

November 1983

Commonwealth Association of Legislative Counsel  
Newsletter No. 1

Accompanying this first newsletter of the Association are copies of the minutes of the inaugural meeting held during the Commonwealth Law Conference in Hong Kong, the minutes of the first Council meeting also held during the Conference, the Constitution adopted by the inaugural meeting and a list of the names and addresses of Association members. It is inevitable that some names and addresses will have been incorrectly or insufficiently recorded. Please notify the Secretary of any mistakes or omissions and the list maintained by her will be corrected. Members may, on request, obtain from the Secretary at any time a copy of the most up-to-date list.

The minutes of the Council meeting are very brief but Council unfortunately had its first meeting over lunch in a restaurant overlooking Hong Kong harbour and it was not to be expected that a great deal would be accomplished.

Members will note however that steps are being taken to have a logo designed for the Association. Apparently a number of similar Commonwealth organizations have such a logo. Council adopted with pleasure the suggestion made by our President that we adopt as our logo that which we most fear and which seems most likely to engender in judges a sense of superiority when they encounter it - the loophole. Should any of us be required to explain why one appears, we shall at least be able to wear brazenly the apparel the President also proposes we be able to acquire - ties and scarves with our logo. If and when these articles become available, the newsletter will inform you.

For the members of the Association, indeed a majority, who were not able to attend the inaugural meeting in Hong Kong, the success of the meeting will be evident from reading the minutes. But the success of the Association will be measured by the extent of the assistance in drafting matters that members are able to give one another through the Association, and this will depend on the willingness of members both to share their ideas and their experiences in drafting matters and to seek the views and experiences of other members.

Please note on the list of names and addresses the addresses of the members of the Council of the Association. Members are of course invited to contact any one of them in order to arrange for a matter to be brought before the Council. The Constitution of the Association envisages that the Secretary will be a contact point for Association members, but as the council members were elected from, and represent, different regions of the Commonwealth, members may sometimes find it more helpful to contact the Council member in their own region.

Two of the matters about which drafters seemed most concerned at the inaugural meeting were, first, the problem of training and retaining drafters and, secondly, and this seems to be a difficulty experienced most acutely by the smaller States,

how to become informed of useful legislative precedents in other jurisdictions. According to Jeremy Pope of the Commonwealth Secretariat, the problem of training and retaining drafters has "dominated the activities of the Legal Division [of the Commonwealth Secretariat] since its inception as well as those of the Commonwealth Fund for Technical Cooperation", and Association members will be aware that this problem has frequently been on the agenda of Law Ministers' Conferences. The Legal Division of the Commonwealth Secretariat is, of course, concerned generally about the legal problems of small States whose legal needs are so disproportionate to their resources, and this is as true of legislative drafting as it is of other areas of legal work. It is the small States which are most likely to find precedents from other jurisdictions useful, if they can obtain them early enough. One possibility being explored by the Secretariat to assist small States is the setting up of "legal units" which would be responsible for providing legal services, including some drafting services, to a number of small States. Our Association is also concerned with the drafting problems faced by small and developing States and, indeed, this concern was one of the reasons for the formation of our Association.

In this newsletter a brief account is included of the main points made by Mr Nazareth and Mr Ewens in their papers concerning the profession of legislative drafting presented to the Commonwealth Law Ministers' meeting in February 1983. It is hoped that Association members will make use of subsequent newsletters to comment on the matters raised by Messrs Nazareth and Ewens and to suggest solutions to the problems they outline.

**Summary of paper entitled "Legislative Draftsmen: Their Training and Retention" by Mr G.P. Nazareth, Law Draftsman, Hong Kong**

The following steps have been taken during the last decade to deal with the problem of the continuing shortage of legislative drafters in the developing countries of the Commonwealth. Commonwealth Law Ministers at their January 1973 meeting agreed that the needs of various Commonwealth countries for drafters should be assessed by the Commonwealth Fund for Technical Cooperation (CFTC) and that some kind of regionally based training facilities should be provided. During 1973/74 consultants appointed by the Secretary-General of the Commonwealth Secretariat undertook appraisal tours in various regions of the Commonwealth for the purpose of ascertaining each country's needs and recommending appropriate training facilities. A seminar was convened by the Secretary-General in London in March 1974 to advise on the structure and content of the proposed regional training courses. Subsequently the Commonwealth Secretariat has organized training courses for drafters, funded through the CFTC, and from 1974 to early 1983 regional drafting courses attended by about 200 trainees from 33 jurisdictions have been conducted. Yet the problem of a shortage of drafters has not lessened since 1974.

