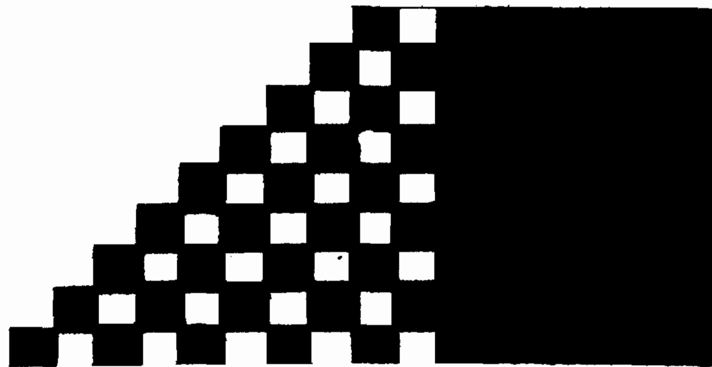
The Loophole

The newsletter of the
Commonwealth Association
of Legislative Counsel (CALC)



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COMMENTS FROM THE SECRETARY

Welcome to Volume 2 Issue 2 of the Loophole, the Newsletter of the Commonwealth Association of Legislative Counsel.

The Table of Contents will give you a good idea of the materials contained in this issue, however there are a few matters that I would particularly like to bring to your attention.

1 Although the last issue of the Newsletter was sent to each member, only 1 copy of this issue is being sent to each address. I would remind the person to whom the Newsletter is addressed to ensure that the Newsletter is circulated or a copy provided to each member at that address.

2 In the last issue, it was suggested that each drafting office designate a local secretary through whom the newsletter and other correspondence could be forwarded to members in his or her office. So far, I have received only a few names. In any event, unless I hear otherwise I will continue to send the newsletters and other correspondence to the first person heading the list of each office.

3 Due to the coup in Fiji, Mr. George Harre has left Fiji. As a result Mr. Harre has advised me that he has resigned as the member of Council representing the Pacific.

4 Mr. Geoff Kolts, former secretary to the Association, has now resigned from his position as Ombudsman to take on a career in private practice. Best wishes Geoff.

5 Although in the past some applications for membership have been made by members on behalf of others, it is requested that prospective members apply on their own behalf.

6 Materials for publication in the Newsletter are urgently required. Any articles of interest that you have come across or better yet articles that you have written are desired. Drafting questions that you have that could be answered by someone in another jurisdiction would also be of interest.

7 The item entitled "The Departmental Solicitor and the Parliamentary Counsel Office" was prepared by the President, Mr. Walter Iles. It was taken from a publication entitled "LEGISLATIVE CHANGE Guidelines on Process and Content" contained in a report of the Legislation Advisory Committee in New Zealand. The publication also has some other interesting topics: "The Process of Developing Legislation" and "The Content of the Legislation". I will include extracts from those in a subsequent issue of the Newsletter.

8 Plain English or Plain Language has been in the forefront in the last few years. Following is a reference to a report prepared on the subject by the "Law Reform Commission of Victoria":

Plain English and the Law - Report No. 9
- Report
- Appendix 1 - Drafting Manual
- Appendix 2 - Takeovers Code
- Appendixes 3 to 8 - Magistrates Act Summons Other Documents

The Canadian Law Information Council is in the process of establishing a Plain Language Centre. As further information becomes available I will pass it on to you.

Comming on the next page there is a report on plain language prepared by the Canadian Law Information Council.

9 In the next issue I plan to have available an alphabetical listing of members.

10 Following is a list of persons for whom I do not have any address. If anyone knows their address would you please contact me:

Mr. B.P. Bhatnagar
Mr. L. Denyeng
Mr. A. Garneau, Q.C.
Mr. J.H. Hobbs
Mr. K.D. Kifli
Mr. O.A. Labodes
Mr. R. Modini
Miss P. Nadarasa
Mr. J.A. Oni

Please advise me of any errors on the list.

Peter J. Pagano
Secretary, C.A.L.C.

PLAIN LANGUAGE, LEGAL DOCUMENTS AND FORMS:

BACKGROUND INFORMATION

Gail S. Dykstra
Director, Public Legal Education
Canadian Law Information Council

Paper presented at the Canadian Institute for the Administration of Justice Seminar on Legislative Drafting and Interpretation, Ottawa, August 19 - 21, 1987

ABSTRACT

This paper has been divided into three sections. In the first section, the need for plain language is explained, a definition and distinctive characteristics of plain language are provided and some of the reasons for its widespread acceptance are given. The second section focuses attention on the types of documents and forms that are most frequently rewritten in plain language. Particular attention is paid to legislative involvement in plain language. The third section suggests the problems encountered by those trying to use plain language in Canada and tells what actions the Canadian Law Information Council (CLIC) is going to take to solve these problems.

The paper was prepared for the Canadian Institute for the Administration of Justice Seminar, "Legislative Drafting and Interpretation", August 19 - 21, 1987.

SECTION ONE

THE PROBLEM OF ACCESS TO THE LAW

Canada's commitment to provide access to the law must include a commitment to provide accessible legal language. Efforts to provide access to information on the law are stymied by a fundamental problem: the public does not understand the language of the law. The public believes that the traditional language of legal documents puts a barrier between them and their ability to read and understand:

* the legal documents they are asked to sign,

* the warranties and explanations of the law they need to read,

* the legal and administrative forms they must fill out, and

* the regulations and statutes they want to see.

The traditional language of the law intimidates the people it is written to serve. Legal language is perceived as hindering, not helping, the public gain access to information on their rights and responsibilities. It makes understanding, much less acting on these rights and responsibilities, far more difficult than it should be.

Some groups within the population are particularly disadvantaged by complex legal language: native persons, the poor and newcomers to Canada. In addition, the number of functional illiterates is growing, and their inability to use everyday legal documents and forms presents a major problem for Canadian society.

Because the traditional language of the law isn't easily understandable, the public has trouble using that language to express its ideas, concerns and priorities about our laws and legal system. The public cannot fully participate in the law reform dialogue if, by its language, the law remains hidden or intimidating.

PLAIN LANGUAGE AS A SOLUTION

The language of the law should be a bridge between the public and the law. Plain language can provide that bridge.

Plain language marries content and format to create documents that can be understood by anybody. It is an approach to writing that is more successful in helping readers understand what they're reading than is a more formal and traditional style of writing. It has been used successfully to translate technical or complex ideas in medicine, science and engineering into information accessible by all.

Applying plain language to legal writing can create a revolution in the way consumer documents, forms, regulations and even statutes are written. The objective is to create legal language that can be understood by the public so that information on the law can be communicated as effectively as possible.

The plain language approach to legal writing* creates documents that:

* are written in language that is appropriate for the needs of the reader and the purpose of the document,
* are designed so that important information can be easily located,
* can be understood the first time they are read, and
* are legally binding.

Plain language promotes both intellectual and physical access to the law and law reform. It helps people know and appreciate the message of law and it complements attempts to provide physical access to information on the law through legal aid, public legal education activities, government information services, advocacy services, and volunteer efforts.

RULES

Writing is a process. It involves planning what to write, selecting and organizing the content, writing, reviewing and revising a draft and evaluating the product. Using a plain language approach to creating legal documents also involves using a process. It is exactly the same process, with additional guidelines to help the writer make sure that the information on the law will be clearly and easily understood. The additional guidelines recognize that the language of the law can pose special problems for the public and the traditional layout of legal documents does not help readers find or understand information.

*For detailed explanation of plain language, see Plain Language and the Law: CLIC's Background Documents, published by CLIC in 1985, or the books and articles listed in the bibliography of this paper. New publications of note are: Legislation, Legal Rights and Plain English (Australia, 1986); Forms Design: An International Perspective (U.K., 1987) Plain English and the Law (Canada, 1986) and Plain Words for Consumers (U.K., 1984).

Experienced users of the plain language approach have prepared rules or guidelines for writers of legal documents. Mellinkoff lists seven rules, Wydick has eight. Redish recommends six steps, Goldfarb and Raymond describe ten rules to follow. A Canadian drafting expert, Robert Dick, details thirty-three rules.* The number of rules may vary but the principles stay the same from expert to expert.

What is different about plain language from the standards of good writing everyone hopes to achieve? Modern legislative drafting, contract preparation and form design techniques all call for clarity in the use of language. The difference between normal writing and plain language is that the readers' need for information always takes precedence in plain language.

For example, a booklet on small claims courts in Ontario might begin, "The Small Claims Court system is a division of the Ontario provincial court system and is properly called the Provincial Court, Civil Division." The booklet then spends three paragraphs describing the court system in Ontario.

There isn't anything wrong with learning how the courts work in Ontario. There is nothing difficult to understand about the first sentence of that booklet. There's only one thing wrong with it: nobody cares. Readers looking for information on how to sue someone don't care whether or not the the court is called "small claims" or "provincial court, civil division". The opening sentence in that brochure was written from an adminstrator's perspective.

All too often legal documents and administrative forms are written from the perspective of the writer's need to inform, rather than the reader's need to know. The right of the audience to inform themselves is paramount, overriding the writer's need to publish or gather information.

