

Open educational resources for professionals: A new era in the training and development of legislative counsel

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Abstract

This paper discusses a current project to develop open educational resources (OER) for legislative counsel in countries of the Commonwealth of Nations. The project is the latest step in a 20-year old distance education program for those professionals. The paper explores best practices for investment in freely available OER for use by professionals and students who are involved in open access and online learning environments. The creation and deployment of the OER raised many of the key issues faced by many current organizations, including the tension between openness and quality, and the relationship of OER to accreditation. Findings describe the importance of chunking information appropriately, tackling the separation of core knowledge from local contexts, and managing integrity while operating in the domain of open source materials.

Résumé

Dans cet article, on discute d'un projet actuel pour développer des ressources pédagogiques ouvertes (RPO) à l'intention des conseillers législatifs dans les pays du Commonwealth des Nations. Pour ces professionnels, ce projet représente la dernière étape d'un programme d'éducation à distance qui existe depuis 20 ans. Cet article explore les meilleures pratiques pour l'investissement dans des RPO largement disponibles à être utilisées par ces professionnels et par les étudiants qui sont impliqués dans le libre-accès et dans l'environnement d'apprentissage en ligne. La création et le déploiement de ces RPO ont soulevé plusieurs des enjeux importants dont sont confrontées plusieurs des organisations actuelles, y compris la tension entre la transparence et la qualité, et la relation des RPO à l'accréditation. Les résultats décrivent l'importance de granulariser l'information de façon appropriée, de s'attaquer à la séparation des connaissances de base des contextes locaux, et de gérer l'intégrité en assurant le fonctionnement dans le domaine des documents de sources ouvertes.

Introduction

Professional education in law has traditionally been anything but “open”, featuring highly restrictive student selection practices and an esoteric subject matter locked up in law libraries or expensive databases. Recently the open access to law movement has succeeded in opening up many sources of law (statutes, court decisions) to the public, but teaching about the law remains largely behind closed doors.

One group of legal specialists, legislative counsel and others who draft legislation, has been disadvantaged recently because little attention is provided to education that focuses on legislation, its creation and interpretation (Dewhurst, Levert & Zariski, 2012). Whether studying law or other legal professions, there is a growing need to ensure access and equity in the pursuit of knowledge, in this case in support of those whose task is to create effective legislation and to support open access to educational materials (Guri-Rosenblit, 2009). To compound the challenges associated with the education of legal specialists, the learning needs of this group often vary. Some legal practitioners may already have practical experience with interpreting and developing legislation and seek to solidify their knowledge or to justify professional advancement; others may desire a credential as part of a new career direction; and yet others may have occasional duties with respect to the practice of law that requires specialized knowledge to solve particular problems. Moreover, for members of this legal sub-community, relevant courses and programs have been few and often geographically dispersed (for example, in London, Canberra, Ottawa and Barbados), thus generating a need for distance and online education strategies.

An emerging trend to provide greater access to educational materials is the utilization of OER. OER have been described as “teaching, learning and research materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits no-cost access, use, adaptation and redistribution by others with no or limited restrictions” (UNESCO, 2012, p. 1). Institutions dedicated to open access and online learning are challenged to meet the numerous and diverse learning needs of today’s students (Anderson, 2009; Garrison, 2009). This warrants the exploration of how to effectively maximize the outcomes from educational opportunities that combine OER with other distance and online strategies.

This paper summarizes key findings of a professional education project targeted towards legal specialists. The project was inspired and enabled by open educational resources (OER). The project was found to be at the nexus of many current trends and tensions in education including how best to:

- combine OER, distance and online teaching strategies (Gourley & Lane, 2009)
- provide open access to law and to legal education
- integrate e-learning techniques for teaching complex professional knowledge (Guri-Rosenblit & Gros, 2011)
- address the needs of diverse learners and of educational providers when using OER (Ives 2013).

Evolution of Legislative Counsel Education and Training

The term “legislative counsel” refers to highly specialized lawyers whose role is to draft and advise governments on proposed legislation and to prepare it for enactment by legislative bodies. In most countries based on the parliamentary model this role is assigned to government staff lawyers who may also, in smaller jurisdictions, have other legal duties to perform. In some cases outside consultants are retained by governments to assist with particular legislation. The term “legislative drafters” is also sometimes used to describe this group of lawyers, although it does not adequately convey the breadth of work done by most legislative counsel.