Legislative drafting presents special demands and drafters have to be lawyers of above average ability and with certain other qualities not commonly found. Yet drafting does not offer commensurate attractions and awards. Substantial incentives are required if competent drafters are to be attracted and retained.

This is the crux of the problem and the key to solving it. The right kind of lawyer must be attracted in the first place, and must be retained.

The principal forms of training available are in-service or on-the-job training or formal courses.

## 1. In-service training

In-service training is the standard form of training in developed countries and is the most effective training available. But in developing countries, especially the smaller ones, the process of in-service training takes too long to be the principal form of training.

In-service training can be provided in 3 ways. Normally it will be given in the drafting office of the jurisdiction in which the trainee proposes to work. An alternative is for a regional legal unit to provide such training, with some training also perhaps being conducted in the trainees' own offices. A third possibility is for trainees to be attached to the drafting offices of developed countries.

## 2. Training courses

### (a) CFTC regional drafting courses

These courses have been useful but have not been able to contribute significantly to overcoming the shortage of drafters. Not all candidates who have so far undertaken the courses had suitable experience and ability and suitable incentives were not always provided subsequently to retain their services.

### (b) University drafting courses

Such universities as Edinburgh University, Ottawa University and Columbia University provide drafting courses. However, only very small numbers of students are able to follow these courses.

### (c) Training of graduates

Barbados offers a LL.M. drafting course for law graduates who have not been admitted as legal practitioners. There is no reason why such persons should not become drafters.

The training situation does not seem to be unsatisfactory in the circumstances. It is the recruitment and retention of drafters that present more difficulties than training them. Too few drafters of appropriate ability and aptitude are being recruited, and too many move on to other occupations. The consultants who in 1973/74 made recommendations to the Commonwealth Secretariat in relation to drafting services saw as the solution the provision of suitable incentives, including increased status, better remuneration, better promotional opportunities, good working conditions and improved drafting instructions. Despite these recommendations, effective incentives have not generally been provided.

### 3. Sharing of drafting resources

A few countries have permitted their drafters to be seconded to work in other jurisdictions. Another arrangement is for experienced, skilled drafters to be based in regional legal centres and to draft complex and difficult legislation for enactment by several countries. Alternatively, it may be possible for an experienced drafter, while working primarily for one jurisdiction, to visit other countries and undertake work for them. In the past drafting services have also been provided to very small dependent Territories by drafters based in other countries, but this is plainly unsatisfactory.

In summary -

- . In-service training is the most effective form of training.
- . It should be undertaken (in order of preference) in the trainee's own country, in a regional legal unit or centre, or on attachment to a drafting office in any country willing to provide facilities.
- . Countries with adequate facilities could probably make more places available for in-service training to other countries that lack such facilities.
- . CFTC drafting courses should be continued, but selection procedures tightened to secure trainees who are suitable and for whom subsequent in-service training is assured.
- . The Legal Division, Commonwealth Secretariat, should, if feasible, provide information on other drafting courses which may be available, use of which courses should be encouraged.
- . Law graduates, even if not qualified to practise, should, if of suitable ability and aptitude, be sponsored for training as drafters.
- . Although existing training facilities are not unsatisfactory, there is probably some scope for improvement.
- . The basic cause of the shortage of drafters is not training but the inability to recruit and retain lawyers of suitable ability.
- . The solution is to provide appropriate incentives, of these suitably enhanced remuneration would be the most effective, but other incentives concerned with status and working conditions are probably also necessary.
- . Sharing between small countries of drafters seconded or recruited ad hoc would probably best be achieved through regional legal units or centres, but a similar arrangement without the establishment of a unit or centre might also prove feasible.

Summary of paper entitled "Legislative Draftsmen: Some Thoughts on How to Provide an Effective service"<sup>1</sup> by Mr J.Q. Ewens, former First Parliamentary Counsel, Australia.

<sup>1</sup>

An article by Mr Ewens based on this paper appears in the October 1983 issue of the Australian Law Journal.

The conditions for an effective drafting service are:

- . obtaining the right sort of people
- . giving them the right sort of training,
- . furnishing them with the right sort of instructions, and
- . providing them with the right tools of trade.

