing Office. A fifth position was created to operate high-speed copying equipment.

The next objective was to find a software package that would run on the existing word processing system to produce an acceptable, typeset quality document. Data General provided this package (and training) within a fortnight. The software was designed for desk top publishing in general office environments and is quite adequate for newsletters and circulars but is very labour intensive to use and is not intended for high volume technical publishing, although it has proved to be a successful short-term solution.

The third major task was to find a means of producing multiple copies of Bills for Parliament. Because of the extremely short deadlines for completing draft legislation, the need for total in-house editorial control over the integrity of the documents and the highly confidential nature of the work, it was essential to find a suitable system for installation and operation within the Parliamentary Counsel's Office in the Goodsell Building. Initially, it was thought that a high volume laser printer was required. This option was found to be too costly and also presented difficulties in terms of compatibility with the existing equipment. High quality, high speed photocopying was the solution adopted and a Xerox 1090 copier was leased. This proved to be inadequate for the high workloads and a second 1090 machine was installed. However, the 1090 model did not have a finishing station (automatic double stapling/heat binding) and even with 2 machines was not capable of meeting the workloads required (1,100 pages x 300 copies in under 6 days, with final copy often not available until within 12 hours of required completion).

The final solution was to obtain three Xerox 5090 copiers, two for Parliament and one for the Parliamentary Counsel's Office. This model was used extensively by Parliamentary Counsel's Office staff during the July/August and later sittings and produced a very

satisfactory result. The other machines located in Parliament House were available for use on a back-up basis.

One of the Xerox 1090 copiers was retained in the Office for back-up purposes.

Ancillary equipment such as a guillotine, paper drill and electric staplers have been or are in the process of being purchased.

The long term solution

1. *Publishing system.* To enable the Parliamentary Counsel's Office to prepare camera-ready copy for the full range of legislative publications formerly prepared in conjunction with the Government Printing Office (and to be able to utilise all the material keystroked over the years and now held on magnetic tape by the Parliamentary Counsel's Office), a professional publishing system is required instead of the short-term package described above. The current system is incapable of efficiently producing lengthy or complex documents. Also, the final product, produced on a small, word processor quality laser printer, is clearly inferior to that produced in the past and is barely acceptable in quality.

A detailed specification for a publishing system was prepared in September and released by the Government Supply Office on 18 October 1989. Seligson & Clare were the successful tenderers. A brief overview of the system is as follows: 1 Sun 4/330 SPARC station file server, 3 Sun 4/60 SPARC workstations, 2 Agfa P3400 PS laser printers, 1 Agfa Focus Scanner S600GS, 1 Wyse PC for data conversion; CAPS (Compugraphic Automated Publishing System) and WordPerfect software. The file server will be capable of automating total office functions.

2. *Expansion of word processing system.* The current mini computer based system is limited in disk capacity and in the number of terminals it can support. At present there are only12 terminals to serve 10 senior drafting officers, 4 publishing operators and 7 word processor operators.

The system needs to be able to support up to 40 users - including junior drafting officers and editorial staff not mentioned above. The disk and processing capacity also needs to be upgraded to be capable of managing the legislation database (previously stored on the larger system at Ultimo) and to enable the full publishing program to be performed in-house by the Parliamentary Counsel's Office. An

expansion program was fully planned before the closure of the Government Printing Office, and will be implemented as part of an integrated system operating with the new publishing equipment.

3. *Staffing.* The number of tradespeople redeployed from the Government Printing Office (4) was decided mainly on the basis that two operators had been employed in the Office on two shifts from 1985 onwards. Since the redeployment of the four Government Printing Office staff, close attention has been given to the question whether this number is sufficient in view of the additional publishing/printing functions that have arisen. However, it is necessary to wait until the new publishing system and expanded word processing system are fully operational to assess final staff requirements. It is intended that any gain in staff numbers should be avoided as far as possible.

A restructuring of the staff establishment is being undertaken. A major aim of the restructuring is to achieve widespread multiskilling and to remove the traditional trade-based separation of functions. Accordingly, it is hoped that many basic publishing activities will in future be undertaken by the existing editorial/keystroking staff and so avoid increasing the overall staff number.

4. *Accommodation.* The new equipment and publishing/printing personnel have occupied approximately 70 square metres of the already limited accommodation on level 12 of the Goodsell Building. The equipment also required extensive building work to enable the installation of a separate air conditioning unit. The new publishing system and expanded word processing system will make further inroads into the available accommodation as well as requiring additional building work for power and wiring purposes. We expect to take possession of the whole of the level by mid-1990.

Conclusion

The Parliamentary Counsel's Office has successfully maintained and extended its publishing functions to ensure that the NSW Parliament is properly served with printed legislation. This process was achieved, under considerable pressure, within a matter of weeks of the closure of the Government Printing Office.

This result was achieved in such a short time through three factors. The first was the presence within the Office of word processing equipment that could be adapted to the purpose. The second was the expertise and dedication of staff of the office, and especially the group

of four who were redeployed from the Government Printing Office. The third was the support from the Attorney General's Department - the Information and Technology Branch, the Corporate Services Branch, and the Properties and Supply Branch.

The Office has been able to satisfy the needs of Parliament by providing printed Bills and by updating Bills as they progress through the Parliamentary stages. It is also providing camera ready copy of legislative material for printing in the private sector. All this is provided by the Office in accordance with strict timetables and has been achieved without disruption to the Parliamentary process.

Although the changing functions and technological developments within the Parliamentary Counsel's Office will increase efficiency for the production of all legislative publications, it will fall to others to carry out the mass production, marketing and distribution of these publications. These activities are beyond the scope of the Parliamentary Counsel's Office as it is presently constituted. If the arrangements for mass production and distribution are to be changed in future so as to require the increased involvement of the Parliamentary Counsel's Office, there would need to be an increase in staff and equipment.

THE PRINTING OF STATUTES IN SINGAPORE

Prior to June 1973, the Government printing work and legislation printing was done by the Government Printing Office (GPO). This was a Common Service Department under the then Ministry of Culture. In 1971 the idea was mooted to convert the GPO into a commercial enterprise. As a result, the Singapore National Printers (Pte) Ltd was incorporated on 26 Mar 73. On 2 Jul 73, the company went into operation and was appointed printers for the Government of Singapore. The GPO ceased to exist on that day.

The company was then a wholly owned subsidiary of Temasek Holdings which is an investment holding company of the Government. Since February 1987, it has been admitted to and traded on SESDAQ. (This is the Stock Exchange of Singapore Dealing and Automated Quotation System. It is not the main but the second board of the Stock Exchange.) As at 29 Mar 89, Temasek Holdings only owns 51% of the shares as a result of the Government privatisation policy.

The company has expanded considerably since its incorporation. From a mere printing office of the Government, the company now handles printing and publishing works from both Government and private sector. An increasing amount of work is for clients overseas. Printing work for the Government and statutory bodies account for 32% of the total turnover while legal publications account for 8.4% of the total turnover of the company in 1988.

The company has a good working relationship with the Government departments and ministries. It has a small group of experienced staff who handle the typesetting and proof reading of legislation and Parliamentary papers. Most of the staff in this group are from the former GPO and are well acquainted with Government rules and procedures. The company thus far has not encountered any special problem in discharging its role as the Government printer. It has been able to meet the deadline for printing of legislation and also to give priority to such printing without affecting its other printing and publication commitments. This is because the company has sufficient resources in machinery and manpower to cope with any urgent demand for the printing of legislation and Parliamentary papers.

SECURITY ARRANGEMENT

All the staff at the company have been subject to security screening. They are all required to sign an undertaking to safeguard official information.

Under section 5 of the Official Secrets Act (Chapter 213, 1985 Edition), a person who discloses without any proper authority any secret official information entrusted in confidence to him by any Government officer commits an offence.

Under the Statutory Bodies and Government Companies (Protection of Secrecy) Act (Chapter 319, 1985 Edition) it is an offence for any person who is or has been a member, officer, employee or agent of the company to disclose, without the authority of the company, any secret or confidential document or information which he has obtained or to which he has access by virtue of his position, unless the disclosure is in

the performance of his duties or lawfully required or authorised by the court or under any written law.

All the undertakings of the company are within the definition of "essential service" under section 5 of the Criminal Law (Temporary Provisions) Act (Chapter 67, 1985 Edition). The effect is that the employees cannot go on strike and the employer cannot lock out any workman unless a 14-day advance notice in prescribed form has been served on each other. Also no strike or lock out is allowed if conciliation proceedings are pending or if the dispute is before the Industrial Arbitration Court or a board of inquiry under the Industrial Relations Act (Chapter 136, 1985 Edition).

The premises of the company have been declared a protected place under the Protected Areas and Protected Places Act (Chapter 256, 1985 Edition). Entry into the premises requires permission and a person may be subject to search before he is allowed entry.

PRINTING SCHEDULE

A Bill is normally printed for the first time after Cabinet has given approval for its introduction in Parliament. When it is presented to Parliament, it is invariably in printed form. There are, however, exceptional instances when a Bill is printed before approval is given by Cabinet if there is great urgency.

After the first reading of a Bill in Parliament, it will be published in the Bills Supplement of the Gazette. When the President has given his assent to a Bill, the Act will be published in the Acts Supplement of the Gazette. Subordinate legislation is published in the Subsidiary Legislation Supplement of the Gazette. All these are normally published on Fridays unless there is exceptional urgency.

Most of the statutes in force in Singapore are currently contained in the Revised Edition 1985. They are in the form of loose booklets. Under the Revised Edition of the Laws Act (Chapter 275, 1985 Edition), the Law Revision Commission will issue annually in the form of separate booklets a revised edition of any Act which has been amended extensively as well as any new Act which has been passed during the preceding year. In the case of a new Act an appropriate chapter number will be assigned. These booklets are printed as soon as practicable after the first of January of each year.

COMPUTERISED PRINTING

The printing of legislation is now computerised. Legislation required for printing is either given to the company stored in a computer diskette or transmitted electronically to its computer system through the computer communication network. As a result the company need not manually retype the legislation and much time is saved in proof reading.

PRICING ARRANGEMENT

The company is given the right to print and sell all legislation (statutes as well as subordinate legislation) and Government Gazette. The Government is paid a royalty for such sales. The Ministry of Finance and the company has an agreement as regards the selling price of legislation based on the number of pages and the quantity printed. The intention is to ensure that copies of legislation are not priced excessively. The prices in the agreement are reviewed periodically to reflect the change in the costs of printing.

The Printing of Legislation

Recent Developments in New Zealand

by

Walter Iles Q.C.

Chief Parliamentary Counsel and

Compiler of Statutes

Background

1. Since about 1864 the Government Printer has been responsible for printing and publishing New Zealand legislation.

2. One of the Government Printer's publications in 1881 was a volume containing A SELECTION FROM THE ACTS OF THE IMPERIAL PARLIAMENT APPARENTLY IN FORCE IN NEW ZEALAND AND OF GENERAL INTEREST AND IMPORTANCE.

3. In 1888 the position of the Government Printer was given statutory recognition.

4. Section 9 of the Interpretation Act 1888 provided as follows:

(19)

"9. It shall not be necessary to gazette the Acts of the General Assembly; but copies of all such Acts shall be procurable by purchase, at the office of the Government Printer."

5. Section 16 of that Act provided as follows:

"16. Every copy of any Act, public or private, printed under the authority of the New Zealand Government by the Government Printer for the time being, shall be evidence of such Act and of its contents; and every copy of any such Act purporting to be printed as aforesaid shall be deemed to be so printed, unless the contrary be proved."

6. In 1988, one hundred years later, -

(a) The New Zealand Parliament resolved the doubts about the Acts of the Imperial Parliament <u>apparently</u> in force in New Zealand by passing the Imperial Laws Application Act 1988; and

(b) The New Zealand Government decided to sell the business of the Government Printer by tender.

7. In 1988, provisions equivalent to the two provisions of the 1888 Act quoted above were still in force.

<u>Issues</u>

8. The decision to sell the business of the Government Printer immediately gave rise to 2 issues that were of concern to the Parliamentary Counsel Office.

9. The first issue was a need to identify the changes that would be required to legislation as a result of the abolition of the Government Printer.

10. The second issue was the practical arrangements that would need to be made for the printing of Acts and regulations and other Parliamentary publications.

11. Parliamentary printing is not easy work.

12. It was stated in 1874 that "parliamentary printing is a troublesome business, requiring night work, inquisitions arising out of any delay or default, and the maximum of despatch". It was also stated at that time that "the maximum of despatch and punctuality is scarcely compatible with a minimum of cost". Those comments are just as true today.

13. The maintenance of the existing standard of service required a printer who would -

(a) Give priority to Parliamentary and Government work:

(b) Work shifts similar to those worked by the present Government Printer:

(21)

(c) Maintain premises or satellite premises close to Parliament Buildings:

(d) Maintain sufficient printing capacity on those premises both in terms of staff and in terms of machines to meet Parliamentary and Government demands:

(e) Preserve the secrecy of confidential Government and Parliamentary documents:

(f) Store and sell Bills, Acts, regulations, and the Gazette, and maintain necessary storage for copies of them:

(g) Have sufficient capacity to produce very big Bills in a very short time.

Changes in Legislation

14. In 1989 a Bill entitled the Statutory Publications Bill was introduced into the House of Representatives. Under this Bill many of the duties of the Government Printer were imposed on the Chief Parliamentary Counsel acting under the control of the Attorney-General.

15. That Bill contained many provisions that were not related to the sale of the business of the Government Printer as, among other things, it implemented proposals for a revision of the Regulations Act 1936.

(22)

16. The Statutory Publications Bill, which was divided into 2 Bills during its passage through the House, was eventually enacted as -

(a) The Acts and Regulations Publication Act 1989; and

(b) The Regulations (Disallowance) Act 1989.

17. A copy of the Acts and Regulations Publication Act 1989 is attached to this paper.

Practical Arrangements

18. The New Zealand Government decided that the Clerk of the House of Representatives and the Chief Parliamentary Counsel should enter into long term arrangements with the Government Printer for the printing of the publications for which the Clerk and the Chief Parliamentary Counsel were responsible. These publications included Bills, Acts, and regulations.

19. The New Zealand Gazette was to be the subject of a similar arrangement with the Department of Internal Affairs.

20. Hansard was to be the subject of a similar arrangement with the Parliamentary Service Commission.

21. On the sale of the business of the Government Printer it was envisaged that the long term arrangements would become the

basis of long term contracts with the purchaser of the business of the Government Printing Office.

22. The need to set out in writing the arrangements between the Government Printing Office and the Office of the Clerk of the House of Representatives and the Parliamentary Counsel Office for the printing and publishing of publications has proved to be a mammoth task.

23. That task is now close to being finished.

Acceptance of Tenders

24. Meanwhile the New Zealand Government has accepted a tender for the sale of the business of the Government Printing Office.

25. This means that the Memorandum of Understanding between the Government Printer and the Clerk of the House of Representatives and the Chief Parliamentary Counsel, which has not yet been signed, is being used as the basis for a draft contract between -

(a) The purchaser of the business of the Government Printing Office; and

(b) The Clerk of the House of Representatives and the Chief Parliamentary Counsel.

(24)

7

Conclusions

26. The New Zealand Government has in the past few years disposed of a number of businesses that were being run by the New Zealand Government.

27. In most cases a company has been established and assets have been transferred to that company. Shares in the company have then been sold.

28. The sale of the business of the Government Printing Office is different in that it involves the direct sale of the business of a Department of State.

29. The work involved in disengaging the Government Printing Office from its 100-year old connection with the very heart of Government in New Zealand has proved to be far more difficult than was envisaged when the process was begun.

30. The joint aim of the Government Printer and the Clerk of the House of Representatives and myself has been, thoughout our negotiations, to preserve continuity and standards in a successful Parliamentary printing operation.

31. It is hoped that when the process has been concluded and the transfer of the business has been effected, this aim will have been achieved.

ANALYSIS

Title
1. Short Title and commencement
2. Interpretation
3. Act to bind the Crown

Publication

4. Publication of copies of Acts of Parliament, reprints of Acts of Parliament, regulations and reprints of regulations, and reprints of Imperial Acts
5. Obligation to forward regulations to Chief Parliamentary Counsel
6. Publication of regulations made before commencement of Act
7. Form of copies and reprints
8. Special requirements in relation to copies of regulations
9. Power to designate places where copies of Acts of Parliament and regulations may be purchased
10. Sale of copies of Acts of Parliament and regulations

Regulations

11. Regulations series
12. Notice of making of regulations
13. Publishing under this Act sufficient compliance with direction to be published in *Gazette*
14. Printing and publication of instruments other than regulations
15. Incorporation of amendments in reprints
16. Power to revoke spent regulations and other instruments

Gazetting of Acts of Parliament Unnecessary

17. Gazetting of Acts of Parliament unnecessary

Amendments to Acts Interpretation Act 1924

18. General interpretation of terms
19. Repeal of provision relating to gazetting of Acts

Amendments to Civil Defence Act 1983

20. Emergency regulations
21. Consequential amendment

Amendments to Electoral Act 1956

22. Indexes of streets and places

Amendments to Evidence Act 1908

23. New sections substituted
28. Judicial notice of Acts of Parliament
28A. Judicial notice of regulations
29. Copy of Act of Parliament, Imperial legislation, and regulations printed as prescribed to be evidence
29A. Copy of reprint of Act or regulations to be evidence
30. Copies of Parliamentary Journals to be evidence
24. Repeals

Amendment to Films Act 1983

25. Departments and organisations to which section 10 of the Films Act 1983 applies

Amendment to Judicature Act 1908

26. Publication of High Court Rules under Acts and Regulations Publication Act 1989

Amendment to Medical Research Council Act 1950

27. Annual report to Minister

Amendments to Ombudsmen Act 1975

28. House of Representatives may make rules for guidance of Ombudsmen
29. Evidence
30. Departments to which Ombudsmen Act 1975 applies

Amendment to Public Finance Act 1989

31. Revolving funds

Amendment to State Sector Act 1988
32. Departments of the Public Service
33. Transitional provision relating to Government Printing Office

Amendments to Veterinary Services Act 1946
34. Annual report and statement of accounts
35. Regulations

1989, No. 142

An Act—

(a) To provide for the printing and publication of copies of Acts of Parliament and statutory regulations; and

(b) To ensure that copies of Acts of Parliament and statutory regulations are available to the public; and

(c) To provide for the Government Printing Office to cease to be a department of the Public Service

[*19 December 1989*

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Acts and Regulations Publication Act 1989.

(2) Except as provided in sections 18 (4), 22 (2), 25 (2), 30 (2), 31 (2), and 32 (2) of this Act, this Act shall come into force on the day on which it receives the Royal assent.

2. Interpretation—In this Act, unless the context otherwise requires,—

"Act of Parliament" includes an Act of the General Assembly:

"Imperial Act" means any Act of the Parliament of England, or of the Parliament of Great Britain, or of the Parliament of the United Kingdom:

"Regulations" means—

(a) Regulations as defined by section 2 of the Regulations (Disallowance) Act 1989; and

(b) Resolutions of the House of Representatives which—

(i) Revoke any such regulations; or

(ii) Amend any such regulations; or

(iii) Revoke any such regulations, and substitute other regulations.

3. Act to bind the Crown—This Act shall bind the Crown.

Publication

4. Publication of copies of Acts of Parliament, reprints of Acts of Parliament, regulations and reprints of regulations, and reprints of Imperial Acts—(1) The Chief

(27)

Parliamentary Counsel shall, under the control of the Attorney-General, arrange for the printing and publication of—

(a) Copies of every Act enacted by Parliament after the commencement of this section; and

(b) Copies of all regulations made after the commencement of this section; and

(c) Reprints of Acts of Parliament and reprints of regulations; and

(d) Reprints of Imperial Acts that have effect as part of the laws of New Zealand.

(2) Every such copy and every such reprint shall state that it is published under the authority of the New Zealand Government.

5. Obligation to forward regulations to Chief Parliamentary Counsel—All regulations made after the passing of this Act shall, forthwith after they are made, be forwarded to the Chief Parliamentary Counsel.

Cf. 1936, No. 17, s. 3 (1)

6. Publication of regulations made before commencement of Act—The Attorney-General may direct that copies of regulations made before the passing of this Act shall be printed and published in accordance with section 4 of this Act.

Cf. 1936, No. 17, s. 3 (2)

7. Form of copies and reprints—(1) The Attorney-General may from time to time give directions as to the form in which—

(a) Copies of Acts of Parliament; or

(b) Reprints of Acts of Parliament; or

(c) Copies of regulations; or

(d) Reprints of regulations; or

(e) Reprints of Imperial Acts that have effect as part of the laws of New Zealand,—

shall be printed and published under this Act.

(2) Directions given under this section may provide for the printing of all or any copies of—

(a) Acts of Parliament; or

(b) Reprints of Acts of Parliament; or

(c) Regulations; or

(d) Reprints of regulations; or

(e) Reprints of Imperial Acts that have effect as part of the laws of New Zealand,—

with the omission of such signatures and formal or introductory parts as the Attorney-General from time to time directs.

Cf. 1936, No. 17, s. 4 (1), (2)

8. Special requirements in relation to copies of regulations—Notwithstanding anything in section 7 (2) of this Act, there shall, in the case of all regulations, be printed references to—

(a) The Act or other authority pursuant to which the regulations were made; and

(b) The date on which the regulations were made; and

(c) The date (if any) on which the regulations are expressed to come into force.