> **The central platform of the plain language movement is the right of the audience - the right to understand any document that confers a benefit or imposes an obligation. Due consideration of audience should be a feature of all documents. Sadly, however, much official writing largely ignores the needs of the audience. Official writers can forget that it is their obligation to make their material accessible to their readers. It is not the readers' responsibility to have to**

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*There isn't enough space to list all of the plain language legal writing rules, much less provide a side-by-side comparison. The manuals that describe the rules are easily available and essential reading for everyone interested in legal writing (Mellinkoff, 1982, xvii; Wydick, 1985,(i-ii); Redish, 1981, 2-28; Goldfarb and Raymond, 1982 130-158; Dick, 1985, ix-xi).

> **labour to discover the meaning. Plain English has brought the audience back into the sights of the writer, reminding us again of the ethical dimension of writing. Documents are not equitable if they cannot be understood by all parties who have to read them.**
>
> Law Reform Commission of Victoria (1986) p. 3.

Plain language is not a vocabulary exercise. It is not the simple replacement of 'bad' words (legalisms, foreign phrases, negative words, triplets, long words) with 'good' words (short words, common words, positive words). Vocabulary can be a problem, but vocabulary can be learned. If terms of art are essential to the meaning of the document, then a term of art can be used. It is the style of legal writing more than terms of art that confuse and intimidate.

Research has discovered that the public has more problems with the unfamiliar organization of text in legal documents, the difficult sentence structure and the lack of a shared context than they do with the vocabulary of the law. Unfamiliar patterns of capitalization, punctuation, paragraph structure and indentation combine to create barriers to understanding the legal document. Readers frequently can't figure out what action they are supposed to take after reading a legal document (especially regulations) because the writing style is devoid of actions and doesn't identify the actors.

CHARACTERISTICS OF PLAIN LANGUAGE

Plain language is based on the principles of clear writing as set out in books of composition such as Strunk and White, The Elements of Style.

Plain language looks for problems people might have in trying to understand legal language and legal documents.

Plain language uses language and layout to develop solutions to the problems.

Plain language uses ordinary speech unless there is a compelling reason not to use it.

Plain language uses

short sentences or, if needed, a mixture of sentence lengths to clearly explain an idea,

normal punctuation, capitalization and paragraph structure,
action verbs, the active voice and the present tense,

pronouns to indicate the reader and any other individuals or institutions in the document.

Plain language helps the reader understand the meaning of the document by using stories, scenarios and examples of action that must be taken, by whom, when and for what reason. It takes advantage of the research that has been done to find out how people learn: how information is processed and what techniques can be effective in enhancing the learning process.

USES FOR PLAIN LANGUAGE

Plain language has been applied to

* consumer contracts, residential leases and personal insurance policies
* legal and administrative forms prepared for public use
* regulations
* statutes
* bylaws
* explanations of the law and government services prepared for the public.

This section of the paper will look at the plain language experience with these documents with particular emphasis on legislative involvement in the plain language process. This paper can only point out major developments and must leave the detailed explanation to other books and papers. The bibliography at the end of this paper lists many excellent survey articles on plain language. The Canadian Law Information Council has collected many other books, papers, unpublished documents and research reports on this area. Readers interested in learning more about the subject are urged to contact the Canadian Law Information Council's Centre for Plain Language*.

CONSUMER CONTRACTS

The idea of plain language has been around for a long time.** In the past there were attempts to mandate change, but they lacked a catalyst that would propel the concept of plain language into the public consciousness and encourage writers of the law to develop the skills necessary to change their writing habits.

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*Suite 205, 600 Eglinton Avenue East, Toronto, Ontario, Canada M4P 1P3, telephone (416) 483-3802.

**There are any number of excellent articles outlining the history of plain language. See Redish, 1986, Felsenfeld 1982/2, Foers, 1987, Eagleson 1986, Mellinkoff, 1982, and especially Blake et al, 1986. In addition, the Canadian Law Information Council published an introduction to plain language and an overview of current activities in 1986.

The catalyst in the modern history of plain language was the consumer movement that developed in the United States in the 1960's and 1970's. Because of the enormous increase in government regulation, the amount of paperwork (largely forms) and the infusion of law into every aspect of daily life, a plain language approach to writing the law was seen as the only way to communicate essential information on the law to the public.

Of particular interest to the consumer movement were the types of contracts signed every day by the public for goods and services. It was strongly felt that in a balancing act between the consumer and business, business had all the power and the scales were unfairly tipped in its favour. Consumers were seen as powerless even though they had signed contracts because their inability to understand the language of the contract meant they couldn't stand up for their rights.

The traditional reliance on common law remedies regarding misuse or careless use of language in contracts was seen as ineffectual and biased in favour of big business. Early U.S. attempts to create a more balanced consumer-business relationship concentrated on increasing the amount of information available to consumers. The assumption was that with more information consumers would make better decisions and avoid some of the common preventable legal problems. By the 1970's it became clear that the problem was not just the amount of information; it was also the clarity of the information being provided to consumers.

In some countries, for example the U.K., Canada and most of Europe, the free market for goods and services was seen as the appropriate way to right the information balance between consumers and business. Goods and services sold with understandable contracts would prevail; confusing contracts would deter consumers from selecting products from companies that do not provide plain language contracts.

In the United States, a more interventionist approach was adopted by the federal government and some states. Plain language laws were passed calling for clear and concise language and easy to read formats in consumer contracts, leases and personal insurance contracts (life, home).

STATUS OF PLAIN LANGUAGE LAWS

As of July 1, 1987 nine states have passed plain language laws.* Generally these laws apply to residential leases and consumer contracts for goods and

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*CLIC surveyed the status of plain language legislation, regulations and resolutions in June 1987. Detailed information on each state's legislation/regulations is available from CLIC. This information will be updated regularly and information on current Canadian activity added.

States with plain language laws include: New York (1977), Connecticut and Maine (1979), New Jersey and Hawaii (1980), Minnesota and West Virginia (1981), Montana (1985 amended 1987), and Oregon (1987). The state of South Carolina passed a resolution regarding plain language in 1979. Sometimes South Carolina is included in the total of states with plain language laws.

services that fall within a specific dollar amount. $25,000 and $50,000 are the most frequently cited numbers. In some states life, health or home insurance are covered; in other states these are excluded. (See the discussion on insurance later in this paper).

Typical wording of the statutes calls for

> **... plain and clear English which can be readily understood by the public - Maine**
>
> 5 Me. Rev. Statutes Annotated 8002 9 (1986 Suppl.)
>
> **... every consumer contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall be appropriately divided and captioned by its various sections ... - Minnesota**
>
> 325G.29 Minnesota Plain Language Contract Act

The states' statutes can be put into two categories. A minority of statutes call for objective tests to determine appropriateness of the contract or lease. The majority of statutes call for subjective tests that provide general guidelines, but do not count number of words in a sentence or number of sentences in a paragraph in determining the appropriateness of the contract.

> **... Specific guidelines and a readability formula may appear to be objective and to ease the burden of drafters, but they do not ensure comprehensibility and cannot be used as rewriting guides ... The general approach, on the other hand, gives business a few loose guidelines.**
>
> Plain words for Consumers (1984, 34)

Opposition to these laws was originally based on three points:

* The statute would cause unnecessary litigation and clog the courts,
* The costs of compliance would be large and impose unfair burdens on small businesses in particular,
* Contracts and leases are so complex they must stay in traditional legal language.

The litigation has failed to materialize. The cost of compliance has become a standard business expense. As for the argument about traditional legal language, that argument will probably continue into the twenty-second century.

Current opposition to plain language laws concentrates on criticizing the objective test standard as unworkable. Harold Lloyd's article in the Law

Library Journal, "Plain Language Statutes: Plain Good Sense or Plain Nonsense?", is characteristic of those who feel these statutes are unworkable and unwarranted. He does, however, feel plain language statutes might be an impetus to the better drafting of statutes and regulations.

> **Although private law subjective plain language statutes would not suffer from the unique problems that plague statutes which simply focus upon words simpliciter, such statutes, of course, would be subject to the market force, economic experimentation, and transcendency objections discussed supra and, for these reasons, would prove unacceptable. However, in one area of public law, subjective plain language statutes might be welcome: requiring legislation and rule making to be clear and effective.**
>
> Lloyd, p. 694

UNIFORM PLAIN LANGUAGE LAW

In the United States a uniform plain language law has been proposed and is currently being considered. The proposal for a "Uniform Consumer Clear Information Act" states:

> **The purpose of this act is to assure that individuals who contract with professionals respecting goods, services or money will be more adequately informed of the rights and duties fixed by the forms they sign.**
>
> **The supplier ... shall provide an agreement that is sufficiently clear using, so far as practicable, words with common meanings; is appropriately divided into sections and paragraphs and captioned by headings; and uses 10-point or larger type, with at least one point of leading between lines, and ink that contrasts sufficiently with the paper.**
>
> **A needed technical term may be used whenever there is no satisfactory clear substitute.**
>
> **In determining whether an agreement complies with <the act> a court shall take into account such specific deficiencies as**
>
> * ambiguity
> * unwarranted vagueness
> * synonyms or other redundancies

* **double negatives**

* **exceptions to exceptions**

* **exceptions expressed in smaller type**

* **over-use of nominalizations where equivalent verbs are available**

* **over-use of the passive voice**

* **unnecessarily long sentences**

* **awkward arrangement**

Draft Uniform Consumer Clear Information Act, supplied to the author by George Hathaway, Counsel, Detroit Edison and Chair of the Michigan Bar Association's Plain Language Committee

The basic fine proposed by this act is $50.00 plus damages and lawyers' fees.