### 1. Obtaining the right sort of people

A competent drafter needs the following qualities: to be a good all round lawyer, to have command of his own language, to possess a clear and logical mind, to have the right temperament (including patience with difficult clients and an ability to produce good work under pressure), to possess an understanding of politics and of the working of his own legislature.

### 2. The right sort of training

The only wholly satisfactory way of training is by the apprentice method but training courses can have a limited usefulness. The respected American Professor Reed Dickerson has a different view, and perhaps the difference between the American and Commonwealth methods of government accounts for this difference of opinion. It is a mistake to try to teach drafting to students who are not yet qualified lawyers.

### 3. The right sort of instructions

Good drafters are so rare it is essential that their time be spent to the best advantage. They should not be concerned directly with policy, although the drafter may be able to give advice on such legal matters as appropriate penalties and how the laws of evidence will apply and he may be able to help formulate a practical scheme of legislation to achieve a desired policy.

It has been suggested to the Commonwealth Secretariat that if drafters in jurisdictions producing programmes of proposed legislation were to circulate these to other jurisdictions, this would be a great help in promoting mutual assistance between jurisdictions and the use made of comparative material. Greater cooperation among drafters in the Commonwealth would benefit their governments. Even more useful would be to devise some machinery by which particulars of enacted legislation were sent by drafters or law departments to a central place to be recorded and made available on request to jurisdictions contemplating similar legislation.

Over the years considerable resort has been made to comparative legislation, but to a variable extent and perhaps in a haphazard way. Perhaps the systematic collection and digesting of legislation could be undertaken by the Commonwealth Secretariat.

Reviews of Commonwealth legislation contained in the Commonwealth Law Bulletins are excellent, but limited.

Of course, uncritical copying of legislative precedents has its dangers.

#### 4. Tools of trade

A drafter needs ready access to a comprehensive law library. A word processor is also a great help.

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Association members would I think benefit if members expressed their views on the suggestions made by Mr Nazareth and Mr Ewens and described any relevant experiences of their own relating to the provision of drafting services. Some of the larger jurisdictions may have experience in making placements available to drafters from smaller countries and offering intensive supervision for a limited period. In some areas the kind of assistance offered by itinerant experienced drafters to which Mr Nazareth referred may be successful.

The use of comparative legal materials is also a matter on which different jurisdictions will have very different experience. It is some consolation that a large part of any country's legislation must be of little use to anyone else, for example, the large bulk of material setting up regulatory agencies and, in any federal system, the Acts effectuating the fiscal arrangements made between the federal and local governments. It is also probable that the larger jurisdictions make negligible use of comparative statutory materials because, while having the resources to locate these materials, they also have the resources to develop a system tailored to their own needs. In the developed countries, too, it is probable that the people who devise the policy are the ones who find out at first hand what other countries are doing and issue drafting instructions taking into account this other experience. The drafter then does not have to be directly concerned with either the legislation or the experience of any other jurisdiction. Smaller jurisdictions probably also differ in the use they make of legislative precedents.

It would be helpful if Association members shared, through their newsletter, their views on, and experience in using, comparative legal materials. Is the policy to be implemented by a Bill based on an Act from another jurisdiction and are the drafting instructions based on, and accompanied by, the other legislation? Do drafters have themselves to search for legislative precedents from other jurisdictions that might assist them? Are they instructed simply to draft a Bill in similar terms to a statute of another jurisdiction? Are legislative precedents adhered to - because of a lack of time and adequate instructions - very closely? Do a group of micro-States all in need of legislation on a particular topic ever permit one State to draft the core provisions? How much do different drafting styles and different methods of citation and of amending legislation hinder the use of comparative materials? Are there one or two jurisdictions whose legislation is most often used as precedents?

Association members are urged to use the newsletter as a means of communicating some of their professional experiences, and their problems and solutions, to one another. If drafters in the Commonwealth are to benefit from greater contact with one another, it will be partly because some means of hearing of the experiences of other jurisdictions and passing on one's own has become available. It has been suggested that the Association could, among other things, provide some way of informing members of major legislation being prepared or recently enacted in a jurisdiction that other jurisdictions could make use of and thereby save themselves a great deal of effort and time-consuming research. What do members think of this proposal? The Council, and especially the Secretary, urges members to write to the Secretary informing her what matters they would like to be dealt with in the newsletter and what kind of information they would like to be circulated to them.

