



Newsletter

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In this issue—

CALC President's Report—April 2020	2
Drafting and Publishing Conference — Canberra, Australia, 1 to 3 April 2020	5
CALC Europe Region Conference — Cardiff, Wales, 18 and 19 June 2020	6
Garth Cecil Thornton OBE, QC, 1930–2019	7
Sir Peter Graham, KCB, CB, QC, 1934–2019	9
Peter Wardell Hogg CC, QC, FRSC, 1939–2020	13
You know CALC is also for editors and translators ?	21
Items of interest	22
New CALC members	48
Secretary's contact details	50

If you would like to join CALC, use our [online registration form](#).



Garth C. Thornton, QC
1930–2019



Sir Peter Graham, QC
1934–2019



Peter W. Hogg, QC
1939–2020

CALC President's Report—April 2020



President
Commonwealth Association of Legislative Counsel

Dear CALC family

COVID-19 pandemic



I send my personal good wishes to all of you and your loved ones at this very difficult time.

I know that many of you, like my own office, will be involved in drafting urgent legislation in response to the COVID-19 pandemic. As well as dealing with our own personal stresses, we are required, even more than usual, to keep a cool head and provide objective and high quality drafting advice in very demanding and high-pressure situations. It is in these circumstances that the professionalism and dedication of legislative drafters come to the fore.

The Australasian drafting community has been supporting each other with advice on approaches as each of our jurisdictions requires a legislative response to the COVID-19 pandemic. I am sure that this will also be happening in other jurisdictions represented by CALC members. It has been of great assistance to my own office, for which I am very grateful to my Australasian colleagues, and I encourage other CALC members to support each other in whatever way they can, given that the need for social distancing and to work remotely makes this so much more difficult.

I note that the Journal, *The Theory and Practice of Legislation*, will be publishing an emergency special issue on legislative responses to the Coronavirus, and is calling for papers as soon as possible. The issue will be free to access.



Regional CALC Conferences scheduled for 2020 to be rescheduled

You will know already that 2 drafting conferences scheduled for this year have disappointingly had to be postponed.



These are—

--the PCC/CALC (Pacific) Drafting and Publishing Conference, that was to be held in Canberra, Australia, 1 to 3 April 2020, and

--the CALC Europe Region Conference, that was to be held in Cardiff, Wales, 18 and 19 June 2020.

I thank Peter Quiggin and his team in Canberra, and Neil Martin, Dylan Hughes, and their team in Cardiff, and everyone else who has also been involved in organising these 2 conferences, for their work to deliver these conferences. I hope that they will be able to be rescheduled for some time in the not too distant future.



Your Immediate Past President, Brenda King, was in Perth recently on holiday. It was a matter of great regret that the current circumstances meant that Brenda and I were unable to meet up in person and she was unable to visit my office. I am pleased to note that she is now safely back in Belfast.

2021 CALC Conference – The Bahamas



The working groups formed by the CALC Council to organise and deliver your 2021 CALC conference in The Bahamas have been making good progress to date, and I thank them for that. The current

circumstances mean that this work has paused for now while members of the working groups understandably devote their attention to more urgent matters. We will resume this work as soon as circumstances permit so that the CALC Council can deliver a truly outstanding conference in 2021.



Kia kaha, kia māia, kia manawanui

My thanks to our indefatigable Secretary, Ross Carter, and to the contributors, for putting together this April 2020 edition of the *CALC Newsletter*.

In New Zealand, there is a Māori proverb that states: **Kia kaha, kia māia, kia manawanui.**

It means “Be strong, be brave, be steadfast”.

It is a fitting exhortation in these challenging times.

Very best wishes to you all,



Geoff Lawn

CALC President, April 2020



Drafting and Publishing Conference — Canberra, Australia, 1 to 3 April 2020: Rescheduled



Australian Government
Office of Parliamentary Counsel

The Australian Office of Parliamentary Counsel (OPC) in association with the Australasian Parliamentary Counsel's Committee (PCC) and the Commonwealth Association of Legislative Counsel (CALC) (Pacific Region) aimed to hold a **Drafting and Publishing conference in Canberra from 1 to 3 April 2020**.

The conference was aimed at legislative drafters and people who work in the publishing of legislation.

The conference was to be hosted by the Australian Office of Parliamentary Counsel (OPC) headed by First Parliamentary Counsel Peter Quiggin PSM (CALC's President from 2011–2017). The OPC, headed by First Parliamentary Counsel, was established on 12 June 1970, and so was to be celebrating its 50th anniversary. The conference theme was **2020 Vision at 50 Years of Age**.

