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# Newsletter



of the



## Commonwealth Association of Legislative Counsel

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### In this issue—

Adoption of new CALC constitution .....	2
Minutes of CALC General Meeting held on 16 and 17 April 2003 .....	2
News of CALC members .....	6
New CALC members .....	7
CALC Members—deaths and resignations .....	16
Lany Bacon SC—Grand master of legislative drafting .....	16
Jersey statutes revised and updated .....	18
Tasmanian legislation website .....	19
Are Australian judges retreating from adopting a purposive approach to judicial interpretation? ..	20
Drafting laws in Sri Lanka .....	21
Anomalies in Child Support Regulations—Smith v Smith and Another .....	24
International conference: “Clarity and obscurity in legal language” .....	25
Fifth international plain language conference—Plain language: Adding up the benefits .....	31
14 <sup>th</sup> Commonwealth Law Conference .....	33
CALC conference and general meeting: Program .....	34
CALC conference registration .....	36
Membership application form for new members .....	39

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## **Adoption of new CALC constitution**

Members will recall that, at the last CALC general meeting, a new constitution for CALC was considered. As the meeting did not have power to adopt the new constitution, it was decided that the incoming CALC Council should arrange for an extraordinary general meeting to be convened at which a motion for the adoption of the new constitution should be put. An extraordinary general meeting was therefore convened for 30 January 2004, with those members who could not attend the meeting being invited to lodge proxies indicating whether they were for or against the new constitution. Under the original constitution, a majority of two-thirds of *all* the members of CALC was required in order to pass the motion. As at 30 January 2004, 660 members were eligible to vote. This meant that, to attain the requisite two-thirds majority, the motion had to be supported by at least 440 members. The meeting decided that more time should be allowed for the gathering of proxies. The chairperson, Don Colagiuri, therefore adjourned the meeting until 15 March 2004.

Although many more proxies had been lodged by the time the meeting was resumed on 15 March, those present at the meeting were of the view that further time should be allowed in order to enable those members who had not done so to lodge proxies. The chairperson therefore once again adjourned the meeting, this time *sine die*.

After considering the options, a majority of the CALC Council decided that a further campaign to gather proxies from members should be attempted and that the adjourned extraordinary general meeting should reconvene on Friday, 3 June 2005. Resulting from this campaign, an additional 134 CALC members lodged proxies. When the motion for the adoption of the new constitution was put at the reconvened meeting, the chairperson declared the motion carried. Out of 660 members eligible to vote, 497 were in favour of the motion and none against, which exceeded the number required for a two-thirds majority by a wide margin. There were 163 abstentions.

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## **Minutes of CALC General Meeting held on 16 and 17 April 2003**

### **1. *Opening of meeting***

The President, Hilary Penfold, opened the meeting at 9:15 a.m.

### **2. *Present***

50 members attended the meeting. Their names are listed in Appendix 2 to the minutes of the General Meeting as set out in the CALC Newsletter published in October 2003.

### **3. *Apologies***

Apologies were received from 26 members. Their names are listed in Appendix 1 to the minutes of the General Meeting as set out in the CALC Newsletter published in October 2003. Two members (Tony Yen and Charles Lim) gave apologies on behalf of fellow CALC members from Hong Kong and Singapore respectively.

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#### **4. Proxies**

The secretary announced that 50 proxies had been lodged with him. Of these—

- 17 from Queensland members were given to Theresa Johnson
- 16 from Hong Kong members were given to the Secretary, Duncan Berry
- 3 from NSW members were given to Don Colagiuri
- 1 from a British Columbia member was given to Janet Erasmus
- 1 from a Canadian (Federal) member was given to John Mark Keyes
- 1 from a Saskatchewan member was given to the Vice-President, Lionel Levert
- 11 from various other members were given to the President, Hilary Penfold.

#### **5. Minutes of previous CALC general meeting**

Walter Iles (New Zealand) moved the adoption of the minutes of the CALC general meeting held at Petalang Jaya, Malaysia, September 1999. Lionel Levert seconded the motion. The meeting adopted the minutes unanimously.

#### **6. CALC Council Report**

The President presented the Council's report, which covered the period from September 1999 to April 2003. The President surveyed the report. The following matters were discussed:

- Membership records
- CALC Website
- Loophole and the CALC Newsletter

The report was carried unanimously on the motion of Judith Keating (Canada, New Brunswick). Don Colagiuri (Australia, NSW) seconded the motion. A copy of the report is contained in Appendix 2 to these minutes.