Reed Dickerson, Indiana University, is a recognized expert in legal drafting. His support for the uniform law is based on the growing problems faced by companies attempting to meet different standards and tests of plain language as more state legislatures pass plain language statutes.

> **Mandating it <plain language> by statute should be confined to so-called "consumer" instruments, such as leases, warranties, and insurance policies. Elsewhere simplification must make its peace with the exigencies of substance ... Because these laws (plain language statutes) differ widely in their requirements, they create undesirable difficulties for companies operating in more than one state.**

Letter from Reed Dickerson, March 6, 1987

The debate over the usefulness of statutes requiring plain language contracts is not finished. A number of U.S. states are considering passing such legislation. The National Consumer Council of the U.K. strongly advocates the passage of such legislation. In Canada only one province has had a bill on plain language contracts introduced. An M.P.P. in Ontario introduced a private members bill; it did not pass.

U. K. LAW

In the U.K. the National Consumer Council has been a leading force in the development of plain language legal documents and forms. In conjunction with the Plain English Campaign they have prepared sample documents and undertaken a national plain language public awareness program. The U.K. is regarded as being a well-spring of information on plain language and alive with exciting plain language activities.

The National Consumer Council now advocates the adoption of a plain language law for consumer contracts. They no longer feel that market forces will encourage voluntary compliance with plain language principles.

> The great strength of a plain language law along the moderate lines we have proposed would be its catalyst effect. Legislation would, at the very least, overcome inertia and make firms and traders review their documents. For those now reluctant to be the only ones to attempt change, it would guarantee universal coverage, with all contracts simultaneously adopting a new approach. The unspecific test of acceptability we propose - 'clear and readily understandable language', 'words with common and everyday meanings' - would keep to a minimum the effort required of businesses, being easy to comply with while at the same time promoting a basic acceptable standard.
>
> National Consumer Council, 1984, p. 43

> A Plain Language Act for this country would go a long way to bring plain English into consumer and housing contracts. Its strength would lie in its largely declaratory nature, with a deliberately low level of actual enforcement. As a law, it would declare a standard. Most businesses would seek to meet the standard, but would not be slavishly bound by detailed rules and regulations. They would not be hounded or pressured into getting everything just right. Nor would they be penalized when they had made genuine efforts to comply. The law would act as a definite prod and encouragement, but it would not amount to any sort of unacceptable imposition.
>
> National Consumer Council, 1984, p. 48 .rm75

IMPACT OF PLAIN LANGUAGE ON CONTRACTS

What has been the effect of preparing consumer contracts and leases in plain language? The activities listed below are symptomatic of the widespread acceptance of plain language consumer contracts in many many countries.

* Banks and insurance companies have accepted the idea of plain language and currently prepare their consumer information in that style. Citibank is generally regarded as being the catalyst for much of the U.S. plain language activity. Most U.S. banks, and many in Canada and the U.K., now try to use plain language principles as their writing standard. Ninety-five percent of all U.S. insurance companies use plain language. Companies doing business in multiple jurisdictions are faced with often conflicting plain language standards.

* Contracts for other consumer goods, such as cars and appliances, are written in plain language. Especially in the U.S., the list of companies using plain language consultants to prepare rewritten contracts and related consumer information reads like a who's who of the largest consumer and public utility companies.

* Leases in plain language have proven to be very popular with tenants and even landlords. In Canada two examples of plain language residential leases are the standard Quebec residential lease and the new CLIC plain language lease. CLIC's lease was done as a demonstration project with Toronto's municipal housing authority, Cityhome.

INSURANCE

Regulations governing the personal insurance contract exist in 32 U.S. states and the District of Columbia. These regulations require that the policy meet specific readability standards based on the National Association of Insurance Companies model. Canada doesn't regulate plain language in insurance contracts. However, many companies do use plain language in their contracts and forms.

FORMS

Although "access to justice" provides the cornerstone for the plain language movement, the cement has turned out to be the enormous savings in time and money created by a switch to plain language forms.

Plain language forms save money. Here are examples from Robert Eagleson's 1985 survey of cost savings due to the use of a plain language approach to rewrite legal documents and forms.

* In the U.K., the Department of Health and Social Security introduced plain language application forms for legal aid in 1984. It cost the Department about $50,055 to develop and test the forms, but they saved $2,917,290 in staff time every year.

* The Department of Defense (U.K.) receives 750,000 claims for travelling expenses per year from its civilian employees. By rewriting the form into plain language, the error rate was cut by 50%, the time needed to fill it out was reduced by 10% and the time needed to process it by 15%. Preparing the plain language form cost $23,265 but it saved about $778,320 per year.

* Insurance companies in Australia have found that it takes less time to train new staff if the forms they process are written in plain language. The advice given clients is more accurate and junior staff interrupt senior staff with questions less frequently.

In Canada two major plain language form revisions stand out as examples of what can be done.

* Quebec has a plain language tax form created by Revenue Quebec in 1982 and in use since then. The entire package of tax information and forms was redesigned and tested by Revenue Quebec and the communication consultation firm they hired. The tax form is easy to use and has proven to be easy to administer.

* Ontario is creating a plain language drivers and vehicles registration form. This form, filled out by three million people over the course of a year, will be revised by the Ministry and tested in the summer/fall of 1987. The Ministry has adopted a plain language approach for all of its new public- use forms and plans to revise its old forms to meet their plain language standards.

RESEARCH

The leading centres for plain language form design are the U.K. and the U.S. Privately and publicly funded plain language research agencies are exploring how and why the public has trouble with forms and are learning the best methods to solve those problems.

As a result of Sir Derek Rayner's study (1981-82) on government forms in the U.K., every government department is now required to report annually on what steps they have taken to eliminate unnecessary paperwork for the public and to provide their forms in understandable language. Other results of the process Rayner started are forms revision research and design departments created in many ministries and a wholesale rewriting of administrative forms by government departments. The Rayner report was initiated by Prime Minister Thatcher, and plain language has continued to receive her wholehearted support.

As an example of the worldwide use of plain language forms, the Inland Revenue recently published a fascinating study of tax forms around the world. The study was the result of a Civil Service Travelling Fellowship given to J. M. Foers of the department. His study compares the plain language forms design experience in many countries and reviews the current state of the research into forms design.

Plain language forms have become good business. Cost savings, increased productivity and heightened customer satisfaction have led companies to invest money in redoing their forms as well as their contracts. Now, public service companies - gas, telephone, electricity - have begun to see the advantages of plain language. Government departments with heavy reliance on forms for user contact are considering redoing their forms in plain language.*

REGULATIONS

President Carter's orders that

> **... regulations should be as simple and clear as possible**
>
> U.S. Executive Order 12044, 23 March 1978

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* There are excellent summaries of current plain language form activities by government and business in Eagleson (1986), Foers (1987), Eagleson (1985) and in every edition of the Document Design Center's Simply Stated.

> **...(government forms) should be as short as possible and should elicit information in a simple straightforward fashion**
>
> U.S. Executive Order 12174, 30 November 1979

paved the way for a widespread regulatory reform program in the United States. Even though President Reagan shifted the emphasis from a consumer's perspective to a business orientation ("get rid of paperwork"), the impetus for change prevailed and plain language has become an accepted standard for consumer-oriented regulation writing.

It is an accepted standard but one that is not widely practised.

Regulations, whether in the U.S., the U.K., Australia, or even Canada, are hard for the public to understand. The account by Rudolf Flesch about his work creating plain language regulations is illuminating. It provides example after example of consumer-oriented regulations that were impossible to understand until redesigned in plain language. Flesch's reliance on the readability formula he created as the guideline for producing plain language documents has been widely criticized. Even though his method might not be really useful in creating plain language regulations, the story of his struggle is well worth reading.

Only the U.S. has relied as heavily on legislated action to improve the understandability of its regulations. Canada and other Commonwealth countries have generally relied on the gradual improvement of legal writing standards to improve regulations. However, in some jurisdictions Freedom of Information legislation requires information to be "clear and understandable". Perhaps this will prove to be the impetus needed to focus more attention on the need to review and revise regulations to make them more clear. Those regulations that need to be read by the public ought to be prepared in plain language.

STATUTES

It is tempting to set out the arguments, pro and con, about the application of plain language principles to legislation as a series of side by side quotes. They could be lined up as if they were soldiers marching down the page. The pro quotes arrayed to the left; the con, to the right. There they would be, point and counterpoint, shot and answering volley: each side intent upon the rightness of their position and, I fear, deaf to the logic of the other.

For every statement that plain language can be applied to preparing legislation, there is an opposing statement that argues against. The quotes are usually passionate, and evidence of the strong emotions and the opposing views of the world, language and legal process held by authors on both sides.

PRO

To date, much of the effort in plain English has been directed to redrafting general commercial and administrative documents which have wide distribution in the community, such as insurance policies, residential leases, tax returns, and claim forms for social service benefits...