Owing to effects of COVID-19 and measures to counter it, the Conference has had to be cancelled. However, the organisers intend to consider rescheduling it once it becomes practicable to do so.

Details of any rescheduling will be made available to CALC members in due course.



CALC Europe Region Conference — Cardiff, Wales, 18 and 19 June 2020: Rescheduled



The CALC Europe Region Conference 2020 was to be held in Cardiff, Wales, on 18 and 19 June 2020. The Conference was to be held at the Pierhead Building in Cardiff Bay, next to Senedd Cymru (the Welsh Parliament). It would have coincided with a vibrant Welsh language festival near Cardiff Castle that weekend – the “Tafwyl” – <http://tafwyl.org/>. The Conference was to be hosted by Swyddfa'r Cwnsleriaid Deddfwriaethol (the Office of the Legislative Counsel), which drafts Welsh laws for consideration by Senedd Cymru. The Office is headed by Dylan Hughes, Y Prif Gwnsler Deddfwriaethol (First Legislative Counsel). Neil Martin, a co-opted member of CALC's Council, has also been involved in organising this Conference. A call for papers was issued on 28 January 2020, with a closing date of 6 March 2020.

Owing to effects of COVID-19 and measures to counter it, the Conference has had to be cancelled. However, the organisers intend to consider rescheduling it once it becomes practicable to do so.

Details of any rescheduling will be made available to CALC members in due course.



Garth Cecil Thornton OBE, QC, 1930–2019

Garth Cecil Thornton, a leader and authority in legislative drafting, died in New Zealand on 5 October 2019. He was known to many CALC members, including legislative drafting colleagues in Tanzania, Hong Kong, Western Australia, and New Zealand.



THORNTON, Garth Cecil. Passed away on October 5, 2019 at his home in Havelock North. He was 89 years old. He lived a long, productive and happy life, although he battled cancer in his last year. Garth leaves behind his much loved wife of 66 years, Judy, as well as their three children, Roger, Rosalind and Nicholas and their partners, and grandchildren Alexander, Aurora, Daisy and Charlotte. We will miss him very much. Our thanks to the friends and healthcare workers who enabled us to keep Garth at home. A private family cremation was held on October 8 and a memorial service to celebrate his life will be held at St. Francis Co-operating Church, Ferry Road, Clive on Saturday 19 October at 2pm. Tributes can be made online at www.tlas.co.nz or mailed to the Thornton family, C/- PO Box 8424, Havelock North 4130.

Published in The New Zealand Herald on Oct. 9, 2019

In March 1996, Garth Thornton QC signed off, in Havelock North, the introduction to the 4th edition of his leading book on *Legislative Drafting* (Butterworths, London). Reflecting his career, previous editions of Thornton's text were published in 1987 (3rd edition, Perth, Western Australia), 1978 (Hong Kong), and 1970 (Hong Kong). The current, 5th edition, is edited by another CALC member, Professor Helen Xanthaki (for a review, see [Bilika Simamba The Loophole, Aug. 2013 \(2013.2\), p 59](#)). In a foreword to that 5th edition, Garth explains the philosophy of the new edition, stressing that the approach remains the same but the book has been updated and supplemented with examples from around the Commonwealth. As CALC Treasurer, John Mark Keyes, has noted, Garth Thornton was a remarkable writer on legislative drafting, quite revolutionary in terms of how he argued for the use of linguistic analysis.

Garth Cecil Thornton was born in Napier in 1930 and graduated from Victoria College, University of New Zealand with the degrees of MA and LLB. On 1 May 2018, Garth and his wife Judith were interviewed by the Hawke's Bay digital archives trust and the audio recording and a transcript of it are both online: <https://knowledgebank.org.nz/audio/garth-cecil-thornton-interview/>. The interview includes many details of Garth's long life, including his varied and remarkable career.

After working in the Wellington firm Buddle Anderson Kent & Co, including a short period as a partner, he joined Her Majesty's Overseas Civil Service and held various positions in East Africa and Hong Kong between 1958 and 1979.

These positions included—

- Crown Counsel in Tanganyika (which achieved independence in 1961 and is now known as Tanzania),
- Deputy Legal Secretary of the East African Common Services Organisation,
- Chief Parliamentary Draftsman and Counsel to the Speaker in Tanzania, and
- [Crown Solicitor and Solicitor General in Hong Kong](#).

Garth Thornton was appointed Queen’s Counsel in Hong Kong in 1973 and in Western Australia in 1986, and [OBE in 1978](#). Between 1979 and 1989 he practised in Western Australia, at first as Deputy Parliamentary Counsel, then, from 1981, in the senior role of Parliamentary Counsel.

