

**Panel on Administration of Justice and Legal Services**

**Information paper for meeting on 24 April 2006**

**Training attachments to overseas jurisdictions**

This paper informs Members of the Panel of the training attachments of law drafting counsel to two overseas jurisdictions.

**Background**

2. The Law Drafting Division (“LDD”) maintains frequent interchange with overseas legislative drafting offices in order to keep abreast of recent developments in other jurisdictions. In 2005, we co-operated with two overseas legislative drafting offices and the following training attachments were arranged for two Senior Government Counsel –

- (a) Ottawa, Canada (from 26 September to 23 December 2005);
- (b) London, United Kingdom (from 3 October to 23 December 2005).

**Legislative Services Branch of the Department of Justice (“LSB”) and House of Commons, Canada**

*Introduction*

3. The trainee’s attachment was mostly with LSB. LSB also arranged training for a few weeks with the House of Commons, which was an extraordinary opportunity for learning in the environment of a legislature. Similar to Hong Kong, a large part of the Canadian legislative system originated from the British system. However, Canada has a unique bijural element because of the civil law system in Quebec.

*Co-drafting*

4. In Canada, federal legislation is drafted bilingually and bijurally by an Anglophone common law counsel and a Francophone civil law counsel. On the bilingualism side, LSB employs language experts as jurilinguists who are influential in improving the quality of legislation.

On the bijuralism side, a harmonization program<sup>1</sup> has been established to deal with existing legislation, while new legislation are subject to review by bijural counsel with training in both legal systems.

5. The trainee received hands-on training in co-drafting. LSB has studied various ways of bilingual drafting and devised innovative methods. It believes co-drafting, although costly, is the best technique. Neither drafter starts working if only monolingual drafting instructions are received. All correspondence and advice are sent out by the co-drafters jointly. They attend meetings in a co-drafting room, sitting side-by-side at two computers, and often produce draft provisions on the spot.

6. The co-drafters are more concerned about the two texts being parallel vertically rather than being parallel horizontally, emphasizing that co-drafting is not a translation process. They ensure that both legal systems are respected and all citizens could read federal legislation in the official language of their choice. Bilingual drafting is certainly an area in which Hong Kong and Canada may share knowledge.

#### *Legislative editing and publishing*

7. The LIMS (Legislation Information Management System) Project team of LSB has been developing the system for drafting, consolidating, managing and publishing legislation and has implemented part of it. It targets to manage the entire process from first drafts to final electronic and paper publication, and involves customization and integration of software tools to make the solution compliant with known business requirements and established office practices.

8. The trainee obtained some basic information of the LIMS system from LSB. A relationship at working level between the Hong Kong and Canadian legislative drafting offices has been established. We hope to be able to exchange experience further with the LIMS team, which would be useful for considering any long term IT plan for our legislative editing and publishing process.

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<sup>1</sup> Program for the Harmonization of Federal Legislation with the Civil Law of the Province of Quebec

### *Learning and knowledge management*

9. A committee<sup>2</sup> of the Department of Justice Canada started meeting in June 2003 to promote a culture of learning and knowledge management. The committee was still considering a departmental strategy on knowledge management during the trainee's attachment.

10. Knowledge management in LSB include sharing experiences, conveying best practices, peer learning, etc., but it is still a developing area. One formal practice is the co-ordination of legal opinions by a centralized Section. LSB has also established a Section to manage training, assist in formulating drafting policies, guidelines and reference materials, and undertake special projects for improving drafting quality (e.g. the "plain language" initiative).

### **Parliamentary Counsel Office ("PCO"), London, United Kingdom**

#### *Introduction*

11. The PCO is based in Whitehall and currently consists of about 60 drafters. They are mainly responsible for drafting Government Bills for introduction into Parliament and handling related Parliamentary business. They also draft Private Members' Bills supported by the Government and certain Orders in Council and subordinate legislation when specially instructed.

