

THE FORMATION AND SUBSEQUENT PROGRESS OF THE COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

A memorandum by the Commonwealth Secretariat and a paper by Sir George Engle,
First Parliamentary Counsel, England and Wales and President of the
Commonwealth Association of Legislative Counsel

While the problems which have long been associated with the acute dearth of trained draftsmen throughout the Commonwealth have persisted, the subject of legislative drafting has continued to receive the attention it deserves at successive Law Ministers' Meetings.

2. It was doubtless in recognition of the importance Ministers attached to legislative drafting and the pivotal role played by legal systems in promoting economic and social advancement that they have, over the years, given strong support to the CFTC funded programme for the training of legislative draftsmen, in consequence of which some progress has been made in bridging the gap in the shortage of trained draftsmen.

3. It was therefore significant that at the beginning of the second decade of the inauguration of the CFTC training programme, which coincided with the Colombo Meeting in 1983, Ministers should have had placed before them a paper co-authored by two eminent draftsmen which, among other things, canvassed ways in which the training, career structure, and the retention of draftsmen might be enhanced. Ministers supported the early formation of "a Commonwealth Association of Parliamentary Counsel and Law Draftsmen", in the knowledge that such an association would promote co-operation among draftsmen themselves. They saw the association as a desirable extension of the non-governmental organisation concept already well developed and established in the Commonwealth over a wide spectrum of professional activities.

4. It was, too, hoped that the Association might help in relieving some of the pressures on the Legal Division of the Commonwealth Secretariat by servicing some of the more routine requests and needs of individual draftsmen throughout the Commonwealth, a function it will be well placed to perform through the valuable lines of communication which, it is gratifying to note, it has already established between its members in the short time of its existence.

5. Ministers may therefore wish not only to take the opportunity at the Meeting of wishing the Association success in its endeavours but may also wish to encourage their drafting staff to join the Association and to participate, to the fullest extent possible, in its activities.

Legal Division
Commonwealth Secretariat
June 1986

THE FORMATION AND SUBSEQUENT PROGRESS OF THE
COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

A paper by Sir George Engle, First Parliamentary Counsel, England and Wales
and President of the Commonwealth Association of Legislative Counsel

At their meeting in Colombo in February 1983 the Commonwealth Law Ministers passed a resolution supporting the formation of a Commonwealth Association of Parliamentary Counsel and Law Draftsmen and accepted the offer by Australia to act as headquarters for the Association and to provide editorial services for a regular newsletter for the Association. It was agreed that the proposed Association should, if possible, be launched at the 1983 Commonwealth Law Conference in Hong Kong; and arrangements to that end were initiated by the Attorney General of Hong Kong.

2. A draft constitution prepared by Mr G K Kolts QC (First Parliamentary Counsel, Commonwealth of Australia) with the assistance of the Commonwealth Secretariat was circulated to a number of other Drafting Offices for comment; and a revised version, embodying changes approved by the majority of those consulted, was adopted at an inaugural meeting of Commonwealth draftsmen held in Hong Kong on 21 September 1983 under the chairmanship of Mr G P Nazareth QC (as he then was).

3. The name agreed on was the Commonwealth Association of Legislative Counsel (giving the acronym "CALC"), and a seven-member Council was elected, consisting of a President (Sir George Engle of the United Kingdom), a Vice-President (Miss M Barnes of Trinidad and Tobago), a Secretary (Ms S Power of Australia), Mr G P Nazareth of Hong Kong and three other Council members from Africa, Asia and the Pacific respectively. At the first Council meeting it was decided to adopt a loophole as the logo of the Association; and ties and headscarves bearing this logo have since been produced and sold to members.

4. Membership has now grown to over 350 members. Some 80 different jurisdictions are represented. The Association has no funds, and there is no admission fee. All persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of legislative drafters are eligible for membership.

5. The main activity of the Association has been to circulate newsletters designed to keep members informed of matters of interest to them in their capacity as legislative drafters. The first newsletter, and the letters to new members notifying them of their admission to membership, have all contained copies of the Constitution of CALC. The names of new members and, from time to time, complete membership lists have been supplied to members.