In April 1983, Garth prepared for the Commonwealth Secretariat a Model Interpretation Act. This 1983 Model Act, and the Uniform Interpretation Act prepared in 1984 by the Uniform Law Conference of Canada, were among the sources the New Zealand Law Commission used in its 1990 report on interpretation: *A New Interpretation Act* (NZLC R17, 1990) at [15].

After 1990, he practised in New Zealand as a Legislative Counsel, mainly as a consultant to the New Zealand Law Commission, but also to the West Australian Government. He drafted many draft Acts included in reports of the Commission. An example is the Law Commission’s Evidence Code: “The Code provisions were drafted by Garth Thornton QC, Legislative Counsel, who provided the project team with a product of clarity and conciseness of expression. He never tired of testing and probing the Commission’s instructions in order to ensure they achieved the desired result. For this the Commission is grateful.”: (NZLC R55, 1999, Vol 1), para A5.

Garth Thornton also wrote *Laws of New Zealand – Statutes* (August 1997; Reissue 1, 2004). On 3 April 1998, he spoke at New Zealand’s PCO on plain language and legislative drafting. While Garth’s work was noted in the [New Zealand Court of Appeal’s Annual Report for 1999](#), his incredible career and contribution may be underappreciated in New Zealand’s legal profession.

As a former member of the Australasian Parliamentary Counsel’s Committee (PCC), he attended a retirement dinner it held in honour of successor WA Parliamentary Counsel Gregg Calcutt in Sydney on 30 October 2008: [CALC Newsletter \(February 2009\) at pages 37 and 38](#).

In 2009 Garth Thornton spoke in New Orleans, Louisiana, about his career in legislative drafting, when he was made an [honoree of the Tulane University International Legislative Drafting Institute](#). Garth said that “Competent law drafters tend to stick with it as a career. Some might think this surprising because generally speaking it is work that generates no fame, no public profile or acclaim, no wealth, and on occasion unfair criticism. To those who take to it however, the work is interesting, challenging and satisfying. It is also creative and positive. Part of the interest lies in the breadth of the areas both of law and policy which a drafter becomes acquainted with in the course of his or her work.”

Sir Peter Graham, KCB, CB, QC, 1934–2019

The following obituary appeared in *The Times*, 26 October 2019.

OBITUARY

Sir Peter Graham obituary

Parliamentary superbrain who drafted 100 bills

October 26 2019, 12:01am,
The Times

Law

Europe

France

Transport

Religion



Peter Graham's career in the parliamentary counsel office spanned 35 years.

Share



Save



In the early 1990s Sir Peter Graham was the government's go-to man for drafting vital legislation and the range of subjects to which he turned his mighty legal brain was staggering. Not only was he responsible for the Maastricht Treaty, the advent of women priests in the Church of England and privatisation of British Rail, but as the first parliamentary counsel he also led the drafting of the National Lottery bill and the legalisation of Sunday trading.

The barrister's oversight of the legislative programme was the culmination of a 35-year career in the parliamentary counsel office, where he had drafted more than 100 acts of parliament on a multiplicity of subjects. He even echoed distinguished predecessors by finishing a parliamentary bill by candlelight, although in Graham's case it was because the miners' strike of 1974 had led to a nationwide power shortage.

A man of quick wit who thrived under pressure, Graham would be called upon to acquire rapid mastery of any area of British law. Under the scrutiny of sometimes fierce senior civil servants and cabinet ministers, the legislation would need to be drafted speedily and accurately – so accurate that it could not be easily challenged in the courts or circumnavigated.

Through it all, Graham's cigar smoking at his desk became a trademark. The smoke would float up the office in Westminster via the ancient ventilation system. A colleague two floors above used their parliamentary order papers to block up the ventilation shaft and thus avoid being "kippered".

Peter Graham was born in Huddersfield in 1934. Douglas Graham, CBE, Peter's father, was an alderman of the West Yorkshire town and his mother was Ena (née Jackson). Douglas had high expectations for his only child.

Peter was educated at St Bees School, Cumberland, where he was senior scholar. He won a scholarship to St John's College, Cambridge, but before taking up his place he served as a lieutenant in the Royal Navy. As a pilot in the Fleet Air Arm from 1952 to 1955, he was described in a report by his commanding officer as "keen and zealous". The report noted that when he was involved in a mid-air collision (for which he was held in no way responsible) that resulted in another aircraft hitting his propeller while forming up for the Queen's Coronation fly-past in 1953, Graham "displayed calmness and initiative in landing his aircraft safely".

