
Newsletter



of the



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CALC Conference and Meeting—Melbourne, Australia, April 2003

From many points of view, this conference was probably the most successful since CALC was established at the Commonwealth Law Conference in 1983. The attendance was excellent. The papers were not only interesting but also engendered quite a lot of healthy debate. For the first time, a legislative drafting master class was held. It was to say the least quite an experience to witness some of our most experienced legislative counsel trying to solve legislative conundrums on the run, so to speak!

It was also great to meet many old friends and at the same time make some new ones. For the first time since the conference in Auckland in 1990, a CALC dinner was held. This was greatly enjoyed by all. Our former president, Hilary Penfold, produced a most entertaining after dinner speech. The text of her speech is to be found elsewhere in this Newsletter. That the conference was so successful was largely attributable to her efforts and those of Eamonn Moran, the Chief Parliamentary Counsel of Victoria.

Editor

Minutes of CALC General Meeting held on 16 and 17 April 2003 at the Convention Centre, Melbourne, Australia

Proceedings held on 16 April

1. Opening of meeting

The President opened the meeting at 9:15 a.m.

2. Present

A list of those present is contained in the Appendix to these minutes.

3. Apologies

A list of apologies is contained in Appendix 1 to these minutes.

4. Proxies

The secretary announced that 50 proxies had been lodged with him. Of these—

- 17 from Queensland members were given to Theresa Johnson
- 16 from Hong Kong members were given to the Secretary, Duncan Berry
- 3 from NSW members were given to Don Colagiuri
- 1 from a British Columbia member was given to Janet Erasmus
- 1 from a Canadian (federal) member was given to John Mark Keyes
- 1 from a Saskatchewan member was given to the Vice-President, Lionel Levert
- 11 from various other members were given to the President, Hilary Penfold.

5. Minutes of previous CALC general meeting

Walter Iles (New Zealand) moved the adoption of the minutes of the CALC general meeting held at Petalang Jaya, Malaysia, September 1999. Lionel Levert seconded the motion. The meeting adopted the minutes unanimously.

6. CALC Council Report

The President presented the Council's report, which covered the period from September 1999 to April 2003. The President surveyed the report. The following matters were discussed:

- Membership records
- CALC Website
- Loophole and the CALC Newsletter

The report was carried unanimously on the motion of Judith Keating (Canada, New Brunswick). Don Colagiuri (Australia, NSW) seconded the motion. A copy of the report is contained in Appendix 2 to these minutes.

7. Matters arising from Council's report

The meeting discussed the following matters arising from the report:

- Membership records—Some members expressed privacy concerns. Peter Quiggin (Australia) pointed out that it might be a breach of Australian privacy laws to publish certain membership information on an Australian web site (e.g. the CALC website). The Secretary pointed out that he had already taken steps to address these concerns. However, in the light of the discussion, the Secretary outlined two further measures that he proposed to taken to ensure that members' privacy was protected. One was to modify the membership application form to ask applicants whether they objected to the publication of their private particulars. The other was to invite existing members to have their private particulars removed from the membership list kept for publication purposes.
- George Tanner (New Zealand) asked whether the CALC proceedings have to be held in conjunction with the CLC. A P asked whether members would prefer to hold the CALC meeting before or after the CLC, rather than at the same time. This would make it easier for members to choose whether to attend both conferences or just the CALC one. NH pointed out that the CLC was expensive and the ACT would not have been able to send as many as 6 members if they had had to register for the CLC.
- Alipate Qetaki (Fiji) asked whether more legislative drafting items could be included on the CLC program.
- Ben Piper (Australia, Victoria) asked whether notification of legislative drafting conferences could be given to members. John Mark Keyes (Canada, federal) suggested that information about law drafting conferences should be co-ordinated into a single calendar, with a view to avoiding clashes between conferences. The Secretary pointed out that this was already done through the CALC Newsletter. The President said that information about legislative drafting conferences could

also be published on the CALC website.

8. Acknowledgement of work of President and Secretary

Ben Piper (Australia, Victoria) moved that the work done for CALC by the President and the Secretary over the past 3 ½ years be acknowledged. The motion was passed by acclamation.

9. CALC accounts

The Secretary presented the CALC accounts for the period since the previous General Meeting. Despite strenuous efforts on his part, the Secretary had been unable to find an independent person to audit the accounts as required by the CALC constitution. Despite this, Janet Erasmus (Canada, British Columbia) proposed that the meeting approve the accounts. Theresa Johnson (Australia, Queensland) seconded the motion. The meeting passed the motion unanimously. A copy of the accounts is contained in Appendix 3 to these minutes.

10. Election of officers and members of the CALC Council

The meeting elected the following officers:

- President: Geoffrey Bowman (England)
Proposer: Hilary Penfold (Australia, Federal);
Secunder: Greg Calcutt (Australia, WA)
- Vice President : Lionel Levert (Canada, federal)
Proposer: Duncan Berry (Australia, NSW/Hong Kong);
Secunder: Catherine Johnston (England)
- Secretary: Duncan Berry (Australia, NSW/Hong Kong/Ireland);
Proposer: Lionel Levert (Canada, Federal)
Secunder: Eamonn Moran (Australia, Victoria)

The meeting elected the following Council members:

- Moinul Kabir (Bangladesh)
Proposer: Lionel Levert (Canada, Federal);
Secunder: Hilary Penfold (Australia, Federal)
- Janet Erasmus (Canada, British Columbia)
Proposer: Keith Byles (Australia (Federal));
Secunder: Shirley Hall (Australia, SA)
- Clive Borrowman (Jersey)
Proposer: John McLuskie (Scotland);
Secunder: Duncan Berry (Australia, NSW/Hong Kong)
- Jeremy Wainwright (Australia, Federal)
Proposer: Lionel Levert (Canada, Federal);
Secunder: Hilary Penfold (Australia, Federal)
- George Tanner (New Zealand)
Proposer: John McLuskie (Scotland);

Seconder: Peter Quiggin (Australia, Federal)

- Tony Yen (Hong Kong)

Proposer: Duncan Berry (Australia, NSW/Hong Kong);

Seconder: Lionel Levert (Canada, Federal)

It was also agreed on the motion of Alipate Qetaki (Fiji) that the Council should have a Pacific Islands member, with the proviso that the nominated person should be a female member of CALC.

11. The new draft CALC Constitution

Walter Iles (New Zealand) opened the discussion on this issue. He said that if the formalities laid down by the existing constitution were to be overridden, he would like to see new constitution adopted by consensus.

The meeting was adjourned at 5.30 p.m. and resumed at 9:10 p.m. on the following day.

The new draft CALC Constitution (continued)

A revised draft of the proposed constitution was circulated. Walter Iles (New Zealand) said that he now thought that the requirements of the existing constitution should be followed in passing the proposed new constitution.

Lionel Levert (Canada, Federal) offered a compromise suggestion, which was for the meeting to pass the proposed new constitution provisionally and then allow members a period within which to object.

