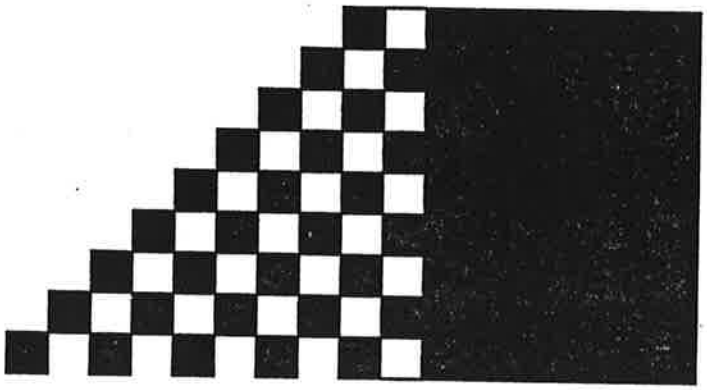
The Loophole

The newsletter of the
Commonwealth Association
of Legislative Counsel (CALC)



[September 1987]

Volume 2, Issue 1

PA

Long Title

A newsletter dedicated to matters of interest to members of the Legislative Drafting Community of the Commonwealth

Short Title

''The Loophole''

Table of Contents

Volume 2, Issue 1
Canada, September 1987

''ESCHEW OBFUSCATION''

1. EXPLANATORY NOTES

''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:

Mr. Walter Iles (President)	NEW ZEALAND
Mr. Justice Jerry Nazareth (Vice President)	HONG KONG
*Mr. Gérard Bertrand (Secretary)	CANADA
Mr. Arthur Buluma (African member)	KENYA
Mr. N.S. Abeyesekere (Asian member)	SRI LANKA
Ms. Hyacinth Lindsay (Caribbean member)	JAMAICA
Mr. George Harre (Pacific member)	FIJI

* Replaced by Mr. Peter Pagano
CANADA

2. PREAMBLE

This is the first issue of the newsletter of the Commonwealth Association of Legislative Counsel following the second meeting of the Association held in Ocho Rios, Jamaica, on Wednesday, September 10, 1986. It has been numbered Volume 2, Issue 1.

The present issue is mainly concerned with the proceedings of the meeting and with the reproduction of papers presented at the meeting and at the 8th Commonwealth Law Conference, for the benefit of people who could not be in attendance. An up-to-date list of members is also included together with various background materials in order to provide, in a single document, all relevant information relating to the establishment and development of the Association.

May I ask each head of a drafting office to designate himself or herself or some other person as ''Local Secretary''. It would be the function of the Local Secretary to act as the single channel through which the newsletter and other correspondence of general interest could be forwarded to members in his or her office.

I am grateful to Allan Roger of the Province of British Columbia and, especially, to Peter Pagano of the Province of Alberta for their assistance in putting together this issue of ''The Loophole''.

Gérard Bertrand

Gérard Bertrand, Q.C.
Secretary

3. SCOPE

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

MINUTES OF GENERAL MEETING HELD

10 SEPTEMBER 1986, AMERICANA HOTEL, OCHO RIOS, JAMAICA

Introduction:

1. The President, Sir George Engle, introduced Mr Justice Gerry Nazareth of Hong Kong, the only other member of the Council present, and informed the meeting that Ms Hilary Penfold, from Australia, was to act as the Secretary of the Association for the purposes of the meeting in substitution for Mr Ian Turnbull, also from Australia, who had been unable to attend.

Proxies

2. The Acting Secretary declared the proxies that had been delivered to the Secretary before the meeting, as required by clause 12 of the Constitution. There was some discussion of this clause, and also discussion whether a proxy holder could exercise those proxies to vote for himself or herself in an election during the meeting. Sir George Engle pointed out that normal meeting procedure would certainly allow such a use of proxies.

Approval of minutes

3. The meeting approved the minutes of the inaugural meeting of CALC held in Hong Kong on 21 September 1983.

President's Report

4. The President read the Council's report reviewing the activities of CALC since its formation in September 1983 (a copy of the report is attached).

Applications for membership

5. The following resolution was moved by Sir George Engle and seconded by Mr George Griffith of Bermuda:

> The Council may, if it thinks fit, authorise the Secretary to grant on the Council's behalf, without referring it to the Council, any application for membership as to which the Secretary is satisfied that the applicant is clearly eligible for membership of the Association; and any authorisation given pursuant to this resolution shall, while it remains in force, apply to the Secretary for the time being.

The motion was carried unanimously.

Election of new Council

6. Elections were then held for a new Council Sir George Engle said that since he was about to retire as the First Parliamentary Counsel, he would not seek another term as President of CALC. He explained that the elections would be conducted in such a way as to ensure that all 5 areas of the Commonwealth (Africa, Asia, The Pacific, The Caribbean and the "old Commonwealth") were represented on the Council.

(1) Election of President

Nominee: Mr Walter Iles, First Parliamentary Counsel, New Zealand

Nominated: Mr Duncan Berry, NSW, Australia.

Seconded: Mr Peter Graham, England.

Elected unopposed.

Mr Justice Nazareth congratulated the meeting on electing Mr Iles as the President, in particular having regard to the fact that the next Commonwealth Law Conference is to be held in New Zealand.

(2) Election of African member of Council

Nominee: Mr Arthur Buluma, Kenya

Nominated: Mr Roger Rose, England

Seconded: Mr Justice Crabbe, Ghana.

Elected unopposed.

(3) Election of Asian member of Council:

Nominee: Mr N.S. Abeyesekere, Legal Draftsman, Sri Lanka

Nominated: Mr D.I. Mendis, St Kitts, Christopher & Nevis

Seconded: M. Gérard Bertrand, Canada.

Elected unopposed.

(4) Election of Caribbean member of Council

Nominee: Ms Hyacinth Lindsay, Jamaica

Nominated: Mr George Griffith, Bermuda

Seconded: Ms Beverly Pereira, Jamaica

Elected unopposed.

(5) Election of Pacific member of Council

Nominee: Mr George Harre, First Parliamentary Counsel, Fiji

Nominated: Mr R.C. Nzerem, Commonwealth Secretariat

Seconded: Professor Keith Patchett, Wales

Elected unopposed.

(6) Election of Vice-President

Nominee: Mr Justice Nazareth, Hong Kong

Nominated: Sir George Engle, England

Seconded: Ms Hilary Penfold, Australia

Elected unopposed.

(7) Election of Secretary

Nominee: M. Gérard Bertrand, Chief Legislative Counsel, Canada

Nominated: Sir George Engle, England

Seconded: Mr Justice Marsh, Jamaica

Elected unopposed.

Association's headquarters

7. In accordance with the Constitution, the meeting proceeded to determine the location of the Association's headquarters. The following motion was moved by Sir George Engle and seconded by Duncan Berry:

> That the headquarters of the Association be in Ottowa until the next meeting of CALC.

The motion was carried unanimously.

Other business

8. (1) Sir George Engle proposed a warm vote of thanks to Mr Geoff Kolts, whom he described as having taken on the job of Secretary and done that job superbly well. The proposal was seconded by Mr Justice Nazareth and carried by acclaim.

(2) Sir George Engle mentioned that Dr A.G. Donaldson, the Editor of the Statute Law Review, would be glad to receive any possibly suitable contribution for that publication from any CALC member. Dr Donaldson's address is:

Faculty of Law,
University of Edinburgh,
Old College, South Bridge,
Edinburgh, EH8 9YL,
SCOTLAND.

(3) Sir George Engle passed on a request from the new Secretary that members should provide him with suitable contributions for CALC newsletters.

(4) Sir George Engle announced that apologies for being unable to attend the meeting had been received from The Hon. R.M. Webster, the Attorney-General of Tuvalu, and from Mr Douglas B. Hester, the Legislative Counsel of the US Senate.

(5) Mr George Griffith, Parliamentary Counsel of Bermuda, on behalf of the ordinary membership of CALC, thanked the outgoing President and other members of Council for all their hard work. He mentioned especially Mr Geoff Kolts, noting that Mr Kolts had made a substantial contribution to the CALC newsletter, on occasions writing it all himself. Sir George Engle thanked Mr Griffith on behalf of himself and his colleagues on the Council.

(6) Mr Peter Graham of England proposed that members of CALC should try to avoid the use of the word "drafter", pointing out that he has an extremely competent female assistant who does not mind being described as a "draftsman". Mr Graham suggested that CALC members should use the expression "Counsel" where possible. This proposal was acclaimed by the meeting.

(7) Mr Allan Roger, Legislative Counsel of British Columbia, asked for suggestions for matters to be discussed at the CALC meeting during the next Commonwealth Law Conference. Mr Mendis suggested the following topics:

(a) Law drafting processes in developing and developed countries;

(b) Parliamentary processes examined from the drafter's point of view.

(8) Sir George Engle called on Mr Walter Iles to make a speech accepting his election as President. Mr Iles said that he had a reputation for brevity which he proposed to fulfil. He said that he appreciated his election and he appreciated Sir George's work in getting the organisation started, and would do his best to continue the work of the Association.

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

Report of Council

I have great pleasure in presenting the report of the Council reviewing the activities of CALC since the inaugural meeting, which was held in Hong Kong on 21 September 1983.

Law Ministers Meeting

2. As you know, CALC was formed following a resolution passed by the Commonwealth Law Ministers at their meeting in Colombo in February 1983. A further meeting of the Law Ministers recently took place in Harare and I arranged for the Attorney-General for England and Wales, Sir Michael Havers, to present a report to the meeting concerning the formation and subsequent activities of CALC.

Council Meeting

3. After the inaugural meeting of the Association, the newly elected Council held a meeting in Hong Kong on 23 September 1983. Minutes of the meeting were subsequently circulated with the first CALC newsletter. The members of the Council discussed several matters, including the distribution of material to members and, in particular, the regular circulation of a newsletter. It is expected that the new Council that is to be elected at this meeting will take the opportunity to hold a meeting before the members disperse to participate in other conference activities or to return to their respective countries. It is important for the Council to meet on this occasion as it is impracticable for a Council meeting to be held between Commonwealth Law Conferences.