At Cambridge, he played alto saxophone and clarinet for the university dance band, which he eventually led. He was awarded, to no one's surprise, a first-class honours degree and was called to the Bar by Gray's Inn in 1958, subsequently becoming a bencher.

He joined the parliamentary counsel office in 1959 and was put in charge of drafting all the finance acts from 1982 to 1987. It was a huge task because of the complexities of tax law and the need for accuracy in the tiniest detail to ensure that the exchequer's tax income was not compromised.

He once amazed his colleagues by writing a lengthy and complex clause by dictation. It was published in the statute book almost exactly as he had extemporised it. He was appointed CB in 1982 and made a QC eight years later.

Though not public-facing, he could claim to have had a big influence on the direction of British law and culture by the time of his retirement from the counsel office in 1994. Graham carried on drafting legislation for many years as an adviser to various governments and had a permanent consultancy in Gibraltar. His output from this period included the Intelligence Services Act 1994 for the British government and a companies bill for the Maldives, although that bill's progress was halted after a coup.

He retired to the Limousin region in central France, where he bought a small château and restored the property with his customary vigour and attention to detail. A fluent French speaker and confirmed francophile, he indulged his love of *la bonne cuisine* and endeared himself to the local community by performing in "am-dram" productions. He also enjoyed restoring vintage prewar sports cars and would take part in rallies across France.

Because he was also an accomplished organist, he was much in demand to play at church weddings and he would double up as a chauffeur to convey the couple to the reception in his vintage Rolls-Royce. When a gendarme once approached him, Graham thought he was about to be collared for an imagined traffic offence in one of his vintage cars. The policeman then asked if he would play at his wedding.

Graham was married first to Judy Dunbar, a nurse, and secondly to Anne Garcia, formerly deputy legal adviser to the department of the environment. He is survived by his third wife, Janet (née Walker), former chief welfare officer to the land registry whom he married in 1997, and by two sons from his first marriage: Ian and Alistair, who lead private lives.

Though increasingly frail after triple bypass surgery last year, Graham could still be seen near the end of his life roaring along the rural roads of France in one of his prized vintage cars.

Sir Peter Graham, government lawyer, was born on January 7, 1934. He died in his sleep on October 20, 2019, aged 85

Law

Europe

France

Transport

Religion

Peter Wardell Hogg CC, QC, FRSC, 1939–2020

Peter W. Hogg QC was, as noted in the *Dominion-Post* newspaper on 12 February 2020, “a towering figure in the law”. See also the following [Toronto Globe and Mail obituary](#):

Death Notice

HOGG, Peter:
CC, QC, FRCS, Professor Emeritus Osgoode Law School, Canada.

Peter, born in Lower Hutt in 1939, died peacefully, after a short illness, in Toronto on February 4, 2020. Son of Eric and Mary Hogg, brother and brother-in-law of Margaret and Malcolm Carr, loved husband of Fran, and father of Anne and David.

A towering figure in the law.

Memorial events are being planned in Toronto and Wellington. Messages to ken.keith@vuw.ac.nz

Published in Dominion Post from Feb. 10 to Feb. 12, 2020



OBITUARY

New Zealander Peter Hogg quietly shaped Canadian law

SEAN FINE > JUSTICE WRITER
PUBLISHED FEBRUARY 21, 2020



Peter Hogg, seen here on Sept. 24, 2003, was considered so authoritative and trustworthy that judges were known to consult him during their private deliberations on cases.

DEBORAH BAIC

He was an invisible hand shaping Canada.

Peter Hogg, a New Zealander who became this country's pre-eminent constitutional scholar, was sometimes called the 10th person on the nine-member Supreme Court of Canada.

A textbook he wrote, *Constitutional Law of Canada*, published in five editions and updated annually in a loose-leaf version, is the work most cited by the court, found in a remarkable 190 decisions – the first in 1979, the most recent on Friday.

“The law is what the judges say it is, but Peter had a big role in telling the judges what to say,” retired Supreme Court judge Ian Binnie (1998-2011) says.

“His contribution is now baked into the minds of generations of law students, lawyers and judges – his work dominates Canadian thinking about the constitution whether we recognize it or not.”

A law professor and dean, Mr. Hogg was from far from an ivory-tower scholar. He advised a wide array of clients, including several governors-general, First Nations groups, and the Ontario, federal and Alberta governments. He also addressed parliamentary committees on wide-ranging matters of law, beginning in 1978, with his final such appearance coming last year, on a bill affecting Indigenous children. And he was an experienced advocate, appearing numerous times in the Supreme Court, where “he relished facing down nine interrogators,” Mr. Binnie said, “like a chess master simultaneously playing multiple opponents.”