More and more, however, the need has been felt to tackle legislative documents, not just for their own deficiencies but also because they wield such an influence on other official writing. Not only do they sometimes dictate the words that have to be used, but as a result of their status, public servants are tempted to imitate their style of language. While there have been some endeavors at improving legislation elsewhere, none matches this systematic investigation of the problem by the Victorian Government through its plain English reference. To this extent the reference is in advance of developments elsewhere. It has already attracted interest and support from overseas.

Law Reform Commission of Victoria, p. 3

CON

It is often observed that legislation should be readily intelligible not only to the lawyer, but also the layman. That may be the ideal. Regrettably it is also a pipe dream for all but the most simple of matters. Complicated matters are neither easily understood nor explained. And it is not only experts that have to deal with complicated matters. Average house-holders and housewives are confronted with but cannot be expected to master the intricacies of the law governing their tenancies any more than the workings of their television sets. The sooner such fanciful notions are abandoned the quicker we should be able to get on with the business of achieving such a measure of simplicity and intelligibility as is attainable.

Nazareth, p. 5

The proponents of plain language would argue that plain language must be applied to statutes because:

* The statutes are used by the public and as the end users, and the base upon which all government rests, their needs for understandable language should be paramount.

* The statutes are quoted, and certainly made reference to, in regulations, contracts, forms and other important documents. By clarifying the statutes' language, the

language of these other documents can be clarified more easily.

The proponents of the status quo would argue that the status quo must be maintained because

* The need for precision and accuracy in writing legislation is so great it makes simplification of the language impossible.

* Convention, judicial review and acceptance of traditional language and document format make changing the language or format of legislation inadvisable.

* Statutes must be consistent. If the old statute doesn't use plain language, then the new amendment can't either.

Those are the arguments **for** doing something - either changing the language or keeping it the same. Most of the authors engaged in this debate spend their time rebutting the arguments of the opposite side. And everyone uses examples to prove their points. It is tempting to classify these as the "Yes, you can - No, you can't arguments". They are referred to in this paper as the traditionalists and the innovators, since all other names are not borne out by a study of the literature. The sides are not neatly polarized along a lawyer - non-lawyer, drafter - non-drafter axis. The argument looks something like this:

Traditionalists	**Innovators**
The courts insist we use this language.	No they don't. Most language isn't defined by law or judicial review, you just think it is.
The real users of statutes are lawyers or judges. They understand traditional legal language.	Don't be so sure of that. The public reads statutes all of the time. Furthermore, they're the ones that are paying for the statutes. They ought to be able to read them.
There isn't time. Bills are drafted in a hurry.	Most bills are drafted in a hurry, but statutes can be revised. There is always a lengthy hearings and revision process in which the bills can be reviewed and revised to make their language clearer.

Most laws have troublesome exceptions and other provisions that make simplistic language impossible.	They can still be worked on so they are more clear.
Tradition demands detail and allows for ambiguity of purpose in legislation. Governments and legislators expect it.	True, but these traditions can be changed.
Radical changes in the style of language would require attitudinal, constitutional, and procedural changes at all levels in society.	True.

REVISION ACTIVITIES

A number of jurisdictions are involved in plain language statute revision programs. In Australia the Attorney General of the State of Victoria announced that from 1985 on, Victorian statutes would be simplified. He recommended the Law Reform Commission of Victoria undertake a sweeping study of the statutes and make specific recommendations for future plain language drafting. The Commission hired Dr. Robert Eagleson, an authority on language. Dr. Eagleson and his staff are thoroughly investigating the situation regarding plain language worldwide, contacting drafters and plain language professionals and preparing detailed examinations of why and how plain language can improve the comprehensibility of the statutes by everyone who uses them, public and lawyer alike.

The work of the Commission is presented in a discussion paper Legislation, Legal Rights and Plain English (Melbourne, 1986). The Commission has also made available unpublished working papers and reports that provide detailed guidelines for plain language drafting of statutes, forms and public legal education materials. Their final report is expected in 1987.

In the United States, Minnesota has set up a Statute Revision Office and is working on rewriting their statutes and preparing their current bills in plain language. A team of lawyers and a language consultant use a detailed drafting manual to revise 10 to 15 chapters of the Statutes of Minnesota every year, as well as to prepare bills for introduction in the legislature. They are also working on preparing administrative rules in plain language.

In New Zealand the Law Reform Commission has been newly created to review and revise both current legislation and the statutes in plain language. The Commission was just created in 1985 it and has only been operating since December 1986. They are so new they have yet to decide precisely how they will operate in cooperation with the parliamentary counsel. Their mandate is to "advise the Minister of Justice on ways to make the law as understandable and accessible as possible and simplify the expression and content of the law as much as is practicable."

Montgomery County, Virginia is writing their municipal by-laws in plain language. Other jurisdictions in the U.S. are also using plain language communication techniques.

In Canada a bill was introduced in 1986 by Brian Lee, MLA (Calgary Buffalo) calling for the creation of a committee to review all bills which had passed second reading in the Legislative Assembly of Alberta. The review committee would consist of representatives of the general public, and experts in English and legal drafting. The bill did not pass.

In his paper, "The Interaction of Language and the Legal Process," (unpublished 1986) Norman Larsen makes a number of practical, easy-to-apply suggestions to reformat and rewrite the statutes of Manitoba. He was at that time the director of the Validation Project for the Ministry of the Attorney General, given responsibility for creating the new French-English revision of the statutes. He suggests that far from being

> **...an unnecessary and onerous task <it is> a once-in-a-lifetime opportunity to review the entire process, including all the legislation, and to improve it.**
>
> Larsen p. 2

He goes on to suggest that a few statutes of obvious public interest such as landlord-tenant and highway traffic, be redone in plain language. It is, in his opinion, more important to get the 'big demand statutes' into plain language rather than trying to systematically redo all of the statutes.

Most parliamentary counsel and legislative drafting sections have adopted modern drafting style which is a great improvement on the older drafting style with its convoluted expressions and antiquated language. While not exactly "plain language", drafting and drafters are concerned with public access and have made attempts to provide the public with more understandable statutes and bills.

OBSERVATIONS

It isn't the purpose of this paper to settle the debate between the plain language innovators and the drafting traditionalists by declaring a winner. I doubt if there are winners or losers in this debate. It isn't even the purpose of this paper to outline in any detail all the arguments of either side. There are many detailed examinations of the topic listed in the bibliography and readers are urged to consult them.

There is room in this paper to make a few observations.

* If traditionalism and plain language stand at the ends of the spectrum, surely there is great room for clarification to occupy the

middle ground. With the exception of the religious texts of this world, works of great literary merit and your favourite children's story, almost every piece of writing can be improved, even statutes.

* The civil law tradition offers drafters of legislation a different perspective and one that would benefit Canadian drafters in particular. The debate between plain language innovators and drafting traditionalists could profit by the intercession of the civilian's approach to writing the law. The need to create common law statutes in French might offer Canadians an opportunity to develop the "clarified" approach to drafting -- a pleasing compromise between the two ends of the drafting spectrum.

  Much more needs to be learned by the common law world about the civil law approach to drafting. This topic should be a priority on drafting's list of potential research topics.*

* To call on drafters to drastically change the way the law is written, without at the same time working toward changing the minds of the judiciary, legislators, government officials, the legal profession and the public is not only unfair, it won't work. Our laws, and the way our laws are written, are a function of our society: both must reexamine their goals in order to create a climate for access to the law to be a reality.

* Just because you can write a sentence doesn't mean you can write a good novel. Just because you went to law school doesn't mean you can write good contracts, leases and statutes. Not enough attention is given to "writing the law" in law schools or in continuing legal education programs. Lawyers are not trained to recognize and deal with writing problems. They receive no information on why and how people have

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* Nazareth (1986) lists a number of useful sources for those interested in comparing the two drafting styles. His article comments on the work of Dale and Renton in particular.

problems understanding the language and format of the law. Communication skills must receive higher priority in the law school or bar admission curricula and special courses on the preparation of legal documents must be provided.

SECTION THREE

CLIC'S PLAIN LANGUAGE CENTRE

The Canadian Law Information Council has created a centre for plain language activities.

After considering the present use of plain language in Canada and the experience of the Commonwealth and of the United States, CLIC has identified the critical missing element that impedes the acceptance of plain language in Canada. We need a plain language catalyst, a well-defined program which will fill the identified need for greater awareness of plain language in Canada; an information-resource service on plain language activities and materials, and a consulting service capable of providing research, editing, design and training to those preparing legal documents and forms.

The Plain Language Centre is intended to meet these needs by:

* creating an awareness of plain language among the public and those who prepare legal and administrative documents and forms, and

* providing the tools, information, advice, training and research needed to use the plain language approach to communicating information on the law.

The long-term objective is to create a self-sustaining CLIC Plain Language Centre to provide consulting services to governments, business, consumer groups, unions, the legal profession, and community and public legal education (PLE) groups.

Although specific activities and service priorities will be recommended by an Advisory Panel, CLIC has identified basic project directions and calculated an approximate cost to achieve these objectives. The Centre would be product- and service-oriented, offering a variety of practical solutions to the problems faced by those who want to use plain language in the legal profession, government, business, PLE and consumer groups. During the three years of the program, CLIC will evaluate its activities and determine if they have met their objectives. CLIC will also put in place regular reporting mechanisms.

