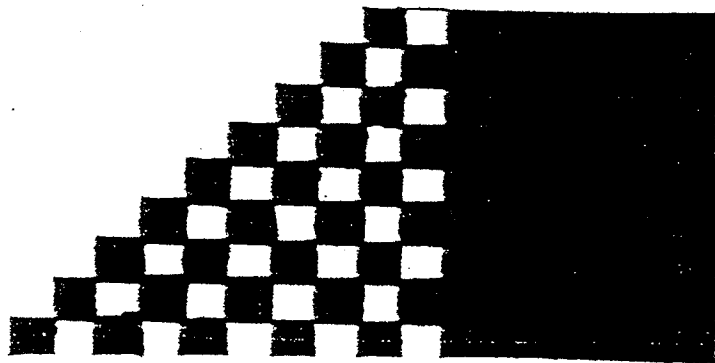


# The Loophole

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



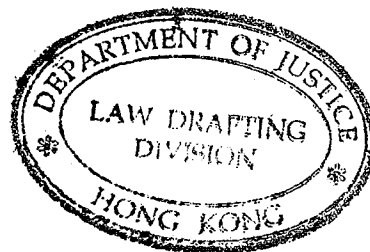
Volume 2, Issue 3

SEPTEMBER, 1988

"The Loophole" is a newsletter of the Commonwealth Association of Legislative Counsel established on September 21, 1983, in the course of the 7th Commonwealth Law Conference held in Hong Kong.

The constitution of the Association provides for an elected council. The present council consists of:

Mr. Walter Iles (President)	NEW ZEALAND
Mr. Justice Jerry Nazareth (Vice President)	HONG KONG
Mr. Peter Pagano (Secretary)	CANADA
Mr. Arthur Buluma (African member)	KENYA
Mr. N.S. Abeysekere (Asian member)	SRI LANKA
Ms. Hyacinth Lindsay (Caribbean member)	JAMAICA
Mr. George Harre - RESIGNED (Pacific member)	FIJI



## TABLE OF CONTENTS

	Page
1 Comments from the Secretary	1
2 Plain Language	2
3 LLM Programme in Legislative Drafting - University of Edinburgh	7
4 Correspondence Course in Legislative Drafting	9
5 List of New members, Address Changes and Members seeking Employment	12
6 C.A.L.C. Ties and Scarves	15
7 Membership Lists	

### COMMENTS FROM THE SECRETARY

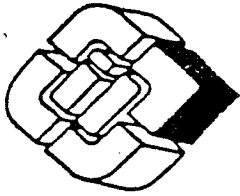
1 The bulk of this Newsletter is an updated Membership List which is composed of 2 parts. The first part is a list of Members according to Country and the second part is an alphabetical listing. PLEASE ADVISE ME OF ANY ERRORS OR OMISSIONS.

2 As you may be aware, the next meeting of the Association is in April of 1990 in New Zealand. We require suggestions for topics of discussion. PLEASE SEND YOUR SUGGESTIONS TO ME OR TO MR. WALTER ILES.

3 I had the pleasure of attending a lecture and participating in a seminar with Professor Robert Eagleson on the topic of "Plain English". Professor Eagleson was in Canada giving a number of lectures and meeting with the Canadian Law Information Council. "Plain English" or as its referred to in Canada "Plain Language" is fast becoming a major topic of interest here.

4 I need material for the next issue which will be sometime in January. DON'T FORGET.

5 Also in this issue you will find information relating to a correspondence course in legislative drafting and to an LLM course in legislative drafting. With respect to the correspondence course, the Commonwealth Secretariat would like you to write to them with your thoughts on the proposal. My apologies for not sending this earlier. I believe that the correspondence course would be very beneficial.



## Canadian Law Information Council Conseil canadien de la documentation juridique

### What is the Plain Language Centre?

People want to understand the legal documents they sign and the forms they fill out. People want to understand their legal responsibilities so that they can carry them out. Plain language makes it possible. Plain language is the bridge that connects people and the law.

The Plain Language Centre provides support and training for those who want to use a plain language approach to writing legal forms and documents.

The Centre is part of the Canadian Law Information Council (CLIC), a non-profit, bilingual organization with a 13-year history of making information on the law more accessible to Canadians and making legal materials more accessible to those who use them.