Cf. 1936, No. 17, s. 4 (2)

9. Power to designate places where copies of Acts of Parliament and regulations may be purchased—(1) The Attorney-General shall from time to time, by notice in the *Gazette*, designate places where copies of—

(a) Acts of Parliament; and

(b) Regulations,—

shall be available for purchase by members of the public.

(2) Notwithstanding subsection (1) of this section, copies to which that subsection applies may be made available for purchase by members of the public not only at the places designated under that subsection but also at other places.

10. Sale of copies of Acts of Parliament and regulations—(1) The Chief Parliamentary Counsel shall, under the control of the Attorney-General, make available for purchase by members of the public at the places designated from time to time by the Attorney-General under section 9 (1) of this Act copies of Acts of Parliament and regulations at a reasonable price.

(2) On the repeal or expiry of any Act of Parliament or the revocation or expiry of any regulations, subsection (1) of this section shall cease to apply in relation to that Act of Parliament or those regulations.

Regulations

11. Regulations series—(1) All copies of regulations printed and published pursuant to section 4 of this Act shall be identified by a number as part of an annual series of regulations.

(2) Any regulations may, without prejudice to any other mode of citation, be cited by the number given to them and by a reference to the year in which copies of them are printed and published.

Cf. 1936, No. 17, s. 3 (3)

12. Notice of making of regulations—The Chief Parliamentary Counsel shall, on each occasion on which copies of regulations are printed and published under section 4 of this Act, arrange for the publication in the *Gazette* of a notice showing—

(a) The title of the regulations:

(b) The date on which the regulations were made:

(c) The Act or other authority pursuant to which the regulations were made:

(d) The number allocated to the regulations under section 11 of this Act:

(e) A place at which copies of the regulations may be purchased:

(f) Such other information as the Chief Parliamentary Counsel considers appropriate.

13. Publishing under this Act sufficient compliance with direction to be published in *Gazette*—Where any regulations are required by any Act to be published or notified in the *Gazette*, the publication in the *Gazette* of a notice under section 12 of this Act which relates to those regulations shall be sufficient compliance with that requirement.

Cf. 1936, No. 17, s. 6

14. Printing and publication of instruments other than regulations—(1) Any instrument that is not a regulation may, if the Attorney-General or the Chief Parliamentary Counsel so directs, be printed and published in accordance with section 4 of this Act, as if it were a regulation.

(2) An instrument shall not by virtue of its printing and publication under this section be a regulation for the purposes of this Act.

(3) The provisions of sections 7, 8, 11, 12, and 15 of this Act shall apply with respect to every instrument that is so printed and published as if it were a regulation for the purposes of this Act.

Cf. 1936, No. 17, s. 6A; 1970, No. 100, s. 2

15. Incorporation of amendments in reprints—(1) Where any regulations have, whether before or after the passing of this Act, been amended—

(a) By the revocation of any provision; or

(b) By the substitution, insertion, or addition of any provision; or

(c) By the revocation or omission of any words or figures; or

(d) By the substitution of any words or figures in lieu of any revoked or omitted words or figures; or

(e) By the insertion of any words or figures,—

then, in any reprint of the regulations, the regulations shall be printed as so amended.

(2) In every such reprint reference shall be made in a footnote or otherwise to the instrument of authority by which each amendment is made.

(3) Before any such reprint is made the Attorney-General shall prepare and certify a copy of the regulations as so amended. The reprint shall be in accordance with the copy so certified and shall contain a statement that it is reprinted under this section.

Cf. 1936, No. 17, s. 7 (1), (2), (3)

16. Power to revoke spent regulations and other instruments—(1) The Governor-General may from time to time, by Order in Council, revoke any regulations or, as the case may require, declare that they shall cease to have effect as part of the laws of New Zealand, if the Governor-General in Council is satisfied that they have ceased to have effect or are no longer required.

(2) This section is in addition to the provisions of any other enactment relating to the revocation of any regulations.

(3) In this section, the term "regulations" includes, in addition to regulations within the meaning of section 2 of this Act,—

(a) Any Order in Council or Proclamation; or

(b) Any notice, Warrant, order, direction, determination, rules, or other instrument of authority—

made or given by the Governor-General or any Minister of the Crown or any person in the service of the Crown, or made or given under any Imperial Act.

Cf. 1936, No. 17, s. 9; 1966, No. 82, s. 2

Gazetting of Acts of Parliament Unnecessary

17. Gazetting of Acts of Parliament unnecessary—It shall not be necessary to gazette Acts of Parliament.

Amendments to Acts Interpretation Act 1924

18. General interpretation of terms—(1) Section 4 of the Acts Interpretation Act 1924 is hereby amended by repealing the definition of the term "Government Printer" (as amended by section 2 of the Acts Interpretation Amendment Act 1986).

(2) Section 4 of the Acts Interpretation Act 1924 is hereby amended by repealing the definition of the term "regulations", and substituting the following definition:

" 'Regulations' has the meaning given to that term by section 2 of the Acts and Regulations Publication Act 1989:".

(3) The Acts Interpretation Amendment Act 1986 is hereby consequentially amended by repealing so much of the Schedule as relates to the definition of the term "Government Printer" in section 4 of the Acts Interpretation Act 1924.

(4) Subsections (1) and (3) of this section shall come into force on a date to be appointed by the Governor-General by Order in Council.

19. Repeal of provision relating to gazetting of Acts—Section 13 of the Acts Interpretation Act 1924 is hereby repealed.

Amendments to Civil Defence Act 1983

20. Emergency regulations—Section 79 of the Civil Defence Act 1983 is hereby amended by repealing subsection (8) (as substituted by section 27 of the Constitution Act 1986), and substituting the following subsections:

"(7A) All regulations made under this section shall be laid before the House of Representatives not later than the seventh sitting day of the House of Representatives after the day on which they are made.

"(8) Where—

"(a) Any regulations made under this section have been laid before the House of Representatives in accordance with subsection (7A) of this section; or

"(b) Parliament has met in accordance with section 49 (2) of this Act or the House of Representatives has met in accordance with section 49 (3) of this Act or the House of Representatives is otherwise sitting, and

any regulations made under this section are in force,—

the House of Representatives may, by resolution, amend or revoke any regulations made under this section."

21. Consequential amendment—The Constitution Act 1986 is hereby consequentially amended by repealing so much of the First Schedule as relates to section 79 of the Civil Defence Act 1983.

Amendments to Electoral Act 1956

22. Indexes of streets and places—(1) Section 20A of the Electoral Act 1956 (as substituted by section 7 (1) of the Electoral Amendment Act 1981) is hereby amended by repealing subsection (4), and substituting the following subsection:

"(4) Copies of each index compiled under subsection (1) (b) of this section in respect of an electoral district shall be sold at every office of the Department of Survey and Land Information and at such other convenient places as the Chief Electoral Officer from time to time directs."

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

Amendments to Evidence Act 1908

23. New sections substituted—The Evidence Act 1908 is hereby amended by repealing section 28 (as amended by section 2 of the Evidence Amendment Act 1972), section 29 (as substituted by section 3 of the Evidence Amendment Act 1988), and section 30, and substituting the following sections:

"28. **Judicial notice of Acts of Parliament**—Judicial notice shall be taken by all Courts and persons acting judicially of all Acts of Parliament.

"28A. **Judicial notice of regulations**—(1) Judicial notice shall be taken by all Courts and persons acting judicially of all regulations.

"(2) In subsection (1) of this section and in section 29 (3) of this Act, the term 'regulations'—

"(a) Has the same meaning as in section 2 of the Acts and Regulations Publications Act 1989; and

"(b) Includes any instrument that has, pursuant to section 6A of the Regulations Act 1936 or section 14 of the Acts and Regulations Publications Act 1989, been printed or published as if it were a regulation.

"29. **Copy of Act of Parliament, Imperial legislation, and regulations printed as prescribed to be evidence**—(1) Every copy of any Act of Parliament or of any Imperial enactment or any Imperial subordinate legislation (as defined in section 2 of the Imperial Laws Application Act 1988), being a copy purporting to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government shall, unless the contrary is proved, be deemed—

"(a) To be a correct copy of that Act of Parliament, enactment, or legislation; and

"(b) To have been so printed or published.

"(2) Every copy of any Imperial enactment or Imperial subordinate legislation (as so defined), being a copy purporting to be printed (whether before or after the commencement of this section) by the Queen's or King's Printer or under the superintendence or authority of Her Majesty's Stationery Office in the United Kingdom, shall, unless the contrary is proved, be deemed—

"(a) To be a correct copy of that enactment or legislation; and

"(b) To have been so printed.

"(3) Every copy of any regulations (as defined in section 28A (2) of this Act) purporting to be printed whether before or after the commencement of this section under the authority of the New Zealand Government shall, unless the contrary is proved, be deemed—

"(a) To be a correct copy of those regulations; and

"(b) To have been so printed or published; and

"(c) To be evidence that the regulations were notified in the *Gazette* on the date printed on that copy as the date of their notification in the *Gazette*.

"29A. **Copy of reprint of Act or regulations to be evidence**—Every copy of a reprint of any Act or of any regulations, being a copy purporting to be printed or published (whether before or after the commencement of this section) under the authority of the New Zealand Government, shall, unless the contrary is proved, either by the production of the official volume of statutes in which the Act was originally contained or by the production of the official volume of regulations in which the regulations were originally contained or otherwise, be deemed—

"(a) To be a copy of a reprint that correctly expresses and sets forth, as at the date at which it is expressed to be reprinted, the law—

"(i) Enacted by that Act and the amendments thereof, if any; or

"(ii) Made by those regulations and the amendments thereof, if any; and

"(b) To have been so printed or published.

"30. **Copies of Parliamentary Journals to be evidence**—All copies of the Journals of the Legislative Council or the House of Representatives, purporting to be printed by the Government Printer or published by order of the House of Representatives, shall be admitted as evidence thereof by all Courts and persons acting judicially, without proof being given that such copies were so printed or published."

24. **Repeals**—The following enactments are hereby consequentially repealed:

(a) Section 2 of the Evidence Amendment Act 1972:

(b) Section 3 of the Evidence Amendment Act 1988.

Amendment to Films Act 1983

25. **Departments and organisations to which section 10 of the Films Act 1983 applies**—(1) The Films Act 1983 is hereby amended by omitting from Part I of the Schedule the words "The Government Printing Office".

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

Amendment to Judicature Act 1908

26. **Publication of High Court Rules under Acts and Regulations Publication Act 1989**—The Judicature Act 1908 is hereby amended by repealing section 51A (as enacted by section 4 of the Judicature Amendment Act (No. 2) 1985), and substituting the following section:

"51A. (1) The High Court Rules may be printed and published under the Acts and Regulations Publication Act 1989 as if they were regulations within the meaning of that Act.

"(2) The Attorney-General may give directions as to the form in which the High Court Rules may be printed and published under the Acts and Regulations Publication Act 1989.

"(3) Directions given under this section may provide for the printing of the High Court Rules with the omission of such

formal or introductory parts as the Attorney-General from time to time directs.

"(4) Every copy of the High Court Rules which is printed pursuant to the Acts and Regulations Publication Act 1989 shall be evidence of those rules and their contents; and every copy of those rules purporting to be so printed shall be deemed to be so printed unless the contrary is proved.

"(5) Section 15 of the Acts and Regulations Publication Act 1989 shall, with all necessary modifications, apply to the High Court Rules as if they were regulations within the meaning of that Act."

Amendment to Medical Research Council Act 1950

27. Annual report to Minister—Section 23 of the Medical Research Council Act 1950 is hereby amended by repealing subsection (2), and substituting the following subsection:

"(2) A copy of the report and of the accounts so certified shall be laid before the House of Representatives within 28 days after the receipt thereof by the Minister if Parliament is then in session, and, if not, shall be laid before the House of Representatives within 28 days after the commencement of the next ensuing session."

Amendments to Ombudsmen Act 1975

28. House of Representatives may make rules for guidance of Ombudsmen—Section 15 (3) of the Ombudsmen Act 1975 is hereby amended by omitting the words "Regulations Act 1936", and substituting the words "Acts and Regulations Publication Act 1989".

29. Evidence—Section 19 (3) of the Ombudsmen Act 1975 is hereby amended by omitting the words "Regulations Act 1936", and substituting the words "Acts and Regulations Publication Act 1989".

30. Departments to which Ombudsmen Act 1975 applies—(1) The Ombudsmen Act 1975 is hereby amended by omitting from Part I of the First Schedule the words "The Government Printing Office".

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

Amendment to Public Finance Act 1989

31. Revolving funds—(1) The Public Finance Act 1989 is hereby amended by omitting from section 88 (1) the words "the Government Printing Office,".

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

Amendment to State Sector Act 1988

32. Departments of the Public Service—(1) The State Sector Act 1988 is hereby amended by omitting from the First Schedule the words "Government Printing Office".

(2) This section shall come into force on a date to be appointed by the Governor-General by Order in Council.

33. Transitional provision relating to Government Printing Office—Notwithstanding the sale of the business of the Government Printing Office,—

(a) The agreement covering the employees of the Government Printing Office registered with the Arbitration Commission and in effect immediately before a date to be appointed by Order in Council for the purposes of this section; and

(b) The union coverage arrangement that prevailed immediately before the date appointed for the purposes of this section—

shall, for a period of 12 months beginning on the date appointed for the purposes of this section, or for such shorter period as may be agreed to by the parties, continue to apply to persons employed on work that was previously covered by that agreement or by that union coverage agreement.

Amendments to Veterinary Services Act 1946

34. Annual report and statement of accounts—Section 30 (2) of the Veterinary Services Act 1946 is hereby amended by omitting the word "Parliament", and substituting the words "the House of Representatives".

35. Regulations—Section 31 (2) of the Veterinary Services Act 1946 is hereby repealed.

This Act is administered in the Parliamentary Counsel Office.

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THE CURRENT PRACTICES AND PROBLEMS IN DRAFTING LEGISLATION RELATING TO MULTILATERAL TREATIES: COMMONWEALTH EXPERIENCE

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THE CURRENT PRACTICES AND PROBLEMS IN DRAFTING LEGISLATION RELATING TO MULTILATERAL TREATIES: COMMONWEALTH EXPERIENCE

"Like parents who find that they have little influence on their children once they leave the parental home, an International Organization ...... exercises very limited control over the implementation of the treaties it gives birth to."

Hans-Jurgen Bartsch,
Professor, Law Department
Free University of Berlin.

PART I - INTRODUCTION

1. Multilateral treaties [hereinafter referred to as "treaties"], when transformed, cover a wide area of subject matter at municipal law. In a modern context, they regulate many transactions pertaining to ordinary life, commercial and financial matters, international trade, communication and many other aspects of society. Their nature and transformation into municipal law are matters of prime importance in all Commonwealth countries.

2. In this paper, the writer wishes to proceed on a comparative basis, with certain empirical observations and *a priori* deductions. It is hoped that this comparative approach would lead to a critical assessment of the practices and problems associated with treaty transformation and thereby manifest some aspects of "richness" and "inventiveness" of the Commonwealth jurisprudence.

3. However it is not intended in this paper to cover drafting practices and problems associated with Federal-State distribution of legislative power in relation to treaty transformation, particularly in Canada and Australia. This paper does not cover ontological or doctrinaire problems as to whether or not treaties are incorporated as part of English Common Law. The implications of the self-executing nature of the EEC Treaty, in the legal systems of the member-States of the European Community of which the United Kingdom is a member, are also not discussed. The question of whether provisions of a treaty when transformed into

national law have primacy or constitute "superior law" (including New Zealand's Treaty of Waitangi Act 1975), in relation to other Statutes, though related and important to the subject matter, is not covered in this paper. The emphasis of this paper is on practical, metabolic and catalyctic aspects associated with the drafting practices and problems of treaty transformation.

PART II - THE REASONS FOR TREATY TRANSFORMATION

4. In most Commonwealth countries (except in the United Kingdom, to a limited extent), treaties are not self-executing as municipal law. The ratification/accession or succession to a treaty binds the State only internationally. There is therefore a need to transform treaties in order to be a part of the domestic legal order. Sometimes, the treaty itself mandates the implementation of legislation before accession or ratification to it and may even set out guidelines for national legislation.

5. Treaty transformation provides an opportunity for Parliament to make ancillary provisions for the implementation of the treaty without diminishing its substance to suit the institutional, administrative and financial infrastructure of the State. It also gives an opportunity to introduce penal provisions or fiscal provisions for effective enforcement of the provisions in a domestic legal order. In this exercise, a Legislative Counsel plays an unique and catalyctic role.

6. It should be emphasised that one of the most important objects of treaty transformation is to achieve uniformity by harmonising the national laws of the States which are High-Contracting Parties to a treaty. This laudable object has not always been faithfully implemented in the process of transformation of treaties, as well as in the interpretation of legislation giving effect to treaties by Courts of Law in many Commonwealth jurisdictions. In this context the role of the Legislature, to a large extent, is that of a "law-transformer" and not that of a "law-giver".

PART III - THE DRAFTING PRACTICES AND PROBLEMS

7. The current drafting practices and problems relating to treaty transformation vary from country to country. Thornton, in his book: 'Legislative Drafting' [1970 - 2nd Edition, at page 210], enumerates several practices commonly employed by Legislative Counsels in the Commonwealth. For convenience, I have reproduced, as an Appendix, the four (4) practices enumerated by Thornton. However, I have made three (3) additions to these four practices and expanded the content, in order to provide examples from the wider Commonwealth. The reasons for the additions are stipulated in paragraph 9 of this paper.

8. Dr. F.A. Mann, in his recent book: 'Foreign Affairs in English Courts' [1986 - Clarendon Press, Oxford], classifies the drafting of legislation relating to treaties, into five (5) distinct practices. They are, namely -
   (a) The Statute does not refer to the Treaty
   (b) The Statute refers to the Treaty, but implements it only in part
   (c) The Statute refers to the Treaty, but enacts its Terms independently
   (d) The Statute enacts the treaty independently, but includes it in a Schedule
   (e) The Statute gives effect to the Treaty as such.

   Professor Elmer Driedger, in his book: 'The Composition of Legislation' [1985 - Department of Justice, Ottawa], has not treated the subject of treaty transformation as a special area in the "specialised field" of Legislative Drafting, but makes some reference to treaties in Chapter XIII, which deals with "Legislation by Reference".

9. Thornton's Classification of drafting legislation relating to treaty transformation into four distinct practices is not quite exhaustive. Legislation relating to treaty transformation of the "wider" or "new" Commonwealth reveal three (3) additional practices. They are as follows: -
   (a) Legislation may give effect to a treaty in part or one Act may give effect to several treaties. It is interesting to note that transformation of the UNCLOS Treaty (1982) [generally known as the Montego Bay Convention], is given effect to by most of the Commonwealth countries by two or more legislative enactments. A good cross-section of legislation on this topic from the wider Commonwealth countries can be seen in the booklet titled: 'Law of the Sea - National Legislation on Exclusive Economic Zone and Exclusive Fishery Zone' (1986), published by the Office of the special Representative of the United Nations. It is a treaty containing 320 articles and 9 annexes and therefore, it is virtually impossible to implement this treaty in one Act. Similarly, in most Commonwealth countries, Merchant Shipping legislation or Marine Pollution Prevention legislation implement several treaties which are somewhat related to each other in one Act. It is therefore appropriate to include in the Appendix, that a treaty may be given effect to in part, or that several treaties may be given effect to by one Act, as a distinct practice.
   (b) It is also to be noted that in some Commonwealth countries, treaties have been implemented entirely by subsidiary legislation. There are two (2) examples from Canada - namely, the Canada Post Corporation Act and the Shipping Act. There are numerous examples from

the "new" Commonwealth. The validity or propriety of such practice is not questioned at this point. It is therefore necessary to classify this as a distinct practice, as provided in paragraph 6 of the Appendix.

(c) It is also possible to give effect to a treaty by a Resolution of Parliament; Two examples may be given from the Constitution of Sierra Leone and Sri Lanka, respectively, as constituting a distinct practice. The relevant provisions are cited at the end of this paragraph. Some countries in the Caribbean Community amend their Common External Tariff (CET), which is a Schedule to the Customs Tariff Act, by Resolution of Parliament, on the basis of an Agreement reached by Heads of Government of a Regional Organization and also implement Double Taxation Relief Treaties, ratified on a regional basis, under the provisions of the Income Tax Acts.

[1] Proviso to section 21(2) of the Constitution of Sierra Leone

"Provided that any Treaty, Agreement, or Convention executed by or under the authority of the President which relates to any matter within the legislative competence or imposes any charge on, or authorizes any expenditure out of the Consolidated Fund or any other fund of Sierra Leone, and any declaration of war made by the President shall be subject to ratification by Parliament -

(i) by an enactment of an Act of Parliament; or

(ii) by a resolution of Parliament supported by the votes of not less than one-half of the Members of Parliament."

[2] Section 157 of the Constitution of Sri Lanka

"157. Where Parliament by resolution passed by not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour, approves as being essential for the development of the national economy, any Treaty or Agreement between the Government of Sri Lanka and the Government of any foreign State for the promotion and protection of the investments in Sri Lanka of such foreign State, its nationals, or of corporations, companies and other associations incorporated or constituted under its laws, such Treaty or Agreement shall have the force of law in Sri Lanka and otherwise than in the interests of national security no written law shall be enacted

or made, and no executive or administrative action shall be taken, in contravention of the provisions of such treaty or Agreement."