Secretariat

4. Under the terms of the Constitution the Secretariat of CALC was to be located in the first instance in Canberra, Australia, and Sandra Power, a member of the Office of Parliamentary Counsel in Canberra, was elected by the inaugural meeting as secretary. Unfortunately, in 1984 Sandra left the Office of Parliamentary Counsel and subsequently resigned as secretary of CALC. With the concurrence of the members of the Council, Geoff Kolts, the First Parliamentary Counsel in Canberra, agreed to undertake the duties of secretary, which he carried out until he too resigned, with effect from 12 June this year, upon his being appointed by the Australian Government as its federal Ombudsman. Since that time, Ian Turnbull, who you will recall played a prominent part at the inaugural meeting, has performed the duties of secretary until this meeting.

Admission of Members

5. Under the Constitution, it is the responsibility of the Council to consider applications for membership of CALC. As the Council is likely to meet only during Commonwealth Law Conferences, it was necessary to provide a mechanism for Council members to grant approval to the admission of new members by correspondence.

Sandra Power, in her capacity as secretary, persuaded the Council to agree upon a procedure under which she would notify each Council member of any application for membership received by her from an eligible person and, unless a Council member notified her to the contrary within one month, she could assume that the member concerned concurred in the applicant's being admitted to membership. This system has worked reasonably well and the membership has now grown to over 350 members. However, to speed up the process it is proposed to ask this meeting to authorise the Council to delegate to the secretary the power to approve admission to membership of persons who are clearly eligible.

Circulation of Newsletters

6. The main activity of the Association has been to circulate newsletters designed to keep members informed of matters of interest to them in their capacity as legislative drafters. The cost of postage of these newsletters is not insignificant and, as CALC does not have any funds itself, the cost is borne by the Office that provides the Secretariat. In order to limit the cost, a practice was adopted whereby, in the case of Offices that had two or more members, the newsletter was sent only to the person whose name appeared first in the list of members from that Office (usually the chief legislative drafter of the Office concerned). He or she was then requested to pass the newsletter on to other members in the Office. Unfortunately, on one or two occasions, newsletters did not filter down to the other members of the staff and action was taken to remind members who received newsletters of their obligations in this respect.

Content of Newsletters

7. Despite many requests for contributions to newsletters, few were received and the task of finding material or information of interest to members fell largely on the secretary. It is hoped that members have found the material that was circulated to be informative and interesting. The first newsletter, and the letters to new members notifying them of their admission to membership, all contained copies of the Constitution of CALC. Notification of the names of new members was also included and, from time to time, newsletters included complete membership lists.

8. Attempts were made to keep members informed of current drafting problems, such as the requirement imposed on some drafters by their Governments to draft legislation so as to avoid so-called "sexist" language. The developments in Australia concerning the use of extrinsic material in the interpretation of legislation were also canvassed. Another current problem raised was the increasing criticism that legislation is not written in "plain English". I might mention to members that this latter criticism is not restricted to drafters in English-speaking countries. Recently the former secretary was informed by the Finnish Ambassador to Australia that in Finland leigslation had been subject to criticism for not being written in "plain Finnish".

9. Members were also informed in newsletters of the on-the-job training that was proposed to be undertaken by the various legislative drafting offices in Australia for drafters from developing countries. Over the past 6 months, such training has been given to drafters from Zimbabwe, Tanzania, Tonga, Western Samoa and Vanuatu.

Ties and Scarves

10. At their meeting on 23 September 1983 the Council agreed to a proposal that a logo should be designed for the Association, and that arrangements should be made to have this printed on ties and scarves. The President's suggestion that the logo should be in the form of a loophole was also accepted. Little did he realise at the time that he was about to enter on a new career as a tie salesman - or how much work this would involve!

11. In February 1984 the President sent the Secretary a sketch giving his idea of a possible logo, and received in reply a set of 8 different variants designed in Canberra. In April the President circulated to all members of the Council photocopies of the two best designs produced by an English firm of tie and scarf manufacturers, one embodying the acronym "CALC", and the other not. The latter design met with general approval; and the June 1984 Newsletter invited members to send their orders to the Secretary or, if ordering from within the United Kingdom, to the President. As the Association had no other funds, it was necessary to wait for a sufficient number of orders to come in before placing an order with the manufacturers; but in the meanwhile the President conducted an animated correspondence with the manufacturers on the details of the designs. An initial order for 140 polyester ties and 30 polyester "headsquares" was eventually placed in January 1985; and following the inspection and approval of a pre-production sample, consignments of the finished articles were despatched to London, Hong Kong and Australia in March. Later last year it became possible to order a further 16 ties and 20 scarves from the manufacturers, bringing the total number of ties and scarves produced to 156 and 50 respectively.

12. The position on 29 April 1986 was that 117 ties and 24 scarves had been sold to members, leaving a stock of 39 ties and 26 scarves unsold. The credit balance in the bank account opened for this purpose at Barclays Bank in Whitehall stood at £34.56 on that date. Details of receipts and payments into and out of this account are annexed to this report - the receipts representing the sums (including postage) paid by members for their purchases. If sold at present prices (£5 for a tie, £6 for a scarf) the stock would bring in £351, which (together with the credit balance of £34.56) could be used to order further stocks from the manufacturers.

Drafting Assignments

13. During the period covered by this report notices were published in the newsletters seeking the names of experienced drafters who were interested in carrying out drafting assignments. There has been little response to these invitations. Only three persons

have indicated their interest, two of them with substantial legislative drafting experience.

Requests for Assistance

14. Several requests were received by the secretary for assistance in connection with miscellaneous matters related to drafting. The Chief Parliamentary Counsel in a jurisdication in the Caribbean sought information about drug laws, particularly in relation to the seizure and forfeiture of property acquired from drug trafficking. The secretary was able to supply copies of some existing and proposed legislation relating to the confiscation of profits derived from drug offences.

15. A request was also received for assistance in the proof-reading of a reprint of the statutes of one jurisdiction. This request was notified in the newsletter and I have been informed that there was a very good response from highly qualified people with some years of experience in legislative matters. As it turned out, the work was able to be performed within the jurisdiction concerned, but it was clear that the newsletter had been very effective in this matter. As a by-product of the notice, the jurisdiction seeking assistance was put in touch with another jurisdiction that was currently engaged in finalising its proof-reading for a supplement to its laws and a useful exchange of ideas and information took place.

16. A further request for assistance was made by another jurisdiction in relation to the possibility of obtaining the services of an expert in connection with the possible conversion of the existing edition of the revised laws of the jurisdiction to a loose-leaf system. The services of a professional indexer were also sought. The request was notified in the newsletter but I am not aware of the results of the notification.

Funding of Drafters

17. A request was received for financial assistance in attending this meeting. The matter was raised with the Commonwealth Secretariat but no assistance could be provided. The Secretariat has stated that the Commonwealth Fund for Technical Cooperation has money available to fund drafters to undertake particular assignments provided that the request comes from the Government of the country concerned. The problem is to find persons with real experience in legislative drafting who are available. As I have mentioned, only one such person has put his name forward to date to the Secretariat of CALC.

18. However, the Commonwealth Secretariat subsequently drew my attention to the existence of several volunteer organisations that could assist in making the services of drafters available to developing countries. As a result, a recent CALC newsletter published a list of these organisations suggesting that -

//

(a) any member wishing to undertake drafting work as a volunteer outside his or her own country should consider applying to any of these volunteer organisations that is based in that country; and

(b) if a need for the services of a drafter arises in a Commonwealth country, CALC members in that country could alert their Government to the fact that a likely source of assistance exists in volunteer organisations based in other countries.

These volunteer organisations have resources available for funding this form of assistance. The incoming Council may consider it worthwhile to monitor the extent to which Governments make use of the facilities offered by these volunteer organisations as a result of the publication of their names in the CALC newsletter.

Preparation for CALC Sessions at Jamaica Conference

19. A considerable amount of effort was involved on the part of several members of the Council, and some other members of CALC, in organising the CALC sessions that were held earlier today. The main problems were the selection of the topics for discussions and the making of arrangements for the presentation of papers. The incoming Council will no doubt welcome the views of members present at this meeting as to the success or otherwise of these sessions so that consideration can be given to whether similar sessions should be organised at future Commonwealth Law Conferences.

Commonwealth Secretariat Survey of Terms and Conditions of Legislative Drafters

20. In July 1984 there was published in the Commonwealth Law Bulletin an article by David Hull analysing the information obtained in response to a questionnaire sent to Commonwealth jurisdictions concerning the terms and conditions of service of legislative drafters. The questionnaire had been sent out by the Legal Division of the Commonwealth Secretariat before the establishment of CALC; but by the time David Hull's analysis appeared, CALC was on the scene and ready to profit from this extremely valuable survey of conditions throughout the Commonwealth which provides, so to speak, a satellite picture of the different ways in which drafting services are organised and rewarded in different jurisdictions.

21. Newsletter No. 3 drew attention to David Hull's article, and publicised the fact that off-prints could be obtained by CALC members from the Commonwealth Secretariat on request. It also set out the main conclusions reached by him with respect to "the continuing and substantial shortage of law draftsmen in developing countries" revealed by the survey. But neither this nor David Hull's own summary does justice to the wealth of information to be found in the article.

Relations with Commonwealth Secretariat

22. Under clause 6(1) of the Constitution it is the President who respresents CALC in its dealings with the Commonwealth Secretariat. This has meant a close and very pleasant association, over the past three years, with Jeremy Pope and Richard Nzerem, both of whom have been unfailingly helpful on all ocassions. Jeremy's assistance was particularly valuable in connection with the planning of the programme for the "CALC Wednesday" at the Jamaica Conference; and the arrangements for that Wednesday, and for the Thursday morning session on The Legislative Process Today, benefited greatly from a meeting arranged by him in June 1985 at which he and George Engle discussed them with the Chairman of the Organising Committee (Mr H. St. C. Whitehorne, the President of the Jamaica Bar Association). We are most grateful to the Secretariat for their help and support.