Richard Dennis (Australia, SA) thought that, if the meeting were to adopt the proposed constitution by consensus, members would find that acceptable, bearing in mind that the proposed changes were only modest.

George Tanner (New Zealand) supported adopting the proposed constitution. He agreed that the existing constitution was too rigid and that the requirements should be avoided. Greg Calcutt (Australia, WA) supported this view.

John Mark Keyes (Canada, Federal) proposed that the association be reconstituted as a “second CALC”.

Hilary Penfold expressed concern about the possible financial implications of passing the proposed constitution otherwise than in accordance with the existing constitution. In particular, she was concerned about the ability of the “new” CALC to gain legitimate access to the funds held by the “old” CALC

Jeremy Wainwright expressed doubts about riding rough shod over the existing constitution. He suggested that drafters were the last people who should simply ignore constitutional provisions because they were inconvenient. However, Shirley Hall

(Australia, SA) expressed the view that the meeting should adopt the proposed constitution without further ado.

Jeremy Wainwright (Australia, Federal) said that, if the meeting agreed to follow the existing constitution, he was prepared to try to organise the proxies necessary to pass a motion to adopt the proposed constitution. Hilary Penfold offered to help with this project. Jon Mark Keyes (Canada, Federal) expressed a willingness to obtain proxies from Canadian members.

Hilary Penfold said that, if any member objects to adopting a new constitution by consensus, the meeting should pursue constitutional change in accordance with the existing constitution.

Keith Byles (Australia, Federal) proposed that the meeting should adopt the new constitution without the need to follow the existing constitution. Lindsay King (Australia, WA) formally proposed:

- that the meeting express its support for the proposed constitution (as amended); and
- that the proposed constitution, with any minor drafting changes agreed to by the Council, should be put to members at an extraordinary general meeting to be convened by the Council in accordance with the provisions of the existing Constitution.

Jeremy Wainwright seconded the motion, which was carried unanimously.

12. Any other business

It was agreed that the incoming Council should meet immediately after the conclusion of the general meeting. The meeting expressed the wish that a meeting of CALC members should be held within the next 12 month if possible. It was noted that the next general meeting of CALC members is proposed to be held before the next Commonwealth Law Conference, which is expected to begin in London on 20 October 2005.

13. Close of business

The meeting closed at 12.20 p.m.

Appendix 1—Members’ apologies for non-attendance

The following members sent their apologies for being unable to attend the meeting:

Geoffrey Bowman, UK (England & Wales)	Michael Batch, Australia (Queensland)
Tony Yen on behalf of those Hong Kong legislative counsel who are CALC members	Charles Lim on behalf of Singapore legislative counsel who are CALC members
Ian Beale, Australia (Queensland)	Steven Berg, Australia (Queensland)
Liaquat Ali Khan, Zimbabwe	David Connolly, Australia (Queensland)
Nalin Abeyesekere, Sri Lanka	Elisabeth Dayot, Australia (Queensland)
Pam Nadarasa, Commonwealth Secretariat	Elizabeth Fedunik, Australia (Queensland)
Richard Nzerem, Commonwealth Secretariat	Desiree Grant (Weir), Australia (Queensland)
Dennis Murphy, Australia (NSW)	David Harwood, Australia (Queensland)
Peter Drew, Australia (Queensland)	Vince Hebbard, Australia (Queensland)
Dawn Ray, Australia (Queensland)	Ian Larwill, Australia (Queensland)
Allanah Aitken, Australia (Queensland)	Julie Lewis, Australia (Queensland)
Roderick Alsop, Australia (Queensland)	Sandra Manning, Australia (Queensland)
Paul McFadyen, Australia (Queensland)	Inderjeet Sidhu, Australia (Queensland)

Appendix 2—CALC Members who attended the general meeting

<i>Name</i>	<i>Country/organisation</i>	<i>Name</i>	<i>Country/organisation</i>
Neil Adsett	Australia (Queensland)	John Mark Keyes	Canada (Federal)
Reza Ali	Bangladesh	John McCluskie	Scotland
Silvia Angelucci	Australia (Queensland)	Lionel Levert	Canada (Federal)
Duncan Berry	Australia (NSW/Hong Kong/Ireland)	Christina Maselos	Australia (Federal)
Clive Borrowman	Jersey	Eamonn Moran	Australia (Victoria)
Keith Byles	Australia (Federal)	Brian Oakes	Australia (Federal)
Warren Cole	New Zealand	Meredith Leigh	Australia (Federal)
Greg Calcutt	Australia (WA)	Jeanette McDonald	Australia (Tasmania)
Lita Chan	Australia (Federal)	Hilary Penfold	Australia (Federal)
Don Colaguiri	Australia (NSW)	Therese Perera	Sri Lanka
Rebecca Considine	Australia (Federal)	Ben Piper	Australia (Victoria)
Barry Dell	Australia (Queensland)	Claire Parkhill	Australia (Federal)
Richard Dennis	Australia (SA)	Julianne Patterson	Australia (Federal)
Janet Erasmus	Canada (British Columbia)	Alipate Qetaki	Fiji
Elizabeth Gardiner	England	Peter Quiggin	Australia (Federal)
James Graham	Australia (Federal)	Liza Quinn	Australia (Federal)
Suzanne Graves	Canada (Ontario)	Angelyne G. Saul	Vanuatu
Shirley Hall	Australia (SA)	Diana Sargent	Australia (Federal)
Nick Horn	Australia (Federal)	Peter Quiggin	Australia (Federal)

Walter Iles	New Zealand	Shannon Read	Australia (Federal)
Theresa Johnson	Australia (Queensland)	Angelyne G. Saul	Vanuatu
Catherine Johnston	England	George Tanner	New Zealand
Moinul Kabir	Bangladesh	Natalia Tomaska	Australia (Federal)
Judith Keating	Canada (New Brunswick)	Jeremy Wainwright	Australia (Federal)
Lindsay King	Australia (WA)	Tony Ward	Australia (Victoria)

Appendix 3—Council report—September 1999 to April 2003

Introduction

This report covers the period of 3¹/₂ years since September 1999, when the last Commonwealth Law Conference (*CLC*), and the associated meeting of the Commonwealth Association of Legislative Counsel (*CALC*), was held in Malaysia.

At that stage, the next *CLC* was planned for Zimbabwe in 2001. This would have provided an unusually short period between *CALC* meetings. However, the decision to cancel the 2001 *CLC* means that the period between *CALC* meetings has been unusually long. Much has happened in those 3¹/₂ years.

The Council

The Council has met as a group only once since the last general meeting of *CALC*. However, the fact that all 8 members of the Council had access to e-mail has greatly enhanced communication among members of the Council. This has meant that decisions could be made more quickly and efficiently.

Membership

By the time of the *CALC* meeting held in Malaysia, it was apparent that the membership records had become out of date and no longer properly reflected the actual membership of *CALC*. The *CALC* Council therefore resolved that the membership records should be reconstructed from scratch. It was further resolved that members on the existing list should be contacted. If they did not respond within a reasonable period, their names would be transferred to an inactive members list. Because of the difficulty of keeping track of members after they had retired or move to other employment, it was decided to ask members and applicants for membership to provide their residential addresses and contact details for those addresses.

