

Items of interest

United Kingdom: Lord Justice Sales' article and swearing in as UKSCJ

As Lydia Clapinska reported in the last (September 2018) edition of the *CALC Newsletter*, the Office of the Parliamentary Counsel in London (OPC) hosted the UK Drafters' Forum 2018 at 1 Horse Guards Road on the 26th and 27th March 2018.

The Forum was opened by OPC's First Parliamentary Counsel, Elizabeth Gardiner CB. She spoke passionately of the current challenges we face as drafters, not least in our role of crafting legislation to facilitate the UK's withdrawal from the EU.

Elizabeth introduced the Forum's keynote speaker, the Rt. Hon. Lord Justice Sales, who spoke powerfully and persuasively about the contribution of legislative drafting to the rule of law.

As Alison Bertlin of OPC in London has kindly indicated, Lord Justice Sales' remarks have now been published as a short article in the latest edition of the Cambridge Law Journal – see [Philip Sales "The Contribution of Legislative Drafting to The Rule of Law" \(2018\) 77\(3\) Cam LJ 630-635.](#)



The abstract is as follows: “Drafters of legislation occupy an important position of constitutional significance, involving the translation of political will into legal form. They help clarify and refine the instructions from politicians and create statutory schemes which are internally coherent and have external coherence with wider legal and constitutional values. They begin the process of disciplining and refining political will through application of constitutional reason, which is then continued at the stage of interpretation of statutes by the courts. Drafters of legislation thus contribute to the formal rule of law values of predictability and certainty and also to more substantive values of fairness and respect for constitutional principles and rights. The better the drafting of legislation, the smoother the integration of democracy and the rule of law and the less need there is for interstitial law-making by judges in the interpretive exercise.”

Lord Sales became a Justice of the UK Supreme Court in January 2019. To view Lord Sales' swearing in ceremony, click [here](#).

UK: Brexit: dramatic developments in lead up to “exit day”

This UK Act got Royal assent on 26 June 2018. Explanatory notes to this UK Act are available at <http://www.legislation.gov.uk/ukpga/2018/16/notes/contents>. Various provisions of this UK Act are brought into force by the [European Union \(Withdrawal\) Act 2018 \(Commencement and Transitional Provisions\) Regulations 2018](#), made on 3 July 2018.

The Attorney-General and Advocate General for Scotland referred the Scotland and Wales Brexit/continuity Bills to the UKSC for a ruling on whether they are within devolved legislative powers: <https://t.co/AxAq7xlq9G> The UKSC heard the reference or appeal on 24 and 25 July 2018. The UKSC gave its [decision](#) on the reference on 13 December 2018. For commentary, see—

- C. McCorkindale and A. McHarg, 'Continuity and Confusion: Towards Clarity? – The Supreme Court and the Scottish Continuity Bill', U.K. Const. L. Blog (20th Dec. 2018) (available at <https://ukconstitutionallaw.org/>):
- K. Campbell, 'Constitutional Dogs That Barked and Dogs That Did Not: The Scottish Continuity Bill in the Supreme Court', U.K. Const. L. Blog (14th Jan. 2019) (available at <https://ukconstitutionallaw.org/>)

The 10 December 2018 CJEU decision of [Wightman v Secretary of State for Exiting the European Union \[2018\] 3 WLR 1965](#) interpreted Article 50 of the Treaty on European Union as giving the United Kingdom a unilateral right to revoke its notice of withdrawal from the EU. For commentary, see G. Phillipson and A.L. Young, 'Wightman: What Would Be the UK's Constitutional Requirements to Revoke Article 50?', U.K. Const. L. Blog (10th Dec. 2018) (available at <https://ukconstitutionallaw.org/>).

Brexit-related developments in the UK since December 2018 have, of course, been dramatic. More may occur before 11pm 29 March 2019. Section 20 of the Withdrawal Act provides, in part:

(2) In this Act references to before, after or on exit day, or to beginning with exit day, are to be read as references to before, after or at 11.00 p.m. on 29 March 2019 or (as the case may be) to beginning with 11.00 p.m. on that day.

(3) Subsection (4) applies if the day or time on or at which the Treaties are to cease to apply to the United Kingdom in accordance with Article 50(3) of the Treaty on European Union is different from that specified in the definition of “exit day” in subsection (1).

(4) A Minister of the Crown may by regulations—

- (a) amend the definition of “exit day” in subsection (1) to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom, and
- (b) amend subsection (2) in consequence of any such amendment.

For commentary about possible developments related to a Backbench Bill, see—

- Sir Stephen Laws KCB QC [“The risks of the Grieve Amendment”](#) (Policy Exchange Research Note, 2019):
- R. Craig, 'Could the Government Advise the Queen to Refuse Royal Assent to a Backbench Bill?', U.K. Const. L. Blog (22nd Jan. 2019) (available at <https://ukconstitutionallaw.org/>)



Bermuda: same sex marriage law, new Domestic Partnership Act 2018 – appeal against June 2018 Supreme Court ruling dismissed – JCPC?

Bermudans were granted the right to same-sex marriages after a Supreme Court [ruling](#) in May 2017.

The ruling was disagreed with by a majority of voting Bermudans in a 2016 referendum (invalid because only 46.89% -- so less than 50% -- of Bermudans voted).

So Bermuda's [Domestic Partnership Act 2018](#) (DPA), assented to by His Excellency the Governor Mr John Rankin, CMG, on 7 February 2018, provides domestic partnerships open to same sex couples (and also to heterosexual couples), and also provides as follows:

Provisions relating to marriage

Clarification of the law of marriage

53 Notwithstanding anything in the Human Rights Act 1981, any other provision of law or the judgment of the Supreme Court in *Godwin and DeRoche v The Registrar General and others* delivered on 5 May 2017, a marriage is void unless the parties are respectively male and female.

Saving for certain same sex marriages

54 (1) In this section—

"pre-commencement same sex marriage" means a marriage entered into under the Marriage Act 1944 or the Maritime Marriage Act 1999 during the transitional period by two people of the same sex;

"relevant law" has the meaning given in section 36(2);

"transitional period" means the period beginning on 5 May 2017 (the date of the Supreme Court judgment in *Godwin and DeRoche v The Registrar General and others*) and ending immediately before the commencement date.

