

Legal briefs and lawful shorts—Are they for you?

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Tired of writing legislation? Want to explore a little elegant variation in your text? Looking for less anonymity and more control? This article is for you.

What am I on about, you will be asking. Well, this is an article about legal newsletters — why an Office of Legislative Counsel might choose to become involved in one, and British Columbia’s experience with such a newsletter.

Why a legal newsletter?

Many of you will be familiar with newsletters put out by law firms. They provide general legal information, and often a little entertainment, in relation to the interests of a firm’s continuing clients. Specialist firms will have a newsletter related to their particular practice area. Large firms with a broad practices may publish a number of targeted newsletters. Why do they do this? It is all about marketing.

Newsletters are considered among the most tried and true — and cost-effective — marketing strategies available for preserving a firm’s client base and expanding the firm’s practice. As the benefits of an external newsletter are described by Sheila Hoffman, an editorial services professional whose business NewslettersAndMore develops newsletters for non-profit organizations as well as business:

“...newsletters let you communicate frequently with a highly specific audience, establish yourself as an authority and market leader, enhance your image and credibility, develop good service or product identification, [and] offer potential users, buyers or members a personalized contact.”

Legislative Counsel, and other lawyers working within government, generally do not need to market their services. But we do have continuing clients, and newsletters for our organizations share many of the business benefits, as well as providing some significant additional public service benefits.

By publishing a legal newsletter for senior government officials, we are able to:

- Establish ourselves as authorities in relation to legislation or other public law matters. By indicating the breadth and importance of issues addressed by government lawyers, our image and credibility is enhanced.

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- Communicate outside the usual circumstances of a problem that requires legal involvement (such as advice on a contract issue, response to a legal proceeding against the government or the drafting of legislation). Our services are provided without time or policy pressures, to be seen as preventive care rather than costly repair.
- Establish an advance connection so that, when officials do need to work directly with us, they do this with the sense of having an existing relationship.
- Provide education about relevant legal issues so that other government officials are better able to do their work and so that they are better able to work with us.
- Sensitise these officials to when they should be coming to us with issues in advance of a problem.
- Provide timely information about legal decisions and legislative changes that have impact across government.

Why Legislative Counsel are well-placed to contribute to a legal newsletter

We have the knowledge. We are specialists in statutory interpretation, knowledge that is relevant to every Ministry that administers legislation. We have a broad understanding of the structure of government and its relationship with Parliament and the courts. As a central office, we are able to identify key issues that have relevance across government. Being consulted by government lawyers who are defending legislation from challenge, we have early warning of potentially significant legal issues. We are aware of and often involved in government's responses to significant legal cases.

We have the writing skills. Legislative drafters are writers – technical writers, yes, but writers with an exquisite sense of the precision of language and the rules of grammar. We are used to writing with a journalist's brevity, even to the style of having only one or two sentences per paragraph. And today, many of us will have had some training in the techniques of plain language writing for effective communication.

Why Legislative Counsel Offices are well-placed to publish a legal newsletter

We have the publishing skills. Information technology has had a significant impact on legislative drafting. See, for example, the articles by Peter Quiggin and Don Macpherson in the March 2005 issue of *The Loophole*. It has also affected the functions of our Legislative Counsel Offices, in many cases turning us effectively into publishers with in-house authors. To our historical writing and editing skills, we have added knowledge and skills regarding document design and formatting. Applying all these skills to a different form of publication is a challenge, but it is also a refreshing change for drafters, editors and administrative support.

We have the contacts. Legislative Counsel Offices have a direct connection with and, in some cases, are in fact part of the Cabinet Secretariat. We provide centralized services to all Ministries, with contacts at senior levels in those Ministries. We are able to identify appropriate distribution for a general legal newsletter.

Legal Briefs and Lawful Shorts — the British Columbia experience

In British Columbia, the “government’s law firm” (as we have been known to call ourselves) is the Legal Services Branch of the Ministry of Attorney General. All legal services for other Ministries are provided by or through this Branch. It has five major divisions: the Office of Legislative Counsel, the Civil Litigation division, the Constitutional and Administration Law division, the Aboriginal Law division and the Solicitors Division. With a size of over 150 lawyers, and with a specialisation in public law, the Legal Services Branch is certainly a candidate for having a legal newsletter.

The impetus for such a newsletter came out of one of those “strategic planning” processes that governments and other large organisations engage in from time to time — an outside consultant comes in and talks about paradigm shifts, visualizations, service orientation and other abstracts, then committees are formed to create something concrete from it all. In our 1995 process, one of the committees was given the name “information partnering” (translation: improving communications with clients) and I was its coordinator. Our recommendations included the development of a legal newsletter for senior levels of government.

The proposal was accepted, and the first issue came out in June 1996 as *Legal Briefs and Lawful Shorts*. (The title was chosen through a name-our-newsletter contest for the Branch.) The response to each issue has been immensely positive. Time and time again there is article that is so immediately helpful that we get notes of thanks.

Organization, publication and other practicalities

The editorial board structure is, shall we say, loose. Membership is on a volunteer basis with an annual call for new recruits. It includes lawyers, legal assistants and support staff. It has always had participation from the Officer of Legislative Counsel, currently two drafters, one editor and our manager of legislation (who doubles as a formatting and design wizard). We rotate the editor-in-chief position for each issue, also on a volunteer basis — share the labour, share the glory.

The editorial board identifies appropriate topics for articles in the upcoming issue and appropriate authors for those articles. Most of the members write from time to time, but more often our assignment is providing contact, editorial and timely chasing services to other members of the Branch who have had their shoulder tapped for an article.

