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# Newsletter



of the



## Commonwealth Association of Legislative Counsel

April 2009

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Hikers' view of Hong Kong from the Peak at the start of the walk to Stanley

## Conference Impressions—CALC 2009<sup>1</sup>

They came from the far-flung reaches of the Commonwealth. From the West Indies, Africa, the Antipodes. Almost 150 participants and 17 guests from 24 countries made the CALC Conference in Hong Kong in April 2009 the largest of the 10 CALC Conferences held so far.

### The presentations

The theme of the conference was “Whose law is it?” and an impressive array of presenters examined this theme from a number of perspectives. In all, the conference included 22 sessions conducted over 2 1/2 days, including a lively CALC general meeting on the second afternoon.

A number of presenters outlined the challenges of drafting in jurisdictions having more than one official language. These included Tony Yen, former Law Draftsman of Hong Kong, Therese Perera, Legal Draftsman of Sri Lanka and Lise Poirier, a Jurilinguist working with the Canadian Government.

Then it was the turn of the academics. Professor Vijay Bhatia from Hong Kong, Professor John Burrows from New Zealand and N.A.N. Ameer Ali from New Zealand and Malaysia each gave a presentation on legal drafting from an academic’s point of view. Professor Burrows highlighted the difficulties of teaching legislation to university students in an environment in which law courses concentrate almost exclusively on case law. Ameer Ali (a construction engineer), gave an entertaining comparative analysis of construction contracts legislation, from the point of view of a non-lawyer academic.



The judicial perspective on legislative drafting was given by the Hon. Mr Justice Bokhary [picture left], a permanent judge of the Court of Final Appeal of Hong Kong. He gave an outline of the court’s role in construing legislation purposively. He also made the observation that statements of legislative intention in legislation, or purpose clauses, could serve a useful purpose. The topic of purpose clauses had been the subject of a presentation by Duncan Berry in the previous session which had excited some discussion and difference of views.

The legislature was represented at the conference by Dr Hon. Margaret Ng, member of the Hong Kong Legislative Council and Jimmy Ma JP, Legal Adviser to the Legislative Council. They outlined the legislative process and, in particular, the role of members and committees in scrutinizing legislation.

Other presentations at the conference were given by heads of drafting offices and senior drafters, on topics such as incorporation by reference, drafting using coherent principles, electronic publication of legislation and consultation on legislation.

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<sup>1</sup> Contributed by Paul O’Brien, David Morris and Duncan Berry

### The CALC general meeting

As mentioned, the CALC general meeting was held on the second afternoon of the conference. Notice had been given of a motion to amend the CALC constitution to alter the number of members of the CALC council and introduce the election of council members on a regional basis. After some lively discussion and some legislative redrafting from the floor of the meeting, the motion was carried and elections held for the new CALC council based on the constitution as amended.



Conference participants

### The social side

#### *Conference reception*

After the first afternoon's presentations, conference participants attended a splendid reception at the Hong Kong Club, a bastion of the Hong Kong establishment. The reception was hosted by the Hong Kong Secretary for Justice, Wong Yan Lung, who also gave a speech of welcome to conference participants.



The Hong Kong Secretary for Justice, Wong Yan Lung, welcoming CALC members at the reception hosted by the Hong Kong Department of Justice at the Hong Kong Club

### **Optional dinners**

On the following evening, optional dinners were arranged. About 30 participants dined at Café Deco at the Peak, overlooking Victoria Harbour. They took the tram (a funicular railway built in 1884) to the Peak and spent some time before dinner viewing Hong Kong harbour from the outdoor viewing areas at the Peak. However, the presence of a rather strong chilly wind meant that most chose to spend the time before dinner browsing in the shops or having a drink in the restaurant bar. Dinner went very well and the conversation flowed.

A similar number of people attended the alternative event, which was a dinner cruise on Victoria Harbour to watch the nightly "Symphony of Lights". This event also went very well, with some good food (and the addition of some rather expensive wine). The diners were entertained by a small band that included three very attractive (and indeed very good sounding) female vocalists. The lively music soon enticed some of the more intrepid CALC members on to the dance floor to trip the light fantastic. From memory, a number of CALC members from Canada and Lesotho featured prominently on the dance floor.

### **The conference dinner**

The conference dinner was held on Friday 3 April at the Jumbo Floating Restaurant, which has been a Hong Kong institution for over 30 years. To quote from the restaurant's website, "it is ornamented in the style of a gorgeous and exquisite ancient Chinese imperial palace". The restaurant is moored in Aberdeen harbour and is reached by a shuttle ferry from the pier. Dinner consisted of a 10-course traditional Chinese banquet with wine and beer. Before dinner, we were treated to an impressive performance by a Chinese face-changer, and during dinner we conducted a CALC trivia quiz (which appears elsewhere in this newsletter). Everyone seemed to leave the dinner satisfied. After the dinner, Duncan Berry took a small group of night owls to experience the night life in the Soho area of Hong Kong. After travelling up the Shelley Street escalator (reputed to be the longest in the world), the group settle in a Soho hostelry where they stayed until nearly 2 a.m.<sup>2</sup>

### **The weekend activities**

A number of social activities took place on the weekend following the formal sessions of the conference.

#### ***The trip to Macau***

On a fine spring morning, 48 conference participants left Hong Kong on the 9 am ferry to Macau. A number of them (particularly those who had joined Duncan Berry's Soho expedition the night before) took the opportunity of obtaining a caffeine injection at Starbucks before embarking on the one-hour trip.

On arrival in Macau, the group was taken by coach to the historic centre of old Macau where we saw the ruins of St Paul's (the 17th century cathedral), the adjoining Monte Forte and some beautifully restored old government buildings and churches. After some time spent shopping for souvenirs, it was time for lunch at the Littoral restaurant on the Barra peninsula for some splendid Portuguese food and wine. Strolling back to the coach after lunch, the group was treated to some lion dancing outside the nearby A-Ma temple. This dancing is part of the annual celebrations in honour of the goddess of the sea.

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<sup>2</sup> This was despite some of them having to be at the Macau Ferry Terminal in time to catch the 8 a.m. turbojet to Macau. Such stamina!





CALC members on the steps of St Paul's Cathedral, which was destroyed by fire over three centuries ago

After some sightseeing on Taipa Island, the group visited the temple to another god, a god of Mammon, the Venetian Casino! At this venue most people either went shopping or took the gondola ride. However to the group's surprise, one of their number (who shall remain nameless) displayed an unexpected prowess at the blackjack table by pocketing a four figure (Hong Kong dollar) sum.

The weather remained perfect all day for this very pleasant excursion. The group was very well looked after by Selina Lau and Carrie Wong, two counsel from Hong Kong's Law Drafting Division. They ensured that everything went smoothly and that everyone had a most enjoyable day.

### **Events on Sunday, 5 April**

On the following day (5 April), there was there was a choice of a boat trip to Lamma Island followed by a seafood lunch, or a hike on Hong Kong Island from the Peak to Stanley at the southern end of the island.



The hiking group

### ***The hike to Stanley***

Thirty-three conference participants gathered at the Peak for the hike to Stanley, which is located on one of two peninsulas at the southern end of the island. The hike had a most enjoyable time. We started with a short walk at the Peak to a view point overlooking Victoria Harbour. Luckily the weather, which had been quite misty, cleared in time for us to have a good view. We then took a very pleasant walk in the central part of Hong Kong Island past the Tai Tam reservoirs, which were constructed over 100 years ago to provide fresh water for the Island. At the end of that walk we caught the bus to Stanley, a town at the Southern tip of Hong Kong Island, which has a lively tourist market, 2 fine beaches and a number of good cafes and restaurants. Although quite a long walk, the walk was mostly downhill so all the hikers were able to cope readily enough. Everyone enjoyed the expansive (if somewhat hazy) views and the jovial chat. A good time was had by all.

### ***The boat trip to Lamma Island***

Although a total of 32 people had signed up for the boat trip to Lamma Island, a largish island that lies on the south side of Hong Kong, only 22 of them were on the boat when it set off for Sok Kwu Wan, a small village located at the western end of the island. What happened to the 10 missing people has yet to be revealed, but rumour has it that they might have foregone the boat trip in favour of going shopping in Tsimshatsui! The 22 sailors were treated to a 2 hour tour of the western side of Hong Kong harbour. This included a close-up view of the Tsing Yi bridge, which connects Kowloon peninsula with Lantau Island, the location of Hong Kong International Airport. This magnificent suspension bridge is the longest combined road/rail bridge in the world.

On arrival at the Lamma Mandarin Restaurant in Sok Kwu Wan, the diners were treated to a sumptuous 10 course seafood banquet<sup>3</sup>. The menu included lobster, which at least two of the diners were heard to say they had never eaten before. After the wining and dining and much banter, the diners were given an unexpected bonus, a short excursion to a nearby floating fishing village. This gave them an insight into how people lived in a village constructed totally of rafts floating on the water. Several of the group took the opportunity to try catching quite large fish from a cage on one of the rafts. They were provided with rather primitive looking fishing rods to which small fish were attached as bait. No one was successful in making a catch!