#### **7. Matters arising from Council's report**

The meeting discussed the following matters arising from the report:

- Membership records—Some members expressed privacy concerns. Peter Quiggin (Australia, Federal) pointed out that it might be a breach of Australian privacy laws to publish certain membership information on an Australian web site (e.g. the CALC website). The Secretary pointed out that he had already taken steps to address these concerns. However, in the light of the discussion, the Secretary outlined two further measures that he proposed to taken to ensure that members' privacy was protected. One was to modify the membership application form to ask applicants whether they objected to the publication of their private particulars. The other was to invite existing members to have their private particulars removed from the membership list kept for publication purposes.
- George Tanner (New Zealand) asked whether the CALC proceedings have to be held in conjunction with the CLC. The President asked whether members would prefer to hold the CALC meeting before or after the CLC, rather than at the same time. This would

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make it easier for members to choose whether to attend both conferences or just the CALC one. Nick Horn (Australia, ACT) pointed out that the CLC was expensive and the ACT would not have been able to send as many as 6 members if they had had to register for the CLC.

- Alipate Qetaki (Fiji) asked whether more legislative drafting items could be included on the CLC program.
- Ben Piper (Australia, Victoria) asked whether notification of legislative drafting conferences could be given to members. John Mark Keyes (Canada, Federal) suggested that information about law drafting conferences should be co-ordinated into a single calendar, with a view to avoiding clashes between conferences. The Secretary pointed out that this was already done through the CALC Newsletter. The President said that information about legislative drafting conferences could also be published on the CALC website.

#### **8. Acknowledgement of work of President and Secretary**

Ben Piper (Australia, Victoria) moved that the work done for CALC by the President and the Secretary over the past 3½ years be acknowledged. The motion was passed by acclamation.

#### **9. CALC accounts**

The Secretary presented the CALC accounts for the period since the previous General Meeting. Despite strenuous efforts on his part, the Secretary had been unable to find an independent person to audit the accounts as required by the CALC constitution. Despite this, Janet Erasmus (Canada, British Columbia) proposed that the meeting approve the accounts. Theresa Johnson (Australia, Queensland) seconded the motion. The meeting passed the motion unanimously. A copy of the accounts is contained in Appendix 3 to the minutes of the General Meeting as set out in the CALC Newsletter published in October 2003.

#### **10. Election of officers and members of the CALC Council**

The meeting elected the following officers:

President: Geoffrey Bowman (England)

- Proposer: Hilary Penfold (Australia, Federal);
- Seconder: Greg Calcutt (Australia, WA)

Vice President: Lionel Levert (Canada, Federal)

- Proposer: Duncan Berry (Australia, NSW/Hong Kong);
- Seconder: Catherine Johnston (England)

Secretary: Duncan Berry (Australia, NSW/Hong Kong/Ireland);

- Proposer: Lionel Levert (Canada, Federal)
- Seconder: Eamonn Moran (Australia, Victoria)

The meeting elected the following Council members:

Moinul Kabir (Bangladesh)

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- Proposer: Lionel Levert (Canada, Federal);
  - Seconder: Hilary Penfold (Australia, Federal)

Janet Erasmus (Canada, British Columbia)

- Proposer: Keith Byles (Australia, Federal);
- Seconder: Shirley Hall (Australia, SA)

Clive Borrowman (Jersey)

- Proposer: John McLuskie (Scotland);
- Seconder: Duncan Berry (Australia; Ireland)

Jeremy Wainwright (Australia, Federal)

- Proposer: Lionel Levert (Canada, Federal);
- Seconder: Hilary Penfold (Australia, Federal)

George Tanner (New Zealand)

- Proposer: John McLuskie (Scotland);
- Seconder: Peter Quiggin (Australia, Federal)

Tony Yen (Hong Kong)

- Proposer: Duncan Berry (Australia, NSW/Hong Kong);
- Seconder: Lionel Levert (Canada, Federal)

It was also agreed on the motion of Alipate Qetaki (Fiji) that the Council should have a Pacific Islands member, with the proviso that the nominated person should be a female member of CALC.

#### **11. The new draft CALC Constitution**

Walter Iles (New Zealand) opened the discussion on this issue. He said that if the formalities laid down by the existing constitution were to be overridden, he would like to see new constitution adopted by consensus.

*[The meeting was adjourned at 5.30 p.m. and resumed at 9:10 p.m. on the following day.]*

A revised draft of the proposed constitution was circulated. Walter Iles (New Zealand) said that he now thought that the requirements of the existing constitution should be followed in passing the proposed new constitution.

Lionel Levert (Canada, Federal) offered a compromise suggestion, which was for the meeting to pass the proposed new constitution provisionally and then allow members a period within which to object.

Richard Dennis (Australia, SA) thought that, if the meeting were to adopt the proposed constitution by consensus, members would find that acceptable, bearing in mind that the proposed changes were only modest.

George Tanner (New Zealand) supported adopting the proposed constitution. He agreed that the existing constitution was too rigid and that steps should be taken to make it more flexible to meet changing circumstances. Greg Calcutt (Australia, WA) supported this view.