10. The relative merits and demerits of the current practices of treaty transformation into municipal law have not yet been subjected to a critical study, by any practitioner or text book writer on Legislative Drafting. It is a complex matter and it is therefore difficult to lay down a hard and fast rule applicable to all circumstances. Thornton states that it is preferable, whenever possible, to transform a treaty by way of a Schedule and give it force of law in order to achieve uniformity. The statutory construction, to a large extent, is based on the type of practice utilised by Legislative Counsels. Hence, one sees the importance of the different practices, but in all cases, it is extremely useful to mention in the long title of the Act, the treaty or treaties which are intended to be covered by such legislation.

11. It is proposed, in this paragraph, to discuss some of the problems associated with treaty transformation in the form of questions, comments and observations, so that the participants of the CALC Meeting could share their views and experiences in a constructive manner.
    (a) In several Commonwealth countries, drafting instructions [including a policy statement] are not issued by the sponsoring Ministry in the same way as for drafting legislation relating to treaty transformation. This creates enormous difficulties and problems for Legislative Counsels. Sometimes, in the developing countries, it is possible to receive a draft Bill prepared by an International Organization or a Specialised Agency of the United Nations, which acts as a depository for such treaties. As an alternative, technical assistance is provided to developing countries by a person who has knowledge of the subject matter but who has had no previous legislative drafting experience at a national level.
    (b) There are no guidelines for the selection of an appropriate legislative practice for purposes of transforming treaties into municipal law. Should a study be undertaken by the Commonwealth Secretariat, on this subject? The "Accession-Kits" prepared by the Commonwealth Secretariat are useful but they are limited in scope.
    (c) As a matter of practice, is it possible to incorporate articles of a treaty by reference, without reproducing such articles in a Schedule? In the International Transport Conventions Act 1983 (UK), the provisions of the Convention Concerning International Carriage by Rail are not reproduced in the Schedule, but it is provided in section 1(3) of the aforesaid Act as follows: -

"(3) The provisions having the force of law by virtue of this section are -

(a) the provisions of the Convention as presented to Parliament in April 1982 and set out in Command Paper 8535; and

(b) as respects Annexes I, II and III to Appendix B to the Convention, the provisions referred to in that Command Paper;

and judicial notice shall be taken of those provisions as if they were contained in this Act."

In many small States of the Commonwealth, it is virtually impossible to reproduce Treaties which are prolix. As a result, some device has to be found, in order to give effect to the practice of incorporating the provisions of a treaty without reproducing the treaty <u>in toto</u> in a Schedule. In this context, it is relevant and befitting to quote Professor Elmer Driedger who says that: -

> "Material other than statutes may be incorporated by reference .... Referential legislation of this character presents problems ...... The reader-layman, judge or lawyer must go elsewhere to find the law, and how can he be sure that he has a correct or authentic text? The second problem is whether the statute incorporates this material as it exists the day the statute is passed, or as it is amended from time to time?"

This method of incorporation is controversial, but in no circumstances should provisions of a treaty be incorporated by reference and be made to override the provisions of an Act. This is done in section 313 of the Shipping Act 1981 of Barbados, in the following manner: -

"Convention prevails

313. Where a provision of an international convention or international regulation and a provision of this Act or any regulation in force by virtue of this Act conflict in any manner the provision of the international convention or international regulation prevails unless the Minister otherwise provides by such regulations as he may make in that behalf."

(d) In some jurisdictions of the Commonwealth, the Minister is given <u>carte-blanche</u> to incorporate articles of a treaty by way of subsidiary legislation

without enumerating the principles and provisions of such treaty in the principal Act. The validity or propriety of such a practice has not yet been challenged in many Courts of law of the Commonwealth. Mr W. Kenneth Robinson, QC MP (Canada) states that: -

> "..... While some may have misgivings about the propriety of implementing any international agreement by subordinate legislation, even under a specific enabling power, it would seem at this stage futile to object, so long as the enabling power is specific, the fact that a regulation is made to implement a particular international agreement is disclosed and the agreement itself is made public, preferably by tabling it in Parliament.
>
> In Canada we have yet to persuade the government of the need to disclose the international agreement that is being implemented in any individual case; but we are working on this particular obstinacy of the government."

(e) Interpretation of legislation is the reverse process of Legislative Drafting. Interpretation is extremely important in relation to legislation giving effect to treaties. It is worthwhile ascertaining whether section 15AB of the Australian Acts Interpretation Act 1901 has been interpreted to achieve uniformity in the implementation of treaties at domestic level. Section 15AB(2)(d) requires a reference to the treaty to be made in the Act in order to consult extrinsic material. This appears somewhat contrary to the judicial decisions so far made in regard to consultation of treaties which have been given effect to by legislation. The provisions of 51(c) of the Directive Principles of State Policy of the Indian Constitution requires that the State shall endeavour to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another." It would be interesting to ascertain how this directive has been construed in the Republic of India in relation to legislation giving effect to treaties.

There is a great need to change the judicial attitude towards interpretation of legislation, which gives effect to treaties. Lord Denning in his book: 'Discipline of the Law' (1979, Butterworths), by quoting Judge H. Kutscher of European Court of Justice, said that there is some value for the Court to adopt "a schematic and teleological approach", as in the case of European countries, in order to ascertain the design and purpose which lies behind an

Act of Parliament. This approach is well expressed in the Latin maxim: "Qui haeret in litera, haeret in cortice" [he who clings to the letter, clings to the dry barrel and shell].

It is submitted that without any reform of the interpretative approach, the interpretation of legislation relating to treaties by Courts of Law would become unpredictable, unless the technique and style of treaty drafting itself is substantially standardised to meet the requirements of national legislation. This difficulty is clearly seen in the decisions of the House of Lords, in James Buchanan v Babco [1977] 3 All ER 1048 and Re Westinghouse [1978] 1 All ER 434. However, the following section of the Civil Jurisdiction and Judgements Act 1982 (c. 27) (UK), which is somewhat unique, is worthy of emulation by Commonwealth countries, which have no special provisions in the respective Interpretation Acts, to consult extrinsic material.

"Interpretation of the Conventions

3. - (1) Any question as to the meaning or effect of any provision of the Conventions shall, if not referred to the European Court in accordance with the 1971 Protocol, be determined in accordance with the principles laid down by and any relevant decision of the European Court.

(2) Judicial notice shall be taken of any decision of, or expression of opinion by, the European Court on any such question.

(3) Without prejudice to the generality of subsection (1), the following reports (which are reproduced in the Official Journal of the Communities), namely -

(a) the reports by Mr. P. Jenard on the 1968 Convention and the 1971 Protocol; and
(b) the report by Professor Peter Schlosser on the Accession Convention,

may be considered in ascertaining the meaning or effect of any provision of the Conventions and shall be given such weight as is appropriate in the circumstances."

(4

(f) There are numerous problems relating to translation of treaties into other languages. In particular, where the language is not one of the working languages of the United Nations system, the problem is further accentuated. Lord Denning in Corocraft Ltd v Pan American Airways Inc. [1969] 1 All ER 82 CA said that "There is another, and perhaps more powerful, reason for adopting the French text. The Warsaw Convention is an international convention which is binding in International Law on all the countries who have ratified it ...... Seeing that the convention itself gives authority to the French text, and to the French text alone, we should so construe our legislation as to give priority to the French text over the English version." In Carriage by Air Act 1986 (St. Kitts-Nevis), the provisions of section 3(3) are as follows: -

"The Convention and the Supplementary Convention to have force of law.

3. - (3) If there is any inconsistency between the English text of the Convention and the Supplementary Convention as published in Schedules I and II and the French text of such Conventions, the French text shall be consulted and shall be given effect to whenever it is expedient to maintain uniformity in rules relating to international carriage of passengers and goods."

In countries bedevilled with bilingual or multilingual legislation, it is always desirable to consult the working languages of the treaty, in order to resolve any conflict whenever such treaty is translated into vernacular languages and included in a Schedule and endowed with the force of law.

(g) Is it fair to say that some of the treaties are drafted in a general and loose form quite uncharacteristic of domestic legislation? As a result, Legislative Counsels encounter numerous difficulties when transforming treaties into municipal law, especially when provisions of a treaty are "re-phrased" or "re-drafted". Should Legislative Counsels be involved in the preparation of treaties, so that they will be in a position to anticipate the difficulties at a national level and advise on the possible ramifications involved in the implementation of a treaty?

PART IV - CONCLUSIONS AND RECOMMENDATIONS

9. It is possible to deduce from the foregoing discussion that the transformation of treaties requires a knowledge of

International Law and Practice, Constitutional Law and International Relations. It also calls for special expertise in the "specialised field" of Legislative Drafting. In this decade and in the next, global issues such as environment, drug trafficking, AIDS epidemic, mutual assistance in criminal matters, economic integration movements and a plethora of other matters may cross national boundaries. Thus legislative regulation of such problems may have to be first resolved by treaties, and thereafter transformed into national legislation for implementation. Treaties may therefore become an important "source" for drafting national legislation in Commonwealth countries and in the United Nations system.

10. The majority of countries in the Commonwealth and in the United Nations Organization will continue to pursue a "dualist" approach [International Law and Municipal Law are two separate legal orders, existing independently of one another] in so far as treaties are concerned. It is to be noted that even in the USA, some treaties have been considered to be inherently non-self-executing. This whole scenario poses the question whether it is timely to establish an International Legislative Drafting Bureau, under the auspices of the UNO, on the lines of a National Parliamentary Counsel's Office, in order to assist developing countries, in treaty transformation, as well as to assist in drafting international treaties, so that they can be easily transformed into municipal law. Should the CALC or its members, through their Governments propose the establishment of such International Legislative Drafting Bureau? This is a matter which should be given serious thought, as there appears to be a "weakness" or "lacuna" in the established international legal structures, because the international legislative process <u>in reality</u> does not end with the ratification of treaties, but with transformation of such treaties into municipal law.

I gratefully acknowledge the information provided by Sir Henry de Waal, KCB QC, First Parliamentary Counsel (UK). The views expressed in this paper are that of the writer and not necessarily that of the Government of Saint Christopher and Nevis or the United Nations Organization.

APPENDIX

[Paragraphs 5, 6 and 7 are added as stated in paragraph 7 of this Paper]

1. THE LEGISLATION MAY CONTAIN NO REFERENCE OF ANY KIND TO THE CONVENTION.

   It is clear from Salomon's case that in case of ambiguity a court will refer to a Convention although the Convention is not mentioned in the legislation implementing it. It is helpful, however, and better practice to make specific mention of the Convention and thus leave no doubt that the purpose of the legislation is to give effect to the Convention.

   Examples of this method are - the Evidence (Proceedings in other Jurisdictions) Act 1975 [UK] and Illois Trust Fund Act 1982 [Mauritius].

2. THE LEGISLATION MAY REFER TO THE CONVENTION BUT NOT SET IT OUT AND MAY GIVE EFFECT TO IT BY SEPARATE SUBSTANTIVE PROVISION NOT BY GRANTING THE CONVENTION THE FORCE OF LAW.

   Examples of this method are - the Tokyo Convention Act 1967 [UK] and the Merchant Shipping (Load Lines) Act 1967 [UK].

3. THE LEGISLATION MAY SET OUT THE CONVENTION IN A SCHEDULE BUT FOR INFORMATION OR REFERENCE PURPOSES ONLY.

   As with method (2), effect is given to the Convention by separate substantive provisions not by endowing the Convention with the force of law.
   An example of this method is the Antarctic Treaty Act 1967 [UK].
   On the grounds of its fuller communication, method (3) is to be preferred to methods (1) and (2).

4. THE LEGISLATION MAY SET OUT THE CONVENTION IN A SCHEDULE AND ENDOW IT, OR PART OF IT, WITH THE FORCE OF LAW.

   The aim of uniformity is most likely to be achieved if method (4) is adopted and, if the contents of the Convention are capable of application in this way, method (4) should be adopted. Consequential modifications of the domestic law must be made where necessary.

   Recent examples where this method has been used are - Uniform Laws on International Sales Act 1967 [UK], Carriage of Goods by Road Act 1965 [UK], the Consular Relations Act 1968 [UK] and The Non-citizens (Registration, Immigration and Expulsion) (Amendment) Act 1980 [Sierra Leone].

5. THE LEGISLATION MAY GIVE EFFECT TO A CONVENTION IN PART, OR ONE PIECE OF LEGISLATION MAY GIVE EFFECT TO SEVERAL CONVENTIONS.

   Examples of this method are - Maritime Zones Act 1984 [St. Kitts-Nevis], and the Fisheries Act 1984 [St. Kitts-Nevis]. Both Acts give effect to some aspects of the Montego Bay Convention (1982).

6. THE LEGISLATION MAY EMPOWER A MINISTER TO GIVE EFFECT TO A CONVENTION BY WAY OF SUBSIDIARY LEGISLATION.

   Examples of this method are - The Shipping Act [Canada], Canada Post Corporation Act [Canada], Marine Pollution Prevention Act 1982 [Sri Lanka], and the Shipping Act 1981 [Barbados].

7. RESOLUTION OF PARLIAMENT MAY GIVE EFFECT TO A CONVENTION.

   Examples of this method are - Article 157 of Chapter XX of the Constitution of Sri Lanka (1978), Section 22 of the Republican Constitution of Sierra Leone (1978), and the Statutory Rules and Orders No. 31 of 1988 [Antigua and Barbuda].

Database Systems for Legislation
- Developments in Western Australia -

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Introduction:

I am sure that every legislative counsel has at one time or another wished that he or she could summon up all the relevant local precedents to help in solving a knotty drafting problem.

At other times each of us must have been faced with the painstaking task of identifying all the consequential amendments that might be needed as a result of some new drafting exercise.

Traditionally, these precedents and consequential changes have been located by using precedent files, indexes or human memory - none of these sources is completely reliable.

With the arrival of the computer it was obvious even to computer luddites that a door was opening to reveal a vista in which the previously impossible dream could become a reality. For a time that vista was vague and ill-defined but, for me, it was resolved into clear focus in the mid 1980's. It was then that I saw a demonstration of an enquiry and retrieval system for legislation which used an ordinary personal computer, an ordinary compact disk player and a compact disk containing the United States Federal tax laws. The power, speed and simplicity of this system were quite stunning. Compared to it the traditional tools of the drafting trade seemed like stone-age technology.

History of the Western Australian database project:

Although the establishment of a database of legislation in Western Australia had been talked about from time to time nothing came of it until two significant events took place.

PAGE 9 2 (51)

The first was the coming into office of a Deputy Premier who took a keen interest in information technology. In 1985 he set up a working party to examine the development of a computerized retrieval system for the legislation of the State.

The second significant event followed quickly. This was the identification by the working party of a number of ways in which such a system could result in cost savings and provide opportunities for the generation of revenue. There were two main areas in which savings were predicted. Firstly there would be a dramatic reduction in the time and resources devoted by the Parliamentary Counsel's Office and the Law Reform Commission to searching legislation for words, phrases, cross-references etc. Secondly the need for Government departments to prepare and maintain "cut-and-paste" versions of the legislation relevant to their operations would disappear.

From that point on the creation of a database of legislation was virtually assured. However, there was a frustrating delay when, in a tightening economic climate, the considerable funds needed for the developmental phase of the project proved difficult to find. Eventually the necessary moneys, approximately A$500 000, were set aside partly by the State Government and partly from a fund administered by the Law Society of Western Australia.

Planning and development for the project got under way in earnest in the second half of 1988 and continued throughout 1989. During this phase:

- A Steering Committee and a Working/Development Committee were formed within the Crown Law Department to determine the requirements of the project and participate in its development.

- The project was given a name: "S.W.A.N.S." standing for the "Statutes of Western Australia Now-in-force Service".

- A detailed requirements study was completed with the assistance of external computer consultants. This study identified the staff, equipment and other resources that would be needed for the project.

- Staff positions were created and filled.

- Tenders were called for equipment and for text retrieval software. Tenders were evaluated and contracts entered into. Details of the equipment and software being used for the project are set out in Appendix 1.

- The daunting task of checking compiled copies of some 482 amended Acts and 430 sets of amended regulations was undertaken and largely completed.

By the end of 1989 the project was ready to move into the all-important data take-up phase.

In discussing the history of the S.W.A.N.S. project I have referred to it only in general terms. Before explaining the current state of the project I propose to describe its purpose more specifically and to examine its main features in greater detail.

<u>Purpose of the S.W.A.N.S. system</u>:

The primary purpose of the S.W.A.N.S. system is to have and maintain, on computer, all Western Australian Acts and regulations in their most up-to-date form (i.e. incorporating all textual amendments), and to be able to provide this information for use within the Crown Law Department, primarily to the Parliamentary Counsel's Office to assist in the drafting of legislation.

Once this is achieved, the purpose of the system will extend to providing the information to interested third parties such as Parliament, other Government Departments and the commercial legal information distributor, Info-One. Initially output to third parties will be by way of tape but if a personal computer version of the Titan text retrieval system is developed the standard method of output may be by way of CD-ROM.

A very significant additional benefit that will flow from the system will be the ability to produce "hard-copy" reprints of legislation with much greater ease and frequency than is presently possible.

How the system will work:

The diagram in Appendix 2 shows the inputs to and outputs from the system and identifies parties involved in it.

Data will be taken into the system by way of -

- a scanning/editing processing in the Parliamentary Counsel's Office; and
- electronic transfer of statutes and reprints from the State Printing Division; and
- data entry by operators in the Parliamentary Counsel's Office.

After processing in the system the data will be available for -

- database enquiry by Parliamentary Counsel's Office users;
- production of printed copies of legislation for internal Parliamentary Counsel's Office use;

- output by electronic transfer to the State Printing Division for production of official reprints of legislation;

- output by tape or direct line to the Crown Solicitor's Office;

- output by tape to Parliament.

- output by tape to Info-one for public distribution;

- output by tape to a central agency for distribution to Government users.

Data take-up:

The take-up of data to form the Statutes database is obviously a critical phase of the project. It involves the capture of approximately 50 000 pages of printed legislation. Originally it was our intention to capture the data by a combination of keyboard entry and transfer of electronic data from the State Printing Division. However since the project was first conceived great advances have been made in the technology of document scanning equipment or "scanners" as they are commonly known. Paradoxically their price has actually decreased at the same time. In development studies for the project it was clearly shown that scanning would provide the quickest and most effective method of capturing the data. Of course the scanning operation needs to be backed up by careful editing and checking procedures to ensure that the database is as accurate as possible.

The various steps involved in the data take-up process are set out in Appendix 3.

The office copies of amended legislation are photocopied. The photocopies are scanned on a Kurzweil K 5100 scanner. The scanned information is converted into a word processing document (still in electronic form) and becomes part of an unedited document library. The document then goes through editing and checking procedures to insert or correct material that the scanner was unable to read or has read incorrectly. The document is held in a checked library of documents before being converted into the format required for loading into the Titan text retrieval system. A copy of the word processing version is retained in the loaded library of documents. The converted version is held in the "raw" database until the accuracy of the conversion is verified. It is then transferred to the "live" database and is ready for use.

The process contains a number of points at which operations are to be logged. This enables reports to be extracted on the progress of the project. It also provides a safety mechanism to ensure that a document has gone through all the necessary editing and checking procedures.

Maintenance of database:

Details of the way in which the database will be amended to incorporate future legislation have yet to be finalized. In the case of new principal legislation it should be possible to load information directly from the State Printing Division into the checked library of documents. For amending legislation a combination of direct transfer, data entry and scanning might be employed.

Information retrieval:

After an extensive evaluation process the Titan system was chosen as the information retrieval package for the S.W.A.N.S. project. Titan is a general purpose information management system that was developed in Australia and is now in use in a number of Australian locations.

Some of the features of Titan are -

- Data can be loaded and retrieved in the form in which it appears on the printed page. It does not have to be manipulated into any special format.

- Information can be retrieved very quickly from an extremely large collection of data.

- Query entry is by a straightforward "query-by-example" method.

- Data display and report formats are flexible and can be tailored to meet the particular needs of the user.

- Several security levels are provided to enable data access and modification to be controlled.

Titan has been customised for the purpose of the S.W.A.N.S. system to provide the most effective storage and retrieval of legislation.

Some examples of typical Titan screens are set out in Appendix 4. Screen 1 shows a query screen. A search can be made across all Acts in the database or in particular Acts. Within an Act a search can be made in all sections or in particular sections identified by number, headnote, or subject matter. In the example shown no particular field of search has been selected so the term "port authority" will be searched for in all sections of all Acts. Within a matter of seconds a screen will appear showing the first of the 20 records on which the term occurs (Screen 2). At any time a summary of the location and distribution of the 20 records on which the term occurs can be produced (Screen 3).

(57)

Current state of the project

As at the end of March 1990 -

. 13.3% of Acts had been loaded into the raw database.

. Another 6.6% were in the checked library waiting to be loaded into the raw database.

. Another 27.3% were in the edited library waiting to be checked.

. Another 5% were in the unedited library waiting to be edited.

This means that 415 Acts, or 47.2% of the total, had been scanned and edited at that time. When it is considered that scanning did not commence until December 1989 this represents a very pleasing rate of progress - somewhat better than expected in fact. However it should be noted that the bulk of the Acts scanned so far have been unamended so that the scanner has been able to operate at close to its maximum efficiency with little editing being required. The rate of data capture will slow down considerably as more editing becomes necessary in respect of heavily amended Acts containing handwritten text which the scanner is unable to recognize.

Nevertheless it is hoped that a significant proportion of the Acts database will be ready for release by June 1990 with the balance being ready by December 1990. Work will then commence on the regulations database. It is planned that the whole of the data capture phase will be completed by July 1992.