Members of the Association are also encouraged to contact any other members of the Council concerning matters relating to the Association. The members of the Council are as follows:

<u>President:</u>	Sir George Engle	United Kingdom
<u>Vice-President:</u>	Miss Monica Barnes	Trinidad and Tobago
<u>Secretary:</u>	Ms Sandra Power	Australia
<u>Other members:</u>	Mr R.V.S. Peri Sastri	India
	Mr Tony Manarangi	Cook Islands
	Mr Gerry Nazareth	Hong Kong
	Mr David Zamchiya	Zimbabwe

**MINUTES OF THE INAUGURAL MEETING OF THE  
COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL  
HELD IN HONG KONG ON 21 SEPTEMBER 1983**

**1. Welcoming Address**

Mr Gerry Nazareth, the Law Draftsman of Hong Kong and the inaugural meeting host, said how honoured he and his colleagues in Hong Kong were to be able to host the meeting. He welcomed the persons attending the meeting particularly those who had not been able to attend the luncheon held the previous day to welcome delegates, which had also been attended by the Lord Chancellor. Mr Nazareth pointed out that Hong Kong had draftsmen who had served in many Commonwealth territories particularly the smaller territories whose problems they understood and would like to play a part in solving. He then outlined the genesis of the Association and the crucial parts played by Mr Geoff Kolts, First Parliamentary Counsel of Australia and Mr Jeremy Pope, Director of the Legal Division of the Commonwealth Secretariat. Mr Nazareth was pleased to report that already remarkable success had been achieved with over 200 names having been put forward for membership from no less than 80 jurisdictions in the Commonwealth, of which at least 38 were represented at the inaugural meeting. He also mentioned that wishes for success and assurances of support had been received from virtually every quarter of the Commonwealth and mentioned in particular the Caribbean Secretariat, Kiribati, Jersey, Jamaica, St Kitts, Zambia and Western Australia. Mr Nazareth then adverted to the draft Constitution which had been prepared and circulated by Mr Kolts. He pointed out that Mr Kolts had taken into account all the comments submitted on the first draft in preparing his revised draft circulated in June, and emphasized that already this had received a very wide degree of acceptance and indeed acclamation. Finally, he expressed his great regret, which he was sure the meeting would share, that Mr Kolts had been prevented by his duties from attending the inaugural meeting. He also mentioned that Mr Jeremy Pope was closely concerned in the Law Reform Forum which was being held concurrently but that he had arranged for him to look in and address the meeting later.

**2. Nomination of Chairman of inaugural meeting**

Mr I Turnbull of Australia nominated Mr Nazareth as the Chairman of the inaugural meeting and the meeting approved the nomination.

**3. Adoption of a Constitution**

The Chairman put before the meeting the draft constitution for the proposed Association that had been prepared by the Australian Office of Parliamentary Counsel and circulated in June 1983 by Mr Kolts to drafters in all Commonwealth jurisdictions.

Clause 1

Adopted without amendment.

Clause 2

Adopted without amendment.

Clause 3

Adopted without amendment.

Mr A R McMillan of Zimbabwe expressed concern that proposed sub-clause 3(6) authorized the imposition of a membership subscription having retrospective effect and he also argued that express provision should be made for members to resign before becoming liable for payment of a subscription. It appeared that Mr McMillan had before him an earlier version of the draft constitution, but after reading the later version Mr McMillan was still unhappy with proposed sub-clause 3(6).

However, the meeting adopted clause 3 without amendment.

Clause 4

Adopted with amendments.

Two amendments were proposed, both of which had been foreshadowed in the letter of Mr Kolts dated 7 July 1983 to prospective members of the Association.

(1) That "Chairman" be substituted for "President".

Mr Anozzi of Nigeria proposed that "President" be retained, notwithstanding the objection made prior to the inaugural meeting and repeated there by Mr R Rose of Kenya that some African countries including Kenya prohibited the use of the title "President" other than by the head of State or head of Government. Mr Lushogara of Tanzania, supporting Mr Anozzi, pointed out that in Tanzania the title "Chairman" was also used in a very restricted way, to describe the leader of a political party.

