
Newsletter



of the



Commonwealth Association of Legislative Counsel

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Commonwealth Law Conference—Melbourne, Australia, April 2003

CALC program (Tuesday 15 April-Thursday 17 April)

<i>Session</i>	<i>Activities</i>	<i>Comments/presenters</i>	<i>Commentators</i>
Tuesday 15 April, 2.00pm-5.00pm	Presentation of papers	Nick Horn (Australia, ACT)— Survey of Aust, New Zealand and Canadian offices John Mark Keyes (Canada)—Is there ever an obligation to make delegated legislation? Lionel Levert (Canada)— Drafting training in developing countries Jeremy Wainwright (Australia OLD)—Compliance with United Nations Security Council Resolution 1373	Susan McInnes (Australia, Victoria) Duncan Berry (Hong Kong) Rowena Armstrong (Australia, Victoria) Janet Erasmus (Canada, BC)
Tuesday 15 April, evening	Commonwealth Law Conference Gala Dinner		
Wednesday 16 April, 9.30am- 11.00am	CALC General meeting		
Wednesday 16 April, 11.30am- 1.00pm	Panel discussion— operations of drafting offices, including: Recruitment and training Management of workflows IT for drafters	Dr Subhash C Jain (India) (TBC)—Recruitment and training/management of workflows Silvio Angelucci (Qld)— Recruitment and training	

		Duncan Berry (Hong Kong)— Training Peter Quiggin (Aust OPC)—IT for drafters
Wednesday 16 April, 1.00pm- 2.30pm	Lunch	Provided by CLC
Wednesday 16 April, 2.30pm- 5.00pm	Masterclass: comparative drafting techniques innovative drafting techniques	Keith Byles (Aust OPC)— Summaries and outlines Eamonn Moran (Victoria, Australia) Don Colagiuri (NSW, Australia)
Wednesday 16 April, 7.00pm	CALC dinner	
Thursday 17 April, 9.30am-12.30pm	Panel discussion— Structure and organisation of legislation, including: use of Schedules location of definitions long and short titles	Catherine Johnstone (UK) Nick Horn (ACT, Australia) Ben Piper (Victoria, Australia) Robyn Hodge (NSW, Australia)

CALC Constitution

At the last general meeting of the Association, it was proposed that the Association's constitution should be replaced by a new constitution.

The existing constitution is as follows:

1. Establishment and headquarters

- (1) The Commonwealth Association of Legislative Counsel (hereinafter called "the Association") is hereby established.
- (2) The headquarters of the Association shall be at Canberra in Australia, or at such other place as is from time to time determined by a general meeting of the Association.

2. Object

- (1) The object of the Association is to promote co-operation in matters of professional interest

between persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting.

- (2) For the purpose of carrying out the object of the Association, the activities of the Association may include—
 - (a) encouraging the sharing of information between members of the Association with respect to—
 - (i) the preparation and publication of legislation, and
 - (ii) the recruitment and training of persons to engage in legislative drafting and the retention of persons engaged in legislative drafting;
 - (b) encouraging the sharing between members of the Association of comparative legal materials and precedents;
 - (c) dealing with requests by members of the Association for information and assistance; and
 - (d) co-operating with appropriate organizations on matters of common interest.

3. Membership

- (1) All persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting are eligible for membership of the Association.¹
- (2) Every person eligible for membership of the Association who, whether or not present at the meeting at which the Association is established, causes it to be made known at that meeting that he or she wishes to become a member of the Association becomes, by force of this sub-clause, a member of the Association.
- (3) A person who desires to become a member of the Association may apply in writing to the Secretary for membership of the Association.
- (4) Where an application for membership of the Association is made to the Secretary in accordance with sub-clause (3), the Secretary shall refer the application to the Council, which, if it is satisfied that the applicant is eligible for membership of the Association, shall grant the application but, if it is not so satisfied, shall refuse the application, and the Secretary shall advise the applicant of the Council's decision.²

¹ **Note:** At the CALC general meeting held in Vancouver in August 1996, the members passed a resolution providing for persons who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting but who are not persons “in the Commonwealth” to be eligible to be associate members of the Association. It was decided that associate members would have no voting rights, but would have all the other privileges of membership. The Constitution has yet to be amended to reflect this decision.

² **Note:** the General meeting in Jamaica the following resolution was passed:
The Council may, if it thinks fit, authorise the Secretary to grant on the Councils behalf, without referring it to the Council, any application for membership as to which the Secretary is satisfied that the applicant is clearly eligible for membership of the Association; and any authorisation given pursuant to this resolution shall, while it remains in force, apply to the Secretary for the time being.

The Council delegated the authority to the Secretary at its meeting following the General Meeting in Jamaica.

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- (5) A member of the Association may at any time, by notice in writing to the Secretary, resign from membership of the Association.
 - (6) If a resolution that a subscription is to be payable in respect of membership of the Association is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association, each member of the Association is liable to pay the subscription within the period, and in the manner, specified in the resolution, and a member who fails so to pay the subscription ceases to be a member of the Association.

4. The Council

- (1) There shall be a Council, which shall manage the affairs of the Association subject to any directions or guidelines given by a general meeting of the Association.
- (2) The Council has power to do all things necessary or convenient to be done for or in connection with the carrying out of the object of the Association and the management of the affairs of the Association.
- (3) The Council shall consist of a President or Chairman of the Association, a Vice-President or Vice-Chairman of the Association, a Secretary of the Association and 5 other members.
- (4) Except in the case of a casual vacancy, the members of the Council shall be elected from the membership of the Association at an ordinary general meeting of the Association.
- (5) In electing members of the Council, a general meeting of the Association shall, so far as practicable, endeavour to ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth.
- (6) Members of the Council elected in accordance with sub-clause (4) hold office until the next ordinary general meeting of the Association, but are eligible for re-election.
- (7) A member of the Council may at any time—
 - (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, resign from office as a member of the Council.
- (8) In the event of a casual vacancy in the membership of the Council, the remaining members of the Council may appoint a member of the Association to hold the vacant office and a member so appointed holds office until the next ordinary general meeting of the Association.
- (9) A member of the Council ceases to hold office as such a member on ceasing to be a member of the Association.

5. Meetings of the Council

- (1) The Council shall, if practicable, meet on the occasion of each general meeting of the Association and may hold such other meetings as it thinks necessary or desirable.
- (2) At a meeting of the Council, the President or, in the absence of the President, the Vice-President shall preside or, in the absence of both the President and the Vice-President, the members of the Council present shall elect one of their number to preside.
- (3) At a meeting of the Council—
 - (a) a quorum is constituted by 4 members of the Council;
 - (b) questions arising shall be decided by consensus but, if necessary, a question may be

decided by a resolution passed by a majority of the members of the Council present and voting; and

- (c) each member of the Council present has one vote.
- (4) The Council may, if it thinks fit, transact any business by circulation of papers, and a proposal agreed to in writing by a majority of the members of the Council has the same effect as if it were a decision of the Council made at a meeting of the Council.
- (5) The Council shall—
 - (a) present to each general meeting of the Association a report reviewing the activities of the Association since the last preceding general meeting; and
 - (a) (b) circulate to members of the Association such other reports on the activities of the Association as it thinks fit or as are required by a resolution of a general meeting of the Association.