Because a few people had prior commitments, the return voyage, which was to have taken the eastern route around Hong Kong Island, had to be curtailed. However, everyone said how much they had enjoyed the trip.

### **To conclude ...**

The social activities provided a good opportunity for people to get together and continue conversations from the conference, and also the opportunity to farewell those who were not staying on in Hong Kong for the Commonwealth Law Conference the following week.

As was acknowledged by the CALC President in his opening and closing remarks at the conference, a big vote of thanks is due to the staff of the Law Drafting Division of the Hong Kong Department of Justice. Over 30 staff of the Division were involved in organising and volunteering at the Conference and, along with the very helpful staff of the Hong Kong Police Headquarters, they ensured that the conference ran smoothly and efficiently. A number of conference participants remarked to me that this was the best-run conference they had ever

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<sup>3</sup> One course was in fact a meat dish, sweet and sour pork!

attended, which is a further tribute to the organisers and volunteers. My personal observation in attending the Commonwealth Law Conference in the week following the CALC Conference was that the CALC conference was much better organised than its big sister.



Lunch group at the Lamma Island Mandarin Seafood Restaurant

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### Conference postscript from the CALC President



I felt greatly honoured at the CALC General Meeting held in Hong Kong to be elected to another term as President. A strong team of Council members has been elected with me. Together we look forward to working over the course of this term in the interests of CALC and our members.

Our contact details can be found on the CALC website at:

<http://www.opc.gov.au/calc/contact.htm>. I encourage any member who wishes to raise any issue for consideration by CALC or who has any suggestion to make to contact any of your regional representatives on the CALC Council. You are also welcome to contact me directly.

Finally, I wish to acknowledge the immense contribution to the successful running of our conference made by my colleagues in the Law Drafting Division in Hong Kong. Their contribution went far beyond my expectations and, on behalf of the whole CALC membership, I thank them most sincerely.

Eamonn Moran

CALC President

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Keda Cheung, one of the conference organisers, and Madeleine MacKenzie, the CALC Treasurer, flanking a conference banner

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## CALC General Meeting

The following are the minutes of the CALC general meeting held on 2 April 2009 at the 8th floor, Arsenal House, Police Headquarters, 1 Arsenal Street, Wanchai, Hong Kong

### 1. Opening of meeting

The meeting was opened by the President, Eamonn Moran QC PSM.

### 2. Present

A list of members who attended the meeting can be found in Appendix 1 to these minutes.

### 3. Apologies

Apologies were received from those members whose names are listed in Appendix 2.

### 4. Proxies

The Secretary announced that a number of members had lodged proxies with him within the time limit prescribed by the CALC constitution. The following is a list of the proxy holders and the number of proxies that they were holding:

Estelle Appiah (Ghana)	3
Stephen Argument (ACT, Australia)	8
Elizabeth Bakibinga (Uganda)	4
Melanie Bromley (New Zealand)	5
Don Colagiuri (NSW, Australia)	50
Warren Cole (New Zealand)	3
Richard Dennis (South Australia)	1
Janet Erasmus (British Columbia, Canada)	17

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Briar Gordon (New Zealand)	3
Laura Hopkins (Ontario, Canada)	2
Gale Jamieson (Western Australia, Australia)	9
John Mark Keyes (Canada (Ottawa))	11
Stephen Laws (UK, England)	9
Fiona Leonard (New Zealand)	3
Lucy Marsh-Smith (Isle of Man)	5
Peter Quiggin (Australia)	17
Eamonn Moran (Hong Kong)	1
Sharon Murdock (UK, Northern Ireland)	1
David Noble (New Zealand)	6
Jim Soundias (Victoria, Australia)	1
Mark Toohey (Australia (Commonwealth))	1
George Tanner (New Zealand)	1
Gemma Varley (Victoria, Australia)	4
Colin Wilson (UK, Scotland)	5

The names of the proxy givers are indicated in the list in Appendix 2 to these minutes. A number of proxies were disallowed because those purporting to give the proxies were found not to be CALC members.

#### **5. Minutes of previous CALC general meeting**

The meeting unanimously confirmed the minutes of the previous general meeting held in Nairobi on 14 September 2007.

Proposed: Paul Peralta (Gibraltar)

Seconded: Lucy Marsh-Smith (Isle of Man)

#### **6. CALC Council Report**

The Secretary, Duncan Berry, presented the Council's report, which covered the period from September 2007 to April 2009. The Secretary highlighted a number of matters, which included the following:

- CALC membership numbers;
- the CALC Website;
- the publication and distribution of The Loophole and the CALC Newsletter;
- twinning well-resourced legislative drafting offices with less well-resourced ones;
- the proposal to publish a book of essays on legislative drafting to commemorate the 25<sup>th</sup> anniversary of CALC;
- the reorganization of the CALC membership records;
- CALC funds;
- CALC ties;
- relations with the Commonwealth Lawyers Association;
- relations with the Commonwealth Secretariat;

- publication of manuals and training courses for the preparation of drafting.

The report was adopted unanimously. A copy of the report is contained in Appendix 3 to these minutes.

Proposed: Duncan Berry (NSW, Australia)

Seconded: Jeremy Wainwright (ACT, Australia)



The Secretary presenting the CALC Council report

## 7. CALC accounts

The Treasurer, Madeleine MacKenzie, presented the CALC statement of accounts as at 25 March 2009. The Treasurer canvassed the accounts. Among the matters discussed were—

- the new source of income from advertising in The Loophole
- the CALC tie account.

After members had had an opportunity to examine the accounts, a motion approving the accounts was put to the meeting. The motion was passed unanimously. A copy of the accounts is contained in Appendix 4 to these minutes.

Proposed: Madeleine MacKenzie (UK, Scotland)

Seconded: Ben Piper (Victoria, Australia)

## 8. Amendment of the CALC Constitution

The following motion was moved in accordance with a resolution passed by the CALC Council:

THAT the CALC Constitution be amended as follows:

(a) for clause 9, substitute—

### “9. Membership of the Council

- (1) The Council is to consist of a President, a Secretary, a Vice-President, a Treasurer and not more than 10 non-executive members.
- (2) Except in the case of a casual vacancy, the members of the Council are to be elected at an ordinary general meeting of CALC from the full members of CALC.

- (3) So as to ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth 2 non-executive members are to be elected for each of the following regions:
  - (a) Africa;
  - (b) Asia;
  - (c) Australasia and the Pacific;
  - (d) Europe;
  - (e) the Americas.
- (4) The following rules apply to the conduct of an election—
  - (a) if there are more nominations for an office than the number to be elected, a secret ballot must be held;
  - (b) a full member may vote for the following number of candidates on a ballot paper—
    - (i) for an election for President, Secretary, Vice-President or Treasurer, 1 candidate;
    - (ii) for an election for non-executive members for a region, no more than 2 candidates;
  - (c) if only 1 office of the same kind is to be filled in an election, the candidate with the most formal votes is elected;
  - (d) if 2 offices of the same kind are to be filled, the 2 candidates with the most formal votes are elected;
  - (e) if, in order to determine the outcome of an election, it becomes necessary to resolve a tie, the person presiding at the general meeting must decide which candidate is to be elected by drawing lots.
- (5) The Council may make rules about the conduct of an election that are not inconsistent with subclause (4).
- (6) Members of the Council elected in accordance with this clause hold office until the next ordinary general meeting of CALC and are eligible for re-election.
- (7) A member of the Council may at any time resign from office as a member of the Council—
  - (a) in the case of the Secretary—by notice in writing to the President; or
  - (b) in any other case—by notice in writing to the Secretary.
- (8) In the event of a casual vacancy in the membership of the Council, the remaining members of the Council may appoint a full member of CALC to hold the vacant office. A member so appointed holds that office until the next ordinary general meeting of CALC.



- (9) A person ceases to be a member of the Council if the person ceases to be a member of CALC.”;
- (b) After clause 12(3)(c) insert—  
“(ca) amend, revoke or replace rules made under clause 9(5); and”.

Proposed: Duncan Berry (NSW, Australia)

Seconded: Lucy Ann Marsh-Smith (Isle of Man)

There was some discussion on the proposed new clause 9 and suggestions to amend the motion. The President noted that the Constitution could be amended only by a special resolution passed at a general meeting with the notice of intention to move that resolution given to members not less than 1 month before the meeting. However, the Secretary advised a motion from the members proposing an amendment that was not directly contrary to the main motion could be put and passed by a two thirds majority of the full members voting in person or by proxy.

In consequence of the Secretary’s advice and after some discussion of subclauses (1), (2), (3), (7) and (8) of the proposed new clause 9, the following amendments were proposed:

- (a) That “Except in the case of a casual vacancy,” be omitted from proposed subclause (2); and
- (b) That “casual” be omitted from proposed subclause (8).

The meeting unanimously agreed that the motion should be amended accordingly.

Proposed: Stephen Laws (UK, England)

Seconded: Jeremy Wainwright (ACT, Australia)

On the further motion of Stephen Laws and Jeremy Wainwright, the meeting unanimously agreed to the motion (as amended above).