CALC: BANK BALANCE AT 29 APRIL 1986

Money received and banked		Payments etc.*	
12 July 1984	112.00	24 December 1984	6.50
25 July 1984	46.00	12 April 1985	6.11
23 October 1984	103.00	16 April 1985	692.61
11 December 1984	402.00	25 April 1985	1.07
17 December 1984	90.00	18 July 1985	1.26
25 January 1985	13.00	30 September 1985	70.17
4 February 1985	26.00	30 October 1985	85.58
18 April 1985	8.50	13 December 1985	2.94
9 May 1985	5.50	7 April 1986	1.99
17 June 1985	15.00		868.23
15 July 1985	6.50	Balance at	
17 September 1985	40.79	29 April 1986	34.56
23 October 1985	5.50		
3 December 1985	16.00		
3 April 1986	11.00		
29 April 1986	2.00		
	902.79		902.79

*For details see over

CALC: Details of payments etc. up to 29 April 1986

24 December 1984	Cheque returned for payee's signature	6.50
12 April 1985	Sir George Engle for postage	6.11
16 April 1985	T.R. Burton for 140 ties and 30 scarves	692.
25 April 1985	P.C. Stokes for postage	1.07
18 July 1985	Sir George Engle for postage	1.26
30 September 1985	T.R. Burton for 16 ties	70.17
30 October 1985	T.R. Burton for 20 scarves	85.58
13 December 1985	Bank charges	2.94
7 April 1986	B.A. Shillito for postage	1.99
		£868.23

Proceedings of the meeting of the Council of the Commonwealth Association of Legislative Counsel held in the Sheraton Hotel, Ochos Rios, Jamaica, on Thursday, 11 September 1986.

In attendance were:

Mr. Walter Iles (President)	NEW ZEALAND
Mr. Justice Jerry Nazareth (Vice President)	HONG KONG
Mr. Gérard Bertrand (Secretary)	CANADA
Mr. Arthur Buluma (African member)	KENYA
Ms. Hyacinth Lindsay (Caribbean member)	JAMAICA
Mr. N.S. Abeyesekere (Asian member)	SRI LANKA

After declaring the meeting open, Mr. Iles underlined the importance, in light of a conversation he had had with his predecessor, Sir George Engle, for Council members to answer correspondence relating to the Association. Mr. Iles expressed the view that this was essential in order to keep the Association going even though pressure of work might at times delay the answering of letters.

The Council then discussed the newsletter. It was suggested that the minutes of the Jamaica meeting and the papers delivered at the conference could be included in the newsletter. It was also suggested that some of these papers might be ''saved'' for subsequent issues in view of the abundance of material available for publication. A further suggestion dealt with the possibility of preparing a list of members by alphabetical order, while keeping the present one which lists names by country. The Council agreed that the choice of items to be included in the newsletter would be left to the discretion of the Secretary and that an effort would be made to have news about members of the legislative drafting community and other human interest items.

The President raised the question of the acceptance of new members and pointed out that the

General Meeting had approved a motion by Sir George Engle delegating to the Council the power, if it thinks fit, to authorise the Secretary to grant on the Council's behalf, application for membership. The Council, in light of that authority, adopted the following resolution:

> ''Where an application for membership of the Association is made to the Secretary in accordance with sub-clause 3(3) of the Constitution, the Secretary may grant the application on behalf of the Council without referring it to the Council if the Secretary is satisfied that the applicant is clearly eligible for membership of the Association; and where he does so, the Secretary shall advise the applicant accordingly.''

It was further agreed that the Secretary would inform members of the Council of applications approved by him under that delegation of authority.

The President raised the issue of the next Commonwealth Law Conference and of the agenda for the next meeting of CALC, with emphasis on how one could avoid the clash between the various specialist meetings: law reform people, judges and legislative counsel as had just been the case at the Jamaica meeting. A number of suggestions were made and considered and after some discussion, it was agreed that the President would decide, after consultation with Mr. Jeremy Pope, on the best time for CALC to have its general meeting and on the format of the agenda.

The question of the ties and scarves was raised by the President. The consensus was that since the manufacturer is in Britain, there would be merit in trying to keep this aspect of the business of the Association with the Parliamentary Counsel Office in London.

Someone mentioned that it would be worthwhile examining the suggestion made during the CALC meeting that a model purchasing order for electronic equipment be prepared in order to assist interested countries. It

was left to the Secretary to approach Mr. Campbell, Mr. Duncan or Mr. Roger to ascertain whether they would be willing to undertake such a task.

Next, the Council discussed the matter of topics to be included in the agenda of the next conference. The subject of ''Plain English in Legislative Drafting'' was mentioned as a possibility. It was however pointed out that the first thing to do was to try to book slots on the agenda and to propose topics in view of the fact that it is the organizing committee of the host country that decides who will be the speakers and when they will speak. It has also a veto on the subject. It was therefore important to come forward as soon as possible with a suggested list of topics to be proposed to the organizing committee in New Zealand.

Exchange of material, as for instance innovative legislation, was next discussed. The Council agreed that this was an interesting proposal and that jurisdictions interested in sharing bills breaking new ground could send a synopsis to the Secretary for inclusion in the newsletter. Countries interested in the full Bill could always write directly to the jurisdiction concerned to obtain the full text.

The President declared the meeting closed at 15:25.

Gérard Bertrand,
Secretary

4. RETROSPECTIVELY: The formation and subsequent progress of the Commonwealth Association of Legislative Counsel

1. At their meeting in Colombo in February 1983 the Commonwealth Law Ministers passed a resolution supporting the formation of a Commonwealth Association of Parliamentary Counsel and Law Draftsmen and accepted the offer by Australia to act as headquarters for the Association and to provide editorial services for a regular newsletter for the Association. It was agreed that the proposed Association should, if possible, be launched at the 1983 Commonwealth Law Conference in Hong Kong; and arrangements to that end were initiated by the Attorney General of Hong Kong.

2. A draft constitution prepared by Mr. G.K. Kolts, Q.C. (First Parliamentary Counsel, Commonwealth of Australia) with the assistance of the Commonwealth Secretariat was circulated to a number of other Drafting Offices for comment; and a revised version, embodying changes approved by the majority of those consulted, was adopted at an inaugural meeting of Commonwealth draftsmen held in Hong Kong on 21 September 1983 under the chairmanship of Mr. G.P. Nazareth, Q.C. (as he then was).

3. The name agreed on was the Commonwealth Association of Legislative Counsel (giving the acronym ''CALC''), and a seven-member Council was elected, consisting of a President (Sir George Engle of the United Kingdom), a Vice-President (Miss M. Barnes of Trinidad and Tobago), a Secretary (Ms. S. Power of Australia), Mr. G.P. Nazareth of Hong Kong and three other Council members from Africa, Asia and the Pacific respectively. At the first Council meeting it was decided to adopt a loophole as the logo of the Association; and ties and headscarves bearing this logo have since been produced and sold to members.

4. Membership has now grown to over 350 members. Some 80 different jurisdictions are represented. The Association has no funds, and there is no admission fee. All persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of legislative drafters are eligible for membership.

5. The main activity of the Association has been to circulate newsletters designed to keep members informed of matters of interest to them in their capacity as legislative drafters. The first newsletter, and the letters to new members notifying them of their admission to membership, have all contained copies of the Constitution of CALC. The names of new members and, from time to time, complete membership lists have been supplied to members.

6. Attempts have been made to keep members informed of current drafting problems, such as the requirement imposed on some drafters by their Governments to draft legislation so as to avoid so-called ''sexist'' language. The developments in Australia concerning the use of extrinsic material in the interpretation of legislation were also canvassed. Another current problem raised was the increasing criticism that legislation is not written in ''plain English''.

7. Members were also informed in newsletters of the on-the-job training that was proposed to be undertaken by the various legislative drafting offices in Australia for drafters from developing countries. In 1986, such training will have been given to drafters from Zimbabwe, Tanzania, Tonga, Western Samoa and Vanuatu.

8. Notices have been published in the newsletters seeking the names of experienced drafters who would be interested in carrying out drafting assignments. There has been little response to these invitations. Only two persons have indicated their interest and only one of these has substantial legislative drafting experience.

9. Several requests were received by the Secretary for assistance in connection with miscellaneous matters related to drafting. The Chief Parliamentary Counsel in a jurisdiction in the Caribbean sought information about drug laws, particularly in relation to the seizure and forfeiture of property acquired from drug trafficking. The Secretary was able to supply copies of some existing and proposed legislation relating to the confiscation of profits derived from drug offences.

10. A request was also received for assistance in the proof-reading of a reprint of the statutes of one jurisdiction. This request was notified in the

newsletter, and there was a very good response from highly qualified people with some years of experience in legislative matters. As it turned out, the work was able to be performed within the jurisdiction concerned, but it was clear that the newsletter had been very effective in this matter. As a by-product of the notice, the jurisdiction seeking assistance was put in touch with another jurisdiction that was currently engaged in finalising its proof-reading for a supplement to its laws, and a useful exchange of ideas and information took place.

11. A further request for assistance was made by another jurisdiction in relation to the possibility of obtaining the services of an expert in connection with the possible conversion of the existing edition of the revised laws of the jurisdiction to a loose-leaf system. The services of a professional indexer were also sought. The request was notified in the newsletter, but the results of the notification are not known to me.

12. The Commonwealth Secretariat recently drew the Association's attention to the existence of several volunteer organisations that could assist in making the services of drafters available to developing countries. As a result, a list of these organisations is about to be published in a newsletter with a suggestion that

> (a) any member wishing to undertake drafting work as a volunteer outside his or her own country should consider applying to any of these volunteer organisations that is based in that country; and
>
> (b) if a need for the services of a drafter arises in a Commonwealth country, CALC members in that country could alert their Government to the fact that a likely source of assistance exists in volunteer organisations based in other countries.

These volunteer organisations have resources available for funding this form of assistance.