6. Functions of Officers

- (1) The President or, if the President is unable to do so, the Vice-President shall arrange for the Secretary to convene meetings of the Council and shall represent the Association in its dealings with the Commonwealth Secretariat or any other organization.
- (2) The Secretary—
 - (a) shall administer the day to day business of the Association;
 - (b) shall convene general meetings of the Association in accordance with this Constitution;
 - (c) when requested to do so by the President or the Vice-President pursuant to sub-clause (1), shall convene meetings of the Council;
 - (d) shall send to all members of the Association minutes of general meetings of the Association, minutes of meetings of the Council and notices of decisions made by the Council under sub-clause 5(4);
 - (e) shall maintain a list of the names and addresses of the members of the Association;
 - (f) shall take all such steps as are reasonably practicable to deal with requests for information and assistance made by members of the Association;
 - (g) shall send to members of the Association from time to time, whether by means of a newsletter or otherwise, any information in the Secretary's possession that the Secretary considers might be of interest to those members; and
 - (h) is responsible for the preparation on behalf of the Council of any reports referred to in sub-clause 5(5) and for the doing on behalf of the Council of anything required to be done by the Council pursuant to clause 8.
- (3) In the performance of functions in respect of the Association, the Secretary is subject to the directions of the Council.

7. General meetings of the Association

- (1) An ordinary general meeting of the Association shall, if practicable, be held during each Commonwealth Law Conference and shall, in any event, be held within 5 years after the last preceding ordinary general meeting of the Association.
- (2) An extraordinary general meeting of the Association shall be convened upon request in

writing made to the Secretary and signed by not less than one-sixth of the members of the Association or upon a resolution of the Council requiring the convening of such a meeting.

- (3) A general meeting of the Association may—
 - (a) confirm, with or without modification, the minutes of the last preceding general meeting;
 - (b) receive, consider and adopt, with or without modification, any report presented by the Council to that general meeting;
 - (c) approve or vary any proposals recommended by the Council;
 - (d) resolve any points of difficulty concerning the affairs of the Association referred to it by the Council; and
 - (e) give directions or guidelines to the Council with respect to the management of the affairs of the Association.
- (4) At the first general meeting of the Association, the members present shall elect one of their number to preside until the election of a President and Vice-President of the Association.
- (5) At a general meeting of the Association, the President or, in the absence of the President, the Vice-President shall preside or, in the absence of both the President and the Vice-President, the members of the Association present shall elect one of their number to preside.
- (6) The Secretary shall give at least 6 months' notice in writing to all members of the date and place of a general meeting of the Association.
- (7) At a general meeting of the Association—
 - (a) a quorum is constituted by the members present;
 - (b) subject to sub-clause 3(6) and clauses 9 and 10, questions arising shall be decided by consensus but, if necessary, a question may be decided by a resolution passed by a majority of the members present, in person or by proxy, and voting; and
 - (c) each member of the Association has one vote.

8. Finances

- (1) If at any time the Association has any funds, those funds shall be expended only in connection with the affairs of the Association, and the Council shall—
 - (a) take such steps as it thinks proper for the holding in a bank, for the temporary investment, and for the expenditure, of those funds; and
 - (b) keep proper accounts and records of its transactions and financial affairs.
- (2) The Council shall include in its report to each ordinary general meeting of the Association a statement whether the Association had any funds at any time during a financial year that ended after the last preceding ordinary general meeting and, if so, an audited statement of the income and expenditure of the Association for that financial year and of its assets and liabilities as at the end of that financial year.
- (3) The Council shall not enter into a commitment to expend any funds of the Association unless the Council is satisfied that the Association will have sufficient funds available to meet each payment by the Council under the commitment as and when the payment becomes due.
- (4) A financial year of the Association is a period of 12 months ending on 30 June or on such other day as a general meeting of the Association determines.

9. Amendment

This Constitution may be amended by a resolution that is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association.

10. Dissolution

The Association may be dissolved by a resolution that is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association and any assets of the Association shall be dealt with as directed by that resolution.

11. Notice of certain resolutions

- (1) A resolution referred to in sub-clause 3(6) that is passed at a meeting other than the first general meeting of the Association, or a resolution referred to in clause 9 or 10, does not have any force unless it is passed pursuant to—
 - (a) a motion that is proposed at the general meeting concerned by a member of the Council in accordance with a resolution of the Council notice of the terms of which was sent to all members of the Association not less than 3 months before that general meeting; or
 - (b) a motion that is proposed at the general meeting concerned by a member of the Association in accordance with a notice that was signed by not less than 10 members of the Association and was given to the Secretary of the Association not less than 5 months before that general meeting, being a notice a copy of which was sent by the Secretary to all members of the Association not less than 3 months before that general meeting.
- (2) Where the Council passes a resolution referred to in paragraph (1)(a), the Secretary shall, as soon as practicable thereafter, send notice of the terms of the resolution to all members of the Association.
- (3) Where the Secretary receives a notice referred to in paragraph (1)(b), the Secretary shall, practicable thereafter, send copies of the notice to all members of the Association.

12. Proxies

A member of the Association may, by instrument in writing signed by the member, appoint a member as a proxy to attend and vote instead of the member at a general meeting of the Association, but an appointment is not effective unless the instrument of appointment is filed with the Secretary before commencement of the meeting for which the appointment was made.

13. Sending of documents

For the purposes of this Constitution, a notice or other document is deemed to be sent or to a member of the Association if the Secretary sends the notice or other document—

- (a) to the member's last address as shown on the list of names and addresses of members maintained by the Secretary; or
- (b) to another member who the Secretary reasonably believes is readily able to send or give the notice to the member.

14. Interpretation

In accordance with sub-clause 4(3), references in any provision of this Constitution, other than that sub-clause or this clause to the President or Vice-President of the Association include a person holding office as Chairman or Vice-Chairman of the Association, as the case may be.

Draft revised constitution

At the Council meeting held at Petalang Jaya, Malaysia, in September 1999, it was proposed that a new constitution should be prepared and that it should supersede the existing one, which would not be formally repealed.

The following is the draft revised constitution. The draft revised Constitution largely follows the existing one, except that it—

- provides for the Secretary to approve applications on behalf of the Council,
- provides for associate membership,
- makes it easier to amend the constitution,
- slightly widens the eligibility for full membership,
- specifies further objects for the Association, and
- makes it easier to lodge proxies at general meetings.

Most of these items have been the subject of ordinary resolutions passed at previous general meetings of the Association or were proposed as amendments to the Constitution at the meeting held in Petalang Jaya, Malaysia, in 1999 but were not passed.

DRAFT REVISED CONSTITUTION OF THE COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

1. Continuance of CALC

The association called the Commonwealth Association of Legislative Counsel is continued by this Constitution.

2. Definitions

In this Constitution—

amend includes omit, substitute and add to.

CALC means the Commonwealth Association of Legislative Counsel.

Commonwealth means the Commonwealth of Nations.

Commonwealth person means a person who is a citizen or permanent resident of, or is domiciled in, a country that is a member of the Commonwealth or a dependent territory of such a country.

Council means the Council of the Association.

office means the office of President, Vice-President or Secretary.

President means the President of CALC, and includes a member of CALC who is acting as President.

Secretary means the Secretary of CALC, and includes a member of CALC who is acting as Secretary.

special resolution means a resolution—

- (a) of which not less than 1 month's notice of intention to move the resolution at a general meeting of CALC has been given to the members of CALC, and
- (b) passed by a majority of at least two-thirds of the votes cast by full members who are present at the meeting and by full members who have appointed other full members as their proxies in accordance with clause 17.