## **9. Election of officers of the CALC Council**

The meeting elected the following officers unopposed:

President: Eamonn Moran

Proposed: George Tanner

Seconded: Ross Carter

Vice President: Janet Erasmus

Proposed: Peter Quiggin

Seconded: John Mark Keyes

Secretary: Duncan Berry

Proposed: Ben Piper (Australia)

Seconded: Walter Iles (New Zealand)

Treasurer: Madeleine MacKenzie

Proposed: Jeremy Wainwright (Australia)

Seconded: Paul Peralta (Gibraltar)

On behalf of all members, Ben Piper extended a hearty vote of thanks to all officers of the Council for their hard work and tremendous contribution to the CALC.

**10. Election of non-executive members of the CALC Council**

In accordance with clause 9(3) of the Constitution (as substituted at the general meeting), elections of non-executive members of the Council were held for 5 regions.

- (a) The following candidates were nominated for Africa:

Estelle Appiah (Ghana)

Proposed: Melanie Bromley (New Zealand)

Seconded: Jane Maseela Ntebaleng (Lesotho)

Elizabeth Bakibinga (Uganda) `

Proposed: John Wilson (UK, England)

Seconded: Lucy Marsh-Smith (Isle of Man)

Enver Daniels (South Africa)

Proposed: David Morris (Hong Kong)

Seconded: Duncan Berry (Australia)

- (b) The meeting elected the following candidates as Council members for Asia unopposed:

Therese Perera (Sri Lanka)

Proposed: Peter Quiggin (Australia (Commonwealth))

Seconded: David Morris (Hong Kong)

Tony Yen (Hong Kong)

Proposed: David Morris (Hong Kong)

Seconded: Walter Iles (New Zealand)

- (c) The following candidates were nominated for Australasia and the Pacific:

Peter Quiggin (ACT, Australia)

Proposed: Don Colagiuri (NSW, Australia)

Seconded: Gemma Varley (Victoria, Australia)

Fiona Leonard (New Zealand) `

Proposed: David Metcalf (ACT, Australia)

Seconded: Shirley Fisher (South Australia)

Jeremy Wainwright (Australia)

Proposed: Duncan Berry (NSW, Australia)

Seconded: David Morris (Hong Kong)

Don Colagiuri (NSW, Australia) `

Proposed: Richard Dennis (South Australia)

Seconded: Peter Quiggin (Australia (Commonwealth))

- (d) The meeting elected the following candidates as Council members for Europe unopposed:
- Stephen Laws (UK, England)
- Proposed: Peter Quiggin (Australia (Commonwealth))
- Seconded: Rowena Armstrong (Victoria, Australia)
- Lucy Marsh-Smith (Isle of Man)
- Proposed: David Morris (Hong Kong)
- Seconded: Janet Erasmus (British Columbia, Canada)
- (e) The meeting elected the following candidates as Council members for the Americas unopposed:
- John Mark Keyes (Canada)
- Proposed: Janet Erasmus (British Columbia, Canada)
- Seconded: Sandra Markman (Canada)
- Bilika Simamba (Cayman Islands)
- Proposed: Stephen Miller (Trinidad & Tobago)
- Seconded: Jeremy Wainwright (ACT, Australia)

With a view to avoiding an election for the Australasia-Pacific region, Jeremy Wainwright, who has served two terms as a CALC Council member, gallantly withdrew his nomination for that region. The remaining candidates for the two contested regions were each given 2 minutes to introduce themselves. Duncan Berry introduced Enver Daniels who was unable to attend the meeting and explained why Enver was unable to attend. Estelle Appiah, Elizabeth Bakibinga, Peter Quiggin, Don Colagiuri and Fiona Leonard each gave brief resumes of their legislative drafting careers and told the meeting what contributions they could make if elected as members of the Council.

The meeting decided that if a member eligible to vote did not wish to vote for two candidates for a region, the member could choose just one of the candidates and the vote would be regarded as valid. The meeting appointed John Moloney (Ireland) as returning officer to conduct the election.

#### **10. Next general meeting**

The President announced that the next general meeting would be held in Hyderabad, India, in 2011 on a date to be fixed by the CALC Council.

#### **11. Any other business**

There was no other business.

#### **12. Adjournment of meeting**

The meeting was adjourned at 6.05 p.m.

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The returning officer, John Moloney (Ireland)  
declaring the results of the election

### **Resumption of general meeting**

The general meeting resumed at 10.45 a.m. the following day [3 April 2009]

Declaration of results of elections for the regions of Africa and Australasia and the Pacific

Having completed the counting of votes for the election of Council members for Africa and for Australasia and the Pacific, the returning officer, John Moloney, declared the following results.

(a) The following candidates were declared to be elected as Council members for Africa:

Estelle Appiah (Ghana)

Elizabeth Bakibinga (Uganda)

(b) The following candidates were declared to be elected as Council members for Australasia and the Pacific:

Peter Quiggin (Australia (Commonwealth))

Fiona Leonard (New Zealand)

The meeting closed at 11 a.m.



The new CALC Council [Left to right]: Fiona Leonard, Stephen Laws, John Mark Keyes, Madeleine MacKenzie, Duncan Berry, Bilika Simamba, Eamonn Moran, Lucy Marsh-Smith, Janet Erasmus, Estelle Appiah, Therese Perera, Peter Quiggin, Elizabeth Bakibinga, and Tony Yen



## APPENDIX 1—List of Participants

<i>Name</i>	<i>Title</i>	<i>Country</i>
Lillian Adebayo	Legal Officer	Nigeria
Daniel Adem	Deputy Director of Legal Services	Nigeria
Mark Adler	Consultant	France
Brahm Agrawal (Dr)	Member-Secretary, Law Commission of India	India
A. A. Noushad Ali Naseem	Company Director & Researcher	New Zealand
Brenda Apiny	Legal Counsel	Uganda
Estelle Appiah	Director, Legislative Drafting Division	Ghana
Stephen Argument	Principal Legal Officer	Australia
Rowena Armstrong	Consultant legislative counsel	Victoria, Australia
Elizabeth Bakibinga	Principal Legislative Counsel	Uganda
Emmanuel Bakwega	Director, Clerks Department	Uganda
Samuel Bello	Senior Legal Officer	Nigeria
Duncan Berry (Dr)	Secretary, CALC; Consultant legislative counsel	Australia
Pius Biribonwoha	Director Legal & Legislative Services	Uganda
Melanie Bromley	Parliamentary Counsel	New Zealand
John Burrows (Prof.)	Law Commissioner	New Zealand
Ross Carter	Parliamentary Counsel	New Zealand
Rayne Chai	Senior Government Counsel	Hong Kong, China
Amy Chan	Senior Government Counsel	Hong Kong, China
Sunny Chan	Deputy Principal Government Counsel	Hong Kong, China
K F Cheng	Deputy Principal Government Counsel	Hong Kong, China
Betty Cheung	Deputy Principal Government Counsel (Ag)	Hong Kong, China
Mabel Cheung	Senior Government Counsel	Hong Kong, China
Arthur Cheung	Senior Assistant Legal Adviser, Legislative Council	Hong Kong, China
Shabani Chikanda	Chief Legislative Drafter	Botswana
Melanie Cocks	Assistant Parliamentary Counsel	Northern Territory, Australia
Don Colagiuri	Parliamentary Counsel	New South Wales, Australia
Warren Cole	Manager, Tax Law Drafting	New Zealand
James Collins	Barrister	Hong Kong, China
Jacqueline Crawford	Deputy Parliamentary Counsel	England, UK
Huw Davies	Senior Welsh Legislative Counsel	Wales, UK
Richard Dennis	Parliamentary Counsel	South Australia, Australia
Nilmini Dissanayake	Deputy Principal Government Counsel	Hong Kong, China
Dejam Djurdjevic	Parliamentary Counsel	Western Australia, Australia
Philip Ember	Senior Assistant Parliamentary Counsel	England, UK
Janet Erasmus	Chief Legislative Counsel	British Columbia, Canada
Nia Evans	Welsh Legislative Counsel	Wales, UK
Grace Ezema	Senior Legal Draftsman	Nigeria
Julie Field	Deputy Parliamentary Counsel	ACT, Australia
Shirley Fisher	Senior Assistant Parliamentary Counsel	South Australia, Australia
Robin Ford	Independent Consultant	Canada
Connie Fung	Assistant Legal Advisor, Legislative Council	Hong Kong, China
Eleanor Furniss	Assistant Parliamentary Counsel	England, UK
Eunice Gichangi	Senior Legal Counsel	Kenya
Briar Gordon (Dr)	Parliamentary Counsel	New Zealand
Daniel Greenberg	Parliamentary Counsel	England, UK
Jeffrey Gunter	Deputy Law Draftsman, (Legislation)(Ag)	Hong Kong, China
Haji Ismail Norismizan	Deputy Senior Counsel	Brunei Darussalam
Shahidul Haque	Ministry of Law, Justice & Parliamentary Affairs	Bangladesh