Legislative counsel are specialized lawyers with a low profile and high responsibility. A major portion of their responsibility is to promote the integrity of written law and to help achieve government aims and objectives through the creation of effective new legislation. The work of legislative counsel is important for maintaining the rule of law and establishing good administration in governmental institutions.

Although the work of legislative counsel was recognized as a distinct type of legal practice in the 19th century, this specialty has been largely ignored in traditional legal education. In most common law legal jurisdictions with a British heritage, legal education is primarily focussed on case law rather than legislation. This focus has resulted in a general lack of attention in law schools to the study of legislation, including its preparation (Dewhurst, Levert & Zariski, 2012). It has only been in the last half of the 20th century that education and training for legislative counsel have been taken up in an organized way. Prior to this development, the apprentice method prevailed in most jurisdictions, whereby, novices were mentored in the preparation of legislation according to British legal and parliamentary norms by experienced legislative counsel. Following the Second World War, the explosion in the number of newly independent parliamentary democracies created a pressing need for legislative counsel. Many former colonial officials, including legislative counsel, returned to the United Kingdom and were no longer locally available to prepare the wide range of legislation needed by modern states. This need was expressed to Commonwealth authorities who adopted a policy of assistance to smaller states. In addition to direct technical support through seconded personnel to assist local legislative counsel, a training plan was created.

As described in Dewhurst, Levert & Zariski (2012) such training initially took the form of regional courses held in various parts of the world using common educational materials. Recognizing the difficulty of relocating staff for training purposes along with the associated educational costs, the Commonwealth commissioned the production of distance training materials on CD-ROMs. These materials were administered by the Commonwealth of Learning (COL) and licenced to a number of universities for use in certificate and diploma programs. In 2008 Athabasca University (AU) launched its Post-Baccalaureate Diploma in Legislative Drafting based on the COL materials.

Although there have been a few programs based in universities which have offered education and training to legislative drafters, these educational offerings have not been sufficient to meet the demand by many governments for competent legal staff. In addition, such programs have met two significant obstacles: first, the direct costs to governments of supporting the residential study of employees in

another country; and second, the indirect costs of losing the services of a member of a drafting office for a substantial period of time while he or she is attending the training sessions.

To begin to address these challenges, OER combined with distance and online teaching strategies are being explored in a number of current contexts. OER are not yet a significant factor in the education, training, and continuing development of the professions. There are some exceptions: teacher education and training projects in Africa (ACEMaths, 2013; TESSA, 2013; Sapire and Reed, 2011), health education (HEAL, 2013), and engineering (SEE, 2013) are well advanced in the use of OER; and, to a limited extent, legal education (Priddle, Maharg, McKellar, & Lysaght, 2010). Integrating OER in professional contexts may have advantages in relation to some key challenges facing OER generally, such as sustainability and adaptable reusability with continuing development (Wolfenden, 2008; Wolfenden, Buckler, & Keraro, 2012). Communities of professional practice may provide the required motivational, practical and professional support to make OER viable and sustainable in the long term. Conversely, OER may contribute to the sustainability and development of the professional community. The professional group who will benefit most from combining OER with teaching legal concepts at a distance are those situated in the Commonwealth of Nations with its headquarters in London (UK). The case study highlights how one institution has begun to explore this distinct opportunity.

Commonwealth of Learning: An OER Case Study

Project Overview

In response to the continuing need to prepare competent legislative counsel professionals, COL decided to transform the CD-ROM-based training materials into OER that were accessible anywhere, at any time, by anyone. Athabasca University partnered with COL to achieve this goal. These transformed OER were designed to assist with drafting legislative texts and, when finalized, would be publically available on servers maintained by the COL. In 2012 the educational resources required review and revision and a project was initiated by COL and AU to transform them into OER for the purposes of:

- enhancing the sustainability of the materials;
 - facilitating reuse and continuing development of the materials;
 - attracting practical and professional support to make the OER viable and sustainable in the long term;
- and
- contributing to a thriving professional legal community

The primary objectives of the project were twofold: (1) to update the legislative drafting materials in order to make them current and accessible as OER; and (2) to observe and analyze the process itself in order to gain insight into how OER materials may become a more significant factor in professional education, training, and continuing professional development. Key outcomes from the project included adapting existing materials into an accessible, reusable OER formats for educators and practitioners, adding various e-learning and mobile technologies to enhance accessibility and adaptability of the materials, and providing facilities for the development and customization by users. Finally, this project was designed to increase the value of the available teaching resources to the relevant professional

community of practice (legislative counsel) by making them into accessible and reusable OER. The project methodology took the form of action research (Carr & Kemmis, 1986) in which the authors participated actively in the project while maintaining a critical observer role. Action research methodology is considered appropriate for this type of collaborative educational development (Lawler, 2008).