Each project will act as one of the building blocks to secure a foundation for the establishment of an ongoing Centre. During the pilot project the Advisory Panel and CLIC will work together to find contract and service funding to make the Centre self-sustaining in year four.

WHAT WILL CLIC DO?

The priorities for the CLIC plain language program are to work on consumer-oriented legal documents and administrative forms. These widely used

documents must be made easier to use and easier to understand. It goes without saying that explanations of the law and government services for the public must be available in plain language. CLIC will

* teach those who prepare legal documents and administrative forms how to use plain language through "How To" workshops and training materials that we will create;

* let people use the experience of others in solving their own communication problems by providing information services and a comprehensive resource collection of plain language samples, instruction manuals and descriptions of current plain language activities;

* create a CLIC plain language contract agency.

TRAINING

In order to make sure our plain language program meets the needs of those who prepare legal documents, CLIC will undertake an extensive analysis of how lawyers are trained to write, what types of instruction would be most helpful, and when in the legal education process it would be most appropriate to provide plain language instructional modules, or full courses, for use in law schools and continuing legal education programs.

We will be doing needs assessments on the training needs of government officials and producers of public legal education materials in order to create "how to" workshops on writing and form design to meet their needs.

CLIC is prepared to invest the time and energy needed to undertake a substantial research phase prior to designing "how to" courses or creating instructional guides. Training, if it's ever to be used six weeks after the course is given, must solve real life problems. In plain language terms, CLIC needs to find solutions to the common writing problems that occur every day. We will be calling on those who face these problems to help us find solutions. Professors of law, government form designers, lawyers and public legal educators from both common and civil law jurisdictions will be asked to help us in our research and to assist in the development and testing of 'how to' courses.

SAMPLES AND INFORMATION SERVICES

When the Bank of Nova Scotia and the Royal Insurance Company were redrafting their consumer contracts, they worked in isolation. Neither was aware of the other's work even though they were in the same city, in fact, within a few blocks of one another. That was 1978-1979. It's 1987 and isolation is still a problem.

Those who have decided to use plain language want and can learn from each other's experience.

* Seeing how someone else designed a tax form can help you redesign yours.

* Seeing a plain language residential lease and hearing about the process that was used to create it, can shrink your four-page single spaced lease to a more manageable size.

A comprehensive bank of samples of plain language legal documents and administrative forms is urgently required. Being able to use other people's documents to guide you through the plain language drafting process will save time and money and will increase the likelihood that your new plain language document will be a success.

CLIC will survey the existing plain language samples and determine where there are gaps. New samples of documents and forms will be created to fill these gaps and to add to our knowledge of how the plain language process works. It is essential that CLIC develop sufficient expertise to help the public and private sectors accurately predict what staff resources, time and money will be required to initiate a plain language re-do of their documents and forms.

Another solution to the problem of isolation will be the communication tools CLIC will create to put people in touch with others interested in plain language. Newsletters and a database of information on current activities, publications and conferences will connect people with plain language interests and experience.

CLIC will be able to maintain a comprehensive view of the plain language experience in Canada and monitor the areas that need plain language attention. Calling on the expertise of the CLIC plain language advisory board and experts in the field, CLIC will be able to effectively target its research efforts and produce practical recommendations for future action.

CONSULTATION SERVICES

Ever since CLIC started researching plain language, the Council has been asked to undertake fee-for-service projects. We will respond to this growing need by investigating the possibility of providing a range of plain language consultation services. CLIC will establish an agency that will be able to tackle small or large plain language redesign/rewrite projects, as well as creating plain language forms and documents from scratch.

CLIC will also be able to help governments and business assess their need for plain language documents and provide guidance on selecting communication consultants and how best to introduce plain language documents to their users/clients.

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The Departmental Solicitor and the Parliamentary Counsel Office

(Extracts from a paper by Mr W Iles, Chief Parliamentary Counsel)

1. The prime role of a departmental solicitor in relation to the Parliamentary Counsel Office is to give instructions to that Office for the drafting of Bills and regulations.

2. In addition, the departmental solicitor usually—
   (a) Participates in conferences on the draft Bill or the draft regulations:
   (b) Considers and comments on draft Bills and draft regulations as they are produced by Parliamentary Counsel:
   (c) Acts as a co-ordinator of Departmental comments on the draft Bill or draft regulations:
   (d) Settles the form of the draft Bill or the draft regulations with Parliamentary Counsel:
   (e) In the case of a draft Bill,—
      (i) Attends at the Cabinet Legislation Committee as one of the Departmental team when the draft Bill is considered by that Committee:
      (ii) Participates in the preparation of the Minister's speech notes:
      (iii) Attends in the House on the introduction of the Bill:
      (iv) Attends the hearings of the Select Committee:
      (v) Assists in the preparation of the departmental report to the Select Committee:
      (vi) Settles with Parliamentary Counsel the form of any amendments required by the Select Committee:
      (vii) Attends in the House on the second reading of the Bill:
      (viii) Attends in the House on the Committee stage of the Bill and settles with Parliamentary Counsel the form of any amendments required by the Minister to be made in the Committee of the Whole. (This may require the Departmental Solicitor to give instructions to Parliamentary Counsel for the preparation of a Supplementary Order Paper or to participate on the bench in the House on the preparation of an instant amendment.)
   (f) Establishes or maintains a good relationship both with officials of the Departmental Solicitor's own department and Parliamentary Counsel with a view to participating in the preparation of the Bill or regulations as a member of an effective and harmonious team:
   (g) Gives advance notice to Parliamentary Counsel of any proposed Bill or proposed regulations where the demands placed on Parliamentary Counsel either by the content of the Bill or by time or by both make advance notice necessary or appropriate. Parliamentary Counsel

specialise to some degree and a little advance notice may ensure that the appropriate specialist is available.

The Giving of Instructions

3. A Department may give instructions to the Parliamentary Counsel Office only if—
   (a) In the case of a Bill, the Cabinet Legislation Committee or Cabinet has approved the preparation of that Bill; or
   (b) In the case of regulations, the Minister in charge of the Department has authorised the preparation of the regulations.

Departmental Drafts and the "Pure" View

4. The "pure" view is that the instructions for the preparation of a bill or regulations should be in the form of ordinary narrative prose and should not, in any circumstances, be in the form of a draft bill or draft regulations.

5. The situation in the New Zealand Parliamentary Counsel Office is that it has not been "pure" in this sense for many years. There is probably an historical reason for this. The Parliamentary Counsel Office used to draft all Bills but very few regulations. Regulations were drafted in the departments by the departmental solicitors and vetted by the Crown Law Office. This practice led to a variety of styles. In the 1950s the then Attorney-General became dissatisfied with this variety of styles and he directed that no regulations were to be submitted to Cabinet unless they had been drafted in the Parliamentary Counsel Office. The staff of the Parliamentary Counsel Office was not increased to take account of this influx of work and the departments had in any event been used to preparing drafts of their own regulations. In many cases they continued to send drafts of regulations to the Parliamentary Counsel Office.

6. Professor Elmer A. Driedger has described in *The Composition of Legislation* (2d ed rev 1976) xix to xx the problems that Parliamentary Counsel face on receiving instructions in the form of a draft Bill. Professor Driedger puts it this way:

> "If he receives a draft, he must construe and interpret what may be an imperfect statement, and he may misunderstand what is intended. A draftsman who is presented with a draft measure would not be discharging his duties if he assumed that a proper legislative plan had been conceived and that proper provisions had been chosen to carry it out; he cannot be expected to confine himself merely to a superficial examination of the outward form of the measure. The drafting of legislation does not consist in polishing what others have written. . . .
>
> Even assuming that a perfect bill is submitted to the draftsman, he must still subject it to the complete drafting process, for how else can he discover that it is a perfect bill and satisfy himself that it will

give legislative effect to the intended policy? Draft measures prepared by inexperienced persons are usually defective, and then the draftsman must spend much time in undoing what has been done. This is particularly awkward where the draft has been circulated and discussed before submission to the draftsman, because those who have seen it expect that the final draft will closely resemble it and will resist any attempts to alter its fundamental structure."

7. The English pamphlet, *The Preparation of Bills* (1948), contains at p8 the following pertinent comment:

> "Nothing is more hampering to the Parliamentary Counsel, when the drafting stage is reached, than to be obliged to build what is usually a complex structure round 'sacred phrases' or forms of words which have become sacrosanct by reason of their having been agreed upon in Cabinet or in one of its committees. A still more serious objection to agreed forms of words of this kind is that they often turn out to represent agreement upon words only, concealing the fact that no real compromise or decision has been reached between conflicting views upon some important question."

8. A particular problem that has arisen in New Zealand is where a department prepares its own draft and then agrees on its terms with an interested party.

9. If, as has happened, Parliamentary Counsel points out—
   (a) That part of the draft is nonsense; or
   (b) That part of the draft, in the case of regulations, is ultra vires the empowering Act; or
   (c) That one part of the draft contradicts another; or
   (d) That part of the draft achieves the exact opposite of what the parties intended,—

   the Department which prepared the draft may be embarrassed.