Vice-President means the Vice-President of CALC, and includes a member of CALC acting as Vice-President.

3. **Headquarters of CALC**

The headquarters of CALC are to be located—

- (a) at such place in Canberra, Australia, as the Council decides, or
- (b) if a general meeting of CALC decides that the headquarters should be located at some other place in another country, at that other place.

4. **Objects of CALC**

(1) The objects of CALC are—

- (a) to promote co-operation on matters of common interest among Commonwealth persons and others who are or have been engaged—
 - (i) in legislative drafting, or
 - (ii) in editing or translating draft legislation, or
 - (iii) in training people as drafters of legislation, and
- (b) to promote public awareness of and to disseminate information about legislative drafting and the role of those who draft legislation, and
- (c) to promote the use of effective legislative drafting practices and techniques.

(2) To achieve the objects of CALC, the activities of CALC may include all or any of the following:

- (a) promoting the sharing of information among members of CALC with respect to—
 - (i) the preparation and publication of legislation, and
 - (ii) the recruitment and training of people to draft legislation and the retention of those already engaged in legislative drafting;
- (b) encouraging the sharing among members of CALC of comparative legal materials and precedents;
- (c) providing members of CALC with information and assistance with respect to legislation and legislative drafting;
- (d) co-operating with appropriate organisations on matters of common interest.

5. **Full membership of CALC**

(1) A person is eligible to be a full member of CALC if the person is a Commonwealth person

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- who is or has been engaged—
- (a) in drafting legislation, or
 - (b) in editing or translating draft legislation, or
 - (c) in training people as drafters of legislation.
- (2) A person who claims to be eligible for full membership of CALC may apply in writing to the Secretary to be a full member of CALC.
 - (3) If, on receiving an application for full membership of CALC, the Secretary is satisfied that the applicant is clearly eligible to be a full member of CALC, the Secretary must approve the application on behalf of the Council.
 - (4) If not satisfied that an applicant for full membership is clearly eligible to be a full member of CALC, the Secretary must refer the application to the Council.
 - (5) If, on the referral of an application to the Council, the Council is satisfied that the applicant is eligible to be a full member of CALC, it must approve the application, but if not so satisfied, it must refuse the application.
 - (6) If an application for full membership is refused because the applicant is ineligible for that membership but the applicant is eligible to be an associate member of CALC, the Council may, with the agreement of the applicant, approve the person as an associate member of CALC.
 - (7) As soon as practicable after—
 - (a) an application for full membership of CALC is approved under subclause (3) or (5),
or
 - (b) such an application is refused under subclause (5), or
 - (c) an applicant is approved as an associate member under subclause (6),the Secretary must notify the applicant in writing of the decision approving or refusing the application or approving the applicant as an associate member.
 - (3) A full member of CALC may at any time, by notice in writing to the Secretary, resign from full membership of CALC.
 - (4) A person who is a full member of CALC does not cease to be such a member only because the person has ceased to be a Commonwealth person.

6. Associate membership of CALC

- (1) A person is eligible to be an associate member of CALC if the person—
 - (a) is a Commonwealth person who claims to have an interest in legislative drafting but is not eligible to be a full member of CALC, or
 - (b) is not a Commonwealth person but is or has been engaged—
 - (i) in drafting legislation, or
 - (ii) in editing or translating draft legislation, or
 - (iii) in training people as drafters of legislation.
 - (2) A person who claims to be eligible for associate membership of CALC may apply in writing to the Secretary to become an associate member of CALC.
 - (3) If, on receiving an application for associate membership of CALC, the Secretary is satisfied that the applicant is clearly eligible to be an associate member of CALC, the Secretary must approve the application on behalf of the Council.
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- (4) If not satisfied that an applicant for associate membership is clearly eligible to be an associate member of CALC, the Secretary must refer the application to the Council.
 - (5) If, on the referral of an application to the Council, the Council is satisfied that the applicant is eligible to be an associate member of CALC, it must approve the application, but if not so satisfied, it must refuse the application.
 - (6) As soon as practicable after an application is approved under subclause (3) or (5) or is refused under subclause (5), the Secretary must notify the applicant in writing of the decision approving or refusing the application.
 - (7) An associate member of CALC may at any time, by notice in writing to the Secretary, resign from associate membership of CALC.
 - (8) An associate member of CALC has the same rights and privileges as a full member, except that an associate member is not—
 - (a) entitled to vote, or to move or second motions, at general meetings of CALC, or
 - (b) eligible to hold office as President or Vice-President or as a member of the Council.

7. Membership fees

- (1) A general meeting of CALC may, by special resolution, require members of CALC to pay a membership fee covering such period as is specified in the resolution.
- (2) Such a resolution must specify—
 - (a) the amount of the fee and the currency in which it is payable, and
 - (b) the time by which it is to be paid, and
 - (c) how and to whom it is to be paid.
- (3) A member who fails to pay a membership fee as required by a resolution that complies with subclause (2) ceases to be a member of CALC.
- (4) A resolution under this clause may specify membership fees for associate members that differ from those for full members or may exempt associate members from payment of membership fees.

8. Council of CALC

- (1) CALC is to have a Council.
- (2) The Council is responsible for the managing the affairs of CALC, subject to any directions or guidelines given by resolution passed at a general meeting of CALC.
- (3) The Council has power to do everything necessary or convenient for or in connection with carrying out the objects of CALC and managing the affairs and activities of CALC.

9. Membership of the Council

- (1) The Council is to consist of the President, Vice-President, a Secretary and not more than 5 other members.
- (2) Except in the case of a casual vacancy, the members of the Council are to be elected from the members of CALC at an ordinary general meeting of CALC.
- (3) In electing members of the Council, a general meeting of CALC must, so far as practicable, ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth.

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- (4) Members of the Council elected in accordance with subclause (2) hold office until the next ordinary general meeting of CALC and are eligible for re-election.
 - (5) 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.
 - (6) In the event of a casual vacancy in the membership of the Council, the remaining members of the Council may appoint a member of CALC to hold the vacant office. A member so appointed holds that office until the next ordinary general meeting of CALC.
 - (7) A person ceases to be a member of the Council if the person ceases to be a member of CALC.

10. Meetings of the Council

- (1) Unless it is impracticable to do so, the Council must meet immediately after each general meeting of CALC. The Council may hold such other meetings as it thinks necessary or desirable.
- (1) The Council may meet not only in person but also by means of a video or telephone link, provided the participating members are able to hear each other speak.
- (2) At a meeting of the Council, the President or, in the absence of the President, the Vice-President is to preside or, in the absence of both the President and the Vice-President, the members of the Council participating must elect one of their number to preside.
- (4) The following provisions apply to a meeting of the Council:
 - (a) a quorum is constituted by not few than 3 members of the Council (including an office holder);
 - (b) questions arising at the meeting are to be decided by consensus, but, if necessary, a question may be decided by a resolution passed by a majority of those members of the Council who are participating in and voting at the meeting;
 - (c) each member of the Council participating in the meeting has one vote.
- (5) The Council may also transact business by circulating a motion among its members. A motion agreed to in writing by a majority of the members of the Council has the same effect as if it were a decision of the Council made at a meeting of the Council.