Some of the lessons that can be learned from the S.W.A.N.S. project:

At this stage I would like to pass on some thoughts that could be of interest and assistance to other jurisdictions that may be contemplating legislation database projects. Although the S.W.A.N.S project is far from being complete we have had enough experience to draw certain conclusions:

Planning: The temptation to accelerate the planning phase and get on with the job of capturing data should be resisted. The S.W.A.N.S. project went through a very long and careful planning process. At times this caused some impatience but the value of the process is now becoming obvious as the project is progressing smoothly, efficiently and on schedule.

Determine the scope of the project: The earliest planning decision that has to be made relates to who is to be the principal user and beneficiary of the project. Is it to be mainly for the use of legislative counsel with public access a secondary object, or vice versa? The content and form of the database are certain to be affected by the answer to this question.

Selling the idea of a database to Government: If difficulty is being experienced in convincing those that hold the purse-strings of the need for a legislation database the production of cost saving estimates can have a dramatic effect on attitudes. In Western Australia it was estimated in 1986 that the creation of such a database might result in cost savings to the Government of some $470 000 per annum. Approval for the project followed swiftly.

Working with computer consultants: Computer experts know a lot about computers but you cannot expect them to know about legislation, the legislative process or the work of legislative counsel. It is important that professional officers involved in legislative drafting should work closely with the computer consultants during the planning and development phases of a database project so that the consultants fully understand what kind of database is required and what kind of purposes it is to serve.

The quality of the professional computer advice received is also very important. We have been very lucky in this regard. The work of the departmental information technology officer who supervised the planning phase and the consultant who is in charge of the development phase has been quite outstanding. I should add that they have been given excellent support by our own clerical staff who have approached the project with enthusiasm and have willingly taken the opportunity to develop and apply new skills.

Extent of preparatory work needed: We were fortunate to have in the Western Australian Parliamentary Counsel's Office a complete library of "cut and paste" versions of amended Acts and regulations. This meant that after a checking process the data capture operation could start immediately. The task of creating an up-to-date database of amended legislation will obviously be a more formidable one for any jurisdiction that does not maintain such a library.

Scanners are not perfect: Document scanners provide the least labour intensive means of converting printed data into electronic form but they cannot be equated to photo-copiers. They do not provide an exact representation of a scanned document. A considerable amount of editing and checking is needed after scanning before a document can be loaded into the database. This is proving to be the most time-consuming operation in the take-up phase.

Even after checking and editing a scanned document may not be completely free of errors. In the immediate future it is not going to be feasible to print out and proof read the 50 000 pages of data that are to be taken-up during the S.W.A.N.S. project. This means that we will continue to regard the "cut and paste" office copies as the primary reference sources of amended legislation.

Conclusion:

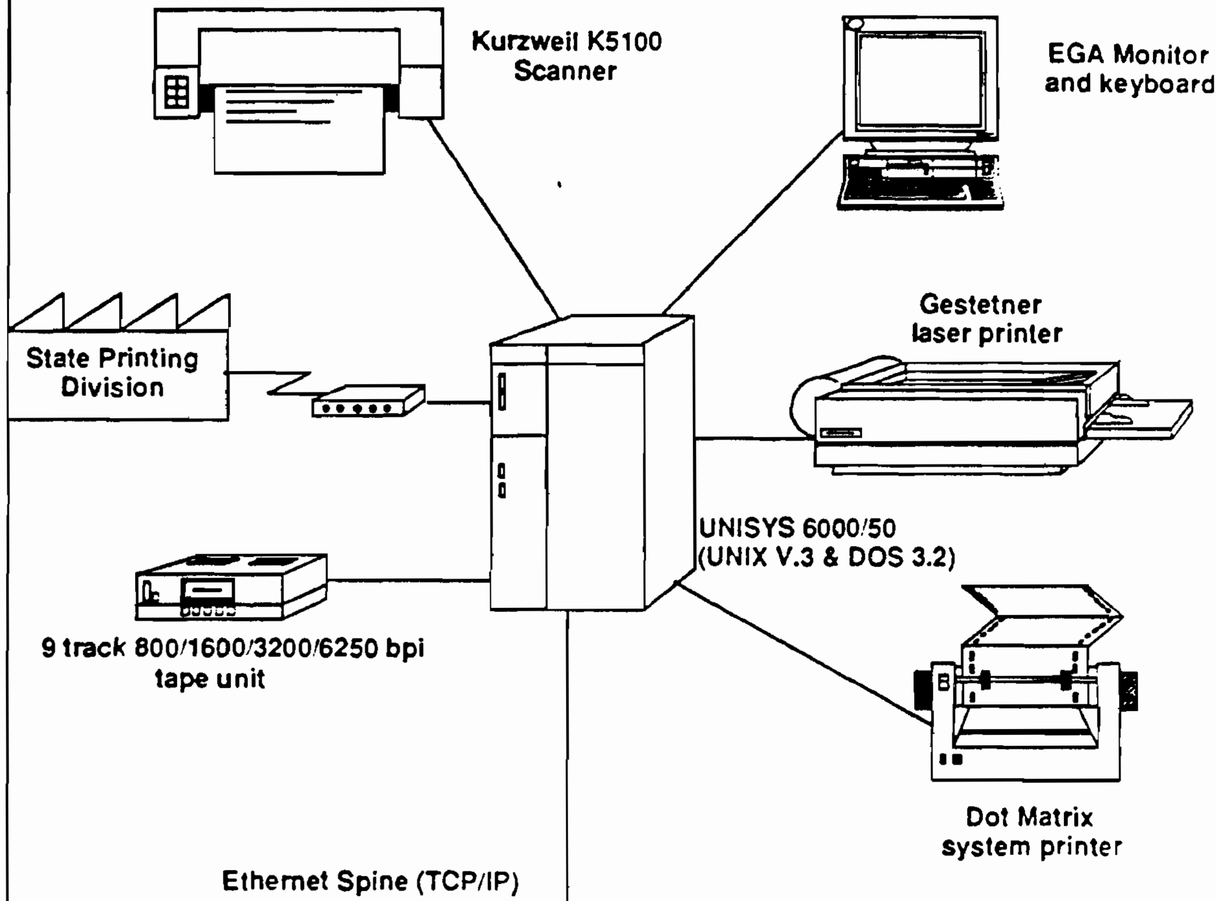
In concluding I would like to be able to recommend that other jurisdictions follow the Western Australian model for the creation of a legislation database but this would be totally premature as the S.W.A.N.S. database has yet to be completed and put into use. However I am confident that, if the level of enthusiasm and commitment that has been evident so far continues to be applied, the success of the project is assured. I hope to be able to provide members of this Association with reports on further developments by way of the Association newsletter.

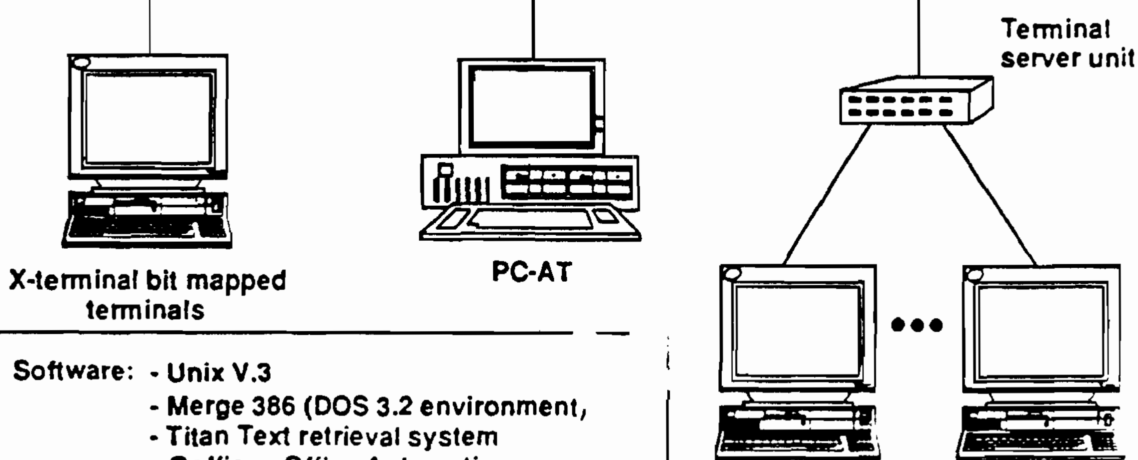
(61)

APPENDIX 1

CROWN LAW DEPARTMENT of WESTERN AUSTRALIA
Parliamentary Counsel's Office - S.W.A.N.S. System

HARDWARE & SOFTWARE ENVIRONMENT





Software:
- Unix V.3
- Merge 386 (DOS 3.2 environment,
- Titan Text retrieval system
- Qoffice - Office Automation and word processing
- Oracle Ver 5 RDBMS
- custom built S/W (Unix & "C")
- X-windows
- Ethernet TCP/IP
- Kurzweil Scanning Software

(62)

page 60

APPENDIX 2

CROWN LAW DEPARTMENT of WESTERN AUSTRALIA

Parliamentary Counsel's Office - S.W.A.N.S. System

SYSTEM OVERVIEW

INPUTS

Scanned/edited data

Statutes and Reprints from State Printing Division

Database Maintenance by Parliamentary Counsel's Office

SWANS SYSTEM

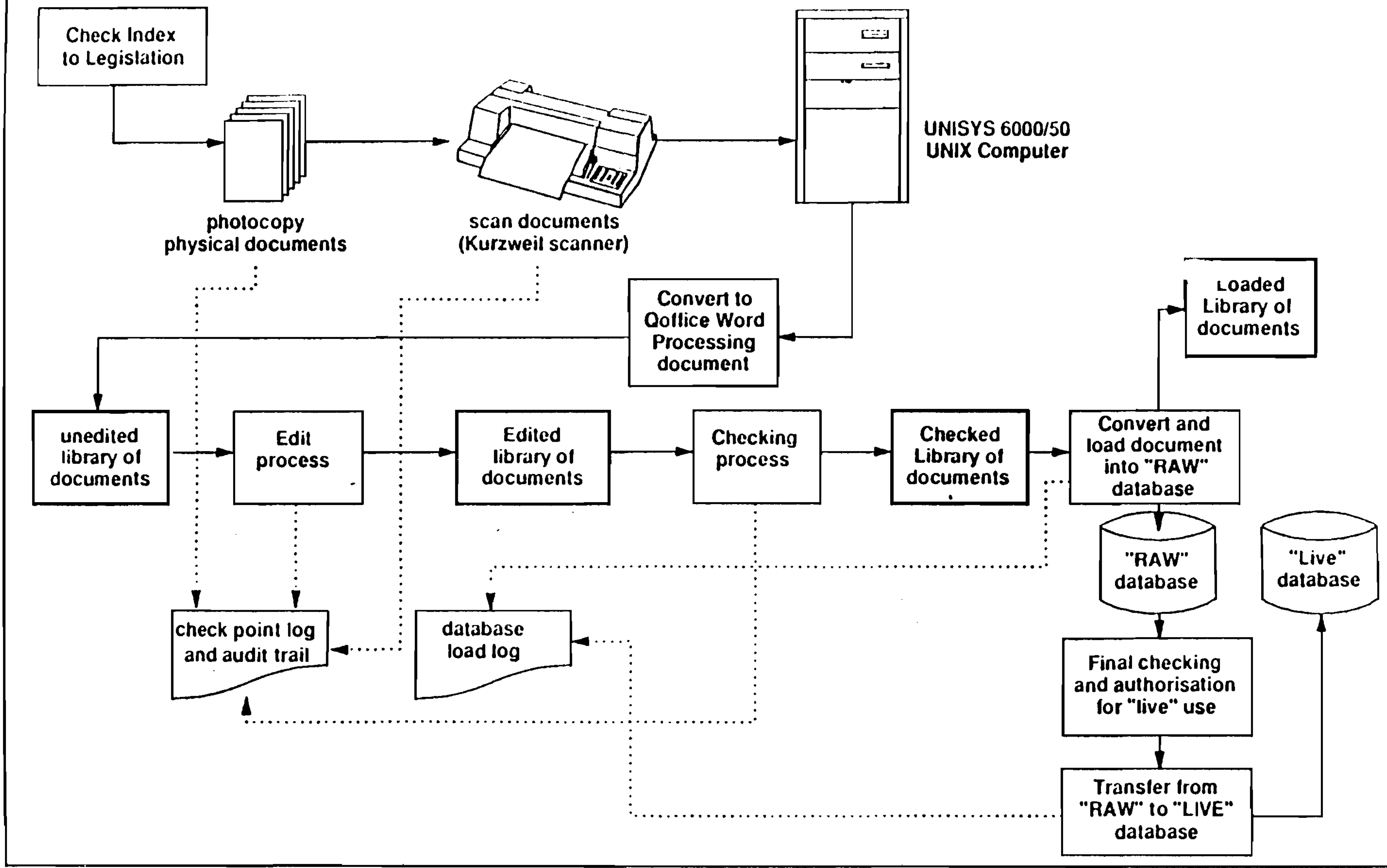
- Information Retrieval
- Word Processing
- User Interface/ customised functions
- Communications

OUTPUTS

- Database enquiry by Parliamentary Counsel's Office
- Hard copies of legislation
- Electronic transfer to State Printing Division
- Database to Crown Law Department corporate computer
- Database to Parliament
- Database to Info-One
- Database to Government Agency for distribution to Government Departments
- System reports

sysover.gmf

APPENDIX 3



(64)

Appendix 4

Examples of S.W.A.N.S. System Screens

Screen 1

```
PARLIAMENTARY COUNSEL'S OFFICE - SWANS System.            Screen    of

Act -


Section number : (       )
        name   :
        type   :


Keywords to be searched :

"port authority"




Amending:                      As at date -

[Query] Fwd-F5  Bwd-F6  Query-F3  Exit-F1  Help-F2
```

Screen 2

```
PARLIAMENTARY COUNSEL'S OFFICE - SWANS System.           Screen 28  of 80
Act - Alumina Refinery Agreements (Alcoa) Amendment Act 1987
Section - (      ) SCHEDULE

                  "and continued in existence under the name of the
                  Fremantle Port Authority pursuant to the Fremantle Port
                  Authority Act 1902";

              (e) in the definition of "leased area", by inserting after
                  "hereof" the following -

                  "which is from time to time included within the mineral
                  lease";

              (f) in the definition of "mineral lease", by deleting "any
                  other mineral lease" and substituting the following -

                  "any separate mineral lease";

              (g) by inserting after the definition of "mineral lease" the
                  following definitions -

[Display] Next-F5  Prev-F6  Edit-F4  Exit-F1  Help-F2         Record 1 of 20
```

(65)

Screen 3

Summary of 20 matching records

No.	Count	"Act -"
1.	1	Alumina Refinery Agreements (Alcoa) Amendment Act 1987
2.	1	Disposal of Uncollected Goods Act 1970
3.	7	Esperance Port Authority Lands Act 1979
4.	11	Alumina Refinery (Pinjarra) Agreement Act 1969

[Text perusal] Copy-^C Exit-F1 Help-F2

Commonwealth Association of
Legislative Counsel
(Auckland, New Zealand - April 1990)

Hong Kong's Looseleaf Laws

At the last CALC meeting in Jamaica, Eric Martin reported on the loose booklet and Revised Edition system of publishing Hong Kong legislation. Hong Kong had only recently (at that time) concluded that its system was still the best for Hong Kong, particularly because of the prospect of doubling the number of laws (presently in 31 Volumes) as they are gradually published in Chinese as well as English. It was admitted then that the "noter-up" feature of the system (Government published cut-and-paste pages) needed attention.

2. Since the meeting in Jamaica, we have had a change of view and in 1991 we plan to adopt a looseleaf format. The publication will be similar to most other looseleaf systems, but British Columbia's was used as the primary model. The problem of the 2 languages will be solved by publishing both the English and Chinese pages on the same page on A4 size but in landscape rather than portrait orientation. Thus a minor change in the law in each language will only require the replacement of one page of the looseleaf.

3. There will be one unique feature which we think will overcome the publication delay problem. Most statute looseleaf publications use a "cut-off date" approach in which all amendments or additions before the cut-off date are incorporated into a set of replacement pages for the whole set. It can then be said that the whole set reflects the law at the cut-off date. There is necessarily a period of time after the cut-off date before replacement pages are available to subscribers. This time is taken up in the necessary tasks of new page preparation, including instructions to the printer (whether electronically or by hand), preparation of proofs, proofreading, revision, printing, collating and distribution.

4. The major delay problem often occurs because a large volume of material is being prepared at the same time, especially in jurisdictions where the enactment of laws is concentrated over only a few weeks or months each year. Because of the large volume of material, and the need to prepare an instruction sheet and checklist of all the pages in the set, the replacement pages for a particular enactment are often held up while work continues on other enactments. Sometimes the delay is so severe (8 - 16 months is not uncommon) that there are further amendments to the pages that have already been prepared.

5. Hong Kong hopes to avoid these delays by creating a combined instruction sheet and checklist (an Enactment Control List) for each enactment plus a Master Control List for all enactments in the set. An Enactment Control List will precede each enactment and will give instructions for insertion and deletion of pages and also serve as a checklist of all pages in the enactment, identified by date. The Master Control List will be at the beginning of the set and will give instructions for insertion and deletion of the Enactment Control Lists and serve as a checklist for all of the Enactment Control Lists. A new Master Control List will go out with each set of replacement pages plus an Enactment Control List for each enactment that requires pages to be inserted or deleted.

6. Under this system when an enactment is amended the replacement page preparation can be started immediately. The Enactment Control List will be prepared and dated in the drafting office as soon as the final page proof is returned to the printer. The printer is then free to print the replacement pages and the Enactment Control List without waiting for other enactments. How often the replacement pages are sent to subscribers is a matter to be decided between the drafting office, the printer and subscribers. A balance between distribution costs and subscriber needs for up-to-date laws must be determined. Initially, Hong Kong is contemplating a 2 or 3 month schedule of replacements. Alternatively, the publication frequency can be left flexible according to need.

7. Finally, recognizing the value of being able to say that the whole set is up to date as of a certain date, the title pages of the set and the Master Control List will have a Master Consolidation Date which will be the date of the previous Master Control List. Thus, on a 2 month publication schedule beginning on January 1, one can confidently say that with the publication of the May 1 Master Control List the whole set is up to date as of March 1 and that many enactments will be updated to the later dates shown on the Enactment Control Lists of those [illegible] replacement pages that were distributed with the March 1 Master Control List.

(69)

8. For those seasonal legislatures where the volume of material is too great to complete within the adopted 2 or 3 month schedule, the Master Control Date can remain the same as on the previous Master Control List and be changed only when the printing has caught up. In the meantime at least some of the enactments will have been updated without having to sit on the printer's shelf waiting for others to catch up.

9. In this system it doesn't matter if there are several changes to an enactment in the 2 or 3 month schedule. Editorially we can decide whether there is time or need to do a reprint before distribution or let the later amendments await the next period for incorporation. Either way the subscriber knows from the Enactment Control List when the enactment was last updated. For unincorporated later amendments the subscriber must, as with all such systems, look to the original enactment for the latest law.

10. Samples of the Master Control and Enactment Control Lists are attached.

11. If anyone has any questions about this system, please feel free to contact us in Hong Kong at -

Attorney General's Chambers,
Queensway Government Offices,
66 Queensway, High Block,
Hong Kong.

Telephone : 867 2405

Fax No. : 8691302

(Allan R. Roger)
Senior Assistant Law Draftsman

Date : 2 Ma..n 1990

Master Control List - Instalment 1

Item	Withdraw Pages	Insert Pages	You should now have pages	Dated
Index of Acts, OIC's, etc.	.....	.....	88 - 103	1.4.89
Chronological Table of Ordinances	.....	.....	1 - 88	1.9.89
	89 - 90	89 - 90	89 - 90	1.1.90

....

VOLUME 6

Item	Withdraw Pages	Insert Pages	You should now have pages	Dated
Chapter 59 (control, red)	1 - 2	1	1	11.12.89
Subsidiary Legislation (contents, green)	1	1 - 2	1 - 2	11.12.89
- Factories and Industrial Undertakings Regulations (control, red)	.....	.....	1	1.7.89
- (Confined Spaces) Regulations (control, red)	1	.....	.....	.....
- New Regulation (control, red)	.....	1 - 2	1 - 2	1.10.89
- Quarrier (Safety) Regulations (Control, red)	1	1	1	11.12.89

....

VOLUME 7

60

(67)

Laws of Hong Kong

MASTER CONTROL LIST - INSTALMENT 1

Master Consolidation Date: 1.9.89

All of the enactments in this publication are up to date as of the Master Consolidation Date. Enactments that have an Enactment Control List bearing a later date are up to date as of that later date. Note that amendments that are not in operation as of the Master Consolidation date are not included but a reference to them is printed at the end of the relevant Enactment Control List

Item	Withdraw Pages	Insert Pages	You should now have pages	Dated
CONTENTS AND INDEX VOLUME				
Title Page	.....	.....	1	1.4.89
Laws of Hong Kong - Contents	.....	.....	1 - 2	1.4.89
Contents and Index Volume - Contents	.....	.....	1	1.4.89
Users Guide to the Laws	.....	.....	1 - 4	1.4.89
Latest letter to subscribers	1 - 2	1 - 2	1 - 2	1.1.90
Note: replacement of the following Master Control List should be done last.				
Master Control List (blue)	1 - 25	1 - 26	1 - 26	1.1.90
Index of Enactments	.....	.....	1 - 5	1.4.89
	6 - 8	6 - 8	6 - 8	1.1.90
	.....	.....	9 - 87	1.4.89

94

Enactment Control List

FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE (CAP. 59)

[Up to date as of 11 Dec 89 or the Master Consolidation Date, whichever is later. The Master Consolidation Date is shown on the Title Page and at the top of the Master Control List, both of which are in the Contents and Index Volume. Refer to the Master Control List in the Contents and Index Volume to confirm that this is the latest enactment control list for this enactment.]