<i>Name</i>	<i>Title</i>	<i>Country</i>
Hassan Hasnah	Senior Legal Officer	Brunei Darussalam
Kimberley Hawley-George	Legislative Counsel	Canada, Newfoundland & Labrador
Gordon Hebb	Chief Legislative Counsel	Nova Scotia, Canada
Robyn Hodge	Assistant Parliamentary Counsel	New South Wales, Australia
Laura Hopkins	Legislative Counsel	Ontario, Canada
Nick Horn	Senior Assistant Parliamentary Counsel	Australia
Walter Iles	Former Chief Parliamentary Counsel	New Zealand
Fanny Ip	Deputy Principal Government Counsel	Hong Kong, China
Leonora Ip	Senior Government Counsel	Hong Kong, China
Gale Jamieson	Deputy Parliamentary Counsel	Western Australia, Australia
Alison John	Assistant Parliamentary Counsel	Australia
Abd Rahman Junaidah	Senior Federal Counsel, Drafting Division	Malaysia
Susan Katono	Senior Legislative Counsel	Uganda
Kau Kin Wah	Assistant Legal Advisor, Legislative Council	Hong Kong, China
Graeme Keay	Consultant legislative counsel	Czech Republic
John Mark Keyes	Chief Legislative Counsel	Canada
Alice Khan	Principal Counsel	Brunei Darussalam
Brenda King	Legislative Counsel	Northern Ireland, UK
Karmen Kwok	Government Counsel	Hong Kong, China
Francoise Lam	Senior Government Counsel	Hong Kong, China
Michael Lam	Deputy Principal Government Counsel	Hong Kong, China
Selina Lau	Senior Government Counsel	Hong Kong, China
Stephen Laws	First Parliamentary Counsel	England, UK
John Leahy	Legislative Counsel	Australia & Qatar
Lee Chuan Huei	Deputy Senior State Counsel	Singapore
Jeanne Lee	Deputy Senior State Counsel	Singapore
Elisabeth Leiss (Dr)	Programme Manager, Legal Sector Reform Programme	Ghana
Fiona Leonard	Parliamentary Counsel	New Zealand
Grace Leung	Senior Government Counsel	Hong Kong, China
David Lim	Senior State Counsel	Singapore
Paul Linehan	Parliamentary Counsel	Ireland
Shandy Liu	Deputy Principal Government Counsel (Ag)	Hong Kong, China
Daniel Lovric	Senior Assistant Parliamentary Counsel	Australia
Matthew Lynch	Assistant Scottish Parliamentary Counsel	Scotland, UK
Manuel Macassaet	Legislative Counsel	Australia & Qatar
Mackenzie Madeleine	Scottish Parliamentary Counsel	Scotland, UK
Susan Mannion	Director, HQ, Regulations Section, Department Of Justice	Canada
Sandra Markman	Consultant Parliamentary Counsel	Canada/Ireland
Lucy Marsh-Smith	Senior Legislative Drafter	Isle Of Man
Jane Maseela Ntebaleng	Parliamentary Counsel	Lesotho
David Metcalf	Principal Drafter	ACT, Australia
Stephen Miller	Senior Legislative Counsel	Cayman Islands
Gilbert Mo	Deputy Law Draftsman (Bilingual Drafting & Administration)	Hong Kong, China
Mohamad Ibrahim Ilani (Dato')	Deputy Parliamentary Counsel	Malaysia
Mohammad Siti Rahmah	Deputy Senior Counsel	Brunei Darussalam
Mohammed Lawal One	Legal Officer	Nigeria
John Moloney	Law Drafting Officer, Department of Agriculture & Fisheries	Ireland
Eamonn Moran	Law Draftsman	Hong Kong, China
David Morris	Consultant legislative counsel	Hong Kong, China

<i>Name</i>	<i>Title</i>	<i>Country</i>
Sam Muganwa	Deputy Parliamentary Counsel	Lesotho
Sharon Murdock	Legislative Counsel	Northern Ireland, UK
Linda Murila	Senior Principal Parliamentary Counsel	Kenya
Elaine Ng	Government Counsel	Hong Kong, China
Mandy Ng	Government Counsel	Hong Kong, China
David Noble	Chief Parliamentary Counsel	New Zealand
Jeremiah Nyegenye	Principal Legal Counsel	Kenya
Paul O'Brien	Deputy Principal Government Counsel	Hong Kong, China
Ogundiran Olusola Olubunmi	Legal Officer	Nigeria
Owi Beng Ki	Deputy Principal Senior State Counsel	Singapore
Lawrence Peng	Deputy Principal Government Counsel	Hong Kong, China
Paul Peralta	Law Drafter	Gibraltar
Therese Perera	Legal Draftsman	Sri Lanka
Ben Piper	Chief Legislative Counsel, National Transport Commission	Australia
Lise Poirier	Senior Jurilinguist	Canada
Peter Quiggin	First Parliamentary Counsel	Australia
Liza Quinn	Acting Senior Parliamentary Counsel	Australia
Sarel Robbertse	State Law Adviser	Republic of South Africa
Roger Rose	Legal Consultant	United Kingdom
Theresa Ross	Principal State Law Adviser	Republic of South Africa
Michael Rubacki	Director, Legislative Services & Publications	New South Wales, Australia
Paul Salembier	General Counsel	Canada
M.A. Sani-Omolori	Director, Legal Services	Nigeria
Meriam Sekokotoana	Senior Assistant Parliamentary Counsel	Lesotho
Willoughby Sheane	Private practitioner	USA
Deana Silverstone	Freelance legislative drafter	Canada
Bilika Simamba	Senior Legislative Counsel	Cayman Islands
Jim Soundias	Assistant Chief Parliamentary Counsel	Victoria, Australia
Catriona Steele	Assistant Parliamentary Counsel	Northern Territory, Australia
Flora Tai	Chief Council Secretary	Hong Kong, China
George Tanner	Law Commissioner	New Zealand
Mary Toohey	Assistant Parliamentary Counsel	ACT, Australia
Anne Treleaven	Assistant Parliamentary Counsel	Australia
Gemma Varley	Chief Parliamentary Counsel, Victoria	Victoria, Australia
Ibrahim Usman	-	Nigeria
Jeremy Wainwright	Consultant legislative counsel	Australia
Ruzaina Wan	Senior Assistant Parliamentary Draftsman	Malaysia
Paul Wan	Deputy Parliamentary Counsel	Northern Territory, Australia
Colin Wilson	First Scottish Parliamentary Counsel	Scotland, U.K.
John Wilson	Law Drafting Consultant	United Kingdom
Carrie Wong	Senior Government Counsel	Hong Kong, China
Emma Wong	Senior Government Counsel (Ag)	Hong Kong, China
Fiona Wright	Assistant Parliamentary Counsel	New Zealand
Tony Yen	Former Law Draftsman	Hong Kong, China
Archie Zariski	Associate Professor, Alabaska University	Canada

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## APPENDIX 2—LIST OF APOLOGIES AND PROXIES

The following is a list of those who lodged or are treated as having lodged apologies for being unable to attend the meeting. Except for those with asterisks next to their names, those persons also lodged proxies.

[Australia (Commonwealth)]: James Graham; Margaret Harrison-Smith; Grant Selmer; Fiona Matthews; Susannah Webb; Janice Larkin; Fiona Ganter; James Craig; James Angura; Shannon Read; Linley Henzell; Paul Lanspeary; John King, Bevan Murray; Marina Farnan; Louise Finucane, Paul Millington; Karyn MacMullin; Johanna Lynch; Olivia Gossip; Iain McMillan; Claire Parkhill; Angela Theodoropoulos; Stephen Mattingley; Keith Byles; Sally Beasley; Matthew Sait.

[Australia, NSW] Scott Murray; Leanne O'Brien; Julie Melville; Bill Moore; Mark Gobbi; Nigel Hill; Abigail Hartley; Robyn Hodge; Richard Hurford; Danielle Thurstan; Francis-Joseph Gross; Annette O'Callaghan; Janet Ockenden; Mark Cowan; Vince Hebbard; Michael Knight; Anne-Marie Maplesden; Marion Pascoe; Soula Papadopoulos; Leigh Glover; Carol Bathis; Daniel Gray; David Mills; Peter Barrett; Dennis Murphy; Colin Easterbrook.

[Australia, Queensland]: Allanah Aitken; Roderick Alsop; Silvio Angelucci; Michael Batch; Ian Beale; Steven Berg; Elisabeth Dayot; Peter Drew; Lesley Dutton; Luke Geurtsen; Desiree Grant; Phil Kay; Theresa Johnson; Ian Larwill; Julie Lewis; Sabine Miranda; Inderjeet Sidhu; Paul McFadyen; Allison Riding;

[Australia (South Australia)]: Rita Bogna.

[Australia, Tasmania]: Colin Grey; Jeanette McDonald; Jessica Chanin; Allyson Veska; David Bingham; Julie Dixon; Claire Bendzulla; Robyn Webb; Ruth Henderson; Kate Woodwod;

[Australia (Victoria)]: Jayne Atkins; Zeina Baz; Catherine Schipano; Adam Bushby; Kevin Cook; Campbell Duncan.

[Australia (Western Australia)]: Lee Harvey, Elaine O'Hare; Una Couper; Nicola Armstrong; Chris Drew; Walter Munyard; Ultan Stephenson; David Taylor; Alison O'Dwyer.