Engagement of the Professional Community

A key objective of the OER project was to engage the professional community consisting of legislative counsel employed by governments, independent consultant legislative counsel, other lawyers who draft legislation, and legal academics who teach and conduct research in this area. Such engagement began with the revision and transformation of the learning materials into OER by two legislative counsel with vast experience worldwide in the practice and teaching of legislative drafting. Their work was complemented by an advisory group composed of senior legislative counsel from a range of jurisdictions around the world. Their role was to bring a broader perspective to the revision given the multi-jurisdictional target audience of the materials. The advisory group's review of the reorganization of the materials and adaptation for use in in-house courses and for self-study greatly aided the project.

One of the initial issues addressed by the advisory group was how to provide assistance with determining the proper target group for the OER materials. Initially, the materials were designed to be licensed by COL to accredited academic institutions. Accordingly, the materials took on an academic professor-student format. However, when presented as OER materials, additional target audiences emerged to include legislative counsel working in government drafting offices, individuals with legal training working in private law offices that provide legislative drafting services, individuals with legal training interested in legislative drafting with a view to joining such offices, and individuals with a general interest in legislative drafting.

Moreover, the advisory group was particularly helpful in refining the target audiences and in underscoring the practical value of the examples, activities and exercises as essential components of the materials. The authors hope that this engagement of the community of legislative counsel will continue in the future in order to lead continuous improvement activities and ongoing "co-development" of the materials over time, following a model of sustainability envisaged by Downes (2007).

Another fundamental challenge for OER implementation from the beginning was to identify and address the diversity of drafting practices and contexts around the world. An important consideration arose based on different practices and contexts: Should OER materials aspire to embody best practices in Commonwealth jurisdictions or should other international common standards be adopted? Again, input from the advisory group was valuable, because they recognized that attempting to identify and discuss multiple differences and contexts would not be a feasible approach. While the creation and development of the OER materials take legislative drafting principles and approaches into consideration, it would not be realistic to claim that the materials were in all respects applicable across all jurisdictions.

Two of the core assumptions follow:

- the materials are based upon the British parliamentary model (and users are cautioned to check whether the materials are applicable to their jurisdiction); and
- the user has general legal training or a basic familiarity with government and legislation for the OER to be effectively utilized.

Legislative drafting is a dynamic, evolving discipline that raises innumerable questions often inviting passionate discussion among its practitioners. The OER materials attempt to reflect this dynamic quality while affirming the fundamentals on which there is overwhelming agreement. In proceeding with the above assumptions, we hope that users with more extensive legislative drafting experience will appreciate the opportunity to review material with which they are familiar while also being challenged by more advanced material that meets their particular needs.

The authors believe that this will be the first step towards engaging the community of legislative counsel in the ongoing development and use of the materials. Through being attentive to the technical elements of the OER, their currency and relevance to the prospective audience, and through engagement with potential users, we hope to promote reuse of the materials by appealing to a variety of motivational factors as identified by Pegler (2012). However, in aiming at this target, we recognize that a sensitive balance has to be maintained between, on the one hand, encouraging and facilitating involvement from online users and, on the other, preserving the academic and legal integrity of highly specialized material on legislative drafting skills.

OER in Online Contexts

The original materials licensed by COL to accredited academic institutions contained exercises for student practice as well as projects to be submitted for evaluation and credit. Based on these exercises, the OER were revised and updated to reflect current practice. Some additional revisions were also required to make the exercises more workable on a stand-alone basis for students who may be without access to academic support in the online environment.

As educational materials were adapted to an OER format, issues related to exam and course integrity had to be addressed. Exam questions and answers were removed from the OER materials in order to preserve their integrity for use in programs that do not utilize OER. To resolve this concern it was decided that an instructor version of the materials would be created and that COL would retain copyright over this version and continue to license it only to accredited academic institutions.