(2) Notwithstanding sections 48(2) and 53, nothing in this Act affects the validity of a pre-commencement same sex marriage.

(3) Notwithstanding sections 38, 48(2) and 53, nothing in this Act prevents the recognition in Bermuda of a marriage lawfully entered into and registered in an overseas jurisdiction under the relevant law before or during the transitional period by two people of the same sex if—

(a) both parties met all requirements necessary to ensure the formal validity of the marriage under the relevant law; and

(b) at the time of the marriage each party was domiciled in Bermuda or had capacity to enter into the marriage under the place of his domicile,

provided that both parties were over 18 years of age at the time of the marriage.

(4) In relation to—

(a) a pre-commencement same sex marriage; and

(b) a marriage falling within subsection (3),

any reference in any enactment to marriage, the parties to marriage or the dissolution of marriage shall be read with the necessary modifications.

(5) No action shall lie against any person for any act or omission before the commencement date relating to any failure to recognise a marriage falling within subsection (3).

Bermuda's Domestic Partnership Act 2018 came into operation on 1 June 2018.

A Supreme Court challenge against the new law was, however, heard by Chief Justice Kawaley on 21 and 22 May 2018. The challenge sought to have the legislation declared void by the court on the basis that it is inconsistent with fundamental rights as set out in the Constitution.

In a [landmark ruling](#) on 6 June 2018, Chief Justice Kawaley struck down parts of the DPA on constitutional grounds, having found the DPA was inconsistent with the rights to freedom of conscience and from discrimination on the basis of creed. A summary of the judgment is [here](#).



The Bermuda Government, however, appealed the 6 June ruling. (The court agreed to an application by the Attorney-General to stay the ruling by 6 weeks, to allow to government to consider an appeal.) The [appeal](#) against the 6 June ruling was confirmed on 5 July 2018 by Walton Brown, the Minister of Home Affairs. Mr Brown said the ministry looked forward to taking the case to the Court of Appeal.

The Court of Appeal delivered its [decision](#) on 23 November 2018. It dismissed the Bermuda Government's appeal, holding (in agreement with Chief Justice Kawaley) that the DPA was passed for a religious purpose and therefore contrary to section 8 of the Bermuda Constitution, which is concerned with protection of religious freedom. At [72], Baker P, giving the judgment of the Court of Appeal (Baker P and Kay and Bell JJA) said: "It is true that the draughtsman of the Bermuda Constitution 50 years ago is unlikely to have had same-sex marriage in the forefront of his mind, or indeed in his mind at all, but that is not the point. It was drafted with sufficient flexibility to protect everyone's freedom of conscience in a changing world. Interference with that freedom can be by both positive and negative acts, in this instance by the negative act of preventing same-sex couples having the right to marry."

On 13 December 2018, the Bermuda Government [reportedly](#) applied to the Court of Appeal for permission to appeal to the Privy Council against the Court of Appeal's decision. Also in December 2018, Lord Tariq Ahmad, the U.K. minister responsible for the British Overseas Territories, [reportedly](#) said the U.K. was content, for now, to let the judicial process takes its course. (Editor: Thanks to Cathryn Balfour-Swain for emailing the Court of Appeal's decision.)

Australia: Queensland: Human Rights Bill 2018 introduced

In Australia, the Government of the State of Queensland introduced a [Human Rights Bill 2018](#) into the Queensland Parliament on 31 October 2018.



Attorney-General Yvette D'Ath [said](#) "it was an historic day for Queenslanders everywhere".

"Mrs D'Ath said it was also about the everyday interactions of individuals with government.

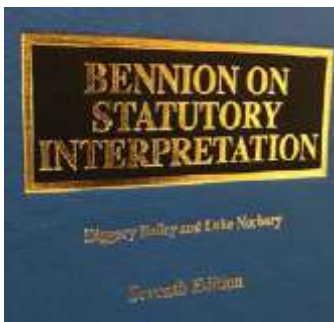
"The Bill will require departments, agencies and public entities to make decisions and act in a way that is consistent with human rights," she said.

"It will require the courts to interpret legislation in a way that is compatible with human rights, along with requiring the Parliament, including Parliamentary Committees, to consider whether bills are compatible with human rights."

This Bill means Queensland will join other common law and Commonwealth countries such as Canada, the United Kingdom, New Zealand and South Africa, as well as Victoria and the Australian Capital Territory, in the legislative protection of human rights."

For commentary, see Jack Maxwell, ["A Human Rights Act for Queensland"](#), Oxford Human Rights Hub, 26 November 2018 blog post.

The Bill was referred to the Legal Affairs and Community Safety Committee on 31 October 2018 for report by 4 February 2019. For an overview of the Committee's inquiry and for submissions to it on the Bill, click [here](#).



United Kingdom: Book review of 2017 7th edition of Bennion on Statutory Interpretation

A book review of this latest edition of this famous work, edited by CALC members Diggory Bailey and Luke Norbury (both of UK OPC, London), is in the *Statute Law Review*. To access the book review as an advance article in the *Statute Law Review*, click [here](#).

New Zealand: “Open Access to Legislation” Project 2018 “Star Reform” in International Open Government Partnership

The New Zealand PCO’s Secondary Legislation “Open Access to Legislation” Project was recognised as a [2018 “Star Reform” in the International Open Government Partnership](#).

The Access Project has been selected by the Open Government Partnership (OGP) as one of the 12 star commitments it sees as transformative for open government, across the world, for 2018. This caps a great year of achievement for the project. Its inclusion in the OGP Star Reforms report was a huge surprise to NZ PCO, and a great honour.



In 2016, there was no single place where New Zealanders could view all of their government’s legislation. At that time, all Acts of Parliament, Legislative Instruments and secondary legislation (regulations) drafted by Parliament were published on the New Zealand Legislature’s website, earning New Zealand a near perfect score for legislative openness by Global Open Data Barometer.¹⁸ Despite this, regulations drafted by government departments and agencies were not systematically published in a single place or in an open format.