[Canada, British Columbia]: Amadou John; Rodney Fehr; Dawn Leroy; Sherie Verhulst; Stephanie Weinhold; Susan Leslie; Ken Downing; Brian Greer; Corinne Swystun, Allan Roger.

[Canada, Alberta]: Earl Evaniew; Peter Pagano; Patricia Gall; Suzanne Foy; David Elliott; Rowena Bradley;

[Canada, Ontario]: Catherine Macnaughton; Alison Fraser.

[Canada (Ottawa)]: Lynn Douglas; Graeme King, Francis Des Côteaux, Julie Lesage, Margaret Hill; Mark Audcent; Robert Archambault; Lionel Levert; Jean-Charles Bélanger, Christine Landry; Luc Gagné.

[Canada, Saskatchewan]: Kenneth Ring.

[Ghana] P.O. Appiah; Henry Tuckey; Agnes Quartey-Papafio.

[Isle of Man]: David Bermingham; Howard Connell; Melissa Hedqvist.



[Jersey]: David Hull; Clive Borrowman.

[New Zealand]: Richard Wallace; Elizabeth Grant; Ian Jamieson; Ravi Sampanthar; Jacqueline Derby; Andrew Borrowdale; Moira Thompson; John Collins; Adrian Kelly; Geoff Lawn; Margaret Nixon; Catherine Yates; Frank Riley; Joanne Guzman; Renato Guzman; Peter Williams.

[Uganda]: Florence Aceng; James Chinery-Hesse; Fredrick Ruhindi.

[UK, England]: Robert Parker, Mark Hudson; Catherine Johnston; Catherine O’Riordan; Elizabeth Gardiner; Richard Spitz; Edward Stell, Imogen Meldal-Johnsen; Bernadette Walsh; Diana Sargent\*.

[UK, Scotland]: Andy Beattie; Alex Gordon; Gavin Henderson; Jonathan Brown; Neil Taylor.

Note: Brenda King and Robyn Hodge attended the conference but gave proxies for the general meeting, which they did not attend.

\* Sent an apology but did not give a proxy.



Hong Kong legislative council, Carmen Chu, summoning conference participants to another session

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## APPENDIX 3—CALC COUNCIL REPORT—September 2007 to April 2009

Presented by the Secretary

### Introduction

This report covers the period of approximately 19 months from 9 September 2007 (the date on which the last general meeting of the Commonwealth Association of Legislative Counsel (CALC) was held in Nairobi, Kenya).

### The CALC Council

The Council met in Nairobi immediately after the CALC general meeting. This is the only occasion on which the current Council has met as a group. However, because of modern electronic communication methods, the fact that Council members are from diverse parts of the globe, and so are not able to meet as a group, has not proved an obstacle to effective decision making.

## Membership

Since the last CALC general meeting in September 2007, the membership has continued to grow, with 134 new full members and 24 new associate members joining CALC. On the debit side, 3 full members resigned and 4 others died. As at 31 March 2009, the total number of full members was 958 and the total number of associate members was 53.

Communication with members is now of course much easier than before, with approximately 85 per cent of members being contactable by e-mail. However, as long as there are members who are not accessible by e-mail, the need to provide facilities for the distribution of hard copies will continue.

I continue to have problems contacting many members because they fail to notify me when they change their addresses. Consequently, when I do a mail-out to members, it is not uncommon for me to receive as many as 50 non-delivery messages, either because a member's address is no longer valid or because a mail box is full. At the last CALC general meeting, the CALC constitution was amended to enable the membership of CALC members to be terminated if they could no longer be contacted. In February this year, the first letters to members were sent to the residential addresses of those members who are no longer contactable by e-mail or via their office addresses informing them that their membership would be terminated if they did not update their membership details. I am glad to report that the letters have had a positive effect with many (if not most) of the members concerned updating their personal details.

## CALC website

CALC web pages continue to be maintained on the Australian Office of Parliamentary Counsel website. All issues of *The Loophole* and CALC Newsletters are now posted on the website shortly after publication.

The current CALC website was established in 2000, but unfortunately it became out of date in certain respects. Consequently, Lucy Marsh Smith and I recently reviewed the website and made some proposals for bringing it up to date. These proposals have since been implemented.

In 2008, the hard copies of all articles published in *The Loophole* during the period 1983 – 1999 (other than those considered to be no longer of relevance) were converted to electronic form and have since been posted on the CALC website. I would like to thank Nilmini Dissanayake, former Hong Kong Deputy Law Draftsman, and her secretary, Betty Leung, for their assistance in converting those articles to electronic form.

In the last Council report, I mentioned that I was giving consideration to publishing in the CALC web pages a list of members and the jurisdictions where they are located. I should be grateful for a steer from the members as to whether I should proceed with this.

On behalf of the CALC Council, once again I should like to thank Peter Quiggin, First Parliamentary Counsel of the Australian Office of Parliamentary Counsel, for his co-operation and assistance in maintaining these web pages.

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

## **Publications**

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

Two issues of *The Loophole* were published during 2008 and one at the end of 2007. A CALC Newsletter was published in April 2008 and another was published in January this year. At the time of writing, a further issue of *The Loophole* is being prepared. Unfortunately, it has been delayed because two of the contributors have yet to give me their papers for editing.

I should like to express my appreciation to members of staff of the Law Drafting Division of the Hong Kong Department of Justice and of the Australian Commonwealth Office of Parliamentary Counsel for continuing to make the necessary arrangements for preparing and distributing hard copies of issues of *The Loophole* and CALC Newsletters to those members who cannot be contacted by e-mail. In this regard, I should particularly like to thank Mr H.H. Lui of the Hong Kong Department of Justice and Peter Quiggin and his colleagues in the Australian Commonwealth OPC for their hard work in assisting in the distribution of hard copies of those publications.

## **Twinning**

At the last CALC Council meeting, two new initiatives for CALC were suggested. One was to 'twin' well-resourced legislative drafting offices with less well-resourced ones. I believe this to be an excellent proposal, which is certainly in keeping with CALC's primary objectives. Action was taken to implement this proposal by asking Council members from each region of the Commonwealth (Africa; the Americas; Asia; Australasia and the Pacific; and Europe) to ask the less well-resourced legislative drafting offices in the region to indicate what kind of assistance they would like to have and then to approach the better resourced offices to see whether they would be able to provide that assistance.

The outcome of this initiative was somewhat disappointing, with only one small jurisdiction, the Falkland Islands, being 'twinned' with South Africa. I would like to take this opportunity of urging the incoming Council to pursue this initiative more vigorously. I think we should make further efforts to canvas the legislative drafting offices of small jurisdictions to find out what their needs are in terms of assistance and then approach the better resourced legislative drafting offices to see whether they might be willing and able to meet those needs.

## **Silver Jubilee**

Last year CALC was 25 years old. The immediate past President of CALC, Lionel Levert, had proposed that we should produce a book of essays on aspects of legislative drafting to mark the occasion. The Council agreed that this was an excellent and worthwhile idea. However, despite efforts to obtain contributions for the book, the response was luke warm and so with some reluctance it was decided not to proceed with Lionel's proposal.<sup>4</sup>

## **Meetings of CALC members**

The question of holding more frequent meetings of CALC members has been raised, but despite some attempts to set up such meetings, nothing has come of this. Meetings of

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<sup>4</sup> A feature about the establishment of CALC was included in the second issue of *The Loophole*, published in 2008.

legislative counsel have been held in Australia, Canada and Malaysia, but they have not been extended to CALC members as a whole. A number of regional groupings of legislative counsel have either been established or proposed. In at least one case, a group has expressed interest in being affiliated with CALC. The Council has proposed an amendment to the CALC constitution in order to facilitate such affiliations.

### **CALC membership records**

Since the last CALC general meeting, the membership records have been completely reorganised and reformatted. This has taken a considerable amount of time and effort and I would like to thank Jeremy Wainwright and my former secretary for all their hard work in preparing the new version of the records. The main advantage of the new format is that particular membership details, such as e-mail addresses, can be extracted much more easily than previously. The only reason that the new version is not yet finalised is that we have applications for membership almost every day and so the records continually have to be updated. When I am satisfied that the new version is complete, I will distribute copies to all Council members.

The failure of some CALC members to notify me when they have changed their address continues to be a problem. Once again, Peter Quiggin and his colleagues have provided considerable assistance in helping me to track down these members. Once again, I should like to thank Peter and his colleagues for all the help they have provided in this regard.

### **CALC funds**

As members will already know, since no subscriptions are currently payable for CALC membership, the Association has only limited funds. Some of these funds are held in the form of HBOS shares.<sup>5</sup> Unfortunately, the value of HBOS shares has plummeted during 2008. The current value of the shares is shown in the CALC accounts.

Another source of revenue is from advertising legislative drafting positions in either The Loophole or the CALC Newsletter. Our substantial membership list is a valuable commodity, since it enables governments and others that are seeking to recruit legislative counsel to specifically target their audience. The Times charges £7,500 for a half page advertisement in the Times Law Supplement. We can provide a much better targeted service for a fraction of that price. As you will see from the CALC accounts, these advertisements have proved to be quite a money spinner for us.