The need to preserve the legal integrity of the materials also raised concerns. It was determined that platforms and formats that were too rigid or “locked down” might deter ongoing use and adaptation of OER. In addition, Adobe PDF files which maintained the legislative layout of the materials were not fully accessible on mobile learning platforms or by users with visual disabilities or others using screen readers. In contrast, free flowing wikis open to non-peer reviewed changes by any user would undermine the soundness of the materials and threaten their accuracy and long-term credibility.

Accordingly, decisions were made that would pair these needs with suitable software platforms and formats; this involved “chunking” the materials into shorter blocks that would promote mobile access, user re-organization, and accessibility for those using screen readers.

Further, tensions between these demands and requirements for the overall cohesion, indexing, and accessibility of the materials required resolution. These decisions were made based on issues which have been identified as common to most OER, such as the optimum level of “granularity” of presentation of the resources and the challenge of format diversity (Atkins, Seely Brown, & Hammond, 2007). OER navigation in itself is a complex technical and a pedagogical issue related to learning styles, contextuality of knowledge, and accessibility of information (Connolly, 2013). As noted by Misra (2013), attention must be paid both to the quality of content and to the quality of the pedagogy embedded in the presentation. In the case of these legislative drafting materials, the authors were fortunate enough to find a structure built upon a well-accepted pedagogical process of study (textual presentation of principles and examples), practice (frequent practical exercises), feedback (automated), and reflection (journal entries). We hope a balance will be achieved by providing discrete topics paired with a detailed index of suggested search terms, and the availability of an additional searchable copy of the entire set of materials. Such strategies address the tension between “granularity” which benefits reuse by “just in time” learners interested in discrete topics and students who seek to gain a comprehensive understanding of a professional field (Schmidt-Jones, 2012; Windle, Wharrad, McCormick, Laverty, & Taylor, 2010). However, some of these challenges might best be resolved over time, and on an ongoing basis, through widespread consultation and involvement among the academic community and the professional community of legislative counsel.

Unexpected Challenges to Overcome

This project was the first of its kind for the project team and therefore an experience with some unexpected challenges. Although team members were familiar with distance learning technologies and constraints associated with the restricted access of learning management systems such as Moodle, there was less experience regarding working in open access environments. Numerous examples of online OER were reviewed and then matched with the available human and technological resources at the authors’ academic institution. As well, various OER platforms that worked for the presentation of less technical materials were evaluated for their adaptability to the more exacting demands of formats required for various courses within the Legislative Drafting program at Athabasca University.

The nature of the teaching materials themselves also presented a challenge, both technically and legally. One of the initial challenges was to determine which OER format and Creative Commons Licence (Creative Commons, 2013) was desirable for the Commonwealth of Learning, Athabasca University, and for most end-users. Informed decisions were made with respect to requirements for attribution and sharing of information, whether OER materials could be used by future users for commercial use or only non-commercial uses, and whether the materials could be subject to certain copyright restrictions. For example, the requirement for ongoing users to share their modifications with other users might mean that educational institutions using the OER to create courses for credit would have to share their

evaluation components and model answers – clearly not a viable option. The commercial prohibition would mean that the materials could not be offered for credit unless the accrediting institution was prepared to offer the courses free of charge. The prohibition against including external documents might mean that some users could not use these documents in their training programs. In the end, a CC-BY (Creative Commons – By Attribution) license was adopted whereby additional users could distribute, remix, amend, and supplement the materials as long as credit was given to the initial OER resources. Also, references to external documents were minimized in order to avoid copyright restrictions. In these respects this project followed recommendations for best practice in OER that have been advanced to date (see for example Bissell, 2009; McAndrew, Farrow, Law, & Elliot-Cirigottis, 2012).

Finally, questions of copyright had to be resolved (and some remain to be resolved) for use in an online format. Some of the supplementary course materials are subject to externally held copyright. Where the copyright holder had previously granted a limited-duration copyright, a limited-use copyright, or permission limited to print-based use, the copyright did not extend to use in an OER format. This restriction entailed further determinations of whether hyperlinks could be made to the material on open-use websites (for example, governmental or legal institute websites). In many cases, this access was possible. When it was not, decisions had to be made regarding whether to summarize the work and provide citations for users to pursue on their own or, alternatively, to replace the materials with publicly available documents that would still preserve the pedagogical and academic rigor of the materials.