Early in 2000, members whose names were on the old membership list were subsequently sent forms asking them whether they wished to continue to be members.

- Approximately 100 of the forms were returned undelivered. It was apparent from the remarks on the some of the returned letters that many of those members had died.
- Approximately 300 members completed the forms. Only two people indicated that they no longer wished to be members.

At the same time, a drive was made to recruit new members. The membership drive yielded over 150 new members.

There has been a steady increase in new members since then. CALC now has 573 full members from 52 different Commonwealth countries and territories and from Hong Kong.¹ The Association also has 12 associate members, most of whom are from Ireland and the USA. The membership records are kept in electronic form. Because some members expressed concern about publication of their residential addresses, two versions of the records are now kept. One version, which contains the residential addresses of all members, is kept for the use of the secretary and other members of the Council. The other version, which is kept for publication, contains residential details of only those members who have not informed the secretary that they do not want those details to be published. An index of members is also kept. The index lists the family names of members in alphabetical order.

Communication with members

Communication with members is now much easier than before. Not only are the membership records up to date, but the fact that approximately 80% of members can be contacted by e-mail greatly facilitates communication between Council members and other CALC members. However, as long as there are members who are not accessible by e-mail, it will be important for the Council to remain aware of the needs of such members.

CALC website

A new CALC web site has been established as part of the web site hosted by the Australian Office of Parliamentary Counsel. Copies of the main pages of the web site are attached to this report.

Another CALC web site has existed since the 1980s, but is so out of date as to be not only useless but also misleading. The secretary made various attempts to find out who was responsible for maintaining the site but was unable to do so. At first, it had been thought that the Commonwealth Secretariat was responsible for the site, but that proved not to be the case. The site continues to ride the Internet airwaves like a piece of space junk.

Publications

Since the establishment of CALC in 1983, the main vehicle of communication has been through *The Loophole*, CALC's journal. This has been published on an irregular basis.

¹ Although Hong Kong is no longer part of the Commonwealth, it was resolved at the CALC general meeting held in Vancouver in 1996 that those who were members at the date when Hong Kong was restored to China should be allowed to continue as full members. At the same meeting it was resolved that legislative counsel from non-Commonwealth countries and others who would be eligible for membership had they been Commonwealth citizens.

At its meeting in Malaysia, the Council decided that it should try to publish the journal on a more systematic basis. The Council also decided that a Newsletter should be published biannually. This publication was intended to contain news and information of interest to members. *The Loophole*, on the other hand, would contain rather more serious articles about legislation and legislative drafting issues.

Although it had been hoped to publish *The Loophole* more frequently, only two issues have been published since 1999. One issue was published for 2000/2001 and the other for 2001/2002. The failure to meet the target was due to the secretary's other commitments and the unavailability of anyone else to produce issues of the journal. On the other hand, six issues of the CALC Newsletter have been published since that meeting, one in 1999, two in 2000, two in 2001, one in 2002, and one in 2003.

At the CALC general meeting held in Vancouver in 1996, it was agreed that as far as possible responsibility for publishing issues of *The Loophole* should be rotated among the different regions of the Commonwealth, as is the case with the journal published by *Clarity*. However, despite the best efforts of the secretary, nothing has come of this.

Meetings of CALC members

It had been hoped to hold meetings of CALC members more frequently than every 3 years or so in line with the CLC. However, many drafting offices are not well-resourced and it might be difficult to achieve worthwhile attendance numbers at more frequent meetings.

The possibility of holding a combined conference with the Canadian Institute for the Administration of Justice was considered, but was not proceeded with because the last legislative drafting conference of the Institute was held only last September and the organisers of that conference felt that that conference was too close in time to this meeting. However, the organisers of the CIAJ legislative drafting conference have expressed a willingness to consider a joint conference in 2004.

CALC funds

Since no subscriptions are currently payable for CALC membership, the Association has only limited funds. These funds were held in an account kept with the Halifax Building Society, in the UK. About 2 years ago, the Society demutualised and become a bank, the HBOS. As a result, the Association has become a shareholder in HBOS. The value of the shares are shown in the CALC accounts.

CALC ties

At its meeting in Kuala Lumpur, the Council noted that the stock of CALC ties was virtually exhausted and decided that the acquisition of a further batch of ties should be investigated. We bought 150 new ties from a Hong Kong manufacturer. Half of the ties are similar to the previous

batch with gold ‘loopholes’ being interspersed along gold diagonal stripes on a royal blue background. The other half is the same except that, instead of ‘loopholes’, the ties bear the letters ‘CALC’ on alternate diagonal lines. The ties are sold by CALC at 8.00 GBP each, plus postage. Ties are available from David Morris, Deputy Law Draftsman, Department of Justice, Queensway Government Offices, Hong Kong.

The CALC accounts show the number of ties shown so far. Those CALC members who do not already own a CALC tie, and who might have a use for one, are urged to buy one.

Relationship with the Commonwealth Law Conference

Various difficulties arose in the course of organising a CALC conference in conjunction with the current Commonwealth Law Conference.

Because each CLC seems to be run by a local organising committee, with little or no involvement of the Commonwealth Lawyers Association in administrative matters, there is no corporate memory about CALC among the CLC organisers with whom CALC organisers must deal. This problem is multiplied by the routine outsourcing of most of the organising task to local professional conference organisers. In the current case, matters were further complicated by a late change from one conference organising firm to another.

The arrangements may also have been complicated by CALC’s wish to present an extended and substantive program of sessions of direct interest to legislative drafters. This reflected the fact that the CLC program itself seemed to offer little of direct interest to legislative drafters. The effect of offering a significant CALC program seems to have been, in part, to deter a number of participants from registering for CLC at all.

Security appeared likely to be a major issue at CLC, and from an early stage, it seemed unwise to assume that people who chose not to register for CLC would nevertheless be able to find their way into the CALC sessions held at the CLC venue. This required difficult and frustrating negotiations with CLC organisers over several months to reach agreement on a method by which CALC participants could pay a reduced registration fee that would give them access to CALC sessions only.

Negotiations over payment methods were complicated by Australian laws relating to the goods and services tax and various aspects of tax administration. The difficulties of opening a bank account were also relevant. CALC members in other countries might find it easier to receive and pay money in conjunction with a CALC conference than it was in Australia.

Conclusion

It has been a relatively busy time for CALC since our last meeting. The activities and efforts of the CALC Council have thrown up various issues that this meeting could usefully discuss. In particular, much of this report deals with developments affected by electronic communications

advances. The Council believes that a focus on harnessing the full benefits of those advances will offer increased opportunities for CALC to expand its role as an important and useful part of the international legislative drafting community. In adopting that focus, however, CALC needs to ensure that we do not overlook those of our members who have only limited access to electronic communications and that we do not impose unsustainable burdens on Council members.