### **CALC ties**

CALC ties have sold steadily since the last general meeting to the extent that the Council felt obliged to purchase more ties. Because some members have expressed interest in buying a silk version of the tie, it was decided to buy 78 silk ties with the letters CALC included; 80 silk ties without letters; 117 polyester ties with the letters CALC; and 125 polyester ties without letters. The prices for these ties have been fixed at £15 (HK\$150) for a silk tie and £8 (HK\$90) for a polyester tie. I should like to thank the former Hong Kong Law Draftsman, Tony Yen, for looking after the stock of ties from June 2004 until earlier this year. They are now available from Eamonn Moran at the Department of Justice, Queensway Government Offices, Hong Kong.

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<sup>5</sup> Originally, these funds were held in an account kept with the Halifax Building Society, in the UK. A few years ago, the Society demutualised and became a bank, the Halifax. This subsequently merged with the Bank of Scotland to become HBOS. The upshot was that CALC became a shareholder in HBOS.

The CALC accounts show the number of ties sold during the period covered by this report. Discussion continues on the question as to whether CALC scarves should be purchased for female CALC members.

#### **Relations with the Commonwealth Lawyers Association**

Because of changes to the constitution of the Commonwealth Lawyers Association (CLA), it is now possible for associations such as CALC to affiliate with that Association. However, on investigating the matter further, the Council concluded that the costs of affiliation exceeded the benefits. The upshot was that no further action has been taken to affiliate with the CLA.

#### **Relations with the Commonwealth Secretariat**

At the request of the Council, I engaged with the Director of Legal Services at the Commonwealth Secretariat to ascertain whether our respective organisations might co-operate on matters of mutual interest. I did receive a positive response from my initial approach to the Director. I then proceeded to make some suggestions about matters in respect of which I thought co-operation might be appropriate, but despite reminders, I have had no response to my suggestions

#### **Preparation of legislative drafting instructions**

In order to assist less well resourced legislative drafting offices, the Council, in response to a request from Bilika Simamba, agreed to explore the possibility of putting on the CALC web page copies of manuals and training courses for the preparation of drafting instructions. It was ultimately decided that this would overload the website with too much material. Instead, it was decided that information giving electronic links to sites where electronic versions of such manuals and courses could be found should be published on the web page. However, this has decision has yet to be implemented, because I have yet to be given details of such links.

Duncan Berry, Secretary  
31 March 2009

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#### **Appendix 4—CALC Accounts**

##### **STATEMENT OF ACCOUNTS AS AT 25 MARCH 2009**

<b>Balance as at 4 September 2007</b>	<b>£5690.22</b>
ADD: Income for period from 5 Sept 2007 to 25 March 2009	
Surplus from London conference	£1317.23
Nairobi conference registration fees	£1920.00
Share dividends (21/11/07 and 2/6/08)	£90.47
Net bank interest to 27/2/09	£123.29

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Loophole advertising	£754.00	
Hong Kong conference registration fees	<u>£35026.06</u>	<u>£39231.05</u>
		£44921.27
LESS: Expenditure for period from 5 Sept 2007 to 25 March 2009		
Balance of Nairobi conference costs	£1228.94	
Part payment of Hong Kong conference costs	<u>£24341.33</u>	<u>£25570.27</u>
<b>Balance as at 25 March 2009</b>		<b>£19351.00</b>

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**Additional information:**

- 1 The Edinburgh bank account is a Treasurer's account with HBOS (still operating under that name). It is operated jointly by Madeleine MacKenzie and Colin Wilson on the instructions of the CALC Council.
- 2 The CALC tie account is operated by the Hong Kong drafting office. The part payment of Hong Kong conference costs includes a transfer of 6000 HKD (approximately £600) to the CALC tie account to pay for a new supply of ties. The detailed tie accounts are attached.
- 3 CALC held 185 shares in HBOS plc. That bank has been acquired by Lloyds Banking Group. CALC now holds 114 shares in Lloyds Banking Group. The UK Government is the majority shareholder in Lloyds Banking Group. On 25 March 2009, the value of the holding was £70.395 (share price of 61.75p).
- 4 Since 25 March 2009 a further payment of £670 has been received for a Loophole advertisement. Payments of about £1500 are expected in respect of two other advertisements.

Madeleine MacKenzie, Scottish Parliamentary Counsel, Treasurer CALC

Audited by Colin Wilson, First Scottish Parliamentary Counsel, Office of the Scottish Parliamentary Counsel, Edinburgh, Scotland

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## **New Council members**

As mentioned in the minutes of the CALC general meeting, five new members were elected to the CALC Council. They are Stephen Laws (First Parliamentary Counsel of the United Kingdom); Estelle Appiah (Director of Legislative Drafting in the Ghana Attorney-General's Department); Fiona Leonard (Senior Parliamentary Counsel in the New Zealand Parliamentary Counsel Office); John Mark Keyes (First Parliamentary Counsel of Canada);

and Peter Quiggin (First Parliamentary Counsel in the Australian Commonwealth Office of Parliamentary Counsel).

Here are their respective profiles:

### **Stephen Laws**



Stephen Laws has been First Parliamentary Counsel and Permanent Secretary in charge of the Office of the Parliamentary Counsel (OPC) since 1 August 2006. The OPC (which forms part of the Cabinet Office) consists of 60 lawyers and 25 support staff whose principal responsibility is the provision of drafting services and procedural handling advice for the Bills in the Government's legislative programme.

Stephen was educated at St Dunstan's College, Catford and Bristol University. He worked as a lecturer in law at Bristol University from 1972 to 1973 and was called to the Bar in 1973. In 2008, he became a master of the Bench of his Inn, Middle Temple.

Stephen joined the Civil Service as a legal assistant at the Home Office in 1975 and transferred to the OPC in 1976. From 1980 to 1982, and again from 1989 to 1991, he was seconded as a drafter to the Law Commission. In 1991 he became a "full" Parliamentary Counsel. He was involved in the drafting of Finance Bills from 1991 to 1999 and was in charge of the Bills for the *Finance Acts 1996 to 1999*. He became a Companion of the Bath in 1996. More recently he led the OPC teams on the *Communications Act 2003*, the *Energy Act 2004*, the *Railways Act 2005* and the *ID Cards Act 2006*, as well as working on many other pieces of legislation.

Stephen has a keen interest in information technology (IT) and was chair of the OPC's IT Group, and OPC's Security Champion for several years. He was responsible for leading the project in OPC that oversaw the development of Framemaker as the platform for the drafting software used by OPC.

He is currently the deputy chair of the Cabinet Office's Operating Committee and he became chairman of the Civil Service Benevolent Fund on 1 April 2009.

### **Estelle Appiah**



Estelle Appiah is the Director of the Legislative Drafting Division of the Attorney-General's Department of the Ministry of Justice in Ghana. She was called to the Bar in England in 1974. She enrolled at the Ghana Bar in 1976. From 1980-1985 she was the Assistant-Registrar of the High Court and Court of Appeal in Lesotho, Southern Africa. Since 1989 she has been working at the Attorney General's Department of the Ministry of Justice drafting legislation. She has been concerned with drafting legislation on a wide spectrum of topics and has also taught legislative drafting to African Commonwealth Lawyers. She is the author of a Legislative Drafting Manual for African Commonwealth Jurisdictions commissioned by the Commonwealth Secretariat. She has many interests that range from flower arranging, gardening to keeping fit. She is also an amateur historian and is currently working on the biography of her grand father George James Christian.



### **Fiona Leonard**



Fiona was appointed as a Parliamentary Counsel for the New Zealand government in 1998 after several years experience as a litigation solicitor in private practice and as a legal adviser for the New Zealand Government.

From 2003 to 2006, she practised as a barrister providing legislative drafting services and advice on the implementation of legislation for various Pacific Islands and international organisations, including the Commonwealth Secretariat, the Pacific Island Secretariat, and the United Nations Environment Programme (UNEP).

Despite returning to the New Zealand Parliamentary Counsel Office in 2006, she has continued to be involved in initiatives relating to legislative drafting in the Pacific Islands, including organising a Pacific Islands drafting forum in conjunction with the Commonwealth Secretariat in Vanuatu in 2007 and in providing input into Commonwealth Secretariat proposals relating to the Pacific region.

She is currently an adjunct lecturer at Victoria University's Law School where she teaches part of the legislation course. She graduated from Canterbury University with an LLB degree with honours in 1991 and completed a LL.M degree at Cambridge University in June 2001.

### **John Mark Keyes**



John Mark Keyes is the Chief Legislative Counsel in the Legislative Services Branch of the Department of Justice (Canada). He is also the departmental champion for Sustainable Development, the co-champion of the Official Languages and the co-chair for Justice Workplace Charitable Campaign.

He joined the Department in 1984, working first in the Privy Council Office Section, then moving to the Legislation Section in 1987 and becoming the Director, Legislative Policy and Development for the Legislative Services Branch in 1999. He has also been seconded to teach at the Faculty of Law, University of Ottawa and to work as an adviser to the Special Joint Committee on a Renewed Canada (Beaudoin-Dobbie).