Sir George Engle proposed that the words "or Chairman" and "or Vice-Chairman" be in effect inserted after "President" or "Vice-President" throughout the Constitution. Mr J Finemore of Victoria, Australia, moved that this proposal be adopted and Mr I Turnbull of Australia seconded it. The motion was carried by 19 votes to 15. It was also agreed that a consequential amendment inserting an interpretation clause be made by the incoming Council.

(2) That the number of members of the Council of the Association other than the President, Vice-President and Secretary be increased from 2 to 4 to enable each regional grouping of Commonwealth countries to be represented.

Mr G Bertrand of Canada moved that this proposal be adopted and Mr E D Chase of Barbados seconded it. The motion was carried unanimously.

Clause 5

Adopted with an amendment.

(1) Mr J K Findlay of Hong Kong moved that, in view of the increase in the number of members of the Council (from 5 in the draft Constitution to 7), the quorum at a meeting of the Council be increased from 2 to 4. This proposal was adopted unanimously.

(2) Mr R Rose of Kenya moved that the President or Chairman be empowered to have a casting vote. Sir George Engle of the United Kingdom stated his opinion that a matter to be decided by the Council which did not receive majority support should be lost. Mr M Bradley of the Cayman Islands seconded Mr Rose's motion. The motion was defeated by 19 votes to 18.

Clause 6

Adopted without amendment.

Clause 7

Adopted without amendment.

(1) Mr T W Cain of the Isle of Man moved an amendment to sub-clause 7(2) of the draft Constitution to provide that the number of members required to convene an extraordinary general meeting be a fixed number such as 12 instead of a proportion of the total membership. Five persons were in favour of the motion and a large majority were against it.

(2) In an effort to meet the concerns expressed by Miss M Barnes of Trinidad and Tobago and Mr G H Griffith of Bermuda that a single regional grouping of members with no other support should not be able to require an extraordinary general meeting to be convened, Sir George Engle of the United Kingdom moved an amendment along the following lines to sub-clause 7(2): "not less than one-sixth of the members of the Association, as certified by the Secretary, from at least three areas of the Commonwealth as represented on the Council". Mr G H Griffith seconded the motion, which was lost, with 15 votes in support of the motion and 20 votes against it.

Clause 8

Adopted without amendment.

Mr J C McCluskie of Scotland objected to the definition of "financial year" given in proposed sub-clause 8(4), and Mr I Turnbull of Australia argued that the definition was satisfactory.

The meeting adopted clause 8 without amendment.

Clause 9

Adopted without amendment.

Clause 10

Adopted with an amendment.

Mr A R McMillan of Zimbabwe moved that clause 10 of the draft Constitution be amended by inserting "assets and" before "funds". Mr I Turnbull of Australia moved that "assets" be substituted for "funds". Mr McMillan withdrew his motion and Mr Turnbull's motion was adopted unanimously.

Clause 11

Adopted without amendment.

Clause 12

Adopted without amendment.

Clause 13

Adopted without amendment.

The Chairman moved that the Constitution as amended by the meeting be adopted and that the Council be authorized to add an interpretation clause at the end relating to the use of the terms "Chairman" and "Vice-chairman".

The amended Constitution was adopted unanimously.

**4. Address by Mr J Pope of the Commonwealth Secretariat**

Mr Pope outlined the background to the formation of the Association, explaining that the Legal Division of the Commonwealth Secretariat had merely facilitated its formation, but that the impetus had come largely as a result of papers relating to the profession of legislative drafting prepared by Messrs G Nazareth of Hong Kong and J Ewens of Australia, which led to the approval in March 1983 by Commonwealth Law Ministers of the formation of a Commonwealth Association of Legislative Counsel. Mr Pope praised the arduous work of Mr Kolts in fostering its formation including the preparation of a draft Constitution and of Mr Nazareth in arranging for the inaugural meeting to be held during the Commonwealth Law Conference.

Mr Pope expressed his hope that a close relationship would develop between the Commonwealth Secretariat and the Association and he conveyed also an invitation from Dr A G Donaldson, editor of Statute Law Review, to the Association and its members to write for the Review.

Mr Pope also added that the Secretariat was at present more concerned about the difficulties encountered by some jurisdictions in retaining rather than in training drafters,

and he ended by expressing his amazement that the Association had succeeded in adopting its Constitution so expeditiously and without dispute.