Minutes of the CALC Council Meeting held on 17 April 2003

1. In the absence of the new President, Geoffrey Bowman, the Vice-President, Lionel Levert, opened the meeting at 12:25 p.m.
2. **Present:** Lionel Levert, George Tanner, Janet Erasmus, Clive Borrowman, Jeremy Wainwright, Moinul Kabir, Duncan Berry.
Also Attending: Hilary Penfold. Absent: Tony Yen.
3. **Proposed new CALC Constitution:** The Council decided that, since the Secretary was expected to be in Australia at the beginning of 2004, he should approach the New South Wales Parliamentary Counsel, Don Colagiuri, to see whether he would be willing to host an extraordinary general meeting of CALC members to consider the proposed new constitution. The Secretary proposed that, if that was agreed, the meeting should be held on the first Friday after Australia Day (26 January 2004).² The Council agreed to this proposal by consensus. The Secretary pointed out that 6 months' notice of the meeting would need to be given, which would mean that members would need to be notified of the EGM before the end of July 2003.

Hilary Penfold, Janet Erasmus and Jeremy Wainwright agreed to conduct a campaign aimed at obtaining the number of proxies needed to adopt the proposed constitution. They also agreed to undertake a campaign to recruit new members and to canvas existing members with a view to ensuring that those members' particulars were kept up to date.

4. **CALC Headquarters:** The Council unanimously agreed that the CALC headquarters should remain in Canberra.
5. **Publication of the Loophole:** The Secretary agreed to continue publishing CALC Newsletters biannually. He also agreed to publish two issues of the 'Loophole' during 2003. Janet Erasmus agreed to assume responsibility for an issue of the 'Loophole' in mid-2004.

² This meeting has since been arranged and will be held in the New South Wales Parliamentary Counsel's Office, Level 12, Goodsell Building, Chifley Square, Sydney 2000 at noon on Friday, 30 January 2004 .

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6. **CALC Website:** The Council agreed that details of forthcoming conferences that include topics of interest to legislative counsel should be published on the CALC Website as well as being advertised in CALC Newsletters.
 7. **Membership records:** The Council agreed that the changes the Secretary had proposed to the system for recording membership particulars should be adopted. [These changes were twofold. One was to include a clause in the CALC membership form asking applicants whether they wish to have personal particulars (such as their residential addresses and telephone numbers) included in the publication list of CALC members. The other was to include in the next CALC Newsletter an invitation for any member to request the Secretary to remove those particulars relating to the member from that publication list.]
 8. The meeting closed at 1.15 p.m.
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Hilary Penfold's speech at the official dinner³

It is wonderful that we have had the opportunity to get together tonight in a slightly more relaxed environment—not that our sessions have not been enjoyable, but they have certainly been fairly focussed, and because we have had such an excellent response to the call for papers and participants, they have also been fairly intense. There has not been much time for unstructured conversation, let alone socialising.

The founding meeting in Hong Kong in 1983, at which CALC was established, involved 53 drafters from around the Commonwealth, including three who are also here tonight—Duncan Berry, Walter Iles and John McCluskie. When I first started dealing with the Commonwealth Law Conference about CALC's participation in the conference, I told them how many people I thought might come to the CALC proceedings. Based on my recollections from Kuala Lumpur, Vancouver, Auckland and Jamaica, discounting a bit because Melbourne is pretty close to the end of the earth, and adding an uplift factor to ensure that the CLC people took me seriously, I told them I expected about 30 or 40 people would turn up. So I was pleasantly surprised when, at one stage in my long-running battle with CLC about payment options, I sent out an e-mail asking people for an indication of who was coming to the conference and quickly received about 70 Yes responses.

In the end, we have finished up with over 80 participants. I suspect that this is well and truly the largest CALC gathering that's ever taken place. I understand that the CLC has had around 1100 registrations all up (about 20 of whom are participating in the CALC conference). Does anyone think that 7% of all the lawyers in the Commonwealth are legislative drafters? I do not. I would

3 At an Italian restaurant in Port Melbourne on 16 April.

be surprised if 0.7% of all the lawyers in the Commonwealth are legislative drafters—and that makes our turn-out even more impressive.

Of those 80 or so participants, just over half are female. This is a pretty remarkable achievement in any area of law, and it's particularly notable when you consider that at the 1983 CALC meeting, out of 53 people, there were 4 participants whom I can identify as women (based on their names or titles), and 2 or 3 others who might have been women (their names don't reveal their sex, at least to me).

Not surprisingly, the majority of the CALC participants this time come from Australia—57 of us at last official count. However, I am really pleased at how many people (25 in all) have come from further a field—in some cases almost the other end of the earth. Including Australia, we have people here from 10 countries. Apart from Australia, those countries are Bangladesh, Canada, India, Jersey, New Zealand; Sri Lanka; Tonga; United Kingdom; Vanuatu. It is not quite the Commonwealth Games, but it is not bad.

I would like to present a small award to the person who has come the furthest to be with us in Melbourne (based entirely on what I know about how long it takes to get to various places, judge's decision is final, no correspondence will be entered into: John Mark Keyes, from Ottawa, Canada.⁴

Many people need to be thanked for their contribution to this conference. I am going to do them now rather than tomorrow, even though not everyone is here tonight, because if I leave it until lunchtime tomorrow we might miss out on lunch. Duncan Berry, for his tireless work as Secretary to CALC, and in particular his recent work on the newsletter, Council report and meeting agenda. Eamonn Moran⁵ and his staff, for all the work they have done here in Melbourne to get things happening and keep them happening. Terry Evans in particular has done a terrific job organising this dinner, and I ask Eamonn to also pass on our thanks to all the other people who have worked behind the scenes.

Back in my own office⁶, Alison Brownell and Janis Dogan have dealt with the registration processes and most of the work in putting together the folders of papers that you all received yesterday. Some of the drafters from my office who are here, Peter Quiggin in particular (because he spoke vaguely the same language as the audio-visual technicians), have been very

⁴ Note that if Judith Keating from New Brunswick in Canada had been at the dinner she might have walked away with the bottle of wine. Note also that there were other participants from Ottawa, at least one of whom received an award for another achievement. That is why I emphasised that the judge's decision (i.e. mine) was final.

⁵ Parliamentary Counsel, Victoria, Australia.

⁶ Australian Commonwealth Office of Parliamentary Counsel, Canberra, Australia.

helpful over the last few days in Melbourne.

Of course, I need to thank all the presenters—without you we wouldn't have had a conference, and all the people who chaired the sessions—without you we would have had a much longer conference.

Finally, I should mention the CLC organisers, although with reservations. They have kept me awake for a few nights in the last few months, and there are not many things that do that. I found it interesting (a polite word) to deal with lawyers who clearly weren't drafters—and what I mean by that was that they didn't seem to think about how their proposals would work in practice, and they didn't ever seem to ask themselves “and then what?”.

All of those people have made an important contribution to the success of our conference, and I thank them all. There is another small group, however, whom I want to recognise specially for their contribution either to this conference, or to CALC over the years.