As part of CLIC, our goal is to further the public's access to information on the law, by promoting the use of plain language.

### What is Plain Language?

Plain language is an approach to organizing and writing documents which makes the material clear and understandable to the user.

These documents use everyday vocabulary and sentence structure and are still legally binding.

Banks and insurance companies throughout the U.S., the U.K. and around the world have already converted much of their material to plain language. Businesses have found that easy-to-understand contracts and forms attract clients and save money.

Until recently, Canada's plain language activities were isolated and sporadic. The Plain Language Centre, as a national organization, focuses this work.

We now offer a wide range of valuable training, information and consulting services. These bilingual services can assist you, as a professional, to create plain language documents and to find the background materials you need.

### **Training Services**

We have developed a variety of workshops to teach people the processes and techniques for writing clear legal documents and administrative forms. We structure these workshops to meet the needs of lawyers as well as others in the legal community, civil servants, document writers and forms designers.

In addition to our workshops, we are developing self-instruction materials that can help you discover ways to use the principles of plain language in your own writing.

### **Information Services**

Our resource centre houses a growing collection of documents and examples of how plain language is being used. We invite you to look at this material to develop your own models.

The collection includes guides and research documents on plain language, from Canada and elsewhere. We also produce a newsletter on plain language activities and techniques.

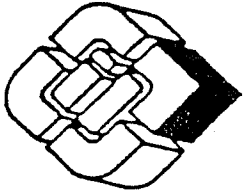
### **Consulting Services**

We provide plain language consultation services to lawyers, businesses, government departments and other organizations, on contract. Our consultants will assess your needs and analyze your documents. Working with you, we then design plain language alternatives and test them for effectiveness.

### **For More Information**

The Plain Language Centre is funded through CLIC, as well as by grants from the Donner Canadian Foundation, the Law Foundation of Ontario and Consumer and Corporate Affairs, Canada.

For more information about the Centre and what we offer, please contact us by phone or mail. We can help.



Canadian Law Information Council  
Conseil canadien de la documentation juridique

PLAIN LANGUAGE: AN INTRODUCTION

People have to complete job applications, fill out tax forms, sign leases or buy cars. Wouldn't it be good if these agreements and other common documents were written in plain language? This bibliography will introduce you to the concepts of plain language and to the benefits of adopting a plain language writing style.

Berry, Duncan. "Legislative Drafting: Could Our Statutes Be Simpler?" Paper prepared for the Commonwealth Law Conference, 1986.

Blake, Marion, et al. "Plain Language and the Law: An Inquiry and a Bibliography." Unpublished, 1986. Prepared for the Department of Justice, Canada.

Charrow, Veda R. "Achieving Plain Language." Unpublished paper, presented at a Conference in Sherbrooke Quebec, August, 1985.

Cohen, David S. "Comment on the Plain English Movement." Canadian Business Law Journal 6 (1981-1982): 421-446.

Dale, William. Legislative Drafting: A New Approach. London: Butterworths, 1977.

Dayananda, James T. "Plain English in the United States." English Today (January 1986): 13.

Dick, Robert C. Legal Drafting. 2nd edition. Toronto: Carswell, 1985.

Dykstra, Gail S. "Plain Language Legal Documents and Forms: Background Information." Paper presented at the Canadian Institute for the Administration of Justice Seminar on Legislative Drafting and Interpretation, Aug.19-20, 1987.

Dykstra, Gail S. Plain Language and the Law: CLIC's Background Documents. Ottawa: Canadian Law Information Council, July 1986.

Eagleson, Robert D. "Plain English and Government Communications: The Case for Plain English." Unpublished paper, presented at a seminar in Canberra, Australia, June 14, 1983.

Eagleson, Robert D. "Plain English in Legislative Drafting." Unpublished paper, 1985.