11. Functions of officers

- (1) The functions of the President are as follows:
 - (a) in consultation with the Secretary, to convene general meetings of CALC and of the Council;
 - (b) to preside at general meetings of CALC and at meetings of the Council;
 - (c) to represent CALC in its dealings with the Commonwealth Secretariat and any other organisation;
 - (d) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.
- (2) The functions of the Secretary are as follows:
 - (a) to carry out the day-to-day administration of CALC;
 - (b) when requested to do so by the President, to convene meetings of CALC and of the

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- Council;
- (c) to send to members of CALC minutes of general meetings of CALC, minutes of meetings of the Council and notices of decisions made by the Council;
 - (d) to keep a list of the names and addresses of the members of CALC;
 - (e) to take all such steps as are reasonably practicable to deal with requests for information and assistance made by members of CALC;
 - (f) to send to members of CALC from time to time, whether by means of a newsletter or otherwise, any information in the Secretary's possession that the Secretary considers might be of interest to those members; and
 - (g) to prepare the report referred to in subclause (3) and, if the Council so directs, to perform on behalf of the Council any function that the Council is required to perform under clause 13;
 - (h) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.
- (3) The Secretary must—
- (a) present to each general meeting of CALC a report reviewing the affairs and activities of CALC during the period since the last preceding general meeting, and
 - (b) circulate to members of CALC such other reports on the affairs and activities of CALC as the Council considers appropriate, or as are required by a resolution of a general meeting of CALC.
- (4) In performing functions on behalf of CALC, the Secretary is required to give effect to any relevant directions given by the Council.
- (5) The functions of the Vice-President are—
- (a) to act as President during any period that the office of President is vacant or that the President is for any reason unable to undertake the responsibilities of that office, and
 - (b) to undertake on behalf of CALC such other responsibilities as the Council or CALC in general meeting specifies.

12. General meetings of CALC

- (1) The Council must, if practicable, ensure that an ordinary general meeting of CALC is held during each Commonwealth Law Conference, and must in any event ensure that such a meeting is held within 5 years after the last ordinary general meeting of CALC.
- (2) The President must convene an extraordinary general meeting of CALC—
 - (a) on being requested to do so by written notice signed by not fewer than one-sixth of the members of CALC, or
 - (b) on a resolution of the Council requiring the convening of such a meeting.
- (3) A general meeting of CALC may—
 - (a) confirm, with or without modification, the minutes of the last preceding general meeting, and
 - (b) receive, consider and adopt, with or without modification, or reject, any report presented by the Council to that general meeting, and
 - (c) approve or vary any proposals recommended by the Council, and
 - (d) resolve any points of difficulty concerning the affairs of CALC referred to it by the

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- Council, and
- (e) give directions or guidelines to the Council with respect to the management of the affairs of CALC.
- (4) The President or, in the absence of the President, the Vice-President is to preside at a general meeting of CALC. However, if both the President and the Vice-President are absent from such a meeting, the members of CALC who are present must elect one of those members to preside.
 - (5) The Secretary must give at least 3 months' notice in writing to all members of the date and place of a general meeting of CALC.
 - (6) The following provisions apply to a general meeting of CALC:
 - (a) a quorum is constituted by the full members present;
 - (b) except for a motion that can be passed only by special resolution, every motion put to the meeting is to be decided by consensus, but, if necessary, such a motion may be passed by a majority of the full members voting in person or by proxy;
 - (c) each full member of CALC has one vote.

13. Finances of CALC

- (1) The Council must ensure that the funds of CALC (if any) are spent only for purposes connected with carrying on the affairs and activities of CALC.
- (2) The Council must also ensure—
 - (a) that CALC's funds (if any) are kept at a bank located in the place where the head office of CALC is located, or at a bank located in such other place as the Council decides, and
 - (b) that such of those funds as are not immediately required to meet the expenses of CALC are placed on deposit with a bank or are invested in readily realisable securities, and
 - (c) that proper accounting records are kept in respect of CALC's funds and of its income and expenditure.
- (3) The Secretary must include in the Secretary's report presented to each ordinary general meeting of CALC—
 - (a) a statement stating whether CALC had any funds at any time during a financial year that ended after the last preceding ordinary general meeting, and
 - (b) if it had, an audited statement of the income and expenditure of CALC for that financial year and of its assets and liabilities as at the end of that year.
- (4) The Council must not enter into a commitment to spend any funds of CALC unless satisfied that CALC will have sufficient funds available to meet each payment under the commitment as and when the payment becomes due.
- (5) A financial year of CALC is the period of 12 months ending on 30 June in each year or such other period ending on such other day as a general meeting of CALC decides.

14. Amendment of this Constitution

This Constitution may be amended only by a special resolution passed at a general meeting of CALC.

15. Dissolution of CALC

CALC may be dissolved only by a special resolution passed at a general meeting of CALC. The assets of CALC are to be disposed of as directed by the resolution or by another resolution passed at the meeting.

16. Notice of certain resolutions

- (1) A special resolution has no effect unless it is passed at a general meeting of CALC in consequence of—
 - (a) a motion moved at that meeting by a member of the Council in accordance with a resolution of the Council notice of which was sent to all members of CALC not less than 1 month before that general meeting, or
 - (b) a motion moved at that meeting by a member of CALC in accordance with a notice that was—
 - (i) signed by not fewer than 10 members of CALC, and
 - (ii) given to the Secretary not less than 6 weeks before that general meeting, being a notice a copy of which was sent by the Secretary to all members of CALC not less than 1 month before that general meeting.
- (2) As soon as practicable after the Council has passed a resolution referred to in subclause (1)(a), the Secretary must send a notice giving details of the resolution to all members of CALC.
- (3) As soon as practicable after receiving a notice referred to in subclause (1)(b), the Secretary must send copies of the notice to all members of CALC.

17. Proxies at general meetings of CALC

A member of CALC may, in writing signed by the member, appoint another member of CALC as a proxy to attend and vote instead of the member at a general meeting of CALC. However, such an appointment is not effective unless the document of appointment is lodged—

- (a) with the Secretary before the start of the meeting, or
- (b) with the person presiding at the meeting within 10 minutes after the start of the meeting.

18. Sending of documents

- (1) For the purposes of this Constitution, a notice or other document is sent or to a member of CALC if the Secretary sends the notice or other document—
 - (a) to the member's last address as shown on the membership records kept by the Secretary; or
 - (b) to another member who the Secretary reasonably believes is readily able to send or give the notice to the member.
 - (2) For the purposes of this section, *address* includes a fax number and an e-mail address.
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Minutes of the last CALC general meeting

The meeting was held at the Sunway Lagoon Resort Hotel, Petalang Jaya, Malaysia, on 15 September 1999

Opening: Walter Iles (NZ) opened the meeting by welcoming the 23 members who were present.

Election of chairperson: In the absence of the President and Vice-President of the Association, an election was held under subclause 7(5) of the Association's constitution to elect a chairperson for the purposes of the meeting. Walter Iles (NZ) was elected chairman of the meeting without opposition.

Proxies: Proxies were delivered. These were exercisable in the names of Dawn Ray and Hilary Penfold.

Apologies: Apologies were received from Dennis Murphy (Australia), Edward Caldwell (UK) and Peter Pagano (Canada) and from those in whose names proxies were delivered.

Opening remarks: The good turnout at the meeting and the larger turnout at the meeting the previous day, when papers had been presented, were noted.

Reports: Walter Iles (NZ) read the report of the President of the Association, Dennis Murphy.