10. Despite these comments, departmental drafts, particularly of regulations, are a fact of life in New Zealand and, in some cases, departments have achieved a good standard. Accordingly it has not been the practice of the Parliamentary Counsel Office to reject instructions that are accompanied by a draft of the proposed Bill or a draft of the proposed regulations.

11. What needs to be remembered is that the submission of a draft Bill or draft regulations is not a substitute for proper instructions. Lengthy drafts accompanied by not one word of explanation concerning the purpose of the draft do not constitute proper instructions to the Parliamentary Counsel Office. They are usually returned to the department.

Proper Instructions

12. This brings me to the question of what constitutes proper instructions. Proper instructions should—

(a) In the case of a Bill, indicate that the drafting of the Bill has been authorised by the Cabinet Legislation Committee or by the Cabinet or, in the case of regulations, indicate that the drafting of the regulations has been authorised by the Minister; in the case of regulations, the authority should preferably be a written authority signed by the Minister;

(b) Indicate the principal objectives intended to be achieved by the Bill or regulations;

(c) Contain all relevant background material relating to the proposals to be included in the Bill or regulations, including all known legal implications and difficulties;

(d) Contain references to any relevant cases, whether or not they agree with the view favoured by the Department;

(e) Be accompanied by copies of any relevant legal opinions that have been obtained, whether or not they agree with the view favoured by the Department;

(f) In the case of an amending Bill or amending regulations, deal separately with each proposed amendment;

(g) If any matters are unresolved, indicate what they are and when the additional instructions in relation to them are likely to be given;

(h) Suggest the penalties to be imposed for any offence;

(i) Indicate existing legislation that will require amendment or consideration to give effect to the proposal;

(j) Indicate any known consequential amendment;

(k) Indicate any transitional or savings provisions required;

(l) If the Bill or regulations are to come into force on a particular date, indicate that date and the reasons for choosing it;

(m) If the Bill or the regulations arise out of a report of a Commission or committee, either refer to the published report of that Commission or committee or, if it has not been published, supply a copy of it or of the relevant portions of it;

(n) If the Bill or the regulations impinge on the activities of another department, indicate the extent to which that department has been consulted;

(o) Give the names of the departmental officers and the departmental solicitor who will be dealing with the matter.

13. Departmental solicitors should remember that Parliamentary Counsel not only have the function of drafting Government Bills and statutory regulations. They have in addition the function of drafting amendments to Government Bills during their passage through the House. Some departmental solicitors have, in making reports to Select Committees, included drafts of proposed amendments to Government Bills. They should not do this. They should instead instruct Parliamentary Counsel to prepare any amendments thought necessary.

14. As a general rule a Bill is liable to be amended only when it is before a Select Committee or before the Committee of the Whole. Parliamentary

Counsel always attend when a Bill is being deliberated on by a Select Committee or when it is being considered in the Committee of the Whole. Parliamentary Counsel attend only some of the hearings conducted by a Select Committee of the submissions made on a Bill. They do not usually attend at any other stages in the consideration of the Bill by Parliament.

Departmental Officers

15. The New South Wales instructions in relation to the drafting of Bills contains the following comments about departmental officers:

> "Departmental officers attending conferences for the settling of Bills should have the detailed knowledge, ability and authority to make decisions on most of the questions that inevitably arise in drafting. If their decisions are to be reviewed by superior Departmental officers, their function becomes not much more than that of a messenger, and the drafting of the Bill is greatly delayed by the draftsman having to await confirmation of their highly tentative decisions. Perhaps even worse is for the draftsman's time to be wasted and the drafting of the Bill consequently delayed because 2 or more Departmental officers attending a conference argue at length about the decision to be given on some question raised by the draftsman. A Departmental officer attending on the settlement of a proposed amending bill should particularly have a detailed knowledge of the provisions and operation of the Principal Act to be amended."

These comments apply with equal force in New Zealand. Continuity within a Department is very important.

Prompt Consideration of Drafts

16. The New South Wales instructions contain the following warning about the prompt consideration by departmental officers of draft Bills:

> "Prompt consideration of these drafts should be given and the draftsman should be quickly advised of any alteration required. It should be realised that the draftsman is usually working on 3 or 4 bills at the same time and that, if queries raised by him or drafts prepared by him are not considered promptly when referred to the department concerned, the continuity of his consideration of the proposed bill is interrupted and subsequent delay occurs in picking up the threads."

This warning applies with equal force in New Zealand.

Estimates of time

17. Departmental instructions should not give estimates of the time that it will take to prepare a draft Bill or a draft set of regulations without consulting with the responsible Parliamentary Counsel in the Parliamentary Counsel Office. The time needed to prepare the draft may be much greater than the

department expects, or the Parliamentary Counsel involved may be required to give priority to other Bills or regulations.

Collaboration

18. The best Bills and the best regulations result from proper collaboration between Parliamentary Counsel and officers of the sponsoring department.

How not to train legislative draftsmen: 'The Legislative Drafting (Training) Course Bill, 1987'

Over the last decade or so, the Commonwealth Secretariat through the auspices of the Commonwealth Fund for Technical Cooperation (CFTC) and with the co-operation of Commonwealth governments has provided facilities for the institutional training of legislative draftsmen. It is common knowledge, that there are some who hold the strong and inflexible 'traditionalist' view that legislative drafting does not lead itself to class-room teaching and is best learned at the elbow of a 'master'. A different school, to which we at the Commonwealth Secretariat subscribe, while not quarrelling with the view that drafting is best learnt by 'doing' believe that in the absence of adequate 'on-the-job' training facilities, class-room teaching of manageable numbers of trainee draftsmen, followed by a period of in-service training is capable of producing good results.

The CFTC sponsored legislative programme, in adopting this approach has produced over three hundred legislative draftsmen and women which has helped to bridge the very serious gap in the shortage of trained legislative draftsmen in the drafting establishment of many developing Commonwealth countries. Many graduates of the programme have risen to become First Parliamentary Counsels, High Court Judges, Attorneys-General and even a Prime Minister!

At the end of one such training course which has recently concluded in the Caribbean, what follows was composed and presented as a parting gesture by the trainees to the course director, obviously much beloved and revered by them, and was clearly intended to humour him by its light-heartedness.

It only remains to be added that to preserve confidentiality and to avoid any embarrassments being caused, the true identities of the trainees who were drawn from sundry parts of the Commonwealth (Bangladesh, Barbados, Botswana, Cayman Islands, Ghana, Greneda, Kenya, Lesotho, Malaysia, Montserrat, Papua New Guinea, Tanzania and Trinidad & Tobago), about half of whom were women, have been somewhat doctored and any resemblance to real persons should therefore be treated as entirely co-incidental. However, the substance of the 'Legislative Drafting Course Bill, 1987' is original and entirely the joint effort of the trainees themselves:

LEGISLATIVE DRAFTING COURSE BILL, 1987.

ARRANGEMENT OF CLAUSES.

CLAUSE

1. Short title.
2. Interpretation.
3. Student's obligations.
4. Lecturer's obligations.
5. Penalties.

- entitled -

AN ACT to enable the participants of the Legislative Drafting Course, 1986/87 to show their appreciation to Justice V.C.R.A.C. Crabbe.

Date of Commencement:

Date of Assent:

ENACTED by the Parliament of Ruritania.

Short title 1. This Act may be cited as the Legislative Drafting Course Act, 1987.

Interpretation. 2. In this Act, unless the context otherwise requires -
"lecturer" means the Director of the Legislative Drafting Course held at the Cave Hill Campus of the University of the West Indies during the 1986/87 academic year;

"students" means the participants who attended the Course, and whose names are specified in the Schedule to this Act.

Student's obligations 3. The students shall -

(a) ensure that they complete their exercises before the 30th May, 1987;

(b) thank the lecturer for having taught them -

(i) how to criticise, in writing, various badly drafted pieces of legislation;

(ii) how to draft various Bills and subsidiary legislation dealing with diverse matters;

(iii) for tolerating their bad drafts and redrafts;

(c) desist from agitating for a bigger allowance;

(d) not discharge any firecrackers.

Lecturer's obligations. 4. The lecturer shall -

(a) desist from giving the students any more exercises on dogs;

(b) desist from instructing the students to redraft any written or spoken matter; and

(c) be in his office between the hours of 9 a.m. and 12 noon on A Day, B day and New Year's Day.

Penalties. 5.(1) Any student who contravenes the provisions of section 3 of this Act shall -

(a) get an F for the Course;

(b) not receive a Certificate of attendance from the Commonwealth Secretariat;

(c) be denied their daily Commonwealth allowance;

(d) be put on a leash for 24 hours.

(2) The lecturer shall, if he fails to comply with the provisions of section 4 of this Act -

(a) be stripped of his Directorship of the Course; and

(b) be given a large bottle of whisky, which he shall be forced to drink, and finish, within 7 days of the coming into force of this Act.

SCHEDULE

1. WARREN HAQ
2. FRANCESCA WARMER
3. MILDRED CHUKWU
4. SHERIDAN COOKSON
5. PAUL APPLEBY
6. WILLIAM FARADAY
7. OPHILIA NYAMBE
8. HOMEBOUND MADDISON
9. NOBBY BAHRAIN
10. EVEREADY SERGEANT
11. ZACCHARIA GREGSON
12. LUCILLE MPANGA
13. ROLAND MAY

DISCUSSION PAPER NO.16

Redraft!