12. Some parliamentary counsel are on loan to the Tax Law Rewrite Project at Her Majesty's Revenue and Customs and the Law Commission. Our trainee seconded to London was assigned to work at these two outstations of the PCO for 12 weeks in total.

#### *Tax Law Rewrite Project*

13. The overall purpose of the Project is to rewrite the United Kingdom's primary direct tax legislation to make it clearer and easier to use, without changing the law. So far three Acts on the areas of capital allowances and income tax have been enacted under the Project.

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<sup>2</sup> The National Learning and Knowledge Management Committee

14. During the attachment period, our trainee took part in the drafting of the 4<sup>th</sup> Bill in the Project, which is a further Income Tax Bill containing rewritten legislation for basic provisions about the charge to income tax, calculation of income tax liability as well as provisions on personal reliefs and other specific reliefs.

15. The Project adopts a number of techniques when rewriting tax legislation to make it easier for readers to understand while preserving its technical effect. Existing provisions are analyzed in detail and reconstructed in a more logical order. The rewritten legislation uses modern language, shorter subsections and sections as well as shorter sentences, better signposts, informative labels for definitions, abbreviated references to Acts, and more reader-friendly format and layout.

16. As the rewritten legislation is not supposed to change the underlying tax policy, it must reproduce the effect of the existing legislation. Accuracy is assured largely by exposing draft clauses to the close scrutiny of internal and external experts through extensive consultation processes.

17. There are also some critical success factors set for measuring the achievements of the Project. For example, the Project must be managed effectively and its objectives must be attained within the agreed programme and budget. The main users, both inside and outside the Government, must be properly consulted for their views to influence the rewrite work. The lessons learned from the experience of rewriting the legislation are expected to be developed into new best practice for producing future tax legislation in the United Kingdom.

#### *Law Commission*

18. The Law Commission is an independent statutory body responsible for keeping the law under review and recommending reform where it is needed. During the attachment period, our trainee was exposed to various law reform projects and the drafting of consolidation bills undertaken by the Commission.

19. Once the Commission has agreed to review an area of law and decided on the remit of the project, members of the project team will research into the relevant areas and other systems for comparative study. The Commission will issue a consultation paper setting out the existing law and its defects, giving the arguments for and against the possible solutions, and inviting comments from all interested persons and bodies.

20. After receiving feedback on the proposals, the Commission will then prepare a report for submission to the Lord Chancellor and Secretary of State for Constitutional Affairs, giving its final recommendations with the reasons for them. Where necessary, the parliamentary counsel on loan to the Commission will be instructed to prepare, for annexation to the final report, a draft Bill that would give effect to the recommendations.

21. The Commission also has a statutory obligation to simplify the law. This is done by codification (i.e. replacing all existing statute and common law in an area with an Act in a comprehensive and self-contained manner) or by consolidation (i.e. bringing together under one Act all the existing statutory provisions previously located in several different Acts, without changing the law itself). Moreover, the Commission has a Statute Law Revision Team dedicated to working across the statute book looking for spent or obsolete provisions to repeal through the preparation of Statute Law (Repeals) Bills.

22. Apart from attending meetings with members of different project teams of the Commission and studying their research materials, our trainee also found the process of reviewing instructions and discussing draft bills with on-site parliamentary counsel a very stimulating and fruitful experience.

## **Conclusion**

23. Bilingual drafting, automated legislative editing and publishing, knowledge management and drafting in plain language are all areas of great interest to LDD. The training attachments not only help to promote our interaction with drafters in other jurisdictions, but also provide an enlightening experience of learning from our overseas counterparts. The foundation for further interflow has been laid. This is beneficial to both LDD and the individual colleagues' professional development.

24. LDD spares no efforts in providing training opportunities for law drafting counsel. Subject to availability of host offices, funds and suitable candidates, we hope to be able to arrange similar training in the future and continue to co-operate with the legislative drafting offices of other jurisdictions.

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