

Legislative Drafting Policy and Legislative Development

A Distance Learning Programme in Legislative Drafting

A Paper by the Commonwealth of Learning

Good governance requires good laws and good laws demand good drafting which in turn requires good drafters. The joint Commonwealth Secretariat/Commonwealth of Learning initiative to develop independent study materials for trainee drafters is designed to address this important Commonwealth-wide need directly and in a cost effective way.

In May 1991, Jeremy Pope, Director of the Secretariat's Legal Division pointed out in a letter to the President of COL, that Commonwealth countries "almost without exception, suffer from a shortage of able and capable lawyers to draft their legislation, both statute and subsidiary". Legislative drafting has had little, if any, place in undergraduate law degree curricula or in professional training, and in many jurisdictions, new recruits to government drafting offices have been expected to learn the technical and legal skills on the job with variable levels of support from their more experienced colleagues.

The established way of addressing this problem has been to send trainees to residential courses. In 1986 CFTC funded training was centred on the University of the West Indies (Cave Hill) where Certificate (5 months) Diploma (7 months) and Masters (1 year) courses have been conducted. By the end of the 1991 academic year some 384 drafters had been trained under the Commonwealth legislative drafting programme since 1974 whilst other well established training courses have been provided in London by the Royal Institute of Public Administration and on the Government Legal Officers course at the Institute of Advanced Legal Studies, and in Canada at the University of Ottawa (Slade 1992).

Nevertheless, residential courses have been consistently oversubscribed and are costly, they have taken trainees away from jurisdictions where their services were urgently needed and ironically "it tends to be the larger countries (arguably those of lesser need) which are able to release staff to attend" (Pope 1991). For all these reasons it seemed appropriate to offer additional opportunities to enable drafters to receive their training in their home locations rather than providing only for them to travel away to study. Although those requiring training are scattered through many Commonwealth countries, there is a Common Law base linking them. It is, therefore, practical to plan a generic course designed specifically for independent study in the jurisdiction where the

drafting will be undertaken, with provision for local mentor or group support where these can be made available.

Early in 1992 Comsec Legal Division and COL decided jointly to support development of a distance education training course and, as a first step, an expert group comprising the major current trainers was convened to establish a Curriculum and to advise on its implementation. One important criterion was that the course should be accessible to prospective trainees anywhere in the Commonwealth and this effectively determined that print, the medium with which lawyers are in any case most professionally comfortable, would provide the core of the teaching/learning resources. A Report on this Phase of the project was presented by Neroni Slade, Deputy Director of Comsec Legal Division to the meeting of Senior Officials of Commonwealth Law Ministries in Singapore (March/April 1992) and received with enthusiasm. The Officials cautioned against assuming the availability in smaller jurisdictions of trained drafters to provide trainees with professional supervision, thus reinforcing the need for guided independent study at a distance: they also encouraged the use of audio-visual aids insofar as these would not disadvantage the more geographically isolated. These suggestions have led to the incorporation in the course of audiocassettes in which the student is guided through print material in advance, and adoption of a course design which places central emphasis on involving learners in frequent drafting tasks and in self assessed activities and exercises as a matter of routine.

Contracts for the planning and development of the distance training course were established with Professor Keith Patchett (one of the current trainers in legislative drafting) who, as course Coordinator is responsible for the educational structure of the course as a whole and for the legislative drafting content in particular, and with the TDA Consulting Group Ltd. of Kew, England, who provide the specialist instructional and graphic design necessary in the development of a distance education course.

When completed the distance training course will comprise 6 print modules and a course reader with audio support: provision has also been made for the later addition of an optional computer assisted learning module for those with access to the required hardware. A pilot module was successfully field tested in Barbados in July 1993 and at the time of writing is undergoing evalua-

tion and revision to serve as a design prototype for the other modules. The curriculum established by the Project Advisory Group is the approximate equivalent of a 3 month full-time course (in which there are 360-400 study hours, of which some 110 are contact or face to face teaching hours); drafters employed full time and using only their own hours for study can be expected to take a year or more whilst newly appointed lawyers given substantial work release could complete the programme in 3 to 6 months.

The full distance training course is scheduled for completion by the middle of 1994: it can then be made available in hard copy format for individual trainee enrolment, and on disk for other educational applications. In distance education substantial front-end fixed costs are incurred in course design and development; once the materials are completed, these costs are recouped from enrolments. In the present case the fixed costs of course development will amount to approximately £100,000 borne equally as a foundation grant by Comsec through CFTC, and by COL. Estimates of potential demand from trainees in Commonwealth legislative drafting offices indicate a possible 100 enrolments per year for 4-5 years, always provided that the course is endorsed and trainees financially supported by their Governments. In addition interest has already been shown in the course from several Commonwealth institutions of higher education.

It must be recognised, however, that the fixed costs of course design represent only one component in the total cost of the training, especially if the trainees are to receive interactive teaching/learning support. The production and delivery of multiple hard copy print and audio sets, the exchange of an essential minimum number of drafting exercises with a distant tutor and, where possible, also local support tuition all represent variable cost elements which are not susceptible to economies of scale and which may indeed provide some constraint due to their heavy dependence on highly specialised professional skills already in short supply. Provision must also be made for institutional costs of

overall course management, up-dating and development. Best estimates of operational costs at this stage however indicate that the total cost of distance training will amount to approximately £3000-4000, rather less than half the cost of a student attending an overseas residential course.

Consideration is now being given to identifying a central institutional base, and probably also some supporting regional bases, from which the training course can be administered. The central institution, which will have experience in conducting outreach training in legal-related studies, will be responsible for enrolling trainees, delivering course materials and handling the interchange of drafting exercises between students and tutors. It is envisaged that trainees will be able to commence the independent study-based course at any time of the calendar year either when they commence their drafting duties or recognise the need for refresher training, and not have to wait for some fixed starting point in an academic calendar. Whilst it will be a major aim of the course to offer trainees examples of the best standards of legislative writing found in Commonwealth practice, this will be balanced by specifically requiring them to familiarise themselves at all stages with actual drafting practice in their own jurisdiction. The central institution will also advise the Commonwealth Secretariat/Commonwealth of Learning on the award of certificates of satisfactory course completion.

Ministers are respectfully asked to note, and to endorse, this first example of a Commonwealth-wide training course in continuing professional distance education.

References:

Pope, J., 1991: Letter to President of COL dated 17 May, 1991.

Slade, N., 1992: Distance Training for Legislative Drafters: A Progress Report for the Meeting of Senior Officials of Commonwealth Law Ministers - Commonwealth Secretariat.