Withdraw pages	Insert pages	You should now have pages	Dated
1	1 - 1.1	1 - 1.1	11.12.89
.....	.....	2 - 5	1.4.89
.....	5.1	5.1	11.12.89
.....	.....	6 - 10	1.4.89
11 - 15	11 - 12	11 - 12	11.12.89
.....	.....	no pages 13 - 15	.....
.....	.....	16 - 20	1.4.89

Enactment History

Originally 34/55 - G.N.A. 102/55, G.N.A. 62/56, 7/59, 42/61, 51/61, 19/63, 10/65, 43/67, 4/69, 72/70, 52/73, 7/76, 19/76, 73/77, 37/78, 55/79, 11/80, 57/80, L.N. 248/82, L.N. 222/83, 37/83, 50/85.

Amendments not in operation

The following citation(s) are to provisions that amend this enactment but which are not in operation as of 11.12.89 or the Master Consolidation Date, whichever is later -

15/88 - amends s. 7(5);
3/89 - amends s. 8(3).

Page 69 - 61 - (71)

LAW REVISION IN THE PACIFIC REGION

A paper delivered to the 1988 meeting of Pacific Law Officers (PILOM) in Tonga by Neil Adsett B.A. L.L.B. Law Revision Commissioner, Tonga.

1. INTRODUCTION

1.1 The subject of this paper is Law Revision in the Pacific Region. In one sense, the law in constantly under revision by Parliaments, the executive and by the judiciary. But the sense in which I am using the term Law Revision is the limited sense of a revised edition of the law - a consolidation; a tidying up and bringing together of the existing law. However necessary it may be to reform and review aspects of the law, it is in my opinion even more necessary, a <u>sine qua non</u>, to know with certainty what the existing law is; and to be able to readily find that law.

1.2 Too often, in my experience, lawyers are not altogether certain of what the law is on a particular subject so they guess and advise in general terms to cover what it probably is, or used to be or what everyone thinks it is - no one being quite able to put their finger on the exact law.

1.3 This problem is of special concern to smaller Pacific States. In a large country with a sophisticated bureaucracy you can expect that someone will be keeping every Act up to date with amendments so that, ultimately, somewhere in Government the true state of the law will be known.

1.4 But in this part of the world? All too often only the lawyers will appreciate the need to keep laws as they are made and to note them up. Plus departmental staff change; Judges often are expatriates and leave. Even Government lawyers have a high mobility rate and their knowledge and records are lost when they leave.

1.5 To confuse the situation further the facilities in the region for drafting and producing Acts, Regulations etc. are often not ideal. An Act which is substantially amended should ideally be repealed and replaced, with proper thought given to transitional and saving provisions and the fate of existing subsidiary legislation. But that means more work for a hard pressed Pacific lawyer, so more often there is a patch up job patched on to an already patchy Act and confusion reigns. Even if there is a repeal and replacement, often not too much thought is given to subsidiary legislation - often it is a case of continuing old Regulations, so far as they are not inconsistent - and it is by no means certain what can or cannot stand alongside a new Act - so more confusion.

1.6 Enter the ubiquitous overseas expert, - typically from a U.N. type agency and with fixed ideas about what "these 3rd world countries" need. So a foreign law is grafted on, leaving numbers of related laws hanging or dropping in the balance.

1.7 So we find Parliaments passing Acts to amend law which may already be repealed. (This is not just a small-state problem or a new one however, the U.K. Parliament did the same thing in 1875). We find judges hearing argument based on the law as it stood before an amendment which is forgotten or lost; Governments and people regulating their affairs on the basis of the wrong idea of the true state of the law.

1.8 What is the answer? My answer is to revise the law - publish an authoritative new edition stating the law as at a given date. Anomalies removed, laws reconciled. A fresh start for everyone.

1.9 As Sir Clifford Hammett said in a paper to the 1986 Meeting of Commonwealth Law Ministers -

> "If the present position in these territories is allowed to deteriorate it will eventually imperil the maintenance of the rule of law, and there will be the danger of a breakdown in the proper administration of justice". *1.*

He was speaking then of the Caribbean region, but the same applies in the Pacific.

2. STATE OF PACIFIC REVISIONS

By way of regional background to this paper, I have tried to ascertain the present state of revisions in the region.

2.1 Time did not allow me to do this properly but I hope to follow up these early enquiries and present at a later time, perhaps to the 1990 Meeting of Commonwealth Law Ministers in New Zealand, a proper resume for the region. This was done in 1986 for the Caribbean region *2.* and is most instructive.

The countries I know about personally are Fiji and Tonga.

2.2 In Fiji, in conjunction with my work there as Parliamentary Counsel, I completed the 1985 Revised Edition. Fiji had previously published new hard bound revised editions about every 10 years, the last in 1967. For Fiji's 1978 edition the loose leaf format was chosen and the 1978 revised edition consisted of 14 loose leaf volumes containing all Acts and subsidiary legislation. Rather optimistically, the law in Fiji required annual revisions to be made but this was never done. What we did was to publish, between coups as it turned out, a major revision of the laws for 8 years, to the end of 1985.

1. From the Memoranda published in 1987 by the Commonwealth Secretariat, page 513.

2. ibid page 509.

The present revised edition in Fiji shows the whole of the law as at the end of 1985. In that sense, then, Fiji's laws are in good shape. In other senses, however, ascertaining what law applies in Fiji is more difficult. Nevertheless, 95% of the law in the 1985 Revision will apply no matter what emerges from the social re-adjustments going on there. Once things settle down it will not be such a major task to revise Fiji's laws for the couple of years.

2.3 In Tonga the practice has been for new Revised Editions to be published every 20 years. The last was the hard bound 1967 edition - 3 volumes in English and 3 in Tongan. The first 2 volumes contain the Acts and the third contains the subsidiary legislation. My present job here in Tonga is to prepare and publish a new revised edition showing the law as at the end of 1987. It is expected to be published and on the shelves in September next year. This edition will be in loose-leaf binders - 5 volumes in English and 5 in Tongan, with the subsidiary legislation following the Act it is made under. The plan in Tonga is for the revised edition to be revised from time to time so that the law in the books is never more than a few years out of date. At present the last is 21 years out of date, it is out of print and has been much amended. For the distant years in the late 60's and early 70's it is difficult to obtain any copies of amending Acts and if this present Revision exercise was not underway, the true state of Tonga's laws would be a problem.

2.4 I spoke about Fiji and Tonga from personal experience; before this meeting I knew about other countries only from looking at copies of their last Revised Editions and accordingly my information may have been out of date and wrong. I thank the PILOM delegates for providing me with the further information which I include in this paper.

2.5 In Western Samoa, as I understand it, no revised edition was ever produced up until 1977. As the preface to that edition sets out, there was considerable difficulty in ascertaining the applicable law in Western Samoa. In 1977 the huge task of collecting together the current law of Western Samoa was completed and what amounts to a revised edition was published in 6 volumes. The preface says "these revision volumes are only updated reprints" and "if any doubt should exist as the authenticity of an.. Act.. a reference should be made to the original text". *3.* But the 1977 Edition in Western Samoa seems to me to be more than a mere reprint - amendments are shown in brackets in the text of the law, even though all amending Acts etc. are set out after the Principal Act. Arrangements are now being made for a new revised edition in Western Samoa.

3. Western Samoa Statutes Reprint 1920-1977, Volume 1 page XI

2.6 In Papua New Guinea the latest Revised Edition shows the laws as at 1976. It is in 12 very large (1000 page) volumes and was not brought into force until 1982 - already 6 years out of date and containing no general index. Although published in loose leaf form and intended for frequent up dating, to my knowledge the revised edition has never been updated, although it seems that some limited revision has been taking place. The problem in Papua New Guinea is a large one because of the existence of the 19 Provincial Legislatures which produce law in addition to those of the central Government. There is also the problem of 700 separate and 3 main languages.

2.7 In Tuvalu, the latest revised edition shows the law as at October 1978. It is in 3 loose leaf volumes with no updating except that the new 1986 constitution was published in a form for inclusion in the Revised Edition and the practice has been adopted of publishing new Acts punched for inclusion in chronological order in volume 3.

2.8 In the Cook Islands there has been no revised edition of the laws produced. A valuable Index to the laws to 1981-1982 has been prepared.

2.9 In Kiribati the law has been revised to 1981 and is published in loose leaf form.

2.10 In Vanuatu there is no revised edition of the law but a proposal is underway to organize one.

2.11 The smaller states have the definite advantage that their body of laws is small enough to enable revised editions to be made at all. In Australia the laws are too voluminous for this to happen. The Federal laws in Australia were last consolidated to 1973 and the plan was then to issue consolidations thereafter every five years. But because of the size of the task it has instead been forced back upon the limited expedient of issuing reprints only of certain Acts. Each Australian state has a different practice and a review of these jurisdictions is beyond the scope of this paper (apart from being quite beyond my knowledge). In New Zealand there is a system of continuous reprints of the law with the stated aim of having the latest printing no more than 10 years old.

3. FORMS OF REVISION

3.1 Having stated the problem and regional position as I see it, I want to go on to look at different options for law revisions. This may assist law officers who will possibly be burdened with arranging their country's revision.

(a) Binding

3.2 Firstly, they can be either hard bound or loose leaf. There is something to be said for each format. The present trend is towards loose leaf for the following reasons -

(a) they can be updated easily;
(b) the laws need not be out of date for 10 or 20 years between editions;
(c) the cost of reprinting all the laws (including the many which are seldom touched) can be avoided;
(d) they can be as convenient to use and carry as hard bound.

Conversely the disadvantages can be -

(e) if not used properly some individual sets can be in a mess and of little use;
(f) some loose leaf bindings are too bulky and inconvenient;
(g) there can be uncertainty about whether the loose leaf binder contains all and the correct law.

The factors in favour of hard bound are -

(h) they can't be tampered with and are permanent;
(i) they are conceptually easier to recognize as the authorative set of the laws;
(j) they can be smaller and stack easier.

Against the hard bound -

(k) they are quickly out of date and can't be renewed;
(l) they lead to more expense in replacing the whole of them, including untouched laws;
(m) they have no versatility.

3.3 Views differ on the format. My view is based on my Fiji experience. There the books were loose leaf but had not been updated for 9 years. For those 9 years they operated exactly as if they had been hard bound. They were as convenient to use and many users probably weren't aware that they were designed to be opened up. 9 years later, if hard bound, they would have been ready to be superseded - discarded and replaced by a whole new edition at great cost. But what happened is that with the 1985 revision we used the old binders and the approximately 4000 pages (1/2 of the whole) which were not affected. We removed the old pages and replaced them with new pages showing the current law. Hundreds of thousands of dollars were saved and the printing was able to be done (just) by the Fiji Government Printer.

3.4 So, coloured by that experience, I'd advise to use loose leaf - even if they are never updated they at least have that potential.

The cost is roughly the same - loose leaf binders are marginally more expensive.

(b) Contents

3.5 Some Revised Editions contained no subsidiary legislation but the modern view (correct in my opinion) is that Regulations etc. form part of the law and must be readily available and updated.

Gazettes and supplements are often harder to locate than Acts, so the need to include them in a revised edition can be even more essential. The old system was to locate subsidiary legislation in separate volumes but this to me is less convenient than placing them with the Act to which they relate - you need then consult only one book to find all the law on the subject. Most revised editions now seem to have adopted this practice. In Fiji we numbered the pages differently so that, when flipping through the laws, you could see easily whether you were looking at the Act or the Regulations. So, for example, the Traffic Act starts at page 1 and goes to page 140. The Traffic Regulations start at page S-1 and go to page S-235. In Western Samoa's 1977 edition and Tuvalu's 1978 edition they went one better and printed the subsidiary legislation in a smaller type and this is a good refinement to aid easier use.

(c) Substance

3.6 A true consolidation involves re-writing the law to reflect changes - this means reflecting the effect of amendments in the text. Western Samoa did this but also printed the amending Act. I can't see the use of this, it is less convenient, and probably not necessary in a true consolidation. Also in Western Samoa and New Zealand the amendments are shown in the text enclosed in bold square brackets. This no doubt reflects that these works are essentially only reprints and I don't think it is necessary in a full revision. Each section or other convenient division should be marked to show how it was amended etc. and this allows the historical research of the provision. Likewise a revision is most convenient if the law is tidied up and sections renumbered so that the Act, etc., appears as an integral statement of the law. Foot notes can also be used to great advantage to draw attention to related laws and generally to make the edition more useful.

(d) Status

3.7 The status given to revised editions in the region differs. It can be conclusive - ie. typically the revised edition is said to contain the true law. No recourse to the original law need to had and this gives certainty.

3.8 If the status is authoritative only you avoid the possibility of being struck with any mistakes in the Revised

Edition - it is then possible to go back to the original law. The problem with this however is that a careful lawyer would need in every case to go behind the revised edition, try to dig up the original law and compare it with the revised edition looking for mistakes.

3.9 This seems too troublesome to be worth it and hence most revisions in the region opt for conclusive status. Even then there is authority for going behind the Revised Edition where it sets out law which is different in meaning from the original.

In a case in Fiji - (Jone Masiu v Reginam 16 F.L.R.13) it was found that a section of the Immigration Act had by mistake been left out of the revised edition. The status was conclusive (it dealt with the 1967 edition which is different from the current one) - the revised edition was to be the only proper statute book. But, as with most Laws Consolidation Acts, the Act provided that the Law Revision Commissioner had no power to alter the law and the Court found therefore that the omission of a section was ultra vires and the court went back to the original law.

3.10 A third status can be given to a revised edition - namely that of convenience only. Western Samoa seems to be in this category with its 1977 edition. For everyday use this would be acceptable but for use in courts it seems that you would still need to refer to (and maintain sets of) the original law as first published.

3.11 Determining status, then, will always be a question of balance. In this region, amongst small states with limited resources, I believe that the balance should be in favour of producing a definitive statute book as a bench mark - a fresh start so that all know the law and as a solid basis upon which to build.

3.12 Whichever system of revised edition is chosen, there will always remain the need to produce annual volumes of the law - eg. the Acts of 1988. Often one needs to know what law applied as at a certain date in the past and annual volumes are needed to trace the history of a law. This is especially so if you have a loose leaf revision under which the old provisions are removed from the book and discarded once they have been changed. But not everyone needs to have these annual volumes - as long as record copies are kept by Government law officers and, say, by the Government archives or Supreme Court Library, those needing to trace the history can do so.

4. HOW TO DO IT

4.1 I want now to consider how a law revision is carried out. Even if law officers do not directly do the law revision, they will have the duty of organising it in general terms, planning

for it, engaging staff, directing the required end product and supervising its stages.

(a) Planning

4.2 The first thing, in my experience, is to produce an index to the laws: to set out what law there has been and its effect on the existing law. The base point is the last revised edition or consolidation. You go through that inserting the details on a word processor in alphabetical form. From there you go, year by year, into all Acts, Gazette Supplements and Gazettes, inserting in place each amendment, new provision etc. When up to date, you then have a complete Index. Don't forget also to look back at the laws which were omitted from each previous Revised Edition because they are still on the statute book. I'd suggest that the Index be printed, locally, by the Government Printer. It can then be sold and distributed within Government with a request that any errors or omissions be reported. Often a department may be working on, say, Regulations which by mistake were never published and which won't be known to the indexer or included in the index. Those sort of problems can be ironed out early enough to get the law into a tidier shape to start the revision.

4.3 Decide next in what order to present the revised edition. The traditional manner is to group laws on related area together, to give them individual chapter numbers in sequence and perhaps Title groupings to contain related chapters. Another method is to make the revised edition self-indexing by placing Acts in strict alphabetical order from the start in volume 1 to the last volume. This method is attractive because it doesn't require a user to consult the index but has draw backs -

(1) related legislation may well be in different volumes so you need to have a desk full of opened books or, worse, need to take numbers of books to court etc. with you;
(2) it doesn't work if, as in Tonga, the revised edition is in 2 languages, because the alphabetical arrangement will only be logical for one language.

4.4 Decide where to place subsidiary legislation - ie. after the relevant Act or in separate volumes.

4.5 Decide finally what laws to omit - typically Appropriation Acts, laws of a temporary nature such Price Control orders, personal laws such as one-off enabling or rectification or deeming laws which have served their purpose as soon as enacted. Also, if there is, say, a new Customs Act in the pipeline, you would omit the existing law and avoid printing perhaps hundreds of pages of law that will be out of date before it ever sees the light of day. Be realistic, however, about what is likely to emerge from the pipeline within a reasonable time.

4.6 Consider also the possibility of a useful subject index to the laws. This could tie in with a "key word" computer retrieval system. Such an index would have an entry such as -
"Motor Vehicle - driving - speed limit CAP 161 s. 42
- dangerous s. 59";
and so on, so that a user, especially a non-lawyer who didn't know what Act to look under, could find the correct provision in the law. The "key word" retrieval system in the computer could be "speed limit" and the computer would take you to each place in the laws where these words are present.

4.7 Incidentally, having a revised edition on computer disk will be one advantage of any new revised edition and you should specify that these disks be made available (in duplicate) by the Printer.

By using them, Government law officers could save a lot of time and make precise amendments to the law. Say, for example, you were changing the title "Crown Solicitor" to "Solicitor General". By keying in the right words the computer would take you to every place in the laws that "Crown Solicitor" was used and you could pick up all the places to amend.

(b) Preparing Manuscript

4.8 Having made those initial decisions you make a start. There have always been few choices about how to prepare manuscript for the printer. If you are working on an existing law which has been amended, you start within the last printing and onto it graft - by cutting the amendments out and pasting them on - the amendments. You read through the revised law and, using such powers as are given by the enabling Revision and Consolidation Act, reconcile the whole and make it into a cohesive law. Renumber sections if necessary, place new provisions in a logical location, correct cross references and names of other laws or offices referred to. The point is to produce a manuscript in a form which the printer can read and understand and for this purpose you use printers symbols to explain.

These symbols are set out in various style manuals - the one I use is the style manual for authors, editors and printers published by the Australian Government Publishing service.

4.9 But new technology is catching up with the old cut and paste technique.

4.10 By far the greatest expense in producing a revised edition is the typesetting of the laws. That is, in the printer typing out onto a disk the text of the laws. If the printing was to cost, say $300000, fully $150000 of this is for the actual typesetting. This is done on special machines which show on

screen exactly what you will see on a page of the book - with different type sizes and faces bold, italics etc.

4.11 But now such machines are no longer so big and expensive and complicated as to be only in the domain of the printer. There are small machines now coming onto the market which are not much bigger or more complicated than a word processor and priced to be affordable for a small Government. This is desk top publishing and it could make big changes in the way a revised edition is prepared - and what it will cost.

4.12 Instead of sending manuscript to a printer I could have a secretary type the text as I went. (If I was clever enough I could type it myself). Once proof read and corrected the machine could then produce photo-ready bromides which a printer could then, in the usual way of photo lithography, photograph into negatives and print from - saving time and much of the present expense.

4.13 Furthermore there now exists a new machine - an Optical Character Reader (OCR) which will, like a photocopier, read existing text into its memory and then allow an operator to amend that text. So if you had 100 pages of an existing printed Act, instead to typing it all again you would put it through the OCR and then type in any amendments etc. and avoid the time and expense. This OCR is not yet ready for the job - it is only 90% accurate and doesn't accept all text - but it is developing and will soon be a valuable tool for the law reviser.

(c) Printing

4.14 A printer must be chosen. This typically takes a long time and you should allow a year to get all prices in and arrangements made. There will be very large price variations so cast your net wide amongst competent printers. For Tonga there were price differences of $300000 between the most expensive and cheapest experienced printer. One well known Printer even dropped its price some $200 000 to try to get the work. So beware and don't just go to one printer for a price. It is tempting to try to do the printing in your own country but I'd advise a realistic appraisal. The laws must be near perfect. And they must be produced in a timely, quality manner. Most Government Printers in this region will be busy enough with normal printing requirements without coping with such a massive task as several thousands of pages, usually in a different form from that they are used to. In Fiji, the Government Printer did the 1985 revision but it took much longer than was expected, it overstretched their resources and ultimately was probably only possible to finish off because the coup freed the presses from being needed for new Acts and other Government Printing. And Fiji's Printer is, as I understand it, a giant within the region, anything smaller may simply not be up to the task.

4.15 But the area where local Government printers can get involved in in updating a loose leaf revised edition. They will be much smaller and, once the data bank is established from a recent revision, the local printer could easily be geared up to print replacement pages, new indices and insertion instructions.

Proof Reading

4.16 Unfortunately you cannot just give the manuscript to the printer and await the final product. The Printer's proof readers will read a proof as part of the initial typesetting process. They then send back to you the first and later the second proofs to be checked. This is extremely important and crucial if the revised edition is to be correct. Unfortunately it is also very time consuming and boring. It will be your job to arrange for it to be done. It would take too long for law officers to do in their free time. We tried in Fiji to involve 8 junior legal officers with proof reading after work and on weekends. They were interested in the money offered but not one of them was prepared to carry on once he realised the magnitude of the work and how boring it was. We were stumped, even advertising in the Commonwealth Association of Legislative Counsel's new letter brought nothing more tangible than sympathy and understanding.

4.17 What we did in the end, and what I'd recommend for law officers in the region, is to organise teams of local lay people. Women were best. Retired school teachers the very best. They needed supervision and brought all possible mistakes to me but they worked away well and finished the job.