Expanding the Scope of Legislative Transparency

With the knowledge that better access to information has the power to increase citizens’ trust in their government, New Zealand is expanding the scope of “legislation.govt.nz”. The updated website will serve as a one-stop shop for citizens to access Acts of Parliament, Legislative Instruments, and regulations in an open format. The new service also standardizes the process and format for legislation and regulation publication across all 33 government agencies for the first time.

Why it Matters

[Legislation.govt.nz](#)’s expanded service improves the ability of citizens and businesses in New Zealand to access and understand their rights and obligations. While the commitment does not incorporate a mechanism for direct feedback, unfettered access to the nation’s laws in an open format stands to increase citizens’ trust in their government and have a stake in its work. For example, with increased knowledge of laws and regulations, citizens might be more likely to voice their disagreement when they find a law or regulation unfair. So far, representatives of both civil society and government have endorsed the user-friendly open data format in which legislation is published.

“Transparency is a key antidote to corruption...
Transparency International New Zealand heralds the
commitment of our Parliamentary Counsel Office to
publish all legislation and codes of practice.”

Transparency International

Isle of Man: New Chief Legislative Drafter

David Bermingham is sadly to leave the drafting in the Attorney General's Chambers, Isle of Man at the end of March 2019. David is a Manx Advocate with strong academic credentials who joined the Attorney General's Chambers in 2005 as an Assistant Legislative Drafter in 2005 from commercial legal practice. Demonstrating a natural flair for drafting he was quickly promoted to a full drafter position in 2007 and took the lead in drafting in the key areas of commercial law and financial services. David succeeded Lucy Marsh-Smith, who was the first holder of the position of Chief Legislative Drafter when she returned to Jersey in 2013 and is the first Manx Advocate to hold the position. His colleagues will doubtless miss his steady hand and sound intellectual approach to drafting. During his time David has expanded the team to include 3 home-grown drafters and Duane Allen, who has worked in a number of jurisdictions and many of whom will remember from his lively and informative presentations at recent CALC conferences.



Howard (centre), **David** (back right) and colleagues in 2016.

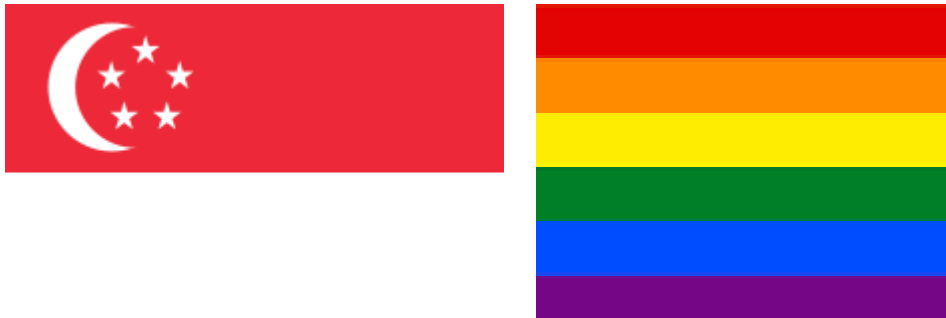
David is succeeded by **Howard Connell** who has delayed his retirement to take on the Chief Drafter role. Howard joined the Manx drafting team in 2008 from the Solicitor's Office of the UK Revenue and Customs Department where he had a number of years' experience of drafting secondary legislation as well as being involved with the tax law rewrite project. Having a keen interest in IT for drafting offices, Howard led the project that successfully delivered drafting templates and a legislation website for the Island. His drafting has been wide-ranging and included the delivery of some large projects including the Isle of Man Equality Act. Howard has a keen interest in church matters and was awarded a distinction in an LL.M in Canon Law in 2014. He is a lay reader and Deputy Vicar General and Chancellor of the Diocese of Sodor and Man.

New Zealand: NZSC delivers 2 decisions on prisoner voting



New Zealand’s Supreme Court has twice in November and December 2018 turned its attention to the vexed issue of prisoner voting. Its first decision, [*Attorney-General v Taylor*](#), upheld by a 3-2 majority a declaration that the legislative ban on all sentenced prisoners voting is inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA). Its second decision, [*Ngaranoa v Attorney-General*](#), found by a 4-1 majority that, because this legislative ban did not amend any of the “reserved” provisions in the Electoral Act 1993, no question arose as to its validity. For commentary, see A. Geddis, 'New Zealand’s Supreme Court Considers Prisoner Voting – Twice', U.K. Const. L. Blog (21st Dec. 2018) (available at <https://ukconstitutionallaw.org/>)

Singapore: Campaign to end gay sex ban after Indian SC decision



[Amy Qin “Inspired by India, Singaporeans Seek to End Gay Sex Ban” *New York Times*, Dec 16, 2018](#)

SINGAPORE — Across the British Empire, the laws banning gay sex in the colonies were often so similar that some even shared the same code number. In India, it was Section 377. In Singapore, 377A.

So when the Indian Supreme Court [struck down](#) this fall the country’s colonial-era law criminalizing gay sex, Johnson Ong — 2,500 miles away in Singapore — saw it as a call to action. Within days, Mr. Ong, 43, filed a constitutional challenge to overturn Singapore’s version of the ban, arguing that it was “absurd and arbitrary” and “in violation of human dignity.”

See also [Fathin Ungku, “Singapore DJ files court challenge against gay sex ban after India ruling” Reuters, September 12, 2018](#)

Pakistan: Legislative Drafting Manual (January 2019)

The Pakistan Institute for Parliamentary Services (PIPS) has recently published a *Legislative Drafting Manual – A Hand Book for Legislative Drafters* (January 2019).

The *Manual* is available at the CALC website's [drafting manuals page](#).