- Eagleson, Robert D. Progress in Plain English: A Report on Recent Developments Overseas. Canberra: Information Co-ordination Branch, Department of Sport, Recreation and Tourism, 1985.
- Felker, Daniel B., ed. Document Design: A Review of the Relevant Research. Washington, D.C.: American Institutes for Research, 1980.
- Felker, Daniel B., et al. Guidelines for Document Designers. Washington, D.C.: American Institutes for Research, 1981.
- Felsenfeld, Carl. "The Plain English Movement in the United States." Canadian Business Law Journal 6 (1981-1982): 408-421.
- Felsenfeld, Carl; Siegel, Alan. Writing Contracts in Plain English. St. Paul, Minn.: West, 1981.
- Fingerhut, Martin. "The Plain English Movement in Canada." Canadian Business Law Journal 6 (1981-1982): 446-452.
- Flesch, Rudolf. How to Write Plain English: A Book for Lawyers and Consumers. New York: Harper and Row, 1979.
- Foers, J. Michael. Forms Design: An International Perspective. London: Inland Revenue, 1987.
- Goldfarb, Ronald L.; Raymond, James C. Clear Understandings: A Guide to Legal Writing. New York: Random House, 1982.
- Great Britain. Parliament. Administrative Forms in Government. Presented to Parliament by the Chancellor of the Duchy of Lancaster. London: HMSO. Cmnd. 8504.
- Hathaway, George H. "An Overview of the Plain English Movement for Lawyers." Michigan Bar Journal (Nov. 1983): 945-949.
- Jayewardene, C.H.S.; Pelpola, T. International Review of Public Legal Education and Information. Research Reports on Public Legal Education and Information, Report No. 1. Ottawa: Department of Justice, Canada, Research and Statistics Section, Policy Programs and Research Branch, 1986.
- Jones, E.Z., and Jones, G.M. "Drafting Government Regulations and Other Legal Documents in Plain English: What Difference does it Make?" In Drafting Documents in Plain Language. New York: Practising Law Institute, <date not indicated>\*\* pp. 269-287.
- Joseph, Albert. "Regulations Writers: Who are They and What are Their Needs?" Paper presented at the Conference on Regulations in Plain English, Brookings Institution\*\*<Institute ??>, June 2, 1978.
- Kurzan, Christine. "Plain English in Legislative Drafting." Michigan Bar Journal (November 1983): 980.

Larsen, Norman. "The Interaction of Language and the Legal Process." Paper presented at the Canadian Law and Society Association Annual Meeting, 1986.

Law Reform Commission of Victoria. Legislation, Legal Rights and Plain English. Melbourne: The Commission, 1986.

Lieberman, Jethro K. "To Reach and Teach the Public, Write Better." in Understanding the Law: A Handbook on Educating the Public. Chicago: American Bar Association, 1983. 23-28.

Lloyd, Harold A. "Plain English Statutes: Plain Good Sense or Plain Nonsense?" Law Library Journal, No. 78\*\*<vol. 78/1978??> 683.

Mellinkoff, David. The Language of the Law. Boston: Little, Brown and Company, c. 1963, 1983.

Mellinkoff, David. Legal Writing: Sense and Nonsense. St. Paul, Minn.: West Publishing Co., 1982.

National Consumer Council. Plain Words for Consumers: The Language and Layout of Consumer Contracts: The Case for a Plain Language Law. London: The Council, 1984.

Nazareth, Hon. Mr. Justice C.B.E. "Legislative Drafting: Could Our Statutes be Simpler?" Paper prepared for the Commonwealth Law Conference, 1986.

Perlet, Harry F. "Problems in Drafting Plain Language Property and Casualty Policies and Their Reception in the Courts." Unpublished, 1984.

Simply Stated. Washington, D.C.: Document Design Centre, American Institutes for Research.

Smith, Clarence. "Legislative Drafting: English and Continental." Statute Law Review (1980): 14.

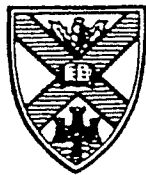
Redish, Janice C. How to Write Regulations (and Other Legal Documents) in Clear English. Washington, D.C.: Document Design Center, 1981, reprinted 1983.

Redish, Janice C. "The Plain English Movement." in The English Language Today. Greenbaum, Sidney, ed. London: Pergamon Institute of England, 1985, Chapter 9.

Walker, Robin. Plain English in Consumer Contracts: The Alberta Context. Edmonton: Alberta Consumer and Corporate Affairs, Research and Planning, 1984.