CONSTITUTION OF THE
COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

Establishment and headquarters

1(1) The Commonwealth Association of Legislative Counsel (hereinafter called "the Association") is hereby established.

(2) The headquarters of the Association shall be at Canberra in Australia, or at such other place as is from time to time determined by a general meeting of the Association.

Object

2(1) The object of the Association is to promote co-operation in matters of professional interest between persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting.

(2) For the purpose of carrying out the object of the Association, the activities of the Association may include

(a) encouraging the sharing of information between members of the Association with respect to -

(i) the preparation and publication of legislation, and

(ii) the recruitment and training of persons to engage in legislative drafting and the retention of persons engaged in legislative drafting;

(b) encouraging the sharing between members of the Association of comparative legal materials and precedents;

(c) dealing with requests by members of the Association for information and assistance; and

(d) co-operating with appropriate organizations on matters of common interest.

Membership

3(1) All persons in the Commonwealth who are or have been engaged in legislative drafting or in the training of persons to engage in legislative drafting are eligible for membership of the Association.

(2) Every person eligible for membership of the Association who, whether or not present at the meeting at which the Association is established, causes it to be made known at that meeting that he or she wishes to become a member of the Association becomes, by force of this sub-clause, a member of the Association.

(3) A person who desires to become a member of the Association may apply in writing to the Secretary for membership of the Association.

(4) Where an application for membership of the Association is made to the Secretary in accordance with sub-clause (3), the Secretary shall refer the application to the Council, which, if it is satisfied that the applicant is eligible for membership of the Association, shall grant the application but, if it is not so satisfied, shall refuse the application, and the Secretary shall advise the applicant of the Council's decision.

(N.B.) At the General meeting in Jamaica the following resolution was passed:

> The Council may, if it thinks fit, authorise the Secretary to grant on the Council's behalf, without referring it to the Council, any application for membership as to which the Secretary is satisfied that the applicant is clearly eligible for membership of the Association; and any authorisation given pursuant to this resolution shall, while it remains in force, apply to the Secretary for the time being.

The Council delegated the authority to the Secretary at its meeting following the General Meeting in Jamaica.

(5) A member of the Association may at any time, by notice in writing to the Secretary, resign from membership of the Association.

(6) If a resolution that a subscription is to be payable in respect of membership of the Association is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association, each member of the Association is liable to pay the subscription within the period, and in the manner, specified in the resolution, and a member who fails so to pay the subscription ceases to be a member of the Association.

The Council

4(1) There shall be a Council, which shall manage the affairs of the Association subject to any directions or guidelines given by a general meeting of the Association.

(2) The Council has power to do all things necessary or convenient to be done for or in connection with the carrying out of the object of the Association and the management of the affairs of the Association.

(3) The Council shall consist of a President or Chairman of the Association, a Vice-President or Vice-Chairman of the Association, a Secretary of the Association and 4 other members.

(4) Except in the case of a casual vacancy, the members of the Council shall be elected from the membership of the Association at an ordinary general meeting of the Association.

(5) In electing members of the Council, a general meeting of the Association shall, so far as practicable, endeavour to ensure that the membership of the Council reflects the nature of the Commonwealth and the diversity of the peoples of the Commonwealth.

(6) Members of the Council elected in accordance with sub-clause (4) hold office until the next ordinary general meeting of the Association, but are eligible for re-election.

(7) A member of the Council may at any time -

(a) in the case of the Secretary - by notice in writing to the President; or

(b) in any other case - by notice in writing to the Secretary,

resign from office as a member of the Council.

(8) In the event of a casual vacancy in the membership of the Council, the remaining members of the Council may appoint a member of the Association to hold the vacant office and a member so appointed holds office until the next ordinary general meeting of the Association.

(9) A member of the Council ceases to hold office as such a member on ceasing to be a member of the Association.

Meetings of the Council

5(1) The Council shall, if practicable, meet on the occasion of each general meeting of the Association and may hold such other meetings as it thinks necessary or desirable.

(2) At a meeting of the Council, the President or, in the absence of the President, the Vice-President shall preside or, in the absence of both the President and the Vice-President, the members of the Council present shall elect one of their number to preside.

(3) At a meeting of the Council -

(a) a quorum is constituted by 4 members of the Council;

(b) questions arising shall be decided by consensus but, if necessary, a question may be decided by a resolution passed by a majority of the members of the Council present and voting; and

(c) each member of the Council present has one vote.

(4) The Council may, if it thinks fit, transact any business by circulation of papers, and a proposal agreed to in writing by a majority of the members of the Council has the same effect as if it were a decision of the Council made at a meeting of the Council.

(5) The Council shall

(a) present to each general meeting of the Association a report reviewing the activities of the Association since the last preceding general meeting; and

(b) circulate to members of the Association such other reports on the activities of the Association as it thinks fit or as are required by a resolution of a general meeting of the Association.

Functions of Officers

6(1) The President or, if the President is unable to do so, the Vice-President shall arrange for the Secretary to convene meetings of the Council and shall represent the Association in its dealings with the Commonwealth Secretariat or any other organization.

(2) The Secretary -

(a) shall administer the day to day business of the Association;

(b) shall convene general meetings of the Association in accordance with this Constitution;

(c) when requested to do so by the President or the Vice-President pursuant to sub-clause (1), shall convene meetings of the Council;

(d) shall send to all members of the Association minutes of general meetings of the Association, minutes of meetings of the Council and notices of decisions made by the Council under sub-clause 5(4);

(e) shall maintain a list of the names and addresses of the members of the Association;

(f) shall take all such steps as are reasonably practicable to deal with requests for information and assistance made by members of the Association;

(g) shall send to members of the Association from time to time, whether by means of a newsletter or otherwise, any information in the Secretary's possession that the Secretary considers might be of interest to those members; and

(h) is responsible for the preparation on behalf of the Council of any reports referred to in sub-clause 5(5) and for the doing on behalf of the Council of anything required to be done by the Council pursuant to clause 8.

(3) In the performance of functions in respect of the Association, the Secretary is subject to the directions of the Council.

General meetings of the Association

7(1) An ordinary general meeting of the Association shall, if practicable, be held during each Commonwealth Law Conference and shall, in any event, be held within 5 years after the least preceding ordinary general meeting of the Association.

(2) An extraordinary general meeting of the Association shall be convened upon request in writing made to the Secretary and signed by not less than one-sixth of the members of the Association or upon a resolution of the Council requiring the convening of such a meeting.

(3) A general meeting of the Association may -

(a) confirm, with or without modification, the minutes of the last preceding general meeting;

(b) receive, consider and adopt, with or without modification, any report presented by the Council to that general meeting;

(c) approve or vary any proposals recommended by the Council;

(d) resolve any points of difficulty concerning the affairs of the Association referred to it by the Council; and

(e) give directions or guidelines to the Council with respect to the management of the affairs of the Association.

(4) At the first general meeting of the Association, the members present shall elect one of their number to preside until the election of a President and Vice-President of the Association.

(5) At a general meeting of the Association, the President or, in the absence of the President, the Vice-President shall preside or, in the absence of both the President and the Vice-President, the members of the Association present shall elect one of their number to preside.

(6) The Secretary shall give at least 6 months' notice in writing to all members of the date and place of a general meeting of the Association.

(7) At a general meeting of the Association -

(a) a quorum is constituted by the members present;

(b) subject to sub-clause 3(6) and clauses 9 and 10, questions arising shall be decided by consensus but, if necessary, a question may be decided by a resolution passed by a majority of the members present, in person or by proxy, and voting; and

(c) each member of the Association has one vote.

Finances

8(1) If at any time the Association has any funds, those funds shall be expended only in connection with the affairs of the Association, and the Council shall -

(a) take such steps as it thinks proper for the holding in a bank, for the temporary investment, and for the expenditure, of those funds; and

(b) keep proper accounts and records of its transactions and financial affairs.

(2) The Council shall include in its report to each ordinary general meeting of the Association a statement whether the Association had any funds at any time during a financial year that ended after the last preceding ordinary general meeting and, if so, an audited statement of the income and expenditure of the Association for that financial year and of its assets and liabilities as at the end of that financial year.

(3) The Council shall not enter into a commitment to expend any funds of the Association unless the Council is satisfied that the Association will have sufficient funds available to meet each payment by the Council under the commitment as and when the payment becomes due.

(4) A financial year of the Association is a period of 12 months ending on 30 June or on such other day as a general meeting of the Association determines.

Amendment

9 This Constitution may be amended by a resolution that is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association.

Dissolution

10 The Association may be dissolved by a resolution that is passed at a general meeting of the Association by a majority of not less than two-thirds of the members of the Association and any assets of the Association shall be dealt with as directed by that resolution.

Notice of certain resolutions

11(1) A resolution referred to in sub-clause 3(6) that is passed at a meeting other than the first general meeting of the Association, or a resolution referred to in clause 9 or 10, does not have any force unless it is passed pursuant to -

(a) a motion that is proposed at the general meeting concerned by a member of the Council in accordance with a resolution of the Council notice of the terms of which was sent to all members of the Association not less than 3 months before that general meeting; or

(b) a motion that is proposed at the general meeting concerned by a member of the Association in accordance with a notice that was signed by not less than 10 members of the Association and was given to the Secretary of the Association not less than 5 months before that general meeting, being a notice a copy of which was sent by the Secretary to all members of the Association not less than 3 months before that general meeting.