The man who quietly shaped Canada had a conventional, affluent upbringing. Peter Wardell Hogg was born on March 12, 1939, in Lower Hutt, near Wellington, N.Z., the son of Eric Hogg, a lawyer, and Mary Hogg (born Wardell), a homemaker. At primary school, where some Maori pupils attended in bare feet, he and his younger sister Margaret would take their sandals and socks off when they left their house and hide them in a hedge, in sympathy with the barefoot children, his sister, Margaret Carr, recalled.

As was typical in affluent homes, his parents sent him to a boys' boarding school, Nelson College, for secondary education. He found it oppressive, his son, David, a professor of astrophysics at New York University, said. "He liked to say, everything was either compulsory or forbidden. The days were scheduled down to the minute, including the time on Sunday afternoons in which they had to write a letter home of a specified length."

From that experience, he developed a lifelong sense of discipline. He wrote that weekly letter home into his 60s, eventually addressing it to his own family. He was a creature of habit, David said. "Every day he did a little bit of work toward the revision of the book. He got up at the same time, he came home at the same time. He had a nice dinner and would do 45 minutes of work."

After studying law at the University of New Zealand (now Victoria University of Wellington), he joined his father's downtown law firm, where a colleague noticed his academic bent, and suggested he apply for a U.S. scholarship. His father told him it was a waste of time – he could be making money – but he went off to Harvard, where he obtained a master's degree in law.

It was at Harvard that he met Frances Benson, a self-described “pepper-pot” from Baltimore, who was studying for her master’s in education. The cafeteria was full of strangers; one space remained next to a young man she knew. “I thought he had the funniest accent I ever heard, so I kept trying to make him talk,” Ms. Hogg said. They would be married for 53 years.

He took a teaching job at Monash University in Melbourne, where he received his PhD in law in 1970, but the school was rigid and hierarchical, modelled after British schools. Osgoode Hall, which had recently joined up with York University in Toronto, was more open to new ideas and people. Gerald Le Dain, a future Supreme Court judge, was the dean. Mr. Hogg came to Osgoode in 1970, and became a citizen in 1975.

He was skeptical when Mr. Le Dain asked him to teach constitutional law. “I said ‘Gerry, I know nothing about Canadian constitutional law,’” he told Virginia Corner, who interviewed him for an Osgoode publication. “He said ‘I have four sections to staff, and I only have professors for three of them.’”

The notes he made for his lectures became the first edition of his book, a slim volume that came out in 1977.

His second edition, published in 1985, three years after the Charter of Rights and Freedoms took effect, was double in size. And the third edition, published in 1992 in a loose-leaf edition, doubled that one. By the fourth edition, in 1997, it had grown to 1,400 pages.

The book, close friend John Evans says, was like its author: “balanced, sensible and middle-of-the road.” Its synthesis of Supreme Court judgments gave it a magisterial quality, in the best tradition of British textbooks, he said.

“Judges loved his writing because it made the law seem more coherent than perhaps it was,” Mr. Binnie said. “On the rare occasions when the Supreme Court disagreed with Peter’s view, the judges usually felt it necessary to explain their side of the disagreement, perhaps in an effort to forestall a devastating riposte in the next edition of his book.”

So authoritative and trustworthy was he considered that judges were known to consult him during their private deliberations on cases.

Mr. Evans said that while he suspects Mr. Hogg gave confidential advice to Supreme Court judges, “I know for a fact judges on other courts have reached out to him.” Mr. Evans is a retired Federal Court of Appeal judge. (He said it was other judges, not Mr. Hogg, who told him.)

Once Mr. Hogg argued against his own book on behalf of a client, and a Supreme Court judge asked him which source they should believe. “It was hilarious,” said Mary-Ellen Turpel Lafond, a lawyer and former Saskatchewan judge, who witnessed the incident.

In his decades at Osgoode, including a reluctant five-year stint as dean from 1998 to 2003, he was a legendary teacher, Mr. Evans said, “respected, admired and revered in a way that I think no one else was.” Mr. Evans went to some classes himself “to see what the Hogg magic was.”

The secret lay in his personal qualities. “Students knew he was on their side. He was there to help them learn the law. He was not there to show how brilliant he was and how ignorant they were. He wasn’t there to make it so complicated that only minor geniuses could possibly unravel it, or people who spent as much time thinking about it as Peter Hogg did.”