Geoffrey Bowman (UK) read a message from the Secretary of the Association, Edward Caldwell, the retiring Secretary of CALC. The message was as follows:

Edward reported problems in keeping track of the membership. He suggested that the membership should consist of only the members for the time being of the different drafting Offices and any other individuals (e.g. retired draftsmen and those otherwise not for the time being members of Offices) who apply for personal membership. He suggested that, in the light of these difficulties, the CALC constitution should be revised.

Edward also pointed out that, in practice, the Council finds it difficult (if not impossible) to meet, except immediately after general meetings. He also felt that the CALC journal "The Loophole" should have some editorial control and that there was a case for more of the activities of CALC to take place on the Internet.

Open forum on legislative drafting and the activities of CALC: The following matters were discussed:

- Geoffrey Bowman (UK) was asked about the statement in the preface to explanatory

notes in the UK that the notes are not part of the law. Geoffrey Bowman explained that this is all that is thought necessary: the proposition is not an enacted proposition.

- Lionel Levert (Canada) explained the re-enactment of the Canadian Employment Insurance Act as a laboratory for plain language drafting. The experience is being used to test different techniques. He promised to keep members of CALC informed of progress.
- John Wilson (Fiji Is) raised the question of Parliamentary procedure for re-enactments in plain language. There was a discussion of the impracticability of re-enactment without changes of substance.
- The consolidation procedures in the UK and the new parliamentary procedure for the tax law rewrite (both involving select committee type procedures) were explained by Geoffrey Bowman (UK) and Stephen Laws (UK).
- Hilary Penfold (Australia) explained that, in Australia, the tax rewrite project's work had been enacted as ordinary Bills. The Bills had been done in stages. This prevented the impetus being lost, but the opportunity to co-ordinate the multiple result may never be taken. This is also the approach in the UK. Points were made about the distinction between re-enactment and reprinting.
- Dawn Ray (Australia) explained the Reprints Act in Queensland, which allows amended legislation to be reprinted in a more accessible form but retains the original as the authoritative text. She answered questions about the value of this and the way in which transitional provisions are dealt with. This led to a discussion of how priority is given to re-printing/re-enactments and the use of information about demand from publishers of the statute book.
- Lionel Levert (Canada) asked if there were any jurisdictions allowing electronic versions of the statute book to be authoritative. Canada is enacting legislation to that effect. Jeremy Wainwright (Australia) explained that in Australia there is no legislation treating any particular edition as authoritative. He said he thought that there was an Act in Tasmania. Goh Phai Cheng (Singapore) explained that the Government printer in Singapore publishes the Gazette on the Internet. There seems to be a greater risk of error. Charles Lim (Singapore) said that the first publication of the authentic text in Singapore is now on the Internet. Walter Iles (NZ) said that the electronic text needs to be user friendly and commercial publishers often achieve this better than Governments.
- There was a discussion about provisions of constitutions that allow Bills to be referred to courts for the purpose of enabling the court to ascertain in advance whether the proposed legislation has constitutional validity.

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- John Wilson (Fiji Is) suggested an association between CALC and the Statute Law Society. Duncan Berry (HK China) suggested a similar association with *Clarity*. In discussion it was agreed that this was a matter that should be considered by the incoming Council.

Confirmation of minutes: The minutes of the previous general meeting, held in Vancouver, Canada, 27 August 1996 were confirmed without dissent

Adoption of report of President: The President's report was adopted without dissent.

Discussion of need for amendments of Constitution: It was agreed that there should be a new constitution for the association and that the new Council should consider what is required and report to members within 6 months.

Discussion of proposal of establishment of a website for the Association: It was agreed that this is something that is desirable and should be pursued. Walter Iles (NZ) pointed out that in the light of the costs involved the best solution was to graft the site onto an existing website. This is another matter that needs to be considered by the CALC Council.

Election of officers and other Council members:

President: Dennis Murphy (Australia) and Hilary Penfold (Australia) were nominated. Duncan Berry (HK China) withdrew Dennis Murphy's nomination and Hilary Penfold was accordingly elected President.

Vice President: Lionel Levert (Canada) was nominated and, as the only nominee, elected.

Secretary: Duncan Berry was nominated and, as the only nominee, was elected.

5 Council members: Zaharah Ibrahim (Malaysia), Margaret Nzioka (Kenya), Nalin Abeysekere (Sri Lanka), George Tanner (NZ) and Geoffrey Bowman (UK) were nominated. As the only nominees, these five members were elected.

Location of HQ for the Association: It was agreed that the headquarters of the Association should be located in Canberra, Australia. It was noted in discussion that there was no need to fix a location for the headquarters.

Other business: On the subject of ties it was agreed that Geoffrey Bowman should investigate into this matter and advise the Council of the outcome. Duncan Berry thought that it would be possible for a new batch of CALC ties to be made in Hong Kong and undertook to make the necessary inquiries.

The retiring Council (Walter Iles in particular) were thanked and acclaimed.

Closing: The meeting closed with a photograph of those members present.

Use of explanatory notes to legislation as an aid to interpretation

In the recent decision of *Westminster City Council v. National Asylum Support Service* [2002] 4 All ER 654, the House of Lords indicated that, in interpreting provisions of a statute, United Kingdom courts can take into account the explanatory notes¹ that accompanied the statute when it was in the form of a Bill without the constraints that apply to the use of parliamentary materials, such as ministerial statements. In the course of his judgement, Lord Steyn said that judges could resort to external material, such as explanatory notes, even when the text to be interpreted is not ambiguous.³

The following is an extract from the judgement of Lord Steyn:

In the United Kingdom, explanatory notes relating to a Bill are now contained in a separate booklet. They do not form part of the Bill, are not endorsed by Parliament and cannot be amended by the legislature. The notes aim to explain the effect of the text and not to justify it. The purpose is to help readers to get their bearings and to ease the task of assimilating the law. The explanatory notes accompanying a Bill on introduction are now updated in the light of changes to the Bill made during the legislative process. Explanatory Notes are usually published by the time the legislation comes into force. Because explanatory notes for Bills are published by Her Majesty's Stationery Office, no costly searches are involved, unlike Hansard reports.

The decision in *Westminster City Council v National Asylum Support Service* [2002] 4 All ER 654 now establishes that, in interpreting provisions of a statute, United Kingdom courts can take into account the explanatory notes that accompanied the statute when it was in the form of a Bill. Because the language of every legislative document conveys meaning according to the circumstances in which it was used, it follows that a judge must always identify and consider the context before or during the process of construing those provisions. According to Lord Steyn,⁴ it is therefore wrong to say that a judge may resort to evidence of the contextual scene *only* when an ambiguity has arisen. In similar vein, Lord Hoffmann had in an earlier case, *Investors Compensation Scheme Ltd v West Bromwich Building Society* [1998] 1 WLR 896, 912-913, made it clear that an ambiguity need not be established before the surrounding circumstances may be taken into account. There is therefore now no need to establish an ambiguity before taking into account the objective circumstances to which the language relates. Nor is there any need to establish an ambiguity before taking into account the objective circumstances to which the language relates.

³ Ibid, at p. 657A.

⁴ Ibid, at pp. 656-658.

In the light of the decision in *Westminster City Council v National Asylum Support Service*, the position with respect to explanatory notes seems to be that, in so far as the notes cast light on the objective setting or contextual scene of the relevant statute and the mischief at which it is aimed, the notes are always admissible aids to interpretation. They can be admitted for what logical value they have. Used for this purpose, explanatory notes may sometimes be more informative and valuable than reports of law reform commission or advisory committees, government green or white papers, and the like, which according to Cross⁵ are already treated as admissible.