Comments on the *Manual* are welcomed, and can be made by email to Sheikh Sarfraz, Additional Draftsman, Ministry of Law and Justice, Pakistan: sheikhsarfraz676@gmail.com

LEGISLATIVE DRAFTING MANUAL

A HAND BOOK FOR LEGISLATIVE DRAFTERS



**PAKISTAN INSTITUTE FOR
PARLIAMENTARY SERVICES**
DEDICATED TO PARLIAMENTARY EXCELLENCE

Wales: New in-depth study of law-making published



GWASG PRIFYSGOL CYMRU
UNIVERSITY OF WALES PRESS

Legislating for Wales

Thomas Glyn Watkin with Daniel Greenberg

September 2018

This in-depth study of law-making delves into the process of preparing and drafting legislation for Wales. In the first book to consider law-making from a

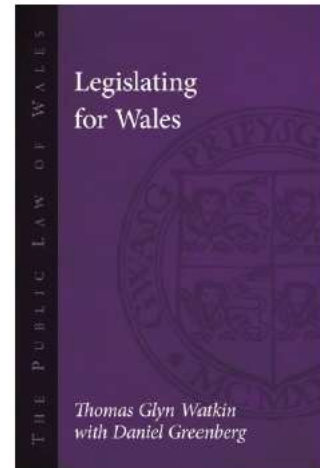
Welsh perspective, *Legislating for Wales* discusses how laws are developed from ideas to their implementation in new legislation. This is a subject that affects us all, and this book offers an essential insight into the law-making processes.

Legislating for Wales is written by two authors whose comprehensive knowledge of the legislative processes of both Westminster and the National Assembly allows them to analyse and assess the way in which a devolved Wales makes its own laws. The book is written to be easily accessible to the general reader, offering real insight to the way legislation comes into being.

Legislating for Wales is an important research tool for anyone with an interest in the legislative process of the Welsh government, and for members of the public interested in how the laws that affect them are created.

Prior to his retirement, **Thomas Glyn Watkin** was First Legislative Counsel to the Welsh Government, and formerly a Professor of Law at Cardiff and Bangor Law Schools.

Daniel Greenberg is Counsel for Domestic Legislation, House of Commons; he has worked extensively with the National Assembly for Wales on legislative scrutiny.



Australia: Northern Territory: Adoption of standard legislative citation

As of 19 February 2019, the Northern Territory has adopted the standard citation scheme for Acts and subordinate legislation, under which the year of enactment or making is included in the short title, so bringing Northern Territory into line with other Australasian jurisdictions.

This expected development has been a long time coming. The Territory had to update its entire statute book – title provisions, cover pages and all cross references. It commenced amendments to the Interpretation Act 1978 (NT) – see [s 75 of the Interpretation Legislation Amendment Act 2018 \(NT\)](#) -- on 19 February 2019 to bring in the new scheme.

Most Australasian statute books have cross references to some NT legislation under corresponding law provisions. So other Australasian jurisdictions will likely look to update these when an opportunity arises to do so.

The legislation website has been updated, with the web page for each Act and SL updated to include the year. The updated documents in Word and PDF format are being progressively uploaded from 19 February 2019.

<https://legislation.nt.gov.au/LegislationPortal/Acts/By-Title>

“This has been a big project”, explained Chief Parliamentary Counsel for the Northern Territory, Andrew Jones, but I’m pleased we have abandoned the obscure practice that’s been in place for decades and entered the mainstream.”



Africa: Who Will Save the Africa Parliamentary Knowledge Network?

Elizabeth Bakibinga and Sean J. Kealy have written a [blog post](#) about the Africa Parliamentary Knowledge Network (APKN), established in June 2008.

They seek to reinvigorate the APKN by conversation with interested parties.

They say: “This conversation could start at the [Commonwealth Association of Legislative Counsel \(CALC\) conference](#) that will take place in Livingstone, Zambia April 1-3, 2019. . . During its short life, the APKN had a string of successes; thanks in large part to the tireless work of the UN/DESA technical advisors, Flavio Zeni and Dr. Cecilia Matanga. The APKN issued a comprehensive set of legislative [drafting guidelines](#) for use across the Continent to allow better informatics sharing while remaining true to best practices in legislative drafting. An assembly of drafters from APKN countries refined and ratified the Guidelines at a 2010 conference in Cape Town South Africa. In 2011, UN/DESA, in conjunction with the APKN issued a [handbook](#) on designing legislation for the free use of drafters everywhere.”

Elizabeth and Sean conclude their posting as follows:

We will send this posting to the various African parliamentary leaders, those who have been active with the APKN in the past, and to the CALC community at large. If anyone who would like to make suggestions, on either a vision for APKN or a source of funding, we will post the ideas on [Boston University School of] Law’s [Dome blog](#) webpage. Our hope is that we can bring several potential suggestions to the CALC conference in April [2019 in Zambia] for discussion amongst drafters from APKN countries and their allies. Together, we can reinvigorate APKN and support stronger parliaments across Africa.”



CALC
COMMONWEALTH ASSOCIATION
OF LEGISLATIVE COUNSEL

Canada, Alberta: Peter Pagano retires as Chief Legislative Counsel



Peter J. Pagano, QC quite likely holds the record as the longest serving head of a legislative drafting office in the Commonwealth (and probably the whole world). He was appointed in 1980 and, after 39 years of loyal service to the Government of Alberta, he is planning to retire in June of 2019.

Peter is originally from Montreal and graduated from Loyola College (now Concordia University) in that city. He received his law degree from the University of New Brunswick in 1972 and completed a post-graduate diploma program in Legislative Drafting at the University of Ottawa in 1973 taught by Dr. Elmer Driedger whom Peter, like so many of Dr. Driedger's students, has described as a "phenomenal teacher". Peter's single regret in taking this program is that with more drafting experience beforehand he might have derived even greater benefit from Dr. Driedger.

Peter first worked as a legislative counsel in the office of the New Brunswick Legislative Counsel. After 5 years, he joined the Alberta Attorney General's Department in 1979. And, on one of the most stellar career trajectories ever, he was appointed Chief Legislative Counsel for Alberta the following year. Although it might have been thought quite risky to appoint someone so

relatively junior to the most senior drafting position in the Government, Peter soundly put to rest any doubts about the wisdom of this decision with his 39 years of outstanding service in this position. During the course of his career with the Alberta Government he has worked with 8 premiers, 13 Ministers of Justice and 10 deputy ministers. And, in addition to capably managing legislative drafting services for the Government and doing an immense amount of drafting himself, Peter has also been instrumental in establishing the Legislative Planners Network to keep the legislative staff in all departments apprised of legislative issues, initiatives and process changes. He was appointed a Queen's Counsel in 1990.