**5. Membership of the Association**

The Chairman stated that in accordance with the Constitution all persons who made known at the meeting their desire to become members of the Association would be members and that for this purpose persons whose names were in the provisional directory and on the annexed supplementary list and the signed attendance list and any other persons whose names were submitted at the meeting would be taken as having made known their desire to become members. He stated also that a membership list would be sent later to members.

**6. Election of President**

Mr G Bertrand of Canada proposed that Mr Nazareth be elected President, but Mr Nazareth declined the nomination in favour of Sir George Engle.

Mr J K Findlay of Hong Kong nominated Sir George Engle as President and Miss M Barnes of Trinidad and Tobago seconded this. Sir George Engle was elected unopposed.

**7. Election of Secretary**

The Chairman requested Mr I Turnbull of Australia to convey the Association's thanks to the Australian Government and to Mr Kolts for their willingness to provide a Secretariat. He added that it was only right and proper and in the interests of efficiency that while this arrangement continued, the Secretary should be from Australia, specifically from the Office of Parliamentary Counsel which would provide the Secretariat. He nominated Ms Sandra Power of Australia as the Secretary. She was elected unopposed.

**8. Election of other members excluding Vice-President**

(1) Council member from Africa

Mr M Onwugbufor of Anambra, Nigeria nominated Mr I Anozie of Nigeria and Mr A Yahaya of Kaduna, Nigeria seconded this.

Mr I Turnbull of Australia nominated Mr D Zamchiya of Zimbabwe and Mr J Findlay of Hong Kong seconded this.

Mr Zamchiya was elected by 14 votes to 8 votes.

(2) Council member from Asia

Mr Abeyesekere of Sri Lanka nominated Mr Peri Sastri of India and Mr Abdul Malek Ahmad of Malaysia seconded this. Mr Peri Sastri was elected unopposed.

(3) Council member from the Pacific

Mr J D Scott of Hong Kong nominated Mr A Manarangi of the Cook Islands and Mr D Morris of Hong Kong seconded this. Mr Manarangi was elected unopposed.

(4) Other Council member

Sir George Engle nominated Mr G Nazareth and Miss M Barnes of Trinidad and Tobago seconded this. General I Haruna of Nigeria pointed out, however, that the west coast of Africa south of the Sahara did not feel adequately represented. Mrs B Belo of Nigeria nominated Mr Anozie of Nigeria and this was seconded by Mr Onwugbufor of Anambra, Nigeria. Mr Nazareth was elected by 20 votes to 8 votes.

9. Election of Vice-President

Dr Shahabuddeen of Guyana and Mr E Chase of Barbados nominated Miss M Barnes of Trinidad and Tobago and this was seconded by Mr M Bradley of Cayman Islands. Miss Barnes was elected unopposed.

The election of the President and Vice-President being completed, Mr Nazareth withdrew from the chair and Sir George Engle, as President of the Association, presided for the remainder of the meeting.

10. Address by President

Sir George Engle expressed his sense of honour in having been elected as the President of the Association, which he regarded as an honour for the office of First Parliamentary Counsel in the United Kingdom, an office created 114 years ago, in 1869. He outlined a little of his own professional background. This included two years spent with his family in Nigeria between 1965 and 1967 during which a military coup occurred and he had to rewrite the Constitution, and he considered that this experience gave him some understanding of the difficulties of drafting in isolated places on one's own. In referring to the omission of a reference to statute law in the opening address given by the Lord Chancellor to the Commonwealth Law Conference, Sir George Engle remarked that judges often seem to regard themselves as the only source of the common law, whereas draftsmen are in fact the main source of modernization of the law. He noted that draftsmen possess a technical skill which, like other technical skills, can be used for good or evil, to support or to repress the rule of law, and stated that draftsmen have as important a function as judges in upholding the rule of law and that they must not allow their skill to be misused. He described the law officers in the United Kingdom as the legal conscience of the government and draftsmen as the legislative conscience of the law officers. He then referred to the First Parliamentary Counsel's responsibility for preparing memoranda for the law officers respecting (*inter alia*) powers contained in Bills, copies of which are sent to the Lord Chancellor, and he noted that these memoranda have led to Bills being rejected by the Legislation Committee of Ministers. He considered legislative counsel achieved a good

deal if statutes were only "50 per cent as horrible as they might otherwise have been".