Wydick, Richard. Plain English for Lawyers. 2nd edition. Durham, North Carolina: Carolina Academic Press, 1985.





FACULTY OF LAW  
UNIVERSITY OF EDINBURGH  
OLD COLLEGE, SOUTH BRIDGE, EDINBURGH EH8 9YL

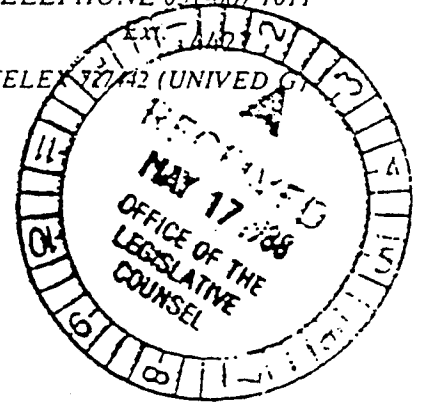
*Department of Constitutional  
and Administrative Law*

TELEPHONE 031-667 1011

TELEX 37742 (UNIVED G)

7 May 1988

Mr Peter J Pagano  
Chief Legislative Counsel  
Department of the Attorney-General  
2nd Floor 9833-109th Street  
Edmonton  
Alberta T5K 2E8  
CANADA



Dear Mr Pagano

LL.M PROGRAMME IN LEGISLATIVE DRAFTING

Three years ago we circulated from this Department a notice of our intention to introduce a new one year programme in Legislative Drafting leading to the award of an LL.M degree. The programme was subsequently launched on a pilot basis in 1985-86. It has since grown each year and is now firmly established.

I am now writing to remind recipients of that letter, and to inform others, of the existence of the programme and to invite applications for admission in October 1988 and in following years.

The special curriculum which we offer has been designed to be of particular interest to law graduates who are already, or are about to be, engaged in legislative drafting and who want to combine, as an integrated package, the systematic study of drafting with advanced academic study of a related branch of the law.

The Courses

Central to the programme as a whole is the course in Legislative Drafting and Drafting Methods. It has been specially designed to include discussion of the principles of legislative drafting and the application of those principles in a series of exercises in drafting. The first part of the course is a functional analysis of the development of drafting, of the use and variation of drafting styles, and of the structure of statutes. The exercises in the second part start with the analysis and rewriting of existing provisions, and proceed through drafting separate provisions to the analysis of instructions and the drafting of bills. The discussion of these exercises draws on the functional analysis in the first part of the course.

All candidates taking Legislative Drafting enrol also for the Context of Legislation course. The course is designed with the draftsman in mind and complements the course in legislative drafting. However, it is self-contained and aims to be a comprehensive treatment of the subject for the student specifically interested in the legislative process. It offers a critical examination of the social and constitutional context within which legislation emerges together with analyses of features of the post-enactment

stage - including the principles of statutory interpretation in the courts and the nature of the impact of legislation upon the social environment. The primary focus is upon the United Kingdom, but the course includes comparative reference to other jurisdictions.

The LL.M degree programme must include three taught courses. The standard third course for draftsmen is Comparative Constitutions. This course involves the study of key constitutional concepts and institutions in different legal systems and then, in the latter part of the course, the detailed study of one selected topic (eg Federalism and Decentralisation of Government or the Protection of Human Rights) on a comparative basis.

#### Teaching and Assessment

The three courses are taught and assessed (on the basis of drafting exercises and long essays) during the period October-June. The course in Legislative Drafting is conducted by Dr A G Donaldson, Editor of Statute Law Review and a former draftsman of twenty five years standing. Other courses are conducted by members of the Department. Candidates complete the year (June-September) with the writing of a dissertation.

Experience with the programme so far has demonstrated the strength of the structure we have created. Students have come together in classes (which we shall never permit to rise above 6 or 7 in any year) representative of many different jurisdictions and backgrounds - to the real advantage of all. Graduates from the programme are not fully trained draftsmen. They do, however, benefit greatly from an intellectually stimulating grounding in the skills of the profession.

I should be grateful if you would bring the availability of the programme to the attention of anyone you think may be interested in applying for admission to it. I would be very happy to supply further information to you or to potential applicants and to respond to any questions you may have about the programme.