Peter also has a distinguished record of service outside his position with the Alberta Government. He is a past member of the Board of the Canadian Institute for the Administration of Justice (CIAJ) and has been a member of the organizing committee for its biennial Legislative Drafting Conferences since their inception in 1987 until the conclusion of its most recent conference in September 2018, including a stint as chair of the committee. He has also served as a valued member of the Uniform Law Conference of Canada to assist in drafting model legislation, including most recently the Model Interpretation Act for Canada.

Peter has as well turned his talents towards education and the formation of further generations of lawyers and legislative counsel as a further testament to his passion for his craft. He has lectured on legislative drafting over the years at the law schools of both the University of Calgary and the University of Alberta. He has been, and continues to be, an instructor in the Legislative Drafting Program at Athabasca University and particularly worked on the most recent revision of the Commonwealth of Learning Course Materials used for that program and others like it. And he has mentored countless lawyers in legislative drafting both in Alberta and other jurisdictions.

Finally, most pertinently for readers of the *CALC Newsletter*, Peter has been a long-standing member of CALC and served as its secretary from 1986 to 1993. This was a particularly formative period for CALC as it expanded from a small group of drafters meeting at the Commonwealth Law Conference to an organization bringing together thousands of legislative counsel from throughout the Commonwealth and beyond.

In retirement, Peter plans to spend more time with his family: his spouse Judy, their children Joseph and Angela and their 5 grandchildren. He also plans to keep a hand in legislative drafting and has every confidence the drafting of Alberta Government legislation is in capable hands with his successor, [James Charlton](#). Peter regrets only that he was unable to draft a bill to repeal Murphy's Law.

Alberta



**USA: Sixth International Conference on Legislation and Law Reform,
Washington, DC, November 14-15, 2019**



Toby Dorsey advises CALC members: This is a “save the date” as well as a call for speakers for [The Sixth International Conference on Legislation and Law Reform](#), to be held at the magnificent DC Bar headquarters building in downtown Washington DC on November 14-15, 2019.

The conference focuses on how laws are written in the United States and around the world at the international, national, and subnational levels. Each year, the conference draws speakers and attendees from governmental and nongovernmental organizations, universities and think tanks, and the private sector, from North America and around the world. The conference provides an unparalleled opportunity for a wide range of experts to meet and exchange knowledge and perspectives on a topic of great importance to governance: the drafting and reform of laws.

I am a founding organizer of [the conference](#) and responsible for speakers and the agenda. If you would be interested in speaking at the conference, or perhaps serving as a member of a panel, please contact me directly. The conference is traditionally unthemed, with a broad range of topics on legislation, regulation, and law reform. We would welcome topics from practitioners, academics, and others, and not limited to US issues. For information about the conference, see <https://ilegis.org/>.

I look forward to hearing from you!

Toby Dorsey
US federal lawyer and independent scholar
Author, [“The Legislative Drafter’s Deskbook: A Practical Guide” \(2006\)](#)
tobiasadorsey@gmail.com

Jersey: Links with, and help from, New South Wales PCO



April Eisner joined Jersey's Legislative Drafting Office on a temporary basis from the New South Wales Parliamentary Counsel's Office principally to backfill the work of a drafter who is being assigned to a large project working on legislation affecting children.



LEGISLATIVE DRAFTING OFFICE

Turning policies into Jersey law

Jersey has also engaged the services of Kate Hannah, who is currently on leave from her post at that same office where she is Assistant Director of Legislation Publications and Systems. Kate will work remotely from Amsterdam for the Jersey Office as their legislation editor on a consultancy basis.

Jersey is pleased to have strengthened links with the New South Wales office and grateful for the assistance of their Parliamentary Counsel Annette O'Callaghan in facilitating the use of staff and enabling Jersey to learn about their IT systems. Jersey drafter Matthew Waddington spent time there whilst over in Sydney where he was further exploring his interest in digital policy development and machine-consumable legislation, a topic he is discussing at his presentation at the conference in Zambia.



These appointments come at a time when Jersey is undergoing major changes on the IT front. A case management system is being developed alongside new drafting templates and a workflow system. Jersey is also looking to replace the annual revised edition update with showing current legislation with a point in time system. It is also looking at adopting an office wiki. Some of these changes have been directly inspired by systems used in New South Wales. Lucy Marsh-Smith will be speaking about some of these innovations in her paper at the forthcoming 2019 CALC conference in Livingstone, Zambia.

UK: OPC in London is celebrating its 150th anniversary!

Richard Spitz (with thanks also to Elizabeth Gardiner, Adrian Hogarth, and Summer Houlder) at OPC in London:

This year, the Office of the Parliamentary Counsel in London is celebrating its 150th anniversary. The official 150th birthday falls on 8 February—as 8 February 1869 is the date of the Treasury Minute establishing the Office. The current demands imposed by the UK’s withdrawal from the European Union mean that the Office has decided to focus its celebrations on the second half of 2019. But it’s been nice to see that the anniversary has recently been noted in the form of an Early Day Motion, with cross-party support, in the House of Commons.

Early Day Motions

House of Commons

150TH ANNIVERSARY OF THE OFFICE OF THE PARLIAMENTARY COUNSEL

EDM #1994

Tabled 22 January 2019
2017-19 Session

That this House congratulates the Office of the Parliamentary Counsel on its sesquicentennial anniversary; expresses its appreciation of the members of the Office, both past and present, for their contribution to the drafting of legislation and the legislative process; and believes that the Office, now under the leadership of Elizabeth Gardiner CB, the first woman to hold the position of First Parliamentary Counsel, will continue to play an essential and much-valued role in the legislative process for many years to come.

During the middle part of the 19th century the system for preparing government bills was a haphazard one. Some bills were prepared by the counsel to the Home Office, who was responsible for drafting bills for the Home Office and a number of other government departments; some departments employed independent counsel to draft their bills; other bills were drafted by departmental officials. As a result, methods for drafting bills, and the quality of bills, varied greatly. The ideal of a truly coherent statute book might always be elusive, but the situation was never going to be helped by such variety in practice and quality.

In 1868, Gladstone succeeded Disraeli as Prime Minister and appointed as Chancellor of the Exchequer Robert Lowe. One of Lowe's first steps was to improve the machinery for the preparation of government bills. The result was that, in February 1869, the Office of the Parliamentary Counsel was constituted by Treasury Minute as a two-year experiment "to settle all such Departmental Bills and to draw all such other Governmental Bills, excepting Irish and Scotch, as may be required to settle and draw by the Treasury".