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John Mark Keyes (Canada, Federal) proposed that the association be reconstituted as a "second CALC".

The President expressed concern about the possible financial implications of passing the proposed constitution otherwise than in accordance with the existing constitution. In particular, she was concerned about the ability of the "new" CALC to gain legitimate access to the funds held by the "old" CALC

Jeremy Wainwright expressed doubts about riding rough shod over the existing constitution. He suggested that drafters were the last people who should simply ignore constitutional provisions because they were inconvenient. However, Shirley Hall (Australia, SA) expressed the view that the meeting should adopt the proposed constitution without further ado.

Jeremy Wainwright (Australia, Federal) said that, if the meeting agreed to follow the existing constitution, he was prepared to try to organise the proxies necessary to pass a motion to adopt the proposed constitution. Hilary Penfold offered to help with this project. Jon Mark Keyes (Canada, Federal) expressed a willingness to obtain proxies from Canadian members.

The President said that, if any member objects to adopting a new constitution by consensus, the meeting should pursue constitutional change in accordance with the existing constitution.

Keith Byles (Australia, Federal) proposed that the meeting should adopt the new constitution without the need to follow the existing constitution.

Lindsay King (Australia, WA) formally proposed:

- that the meeting express its support for the proposed constitution (as amended); and
- that the proposed constitution, with any minor drafting changes agreed to by the Council, should be put to members at an extraordinary general meeting to be convened by the Council in accordance with the provisions of the existing Constitution.

Jeremy Wainwright seconded the motion, which was carried unanimously.

## **12. Any other business**

It was agreed that the incoming Council should meet immediately after the conclusion of the general meeting. The meeting expressed the wish that a meeting of CALC members should be held within the next 12 months if possible. It was noted that the next general meeting of CALC members is proposed to be held before the next Commonwealth Law Conference, which is expected to begin in London on 20 October 2005.

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## **News of CALC members**

Congratulations are due to Zaharah Ibrahim, who was recently appointed as a Judicial Commissioner of the High Court of Malaysia. Zaharah was formerly head of the Malaysian legislative drafting office and was a member of the CALC Council from 1999 to 2003. On behalf of the CALC Council, I should like to wish her every success in her new career as a member of the Malaysian Judiciary.

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Members who have retired from legislative drafting include Euan Sutherland (England), Bill McGregor (Jersey, Channel Islands), Kerry Jones Andrew Mason (Australia, ACT), Kerry Jones (Australia, OLDP), John Christensen (Australia, OLDP), Bob Steins (Australia, OLDP), Margaret Lawrence (Australia, OLDP), Andrew Smith (Australia, OLDP), Tony Ward (Australia, Victoria), Eric Wilson (Australia, Queensland) and Alvin Hopper (Australia, ACT) and Tony McMillan (Zimbabwe) who now lives in New Zealand. Brian Suttill (formerly of Hong Kong, Jersey and Botswana) is now living in retirement in England. On behalf of the CALC Council, I wish them a long and happy retirement.

James Graham has moved (formerly ACT) has moved to the Australian Office of Legislative Drafting and Publication and Diane Buckland (formerly Canadian North-West Territories) has moved to the Legislative Division of the Department of Justice in Iqaluit, Nunavut, Canada. Victoria Aitken (formerly Northern Territory, Australia) is now Deputy Parliamentary Counsel of the Solomon Islands. Eliza Bergin (Australia, Victoria) has left legislative drafting for private practice and Harry Dunstall (formerly Australia, OLDP) has moved to another branch of the Australian Government legal service. Tsitsi Chitsuku (formerly of Zimbabwe) is now working as a legislative drafter in South Africa.

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## **New CALC members**

On behalf of the CALC Council, I should like to welcome all those who have joined the Association since the publication of the last list of new CALC members. As a result, the Association now has over 700 members from 52 different legal jurisdictions.

The following is a list of those who have become members of CALC since March 2004.

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<sup>1</sup> Rejoined after previous resignation.

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## **CALC members—deaths and resignations**

The following members have resigned since the beginning of 2004:

Jonathon Woodger, Australia  
Glen Osboldstone, Victoria, Australia  
David Giufridda, Ontario, Canada  
David Marriott, New Zealand  
John Harkness, UK (Scotland)  
Anthony McMillan, Zimbabwe  
Fiona Leonard, New Zealand

Notification of the deaths of the following members has been received since the beginning of 2004:<sup>2</sup>

Siegfried Lushagara, Tanzania  
Milton Matare, Zimbabwe

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## **Lany Bacon SC—Grand master of legislative drafting<sup>3</sup>**

Were there an entry in the Guinness Book of Records as regards the years spent in drafting legislation, then the name of the late Edward William Delany ('Lany') Bacon, SC, who sadly died in Dublin in February, would surely appear on the relevant page. For 52 of his 80 years were spent in what is now the Irish Office of the Parliamentary Counsel to the Government.