If an explanatory note contains a clear assurance by the policy formulators to the legislature about the meaning of a provision, or the circumstances in which a power will or will not be used, that assurance may, according to Lord Steyn, be admitted against the executive in proceedings in which the executive places a contrary contention before a court. This reflects the actual decision in *Pepper v Hart* [1993] AC 593. What, according to Lord Steyn, is impermissible is to treat the wishes and desires of the executive about the scope of the statutory language as reflecting the will of the legislature. The aims of the executive as to the meaning of provisions of a statute, as revealed in the explanatory notes, cannot be attributed to the legislature. "The object is to see what is the intention expressed by the words enacted."

Ugandan MPs to train in legislative drafting⁶

Members of the Ugandan Parliament are to undertake a six-month diploma course in legislative drafting. Deputy Speaker of Parliament, Rebecca Kadaga, recently told the visiting Rwandese parliamentary delegation that the Ugandan MPs would undergo the training in groups of 10, beginning in March 2003. Ms Kadaga said the course was aimed at equipping the MPs with legal knowledge that is relevant in drafting laws and would help them understand the law better and reduce their reliance on the parliamentary staff.

The Director of the Ugandan Office of Parliamentary Professional Development (OPPD), Emmanuel Pinto, said the training was sponsored by the Development Association and USAID in conjunction with OPPD and would be conducted by the International Law Institute. He said parliamentary staff, Ministry of Justice staff and civil society representatives would also attend the course.

Ms Kadaga told the seven-man delegation led by John Rusimbi, that there is need for increased interaction between the Ugandan and Rwandese Parliaments to help diffuse the tension and suspicion between the two.

⁵ *Statutory Interpretation*, 3rd ed (1995), 160-161

⁶ Reported in "allAfrica.com". It will most be interesting to learn the outcome of this initiative! (Ed.)

The Speaker of Parliament, Edward Ssekandi, told the delegation that the independence of Parliament from the Judiciary was very important. He added that Parliament should be autonomous to avoid being compromised.

New CALC Members

On behalf of the CALC Council, I should like to welcome all those who have joined the Association since the publication of the last list of new CALC members. As a result, the Association's membership numbers are now well past the 500 mark. For the first time, we now have members from Bangladesh, South Africa and Gibraltar. Also for the first time we have a member from Mozambique, which became a member of the Commonwealth only within the past decade and several parliamentary counsel from the Irish Office of Parliamentary Counsel to the Government have also joined the Association as associate members.

[The list of new members including personal information about them has been omitted for privacy reasons.]

Secretary's change of address

Once again, I am on the move. I will be leaving Hong Kong on 14 March 2003. For the two months following that date, I can be contacted at duncan_e_berry@yahoo.com.au and from mid-May, I will be at the Office of Parliamentary Counsel, Government Buildings, Upper Merrion Street, Dublin 2, Ireland. My e-mail address at that Office is duncan_berry@ag.irlgov.ie All future communications to the Association should be sent to me at one of those addresses or to Hilary Penfold at the Office of Parliamentary Counsel Locked Bag 30, Kingston, ACT 2604, Australia (e-mail address: hilary.penfold@opc.gov.au)

Duncan Berry (Secretary CALC)

CALC Ties

Two versions of CALC ties are available for purchase. Both versions have the CALC loophole logo in gold on a dark blue background. One version features the letters "CALC" in gold. The other version has no lettering.

I am sorry to say that the ties are still not selling well! So if you are a male CALC member and

do not have a CALC tie in your wardrobe, how about buying one? They cost only £8.00 each (or HK\$90 or AS20) plus the cost of postage.

If you would like to buy a tie, please send your cheque or bank draught to David Morris, Deputy Law Draftsman, Department of Justice, 8/f, High Block, Queensway Government Offices, Hong Kong. David can also be contacted by fax (852 2869 1302) or e-mail (davidmorris@doj.gov.hk). Alternatively, I will have a few available for purchase at the CALC meetings next month.

How US Federal Laws Are Made: A Ghost Writer's View

***Sandra Strokoff, Assistant Counsel
Office of the Legislative Counsel, U.S. House of Representatives⁷***

Frequently, on the floor of the House of Representatives, one will hear a Member refer to another as the “author” of a bill who has “carefully crafted” the language of the proposed legislation. Statements like these make me smile, because if the Members are the authors, then I and my colleagues in the Office of the Legislative Counsel of the House of Representatives are the ghost-writers.

The Office of the Legislative Counsel, created by statute originally in 1918,⁸ is currently composed of 30-plus attorneys who generally toil in anonymity, at least as far as those outside the legislative process are concerned. Attorneys are charged with taking the idea of any Member or committee of the House of Representatives requesting the services of the Office and transforming it into legislative language or, as one of my clients used to say, “the magic words.” We participate in all stages of the legislative process, be it preparing a bill for introduction, drafting amendments, participating in any conference of the two Houses of Congress to resolve differences between the two versions of the bill, or incorporating changes in the bill at each stage for publication and ultimately for presentation to the President. Frequently, we draft while debate is going on - both during committee consideration and on the House Floor, and may be asked to explain the meaning or effect of legislative language.

Although the Office has drafting manuals and guidelines, drafting legislation is without question a matter of on-the-job training. For up to two years, a new attorney in the Office, while communicating directly with clients (congressional staff members, but occasionally the Members

⁷ This article is an expanded version of one originally published by the author in *The Philadelphia Lawyer*, Philadelphia Bar Association Quarterly Magazine, Vol. 59, No. 2, Summer 1996.

⁸ Section 1303 of the *Revenue Act of 1918*. The Office of the Legislative Counsel is presently governed by title V of the *Legislative Reorganization Act of 1970* (2 U.S.C. 281-282e).

themselves) on legislative requests, works under the tutelage of a senior attorney in preparing for introduction a wide variety of bills to gain as much experience as possible in developing drafting skills. Typically, only legislation that is unlikely to pass is given to a new attorney. Ironically a new attorney's work will almost always include drafting a few amendments to the U.S. Constitution.

Members of the Office of the Legislative Counsel are bound by statute not to express views on or make policy with respect to legislation. Our responsibility is to reflect the ideas of Members of Congress accurately in legislative language. That isn't to say that we can't affect policy by pointing out the consequences or meanings of the printed word. Trying to close loopholes before they open is a constant challenge. It is easy to overlook the consequences of the simplest word. Some years ago, a House bill authorizing the President to impose controls on exports to any foreign country for foreign policy reasons was amended to prohibit placing these controls on "food". When the House was in conference with the Senate on the bill, the Senate staff referred to the provision as the "Twinkies amendment" because "food" meant any kind of food, exported for any reason. The conference agreement modified the provision to prohibit controls on exports of food, but only food used to combat malnutrition. Most would not put Twinkies in that category.

Attorneys in our office "specialize" in particular areas of law with which we become reasonably conversant over a period of time; however, because of the relatively small number of attorneys handling anything that comes in the door, we use the term "specialist" loosely. I, for example, am responsible for legislation involving trade with other countries, exports from the United States, controlling the proliferation of arms and weapons of mass destruction, all forms of intellectual property, and matters affecting the Federal courts and civil actions, and I share responsibility with other attorneys on all other matters affecting international relations. We work best when we can rely on the expertise of congressional staff, the executive branch, the Library of Congress, and even outside groups, who are able to answer our questions regarding the practical effect of a particular policy.