13. In July 1983 there was published in the Commonwealth Law Bulletin an article by David Hull analysing the information obtained in response to a questionnaire sent to Commonwealth jurisdictions concerning the terms and conditions of service of

legislative drafters. The questionnaire had been sent out by the Legal Division of the Commonwealth Secretariat before the establishment of CALC; but by the time David Hull's analysis appeared, CALC was on the scene and ready to profit from this extremely valuable survey of conditions throughout the Commonwealth which provides, so to speak, a satellite picture of the different ways in which drafting services are organised and rewarded in different jurisdictions. A newsletter subsequently drew attention to David Hull's article, and publicised the fact that off-prints could be obtained by CALC members from the Commonwealth Secretariat on request. It also set out the main conclusions reached by him with respect to ''the continuing and substantial shortage of law draftsmen in developing countries'' revealed by the survey.

14. In accordance with its constitution, the second general meeting of CALC was held during the 8th Commonwealth Law Conference in Jamaica.

15. The association has maintained close and cordial relations with the Legal Division of the Commonwealth Secretariat throughout the period since its formation in 1983. It has established valuable lines of communication between its members, and has given legislative drafters in different jurisdictions throughout the Commonwealth a sense of community as fellow-specialists within the legal profession.

May 1986

Sir George Engle KCB QC
President, Commonwealth
Association of Legislative Counsel

MINUTES OF COUNCIL MEETING HELD IN HONG KONG ON 23 SEPTEMBER 1983

All members of the Council were present other than Mr David Zamchiya from whom an apology for his absence was received. The meeting commenced at 12.30 p m.

1. Communications to members

Council members discussed how information was to be circulated to members. The President suggested, in order to minimize postage and administrative costs for the Australian Government, that where a number of members of the Association work in a single drafting office, a copy of any information to be circulated generally should be sent to one of those members, who could then photocopy and circulate the material to the other members in that office. It was considered that this arrangement would comply with sub-clause 6(2) and clause 13 of the Constitution. Members of the Association who were not working in the official office of a jurisdiction would each be sent any information of general interest.

2. Contents of newsletter

The Council agreed that a newsletter should be circulated once or twice a year and that, where appropriate, minutes of Council and Association meetings could be included in or attached to the newsletter. It was expected that the first newsletter would be ready soon after the Secretary's return to Australia in October. The President suggested that a second newsletter should be circulated about May/June 1984 and that perhaps after that a newsletter should be circulated regularly in December/January and June/July. Council members recognized that the preparation and distribution of a newsletter in the Australian Office of Parliamentary Counsel could be delayed if that Office was extremely busy in the preparation of legislation.

The Council agreed that the first newsletter should include or be accompanied by minutes of the inaugural meeting of the Association and of the first meeting of the Council, a list of members' names and addresses and the Constitution adopted by the inaugural meeting.

3. Membership of Association

Some members of the Council expressed concern that the Association might include "gatecrashers", persons who did not fit the description of persons eligible for membership given in sub-clause 3(1) of the Constitution, if all names that had been put forward were accepted for membership. It was agreed however that all names proposed should be accepted for the time being. Council members hoped however that the main membership of the Association would comprise legislative counsel working in official drafting offices rather than persons outside such offices engaged in drafting or amending legislative instruments, including private members' bills.

4. Problem of retaining drafters

Some Council members described the difficulties of their own jurisdictions in retaining drafters. It was considered that this problem probably arose for different reasons in different jurisdictions and would have to be solved in different ways.

Mr Mangarangi considered the training of drafters was also a problem and he mentioned that the Cook Islands had suggested to Commonwealth Law Ministers that drafters from smaller jurisdictions be attached to the drafting offices of the larger jurisdictions for intensive training.

5. Relationship between the Association and the Commonwealth Secretariat

Council members noted that some overlapping in the functions of the Association and Secretariat appeared to exist in that the Legal Division of the Secretariat at present acts as a clearing house for requests for information and assistance received from all jurisdictions. The Legal Division apparently hoped that to some extent the Secretary of the Association would take on this function. The Council agreed that, while the Secretary had certain functions to perform in accordance with the Association's Constitution, she had neither the time nor the resources to take on the role often performed by the Secretariat of searching for and providing legislative precedents from other jurisdictions. The Council considered that members who knew of relevant precedents from other jurisdictions should, if possible, make contact directly with the appropriate drafting office. The Secretary would, of course, try to deal with or if necessary forward on to other members or drafting offices any requests made to her by Association members for legal materials from other jurisdictions but she would not have the time to engage in extensive legal research on behalf of members.

6. Logo for Association

The President proposed that the Association design a logo and arrange to have this printed on ties and scarves. Council members agreed to this proposal and to the President's further suggestion that the logo adopted be a loophole.

7. Constitution

Council members agreed on an Interpretation clause to be inserted in the Constitution providing for the use of the titles Chairman and Vice-Chairman instead of President and Vice-President.

The Council concluded its meeting at 2.15 pm.

5. MARGINAL NOTES

It is proposed, in this Section, to include brief, short notes on comings and goings and other news within the Commonwealth drafting community as well as requests for personnel or information and offers of services. Contributions to this feature of the newsletter are solicited and will be most welcome.

AUSTRALIA

Mr. Ian Turnbull has been appointed First Parliamentary Counsel, Commonwealth of Australia.

CANADA

Allan Roger, Chief Legislative Counsel of British Columbia is going to Hong Kong on a three-year contract with the Attorney General's Chambers.

Arthur N. Stone, Q.C. Senior Legislative Counsel for the Province of Ontario is retiring.

Mary Dawson, Associate Chief Legislative Counsel of Canada has been appointed Assistant Deputy Minister (Public Law) Department of Justice, Ottawa.

Deborah Meldazy has resigned as Chief Legislative Counsel for the Northwest Territories in order to undertake the revision of the Ordinances of the Northwest Territories.

Gérard Bertrand, Q.C., Chief Legislative Counsel of Canada has been appointed Chairman of the Ontario French Language Services Commission in Toronto.

Peter E. Johnson, Q.C. has been appointed Chief Legislative Counsel of Canada.

Donald L. Revell has been appointed Senior Legislative Counsel for the Province of Ontario.

UNITED KINGDOM

Sir George Engle, First Parliamentary Counsel has retired.

6. CITATIONS

The intent of this section is to bring to the attention of members the publication of books, periodicals or major articles related to the art of legislative drafting and which cannot be reproduced in ''The Loophole'' by reason of their length.

Law Reform Commission of Victoria
Discussion Paper No. 1
Legislation
Legal Rights and Plain English
August 1986

Department of Justice of Canada
Plain Language and the Law
An Inquiry and a Bibliography prepared
by Marion Blake, March 1986

Department of Justice of Canada
The Federal Legislative Process in Canada,
May 1987

Alisa Posesorski
Director, Indexing Agency
Canadian Law Information Council
Indexing to Improve Access to Legal Information
The Activities of the Canadian Law
Information Council

7. OFFENCES

Every member who refuses or fails to provide any news, paper, article or other information, related to legislative drafting for publication in ''The Loophole'' is guilty of an offence and is liable to live with a guilty conscience.

This section has been added to emphasize the importance for the future of the Association and its healthy development that all members make a special effort to send material and news of general interest for the drafting community.

8. SCHEDULES

- BERRY, Duncan, Senior Legislative Draftsman,
  New South Wales
  LEGISLATIVE DRAFTING
  COULD OUR STATUTES BE SIMPLER?

- BERRY, Duncan, Senior Legislative Draftsman
  New South Wales
  AN ACTS RESTATEMENT ACT ?

- BERTRAND, Gérard, Q.C., Chief Legislative Counsel
  of the Government -- Canada
  ELECTRONIC AIDS IN LEGISLATION:
  COMPUTER HARDWARE

- CRABBE, The Hon. Mr. Justice, V.C., Ghana
  SHORTER PARLIAMENTARY ENACTMENTS AND
  LONGER EXECUTIVE REGULATIONS
  - PROS AND CONS

- DOUGLAS, The Rt. Hon. Sir William, K.C.M.G.
  Chief Justice, Barbados
  STATUTORY INTERPRETATION:
  THE ROLE OF THE JUDICIARY

- DUNCAN, D.J.S., Parliamentary Draftsman &
  Senior Assistant Legal Secretary
  Lord Advocate's Department, UK

- ENGLE, Sir George, KCB, Q.C.,
  First Parliamentary Counsel, England and Wales
  THE LEGISLATIVE PROCESS TODAY

- ENGLE, Sir George, Parliamentary Counsel Office,
  London
  STATUTE IN FORCE
  The United Kingdom's official revised
  edition of the statutes

- HUDSON-PHILIPS, Karl T., Trinidad and Tobago Bar
  A CASE FOR GREATER PUBLIC PARTICIPATION
  IN THE LEGISLATIVE PROCESS

- MARTIN, E.H. & PIERCE, A.B.S.
  PUBLICATION, CONSOLIDATION AND REVISION
  THE HONG KONG EXPERIENCE: NEW BOOKS FOR OLD

- NAZARETH, The Hon. Mr. Justice, C.B.E.
  Judge of the High Court, Hong Kong
  LEGISLATIVE DRAFTING: COULD OUR STATUTES BE SIMPLER?

- PAGANO, Peter J., Chief Legislative Counsel,
  Province of Alberta, Canada
  ELECTRONIC AIDS IN LEGISLATIVE DRAFTING
  Creation of Data Bases and other Publications

- PATCHETT, Professor Keith
  CONSOLIDATION OF STATUTES IN SMALL
  COMMONWEALTH STATES

- ROGER, Allan, Chief Legislative Counsel,
  Province of British Columbia
  ELECTRONIC AIDS IN LEGISLATIVE DRAFTING AND PUBLICATION
  Electronic Typing & Typesetting

LEGISLATIVE DRAFTING

COULD OUR STATUTES BE SIMPLER?

DUNCAN BERRY LL.B (Notts.), LL.M (V.U.W.), Barrister

SENIOR LEGISLATIVE DRAFTING OFFICER

NEW SOUTH WALES

In May 1985 the Victorian Attorney-General, Jim Kennan, made a statement in the Victorian Legislative Council to the effect that new rules would be introduced to simplify the language and structure of Victorian legislation.