Sir George then mentioned 3 principal difficulties of draftsmen. First, they were always the first people to be asked to do horrible things by autocratic governments. They had always, however, the duty to advise and point out to the government any excesses and at least not to let things go by default. Secondly, they were often given inadequate instructions, even in the United Kingdom, yet draftsmen are not policy-makers. He noted that this problem, of being required to devise policy, was probably worse for drafters who were not nationals of the countries in which they drafted. He considered draftsmen must always endeavour to get instructions from the government and force other people to accept responsibility for policy decisions. Thirdly, he noted the particular difficulties faced by persons required to draft in a language that was not their maternal language, even if the main thing required of drafters was to think out a problem consistently and clearly rather than the subtle use of language. He expressed admiration for the work of drafters drafting in a language that was not their first language.

Sir George then pointed out that the countries represented by the Association included, from the point of view of drafting experience, traditions and resources and the difficulties draftsmen faced, both haves and have-nots, the latter being constituted by the smaller jurisdictions especially. He summed up two ways in which the Association could assist the drafting profession, by spreading "sweetness and light" among all draftsmen and by generous assistance being given by the haves to those less fortunately placed.

Sir George then expressed great thanks to Mr Nazareth for his work in facilitating the formation of the Association and he expressed his delight that Mr Nazareth would also be a member of the Council of the Association.

#### 11. Other business

Mr J Ewens of Australia, who prepared one of the two papers on the basis of which Law Ministers approved the formation of the Association, mentioned that the paper would be published later in 1983 in the Australian Law Journal.

General Haruna of Nigeria congratulated Mr Nazareth and Sir George Engle on having been elected to the Council of the Association.

Each member of the Council introduced himself or herself briefly.

Miss M Barnes thanked members for having elected her as Vice-President and she thanked especially members from the Caribbean for their support. She suggested that the Association look closely at legislative drafting as a career, for otherwise the failure to retain drafters would continue. She pointed out that in Trinidad and Tobago more drafters were now on the bench than in her office.

Mr Peri Sastri of India stated that his drafting career began in 1961.

Mr A Manarangi of the Cook Islands referred to the difficulties of drafters working in small jurisdictions and hoped that the Association would be able to assist them and that he himself would be able to make some contribution to the Association.

Mr Zamchiya of Zimbabwe said that although Commonwealth Law Ministers had expressed the view that the Association should not act as a trade union, it should act as one to the extent necessary to help the weaker members with fewer resources. He added that he regarded himself as having been elected to represent the entire fraternity of drafters, not just a region.

Mr Nazareth mentioned his own connections, by descent, birthplace and employment, with Africa, Asia and the Pacific and he pointed out that his experience in drafting for the Gilbert Islands and the former New Hebrides and Solomon Islands also helped him to appreciate the difficulties of drafting in small jurisdictions.

Mr G Bertrand of Canada asked the Council what relationship would exist between the Association and the Commonwealth Secretariat. The President assured Mr Bertrand that the Association would work closely with the Secretariat but also as much as possible on its own initiative.

Mr J F Wilson of Hong Kong asked the Council whether the Association proposed to use as its means of communication the Commonwealth Law Bulletin or the Statute Law Review and also whether the Association would encourage former drafters to join it.

Sir William Dale, as a member of the editorial board of the Review, encouraged contributions to the Review.

The President stated that it was probable the Association would send out a newsletter once or twice a year to members for Association communications and he encouraged members to submit material to the newsletter. He said also that he hoped the Association would respond to the invitations made to it to publish in other journals.

The President concluded by thanking Mr Nazareth for the warmth and hospitality extended in Hong Kong to all members of the Association.

CONSTITUTION OF THE  
COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

**Establishment and headquarters**

1.(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.

**Object**

2.(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 -
  - (1) the preparation and publication of legislation; and
  - (11) 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.

**Membership**

3.(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.

(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.

(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.

#### The Council

4.(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 4 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.

### Meetings of the Council

5.(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
- (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.

### Functions of Officers

6.(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.

#### General meetings of the Association

7.(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.

#### Finances

8.(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.

#### Amendment

9. 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.

#### Dissolution

10. 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.

#### Notice of certain resolutions

11.(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, as soon as practicable thereafter, send copies of the notice to all members of the Association.

#### **Proxies**

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

#### **Sending of documents**

13. For the purposes of this Constitution, a notice or other document is deemed to be sent or circulated 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.

#### **Interpretation**

14. 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.