We draft legislation for all sides on the issues at the same time, both Republicans and Democrats, and factions within each party. We may be drafting the same legislation for different individuals. At times, it would be much more efficient to be able to hook up several different clients who want to do roughly the same thing at the same time, instead of having to produce multiple documents with enough modifications to make them look different. But we are strictly bound by the rules of attorney-client confidentiality. We are therefore frequently in the position of knowing what all sides are up to before anyone else does.

While drafting legislation primarily involves knowing what existing law is and how to change it to do only what is asked and no more, we of course have to be mindful of the constraints of the Constitution. Bill of Rights issues do occasionally arise, but far more likely are issues regarding Federal versus State powers. I have become aware of parts of the Constitution I didn't know existed in law school, such as Article 1, section 9, clause 5, which prohibits the imposition of a

tax on exports from any State, and Article I, section 10, clauses 2 and 3, which require the consent of Congress to any State-imposed duty on imports or exports and to any interstate compact (e.g. the agreement between Pennsylvania and New Jersey establishing the Delaware River Port Authority, which is supposed to keep the bridges connecting the two States from falling down). Sometimes we are asked to draft a constitutional fix for a provision that the courts have struck down as unconstitutional. Far more common, however, are proposals to amend existing law to change an interpretation of it by the courts that were unintended when the law was first enacted.

Of more pervasive impact than the Constitution are procedural issues. The rules of the House of Representatives and the Senate have tremendous significance at all stages of the legislative process once a bill has been introduced. An amendment to be offered to a bill in committee or on the House floor has to be *germane* to the bill (a term meaning, roughly, to be within the jurisdictional scope of the bill), and has to be offered at the appropriate time and in the appropriate form (e.g. as an amendment, an amendment to an amendment, a substitute to an amendment, an amendment to a substitute, etc.). But more significantly, before each bill is considered on the House floor, a rule is adopted (as reported by the Committee on Rules of the House) that stipulates how it is to be considered. Whereas in the past most bills had an “open rule”, that is, a rule under which anyone could offer an amendment to the bill, more recently the norm is either a rule making in order a short list of amendments submitted in advance to the Rules Committee, or a rule prescribing a limited time within which consideration of the bill, and all amendments thereto, must be completed. Both of these so-called “modified open rules” have the effect of cutting off debate. The result is that many ideas are never debated at all. In recent years the volume of work, coupled with extraordinary time constraints within which to do it, have made the job as legislative counsel increasingly demanding. There has also been the advent of the “megabill”, that is, instead of a bill dealing with a specific subject within the jurisdiction of one committee that more than likely began as the idea of one Member of the House, a bill on a general subject for which many committees contribute provisions within their respective jurisdictions. The major megabills created by the budget process mandated by law are the budget reconciliation bills, encompassing changes in law required for each committee to meet prescribed budget targets for the coming fiscal year for matters within their respective jurisdictions. Our office is assigned the task of assembling these massive bills, which by their nature require co-ordinating the efforts of many attorneys in the Office who handle the different jurisdictions.

If, as we are all aware, legislation is not perfect, the circumstances under which it is put together prevent its being so: being asked to draft major proposals or multiple requests (as in preparation for committee or floor consideration) in short periods of time; being told to leave language ambiguous so as to avoid a particular interpretation or to gain the support of a particular constituency; generally not having enough time to read and reread proposed legislation for consistency and technical correctness. And, in some cases, the services of legislative counsel are not even used. The extraordinary agenda of the House of Representatives in the 104th Congress of *completing* consideration of major pieces of legislation in the now famous first “100 days”,

coupled with the major downsizing of congressional staff (and with it, a significant loss of expertise and institutional memory) have made the job of legislative counsel all the more challenging.

Complaints aside, what keeps the job interesting and intellectually stimulating is the steady stream of new issues to tackle. To be presented with a problem that seeks a legislative solution, and then to put the pieces together in the matrix of existing law, much like solving a puzzle, can be very gratifying. And my work does have its humorous side. To wit: Washington's love of acronyms has on occasion required some last minute word reshuffling. After labouring for months with my Senate counterpart and a host of staff from the Hill and the executive branch on the complex legislation implementing the GATT agreements entered into in April of 1994, I was told we had to change the title of the bill, and every reference to it in the 650-page bill, from the "Uruguay Round Implementation Act" to the "Uruguay Round Agreements Act" because someone had already referred to the bill as "URIA", pronounced "U-REE-A". Needless to say, no one liked the sound of that.

Similarly, some years ago a bill was enacted to replace the Copyright Royalty Tribunal, a group of 3 highly paid full-time officers charged with the apparently part-time job of settling occasional copyright royalty disputes. The new ad hoc panels would be appointed as the need for them arose and would be paid for by the participants in the arbitration proceeding. Certainly a more economical and efficient way of doing things. But economy and efficiency only go so far in Washington. One day the staff person from the Judiciary Committee with whom I had been working on the bill appeared and said, in obvious amusement, that what we had been calling the new "copyright royalty arbitration panels" had to be changed to "copyright arbitration royalty panels" (which logic argued against) ...well, you can figure it out.

In 1974, Congress passed a bill creating in essence a statutory trademark for "Woodsy Owl", defining Woodsy down to his "slacks (forest green when colored), a belt (brown when colored), and a Robin Hood style hat (forest green when colored) with a feather (red when colored)... who furthers the slogan 'Give a Hoot, Don't Pollute' ". Woodsy was to be under the watchful eye of the Secretary of Agriculture, who would be ready to slap an injunction on the unlicensed use of Woodsy or his slogan. The problem with the meticulous definition of Woodsy was that, when the Agriculture Department decided Woodsy needed a new look for the '90s, his new wardrobe required an Act of Congress. A bill was introduced to do this, only this time around, the bill was drafted to entrust Woodsy's new look to the Secretary of Agriculture to modify at will! Being a participant in and observer of the legislative process has been at times exhilarating, at other times frustrating, and many times nerve-wracking. Most legislation that is enacted is a compromise of divergent points of view, and that, perhaps, is the essence of the democratic process. There are times, purely for the sake of that compromise, when I am asked to draft provisions that may not make much logical, let alone policy, sense. At such times I am happy to remain a ghost writer as I mutter the title of a pamphlet given to me on my first day in the Office 20 years ago: "How our laws are made."

Some very odd laws

France

- Between the hours of 8AM and 8PM, 70% of the music in the radio must be by French composers.

Thailand

- It is illegal to leave your house if you are not wearing underwear.
- You must wear a shirt while driving a car.
- You must pay a fine of \$600 in Thailand if you're caught throwing away chewed bubblegum on the sidewalk. If you do not pay the fine, you are jailed.
- No one may step on any of the nation's currency.

United Kingdom

- Picking up abandoned baggage is an act of terrorism.

United States

Alabama

- It is illegal for a driver to be blindfolded while operating a vehicle.
- Dominoes may not be played on Sunday.
- It is illegal to wear a fake moustache that causes laughter in church.

California

- Sunshine is guaranteed to the masses.
- Animals are banned from mating publicly within 1,500 feet of a tavern, school, or place of worship.
- Bathhouses are against the law.
- It is a misdemeanor to shoot at any kind of game from a moving vehicle, unless the target is a whale.
- Women may not drive in a housecoat.