As much as he was respected for his legal wisdom, and honoured as a Queen’s Counsel and a companion of the Order of Canada, he was regarded with deep affection for a gentle, modest, kind, optimistic and generous nature. When lawyer Allison Thornton was a first-year student, she went to work for him as a researcher, and says he treated her as a peer. The next year, rather than bury her contribution in a footnote, he credited her with joint authorship (under her birth name, Bushell), on one of his most widely read journal articles – the constitutional “dialogue” between the courts and Parliament. For the next quarter-century, he was her mentor.

“I didn’t know how much I was going to get out of an \$11-an-hour job. It was a lifetime of support and encouragement and inspiration,” she said.

Two cases stood out for him as special accomplishments. One involved advising the Council of Yukon Indians (now called the Council of Yukon First Nations) in successful land-claims and governance talks with Ottawa and the Yukon, culminating in agreements in the early 1990s. His credibility had a big impact on the other parties, recalls Dave Joe, a lawyer from the Champagne and Aishihik First Nations.

“It was like getting Connor McDavid to play for your team.” He added that Mr. Hogg felt Canada had a responsibility to ensure space in its Constitution for Indigenous peoples.

Another came in 2004 when he was lead counsel for the federal attorney-general in an important case for same-sex marriage at the Supreme Court.

“That’s the case I’m most proud of because I think that really increased the sum of human happiness,” he told Ms. Corner.

In 2006, Mr. Hogg proved himself indispensable in Canada’s first-ever public hearing for a Supreme Court nominee, created by prime minister Stephen Harper.

First, Mr. Hogg gave the nominee, Marshall Rothstein, a three-hour crash course in constitutional law; and then, he oversaw the hearing itself, instructing parliamentarians on what kinds of questions they could ask Mr. Rothstein.

“He was a masterful teacher,” Mr. Rothstein said. “That wasn’t easy stuff. He was able to convey it to me in such a coherent, concise way. It was everything that I needed.”

But why, as such a respected legal authority, was he never put on the Supreme Court? Other law-school professors have reached the court, such as current members Russell Brown and Nicholas Kasirer, and the late chief justice Bora Laskin. But all three did stints on provincial courts of appeal first. Mr. Hogg turned down such a job, according to both David and Ms. Hogg, because he preferred teaching and did not want the grind of the appeal-court job.

David recalls a period when his father was excited, thinking he had a chance to be appointed to the Supreme Court. But Anne McLellan, a former justice minister, says she does not recall his name being on a short-list for two Supreme Court vacancies, one in 1998, and the other in 1999 (Mr. Binnie and Louise Arbour, a former Osgoode colleague, were appointed), around the time he was turning 60, the prime age for a new appointee.

After he left Osgoode, just short of mandatory retirement age, he became a scholar-in-residence at Blake, Cassels & Graydon, a national law firm. “Every Supreme Court factum [written argument] I’ve done in my life I’ve always run past Peter,” Brad Berg, a senior lawyer at the firm, said. (Once, when Mr. Berg lost a case 9-0, Mr. Hogg dropped his habitual modesty, telling him: “The Supreme Court got it wrong.”)

Mr. Hogg died of bleeding on the brain late in the night of Feb. 4, leaving his wife, Ms. Hogg; his adult children, David and Anne; a granddaughter, Vera; and his sister, Margaret Carr of New Zealand. He was 80.



Hogg & Monahan *Liability of the Crown* (Thomson Canada Ltd) is another famous textbook of Professor Hogg's, albeit one that is not mentioned expressly in that obituary. That obituary does, however, note Professor Hogg's PhD in law in 1970 from Monash University in Melbourne. The thesis for that PhD, adapted suitably, was the first edition of *Liability of the Crown* (Law Book Company Ltd, 1971). Professor Hogg's book on Liability of the Crown is a remarkable textbook. It is both descriptive and prescriptive. It is also wonderfully analytical as a work of comparative constitutional law and admirably concise. So it is widely regarded as "magisterial" (to use the adjective in *Commissioner of Inland Revenue v Medical Council of New Zealand* [1997] 2 NZLR 297 at 327 (CA) per Keith J). Professor Hogg is an inspirational figure for New Zealanders, especially New Zealand lawyers, and especially New Zealand constitutional lawyers. It is wonderful that this person who grew up in Lower Hutt, and who (like former New Zealand Prime Minister Sir Geoffrey Palmer, and former New Zealand Chief Parliamentary Counsel and President of CALC, Walter Iles QC) attended Nelson college, achieved so much in the law in Canada and around the common law world, including helping settle the terms of the Bill for the New Zealand Bill of Rights Act 1990: [Keith \(2013\) 11 NZLPIL 1](#) at 1, 8, and 9.