In turn, where copyright permission was initially given or transferred to the Commonwealth of Learning for “use in their course materials,” another issue emerged: Could this initial grant of copyright be interpreted to extend to an OER use of the materials (a use that often did not even exist at the time of the original grant of copyright)? The answer to this question was determined to be “No.”

Use, Enhancement, and Sustainability of the OER

It is expected that other educational institutions will be prospective users of the legislative drafting OER with a view to offering credentials in this area of legal practice. A distinction can be drawn between OER, which are the subject of this paper, and open courseware (OCW) which present a distinct course of directed study, often with student assessment components. The legislative drafting OER created in this project do not include course plans or evaluation instruments; their copyright has been retained by the Commonwealth of Learning. The OER materials may therefore be used by institutions as part of their courses, by novice or aspiring legislative counsel for individual self-study online, or as downloaded editable files customizable for use in legislative drafting offices for training sessions conducted without the award of any associated academic credential. In this way the legislative drafting OER achieve the goals of interoperability and capacity for localisation highlighted by McGreal (2013).

Discussions are underway with OER University (2013), a consortium of OER providers, regarding ways of incorporating the legislative drafting OER into an academic credit granting program. However, the evaluation components of the materials are designed as drafting projects to be submitted for assessment and no examinations are included as currently written. Such an evaluation system is more

amenable for students at an institution who wish to gain an academic credential whereas this OER initiative is designed to provide freely available reference, training and practice exercises that are not designed to be submitted towards an academic credential. Institutions such as AU will continue to use and adapt the OER materials in credit granting courses and programs where they will be offered on an OCW platform or through a learning management system based upon the preferences of the particular institution. As for the OER materials themselves, it is hoped that the materials will serve as a catalyst in the formation of a community of institutional users willing to collaborate and invest in the revision and improvement of the OER. Such a community may also generate alternative methods of evaluating and credentialing learning through the OER (Friesen & Wihak, 2013). It will then be up to accredited academic institutions to decide whether to adopt these developments and adaptations in their OCW or other offerings.

The authors envision the ongoing enhancement and adaptation of these materials by the professional community of legislative counsel, and that such engagement will contribute to their continued development and sustainability as valuable learning resources. Some ways in which this engagement may be facilitated include:

- providing a wiki or other mechanism for suggestions and comments on the materials;
- using social media discussion groups (such as the CALC Members Group and the Legal Drafting Subgroup on LinkedIn);
- providing a mechanism for uploading adapted materials used in a specific jurisdiction; and
- convening online conferences to discuss and debate issues raised by the materials.

The financial and staffing resources required for those initiatives have yet to be determined. Additionally, decisions in the choice of suitable platforms must be made to encourage ongoing contributions and suggested improvements from the community of users.

Conclusion

The project described in this paper has borne fruit, but is not yet complete. In one sense, if successful, the project will be sustained indefinitely if the professional community of legislative counsel and participating institutions take “ownership” and continue to enhance and adapt the OER. A number of lessons have been learned, not the least of which is that the skills and knowledge of legislative counsel require the foundation of a broad and well-integrated understanding of a range of interconnected topics. Like legislative texts themselves, learning materials must be consistent and coherent; this is a challenge given the scope of the materials.

A number of key considerations also emerged as this project was undertaken. Extensive consideration must be given to selecting a suitable OER platform for the particular content and format of the subject matter; ensuring the availability of technical skills and human resources needed to adapt and prepare the materials along with the necessary data coding to preserve the format and layout of the materials; choosing an OER platform that allows end-users to easily access, adapt, and supplement the materials; challenging interpretations of previously existing copyright permissions for the inclusion of externally

developed materials must be considered in light of the terms of the OER copyright categories, particularly in the absence of a developed body of interpretations of the legal meanings of those categories; copyright issues are, to some extent, alleviated by the availability of materials on the Internet, particularly legislative documents that can be hyperlinked rather than imported into the materials; and pedagogical concerns must be resolved regarding the inclusion, deletion, or replacement of external resources where copyright prohibits the use of the materials in an OER format or where the permissions are unclear.

The OER team hopes that the description of this project will encourage other professional communities to explore the development of OER for education and training purposes. Although there are many challenges to surmount, the potential rewards are substantial and well worth the effort involved.

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