We usually publish two issues a year, although we have been known to do a special issue if there is information on a new court decision or piece of legislation that needs to get out earlier. For example, the *Freedom of Information and Protection of Privacy Act* was amended with a view to keeping personal information (such as medical records) inside Canada and away from the reach of foreign access under legislation such as the *U.S. PATRIOT Act*. These amendments had significant impact on government operations, particularly in relation to contracts with IT service providers, and a special issue of *Legal*

Briefs and Lawful Shorts was prepared.

When we first began, *Legal Briefs* (our short title for conversations) was published in hard copy, with all the effort and cost that entailed. Within a short time government email systems had improved immensely and we now do the distribution electronically using Adobe Acrobat (.pdf) format. It is cheaper and faster, delivery is more certain — and it allows us to do these quick, short issues on significant issues.

The distribution is not centralized — and this is for reasons of client relations. Each Ministry has a Legal Services Branch lawyer assigned as Client Service Coordinator. The Coordinator is a central contact for all issues regarding legal services provided to the Ministry, and is responsible for negotiating the annual level of committed funding from the Ministry. (We have a charge-back system for most legal services, although not Legislative Counsel services, in case you are wondering.) The *Legal Briefs* distribution is set up so that it comes out to a Ministry through their Client Service Coordinator.

What to write about

New and significant cases and legislation will always be suitable topics, but there are also general topics that provide us articles. The following are some of these general topics and examples of articles that have been published on them:

Practical matters related to litigation — for example, when a public service employee may be asked to swear an affidavit on behalf of the government court case or what is involved in having to be a government witness in an examination for discovery.

Issues involved with the Freedom of Information and Protection of Privacy Act — for example, the rules regarding access to legal opinions, the circumstances in which personal information about public service employees is subject to disclosure or the scope of the obligation to search for requested records.

Timely information — for example, new reporting obligations for public servants if they considering government is about to make an unauthorized expenditure.

New government initiatives — for example, consultations on civil liability reform, the promotion of mediation and other alternative dispute resolution processes or changes to government contracts with IT service providers.

Services provided by the Legal Services Branch — for example, a free course on administrative law principles for statutory decision makers or a new Guide to Preparing Drafting Instructions available from the Office of Legislative Counsel.

General information — for example, general rules on obtaining injunctions to stop breaches of the law, the role of the Attorney General in relation to judicial independence or videotaping in the

context of regulatory inspections.

General interest — for example, “Do Kangaroos work like Beavers?” by Australian Parliamentary Counsel, Michelle Fletcher, describing her work exchange experience with our Office of Legislative Counsel.

What might go in an issue

The following are a few examples taken from our Table of Contents records.

The first issue:

Volume 1 – Issue 1 (June 1996)

Intro by Assistant Deputy Attorney General	Jill Wallace
LSB Branch organization	Sheila Gallagher
FOI Facts: personal privacy; legal opinions	Kerri Sinclair
Case brief: <i>Director of Trade Practices v. Ideal Credit Referral Service</i> ..	David Morris
Case brief: Small claims actions against government employees	Tim Leadem
Article: Swearing affidavits	Judy Wayte
Article: Dispute Resolution initiatives in LSB	Jerry McHale

A very large issue:

Volume 7 – Issue 1 (April 2002)

Lead Article: Employees and Independent Contractors.....	Lois Toms
Case brief: Recent Aboriginal law decisions of the BCCA	Geoff Moysé
Case Brief: Contract terms are generally not subject to judicial review	Nerys Poole
Article: Independent contractors in the human rights context	Leah Greathead
Article: Civil liability – the way to reform.....	Sheila Gallagher
Article: Bills, media briefings and parliamentary privilege.....	Janet Erasmus
Article: Regulatory liability.....	Bruce Macallum
Article: How to read an Act: Episode 5 – when an Act comes into force ..	Janet Erasmus
Article: Free course for statutory decision makers	Joe McBride
Article: In memoriam – Dennis Carson	Judge Brian Neal

A special issue:

Volume 9 – Issue 2 (December 2004)

Protecting personal information (Patriot Act)	John Tuck and Alexandra Henley
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Contributions by Legislative Counsel

Almost every issue has had one or two articles by a Legislative Counsel. As discussed above, as a central officer we have information that is relevant across government. Topics on specific legal issues have ranged broadly and include the following:

- Judicial appetite for Hansard: “peppering” the Bills;

- Bills, media briefings and parliamentary privilege;
- What happens to Ministers and Cabinet when a general election is called;
- The Queen Proposed and Parliament Disposes — sources for government spending authority;
- Benefit programs under voted appropriations — Pharmacare and the power to establish entitlement rules without statutory authority.

The largest contribution has been a continuing series on statutory interpretation, with the series title *How to Read an Act*. Specific articles have covered:

- Introduction to the Interpretation Act;
- Persons, ministers and government;
- Record, deliver and mail;
- Calculating time;
- When an Act comes into force;
- Must we? May we? And what if we don't?

Judging by the number of positive responses to these articles, these are topics that hold great interest in the public service. It was, as the advertising industry might say, a market waiting for a product.

A continuing value

The responses received directly from client Ministries have been excellent. Equally as interesting are the anecdotal reports we have from other members of the Legal Services Branch.

Ministries contact their advising lawyers because an article has made them realize there is an issue that needs to be addressed before it becomes a larger problem. Meeting a Ministry official for the first time, a lawyer will be greeted by the recognition: “Aren't you the one who wrote ...?” Advising solicitors are able to print off and provide the relevant article when a client comes with a general question.

The final question

Legal Briefs and Lawful Shorts — Is a legal newsletter something for you and your Office?