He said that the format would be "Kennanised". By this he meant to convey that legislation would be "easier to understand, free of pomposity and verbiage, lean and hungry in approach and full of informed common sense".

He envisaged the following changes to the format of Acts:

(a) there would be no long title;
(b) no Latin words would be used;
(c) there would no longer be a reference to the year of the monarch's reign;
(d) the enacting words would be abbreviated to "The Queen and Parliament enact ....";
(e) the short title clause would be replaced by a statement of the title at the beginning of the Act;
(f) the first clause would state the objects of the Bill;
(g) the provisions of a Bill would be identified by "decimalised" numbers;
(h) repetition and "superfluous" words and phrases would be eliminated.

In addition, parliamentary counsel would in future be required to have regard to the so-called Flesch Reading Index which is claimed to be a guide to readability. It involves applying a formula to the number of syllables per 100 words and the number of words per sentence. The object is to bring about the use of shorter words and shorter sentences.

I do not want to dwell on Mr. Kennan's proposals for structural changes. Many of them are largely cosmetic. The long title is omitted only to reappear elsewhere as an objects clause. Few parliamentary counsel use Latin words these days. The shortening and modernising of the enacting formula are welcome but the identification of legislative provisions by decimalised numbers seems to have no advantages over the system currently used in most Commonwealth

countries. Few would disagree that superfluous words should be omitted. However, it is likely that there will be disagreement as to whether particular words are in fact superfluous.

Most people would support the view that in principle parliamentary counsel should, as far as possible, use shorter words and shorter sentences[1]. However, there are dangers. It must be remembered that legislation tends to be complicated because it usually deals with complex and technical issues. Broad statements of principle are usually inadequate. The circumstances, conditions and contingencies in which a particular legislative provision is to operate need to be specified with precision and certainty. Likewise the exceptions and qualifications to which such a provision is subject need to be clearly designated. I would go further. I would urge that the legal consequences of non-compliance or contravention should always be specified. Parliamentary counsel should be aiming to ensure that, in the event of a legislative instrument coming before a judicial tribunal for interpretation, it would be interpreted in a way that is fully consistent with the proponent's policy objectives. So far as practicable a legislative instrument should contain sufficient details to enable persons affected by the legislation to ascertain the law and its consequences without the need to resort to expensive litigation and every effort should be made to remove all doubt-creating factors[2].

An illustration of the kind of thing I have in mind here is the not infrequent failure of parliamentary counsel to specify in precise terms the particular legal consequences that are to ensue from omitting to perform a duty imposed by a legislative provision. This failure has often been criticised by the courts. One illustration will suffice. In Cutler v Wandsworth Stadium[3] a bookmaker suffered a pecuniary loss as a result of the failure of a proprietor of a greyhound stadium to provide for the bookmaker the amount of space prescribed by statute. The question arose as to whether the bookmaker was entitled to recover damages for

breach of statute. In the course of his judgment in that case Lord du Parcq said:

> "To a person versed in the science or arts of legislation, it may well seem strange that Parliament has not now made it a rule to state explicitly what its intention is in a matter which is often of no little importance, instead of leaving it to the courts to discover by careful examination or analysis of what it is expressly said what that intention may probably be supposed to be"[4].

Despite Lord du Parcq's cri de coeur over 30 years ago, it is still distressingly rare for legislation which has the effect of imposing duties on persons to make it clear whether or not a failure to perform those duties will give rise to a liability for damages. Legislative instruments should answer these questions, not pose them. I believe parliamentary counsel have a responsibility to ensure that the situation is made clear and this responsibility should not be compromised in striving to shorten legislative instruments.

One device employed by the parliamentary counsel who seeks to use fewer words is that of ellipsis. Ellipsis involves leaving the "obvious" to be inferred. The problem is that what may be obvious to the parliamentary counsel may not be obvious to the reader. While the use of ellipsis in preparing legislation is frequently resorted to by parliamentary counsel, it is a device that must be used with care and only in those instances where no doubt as to the meaning of particular provisions will be left in the minds of legislators and users of statutes. Most parliamentary counsel will no doubt recall the words of Stephen J. in Re Castioni where he said that the draftsman needs to employ a considerable degree of precision which "is essential to everyone who has ever had, as I have on many occasions, to draft Acts of Parliament, which although they may be easy to understand, people continually try to misunderstand and in which therefore it is not enough to attain a degree of

precision which a person reading in good faith can understand; but it is necessary to attain if possible a degree of precision which a person reading in good faith cannot mis-understand. It is all the better if he cannot pretend to misunderstand it"[5].

On the other hand parliamentary counsel should aim to use no more words than are necessary to give legal effect to the policy objectives of the legislative instrument concerned. Ministers generally like their Bills to be brief. They claim that the more words there are in a Bill the more likely it is that the Bill will become the subject of argument and controversy in the legislature. My experience is the opposite; the amount of debate on a Bill tends to be in inverse ratio to its size. Ministers also like as few clauses as possible. Each clause has to be put to the legislature as a motion. Obviously the fewer the number of clauses the fewer the number of motions to be put.

The pressures for brevity often conflict with other pressures which demand more detail. These conflicting pressures place parliamentary counsel in something of a dilemma. The result is often a resort to compression of language. This may mean that a legal proposition is expressed with such economy of words that it becomes something of a riddle. The Renton Committee, in its report The Preparation of Legislation[6], received sympathetically complaints that "skilfully compressed wording"[7] was difficult to understand. I strongly agree with the committee's view that it is "preferable to sacrifice elegant economy of expression in order to achieve greater clarity even at the cost of increased length"[8]. The Committee gave the following example from an English Act:

> "For the purposes of this Part of this Schedule a person over pensionable age, not being an insured person, shall be treated as an employed person if he would be an insured person were he under pensionable age and would be an employed person were he an insured person."[9]

In the opinion of the Committee any enactment of that kind was likely to be provacative and the more so the more skilfully it was compressed. Although some of the terms used are defined elsewhere, this sort of provision contributes nothing towards easy comprehension by the reader.

Another frequently encountered form of legislative compression is legislation by reference, that is, applying provisions applicable to one situation to another situation with appropriate modifications. Although this drafting device can of course save a lot of words, it can be extremely difficult for the statute user to follow. Moreover, this device is dangerous if not carefully executed. There are numerous cases where not all of the appropriate modifications have been made and this has resulted in difficulties of interpretation.[11]

Problems of intelligibility arise when parliamentary counsel attempt to encompass too many cases in a single formulation of words. The overall effect is that fewer words are used but the provision is more difficult to understand. What is required here is the use of more but shorter provisions so that there is a separate provision dealing with each case. A revision of section 2 of the Official Secrets Act 1911 (U.K.) furnishes an example of what could be achieved[12]. Several repeated phrases could be eliminated by means of a subsection that defines terms for the purposes of the section. The remainder of the section could be broken down into six subsections creating five different offences. The net result would be the removal of several ambiguities and a much more comprehensible section. Yet another example discussed by Bennion in his book "Statute Law".[13] Section 9 (1) and (2) of the Theft Act 1968 (U.K.) defines the offence of burglary in a building. The two subsections create six separate offences in what Bennion calls "a draftsman's omelette". Even though the outcome would be the use of more words, the section would be much easier to follow if it had been divided into six subsections each embodying one of those offences.

A further device employed to shorten legislative provisions is to use the "broad term". The words "fair" or "reasonable" are examples. Such a term will usually manifest what is known as a "penumbra of uncertainty". The interpretation of this kind of term is usually left to others, the courts for instance. By its very nature the broad term creates doubts and may require expensive litigation to determine its meaning. Where appropriate, more words should be used to limit those terms which have a dangerously wide meaning and to amplify those whose meaning may be restricted. Parliamentary counsel should choose only those words whose penumbra of doubt is minimal. If in order to remove the doubt more words are required, so be it. A person should not be made to suffer the ordeal of expensive litigation in order to ascertain the meaning of a term whose doubt might with proper foresight have been removed by the drafter. If a high degree of precision is unattainable, for example because it is not possible to identify all of the circumstances in which the provision is to operate, then an effort should at least be made to provide guidance as to how such terms should be interpreted.

Coupled with the objectives of legal effectiveness and certainty, a principal objective of parliamentary counsel should be to ensure that legislative instruments are intelligible. If the words of a legislative instrument convey no meaning to a user, then, even if some meaning can be given to it by the courts, the instrument is largely a failure. Legislative instruments are directed at many groups, legislators, lawyers, accountants and others. Such instruments should be intelligible to all persons who are affected or who have an interest in them. As I have endeavoured to point out, intelligibility is not necessarily achieved by using fewer words. Intelligibility is facilitated by avoidance of prolixity, tautology and coupled synonyms. Intelligibility is also promoted by the avoidance of circumlocution, legal jargon and undefined technical terms. There is nothing wrong with short provisions as long as the text is comprehensive and comprehensible, but parliamentary counsel should not be afraid to use more words

where these are necessary to achieve the objectives of legal effectiveness and certainty. The problem is not to simplify the law. Society is now so complex that this objective is virtually unattainable though, as pointed out elsewhere, efforts could be made to avoid over intricate policy and thus eliminate one of the obstacles to improving the intelligibility of statutes. One way to make statute law more readable is to use more visual aids such as setting headings and marginal notes in bold print and dividing sections and subsections into more easily digestible lettered or numbered paragraphs and subparagraphs. Related provisions should be located in designated Parts and Divisions and administrative detail should be relegated to Schedules. Another device is to use mathematical formulae, followed by explanations of what each symbol represents. Such formulae are in my view less difficult to comprehend than provisions which contain prose descriptions of a mathematical process.[14] Where a legislative provision is dependent on or affected by another provision or another Act, there should be an appropriate reference directing the reader's attention to that other provision or Act. Similarly, it is important that the provisions of a statute should be arranged in an orderly and logical manner. In these days of word processors, computer type-setting and easy information retrieval, shortage of time and the possibility that a Bill will be amended during its passage through the legislature are no longer acceptable excuses for anonymity[15] or the failure to group together closely related provisions. However, it should not be forgotten that legislation tends to be complicated because it deals with complex and technical situations. Many legislative instruments would not be workable if they were composed in terms simple enough for the mythical average person in the street to understand. Sections 90 and 92 of the Australian Constitution are good examples of the difficulty. These provisions, which relate respectively to the power to impose excise duty and the maintenance of free trade and commerce among the Australian States are written in simple terms. They have nevertheless given rise to a vast quantity of litigation which in turn has

spawned judicial decisions many of which are difficult to reconcile.