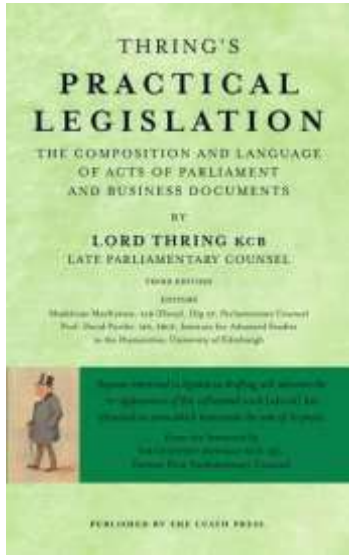
The Office initially comprised Henry Thring as its full-time head, with one assistant, to be selected by Thring with Treasury approval. So it started as an "office" in the sense of a post to which certain duties are attached, not in the sense of a group of drafters. In January 1871 the experiment was made permanent, the Treasury minute of that year noting that Thring had "succeeded in systematising and greatly improving the method of preparing the Government Bills My Lords can have no doubt as to the advantage to the Public Service of placing the Department on a permanent footing". The Office gradually took over the drafting of bills for all departments, and expanded to take on more and more drafters as the volume of legislation increased. The Office ceased to be part of the Treasury in 1968 and, after 12 years in the Civil Service Department, became part of the Cabinet Office in 1980 (where it has remained ever since). It is now an office of around 50 drafters – a far cry from the two-man band of the late 1860s.

Things have changed a little since Thring's days in charge of the Office. Take his account of how he prepared the bill for the Irish Land Act of 1870:

"The instructions given to me were ... to a great extent verbal and were conveyed during a series of conferences with [the Prime Minister] Mr Gladstone. I used to attend him at his house, generally by myself. I never hesitated to tell him

my mind ... He would then stand up, his back to the fire, and make me a little speech urging his view of the case. I then replied shortly till the point was settled.": Madeleine MacKenzie and Prof. David Purdie (eds)

[Thring's Practical Legislation](#) by Lord Thring KCB (3rd ed, Luath Press, 2015), 21.



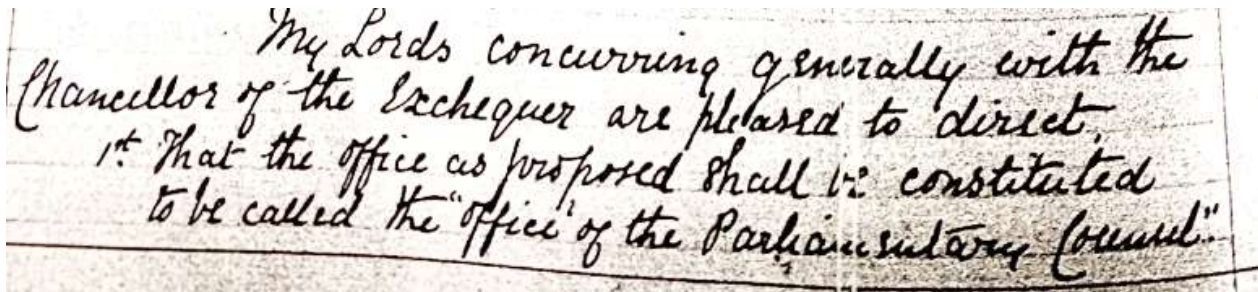
It's difficult to imagine the contents of a bill being thrashed out, these days, in meetings in 10 Downing Street between the Prime Minister and the drafter. But many of the principles that guided Thring (as elaborated in *Thring's Practical Legislation*) - in particular in relation to the need for bills that are accurate, concise and clear – are as relevant now as they were in his day. So while the world in which we now operate is very different from that of the later 19th century, it's striking that in our day-to-day work we continue to have in mind essentially the same goals as those that guided our predecessors.

The Office is planning a range of events to mark its 150th anniversary. Anything worth recording will follow in a future edition of the *CALC Newsletter*.



Office of the Parliamentary Counsel

Below: Extract, 8 February 1869 Treasury Minute:



Establishment of Parliamentary Counsel's Office in 1869. In 1869, the acute and frugal mind of Mr. Lowe, then Chancellor of the Exchequer, was much impressed with the defective nature of these arrangements. The remedy which he devised was the establishment of an Office which should be responsible for the preparation of all Government Bills, and which should be subordinate to the Treasury, and thus brought into immediate relation, not only with the Chancellor of the Exchequer, but with the First Lord of the Treasury, who was usually Prime Minister. The Office was constituted by a Treasury Minute dated February 8, 1869¹, and issued when Mr. Gladstone was First Lord of the Treasury and Mr. Lowe (afterwards Lord Sherbrooke) was Chancellor of the Exchequer.

Left: Extract from Sir Courtenay Ilbert's [Legislative Methods and Forms \(Oxford, Clarendon, 1901\), p 84.](#)

Next page: [Jehu Junior's \(Thomas Gibson Bowles'\) biographical notice](#), apparently with ["Spy's" \(Sir Leslie Matthew Ward's\) caricature](#) (above), of Lord Thring, *Vanity Fair*, 29 June 1893.

STATESMEN.—No. DCXIV.

LORD THRING.

HE is the second of five sons born to the late Reverend John Gale Dalton Thring, of Alford House, in Somerset; of whom three became parsons, one, Edward, now dead, was the excellent and popular Head Master of Uppingham School, and himself, Henry, after being grounded at Shrewsbury School, went to Magdalen College, Cambridge, and got third place in the Classical Tripos, became fourteenth Junior Optime and a Fellow of his College. Having achieved so much and being still most industriously inclined, he went to the Bar with qualities and luck that together some three-and-thirty years ago improved him into Counsel to the Home Office. Eight years later he rose to be Parliamentary Counsel; after which, as a matter of course, he was honoured with a K.C.B., and, when he retired from Office seven years back, he was very naturally offered a Peerage, which he accepted as the slight reward to which his years of service had entitled him from a grateful country.