4.18 The Law Revision Commissioner will also proof read the work but for a quality job you need people working in teams of 2 - one reads out loud from the manuscript and the other checks the proof.

(d) Marketing

4.19 Once produced, a revised edition should recoup considerable money by being sold throughout the world. The principal users of these books are obviously limited by the size of a country, and the economies of scale in producing the revised edition work unfairly against a small country. But in Fiji we found that the most unlikely places were prepared to buy a set of the laws. Thus Fiji's laws may be found on the shelves of Universities in Russia, Germany and throughout the USA. I suspect that if offered a set of the laws of a place (even though unheard of) many libraries, flush with funds, will take up the offer. By creative marketing, then, some of the costs can be re-couped.

(e) General Hints

4.20 To finish off this advice on supervising a revised edition I offer the following -

4.21 (a) be realistic and achievable. These are major works by any standard, they take a long time to plan and execute. Don't try to do too much too quickly. You may want the whole statute book re-written before you print - that is a life time job and never finished. It is better, in my opinion, to have a set of current laws as a base to work on rather than an impossible dream of the perfect statute book.

4.22 (b) Keep the eventual new revised edition always in mind by keeping comprehensive records of any mistakes you find in the existing edition, anomalies, and desirable small changes. These can then be presented to the Law Revision Commissioner when he starts work. How often does someone find a problem, mention it, perhaps mark his volume but then never get it into the hands of the man doing the job? If a file or a card was kept on each Act etc. this would also help if that Act came to be amended in the ordinary way - they could be picked up in the amendment.

4.23 (c) A special problem is with penalties. Penalties are often expressed in terms of a fine and imprisonment, either together, as alternatives or in default of the other. The prison term doesn't get out of date - man's lifespan stays more or less the same so that 5 years' prison in 1950 is about the same weight of penalty in 1990. But inflation vastly changes the weight of fines. $10 in 1950 may have been a month's average wage but in 1990 merely a day's. And whereas when enacted a court may have been satisfied that the maximum fine was a sufficient punishment or deterrent, 20 or 30 years later the Court will have to send the offender to prison to do justice; and fill up the prisons with men who shouldn't be there and who end up costing the state a lot of money.

4.24 Fines are reviewed but not on any systematic basis so that there remain, when the law is being revised, many anacronisms, each of which requires a policy decision to review and a large amount of parliamentary time.

4.25 This problem is not new but I wish to mention one solution which is now being tried. In Victoria, Australia the whole statute book was reviewed and the penalty point system introduced. All fines were brought up to date and were expressed as so many penalty points instead of dollars. Thus a $50 fine became 5 penalty points and so on. The Interpretation Act stated that a penalty point mean $10, so 5 penalty points actually meant $50. The beauty of it is,

however, that next year the Interpretation Act can be amended to say that a penalty point means $11 and thereby all fines throughout the state have been increased by 10%. In the long term therefore fines will remain as relevant and effective as when first enacted. Plus Government's revenue from fines (and therefore the criminal justice system's ability to pay for itself) is increased.

4.26 This seems to me an interesting development which, if proven, deserves a closer look at by Pacific Island states. The Federal Government in Australia is now looking at the possibility of introducing the scheme also. The time to implement such a system is when a revised edition is being prepared. It is a relatively simple matter for the Law Revision Commissioner to pick up and change the fines as he goes through the law. They need to all be brought up to date at the same time and this involves a lot of policy decision but if done at the one time, and perhaps set out in tabular form for easy, quick comparison, it can be done within a reasonable time.

5. LAW REPORTS

5.1 Although beyond the scope of this paper, I wish also to mention a problem pressing in this region - the lack of law reports of smaller states. The meaning of statutes is often considered by a court and an important judgment given, of value well beyond the instant facts. But it is lost; the judge leaves; it lives on as rumour and legend but too often people considering the same problem do not have the benefit of it. I have been writing legislation and would be told - "I think Judge so and so, some time back, decided that section was meaningless" and no one could find the judgment or the correct judge and it was lost.

5.2 From my brief enquiries in the region about the state of law reporting, I find the present situation grim. I am not aware of any concerted plans to bring reports together and keep them going. Papua New Guinea is, I am told, up to date with its Law Reports. Fiji was in 1986 up to volume 22 of its Law Reports - for the year 1976, but still well out of date and getting further behind. I am not aware of any other small country in the region having up to date reports.

5.3 There is the Commonwealth Law Bulletin which provides an excellent service but necessarily limited and unfortunately not well fed by decisions from this region. There is also the excellent new Law Reports of the Commonwealth which in a short space of time have become invaluable in law offices in the region in reporting major cases.

5.4 The Law Library of Papua New Guinea publishes a quarterly Digest - the Pacific Law Digest, which could be of great value if utilised widely.

5.5 I wonder whether this is not an area where a regional approach is warranted. One authority to which courts could regularly send copies of reasoned judgments to be recorded, collated, indexed and included in Law reports and digests. Perhaps this is, long term, realistically beyond the resources of each small state, but quite feasible if done on a regional basis.

5.6 What is possible in smaller states, and in some ways of more use than formal Law Reports, is an index to cases. Such an index would include cases back to the start of the country's legal system. It would be arranged by subject and include a precis of the effect of the case. A reference to the case would allow the user to locate the full judgment in the records of the court. If placed on computer disk the index could be updated regularly.

5.7 The problem with this, as well as with formal law reports, is in getting your court officers and judges organised into providing the text of judgments which have a continuing relevance... And creating a system whereby all such judgments are despatched to the person who is going to index them.

6. REGIONAL APPROACHES

6.1 And that brings me to the question of a regional approach to other related areas. And here I am at a disadvantage to most of you. Although I've spent most of my life in Brisbane, on the geographical rim of this region, I've been only 4 years working in the Pacific - in Fiji and Tonga. But long enough to be aware of the perennial proposals for a regional Court of Appeal which I'm sure could bring significant benefits in terms of efficient use of judge time and cohesive development of the law. I note that this is being re-activated with renewed vigour by PILOM this year.

6.2 And there are developing proposals directly in my field for the establishment of a regional data bank for legislation. One I have is from the University of Technology in Sydney, which proposes starting a bank of all current law from states in the region, who would be a le on line at their own computers, to receive up to date ext of their laws and those of neighbouring states. Prof. Keith Patchett is I know also working on a similar scheme, to be presented I believe at the 1990 Meeting of Commonwealth Law Ministers in New Zealand.

6.3 And another area where a regional base could operate is for a legislation drafting unit to be set up to serve the needs of states who cannot presently justify the full time services of a legislative draftsman. Here instructions could be sent

down the line, via computer terminal or FAX to a draftsman to prepare a draft and send it back. Technology now operates to make it almost as convenient to have the draftsman 2000 miles away at one end of a terminal, as to have him in the next office.

6.4 It is early days yet, still, I can well imagine one centre being able to assist states in this region by -

(a) keeping their legislation constantly up dated and accessible to Government, local lawyers, other Governments and other users (who would pay to use the system);
(b) keeping records and indices of judgments of the courts, again available to those who want them;
(c) preparing at low cost and quickly, new revised editions or revisions from the bank of updated legislation.

It is relatively easy to imagine such schemes. I believe they could be made to work. If they were ever to operate it may well be up to law officers to make the plans and prepare the ground for their Ministers to adopt policy to implement them.

Apart from providing an opportunity generally to exchange news and ideas, PILOM could well be the place to begin such regional initiatives.

Commonwealth Association of
Legislative Counsel
(Auckland, New Zealand - April 1990)

Hong Kong's Bilingual Database and Computer System

The Hong Kong drafting office is the proud owner of a new computer system which includes -

(a) legislation databases in English and Chinese;

(b) integrated P.C. and mini computer based word processing;

(c) office automation (electronic mail, calenders, scheduling);

(d) desktop publishing;

(e) a network of up to 120 workstations (initially 50).

2. The databases will initially consist of principal and subsidiary legislation and Bills. As time permits, opinions, manuals and other databases may be added. In addition to the support staff, each lawyer has his own P.C. terminal which has access to all other terminals and printers via the network.

3. Because the system is controlled and operated by the Drafting Division we have been able to customize the program, using macro commands, for drafting use. For example, it is very convenient to locate internal cross references to section numbers and external cross references to enactments. Using another feature we can quickly locate fees, fines, imprisonments, taxes, etc. above, below or equal to specified amounts. Searches can also be restricted to recent enactments by specifying dates used in historical notes. Searches can be restricted to certain parts of the text such as definitions.

4. Because of our need to have a bilingual English/Chinese database only one vendor combination tendered on the project. Wang provided the hardware and non-database software. Computer Power Pty. Ltd. provided the database software. It is called "Status" and is widely used in a national English language database service in Australia.

(58)

5. We designed our own menu interface for Status using the Wang/Status macro facilities. It is very user friendly and can be learned in only 2 - 3 hours, at least well enough to get some basic use out of the program.

6. We used an "intelligent" optical scanner, the Calera CDP 3000XF to capture the text from the printed laws. It was then edited, updated, encoded, proofread and loaded onto the database. The scanner has worked very well.

7. We have 2 database administrators on staff (not technically trained) plus the help of government computer technicians. We have hired 5 temporary staff to do database preparation. Preparation of the English databases will have taken about 2 years by the time they are complete. At this time we have nearly completed the database of principal legislation.

8. The total hardware and software cost is about US$750,000. If anyone would like more information about our project, including editorial decisions in regard to the application of the program to our legislation, please contact us in Hong Kong -

Attorney General's Chambers,
Queensway Government Offices,
66 Queensway, High Block,
Hong Kong.

Telephone : 867 2405

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(Allan R. Roger)
Senior Assistant Law Draftsman

Date : 28 March 1990

Article from Commonwealth
Law Bulletin (1985) 11 CLB 590

Avoidance of "sexist" language in legislation

The Australian Attorney-General recently announced a decision of the Australian Government that the use of so-called "sexist" language in legislation was undesirable and that certain changes in drafting practices proposed by Parliamentary Counsel should be adopted for the purpose of eliminating language of this kind from the federal statutes. The Government had considered various options that had, at their request, been put forward by Parliamentary Counsel.

In order to understand the basis of some of these options, it is necessary to understand the reason (whether or not one finds the reason compelling) for current calls for the adoption of non-sexist language in legislation. It is not nowadays asserted that the use in legislation of masculine nouns and pronouns has the effect, or could have the effect, of depriving women of rights conferred by such legislation. Interpretation legislation providing that words importing the masculine gender are to be taken to import the feminine gender ensures that drafting that uses nouns and pronouns of the masculine gender only will apply equally to men and women. What is suggested, however, is that the drafting of legislation in "masculine" language, which is simply one example of a much more widespread use of such language, contributes to some extent to the perpetuation of a society in which men, and perhaps more significantly, women, see women as lesser beings. The argument is that the general use of masculine nouns and pronouns "implies that personality is really a male attribute, and that women are a human sub-species". Needless to say, this argument, while strongly propounded by some feminists, is not universally accepted. However, the Australian Government were committed to the view that the use of sexist languange in legislation was undesirable and therefore addressed the question of what changes should be made.

There were three matters for consideration—

1. the use in legislation of masculine personal pronouns;
2. the use in legislation of allegedly sex-specific words incorporating "man"; and
3. the extent of the application of any changes to be made to current drafting practice.

Masculine personal pronouns

There were two possibilities, either to endeavour to eliminate masculine personal pronouns from legislation or to retain the use of those pronouns while taking other steps to remove from legislation its alleged tendency to perpetuate sexist attitudes—

1. Four possible methods of eliminating masculine personal pronouns from legislation were considered—
   (1) *Draft entirely in the plural* This option was considered not t[illegible] be f[illegible]ible since, notwithstanding the general rule of interpretation tha[illegible] [illegible]lar includes the plural and vice versa, it is often necessary to [illegible]raft the singular to avoid ambiguity: e.g. "A person who has given two or more

notices . . ." is unambiguous. "Persons who have given two or more notices. . ." is not.

(2) *Use plural personal pronouns (they, their, them, themselves) with singular nouns* This option was not acceptable because it is ungrammatical. Moreover, it has a substantial potential for creating ambiguities in legislation, particularly in provisions containing both singular and plural nouns.

(3) *Use the pronouns "one", "ones", "oneself"* This option has been seriously put forward in some quarters but it is grammatically incorrect and unidiomatic and was regarded as absurd. For example, "Where a person has satisfied oneself that . . ." is simply not English.

(4) *Avoid the use of pronouns entirely by repeating the relevant nouns* This option was accepted although it was recognised that repetition of a noun (especially a long one) could on occasions render a provision inelegant by comparison with an equivalent provision in which pronouns are used. For example, compare the following: "A member of a Tribunal may resign his office by writing signed by him and delivered to the Minister." "A member of a Tribunal may resign from the office of member by writing signed by the member and delivered to the Minister." On the other hand, repetition of a noun instead of the use of a pronoun sometimes avoids an ambiguity in a provision where there are two or more nouns to which the pronoun could refer.

Drafting by avoiding the use of pronouns can make provisions more difficult to read but this difficulty will be lessened as the option was adopted by the Government in conjunction with option 2(1) below. A variation on this option would have been to repeat the relevant nouns except where substantial inelegancies would result. This option would have reduced , but not eliminated entirely, the use of pronouns and for that reason was not accepted.

5. *Invent new pronouns* A Royal Commission on "Human Relationships" that reported to the Australian Government several years ago suggested "id". The word "s/h/it" has been suggested in some quarters. Some other absurd proposals that have been seriously put forward are set out in the attached table. This was not considered to be a serious option.

2. Consideration was given to two possible methods of retaining the use of masculine personal pronouns while removing from legislation its alleged tendency to perpetuate sexist attitudes. These were as follows—

(1) *Continue to use masculine personal pronouns in relation to natural persons but accompany them with feminine pronouns when they refer to both sexes ("he or she" etc.)* It was noted that this option would of necessity lengthen Australian federal legislation, although not substantially. If the approximately 50,000 occurrences of masculine pronouns in the federal Acts to the end of 1982 were amended, this would add about 150 pages to the total amount of Commonwealth legislation. It was decided that this option could usefully be adopted in conjunction with option 1(4) above.

(2) *Use masculine personal pronouns in some legislation and feminine personal pronouns in other legislation* This was not regarded as a serious option.

"Masculine" nouns

Words ending in "man", such as "chairman", "serviceman", "seaman", etc., are alleged by some to be sex-specific, and properly to describe only men. It was decided to avoid such words either by using words created by replacing "man"

with "person", e.g. "chairperson" (which unfortunately appears in the latest edition of the *Concise Oxford Dictionary*) where the word concerned was not too inelegant or plainly absurd, or preferably by finding other words that already have a recognised place in the English language, e.g.

President
Commissioner
Administrator
Secretary — for Chairman
Convenor
Presiding Member
Principal Member
Senior Member
member of the Armed forces for serviceman
mariner for seaman

At the suggestion of the New South Wales Parliamentary Counsel, Australian federal Parliamentary Counsel have adopted the expedient, whenever forced to use "chairperson", of including a provision in the law concerned stating that the chairperson may be referred to as the chairman or the chairwoman, as the case requires.

Application of new principles

The Government decided to apply the new drafting principles in all new principal legislation and in new provisions for inclusion in existing legislation. They also decided that, where existing legislation is being amended for other purposes, it should be amended to bring it into line with the new drafting principles if resources permitted.

Subsequently guidelines have been approved by the Legislation Committee of the Australian Federal Cabinet aimed at eliminating sexist language from Federal legislation.

The guidelines have three main elements—

(1) The avoidance of personal pronouns ("he", "she") by repetition of the relevant nouns.

For example, instead of—

"A member of a Tribunal may resign his office by writing signed by him . . ."

the clause will now read—

"A member of a Tribunal may resign from the office of member by writing signed by the member . . ."

Although this can render provisions inelegant, it also makes them unambiguous. This method of drafting has already been used in the Sex Discrimination Act 1984 and the Australian National University Act 1946.

(2) Use of the formula "he or she" where personal pronouns must be used.

It is estimated that there are about 50,000 occurrences of the words "he", "him" and "his" in Australian Federal Acts, and, while the effort involved in immediate amendment of all instances obviously could not be justified, these can be varied as opportunity permits in accordance with the implementation process described below.

(3) Where possible and appropriate, avoidance of the use of words ending in "man", such as "chairman", "serviceman" "seaman" and so on.

It is usually possible to find other words: e.g., instead of "chairman",

use "president", "convenor", or such like; or instead of "seaman" use "mariner".

The new approach is to be operative immediately in the drafting of new principal Acts, new provisions for existing Acts and, when drafting resources permit, where existing Acts are being amended for other purposes.

In announcing the decision of the Federal Cabinet, the Australian Federal Attorney-General stated: "The changes are not merely cosmetic. Although there is no doubt these days that legislation using masculine nouns and pronouns applies equally to men and women, there is a strong argument on egalitarian grounds for the changes. The Government accepts that drafting in 'masculine' language may contribute to some extent to the perpetuation of a society in which men and women see women as lesser beings. The implementation of the guidelines will not involve straining drafting language in any unacceptable or artificial way; it will simply involve some differences in sentence construction and terminology which will look a little unusual at first, but should not take lawyers or anyone else very long to adjust to."

Topics that may be discussed at the panel discussions on 16 April or 19 April

(1) Avoidance of "sexist" language in legislation

See pages 87 to 90 of the book of papers.

(2) Bi-lingual drafting

See pages 85 and 86 of the book of papers.

(3) New Zealand Crimes Bill

Some copies of this Bill are available for distribution.

(4) Plain English

(5) Training of Legislative Counsel

A paper should be available for distribution at the meeting.

Notes: (1) The panel discussions are not limited to the matters listed above.

(2) There will be an opportunity to raise matters from the floor.

(3) If members have other papers that they wish to have photocopied and circulated, please see Walter Iles as soon as possible.

(4) Address any queries or suggestions to Walter Iles. He is staying at the Sheraton Hotel.

REVISED STATUTES OF CANADA, 1985

The Revised Statutes of Canada, 1985 came into force on December 12, 1988. This was the sixth revision of Canada's statutes since Confederation in 1867; previous revisions occurred in 1886, 1906, 1927, 1952 and 1970.

While the coming into force of the 1985 revision was undoubtedly a welcome event in the legal community, it was not without problems and it also raised some questions and even some concerns. The main purpose of this paper however is to provide information about how the revision was carried out.

Statute Revision Commission

As was the case with past revisions, the 1985 exercise started off with the passage of the Statute Revision Act at the end of 1974. I will refer to this Act from time to time as "the authorizing Act". The Act not only provided for the new revision but it also authorized the consolidation of all federal regulations which was completed in 1978. The Act further provided for a permanent revision commission consisting of three employees of the Department of Justice. Previous revision Acts had not given permanent status

to revision commissions. The Commission was also given authority under the Act to operate a loose-leaf updating system for the statutes (about which I will speak later), authority to do continuing revisions of selected statutes and to do revision type work (as opposed to mere consolidations) in connection with regulations, something which had never previously been done. Because of the length of time taken to complete the revision work, the membership of the Commission has changed over the years. The current membership, which has been the same since 1987, is the Chairperson, who is an Associate Deputy Minister and the former Assistant Chief Legislative Counsel, the Chief Legislative Counsel (myself), and a senior francophone legislative counsel who is a member of our Legislation Section. The Secretary of the Commission, a senior lawyer, directs the day-to-day work of the full-time staff. The staff of the Commission since its inception has consisted of a number of francophone and anglophone lawyers, a number of English and French speaking editors and, until last year, a francophone jurilinguist who assisted in the immense amount of work done on the French versions of the statutes (about which I will say more later). The number of Commission staff over the years has varied considerably but the average number each year has been relatively the same at thirteen to fifteen.

The Revision Process

Pursuant to the authorizing Act, decisions were made at the outset to exclude certain Acts from the revision. Typical of the Acts that were not included are:

1. Repealing Acts;
2. Acts that have expired or served their purpose, such as strike-ending legislation;
3. Acts of a local, regional or private nature, such as those on electoral boundaries;
4. Acts of a financial nature that recur periodically, such as appropriations;
5. Acts concerning a limited number of persons, such as those that implement taxation agreements;
6. Acts of such rare or limited application that their inclusion did not seem warranted (for example, the Canada Prize Act).

Except for the spent Acts most of these statutes remain in force, despite their exclusion from the revision. They are known as Acts not consolidated \ not repealed (NC\NR).

The first step in the process was the updating of each included Act. Because the data for the 1970 revision had been stored on computer, all of the updating for the current revision was also

done on computer. Where additions to or deletions from an Act were made since the 1970 *revision or since the statute was enacted, the* sections of the Act were also renumbered. The text of each Act was then revised, incorrect or inaccurate terminology corrected, excessively long sections were subdivided, archaic language and latin expressions (for the most part) eliminated, ambiguous passages rewritten, and transitional or expired provisions deleted. The powers of the Commission in this area also are set out in the authorizing Act. The resulting revision allows users of federal statutes, (except for purposes of historical research or when locating the NC/NR material), to rely on the most recent revision.

Simply stated, each Act being revised was first put together by editors, then reviewed by the Commission lawyers, then all of the changes were reviewed by the three Commissioners and finally the Act was sent to the responsible department or agency asking for comments or concerns about the changes being proposed. All of this sounds straightforward but it took many years to accomplish. Perhaps the most major component of the work done in the revision was the transformation of the French versions of the statutes (which had previously been literal and often very poor translations) into versions which were well-written in the French language. This work took a considerable amount of time and careful effort and even so, the French versions of some of the revised Acts were not dealt with in this way because of time constraints and other considerations. For instance, if it became clear during the

revision process that an Act being included in the revision was in the near future going to be substantially changed in Parliament, the re-write of the French version of that Act was not carried out.