First, I want to give an award for the person who has done the most to ensure that someone else turns up at this conference. There are two people who need to be recognised for their work: Lionel Levert, from Canada, who has ensured that Reza Ali and Moinul Kabir from Bangladesh have joined us. Mrs Indira Samarasinghe, from Sri Lanka, who from her vantage point in Melbourne put a lot of effort into ensuring that her colleague, Mrs Therese Perera, also of Sri Lanka, was properly registered for both the CLC and CALC.

Next, I'd like to present a third time lucky award to a person who has missed the last two CALC meetings (Kuala Lumpur and Vancouver) due to sudden problems at work, but who finally managed to make it to Australia (although not without a last-ditch attempt at choking⁷): George Tanner from New Zealand.

Last in this group of awards is the *secret nobility award*. Of course, a lot of drafters are very noble spirits, but until I saw his original CLC registration badge on Monday morning, I had no idea that my friend and colleague Greg Calcutt who heads the Parliamentary Counsel's Office in Western Australia is in fact the Right Hon the Lord Gregory Calcutt⁸. I should say, neither did

7 George rang me not much more than a week ago to say that a big problem had blown up for the New Zealand Government, that he was heavily involved in dealing with it, and that he wasn't sure if he would make it to Melbourne. Fortunately, he found someone else to sort out the Government's problems (I do not know whether this had anything to do with my unkind suggestion that he was getting to be a serial offender).

8 Greg's natural modesty led him to return his registration badge to the CLC organisers, who grudgingly replaced it, but refused to let him keep the more impressive original. It has still not become clear whether the registration of the Lord Calcutt reflected a mistake by the

he.

The CALC Council report presented at this morning's meeting focussed on the impact of communications technology, and particularly the Internet. What it did not mention was what I see as the biggest downside of the Internet, at least for an after-dinner speaker: there are no new jokes. Jokes seem to hit the Internet within seconds of their birth, and everyone has heard everything.

It is possible, however, that this is more a characteristic of jokes than of the Internet. Thinking back, I remember an experience a good 20 years ago, when I first heard the "What do you call a man with" series of jokes—no, this is not the feminist equivalent of blond jokes, it's the ones that go:

What do you call a man with a tree on his head? Edward
What do you call a man with 3 trees on his head? Edward Woodward
What do you call a man with a shovel in his head? Doug
What do you call a man without a shovel in his head? Douglas

Within 2 days of hearing these jokes, I received a letter from one of my sisters who was in London, with another one of these jokes written on the outside of the envelope⁹—so perhaps the truth is that jokes simply move round the world at their own speed, and the Internet just means that they are recorded more often.

Recently we were talking about these jokes at an OPC lunch, and we invented our own joke in the series:

What do you call a man who is a legislative drafter? 'Bill'¹⁰
Feel free to groan—but none of us could remember ever knowing, or even hearing of, a legislative drafter called Bill! And there is not one among our 80-odd participants, either, not even a Wilfred or a Wilhemina who might count at a pinch. So, I was planning to give an award to a legislative drafter called Bill, but in the absence of an obvious one, I'm prepared to give this prize to anyone who will admit to having Bill or anything that could possibly be shortened to Bill as a middle name, or to the first person who can name the fairly famous person associated with

CLC organisers or a deliberate action on the part of one of Greg's wittier staff members.

9 What do you call a man with lots of rabbits? Warren.

10 It was pointed out to me with some force by hecklers at the dinner that an equally legitimate answer would be "Reg". Interestingly, the rest of my comments are equally applicable to Reg—there were no registrants called Reg, and I can't remember ever hearing of a drafter called Reg. Nor can any of my colleagues who head the other Australian drafting offices, although one of them did helpfully point out that there is a policeman ("a silly policeman", in his words) called Reg in the TV show *The Bill*.

drafting who was called Bill ... (I was reminded of him only the other day while I was doing some research on the origins of CALC)¹¹.

Last year someone drew my attention to the transcript of argument in a case in the Australian High Court¹². He wanted me to see the discussion about a particular legislative provision, which I will come to soon, but as I skimmed through the transcript, I came upon another couple of gems that I want to read to you.

The case concerned an application under the Australian Freedom of Information Act, and counsel for the appellant was very keen to have the judges look at the provisions of the statute. The judges were not so keen. After quite some efforts on the part of counsel for the appellant, we come to this exchange:

Kirby J: Now, you say it is very clear if only we will look at all the provisions of the Act.

Mr Cavanough: Yes, your Honour.

Kirby J: Well, it is like the dentist's chair. As typical of lawyers, they hate to go into the statutes.

Mr Cavanough: No, your Honour. In this case, we say the statute is the very thing that gets us home.

Kirby J: Well, let us go into the dentist's chair.

Gleeson CJ: You say it is more like a dental conversation in which the dentist asks you a question and then puts a drill in your mouth before you can answer it.

It is nice to feel appreciated! So then, we come to another gem, which is almost enough to make most of us give up in despair. I should say, though, that in the course of reading this transcript I developed quite some affection—not to mention sympathy—for Mr Cavanough:

Gummow J: And one would have thought there would be better language if that was what the Parliament was setting out to do. Stronger language.

Mr Cavanough: With respect, your Honour, it is hard to be more plain than “established conclusively” and what that means, with respect, your Honour ---

Gummow J: There are plenty of privative clauses that said that, that collapsed in a heap.

11 This award went to Duncan Berry, for identifying Sir William Dale (although challenging his right to be described as a drafter—which was why the question referred to him as “associated with drafting”). Duncan also identified another drafter called Bill, namely Bill McGregor, who recently retired as head of the Jersey Law Drafting Office, and who was previously First Parliamentary Counsel in the Fiji Islands. I have since identified another drafter called Bill—Bill Moore, who works in the New Zealand Parliamentary Counsel Office; the CALC membership list also shows drafters called William in Bermuda and the UK.

12 *Shergold v Tanner* [2002] HCA 19 (23 May 2002).

And finally, here is the part that was originally drawn to my attention. But I thought I might have a bit of fun with this. What I am about to read you starts out as genuine transcript, but at some point turns into a bit of creative writing on my part. What I would like you to do is to listen carefully, and put up your hand as soon as you think we have left the real High Court behind.

Counsel: Yes. Our submission is that the expression “so long as it remains in force” is apt to include the circumstances of according force removal and that it is not confined to circumstances where its operation is sunsetted. In other words, there may be a range of reasons that bring that phrase into play and this is relevant to our argument, which I have previously put as well as what I am now submitting. But more fundamentally, we submit, that even if the words were not there, so that the words simply read, “Subject to the operation of Part VI, such a certificate establishes conclusively that the document (a) and (b)”, then - - -

Justice: Well, the phrase “so long as” is ambiguous, too. It is this vernacular drafting that is going on.

Counsel: Yes.

Justice: It means “for such period as”?

Counsel: Yes.

Justice: Or “if” and “so long as”?

Counsel: Yes.