He has now lived through precisely three-quarters of a century; but he found himself in the House of Lords too late to cut the figure that he might there have cut as a younger man. For he had been warped into detailed narrowness by a long life of drudgery, spent in the unwholesome drafting of Parliamentary documents, such as would have made musty the talents of a better man. Yet has he written much outside the routine work of his Office. Among many other Bills, he drafted the Joint Stock Companies Acts of 1856, 1857, and 1858, the Joint Stock Banking Companies' Act of 1857, and the consolidation of those Acts by the Companies' Act of 1862; whereby he became, as he thought, qualified to contrive that work on "The Law and Practice of Joint Stock and Other Companies," which still, though much edited, bears his name; in which he explained to those concerned how the principle of Limited Liability was meant to work. He has also written on the Succession Duty Act, and on "Practical Legislation"; of the clerical part of which at least he should know as much as any man.

He lives at Egham, and he is a County Councillor for Surrey. He greatly interests himself in good works, and, being a keen politician as well as an ardent admirer of Mr. Gladstone, he conscientiously misses no chance of attending a Liberal meeting. He married a niece of Lord Cardwell, and having one daughter he has no heir. He is a very worthy man; but he does not go into Society.

JERU JUNIOR.



Elizabeth Gardiner ✓

@1ParliCounsel

Follow

This year we are celebrating 150 years of [@ParliCounsel_UK](#)! Henry Thring was appointed as Parliamentary Counsel to the Treasury on 8 February 1869. 🎂🍷

5:56 AM - 18 Jan 2019

19 Retweets 60 Likes



4 19 60



Martin Kelly @Philosophy_Law · Jan 18

Replying to [@1ParliCounsel](#) [@ParliCounsel_UK](#)

Thring makes an appearance in my forthcoming PhD thesis!

1 2



Elizabeth Gardiner ✓ @1ParliCounsel · Jan 18

What's the connection?

1



Martin Kelly @Philosophy_Law · Jan 18

Present tense drafting and the 'always speaking' rule. Thring seems to have popularised it but George Coode's work was earlier and more comprehensive.

1



Matthew Waddington @mattwadd · Jan 18

Replying to [@1ParliCounsel](#) [@ParliCounsel_UK](#)

This is special for UK Parliamentary Counsel. But all members of the Commonwealth Association of Legislative Counsel, across the globe, can join with you in celebrating 8 Feb 1869 as the founding of our profession. Cheers.

4



Jeremy Benson @jembenson · Jan 18

Replying to [@1ParliCounsel](#) [@ParliCounsel_UK](#)

Congratulations! 😊

1



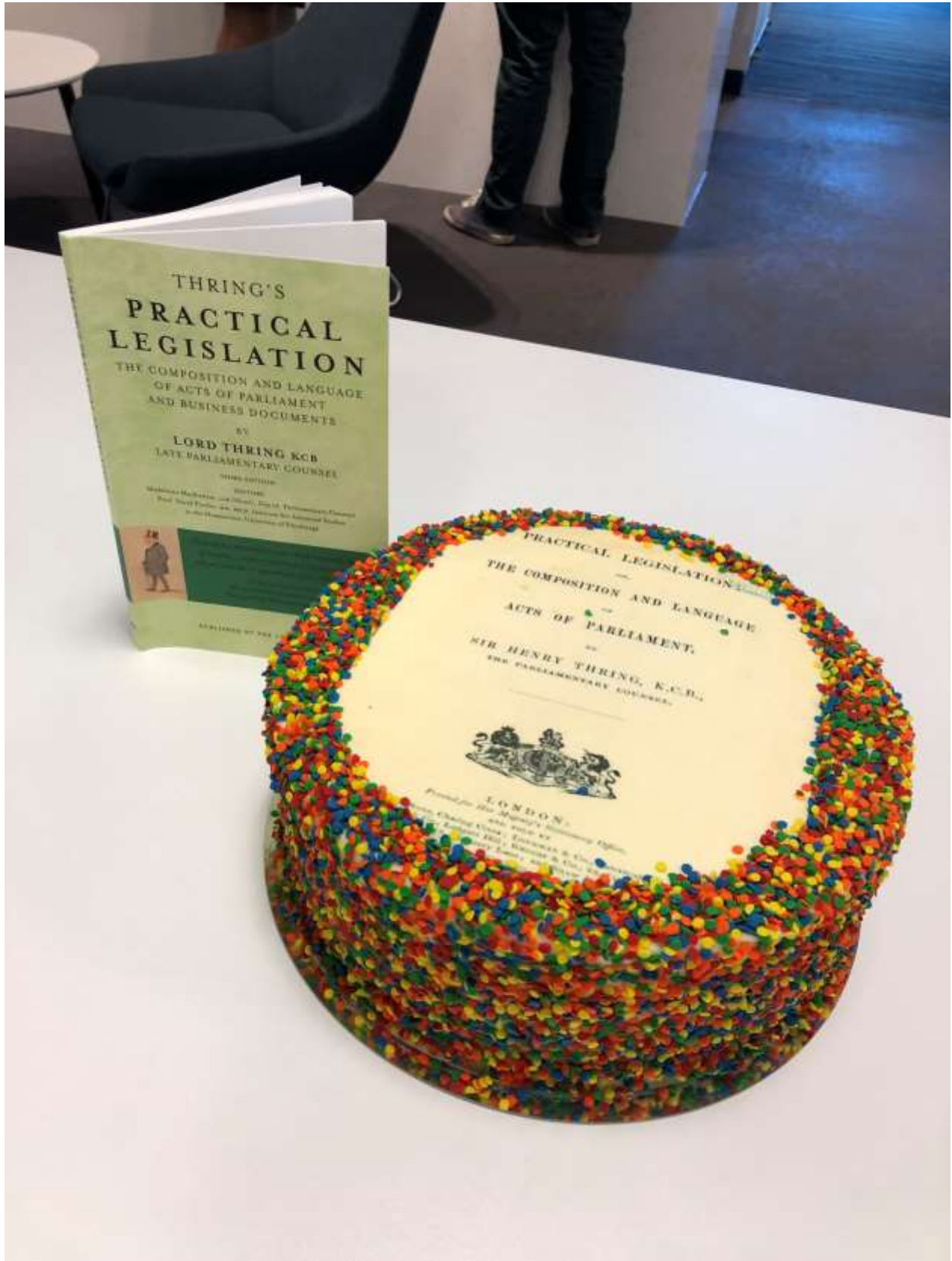
A lovely gathering @ParliCounsel_UK to mark our 150th birthday!