Florida

- Women may be fined for falling asleep under a hair dryer, as can the salon owner.
- A special law prohibits unmarried women from parachuting on Sunday or she shall risk arrest, fine, and/or jailing.
- If an elephant is left tied to a parking meter, the parking fee has to be paid just as it would for a vehicle.
- It is illegal to sing in a public place while attired in a swimsuit.
- Men may not be seen publicly in any kind of strapless gown.
- Having sexual relations with a porcupine is illegal.
- It is illegal to skateboard without a license.
- When having sex, only the missionary position is legal.

Kansas

-
- Prohibits shooting rabbits from a motorboat.

Louisiana

- It is illegal to rob a bank and then shoot at the bank teller with a water pistol.

Indiana

- It is illegal for a liquor store to sell cold soft drinks.
- Liquor stores may not sell milk.

Michigan

- You may not swear in front of women and children in the state of Michigan.

Nebraska

- It is illegal for bar owners to sell beer unless they are simultaneously brewing a kettle of soup.

New York

- A fine of \$25 can be levied for flirting. This old law specifically prohibits men from turning around on any city street and looking “at a woman in that way”. A second conviction for a crime of this magnitude calls for the violating male to be forced to wear a “pair of horse-blinders” wherever and whenever he goes outside for a stroll.
- It is against the law to throw a ball at someone's head for fun.
- A license must be purchased before hanging clothes on a clothesline.
- The penalty for jumping off a building is death.

North Dakota

- Beer and pretzels can't be served at the same time in any bar or restaurant.
- It is illegal to lie down and fall asleep with your shoes on.

Ohio

- It is illegal to fish for whales on Sunday.
- It is illegal to get a fish drunk.

Pennsylvania

- A person is not eligible to become Governor if he or she has participated in a duel.

Texas

- It is illegal to take more than three sips of beer at a time while standing.
- It is illegal to drive without windshield wipers. You don't need a windshield, but you must have the wipers.
- It is illegal for one to shoot a buffalo from the second story of a hotel.
- It is illegal to milk another person's cow.
- A recently passed anticrime law requires criminals to give their victims 24 hours notice, either orally or in writing, and to explain the nature of the crime to be committed.
- The entire Encyclopaedia Britannica is banned in Texas because it contains a formula for making beer at home.

Wisconsin

- You must manually flush all urinals in a building.
 - Butter substitutes are not allowed to be served in state prisons.
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Legislative drafting forum in the Caribbean

The University of the West Indies Faculty of Law's 2nd annual Caribbean Legislative Drafting Forum will be held in Jamaica from July 16th to 18th, 2003. This Forum, the premier legislative drafting meeting of its kind, is not a "conference" in the traditional sense. Rather, it strives for a format that allows and encourages legislative drafters and others to share their expertise and experiences. A "free and full" discussion of the issues is the goal.

This year's Forum, "Drafting For The Future Present", will include these issues:
international law drafting;

- is there ever an obligation to make delegated legislation?
- use of diagrams etc in legislation;
- role of extrinsic materials in interpretation including the issue of how to interpret things like diagrams etc;
- policy formation; and
- constitution drafting.

There will also be demonstrations of IT techniques in legislative drafting.

Presenters will include—

- Hilary Penfold QC, First Parliamentary Counsel, Australian Office of Parliamentary Counsel, Canberra, Australia;
- Ruth Sullivan, Professor of Law, University of Ottawa, Ottawa, Canada;
- Douglass Bellis; Deputy Legislative Counsel, Office of the Legislative Counsel, US House of Representatives, Washington, DC;
- Keith Patchett, Emeritus Professor, University of Wales, Law Consultant, Cardiff, Wales;
- John Mark Keyes, Director, Legislative Policy and Development, Department of Justice, Ottawa, Canada

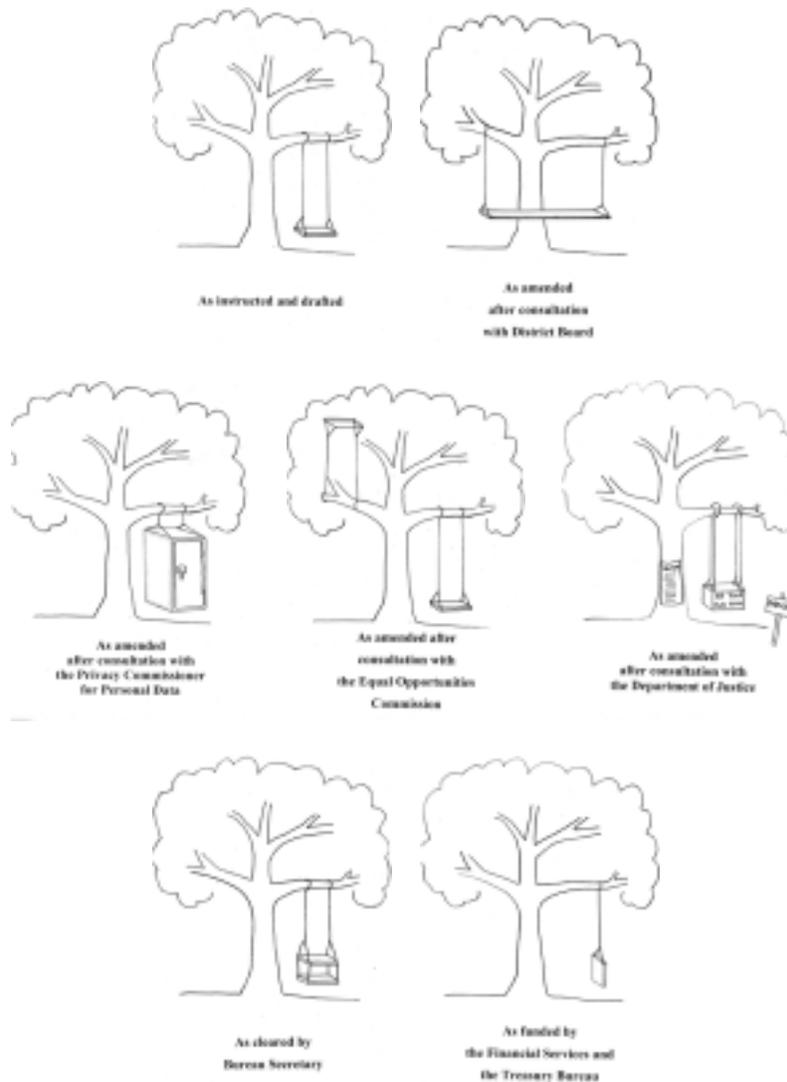
The registration fee for the Forum is US\$500. For further information, please contact:

Harris Wineberg, Director, LL.M. Programme in Legislative Drafting, Faculty of Law,
University of the West Indies, Barbados, Email: hwineberg@caribsurf.com

Employment opportunity—Fiji Islands⁹

The Fiji Islands Government is looking for law drafters for its Parliamentary Counsel's Office in Suva. The salary is in the region of F\$70,000 a year, with a contract period of 2 years. If interested, please contact Rupeni Nawaqakuta, First Parliamentary Counsel, at Office of the Attorney General, Suvavou House, Victoria Parade, Suva, Fiji Islands. Tel: (Fiji) 309866 ext. 563. E-mail rnwaqakuta@govnet.gov.fj

The legislative drafting process Hong Kong style!¹⁰



⁹ Notice placed by John F. Wilson, former First Parliamentary Counsel, Fiji Islands

¹⁰ Source—Gilbert Mo, Deputy Law Draftsman, Department of Justice, Hong Kong.



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