Toward the end of the revision process, the Government adopted a non-sexist language policy concerning legislation. As a result, although major efforts to avoid the use of sexist language had not been made at the outset of the revision work, such efforts were made in the last part of the work. The outcome, as you can imagine, is that some of the revised statutes are relatively free of gender-specific language while many are not.

Another difference between the revision and those that had been done previously, was a new procedure required by the authorizing Act whereby the draft revised statutes were to be approved by a Senate committee and a House of Commons committee. In addition, the revised statutes had to be adopted by Parliament. (Previous revisions were brought into force by order of the Governor in Council without prior examination and approval by Parliament). The revised statutes were adopted pursuant to an Act drafted in accordance with the schedule to the authorizing Act. Pursuant to the authorizing Act, the draft revised statutes were tabled in both Houses on December 17, 1986, and the adopting Act was given Royal Assent on December 17, 1987. The Supplements, about which I will speak next, were not required to be examined in committees of Parliament.

There are 5 Supplements to the revised statutes. Essentially the Supplements contain all the laws that were passed by Parliament after the cut-off date for the revision work. The cut-off date was December 31, 1984 so there is a Supplement for each of the years 1985, 1986, 1987 and 1988 and one additional Supplement containing the Income Tax Act which is yet to be issued. Each Supplement is in essence a re-issue of the law that was passed in a year after December 31, 1984, altered so as to fit the new numbering and terminology etc. of the revised statutes. Because there had been such extensive work done to re-write the French versions of the statutes, the Supplements took a good deal longer to prepare than would otherwise have been the case. The four Supplements already issued were brought into force by orders of the Governor in Council. On the coming into force of the revised statutes and each supplement, the predecessor statute was repealed.

I have already spoken of a number of "firsts" for this latest revision and another of them I should mention was the absence for the first time in recent revisions of a clause in the authorizing Act that purported to give the revised Acts legal priority if there were ever found to be differences in legal meaning between a revised Act and its predecessor. There were really two reasons for eliminating this clause. Firstly, it was felt that because the Revision Commission had no authority to alter the law in the revising exercise, the clause was a non sequitur and conflicted

with the intention of the revision exercise. Secondly, the Supreme Court of Canada, in a decision that concerned legal differences that were found between an earlier revised statute and its predecessor, had disregarded such a clause and held that the legal differences were resolved in favor of the predecessor statute even though it had been repealed. The provision was therefore considered to be useless. In any event, the Act bringing the revised statutes into force provides that the revision shall be construed as a consolidation and does not operate as new law.

While the revision work progressed, indexing was being carried out by private contractors who did comprehensive indexing of both the English and French versions. This was the first time that such detailed indexing had been done and it was also the first time that indexing was done on an integrated basis as opposed to simply a statute by statute basis. A table of concordance was also prepared and work is currently being finalized on a table of the history and disposal of Acts. The table of concordance shows the relation between provisions of the revised statutes and those of the predecessor statutes.

Some Problems

I would be less than candid if I left this topic without telling you about some of the difficulties and untoward events which occurred along the way that, if we had to do it over again, possibly could have been avoided.

First of all, if we look back at the enormous amount of work that was done, particularly with respect to the re-write of the French versions of the statutes, we realize that it could have been done much more efficiently if we had had a larger staff at the outset. It is always difficult to judge these things before they start and needless to say it always seems possible to do better with more resources. In any event, the whole revision process probably could have been completed a year or so earlier if we had had more lawyers and staff to help than the number that actually did the work. Another factor that from time to time had a slowing down effect on the work was the delays in getting material reviewed either by the responsible departments or by the members of the Revision Commission who had to carry out their reviews in addition to their regular duties in the Department.

As I mentioned earlier, the authorizing Act also provided for the establishment and operation of a loose-leaf system for the revised statutes. The loose-leaf version however is not recognized as

evidence under the Canada Evidence Act. The Commission planned for this early on and when the revised statutes were issued in 1988, purchasers were given the option of choosing either the hard-bound set of statutes or the binders together with the unbound pages for the looseleaf system. (To date no updates for the loose-leaf system have been issued and because of the unknowns in this new area, it is proving somewhat more difficult than expected to get the system underway. It is anticipated however that the first update will be available early next year.) When the looseleaf binders were ready for distribution together with individually packaged pages for each of the eight binders, it was discovered that the holes in the pages had been misaligned and moreover the holes were too small to be used in the binders. Most of the material had to be returned to the printer for correction of this problem and the situation, although somewhat humorous now, caused us some delays and considerable embarrassment. We also had other problems with the printer and at one point had to return a number of volumes for reprinting because of poor print quality. On another occasion two hundred copies of two volumes were lost in shipping and there were delays in getting them replaced.

Conclusion

There were additional minor problems that occurred along the way but the reaction by the legal community to the work that has finally been accomplished has generally been very positive. Some

minor errors have been detected but steps have been taken to correct them through our Miscellaneous Statute Law Amendment program. The cost of the revision was significant, particularly due to the extra time that it took to accomplish. All in all, however, if one looks back on the immense amount of work that was undertaken and completed in the revision exercise, we realize that the result has been extremely successful. Reviewing and rewriting the 8000 or so pages of the 1970 Revised Statutes, on which the current revision was based, and examining and integrating the 14,000 pages of public laws that were passed since the 1970 Revision occurred is an immense and tedious task and the people that did this work were very dedicated and did an extremely fine job. The law found in the resulting product is for the most part much clearer and more readily accessible to the public and to the legal community and in our view the end more than justifies the work and cost that went into the effort.

April, 1990 Thank you for your attention.

GE/101

(104)

DEVELOPING THE TRAINING FUNCTION IN A PARLIAMENTARY COUNSEL OFFICE

DUNCAN BERRY

DEVELOPING THE TRAINING FUNCTION IN A PARLIAMENTARY COUNSEL OFFICE

A. Introduction

Since most Parliamentary Counsel Offices ("PCOs") recruit their legislative draftsmen from recently qualified law graduates and lawyers who are already working in private practice or for some government agency, newly recruited legal personnel will invariably have little of the knowledge and few of the skills necessary to perform their new tasks competently, except of course in the rare case when they may worked in a PCO in another jurisdiction. It is evident from talking to a number of newly recruited legal personnel that law faculties in the universities and other tertiary institutions provide little or no training in legislative drafting skills. Furthermore, legislation and statutory interpretation appear to be accorded a fairly low priority in law schools' curricula. Such training in legal drafting as law students do in fact receive seems to be extremely rudimentary and is directed mainly at drafting legal documents of a private nature, such as wills and contracts. It seems to me therefore that there is a clear need for such legal personnel to receive training in the skills, knowledge and attitudes that are required to become effective and efficient legislative draftsmen.

Traditionally, legislative draftsmen have been trained "on the job" on a master and apprentice basis. Newcomers are usually given fairly simple drafting tasks to perform and these are carried out with the guidance and supervision of an experienced legislative draftsman. As junior draftsmen gain experience and competence , the complexity of the tasks they are expected to perform is increased until after about five or six years they may finally be regarded as being fully trained. The eminent Australian legislative draftsman, John Ewens (1983), believed that this was the most satisfactory way of training legislative draftsmen. On the other hand, the respected and experienced Professor Reed Dickerson took a different view. He maintained that he was a "steadfast believer in the need to teach legislative drafting to large classes of students within a law school curriculum" (1982). However, Ewens (1982) thinks it is a mistake to try to teach legislative drafting to students who are not yet qualified and he could well be right about this.

The apprentice method is an extrmely laborious process which involves much trial and error. Moreover, there is a danger that a junior draftsman may be saddled with a "master" who may be unable to communicate adequately, may pass on bad habits or create the impression that his or her way is the only way to draft. While there is little doubt that this kind of "on the job" training will continue to have a useful role to play in training lawyers to become competent legislative draftsmen, I am firmly of the view that there

are more effective and efficient ways of carrying out the required training. In this paper I therefore propose to consider an alternative approach to dealing with the problem of training legislative draftsmen to an appropriate standard.

B. The need for PCOs to reconsider their training policies -

I would strongly urge all PCOs to reconsider their current training policies. As far as I am aware, of the nine PCOs in Australia, only the News South Wales PCO has a policy of providing in house "off the job" training for its new legal staff. All PCOs should contemplate the introduction of a program of formal training for their new legal staff.

The development of such a program needs to be carefully planned and it is essential that instruction should be given by someone who is not only an experienced draftsman but also has competent communication skills. The outcome of the training should be an observable gain in the skills, knowledge and attitudes that might reasonably be expected of a competent legislative draftsman. Although new recruits may learn spontaneously from colleagues and supervisors, the office management should not accept this fortuitous process as a satisfactory sole method of raising the competence of its new legal staff to an appropriate operational level. It is reasonable to expect an office training program to secure substantial organisational benefits, but if it is to do so it is essential that the training should make a measurable contribution towards achieving the office goals. Once such a program is established and opoerational, the effectiveness of the program needs to be evaluated to ensure that it is making that contribution.

So how should we go about designing an appropriate training program for legislative draftsmen? Several experts in the training field have produced models for designing training programs and it is both useful and instructive to consider at least some of them. Appendix 1 deals with three models designed by experts in the field. Table 1 of the Appendix contains an outline of the model developed by Camp, Blanchard and Husczo (1986). In Table 2 of the Appendix, Nadler (1982) suggests a composite model for the design of training programs. The Nadler model provides a general framework for program design and emphasises of continuing evaluation of all of the critical elements in the design process. The Nadler model lacks specific guidelines and this limits the ease with which the basic principles can be applied. On the other hand, the Gagne' and Briggs model, which is outlined in Table 3 of the Appendix, has 14 stages which cover the full range of activities normally considered when designing training programs.

C. Pre-requisites to designing a training program

Before considering the question of training junior legislative draftsmen in any depth, it is pertinent to specify the organisational goals of Parliamentary Counsel Offices ("PCOs") since these have an important bearing on training objectives (which will be discussed later). As with most organisations, the principal goals of PCOs are to perform their functions as effectively and efficiently as possible. But such a statement does not adequately come to grips with what legislative draftsmen should be seeking to achieve in assuming responsibility for the production of legislative instruments and further analysis is required. The concerns of PCOs and legislative draftsmen are both quantitative and qualitative. Quantitatively, PCOs and legislative draftsmen are responsible for ensuring that the government's legislative program is fulfilled within the prescribed time constraints. This means that not only do draftsmen need to have the appropriate skills but also that they need to be able to exercise those skills in a timely manner. PCOs and legislative draftsmen also have a number of important concerns of a qualitative nature and the main ones are set out below. In preparing Parliamentary Bills, draftsmen are trying to achieve several goals, not all of which are compatible with each other. These goals, not necessarily in the order of importance are -

- (a) achieving legal effectiveness (that is, giving the effectiveness to the Government's policies as sanctioned by Parliament);
- (b) attaining legal certainty and precision;
- (c) ensuring that the legislation is compatible with the relevant existing law;
- (d) ensuring that the legislation can be comprehended by its various user constituencies;
- (e) ensuring that the legislation will comply with parliamentary procedural requirements;
- (f) ensuring that the legislation is expressed in a form that is acceptable to those concerned in the legislative process;
- (g) ensuring that the legislation is expressed in a form that will enable it to be debated by the legislature; and
- (h) ensuring that the legislation is as brief as possible.

Except for the goals specified in paragraphs (e) and (g), all of the goals are equallly relevant to the preparation of subordinate legislation. However, legislative draftsmen who are dealing with with subordinate legslation do have the additional responsibility of ensuring that the subordinate legislation may be legally made in terms of the parent legislation.

The goals outlined above may be classified into preparational ones (that is, those which have to be achieved in order that legislation may be enacted as law or otherwise legitimised) and operational ones. Operational goals are those which affect the operation of legislation after it has been processed by the legislature or, in the case of subordinate legislation, by the appropriate enacting authority. The only real connection between the two classes

is that everyone concerned in the legislative processing stages must have regard to the feasibility and ramifications of the legislation when it becomes law.

(2) Assessing training needs

Traditionally the first step has been to carry out an assessment of training needs. This involves identifying those needs and determining priorities. The identification and assessment of needs itself involves a number of steps. As far as PCOs are concerned, their training needs are several but perhaps the primary requirement is to develop the skills, knowledge and attitudes of newly recruited legislative draftsmen. As already mentioned in the introduction, law students in tertiary institutions receive little or no training in the specialist skills and knowledge expected of a competent legislative draftsman.

So what are the skills expected of a competent legislative draftsman? One skill is the ability to understand policy problems and to be able to analyse legislative proposals critically and to determine the likely ramifications involved in implementing those proposals. Another skill is the ability to design a legislative scheme which will effectively achieve the goals of the policy makers. A further skill is the ability to compose legislation which will enable the the legislative scheme to be implemented and to place it in the appropriate legal environment. This in turn implies that the draftsman has good writing skills and an excellent knowledge of grammar and syntax and a wide vocabulary, not to mention a good working knowledge of the local law. Finally, he or she must have the ability to scrutinise the product so as to ensure that it is comprehensible and coherent and bot internally consistent and consistent with the external legal environment.

Trainee legislative draftsmen are almost totally deficient in these areas so the need for training is self evident. A PCO cannot achieve its organisational goals without competent legislative draftsmen so clearly the first step is to eliminate this deficiency by effective training. As trainee draftsmen become more competent and confident in the use of their newly acquired skills and knowledge, not only will they become effective operators but they will become more efficient ones too.

(3) Training objectives

In conjunction with analysing the needs of trainees, it is usual to develop a set of training objectives. There are several reasons why training objectives need to be determined. Firstly, the determination of training objectivesmay assist in assessing the relative benefits of various training proposals and deciding priorities. It is useful and realistic to be able to see the relative values of future training before proceeding further. The second reason is the value of objectives when considering what

establishing a framework for more detailed planning and co-ordination of training activities. Thirdly there is a danger that the training supervisor may become preoccupied with the technical detail of his or her work and its planning and execution, even to the point of overlooking the training objectives and goals that lie beyond the training objectives. The determination of training objectives provides the trainin g supervisor with material with which he or she can use to monitor the overall progress and direction of a training program. The training supervisor must ensure that the training program is such as to enable trainee draftsmen to attain the requisite standards of competency. Finally, and perhaps most importantly, training objectives provide the basis for evluating the benefits of a particular training activity. Any attempt at evaluation that is made without reference to the training objectives (which in turn should be consistent with the attainment of organisational goals) is likely to be ill conceived and to addrees the real training needs of the organisation.

In general, training objectives are used to identify the performances expected of traininees during and after undergoing a training program. Training objectives may be divided into two categories, intermediate objectives and terminal objectives (Pace, 1983). Intermediate objectives are those that indicate the specific performances that are expected of trainees when they successfully complete a particular training session. Terminal objectives refer to the performance that is expected of trainees when they have completed the entire program or a specified part of it. Pace suggests that the design of any training program needs to begin with a statement of terminal objectives. Each terminal objective can be classified according to the deficiency that it is designed to alleviate. In most cases three factors account for training deficiencies. These are:

- (a) lack of psychomotor skills;
- (b) lack of relevant information; and
- (c) lack of appropriate attitudes, including beliefs, feelings, values and preferences.

For a newly recruited legislative draftsman to perform at a minimally acceptable level, he or she -

- (a) be able to understand the relevant information (i.e. have accurate and acceptable personal interpretations of that information);
- (b) have afavourable set of beiefs, feelings, values and preferences; and
- (c) have the ability to do the job (i.e. possess the skills necessary to execute the requisite behaviours).

Deficiencies in any of these areas may lead to inadequate work performance. A training program for newly recruited legislative draftsmen should be directed at each of these areas. Training deficiencies cannot be alleviated simply by changing the system or by managing staff more carefully. As a result, objectives to be accomplished during a training program are usually expressed in specific behaviour terms. Intermediate objectives should be directly related to one of the terminal objectives and refer to trainee behaviours.

The statement of intermediate objectives should tell bothe the trainer and the trainee exactly what the trainee should be able to do at the end of a particular training session or a particular sequence of a training session.

A statement of training objectives should -

(a) make direct reference to some observable behaviour;

(b) omit any reference to instructions, directions and training activities;

(c) include reliable and easily understood qualitative and quantitative ways of measuring performance;

(d) refer to the important conditions under which the performance is to occur; and

(e) specify the resources that will be available to the trainee.

As far as trainee legislative draftsmen are concerned, training objectives will include acquiring an adequate knowledge of drafting techniques and the ability to put those techniques into practice. Once the training objectives have been formulated, it will then be possible to proceed with designing an appropriate training program and devising appropriate learning strategies.

(4) Identification of resources, etc.

When training needs and priorities have been ascertained, general outcomes have been formulated and specific outcomes have been identified, the next step is to identify what resources will be available for carrying out an effective training program. Although it is essential that the person chosen to supervise the program should hasve a full understanding of the work of a legislative draftsman, it is equally important that the person should have expertise in training and working with adult learners.

There is now a considerable amount of literature on legislative drafting and legisalative drafting techniques and, together with the expertise of the training supervisor, this should provide the foundation for developing an effective training program for legislative draftsmen. (See Appendix 2.) But there is no ready-made, off-the-shelf solution to the problem of training legislative draftsmen and there is a clear need to design a training program that will achieve the training objectives and meet the training needs that are identified as a result of the needs analysis.

An adequate training program must utilise all available learning resources, apply tested principles of learning and make use of the most potent learning strategies available. There will of course be some costs involved in establshing such a program and these should be identified at the outset to ensure that the program is as cost-effective as possible. (Elaborate first sentence in this paragraph.)

C. Designing a training program

Perhaps the key issue in designing a training program is to remember that to be effective it must be planned in a systematic way. Having formulated a set of training objectives, difficulties may be encountered when attempts are made to translate objectives into behaviours, but this is necessary nevertheless. This is because the aim of training in legislative drafting is not simply to provide trainees with information about the subject-matter: it is also to provide the skills and techniques necessary to achieve an adequate level of competence.

The determination of program content may precede or follow the formulation of training objectives. However, more often than not content will eveolve out of the needs analysis. The content of the training program should be decided by the designated training supervisor in conjunction with senior office management. This is particularly important because a training program that is not fully supported by senior office management is almost certainly doomed to failure.

The training supervisor and senior office management should carefully analyse their strategy for providing the learning experiences that will help trainees to achieve the designated training objectives. (elaborate with examples?) In designing a training program several design principles should be taken into account. These include -

(a) the existing level of knowledge and skills of the trainees;
(b) the training supervisor's theories about how people learn;
(c) attitudes towards and previous experiences with respect to how people learn;
(d) the environment in which the training supervisor operates; and
(e) the environment in which senor counsel operate vis a vis junior counsel.

The next stage is the need to consider and decide the specific things that need to be learned in order to produce the required development. Internal conflict may arise if the training supervisor's theories about how people learn and his or her experience as to what is successful differ from what he or she is allowed to do. Howver, this is a challenge which the training supervisor should confront and obviously depends on the environmental needs of the PCO concerned and what training techniques are the most appropriate to achieve the designated learni g jectives.

Having carried out a needs analysis, formulaced training objectives, conducted an analysis of resources and constraints, determined the scope and sequence of the curriculum and decided on an appropriate delivery system, it is necessary to determine the course structure and sequence. The outcome could be an outline of topics much like that set out in Appendix 2. Program content should be determined by what the trainees must know in order to accomplish the

prescribed training objectives and to perform their work to the required standard.

Once a fairly detailed outline of the content has been written, the next step is to select a general strategy or approach that is most compatible and relevant to the development of the skills that have been identified. Among the strategies that may be useful in training legislative counsel are simulations, such as role playing and structured legislative drafting exercises, group discussions revolving around pre-distributed training materials, case histories and lecturettes. Role playing, for instance, might be a very useful strategy for training trainee draftsmen in conducting drafting conferences with instructing officers. It might be possible too to design appropriate computer-based training sequences, but bearing in mind that legislative drafting is a highly cognitive activity, the relatively small number of persons that would undergo training at any one time and the high cost of producing the necessary software, the cost effectiveness of this strategy is perhaps questionable.

D. Designing individual training sessions

Having looked at the broad picture, it is necessary to consider the specifics for designing individual training sessions. Training sessions fall into general categories, but they all have some characteristics in common. These characteristics include the following:

(a) A training sequence should, regardless of length, cover only one topic which should be capable of standing alone even though it will usually be part of a composite whole. A training session should not be too long, otherwise it loses touch with its ojectives and the theme of the program. A period of 60 to 75 minutes is the suggested norm.

(b) A training session should be tied to a particular standard of performance. This means that something definite should emanate from the learning experience. However, it does not meqan that results always need to be measurable and observable, but rather that something worth while should be achieved.

(c) A training session should be adapted to the particular needs of the trainees. The objectives of a particular training session, and the learning activities necessary to achieve those objectives, should be within the capabilities of the trainees who should be able to identify with those objectives.

When designing a training session, there are four steps that should be followed (Gagne' and Briggs, 1979). These are as follows:

(2) Define the roles of the training supervisor and the trainees.
(3) Select and use appropriate media for the session.
(4) Specify the desired instructional events.

These steps will now be considered seriatim.