John Mark is also an adjunct professor at the Faculty of Law, University of Ottawa. He has taught in the areas of legislative drafting, delegated legislation, legislative interpretation, public law and torts. He has also published a number of scholarly articles and casebooks, as well as a book entitled *Executive Legislation: Delegated Law-making by the Executive Branch*.

### **Peter Quiggin**



Peter Quiggin is the First Parliamentary Counsel of the Office of Parliamentary Counsel, which is responsible for drafting all principal legislation for the Australian Government, including all principal taxation legislation.

Peter's 7 year appointment as First Parliamentary Counsel started on 13 May 2004. He has been a drafter with the Office of Parliamentary Counsel for about 19 years and has drafted legislation covering a wide range of topics including taxation, native title and immigration.

Prior to working at OPC, Peter worked for a number of years with the Tax Office and the Administrative Appeals Tribunal.

Peter was awarded a Public Service Medal (PSM) in the Australia Day Honours 2008.

## Items of interest

### Isle of Man secondary legislation now available on-line

The Isle of Man are now putting all its secondary legislation (except legislation concerned with road traffic matters of temporary effect) made since the beginning of 2009 on its government website in as enacted form. Since 2001 it has placed all Acts of Tynwald as enacted on this site - see <http://www.gov.im/infocentre/acts> The IoM also decided recently to modernise the appearance of Acts of Tynwald (the island's parliament), including adopting a new typeface similar to that used by the UK, removing side headings and establishing a revised standard order of provisions. These changes, which are in the process of being finalised, will start appearing in Bills published during 2009.

### UK Legislative Drafting Forum

In September, the Welsh Assembly will host the second biennial United Kingdom Legislative Drafters' Forum at the National Assembly for Wales building in Cardiff Bay. Further details are available from Professor Thomas Watkin, First Welsh Parliamentary Counsel [thomasglyn.watkin@wales.gsi.gov.uk](mailto:thomasglyn.watkin@wales.gsi.gov.uk).

### Guernsey's legal resources go on-line

Access to Bailiwick of Guernsey legal materials is about to become easier with the launch of the Island's first Legal Resources website. The website is the result of a unique joint initiative between Guernsey's Royal Court and the Law Officers of the Crown and provides access to a comprehensive collection and database of Guernsey's legal material, including—

- Guernsey and Bailiwick laws, ordinances and statutory instruments enacted and published since 1998;
- Consolidated versions of laws and ordinances from 1998 onwards;
- Orders and Practice Directions of the Royal Court from 2000 onwards
- Judgments of the Guernsey Courts from 2006 onwards;
- The Guernsey Law Reports from 2007 onwards; and
- The Guernsey Law Journal and the Jersey and Guernsey Law Review

Commenting on the launch of the new website, the Bailiff of Guernsey, Geoffrey Rowland, said "Both the Royal Court and the Law Officers are committed to further improving the administration of justice in the Island by providing easy access to some of its most frequently used legal material. We hope the site will provide an invaluable resource not just to members of the legal profession, but to the public, researchers and anybody thinking about doing business or taking up residency in Guernsey. The intention is to progressively publish legislation enacted in earlier years, as well as publishing all new legislation on the site. The site will help to promote Guernsey's identity on the international stage."

Welcoming the new website, Her Majesty's Procureur, Nik Van Leuven, said "I am delighted to see the project to develop this website coming to fruition. Making laws and legal authorities easily available is the hallmark of a civilised and mature community. It is essential that the public have easy access to the laws and regulations by which their lives, businesses and general affairs are conducted. The provision of ready access to comprehensive legal information sits comfortably with our notions of rights and freedoms."

### **Plain Language Act reintroduced**

In the United States on 10 February, Representative Bruce Braley reintroduced the Plain Language Act of 2009. This bill would require the federal government to write documents like tax returns, grant application forms, websites, and pension forms in simple, easy-to-understand language. As was reported in Pikestaff 14 and 15, the bill attracted support from both the Democrats and Republicans in 2008, and was passed by the House of Representatives by a vote of 376-1; but the Senate didn't act on it.

Braley said:

“As Congress debates the American Reinvestment and Recovery Act this week, it's appropriate to renew the effort to make government documents easy to understand so people can track how their taxpayer dollars are being spent. Writing government documents in plain language will increase government accountability and will save Americans time and money.

Anyone who has done their own taxes knows the headache of trying to understand pages and pages of confusing forms and instructions. There is no reason why the federal government can't write these forms and other public documents in a way we can all understand. We need to pass this bill to make it easier for Americans to work with and understand their government.”

As the website of the Centre for Plain Language comments, “this bill would be a great help to consumers and business.”

### **John Clifford—ACT Parliamentary Counsel**

John recently retired as head of the Australian Capital Territory Parliamentary Counsel Office. Appointed as Deputy Parliamentary Counsel at self-government, John was pivotal in setting up the office. He was there at the beginning to tackle the tasks of converting old Commonwealth laws and writing new ones for the new self-governing Territory. His fingerprints are on just about every ACT law made since then. John was appointed as the head of the office in 2007.

John is known for his inspirational commitment to excellence in drafting and to public access to legislation. He was instrumental in the establishment of the ACT Legislation Register and a moving force behind the national IT forum for drafting and publishing offices.

We wish John well in his retirement.

### **Other news from Australia**

Walter Muniard has been appointed as head of the Western Australian office replacing Greg Calcutt AM SC who has retired after a distinguished career. Sandra Georges has been appointed as head of the Australian Capital Territory office replacing John Clifford who has retired after a long career in both the Commonwealth and the ACT.

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### **Quiz—Do you know your CALC?**

- 1 CALC members hail from many lands. Name the first and last country or territory, alphabetically, in which there are CALC members.
- 2 In what year was CALC founded?

- 3 Which UK Attorney-General helped to instigate the founding of CALC?
- 4 Who is his son, a well-known actor?
- 5 At last count, approximately how many full members of CALC were there?  
(a) 550 (b) 950 (c) 1150 (d) 1400
- 6 The headquarters of CALC are located in which city?
- 7 What are the 5 regions from which CALC non-executive council members are elected?
- 8 How many members of the CALC council constitute a quorum?
- 9 What is the price of a CALC silk tie and a CALC polyester tie (HK\$)?
- 10 The President of CALC drafted which one of the following enlightening definitions:  
(a) woman means a female human;  
(b) forest means an area containing trees;  
(c) triangle means a figure with 3 sides.

Tie break: How many jurisdictions are represented by CALC members?

Answers are on page [\[34\]](#)



Paul O'Brien conducting the quiz at the CALC dinner

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## CALC Ties

Four versions of CALC ties are available for purchase. Two are made of silk and two are of polyester. All versions have the CALC loophole logo in gold on a dark blue background. One of the silk versions and one of the polyester versions also features the letters "CALC" in gold. The other versions have no lettering.

The silk ties cost only £15.00 each (or HK\$150) and the polyester ties cost £8.00 (HK\$90), plus the cost of postage. So if you would like to buy a tie, please send your cheque or bank draught to Eamonn Moran, Law Draftsman, Department of Justice, 8/f, High Block, Queensway Government Offices, Hong Kong. Eamonn can also be contacted by fax (852 2869 1302) or e-mail ([eamonnmoran@doj.gov.hk](mailto:eamonnmoran@doj.gov.hk)).

## **New CALC members**

The CALC Council would like to welcome the following persons who have become CALC members since 16 February 2009 (the date when the last CALC Newsletter was published):

### **Full Members**

<i>Name</i>	<i>Country</i>	<i>Contact address</i>
Abigail Hartley	Australia , New South Wales	Parliamentary Counsel's Office PO Box 4191, Sydney, NSW 2000
Adrian Kelly	New Zealand	Inland Revenue Department Tax Law Drafting Policy Advice Division PO Box 2198, Wellington 6011
Alice Khan	Brunei Darussalam	Attorney-General's Chambers, The Law Building, Jln Tutong, BA 1910, Bandar Seri Begawan, BA 1910
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Ashlar Colebrook	New Zealand	NZ Transport Agency Private Bag 6995, Wellington 6140
Daniel Gray	Australia [New South Wales]	Parliamentary Counsel's Office PO Box 4191, Sydney, NSW 2000
Daniel Adem	Nigeria (Federal)	National Assembly (Legal Service Department) PMB 141, Abuja
Emmanuel Bakwega	Uganda	Parliament of Uganda PO Box 7178, Kampala 256-41
Eunice Gichangi	Kenya	National Assembly, Parliamentary Service Commission Parliament Buildings, PO Box 41842 Nairobi 00100
Farzana Jumaye	Seychelles	Attorney General's Office , National House, Victoria, Mahé
Fiona Wright	New Zealand	Law Commission PO Box 2590 Wellington
Grace Ezema	Nigeria (Federal)	National Assembly (Legal Service Department) PMB 141, Abuja
Kimberly Hawley-George	Canada , Newfoundland and Labrador	Department of Justice, PO Box 8700 St. John's NL A1B 4J6
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#### Associate Members

Name	Country	Contact address
Noushad Ali Naseem Ameer Ali	New Zealand	CIC-QS Services, Suite F-10-10 Phileo Damansara 1, Off Jalan Damansara Petaling Jaya 46350, Malaysia
Douglass Bellis	United States	Legislative Counsel Office US House of Representatives Washington DC
Elisabeth Leiss (Dr)	Ghana	GTZ-Legal Sector Reform #7 Volta Street, Airport Res PO Box KA 9698, Accra 233 21
Mandy Ng	Hong Kong:	Department of Justice Queensway Government Offices 66 Queensway, Hong Kong
Michael Rubacki	Australia, New South Wales	Parliamentary Counsel's Office GPO Box 4191, Sydney 2001

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#### Quiz answers

Q 1: First: Anguilla; Last: Zimbabwe; Q. 2: 1983; Q. 3: Sir Michael Havers; Q. 4: Nigel Havers; Q. 5: 950; Q. 6: Canberra; Q. 7: Africa; Asia; Australasia and the Pacific; Europe; and The Americas; Q. 8: 3; 9: silk: HK\$150; polyester: HK\$90; Q. 10: (a). Tie breaker: 94.