Another Justice: Or provided.

Justice: Or provided.

Counsel: Or provided.

Yet another Justice: You cannot have “provided”. That is naughty drafting these days, apparently.

Justice: Yes, yes.

Counsel: Yes, clear but naughty.¹³

A further Justice: Those legislative drafters really ought to be spanked.

And another Justice: I’d be happy to spank some of them myself.¹⁴

This award goes to the first person to put up their hand, and it is given for their trusting faith in the cream of Australia’s legal establishment¹⁵.

13 This is the end of the genuine transcript.

14 The names of all the Justices involved in this exchange have been concealed to avoid attributing the invented dialogue to any of them by name.

15 After a certain amount of confusion, bottles of wine were awarded to Mary Toohey, from the Australian Capital Territory Parliamentary Counsel’s Office, and to another dinner guest who remains unidentified. The confusion arose because I asked my husband to identify the first person to raise a hand, but he assumed that I wanted the first person to raise a hand when the transcript stopped being the genuine article. In fact, I expected that some people would still find the reference to “naughty drafting” unlikely in a High Court transcript (even though it is entirely genuine), and I wanted to give the award to such a person, in preference to their more cynical (and more numerous) colleagues.

There is one more award I would like to give. It is almost exactly 20 years since CALC was established in Hong Kong in 1983. I found on one of our files the original, hand-written list of those who attended that first meeting, and it certainly had a lot famous names on it. Indeed, a lot of the famous names in the Commonwealth drafting community have had a role in CALC at one stage or another, and I will not try to list them all because inevitably I would overlook some people and thereby offend them, or other people on their behalf.

But we have a person here tonight who I would like to recognise for his truly important contribution to CALC over the years (a kind of CALC lifetime achievement award). He was in on the establishment of CALC, he has been its Vice-President, he has organised a CALC meeting when the Commonwealth Law Conference was held in his country, he has put up his own money as seed funding for the purchase of ties¹⁶, I'm told (although I can't remember and so I've obviously repressed it) that he's argued with me at a past CALC meeting about proxies¹⁷, and he has been to probably more CALC meetings than anyone else: Walter Iles from New Zealand.

I was going to close by telling a longish joke, but I think a short one would be better. Did you hear about the man who lost his whole left side? He's all right. *And so are we!*

CALC Constitution—constitutional change

At the CALC conference held in Melbourne on 15, 16 and 17 April 2003, a lot of time was spent discussing options for constitutional change.

Need for constitutional change

At the last few CALC meetings, members present have resolved in favour of several important constitutional changes. However, it has not been possible to formally incorporate these changes into the existing CALC constitution. This is because the current provisions for changing the CALC constitution are very difficult to comply with, given the nature of the organisation. In particular, the constitution requires 3 months notice to be given of a motion proposing constitutional change, and requires such a motion to be passed by two-thirds of the membership.

Problems with current provisions for constitutional change

The requirement of 3 months notice is not in itself onerous, but it has caused difficulties because Council members have found it hard to devote significant time to CALC work, and to get access to resources to enable appropriate notice to be given to all members.

The requirement for a motion to be passed by two-thirds of the membership is much more of a

16 I understand that the money was in due course repaid.

17 I attended the CALC meeting in Jamaica as the representative of the then Secretary, Geoff Kolts. Walter asserts, and I believe him, that I refused to accept his proxies because the Constitution required that proxies be lodged with the Secretary before the meeting. In the end, I don't think anything turned on the use or non-use of Walter's proxies.

problem. The Melbourne meeting was well attended by the standards of previous general meetings, but members present still represented only around 15% of CALC's membership. It is clear that a vote of two-thirds of the members can be achieved only by substantial reliance on proxy voting.

A process to achieve constitutional change

At the Melbourne, meeting options for establishing a new CALC constitution without complying with the strict requirements of the existing constitution were canvassed. In the end, however, the meeting agreed that an attempt should be made to change the constitution in accordance with the current constitution. Recognising that this would impose a significant burden on the new CALC Council, Jeremy Wainwright and Hilary Penfold agreed to manage the process of seeking constitutional change.

The process currently being undertaken is as follows:

- The membership list is being updated, and new members have been and are continuing to be recruited (especially with a view to signing up all current members of Commonwealth legislative drafting offices).
- 6 months notice of an extraordinary general meeting of CALC has been given and is scheduled to be held at the New South Wales Parliamentary Counsel's Office on the last Friday in late January 2004 (to ensure that the Secretary is able to be present).
- A campaign is being undertaken to get as many proxy votes as possible lodged for the extraordinary general meeting. Every effort is being made to ensure that it is as easy as possible to give and collect proxies for the meeting. For example, proxies will be accepted by e-mail; multiple proxies will be accepted on a single form; and heads of legislative drafting offices are being asked to encourage all their legislative counsel who are CALC members to provide proxies for the meeting.
- The draft new constitution (which is a finely tuned version of the draft approved in principle at the CALC general meeting held in Melbourne last April) is set out below.

Proposed new constitution of the Commonwealth Association of Legislative Counsel¹⁸

1. Continuance of CALC

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

2. Definitions

¹⁸ A copy of the existing constitution is set out in the previous CALC Newsletter, which was published in March this year.

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;

members of the Council means the Officers and the other members of the Council elected under clause 9;

Officer means the 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) notice of which not less than 1 month's notice of intention to move the resolution at a general meeting of CALC has been given as referred to in clause 16 (1)(a) or (b), and
- (b) that is passed by a majority of at least two-thirds of the votes cast at the meeting by full members voting in person or by proxy;

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 Australia or 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—

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- (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 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.
- (8) A full member of CALC may at any time, by notice in writing to the Secretary, resign from full membership of CALC.
- (9) 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—

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- (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.
 - (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 for election 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 in accordance with a resolution that complies with subclause (2) ceases to be a member of CALC after the expiry of—
 - (a) 30 days after the date on which the resolution is notified in a publication of CALC, or
 - (b) 30 days after the date on which the fee becomes payable in accordance with the resolution,whichever is the later.
- (4) A resolution under this clause may specify differential membership fees by reference to such matters as classes of membership and the costs associated with maintaining contact with members, but not so as to discriminate unfairly between members.

8. Council of CALC

- (1) CALC is to have a Council.
- (2) The Council is responsible for 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 a President, a Vice-President, a Secretary and not more than 7 other members.
- (2) Except in the case of a casual vacancy, the members of the Council are to be elected at an ordinary general meeting of CALC from the full members of CALC.
- (3) 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.
- (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 full 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. Proceedings 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.
 - (2) 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.
 - (3) 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 at least 3 members of the Council (including at least one of the Officers);
 - (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
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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 give notice of meetings of CALC and of the Council and to make arrangements for the holding of those meetings;
 - (d) 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;
 - (e) to keep a list of the names and addresses of the members of CALC;
 - (f) to take all such steps as are reasonably practicable to deal with requests for information and assistance made by members of CALC;
 - (g) 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
 - (h) 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;
 - (i) 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 when—
 - (i) the office of President is vacant, or
 - (ii) 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 in conjunction with 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 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 full members of CALC who are present must elect one of their number 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, 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.