At London OPC, the occasion was marked with a lunchtime gathering, for sherry. This is because apparently this is what they did in 1969 to celebrate the 100th anniversary. We know this because the former UK First Parliamentary Counsel, Edward Caldwell, started working in the office on 8 February 1969 - and it was his first experience of life at London OPC!



To mark the occasion of the 150th anniversary of the establishment of the UK OPC, and the appointment of Henry Thring as the Parliamentary Counsel, the Western Australia (WA) PCO in Perth held a special morning tea on 8 February 2019. The cake in the photos was specially commissioned, with the image of the 1st edition of Thring's book:



Commonwealth@70

As you might be already aware this year marks the 70th anniversary since the [London Declaration](#) was signed thus establishing the modern Commonwealth of Nations.

THE LONDON DECLARATION OF THE COMMONWEALTH PRIME MINISTERS, APRIL 28, 1949

The Commonwealth is one of the world's oldest political association of states. Its roots go back to the British Empire when some countries were ruled directly or indirectly by Britain. Some of these countries became self-governing while retaining Britain's monarch as Head of State. They formed the British Commonwealth of Nations.

In 1949 the association we know today, the Commonwealth came into being. Since then, independent countries from Africa, the Americas, Asia, Europe and the Pacific have joined the Commonwealth.

Membership today is based on free and equal voluntary co-operation. The last two countries to join the Commonwealth - Rwanda and Mozambique - have no historical ties to the British Empire.

Various events and activities are planned, and CALC itself is considering what it can best do, to celebrate the Commonwealth@70.



The Commonwealth



Towards a
Common
Future



Commonwealth Secretary-
General Rt Hon Patricia
Scotland QC (2016 - to
present)



CALC

COMMONWEALTH ASSOCIATION
OF LEGISLATIVE COUNSEL

New CALC members

New members since September 2018

The following have been recorded as members of CALC (a) since the publication of the last edition of the *CALC Newsletter* (in September 2018), and (b) as at 28 February 2019.

Name	Country
St. Rose, Kim	Saint Lucia
St. Romain, Jeniece	Antigua and Barbuda
Keyes, Antony David	Australia
Trinca, Alexander	Australia
Beaudoin, Catherine	Canada
McIsaac, Ian	Canada
Marrast-Victor, Kinna	Grenada
Bourke, Deirdre	Ireland
Garvey, Owen	Ireland
McCormack, Laura	Ireland
Wallace, Paul	Ireland
Aron, Agnes	Kenya
Wanyonyi, Mercy	Kenya
Vokhiwa, Brenda	Malawi
Sulaiman, Shahnaz	Malaysia
Ucchendu, Alfred	Nigeria
Milford, Anthony	South Africa
Ndinisa, Phiwe	South Africa
Wilson, Monica Nyambura	South Africa
Nkambule, Ngabisa	Swaziland
Andre, Jean-Francois Charles	United Kingdom
Haynes, Natalie Esquire	United States
Muntengwa, Given Shitubotu	Zambia
Ng, Wallance	Hong Kong
Koen, Jayde Jo-Anne	South Africa
Hynna, Aleksander	United Kingdom

Name	Country
Mwenda, Grace	Kenya
Itibita, Timau	Kiribati
Moll, Christiaan	Netherlands
Dusabe, Francis	Rwanda
Gule, Nomalanga Pearl	Swaziland
Gilmour, Carl	United States
Mukula, Damaris Mbaki	Kenya
Ibuola, Bolarinwa Christopher	Nigeria
Mason, Heather	
Emran, Mohammad Anisul Haque	Bangladesh
Ezenwosu, Ada	Nigeria
Mwendwa, Gladys Kanyaa	Kenya
Cobb, Kerran	New Zealand
Raasch, John	Canada
Davidson, Elle	Australia
Fuller, Jane	Australia
Hobba, Eleanor	Australia
Bonamy, Antionette	Bahamas
Folotiya, Thandiwe	Zambia
Ding, Nina	Australia
Farnell, Emma	Australia
August-Hanson, Tanya Marie	Isle of Man
Kleinhans, Robyn	Namibia
de Castro Fernandes Costa Rosa, Jorge Miguel	Portugal
Floris, Alicia	South Africa
Zeeman, Timothy Raymond	South Africa
Edwards, Jacqueline	Australia
Jacob, Mariam	Australia
Low, Melissa	Australia
May, Christopher Jonathan	Australia
Wilson, Alsha	Bermuda
Ngunjiri, Scolastica	Kenya
Wahome, Catherine	Kenya
Wambulwa, Job	Kenya

Name	Country
Mohammed, Jamila	Nigeria
Nwafororizu, Onyinye Ngozi	Nigeria
Lee, Jeanne	Singapore
Sinabulya Nkwanga, Mark	Uganda
Nachalwe, Nkusuwila	Zambia
Wamunyima, Mbololwa	Zambia
Morauta, James	Australia
Kariuki, Daisy	Kenya
Chingeni, Janet Chisomo	Malawi
Matli, Morero Ernest	South Africa
Nguyen, Hoai	
Lim, Grace	Australia
Mataitoga, Salote	Australia
Ngugi, Malcolm	Kenya
Inko-Tariah, Somiete	Nigeria
Benjiman, Verna Salome	South Africa
Halley-Starkey, Telana	South Africa
Ahmed, Ali	Iraq
Solvalu, David Edward	Fiji
Fife, Claire	Wales
Natuman, Joe Junior	Vanuatu
Tari, Elizabeth	Vanuatu
Thomas, David	Vanuatu



Secretary Contact Details

To contact CALC's Secretary, Ross Carter, about membership or any other CALC matters (for example, to suggest or send items for this *CALC Newsletter*), email: ross.carter@pco.govt.nz



**REFORMATIVE LEGISLATION. NEW LEGISLATION.
Much Needed Legislation. ADVANCED LEGISLATION.**

(Old New Zealand newspaper headlines — courtesy of [Papers Past](#))