At this point it is perhaps worth reflecting on where at least some of the responsibility for the current style of drafting lies. Practising and academic lawyers and, in particular, the courts must accept some share of this responsibility. Often with legislation involving the imposition of taxation it is the aim of the taxpayer's lawyer to render the legislation ineffective. Opposing parties argue for the interpretation that suits their cause; there is no attempt to take an objective view of the legislation.

It has been said[16] with some justification, that "forms of draftsmanship are often consequences of the methods and rules of judicial interpretation". Similarly, in 1969, the English Law Commission in its paper "The Interpretation of Statutes"[17] said:

> "If defects in drafting complicate the rules of interpretation, it is also true that unsatisfactory rules of interpretation may lead the draftsman to an over refinement in drafting at the cost of the general intelligibility of the law".

In the circumstances it is perhaps not surprising that parliamentary counsel often engage in very detailed drafting in an attempt to fortify legislation and prevent its intention from being frustrated. Lord Diplock, in giving judgment in Fothergill v Monarch Airlines Ltd.[18], admitted that judges had some degree of responsibility for the complicated nature of legislative texts. In referring to the narrowly semantic approach to interpretation of legislation adopted by some judges, he said:

> "The unhappy legacy of this judicial attitude, although it is now being replaced by an increasing willingness to give a purposive construction to the Act, is the current style of English legislative draftsmanship"[19].

Australian courts have also come in for criticism for adopting an over rigid approach to the interpretation of statutes[20].

However, despite these criticisms and admissions of judicial responsibility, Mr. Kennan, in the ministerial statement already mentioned, was critical of an over-qualified and over-cautious style of drafting. He described the current approach to legislative drafting as "drafting by fear". He implicitly blamed parliamentary counsel rather than the courts and the lawyers and indicated that parliamentary counsel should not be concerned with the possibility that a perverse judge would adopt a contention for an unintended meaning. Nevertheless, there is clearly a relationship between statutory interpretation and styles of legislative drafting. With the enactment of section 15AA of the Australian Commonwealth's Interpretation Act 1901 and similar legislation in some of the Australian States[21], one may expect to see Australian courts adopting a more liberal approach to the interpretation of legislation. This, however, deals with only part of the problem. There is also a need to review the operation of the common law canons of statutory interpretation. It is well known that many canons of construction are contradictory. As Lord Simon of Glaisdale admitted in R v Governor of Pentonville Prison, ex parte Cheng[22] -

> "English law provides a number of guides to interpretation or 'canons of construction'. A difficulty arises that various canons could return conflicting answers, since English law has not yet authoritatively established any complete hierarchy among the canons."

Other commentators have written in similar vein. C.K. Allen, for instance, in his book "Law in the Making" took the view that "on the whole, it cannot be pretended that the principles of statutory interpretation form the most stable, consistent or logically satisfying part of our jurisprudence."[23] It is estimated that over 20 of the established cannons of construction are, in some situations, capable of contradicting at least one other of those canons.

It is a matter for concern that very little attempt has been made to systematize the rules for construing statutes. Parliamentary counsel and users of statutes generally should be placed in a position where they are able to predict, with at least some reasonable degree of certainty, how a court will interpret statutory provisions. If the courts were more willing to specify the approach that they employ in interpreting statutes, it would assist parliamentary counsel and users of statutes to ascertain which canons were the most important and which canons the courts were more likely to hold to be rebuttable. If parliamentary counsel could rely on a particular canon being applied in particular cases, they would be able to frame their Bills accordingly. The failure of the courts to adopt a more definitive, rational and systematic approach to the interpretation of statutes has almost certainly contributed to the complexity of statutes. This in turn has resulted in difficulties of comprehension for users. There is a need for the courts to give further consideration to their approach to statutory interpretation. If statutory interpretation is to become a rationally systematic process, the courts must abandon the apparently intuitive way in which they frequently interpret statutes. Several legislatures[24] have already enacted provisions directing the courts to adopt a construction that would promote the purpose or object underlying an Act in preference to one that would not promote that purpose or object. It is surely only a matter of time before legislatures will feel obliged to go further and enact legislation to codify and systematise the rules for interpreting statutes.

There is also the problem of over intricate policy. Obviously a statute that embodies a complex policy will be more difficult for the reader to follow than one that deals with a policy that is not subject to exceptions and qualifications. For example, a taxing statute that imposes an income tax at a flat rate on all employed persons without exception will be simpler than one that imposes the tax at progressive rates with special provision for specified classes of persons or income to be wholly or partially exempted or excepted from the tax. Similarly, a taxing

statute that contains provisions that have policy objectives, the provision of investment incentives for instance, that are totally unrelated to the revenue gathering objectives of the statute will be far more complicated than one that does not contain such provisions. The need to try to reconcile conflicting policy objectives is a problem not infrequently encountered by parliamentary counsel and the resulting provisions will inevitably be difficult to comprehand despite the use of short sentences and other hallmarks of plain English. Other legislative provisions prescribe administrative structures, procedures and processes. In many cases these structures, procedures and processes are more complex than are necessary for the purposes of the statute concerned. The increased complexity resulting from the adoption of such structures, procedures and processes adds to the difficulties of parliamentary counsel and is likely to be an obstacle to improved intelligibility. There is a clear need for formulators of policy to identify and evaluate the various means by which the policy goals may be achieved and to select the most effective and efficient, and the least complicated, means for achieving those goals. It is also desirable that legislative proposals should not contain conflicting policy goals. For example, a proposed taxing statute should not contain investment incentives.

The fact that parliamentary counsel are not brought into the legislative process until after the relevant policy has been formulated means that, although they may, by virtue of their experience, be able to make constructive suggestions for ameliorating the situation, it is usually too late for those suggestions to be adopted, valid though they may be. Ideally it would be desirable for parliamentary counsel to be brought into the legislative process at an earlier stage. However, because of the shortage of parliamentary counsel in most jurisdictions and because of the demands on their time, it is unlikely that this ideal will be attained.

It is easy enough to lay down a list of rules as to what should be done or should not be done. But there will always be exceptions and implementation may prove more difficult

than specifying rules or guidelines as to what should be done. For instance, there is no guarantee that every-day words will be any less semantically ambiguous than rare or obscure words. Despite Mr. Kennan's claims for the Flesch Reading Index, which produces a rating by quantitative comparisons of the number of syllables in words and words in sentences, there is a lot more to comprehensibility than short sentences and simple words. As one writer has said:

> "While the Flesch test is handy, consistent and of some validity, it is also misleading. By determining readability on the basis of word and sentence length, the formula actually measures reader sophistication more than document readability"[25].

An early attempt at Kennanisation in Victoria was the Coroners Bill. This Bill manifested many of the dangers of simplification that I have already outlined. Many of the provisions were elliptical. The Bill "contained" lacunae. Many of the legal ramifications were not satisfactorily unravelled, leaving the statute user unable to ascertain the consequences of contravention of or non-compliance with particular provisions.

While there is undoubtedly a case to be made for simplifying legislation, steps to that end should be taken with care, with the prime objective being to secure the greatest possible degree of intelligibility while at the same time ensuring that the legislation is both legally effective and operationally certain. As pointed out, there are dangers. An analysis of "plain English" shows that converting the current language used for expressing legislation to "plain English" is not a simple process. In particular, readability formulae, such as the Flesch test, should not be relied on to produce a simplification of legislation. At best, such formulae merely indicate the size of the problem. Finally, although parliamentary counsel undoubtedly have a responsibility to ensure that legislation is comprehensible to users, others, in particular the

judiciary, policy formutators and not least legislatures, also have contributions to make towards attaining that objective.

APPENDIX

Preliminary Note - Although rendered more intelligible as a result of the redraft, the section still lacks precision. For example, it is not clear who has authority to receive an official secret. Nor is it clear what is a lawful authority for the purposes of the section. As can be seen from recent prosecutions under the section, there is also disagreement as to the meaning of the expression "in the interests of the State". The reason why the existing section prohibits a person from "using" information "for the benefit of a foreign power" in one case and from "communicating" information "directly or indirectly to a foreign power" in another (but similar) case is not understood. There are other problems of a similar kind. There may also be a case for extending the definition of "document" to cover information stored in a computer or in computer tapes. No attempt has been made to deal with these problems. The policy underlying the section has been taken as given and no attempt has been made to cure defects in the policy.

Wrongful communication, etc., of information

2. (1) If any person having in his possession or control any secret official code word, or pass word, or any sketch,[1] plan, model,[1] article, note, document,[2] or information, which relates to or is used in a prohibited place[1] or anything in such a place, or which has been made or obtained[1] in contravention of this Act, or which has been entrusted in confidence

Wrongful communication of official secrets, etc.

2. (1) In this section--

"classified information" means information that, whether contained in a document or not---

(a) relates to or is used in a prohibited place[1] or anything in such a place;

(b) has been made or obtained[1] in contravention of this Act;

(c) has been entrusted in confidence to a person by a person who

to him by any person holding office under His Majesty or which he has obtained[1] or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,--

(a) communicates[1] the code word, pass word, sketch,[1] plan model,[1] article, note, document,[2] or information to any person, other than a person to whom he is authorised to communicate[1] it, or a person to whom it is in the interest of the State his duty to communicate[1] it, or,

(aa) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests

(b) retains[1] the sketch,[1] plan, model,[1] article, note or document[2] in his possession or control when he has no right to retain[1] it or when it is contrary to his duty to retain[1] it

holds office under the Crown; or

(d) a person has obtained[1], or to which a person has had access, by virtue of that person's position--

(i) as a person who has or or has held office under the Crown;

(ii) as a person who is or has been engaged under a contract made on behalf of the Crown, or a contract the performance of which is wholly or partly carried out in a prohibited place[1]; or

(iii) as a person who is or has been been employed under a person who holds or has held such an office or who is or has been engaged under such a contract;

"classified document" means a document that contains classified information;

"document" includes sketch[1], plan, model[1], article and note, and includes part of a document[4];

"official secret" means any classified information, secret official code word or secret official pass word, and includes a classified document.