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- (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 the relevant accounting period, and
 - (b) if it had, an audited statement of the income and expenditure of CALC for that period and of its assets and liabilities as at the end of that period.
 - (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) The relevant accounting period in relation to an ordinary general meeting is the period beginning—
 - (a) in the case of the first ordinary general meeting after the adoption of this Constitution—on 13 March 2003, and
 - (b) in any other case—on the day immediately following the relevant accounting period for the last preceding ordinary general meeting, and ending 6 weeks before the day fixed for the commencement of the first-mentioned meeting.

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.

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 full 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 for which the appointment was made, or
- (b) with the person presiding within 10 minutes after the start of that meeting.

18. Sending of documents

(1) For the purposes of this Constitution, a notice or other document is sent 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 forward the notice to the member.

(2) For the purposes of this section, *address* includes a fax number and an e-mail address.

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 600 mark.

The following is a list of those who have become members of CALC since March 2001. A number of membership applications were recently received from Canada. Since processing these applications would have meant delaying publication of this Newsletter, the names of those concerned will be published in the next CALC Newsletter.

Australia

Australia (Commonwealth)

Sally Beasley	Office of Legislative Drafting Attorney-General's Department Robert Garran Offices National Circuit Barton, ACT 2600	<i>E-mail:</i> _____
Rebecca Considine	Office of Parliamentary Counsel Locked Bag 30 Kingston, ACT 2604	<i>E-mail:</i> _____
Ian Failes	Office of Legislative Drafting	<i>E-mail:</i> _____

	Attorney-General's Department Robert Garran Offices National Circuit Barton, ACT 2600	
Lee Galloway	Office of Legislative Drafting Attorney-General's Department Robert Garran Offices National Circuit Barton, ACT 2600	<i>E-mail:</i> _____
John Jeffrey,	Office of Legislative Drafting Attorney-General's Department Robert Garran Offices National Circuit Barton, ACT 2600	<i>E-mail:</i> _____
Kerry Jones	Office of Parliamentary Counsel Locked Bag 30 Kingston ACT 2604	<i>E-mail:</i> _____
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Susan Cochrane, Australia (Commonwealth)

Brevity = obloquy²²

There is a habit in the House of Lords Judicial Committee of finding fault with the products of the law drafter's art. Three recent examples will illustrate.

In 1990 the House of Lords upheld the conviction of a defendant for using premises as a sex establishment without a licence, even though this required treating some words in the relevant statute as "mere surplusage". Lord Bridge of Harwich concluded that where the object of the legislative provision is plain and obvious, and the relevant words on which the defendant relies serve no purpose, they can be ignored as the product of "an unusual degree of ineptitude by the draftsman." (The inference being, presumably, that a usual degree of ineptitude is to be expected.)

In 2000, the House of Lords adopted a similar approach to the interpretation of a provision in the Arbitration Act 1996. Lord Nicholls of Birkenhead explained that it was "plain beyond peradventure that on this occasion, Homer, in the person of the draftsman of Schedule 3, nodded". He concluded that the courts "must be able to correct obvious drafting errors." (It evidently did not occur to His Lordship that legislation is the result of the entire legislative process, including committees.)

Now in 2003, Lord Nicholls has found another opportunity to comment adversely on the drafter's art. In the case of *Mirvahedy v. Henley and another* (Times, 24 March 2003) the question for the court was whether strict liability applied when a horse ran out of its field and onto a main road and damaged a car. The relevant statutory provision was section 2 of the Animals Act, 1971. In the course of his judgement, Lord Nicholls said, "Unfortunately, the language of section 2(2) is itself opaque. The draftsman's zeal for brevity has led to obscurity. Section 2(2) has attracted much judicial obloquy."

²² Contributed by John Wilson, Consultant Legislative Counsel, Law Drafting Division, Department of Justice, Hong Kong.

This consistent pattern of criticism by the highest judicial body in the U.K. prompts the following response from a law drafter at the coal face:

*How nice to be a learned judge
who never writes a law.
He sits all dressed up every day
and feels quite free to pour
The greatest scorn upon the work
of those who draft the Bills.
He thinks it fun to say that their
mistakes cause all the ills
That make the people go to law.
But he should never smirk -
The drafter's faults are just the things
that keep the courts in work !*

Two stalwarts of legislative drafting—Edward Sainsbury and Godfrey Carter²³

Edward Sainsbury

Edward Sainsbury, TD, a former Commissioner for Revision of the Laws of Hong Kong, died on 24 September 2003, aged 91. As a legislative counsel in Hong Kong, Edward helped to rewrite the territory's laws after four years of Japanese occupation during the Second World War. Some his work has even survived China's resumption of the sovereignty of Hong Kong.

In the early 1950s, Edward returned to Hong Kong to serve once again as a legislative counsel. Later, he was appointed as a judge of the Hong Kong High Court judge. At the end of his overseas service, he became a solicitor in East Sussex and remained so until his retirement.

Edward was born in Cardiff in 1912, the son of a dentist, Edward Hardwicke Sainsbury. After attending Cardiff High School, Edward read law at the University College of South Wales and Monmouthshire. In 1935, he was admitted to practice as a solicitor and for a while worked at the Cardiff firm run by his uncle. In 1938, he was appointed as a prosecuting solicitor and in the following year was appointed as a senior prosecuting solicitor.

In 1936, Edward received a commission in the Territorial Army in 1936 and soon after the beginning of World War 2, he joined the 77th Heavy Anti-Aircraft Regiment as an adjutant. Four years later, he was appointed commander of 240 HAA Battery in Gibraltar.

Soon after his demobilisation, Edward successfully applied for the post of Assistant Crown

²³ These obituaries are edited versions of obituaries that were recently published in the London Times.

Solicitor in Hong Kong. In 1947, he was appointed Commissioner for Revision of the Laws of Hong Kong and in that capacity was one of those responsible producing the Revised Laws of Hong Kong, which was published in the following year. In 1948, he was appointed as a Hong Kong magistrate and in the following year was made a High Court registrar. After 3 years in that position, he became a senior magistrate for the Kowloon district of Hong Kong. In the same year, Edward was called to the English bar while on leave in England. On his return to Hong Kong, he was appointed as a Senior Crown Counsel.

During the 1950s, Edward served as a legislative counsel in Nigeria and in 1958 was appointed Principal Legal Draftsman of the Nigerian Federation. He also served in southern Cameroon as Speaker of the House of Assembly and as president of the Commonwealth Parliamentary Association. In 1960, he was appointed as a judge of the High Courts of both Nigeria and Cameroon. Later, Edward did a two-year stint as chairman of the Public Service Commission in southern Cameroon. He also served briefly as Attorney-General of Nigeria.

Edward returned to England in 1963 and spent the next 30 years with the firm of Dawson & Hart in Uckfield, becoming first a partner, then senior partner and finally a consultant. He was a respected figure within the local community and was well known for his dry wit, old-school charm and snappy dress sense.