You know CALC is also for **editors** and **translators**?



If your office employs editors, translators, or both, please pass this message on!

A diverse range of expertise goes into producing legislation, and for that reason CALC's constitution has as its primary objective to promote co-operation on matters of common interest among Commonwealth persons and others who are, or have been, engaged not just in legislative drafting but in **editing** or **translating** draft legislation too.

Full membership of CALC is open to Commonwealth people who are or have been engaged—
(a) in drafting legislation, or
(b) in **editing** or **translating** draft legislation, or
(c) in training people as drafters of legislation.

Whatever the job title, if you work, or have worked, on the proofing, editing, translating, or similar aspects of legislation then CALC is a place where you can connect with like-minded people, be part of conferences and other events of interest to those of your skillset, and share and develop new skills, techniques, and opportunities.

The CALC Council is keen to gauge the level of interest there might be in active membership from editors, translators, or both.

**If you want to dive in, you can join now (membership is free).
To join CALC, use our [online registration form](#).**

**If you would like more information, email Kate Hannah at K.Hannah@gov.je.
Kate is acting as a first point of contact with a view to establishing an editors and translators section of CALC.**



editor, n. translator, n.

Items of interest

Guernsey – elections



In June, Guernsey goes to the polls to elect People’s Deputies in the Island’s General Election. Following Guernsey’s first referendum in October 2018 (held in accordance with the terms of the Electoral System Referendum (Guernsey) Law, 2018), this election will be the first to be held on the basis of Island-Wide voting, meaning that there will be one electoral district for the whole Island, rather than the traditional parish-based electoral districts. Each voter will be able to vote for up to 38 candidates on an outside ballot paper that may have the name of one hundred or more candidates on it. Advance voting

(that is, voting at polling stations before the date of the election) is being introduced for the first time, as are “super polling stations” – polling stations where any elector, from whatever parish, will be able to vote. (Our leisure centre will even be an advance and super polling station, all at the same time.) Other changes include the introduction for the first time of the right, in certain circumstances, to be on the electoral roll without one’s name and address being publicly available; and provision for the registration of, and the control of expenditure by, political parties. Guernsey has not had political parties before, but it was expected that the implementation of Island-Wide voting would likely encourage their formation, and indeed this has already been seen.

Needless to say, preparing for what the BBC has rather worryingly described as “the strangest [election] in the world” is a huge logistical task, and has also posed significant legislative challenges. Amendments to the main piece of primary legislation governing elections, the Reform (Guernsey) Law, 1948, have been prepared and passed in double-quick time – the relevant Amendment Law was given Royal Sanction at the February meeting of the Privy Council - and a raft of secondary legislation has had to be prepared under similar pressure of time. A stream of queries continues to come into Chambers, as our new provisions come face to face with practical - and political - realities. It’s been a fascinating project, but I think it fair to say that everyone involved will be relieved when it is all over!



Crown Advocate Jon McLellan
Director of Legislative Drafting
Law Officers of the Crown, Guernsey



LAW OFFICERS
OF THE CROWN

(Editor: This item does not reflect developments after 4 March 2020.)

New Zealand – declarations of inconsistency – recent developments

In [Chief Executive of Department of Corrections v Mark David Chisnall \[2019\] NZHC 3126 \(28 November 2019\)](#), Justice Whata of the High Court of New Zealand made New Zealand's second declaration of inconsistency under the New Zealand Bill of Rights Act 1990.

A declaration of inconsistency is a judicial declaration to the effect that legislation limits unjustifiably, and so is inconsistent with, a basic right affirmed by the Bill of Rights Act. The declaration does not, however, make the legislation concerned in any way invalid or ineffective.

New Zealand's Supreme Court (by a 3–2 majority) confirmed the jurisdiction to make such a declaration, and made the first such declaration (in respect of 2010 legislation limiting unjustifiably prisoners' rights to vote in s 12 of the Bill of Rights), in [Attorney-General v Taylor \[2018\] NZSC 104; \[2019\] 1 NZLR 213 \(SC\) \(9 November 2018\)](#). Ellen France J at [49] said:

[49] In terms of the legislative history, for the reasons given in *Baigent* nor do we see that the absence of a remedies clause in the Bill of Rights alters the position.[59] We add that art 25 of the draft Bill attached to the *White Paper* would have provided for persons whose rights had been “infringed or denied” to “apply ... to obtain such remedy as the court considers appropriate and just in the circumstances”. [60] The White Paper said that in most situations covered by the Bill of Rights the courts would be able to “provide a remedy from their present armoury”. [61] Hence, the White Paper set out various remedies from that armoury including that: [62]

- a person who wishes to take action forbidden by a statute claimed to be in breach of the Bill can seek a declaration.