Step 1 - Specify the objective of the training session
It should be noted that the collective objectives established for each of the training sessions which constitute a trtaining program combine to create a series of objectives for the program as a whole. It may also be necessary to establish a sequence of objectives for a session. It is often necessary to design training sessions so that simple objectives come first and more complex ones are dealt with later. This means that the program designer should be able to prescribed objectives that test different kinds of final behaviour. According to Bloom (1956), objectives for training sessions can be classified into three domains, namely cognitive, affective (attitudinal) and psychomotor.

Undoubtedly the most relevant of these three domains so far as the training of legislative draftsmen are concerned is the cognitive one, although the affective domain is of course important too. As far as the cognitive domain is concerned, Bloom identified six different levels. These are as follows:
(a) the first and lowest level - the ability of the trainee to recall and recognise knowledge;
(b) second level - the trainee's ability to comprehend the knowledge;
(c) third level - the trainee's ability to apply the knowledge that has been comprehended;
(d) fourth level - the ability of the trainee to analyse the situation involving the acquired knowledge;
(e) fifth level - the ability of the trainee to apply the knowledge and analysis in new situations;
((f) the sixth and highest level - the ability of the trainee to evaluate so that he or she can judge the value of the acquired knowledge.

Step 2 - Roles of the training supervisor and trainers
The next step requires then training supervisor before embarking on a training session, to plan the session in such a way the he or she knows what both the supervisor and the trainees will be doing during any particular part of the session. In planning a training session, the training supervisor should prepare a written list of the various activities that will be undertaken during the session.

Step 3 - Selecting an using media

Although there are now quite a number of texts on legislation and legislative drafting, there is a dearth of material which is specifically directed at training legislative draftsmen. Possibly the only useful text in this area is "A Manual of Instructions for Legislative and Legal Writing" (Driedger, 1982), but this is specifically designed for Canadian conditions. Nevertheless, there is no doubt that this material could with some ingenuity be aadapted for local use. A list of materials that could be used in legislative drafting training programs is set out in Appendix 2.

Although there may be some scope for the use of some of the modern training aids in this area, such as computer based training, the utility of other gadgetry may, because of the highly complex cognitive nature of legislative drafting, be of rather limited value. Apart from the fact that, as far as I am aware, there are no videotapes or films relevant to the training of legislative draftsmen, there seems to be little scope for such material, excepr possibly in the area of training trainees how to conduct conferences with instructing officers.

Whatever media are selected, the overriding principle should be to make the training experience as nearly as possible like the real thing. No doubt the choice of media will depend on a variety of factors, but the close the training is to reality the better.

Step 4 - Listing the desired instructional events

For each training session there are three significant phases which should be noted. Firstly, the training supervisor should, at the beginning of each session, outline the knowledge and skills that are to be dealt with during the session and tell the trainees what outcome is expected. The training supervisor should then endeavour to set the climate for the session and connect the proposed learning with any relevant past experience of the trainees.

Secondly, the training instructor needs to remind the trainees of their existing knowledge so far as it is relevant to the new material and to present the trainees with the new knowledge, skills and attitudes that they are expected to master. In doing this, the instructor should provide the trainees with encouragement and guidance. It is also important to ensure that the trainees practise what they have learned and, perhaps most important of all, to provide them with feedback on their progress. Training material needs to be presented gradually and should include questions to ensure that the trainees have undertsood what has been presented to them. It is also important to ensure that there is significant trainee involvement. A session should conclude with an evaluation of the knowledge, skills and attitudes

E. Some of the practicalities involved in conducting a training program

The conduct of a training program involves considerably more than standing in front of a group of trainees and just talking to them about legislative drafting. Although the design of the program and the preparation of a training guide should provide most of the basic information and directions for supervision, presenting, facilitating and directing activities, other details need to be taken care of. The following is a summary of some of the important matters that need to be provided for prior to embarking on a training program (Davis and McCallon, 1974):

(1) Dates for training sessions need to be established and scheduled.
(2) Facilities (meeting rooms and the like) need to be scheduled.
(3) Equipment and training aids should be identified and acquired.
(4) Materials (pre-readings, handouts, instructions exercises and other items involved in the activities) should be prepared, reproduced, sorted and made available.
(5) Where appropriate, the meeting room set-up (arrangement of chairs, tables, etc.) should be organised.
(6) Budget (itemsised list of funds available and disbursed and projected costs should be prepared so as to account for and explain expenditures).

Davis and McCallon list other items but these would not be relevant to the operation of a training program for legislative drafting.

F. Evaluation of training

Perhaps one of the most important aspects of the training program is the need to evaluate it. But evaluating a training program is not only important, it is also one of the most difficult aspects of a training program to manage. Sometimes evaluation is overlooked altogether or, if not overlooked, put into the "too-hard-basket".

There are several are several reasons for failure to evaluate training. Smith (1980) argues that failure to evaluate the training process may be explained by the fact that -

(a) no one sees a need for evaluation, because the training sessions appear to be going fairly well and therefore the actual need for evaluation does not seem to be particularly important;
(b) evaluators do not know how to evaluate properly, with the major deficiencies being in not knowing how to state evaluation objectives in precise and measurable terms or how to analyse the data once it has been gathered; or

(c) the complexity of the trainer's job leads to other tasks having a higher priority.

It is quite likely that each of these factors could be a barrier to effective evaluation of training in a PCO.

Another problem may be the perception of trainers and trainees that there may be a lack of co-operation with evaluators.

Pace (1983) suggested that the following four problems resulted from these causes:

(a) no evaluation data are collected;
(b) evaluation data may be unreliable and misleading.
(c) evaluation data may not be presented in a timely fashion so that they may be too late to be used in an effective way;
(d) evaluation data may be incomplete and may frequently lack information about potential causes.

As with other aspects of training, evaluation should be planned if it is to be effective. Pace (1983) envisages that the first step in the process should be to identify what should be known about the training. The second step, he maintains, is decide what ought to be measured and the third is to identify means of obtaining the data. He goes on to suggest answers to five questions seem to be critical in evaluating a training program. The questions are -

(1) Are the trainees satisfied?
(2) Did the trainees experience information gain?
(3) Did the trainees acquire the skills that are being developed?
(4) Do the trainees use the skills on the job?
(5) Does using the skills have a positive effect on the organisation (i.e. the PCO concerned)?

Finding answers to these questions constitutes the evaluation process.

Pace further maintains that in order to evaluate satisfaction with the training experience, some measurement of trainee perceptions both during training sessions and afterwards when the trainees continue with their jobs is important. Satisfaction with program content, instructor styles, learning experiences, facilities and other relevant factors may all affect the quality of training sessions. Information gain is usually measured directly by administering some type of test of an objective or subjective nature. In addition, much can be learned about what a trainee knows by listening to him or her explain ideas to others.

The evaluation of how well a trainee has developed other cognitive skills that need to acquired in order to become a competent legislative draftsman is a difficult task. Measures of performance are frequently based on observations and may be quite subjective. How well a person performs a particular skill in training sessions may often be difficult

particular skills are actually transferred and used on the job. Performance reviews, observations of work and trainee reported problems may all provide clues as to how well the trainee has acquired and uses the skills presented during the training sessions. It should be emphasised that real evaluation goes much further than merely determining the "satisfaction" of the trainees or even assessing the knowledge and skills that appear to have been acquired at the end of the training program: it is essential that the functioning of trainees in the workplace is properly assessed at some stage after the completion of that program and in particular to determine how far that knowledge and those skills are being applied in the workplace.

Whether or not what is learned during training sessions will have a positive effect on the functioning of a particular PCO is something that can only be estimated, especially when evaluated during training sessions. Selecting the two or three most important job related objectives and evaluating how well they have been achievedduring training may provide some indication as to the value of the objectives to that PCO. As senior managment observes the performance of their more junior colleagues, they may recognise problems or notice those colleagues acting in ways that are of value to their office. Obviously output statistics and other objective indicators that can be related to the activity of those colleagues will usually be excellent indicators of the effect of training on that PCO.

G. Summary

In this paper I have endeavoured to argue that PCOs should reconsider their training policies. Without unduly deprecating the traditional methods of training legislative draftsmen, I believe that there are other effective and efficient strategies for providing newly recruited legal staff with the skills, knowledge and attitudes necessary for them to become competent legislative draftsmen. While there will always continue to be a place for "on-the job" or learn-as-you-go" training, there is also a place for more formally structured training programs to supplement that kind of training. In other words, I think that the views of Ewens (1983) and Dickerson (1982) are not necessarily incompatible and both have a contribution to make towards producing satisfactory arrangements for training legislative draftsmen.

In the course of this paper I have made some tentative suggestions for the design of such a program. Three models for designing training programs were canvassed. These models were formulated by Camp, Blanchard and Husczo (1986), Gagne' and Briggs (1979) and Nadler (1982). However, it is stressed that other experts in the training field have formulated models for designing training programs and these should not be overlooked by those called on to train legislative draftsmen.

I then considered the various stages that would be involved in establishing and operating a training program for legislative draftsmen. The first stage is to carry out an assessment of training needs to establish what skills, knowledge and attitudes trainees are required to acquire in order to become competent legislative draftsmen. The next step is to formulate a set of of training objectives which should be consistent with organisational goals. After considering some of the practicalities involved in running a training program, I then moved from the macro to the micro level and discussed some possible approaches to designing and conducting individual training sessions.

Finally, I considered the importance of conducting evaluations of training programs and some of the difficulties involved. Most experts point out the inadequacy of training satisfaction questionnaires (commonly known as "smile sheets") filled out by trainees at the conclusion of their training. Nadler's model, for example, emphasised the importance of continuing evaluation of all critical elements in the design process, as well as of training outcomes, while Dunn and Thomas (1985) argue that evaluation must be built into the training program. They claim that instructional design is incomplete without evaluation and maintain that, ideally, evaluation should be planned even before the program activities are designed.

(114)

APPENDIX 1 - SOME MODELS FOR ESTABLISHING AND OPERATING TRAINING PROGRAMS

Table 1

The Camp, Blanchard and Husczo Training Model

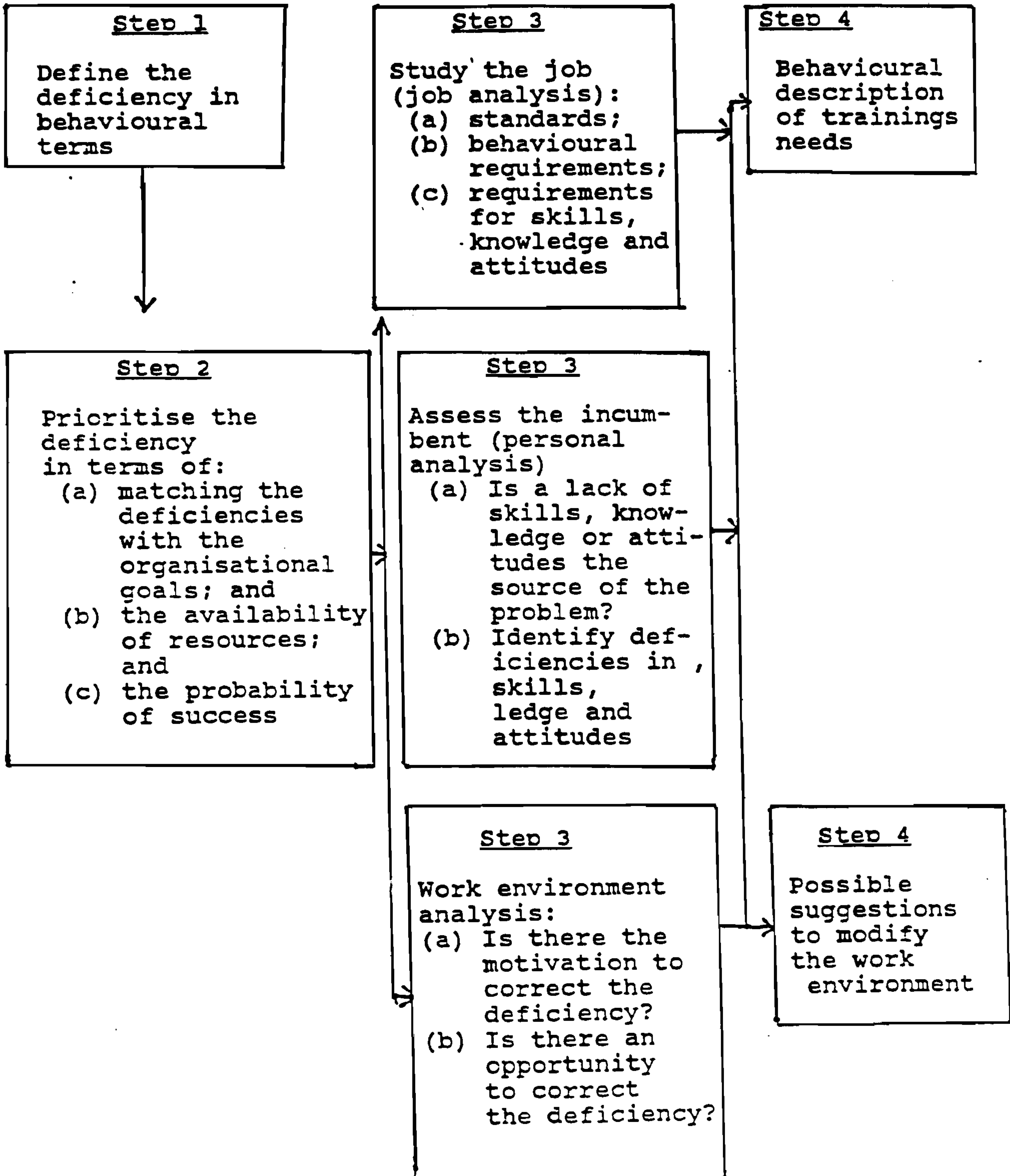
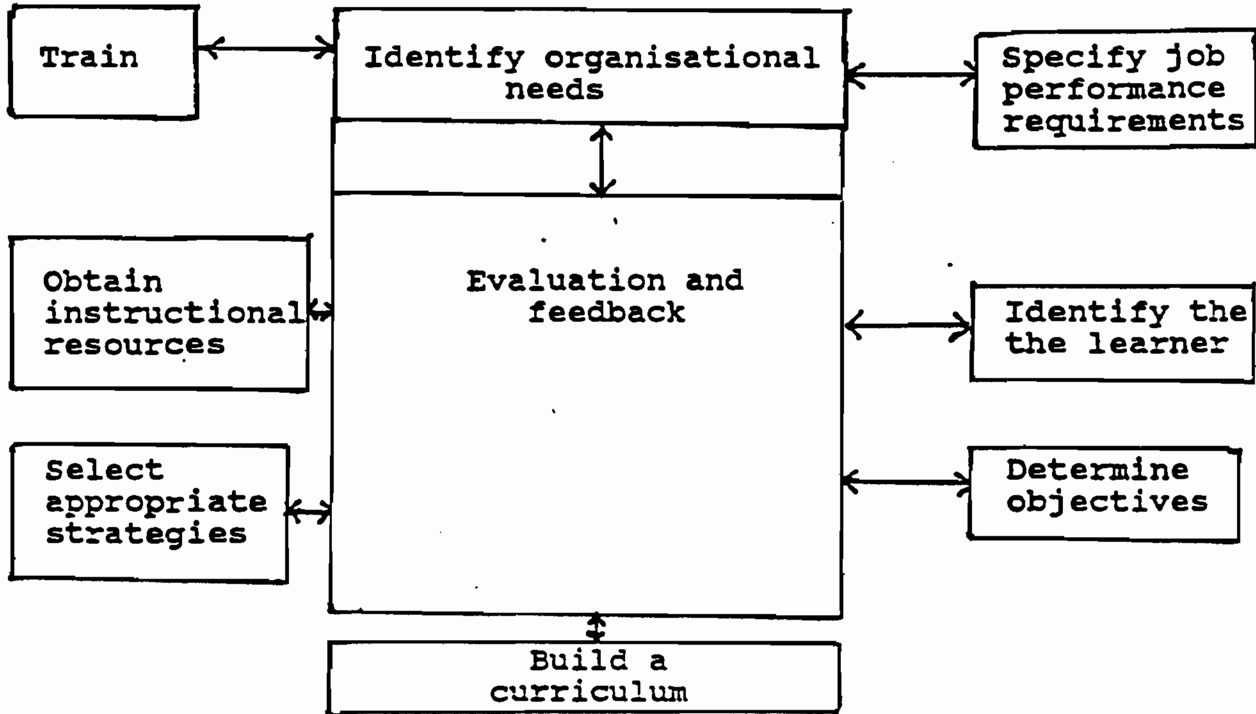


Table 2

Nadler's critical events model



(12)

Table 3

Outline of the Gagne' and Briggs model - "Stages in designing instructional systems"

Stage	Description	Level
Stage 1	Analysis of needs, goals and priorities	Systems Level
Stage 2	Analysis of resources, constraints and delivery system	
Stage 3	Determine scope and sequence of the curriculum; also the design of the delivery system	
Stage 4	Determine the course structure and sequence	Course Level
Stage 5	Analysis of course objectives	
Stage 6	Definition of performance objectives	Training Session Level
Stage 7	Preparing plans for training sessions	
Stage 8	Developing and selecting training materials and media	
Stage 9	Assessing the trainee's performance	
Stage 10	Trainer preparation	System Level
Stage 11	Formative evaluation	
Stage 12	Field testing, revision	
Stage 13	Summative evaluation	
Stage 14	Installation and diffusion	

(122)

APPENDIX 2

AN OUTLINE SCHEME FOR A LEGISLATIVE DRAFTING TRAINING PRROGRAM

Session 1	What statute law is; who legislates; restrictions on the legislature.
Session 2	Institutional arrangements for the preparation of legislation; the preparation and implementation of the legislative program; the condition of the statute book; the pre-parliamentary stages, including the preparation of legislative proposals; the role of Parliament.
Session 3	The drafting of legislation (general outline); the drafting objectives and constraints; a broad outline of the drafting process.
Session 4	The Parliamentary stages; parliamentary procedures; the demands of government.
Session 5	Communication, words, syntax in the legisalative context. Traditional grammar, the sentence, punctutation. Factors that block comprehension and what might be done to avoid them.
Session 6	"Style" in legislative drafting; the purposes of legislation; comprehensibility; the functions of particular kinds of provisions; miscellaneous matters of style.
Session 7	Miscellaneous words and exp[ressions; words and expressions to avoid; the use of definitions; provisions relating to the construction of legislation; objectives, functions, powers and duties.
Session 8	The drafting process - five stages of the drafting process - understanding the policy and instructions, analysis. design, composition and scrutiny.
Session 9	Formalities and arrangment.
Session 10	Preliminary provisions; substantive aand administrative provisions.
Session 11	Supplementary provisions; penal provisions; vicarious liability; corporations; powers of entry, search, seizure, forfeiture of propoerty etc.; injunctions; penalty notices; enforcement generally.

Seesion 12 Final provisions; savings and transitional provisions; repeals; exprir y of temporary legislation; Schedules; amending legislation.

Session 13 Doubt factors (1) - ellipsis; the broad term; political uncertainty; the unforeseeable development.

Session 14 Doubt factors (2) - how drafting errors arise amd how they might be avoided.

Session 15 Particular problems involving subordinate legislation.

Sessions 16 - 18 Statutory interpretation; the Interpretation Act; statute consolidation, revision, reprints etc.*

Session 19 Legislative drafting - an overview.

* Whether or not it would be necessary to cover statutory interpretation in any great depth would depend on the extent to which trainees had covered this subject during their basic legal training.

(124)

APPENDIX 3

SOME SUGGESTED MATERIALS FOR USE IN A LEGISLATIVE DRAFTING TRAINING PROGRAM

Bennion, F.A.R. (1983) **Statute Law** (2nd ed) Oyez Longman: London

Driedger, E.A. (1982) **A Manual of Instructions for Legislative and Legal Writing** (Books 1 - 6), Canadian Government Publishing Centre: Ottawa

Miers, D.R., Page, A.C. (1982) **Legislation** Sweet & Maxwell: London

Pearce, D.C. (1981) **Statutory Interpretation** (3rd ed.) Butterworths: Sydney

Thornton, G.C. (1986) **Legislative Drafting** (3rd ed.) Nutterworths, London

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(125)

REFERENCES

Bloom, B.S. (1956) **Taxonomy of Education Objectives. Handbook I - Cognitive Domain** McKay: New York

Camp, R.R., Blanchard, P.N., Husczo, G.E. (1986) **Toward a More Organisationally Effective Training Strategy and Process**, Reston, Prentice-Hall: Englewood Cliffs, N.J.

Davis, L.N., McCallon, E., (1974) **Planning, Conducting and Evaluating Workshops** Learning Concepts: Austin, Tex.

Dickerson, R. (1982) Materials on legislative drafting **Commonwealth Law Bulletin**, vol. 8, no. 2, p. 847

Driedger, E.M. (1982) **Manual of Instructions for Legislative and Legal Writing** Canadian Government Publishing Centre: Ottawa

Ewens, J.Q. (1983) Legislative draftsmen - their recruitment and training, **Australian Law Journal** (October) p. 567

Dunn, S., Thomas, K., (1985) Surpassing the "smile sheet" approach to evaluation, **Training** (April), p. 65

Gagne', R.M., Briggs, L.J. (1979) **Principles of Instructional Design** Holt, Rhinehart and Wington: New York

Nadler, L. (1982) **Organizational Communication** Addison-Westley: Reading, Mass.

Pace, R.W. (1983) **Organizational Communication** Prentic-Hall: Englewood-Cliffs: N.J.

Smith, M .E. (1980) Evaluating training operations and programs **Training Development Journal** (October) pp. 70 - 78