(2) A person who, having possession or control of an official secret--

(a) communicates[1] the secret to any person other than--

or or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch,[1] plan, model,[1] article, note, document, secret official code or pass word or information:

that person shall be guilty of a misdemeanor.

(1A) If any person having in his possession or control any sketch,[1] plan, model,[1] article, note, document,[2] or information which relates to munitions of war,[1] communicates[1] it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour.

(2) If any person receives[1] any secret official code word, or pass word, or sketch,[1] plan, model,[1] article, note, document, or information knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch,[1] plan, model,[1] article, note, foreign power; or document, or information is

(i) a person who is authorised to receive the secret; or

(ii) a person to whom it is, in the interest of the State, his or her duty to communicate[1] the secret; or

(b) fails to take reasonable care of, or engages in conduct that endangers the safety of, the secret.

is guilty of an offence.

(3) A person who, having possession or control of a classified document--

(a) retains[1] the document in his or her possession or control when that person has no right to retain it or when it is contrary to that person's duty to retain it; or

(b) fails to comply with all directions issued by a lawful authority with regard to its return or disposal,

is guilty of an offence.

(4) A person who, having possession or control of any classified information[3], uses the information--

(a) for the benefit of a foreign power; or

(b) in any other manner prejudicial to the safety or interests of the State,

is guilty of an offence.

(5) Any person who, having possession of any information relating to war munitions[1], communicates the information--

(a) directly or indirectly to a foreign power; or

communicated[1] to him is contravention of this Act, he shall be guilty of a misdemeanour unless he proves that the communication[1] to him of the code word, pass word sketch,[1] plan, model,[1] article, note, document, or information was contrary to his desire.

(b) in any other manner prejudicial to the safety or interests of the of the interest of of the State, is guilty of an offence.

(6) Any person who receives[1] any code word, pass word or other information knowing, or having reasonable grounds for believing, that it is an official secret communicated[1] in contravention of this Act, is guilty of an offence, unless it is proved in defence that the communication[1] was made against that person's wishes.

Notes to the Appendix

1. This expression is defined in section 12 of the Official Secrets Act 1911 (U.K.).

2. "Document" is defined in section 12 of the Principal Act as including part of a document.

3. It is assumed that using a document for the benefit of a foreign power is to be an offence.

4. One would normally insert this definition in the relevant interpretation section (i.e. section 12 of the Principal Act), but to keep the example simple it is included in the revised section.

Notes

1. For example, in Bismag Ltd. v Amblins (Chemists) Ltd. (1940), 667 at p. 687, McKinnon L.J. was no doubt justified in saying "I have very little notion of what the section is intended to convey, and particularly the sentence of 253 words which constitutes subsection (1). I doubt if the entire statute book could be successfully searched for a sentence of equal length which is of a more fuliginous obscurity". But as for shorter sentences, one should not overlook the words of caution offered to the Renton Committee by a former English First Parliamentary Counsel, Sir John Fiennes, when he said:

> "Shorter sentences are easier in themselves, and it would probably help overall to have them shorter, but you are then faced with having to find the relationship between that sentence and another sentence two sentences away, which, if you have it all in one sentence, is really done for you by the draftsman."

2. However, there may be a case for drafting Bills of a non-contentious and non-controversial nature (such as those relating to the internal operations of a statutory corporation) in more general terms.
3. (1949) A.C. 398.
4. Ibid. at 410.
5. (1891) 1 Q.B. 147, 167-168.
6. Cmnd. 6053.
7. Ibid. para. 17.18.
8. Ibid.
9. Ibid. para. 6.3; it was a footnote to the National Insurance Act 1946, Sch. 1, Pt. II.
10. Ibid.
11. See. e.g. R v Harbax Singh (1979) Q.B. 319. In that case the defendant was convicted of an offence against section 6 of the Bail Act 1976 (U.K.). The section provided that an offence against the section was punishable either on summary conviction or as if it were a criminal contempt of court. The defendant was sentenced to imprisonment. It was argued on appeal that the court had power to sentence the defendant to imprisonment only if the contempt was committed in the face of

the court and that, since those words did not appear in the statutory hypothesis, a custodial sentence was inappropriate. The English Court of Appeal dismissed this argument, holding that the missing words were implied. So much for the canon of construction that penal statutes must be construed strictly (i.e. in a manner favourable to the citizen)!

12. See the Appendix. The sole reason for selecting this particular section is that it is an excellent example of an extremely poor piece of drafting which is virtually unintelligible unless reconstructed or broken down into further paragraphs and subparagraphs. (Its selection should in no way be regarded as being an endorsement of its contents or the underlying policy.)
13 "Statute Law" (2nd Edn.), pp 121-2.
14. Parliamentary Counsel Offices in most Commonwealth countries have already adopted at least some of these devices.
15. i.e. the failure to provide adequate cross-references, headings, notes and other "signposts".
16. See Mitchell "Reflections on Law and Orders" Juridical Review 19.
17. (1969) Law Com. No. 21, para 5.
18. (1981) A.C. 251.
19. Ibid. at 280.
20. Victorian Legal Constitutional Committee, Report on the Victorian Interpretation Bill (1982).
21. See for example section 33 of the Interpretation Act 1987 (N.S.W.).
22. (1973) A.C. 931.
23. (1964) p. 526.
24. Ibid.
25. e.g. S.Ross, "On Legalities and Linguistics: Plain Language Legislation" (1981) 30 Buffalo Law Review 317, 337.

AN ACTS RESTATEMENT ACT ?

DUNCAN BERRY

SENIOR LEGISLATIVE DRAFTSMAN

NEW SOUTH WALES

It is frequently a problem for the statute user to ascertain what the law is, particularly when it has been the subject of extensive amendment. The statute user wants the law to be in one place and in an up-to-date and intelligible form.

In the case of a statute that has been amended by the textual method, one solution is to reprint the statute together with all of its incorporable amendments. This solution does not however deal with all of the defects commonly found in a principal enactment. As Bennion [1] points out in his book "Statute Law", statutes not infrequently contain defects which are blocks to intelligibility. Some of the defects to which Bennion refers are compression of language, anonymity, distortion and scatter. For those who are unfamiliar with these expressions, compression of language occurs when too many ideas or concepts are compressed into a single proposition. Anonymity exists when words which relate to a specific provision in another part of the legislative text do not indicate that relationship. Distortion arises when the drafter uses a term in such a way as to include a thing or concept that it would not normally encompass. Finally, scatter. This occurs when the drafter places closely related provisions in different parts of the text thus making it more difficult for the statute user to follow the nexus between those provisions. Such drafting infelicities usually arise because the drafter is under pressure to produce a draft Bill at very short notice. In trying to meet unrealistic deadlines, the drafter seeks to achieve legal effectiveness and precision by using the minimum number of words possible. Thus the drafter's immediate goals are achieved at the expense of intelligibility which more often than not requires the use of more rather than fewer words.

(1) 2nd Edition, Chapter 11.

These and other infelicities could be disposed of by means of a restatement of an Act. The restatement would contain all incorporable amendments to the principal enactment together with revamped versions of any unincorporable amendments that remained extant. Obsolescent text would be omitted and defects in the text would be corrected. Relevant subordinate legislation would be similarly restated and included in the same publication as the restatement of its parent statute. Thus all of the relevant law on a subject would be located in one place so that the user could find the law on a particular point relatively easily. The restatement would provide the user with the means to ascertain the law on that point as simply and comprehensibly as the subject matter allowed. A restatement would be much easier to understand than the source material that it processes, and would be more reliable than a summary, precis, digest or abridgment.

There are several ways in which a legislative instrument might be restated. It could be done by re-enactment. By this means the re-enacted instrument would itself constitute the law. The possibility of conflict between the originally enacted law and the restatement would be eliminated. There would be no need for anyone to consult the old text. The problem with this approach is that it involves going through all of the various time consuming parliamentary processes and procedures. The legislature is unlikely to agree to enact a restatement without being satisfied that it reproduces the existing law exactly or giving itself the opportunity to debate and amend the restated provisions. The object of having a restatement would thus be largely defeated. Already many legislatures have insufficient time to process new substantive legislation and so to permit parliamentary debate and amendments would be either unacceptable or make the legislature unworkable. To allow amendments

to the restatement would leave the door open to distortion of the text, one of the evils that the restatement is designed to eliminate.

Another way of effecting a restatement would be for it to be done by a private organisation, such as a legal publishing firm. Restatements of United States law have been carried out in this way. Halbury's Statutes are another example. Yet another approach would be for the restatement to be produced by an official body, such as the Parliamentary Counsel's Office, the Law Reform Commission or some body specially established for the purpose. In this event the original law would remain in force and would be amended by the legislature in the ordinary way. The courts would retain their full authority to pronounce on the meaning of a legislative instrument in the form originally enacted and would treat a restatement as prima facie evidence of that instrument. In the event of a conflict between the original text and the restatement the former would prevail.