Anyone wishing to apply for admission in October 1988 should get in touch as soon as possible.

Yours sincerely



CMG Himsworth

9 March 1988

TO: ALL CALC MEMBERS

For sometime now we have been casting about for ideas as to how the shortage of trained legislative draftsmen around the Commonwealth can be combatted, in addition to the Commonwealth Fund for Technical Cooperation's legislative drafting course and any other training arrangements individual jurisdictions may have.

The CFTC course, as you know, has very restricted numbers and is never able to take all the persons nominated for it. It is also difficult for some jurisdictions to release staff members for the entire duration of the course, in view of the urgent need for their skills in their own countries.

The suggestion has been made that a post graduate diploma in legislative drafting course might be established, possibly under the aegis of the Institute of Advanced Legal Studies and leading to a diploma granted by the University of London. This would be for extra-mural students who would undertake the course work in their own time whilst continuing with their employment at home.

It is envisaged that the students would work through a series of assignments at their own pace and which would be assessed by the University (but the course would take two years of consistent part-time work). In recognition of the fact that many of those on the course would be engaged in drafting all day, the thrust of the course would be to develop students' skills at analysing drafts critically, and correcting them, rather than in doing at night what they are already doing by day. Whilst some drafting would inevitably be involved, this would be kept to a minimum.

Naturally, appropriate financial arrangements would have to be negotiated and we would explore the possibility of the CFTC making a substantial contribution to the development of the necessary materials.

The purpose of my writing is to alert you to this proposal (which is very much in tentative form at this stage) and to invite you to express your own views on it and in particular on the following:

- a) whether in your opinion you would see your government as being likely to recognise the diploma for the purpose of either promoting to a higher grade in the drafting establishment or awarding additional increments to government servants who have successfully completed the course.

- b) how you would see the course as most usefully tailored in so far as your own needs and those of your staff are concerned.
- c) whether you would expect your own staff (or persons elsewhere in government employ in the wider legal field) being attracted to the course (subject, of course, to appropriate financial arrangements existing in so far as fees are concerned), and if so, in what numbers.
- d) whether you would see it as possible that your government might be prepared to consider contributing towards a modest fee for its students (in view of the fact that such a diploma course would augment the government's own in-service training resources).

I look forward to hearing from you at an early date.

JD Pope  
Director  
LEGAL DIVISION

OUTLINE PROPOSAL FOR DIPLOMA IN  
LEGISLATIVE DRAFTING

-----

The proposal is to establish a post-graduate diploma course in legislative drafting under the aegis of the Institute of Advanced Legal Studies and leading to the grant of a diploma under the Charter of the University of London. It is envisaged that the course would be a two year course, which would be undertaken by extra-mural post-graduate students, on a part-time basis.

The aim of the course would be to introduce students to the fundamentals of legislative drafting with particular emphasis on developing their critical skills in analysing draft legislation.

Students would work at their own pace through a series of assignments. These would include some drafting but the principal focus would be on the critical analysis of draft legislation which would be provided and which they would be invited both to comment upon and to amend. In view of the fact that the course would be designed for those working in government legislative drafting services, there would not be any significant requirement of drafting per se (as having drafted all day they might well not wish to go home to draft in the evenings).

The diploma is also seen as underpinning government "in-house" arrangements for the in-service training of legislative draftsmen.

The diploma would not replace the CFTC legislative drafting programme, which would continue until such time as a comparative valuation could be carried out. An approach would be made to the CFTC for the Fund to contribute towards the cost of developing the materials in order to ensure that the fees for the course are as modest as economic realities allow.

It is seen as essential that a sufficient number of Commonwealth governments recognise the diploma and accord holders of the diploma added salary increments. This incentive is fundamental to a sufficient number of students to the diploma course being attracted to the course.

Preliminary discussions with the Institute of Advanced Legal Studies have established that the Director of the Institute is keen to explore the proposal with the University of London.

Chief Parliamentary Counsel are seen as possibly playing a very modest role, simply in keeping an eye on their staff members who have enrolled for the diploma, and possibly occasionally certifying that particular pieces of work are the work of the student in question.

9 March 1988