After retirement, Edward and his wife did much travelling. Their trips included adventure holidays in the United States and in Africa. Edward was a keen golfer and, at his peak, played from a single-figure handicap. He got his first hold-in-one during his stay in Hong Kong (presumably on the Fan-ling course). He continued to play the game well into his eighties, before failing eyesight forced him to give it up. Edward is survived by his wife Ruth and by a son and daughter.

Godfrey Carter

Godfrey Carter died on 28 July 2003, aged 84. Although he never made *The Guinness Book of Records*, he clearly deserves a place as the drafter of what was at the time the longest Act passed in the history of the British Parliament, the 600-page Companies Act 1985. But that Act was only one of four Acts that resulted from his efforts in consolidating the mass of statute law dealing with companies and the like.

Before becoming a parliamentary counsel, Godfrey had gained considerable commercial experience, which is almost certainly why he was asked to work on the companies legislation.

Godfrey was born shortly before the end of the First World War. His father, a captain in the Grenadier Guards, was killed in action. Godfrey was educated at Eton, where he was a King's Scholar, and won a scholarship to Magdalene College, Cambridge, in modern languages.

During the Second World War, Godfrey served in the Middle East with the Rifle Brigade and

rose to the rank of captain. After having been twice wounded, he was discharged in 1944. After the war, he returned to Cambridge University to study law. Despite being handicapped by his war wounds, he became becoming President of the Union. Later, he gained first class honours in the Bar examinations, obtained a Cambridge LLM, and was called to the Bar of the Inner Temple.

In 1949, Godfrey left the Bar and entered the UK Office of Parliamentary Counsel. He took a position as parliamentary counsel despite being warned by the then First Parliamentary Counsel, Sir Allen Ellis, warning that: “The real difficulties are entirely unknown to anyone outside, even lawyers, and there are far more kicks than halfpence, except from one’s immediate clients.”

[Never a truer word was spoken! Ed.]

After 7 years in the Office of Parliamentary Counsel, Godfrey resigned and joined the commercial department of the British Aerospace Company, where he worked for eight years. However, he returned to that Office, even though this involved a considerable reduction in salary. From 1965 to 1967, Godfrey he worked for what was then the newly established Law Commission of England and Wales as one of its parliamentary counsel. In 1970, Godfrey was promoted to deputy counsel. An in 1972, he was promoted to full counsel after working as principal assistant to the First Parliamentary Counsel, Sir John Fiennes, on the Bill that enabled the United Kingdom to join the European Communities.

From 1972 until his official retirement in 1979, Godfrey produced a number of Bills, including those for the Inheritance (Provision for Family and Dependents) Act 1975, the Unfair Contract Terms Act 1977 (which limited a contracting party’s power to negative liability for negligence or breach of contract), and the Nurses, Midwives and Health Visitors Act 1979. He also drafted the Public Lending Right Act 1979.

It was as a bold and modernising drafter of consolidating Acts that Godfrey will be mostly remembered. He produced the Criminal Appeal Act 1968, which brought order and intelligibility to a very tangled corner of the criminal justice system; the Firearms Act 1968, for which he devised new ways for setting out the penalties for firearms offences and for prosecuting those offences.

After his retirement, Godfrey continued to draft on a freelance basis and was given the job of consolidating the UK Companies Acts. It was after he had completed this project that he was awarded the CBE.

Godfrey Carter is reputed to have been a man of sterling character and sturdy independence of mind. A letter received on his retirement from public service referred to “the pungent wit of your letters to departments rebuking those in high places judged guilty of circumlocution and woolly thinking”. However, it seems that his robust common sense could sometimes lead to disagreements with those instructing him. His assignment as parliamentary counsel to the Williams Committee on Obscenity and Film Censorship was apparently not a success.

Godfrey's war wounds eventually caught up with him and his wounded leg had to be amputated, an event that he seems to have accepted philosophically and without complaint.

Godfrey is survived by his wife Cynthia and by their three sons.

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.

Although about two dozen ties were sold at the recent CALC conference, I am sorry to say that the ties are still not selling as well as hoped! 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. They are excellent value.

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).

Legislative drafting conference—Annual conference of the Statute Law Society

The Statute Law Society is to hold its annual conference on Saturday, 1 November 2003, at the Institute of Advance Legal Studies, Charles Clore House, 17 Russell Square, London WC1

The theme of the conference is "Drafting and interpretation in a changing world".

The program is as follows:

9.00 – 9.30 am ***Registration (Coffee will be served)***

9.30 – 11.00 am ***Session I***

New approaches to legislative drafting for different parts of the United Kingdom
(Chairman: The Rt Hon Lord Rodger of Earlsferry, Chairman of the Statute Law Society)

1. *The view from Scotland*
Speaker: John McCluskie CB QC, First Scottish Parliamentary Counsel
2. *The Welsh Perspective*
Speaker: Keith Bush, Assistant Counsel General to the National Assembly for Wales

3. *Bilingual and Bijural Legislative Drafting: To be or not to be?*
Speaker: Lionel Levert QC, former Chief Legislative Counsel, Canada

11.00 – 11.30 am *Coffee*

11.30 – 1.00 pm *Session 2*

The influence of Community law and Convention jurisprudence on statute law
(Chairman: Sir Edward Caldwell KCB, QC (former First Parliamentary Counsel of
England and Wales))

1. An insight into the preparation of Community law
Speaker: Robin Bellis, Legal Consultant to the Foreign and Commonwealth
Office and former Assistant Treasury Solicitor
2. Interpretation of domestic legislation in the light of Convention
jurisprudence

Speaker: The Rt. Hon Lady Justice Arden DBE

1.00 – 2.15 pm *Lunch*

2.15 – 3.30 pm. *Session 3*

The International Perspective (Chairman: Judge David Edward, Judge of the Court of
European Communities)

1. International Treaties and British Statutes
Sir Franklin Berman KCMG, QC, former Legal Adviser, Foreign and
Commonwealth Office and Judge ad hoc on the International Court of
Justice
2. Enacting Treaties
Martin Eaton, GMG, former Deputy Legal Adviser, Foreign and
Commonwealth Office

3.30 – 4.00 pm Tea

4.00 – 4.45 pm *Session 4*

Panel Session (Chairman: The Rt. Hon Lord Rodger of Earlsferry)

Employment opportunity—Solomon Islands²⁴

AusAid, the Australian aid agency, is seeking assistance in its search for a legislative
counsel (including any retired counsel) to work in the Solomon Islands. Drafting

²⁴ Notice placed by Don Colajiuri, Parliamentary Counsel, New South Wales, Australia.

assistance is required within the next few months and would involve a short engagement to be negotiated.

The contact person is Daniel Rowland (telephone no. 61 2 9006 3342; e-mail address: daniel_rowland@ausaid.gov.au)



Some of the CALC members who attended the CALC conference and meeting held in Melbourne, Australia in April this year