(2) Where the Council passes a resolution referred to in paragraph (1)(a), the Secretary shall, as soon as practicable thereafter, send notice of the terms of the resolution to all members of the Association.

(3) Where the Secretary receives a notice referred to in paragraph (1)(b), the Secretary shall, as soon as practicable thereafter, send copies of the notice to all members of the Association.

Proxies

12 A member of the Association may, by instrument in writing signed by the member, appoint another member as a proxy to attend and vote instead of the member at a general meeting of the Association, but the appointment is not effective unless the instrument of appointment is filed with the Secretary before the commencement of the meeting for which the appointment was made.

Sending of documents

13 For the purposes of this Constitution, a notice or other document is deemed to be sent or circulated to a member of the Association if the Secretary sends the notice or other document -

(a) to the member's last address as shown on the list of names and addresses of members maintained by the Secretary; or

(b) to another member who the Secretary reasonably believes is readily able to send or give the notice to the member.

Interpretation

14 In accordance with sub-clause 4(3), references in any provision of this Constitution, other than that sub-clause or this clause to the President or Vice-President of the Association include a person holding office as Chairman or Vice-Chairman of the Association, as the case may be.

NEW MEMBERS, ADDRESS CHANGES AND MEMBERS SEEKING EMPLOYMENT

C.A.L.C. is extremely pleased to welcome the following new members:

NEW MEMBERS

Mr. Eric Au Mrs. Nilmini Dissanayake Mr. John Abbott Mrs. Spring Fung Mr. Tony Yen Ms. Priscilla Sit Ms. May Wong Mr. Kenneth Yuen	Legal Department High Block Queensway Government Offices Hong Kong
Mr. B.H. Simamba Acting Chief Parliamentary Draftsman	Ministry of Legal Affairs P.O. Box 50106 Lusaka, Zambia
Mr. Anwarul Haque	501/c. Khilgaon P.O. Khilgaon Dhaka - 1219 Bangladesh
Ms. Vastina Rukimerana Mr. Hlomelang Lebusa	Ministry of Law P.O. Box 33 Maseru Lesotho Southern Africa
Mr. Terry Scarborough Legislative Draftsman	Attorney General's Chambers Hibiscus Square Grand Turk Turks ad Caicos Islands British West Indies
Ms. Susan Krongold	120 Blackburn Avenue Ottawa, Ontario Canada K1N 8A7
Ms. S.M.A. Segopolo-Chukura	Attorney General's Chambers Private Bag 009 Gaborone Botswana
Mr. G.S.A. de Silva	39, Leigh Gardens Kenselrise Longon N.W. 10 5HN United Kingdom
Miss Francis Warner	Attorney General's Chambers Marine House Hastings, Christchurch Barbados

Please make note of the following changes of addresses:

ADDRESS CHANGES

Name	Address
Mr. George Harre (formerly Fiji)	Crescent Cottage 6 Love Lane Wislech Cambs PE 13 1HP England
Mr. Allan Roger (formerly British Columbia, Canada) Mr. Tony Watson-Brown (formerly Queensland, Australia)	Legal Department High Block Queensway Government Offices Hong Kong
Mr. L.J. Chinery-Hesse (formerly Sierra Leone) Australia)	Ministry of Legal Affairs P.O. Box 50106 Lusaka, Zambia
Mr. G.F. Harwood (formerly London)	Fernhill House Almondsbury Bristol BS12 4LX England
Mr. N.J. Richards (formerly New Zealand)	Parliamentary Counsel's Office Department of the Chief Minister G.P.O. Box 3144 Darwin NT 5794 Australia
Mr. Eric Wright (formerly Attorney General's Department, Canberra)	Office of Parliamentary Counsel Robert Garran Officer Kings Avenue Canberra, A.C.T. 2600 Australia
Mr. D.K. Hunt (formerly Attorney General's Department, Canberra)	Legislative Counsel's Office G.P.O. Box 158 Canberra, A.C.T. 2601 Australia
Mr. Geoff Kolts (formerly Canberra, Australia)	32 Marrakai Street Hawker A.C.T. 2614 Australia
Mrs. Anita Allen (formerly legal department Nassau)	c/o Toothe, Paton & Co. P.O. Box N-9306 Nassau, Bahamas
Mr. Neil Adsett (formerly Fiji)	Prime Minister's Office P.O. Box 62 Nuku'alofa Tonga

MEMBERS SEEKING EMPLOYMENT

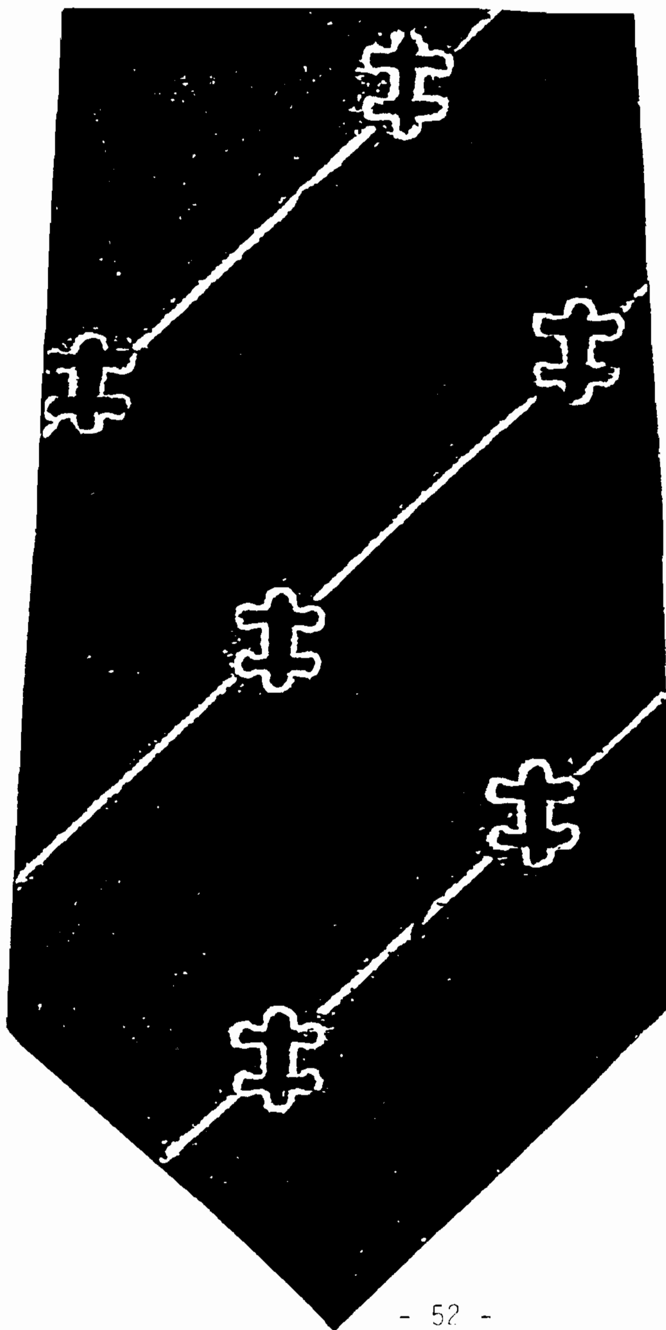
The following members are seeking employment:

Mr. George Harre	-see address above
Mr. Steven Thomas Adade	Ministry of Justice PMB 2059 Gongola State Nigeria

TIES AND SCARVES

For those of you who are not aware and for the others who may have forgotten, the Association has an official tie and scarf. The Associations's logo, the "loophole" is in a gold colour on dark blue woven polyester. The size of the scarf is 68 cm x 68 cm (27 inches x 27 inches). An illustration of the design is set out below. An order form appears at the end of this issue.

It would be easier if those members within a particular drafting office send one bank draft, cheque or money order covering all the orders for that office.



CALC TIES AND SCARVES

ORDER FORM

PLEASE POST TO: Mr. G.B. Sellers,
Office of the Parliamentary Counsel,
36 Whitehall,
LONDON, ENGLAND
SW1A 2AY

NAME ______________________________

ADDRESS ______________________________

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I would like to order:

__________ ties (please state the number)

__________ scarves (please state the number)

The price for each tie including postage:

for Members in the United Kingdom .... UK £ 5.50
for Members outside the United Kingdom..... UK £ 6.50

The price for each scarf including postage:

for Members in the United Kingdom.......... UK £ 6.50
for Members outside the United Kingdom..... UK £ 7.50

Enclosed is my cheque/bank draft/money order for UK £______________.

Please make above payable to the "Commonwealth Association of Legislative Counsel".

N.B.: *A small supply of ties still remains at the Parliamentary Counsel's Office in Canberra. Until the supply has been exhausted, members residing in Australia may purchase ties (no scarves are available) from that office. Payment may be made in pounds sterling or the equivalent in Australian dollars. The address is as follows:*

Office of Parliamentary Counsel,
Robert Garran Offices,
Kings Avenue
CANBERRA ACT 2600
AUSTRALIA