[59] *Simpson v Attorney-General* [1994] 3 NZLR 667 (CA) [*Baigent*] at 676–677 per Cooke P, 691 per Casey J, 698–699 per Hardie Boys J, 707 per Gault J, and 718 per McKay J.

[60] Geoffrey Palmer “A Bill of Rights for New Zealand: A White Paper” [1984–1985] I AJHR A6 [the *White Paper*] at 114.

[61] At [10.184].

[62] At [10.184].

The Government has since proposed legislation to remove that declared inconsistency: [Electoral \(Registration of Sentenced Prisoners\) Amendment Bill \(223—1\)](#), introduced on 25 February 2020, and read a first time and referred to the [*Justice*] committee on 17 March 2020 (extended sitting on calendar 18 March 2020) for report on or before [*date*].

In the *Chisnall* case, Whata J declared retrospective extended supervision orders (ESOs) under the Parole Act 2002 (as amended by the Parole (Extended Supervision) Amendment Act 2004 and Parole (Extended Supervision Orders) Amendment Act 2014) to be inconsistent with the right to be free from double jeopardy (in s 26(2) of the Bill of Rights Act: “No one who has been finally acquitted or convicted of, or pardoned for, an offence shall be tried or punished for it again”). But this High Court decision is, apparently, to be appealed, by both parties, to the Court of Appeal.

As the [CALC Newsletter March 2018](#) noted (at pages 9–11), in February 2018, following decisions by the High Court and Court of Appeal in *Taylor*, Cabinet agreed, in principle, to amend the Bill of Rights to provide for declarations of inconsistency made by the senior courts. Also in February 2018, the Speaker of the House of Representatives referred to its Privileges Committee a question of privilege about declarations of inconsistency and their implications for Parliament. The question remains business before the Committee. The [New Zealand Bill of Rights \(Declarations of Inconsistency\) Amendment Bill \(230—1\) 2020](#) was introduced on 18 March 2020.

Australia – bushfires affect vast areas

In Australia, extreme and uncontrollable bushfires over the 2019-20 “Black summer” affected vast areas, including in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania, Victoria, and Western Australia. They resulted in loss of life, property, and wildlife, and extensive environmental destruction.

States of emergency were declared in, and fires threatened, and filled air with smoke in, many places. On New Year's Day 2020 in New Zealand, a blanket of smoke from the Australian fires covered the whole South Island, giving the sky an orange-yellow haze. People in Dunedin, New Zealand, reported smelling smoke in the air. In February 2020, it was reported that torrential rain across most of south-east Australia had extinguished a third of extant fires.

A federal [Royal Commission into National Natural Disaster Arrangements](#) was established on 20 February 2020 in response to the extreme bushfire season of 2019-20. Submissions will close on Friday, 3 April 2020. Similar inquiries have also been initiated by States and Territories.

New Zealand – COVID-19 – Parliament agrees to special procedures



New Zealand's House of Representatives on 19 March 2020 agreed to a motion regarding special procedures during the COVID-19 epidemic (Government notice of motion No 1 on the [final Order Paper for Thursday, 19 March 2020](#)). As [an RNZ report](#) of 19 March 2020 says:

A motion will be introduced to the House today to put in place changes that would alter normal standing orders in the House.

The more serious measures would be triggered only if the situation develops in a way that means that a significant number of MPs are unable to travel to Wellington to be physically present in Parliament.

Usually, a maximum of 25 percent of MPs from any one party can be away from the parliamentary precinct at any one time without affecting the number of votes that party can cast.

Under the proposal, the Business Committee will be given the power to adjust or move the 25 percent limit.

However, if numbers in the House became severely depleted, the government would not continue as usual.

The House would be left to focus on passing any legislation that was necessary in dealing with COVID-19 and or any other urgent matter.

The Business Committee already has the power to change the sitting schedule as necessary.

The Speaker would also be given the power to put into place special arrangements for select committees to meet and conduct their business, including meeting remotely.

Leader of the House Chris Hipkins said the precautionary measure means that changes can be made even when Parliament is not sitting.

"Obviously we are going into a period where Parliament is not scheduled to sit next week, a lot can happen in a couple of days and a heck of a lot can happen in a couple of weeks, so we want to make sure whatever happens we are in position where we can bring Parliament back and make decisions if we need to," he said.