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#### Speaker's Corner: Who then in law is a public servant's neighbour?<sup>6</sup>

By Patrick Orr<sup>7</sup>

As a legislative drafter who has been writing laws for governments for over two decades, I was dumbfounded by Professor Lewis Klar's recent article in another legal newspaper analysing the cases of *Attis v. Canada and Drady v. Canada*. The cases claim catastrophic, personal and physical harm caused by gross negligence committed by the federal Crown. The Ontario Court of Appeal decided the pleadings disclosed no cause of action. Klar asks if there was a legislative intention to create a private law duty of care. This question indicates a misunderstanding of both legislative intention and tort law. I respectfully submit that the

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<sup>6</sup> This article was first published in the *Law Times* on 24 February 2009.

<sup>7</sup> Patrick Orr, BA, LLB & Dip LD, is a member of the bars of Ontario, NWT, and Nunavut and has practised as a legislative counsel since 1983. He has acted as counsel on issues of statutory interpretation and regulatory negligence in relation to medical devices litigation. He can be reached at [lawdraft@magma.ca](mailto:lawdraft@magma.ca)

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proper question is whether courts should ignore the 1953 statutory reversal of the common law immunity of the federal Crown.

These cases amount to judicial extinction of the private law right of action granted by plain words in a simple and direct statute. This might trouble even lawyers or academics who lament so-called “judicial activism.”

The *Crown Liability and Proceedings Act* provides that the Crown in right of Canada is liable in tort as if it were a private person of full age and capacity.

Lawyers should be able to assume that statutes will have their intended effect. It is for Parliament to exempt the Crown from liability. We hardly need the courts creating an immunity not enacted by Parliament.

Let us recall first principles in tort, Lord James Atkin’s decision in *Donoghue v. Stevenson* and the test set out in *Anns v. Merton London Borough Council*.

The principle that a duty of care exists between a consumer and a manufacturer and between a member of the public and a regulator has been accepted for decades, despite their lack of any direct relationship. In any event, the Food and Drugs Act was enacted to protect consumers of medical devices and drugs.

This legal regime was enacted and funds appropriated to protect people just like Attis and Drady. In addition, the Department of Health Act expressly entrusts the Minister of Health with powers, duties, and functions to promote and preserve the physical, mental, and social well-being of the people of Canada.

How can it sensibly be said that the relationship between Health Canada and Attis or Drady (users of medical devices) is less proximate than between the BC Dept. of Highways and Mr. Just (a user of a highway)?

The relationship between Health Canada and primary users of medical devices is the most direct relationship imaginable.

That is their job. It cannot sensibly be said that their relationship is more remote than that between a manufacturer and a purchaser of ginger beer; nor more remote than the relationship between Transport Canada and the travelling public.

The facts pleaded in *Attis* and in *Drady* are of actual direct knowledge of danger and probable, if not certain, harm to users of the medical implants at issue. How can actual direct knowledge of danger and harm not create proximity in fact?

*Attis* and *Drady* are not cases of economic loss or negligent misrepresentation. The proximity analysis in *Cooper v. Hobart*, used by the Court of Appeal, might be slightly more relevant in a purely economic loss case — a situation where the second part of the test in *Anns* would also be relevant.

But any consideration of the policy issues involved in the second part of the *Anns* test would require the production of evidence and a trial, and so could not be summarily dismissed before certification.

*Cooper*, as well as *Edwards v. Law Society of Upper Canada*, concerned negligence claims against provincial authorities for pure economic loss, and no interpretation of the *Crown Liability and Proceedings Act*.

Attis and Drady pleaded (and those pleadings must be accepted as true) that Health Canada knew of the dangers and did nothing to protect the public. In fact, Health Canada maintains it still has no duty to warn the public about the dangers of these devices.

In any event, at its best, *Cooper* does not stand for the proposition that proximity must be found in the statute. In *Cooper*, neither the plaintiffs nor the Registrar of Mortgage Brokers knew of each other's existence before the alleged cause of action arose.

Attis and Drady are opposite to the *Cooper* situation of non-relationship. Health Canada operates Canada's only human medical device oversight inspectorate. Health Canada cannot be said to not know that there would be a discrete group of individuals who would use the devices that it reviews and regulates.

It is perhaps time for the law to come back to the reality stated by Linden J.A. in *Swanson Estate v. R*: "While governments must certainly be free to govern, it is not acceptable for all bureaucrats who must exercise professional judgment to clothe themselves in the vestments of policy-making functions and thereby seek to avoid any responsibility for their negligence.

This is especially so for officials charged with the duty of maintaining safety. They cannot be protected by an immunity, but must be encouraged, just like other professionals, to perform their duties carefully. They must learn that negligence, like crime, does not pay."

Finally, the concerns over creating indeterminate Crown liability, or externalizing private costs onto the public purse, do not arise in *Attis* or *Drady*. Our provincial and territorial medical and welfare systems must pay much of the health care and related costs arising from federal inspectors' negligence.

Recognizing the federal duty of care merely allocates the costs of negligence to those public servants who are best able to avoid causing the damage in the first place.

In reality, *Attis* and *Drady* endanger individual Canadians by exempting inspectors from liability for their gross negligence, where Parliament conspicuously did not do that itself.

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West meets East—Paul Linehan (Ireland) with Carrie Wong (Hong Kong)  
on the Sok Kwu Wan fishing village junk near Lamma Island

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## Is there any difference between writing for print and for the web?<sup>8</sup>

Is there really any difference between writing for print and for the web? Some writers think not. For example, communication consultant Philip Yaffe notes: 'Ever since it became popular, I have been hearing that writing for the Web is different from writing for print. I have always been sceptical of this assertion and now after years of experience I am certain that it is wrong.' And a reader's letter to Communicator magazine asserts: 'I've always thought that there is virtually no difference between writing for web and print.'

### **Pikestaff's advice**

Certainly, most plain-English guidelines are just as relevant to writing for the web as for print. Some experts say that people read differently on screen, as they tend to scan web pages quickly and read less; others argue this is equally true of busy people reading printed texts. Either way, you'll likely have more design features open to you when writing for the web (with hyperlinks possible, and colour at no extra cost), so use these (sensibly) to highlight key words.

Another difference may be that people take a less linear route through a website than a paper text. Eye tracking studies show that web users tend to scan pages in an F-pattern (first a horizontal scan at the top, then a shorter one lower down, and finally a vertical scan of the left side). There are clear implications for web authors, says usability expert Jakob Nielsen: 'Start subheads, paragraphs, and bullet points with information-carrying words that users will notice when scanning down the left side of your content in the final stem of their F-behaviour. They'll read the third word on a line much less often than the first two words.'

Finally, think about the practical differences between reading from the page and the screen:

Bear in mind the size of a typical computer screen: if users have to scroll down to find something, they may never see it.

Some fonts are more legible than others on the web, working well for different platforms (Microsoft and Macintosh) and browsers (e.g. Firefox, Internet Explorer and Netscape). We recommend Verdana, Trebuchet MS, Tahoma and Georgia.

People use search engines to find sites – so write first paragraphs for each page, and particularly your home page, that include the words people will use to search for the things you offer.

### **Readers' recommended resources**

The following is a list of useful books on writing for the web:

- *Hot Text: Web Writing That Works* by Jonathan and Lisa Price (published by New Riders, 2002)
- *Letting Go of the Words: Writing Web Content that Works* by Janice (Ginny) Redish (Morgan Kaufman, 2007)
- *Killer Web Content: Make the Sale, Deliver the Service, Build the Brand* by Gerry McGovern (A & C Black, 2006)

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<sup>8</sup> This item is an extract from Pikestaff 24, which was published by Plain Language Commission (clearest.co.uk ltd).

- *The Web Content Style Guide: The Essential Reference for Online Writers, Editors and Managers* by Gerry McGovern, Rob Norton and Catherine O'Dowd (Financial Times/Prentice Hall, 2001)

Finally, the new edition of Martin Cutts's book, the *Oxford Guide to Plain English* (out in September) will have a chapter on writing for the web.

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The conference registration team