6. Attempts have been made to keep members informed of current drafting problems, such as the requirement imposed on some drafters by their Governments to draft legislation so as to avoid so-called "sexist" language. The developments in Australia concerning the use of extrinsic material in the interpretation of legislation were also canvassed. Another current problem raised was the increasing criticism that legislation is not written in "plain English".

7. Members were also informed in newsletters of the on-the-job training that was proposed to be undertaken by the various legislative drafting offices in Australia for drafters from developing countries. In 1986, such training will have been given to drafters from Zimbabwe, Tanzania, Tonga, Western Samoa and Vanuatu.

8. Notices have been published in the newsletters seeking the names of experienced drafters who would be interested in carrying out drafting assignments. There has been little response to these invitations. Only two persons have indicated their interest and only one of these has substantial legislative drafting experience.

9. Several requests were received by the Secretary for assistance in connection with miscellaneous matters related to drafting. The Chief Parliamentary Counsel in a jurisdiction in the Caribbean sought information about drug laws, particularly in relation to the Seizure and forfeiture of property acquired from drug trafficking. The Secretary was able to supply copies of some existing and proposed legislation relating to the confiscation of profits derived from drug offences.

10. A request was also received for assistance in the proof-reading of a reprint of the statutes of one jurisdiction. This request was notified in the newsletter, and there was a very good response from highly qualified people with some years of experience in legislative matters. As it turned out, the work was able to be performed within the jurisdiction concerned, but it was clear that the newsletter had been very effective in this matter. As a by-product of the notice, the jurisdiction seeking assistance was put in touch with another jurisdiction that was currently engaged in finalising its proof-reading for a supplement to its laws, and a useful exchange of ideas and information took place.

11. A further request for assistance was made by another jurisdiction in relation to the possibility of obtaining the services of an expert in connection with the possible conversion of the existing edition of the revised laws of the jurisdiction to a loose-leaf system. The services of a professional indexer were also sought. The request was notified in the newsletter, but the results of the notification are not known to me.

12. The Commonwealth Secretariat recently drew the Association's attention to the existence of several volunteer organisations that could assist in making the services of drafters available to developing countries. As a result, a list of these organisations is about to be published in a newsletter with a suggestion that -

- (a) any member wishing to undertake drafting work as a volunteer outside his or her own country should consider applying to any of these volunteer organisations that is based in that country; and
- (b) if a need for the services of a drafter arises in a Commonwealth country, CALC members in that country could alert their Government to the fact that a likely source of assistance exists in volunteer organisations based in other countries.

These volunteer organisations have resources available for funding this form of assistance.

13. In July 1983 there was published in the Commonwealth Law Bulletin an article by David Hull analysing the information obtained in response to a questionnaire sent to Commonwealth jurisdictions concerning the terms and conditions of service of legislative drafters. The questionnaire had been sent out by the Legal Division of the Commonwealth Secretariat before the establishment of CALC; but by the time David Hull's analysis appeared, CALC was on the scene and ready to profit from this extremely valuable survey of conditions throughout the Commonwealth which provides, so to speak, a satellite picture of the different ways in which drafting services are organised and rewarded in different jurisdictions. A newsletter subsequently drew attention to David Hull's article, and publicised the fact that off-prints could be obtained by CALC members from the Commonwealth Secretariat on request. It also set out the main conclusions reached by him with respect to "the continuing and substantial shortage of law draftsmen in developing countries" revealed by the survey.

14. In accordance with its constitution, the next general meeting of CALC will be held during the forthcoming Commonwealth Law Conference in Jamaica. On Wednesday 10 September,

the day of the Conference reserved for specialist meetings, there will be a full CALC programme comprising the following items:

- (i) **Electronic Aids in Legislation** - presentation by Canadian legislative drafters, followed by other contributions, a discussion, and a display of electronic equipment.
- (ii) **A CALC lunch** presided over by Mr Justice O.D. Marsh (First Parliamentary Counsel, Jamaica).
- (iii) **Statute law: Consolidation, Publication and the Keeping of Published Texts Up to Date** - contributions followed by a discussion.
- (iv) **General meeting of CALC.**

15. The association has maintained closed and cordial relations with the Legal Division of the Commonwealth Secretariat throughout the period since its formation in 1983. It has established valuable lines of communication between its members, and has given legislative drafters in different jurisdictions throughout the Commonwealth a sense of community as fellow-specialists within the legal profession.