The problem with the last two last-mentioned methods of restatement is that they leave the restatement subordinate to the existing law. Restatements of these kinds would be useful in so far as they would make it easier for practitioners to find out what the current law on a topic is. Although such restatements, if skilfully compiled, would ultimately gain persuasive evidentiary authority, in the last analysis it would still be necessary to consult the original text. How could this problem be overcome? I believe that the solution might be to enact an Acts Restatement Act. Such an Act would authorise a designated person, such as the Parliamentary Counsel, to prepare restatements of Acts. The Act would permit the omission of obsolete matter and the correction of defective text. It would authorise specified kinds of amendments of a formal nature. For instance, the updating of cross references would be permitted. In a case where the name of a body specified in the original

text had changed, in the restatement the new name would be substituted. When completed, the restatement would be tabled in the legislature. If not the subject of a negative resolution of the legislature or, in the case of a bi-cameral legislature, of either house of the legislature, within say 28 sitting days of tabling, the restatement would become the law to the exclusion of the original enactment. The possibility of conflict between the original text and the restatement would be avoided, as would the need for anyone to consult both texts. Also avoided could be the need to run the gauntlet of the processes, procedures and debates applicable to the enactment of a Bill. At the same time the legislature would retain full control over the legislation concerned and, if not satisfied that the restatement correctly reproduced the substance of the original law, together with subsequent amendments, would resolve not to give effect to it. Rather than employing the negative resolution procedure just outlined, another approach might be to require a positive resolution of the legislature or, where appropriate, of both houses of the legislature. Although this would make it more difficult to secure the implementation of a restatement, it would still be more efficient than submitting the restatement to the legislature in the form of a Bill.

The procedures I have outlined are in part based on procedures generally applicable to subordinate legislation. The latter procedures have proved workable in relation to that kind of legislation and I have no reason to believe that, suitably modified, they would not prove workable in relation to restatements.

Electronic Aids in Legislation: computer hardware
Prepared by Gérard Bertrand, Q.C., Chief Legislative Counsel of the Government -- Canada

Ladies and Gentlemen,

I am grateful to our president, Sir George Engle, for giving Canada the opportunity to make a presentation on the use of electronic aids in legislation. I am also grateful to Mr. Peter Pagano, Chief Legislative Counsel for the Province of Alberta and to Mr. Allan Roger, Chief Legislative Counsel for the Province of British Columbia for having readily agreed to participate in this presentation which we have divided into three parts. Mr. Roger will address first the topic of electronic typing and typesetting, then Mr. Pagano will talk to you about the creation and maintenance of searchable data bases and their use in the drafting and publication of legislation. I will then address the topic of computer hardware. My presentation will be followed by that of Ms. Alisa Posesorski, of the Canadian Law Information Council (CLIC), who will talk about the electronic indexing of statutes through a computer program developed by the Council. As some of you may know, CLIC is a non-profit body made up of representatives of the Federal and Provincial Governments, the professional societies, the legal

publishers and suppliers of computerized legal information retrieval services. One of the objectives of the Council is to enhance the quality and increase the availability of information pertaining to the law in Canada for the benefit of the Canadian Community.

Finally, Mr. Douglas Duncan, a Scottish Parliamentary drafter will present a paper on his participation in the ''STATLAW'' project for the preparation of UK Bills using electronic means.

Thereafter a panel made up of the above-mentioned speakers plus Ms. Hilary Penfold (Australian Office of Parliamentary Counsel) and Mr. Walter Iles (Chief Parliamentary Counsel for New Zealand) will answer questions you may have.

There will be a demonstration all day in room by the Xerox Corporation of some of its equipment. I wish to thank the Corporation for arranging this demonstration while at the same time adding that its presence here at the invitation of Mr. Roger

is not to be construed as an official endorsement of its products.

Electronic aids in legislation are now commonly used in Canada where experiments with the use of computers in the drafting process started some fifteen years ago and where also a computer data base of statutes, court decisions and other legal information was made accessible through the QUIC/LAW system operated by QL Systems Limited founded at about the same time. Incidentally, Canada's legal world owes much in this development to the sense of vision, dedication and perseverance of two members of the legal profession: Professor Hugh Lawford of Queen's University, Kingston, Ontario and Mr. Stephen J. Skelly currently Senior Assistant Deputy Minister of the Canadian Federal Department of Justice.

The Legislation Section of the Department of Justice, where drafting of federal government

legislation in Canada is centralized, has been employing, for the past seven years, Vucom II terminals through which all Bills are input by the drafters' secretaries and thereafter printed by computerized photocomposition using the Automatic Typesetting system run on the Canadian Government Printing Bureau Computer.

More advanced technology is now available through the advent of multifunctional microcomputers, also called personal computers (P.C.), which come with a wide choice of software products that can be used quickly and easily by novice users.

The Canadian Federal Department of Justice is at present shopping for a system of such computers with a view to equipping its drafters and their support staff with the best technology at present available. To that end a number of manufacturers have been invited to demonstrate the capacity of their equipment to meet the specific needs of the drafters of legislation and of regulations and of those responsible for the permanent revision of

statutes and regulations and the maintenance of data bases of statutes and regulations.

I shall outline what our requirements are because I believe that they are no different than those of other drafting offices in the Commonwealth no matter their size or volume of work.

What we need is off the shelf, easy to use, reliable equipment at a reasonable purchasing or leasing cost that will allow drafters and support staff:

(a) to take the drudgery out of legislative drafting;

(b) to increase the time in which to create, print and distribute a legislative text; and

(c) to increase the accuracy of that text.

That means that the equipment required to meet those needs must offer the following characteristics or functions:

(a) a video display terminal which can be divided easily, as desired, into several segments called ''windows'' so that various pages of stored information can be displayed simultaneously on the screen for ease of comparison. For instance, a drafter from Vanuatu working on an amendment to a section of an Act could see on his screen, at the same time, the English, French and Bislama's version of that section of the Act or one or two, at his discretion, plus his proposed draft amendment to each of them, or one of them, as needed.

(b) its own data bases, or immediate access to data bases located somewhere else, in order to retrieve and consult or copy precedential materials such as the case law, legal opinions and standard sentences, paragraphs or definitions, etc. for incorporation, as appropriate, into a bill or regulation being drafted. This feature is particularly useful when amendments to existing Acts or regulations consist in changing a word or a few words only

throughout a text as it saves the trouble of retyping it with its resulting risks of errors.

(c) the capacity to switch instantaneously from one data base to another data base.

(d) the capacity to check texts for typing and spelling mistakes for immediate correction through inclusion, in the data base, of a dictionary.

(e) the capacity for the drafter to create his or her own dictionary, for retrieval or reference purposes, of frequently used terms and expressions or formulae etc.

(f) the capacity to communicate with other offices also equipped with microcomputers without having to go through the process of writing or dictating a communication, having it typed and retyped by a secretary and proofread and signed by the author and then mailed or entrusted to a messenger.

(g) instant and fast printing of the text that has just been created in a programmed pre-determined form (for instance, double-spaced draft, one column, two column, letter or memorandum, etc.)

(h) compatibility, where appropriate, with the computer equipment of the Government central printing bureau, but bearing in mind the need for confidentiality.

Inexpensive, multifunctional microcomputers with the above choice of software products or programmes do exist but with variations in the number and quality of features being promoted by vendors. One should therefore be cautious as this is a case where it is most appropriate to bear in mind the caveat emptor advice.

First of all, a careful comparison, through actual demonstrations, of available microcomputers is warranted since they are proliferating, in order to assess those that are best suited to one's needs in light of the end result expected. In

that connection, it might be worthwhile quoting here, because it is as relevant today as it was in 1983, the following abstract from the Memorandum by the Government of Canada (LMM(83)24) for the Meeting of Commonwealth Ministers held in Colombo, Sri Lanka, in February 1983:

> ''However,in choosing a system, many factors must be taken into account in addition to the funds that are available. These include:
>
> (i) the future need of the office as well as the present needs so that the equipment chosen for today can accommodate, or be developed to accommodate, the future needs;
>
> (ii) the type of equipment already in use within the government or local private sector which could provide the type of service required or could provide backup in the event of equipment failure ;
>
> (iii) the guarantee that a service

representative can be on site within a reasonable period of time following equipment failure. Today, one should insist on a one-hour delay);

(iv) the kind of environment the equipment can be operated within, e.g. is it sensitive to heat, humidity, etc. and what are the limits within which it can operate. (Current electronic data processing equipment is far less sensitive to these factors than earlier equipment, but, nevertheless, problems could arise in some jurisdictions.);

(v) can additional equipment be obtained within a reasonable time frame if expansion of the system becomes necessary, and so on.''

Is the equipment offered affordable? In an internal document dated October 1985 reference PUB. PWSS142, entitled Guidelines for microcomputer usage in the Government of Alberta, reference is made to that question as follows under the heading The True Cost of Microcomputers:

''The initial cost of a microcomputer is only a small part of its ultimate true cost to the department. Additional expenses have been found by experience to be from 2 to 6 times the initial cost of the hardware. These expenses include training (including the cost of employee time while on training), additional software, additional peripherals, additional furniture and office space, charges for access to public data bases, work to provide the appropriate telecommunications infrastructure, work required to make mainframe data accessible to microcomputer users, the provision of advisory services, arrangements for back-ups, maintenance, and additional costs for subsequent physical moves.

Compatibility and the capability of integrating the micro initiatives into both the departments' and central agencies' systems and networks are important considerations that should be dealt with early in the planning stages. This is necessary in order to ensure that the equipment

will be utilized to its full potential and to avoid redundant capital investment as departmental requirements change.''

The same document refers to the impact of microcomputers on employees and organizations and recommends that Departments buying them should prepare guidelines with regard to potential impacts of the introduction of microcomputers into an office so that anticipated benefits are not cancelled out by unforeseen problems. The impact of microcomputers on employees' work habits, quality of work and job functions, and on the organization, and also the potential for job displacement, job change, etc., all need to be considered before acquisition. It is important that employees are fully informed and participate, as applicable, so that fears do not develop based on misinformation.

The Canadian memorandum quoted above contained the following observations on that particular question.

> ''(Secondly, there was initial resistance by some secretaries to using the terminals and concern with loss of jobs. The latter was slowly overcome by the assurances that no one would lose a job because of the new technology and the former by not forcing too quickly the use of the terminals until the secretaries were comfortable with them. Courses on the use of the terminals were given half-days for one or two weeks and time allowed for the secretaries to practise on them. The value of the system is now acknowledged by the secretaries who are relieved of the tedious, repetitive work of retyping and proofreading successive drafts of the same material.''

As was said of television some years ago, microcomputers are here to stay and their advantages far outweigh their disadvantages if their purchase and use is carefully planned.

It now gives me great pleasure to ask Mrs. Alisa Posesorski to address you.

66

Thank you.