After a distinguished school record at the Jesuit colleges of Belvedere and Clongowes Wood, Lany proceeded to University College Dublin and at the same time enrolled as a student at King's Inn, Ireland's sole Inn of Court. And it was here that he excelled. For not only did he gain the Senior Victoria Prize at the Bar Final in the early summer of 1945 but went on to win the John Brooke Scholarship in the following autumn. This was a three-year bursary whose object was to help newly-called barristers establish themselves in practice. It was open to all who were successful at the previous Bar Final Examination and candidates faced eight papers, none of whose specialised subjects had been covered at any stage by the lecturers at King's Inn. Indeed, it may surprise readers to discover that in those days King's Inn students

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<sup>2</sup> These are additional to those notified elsewhere in this Newsletter or previously in *The Loophole*.

<sup>3</sup> Lany Bacon had been an associate member of CALC since 2001. This tribute was prepared by Dennis Morris, a former colleague of Lany Bacon.

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spent 2 years grappling with the mysteries of real property and equity but were not required even to glance at company law; as a result some aspect of that branch of the law usually featured in “the Brooke”. So it looks as if the Benchers of the time (of whom Lany’s father, Tom Bacon, was one) considered familiarity with the intricacies of shifting or springing uses and the necessary intellectual effort that entailed preferable to digesting the much more straightforward Schedule A to the Companies (Consolidation) Act 1908, then still the pivotal statute as regards that branch of Irish law. Did they, one wonders, regard that enactment as tainted by “trade”?

Not only was Lany an outstanding student, he was also an excellent swimmer and played a well above average game of tennis. Indeed, for most of his life he was a keen member of Fitzwilliam LTC. So spending 1945’s summer days in King’s Inn or other sunless libraries preparing for the Brooke must have necessitated considerable self-discipline.

After being called to the Irish Bar in Michaelmas 1945 at the age of 21, Lany joined “The Law Library” in the Four Courts in Dublin. It was from here that all the Dublin barristers practised; the establishment of barristers’ chambers in that city lay years ahead. He also went on circuit - “the Leinster Bar” - and very probably, the solicitors in the towns on the circuit soon noted his ability. So a distinguished career at the Irish Bar appeared to be ahead of him. However, his professional prospects suddenly seemed to fall collapse when, in the late 1940s, he broke his neck in a swimming accident. Though very fortunately he made a complete recovery, the traumatic experience may have engendered fears for his future health and so caused doubts as to whether the hurly-burly of life at the Bar would be to his best advantage, despite his almost certain future success. At any rate, a vacancy occurred in the Parliamentary Draftsman’s Office (now the Office of the Parliamentary Counsel) and Lany was appointed to fill it. In consequence, he first entered Dublin’s Government Buildings as a civil servant in 1952. Little did he know that he would continue to use its portals for the next fifty-two years, having for most of that period arrived by bicycle. Moreover, what was then the Bar’s undoubted loss quickly became the Parliamentary Draftsman’s Office’s inestimable gain. For its new officer had a willingness and ability to carefully examine and analyse drafting instructions and work out their implications - “applying the cold towel” Lany called it - and also the rare gift of clarity of both thought and expression, qualities whose possession academic success, no matter how distinguished, does not enable others to presuppose. As a result, sometimes on receipt of a Bacon draft those concerned in the instructing Department would realise that what they had asked for was not what they actually required.

A half century ago, few Dubliners were aware of the existence of the Parliamentary Draftsman’s Office. But the exceptions probably imagined the office to be staffed by elderly, stooped and parchment-faced men with little hair and beaky noses at whose tips remained a perpetual drop as if secured by glue and on whose bridges pince-nez were permanently perched. However had they visited the office, Lany’s tall and slim frame, handsome looks and classic athletic demeanour would have instantly dispelled any such perception. Also, in those days, the Parliamentary Draftsman’s Office was tiny, with only four legislative draftsmen. The remaining staff constituted of just two secretary/typists. Indeed, in the 33 years between Lany’s arrival and his formal retirement in 1985, the office’s professional strength had only increased to seven. Even then the office still resembled a specialised barristers’ chambers - save there were no fee sheets. And as the administrative managers had yet to target this Dublin backwater, committees, task forces or progress reports were as yet unknown. Indeed there were not even office circulars. The filing

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system was straightforward and so nothing went awry. As to the work method and training, a new recruit - a rare event - was under close supervision for his initial two years after which he was entirely responsible for the files the Parliamentary Draftsmen allocated to him. The office ran very smoothly and with Lany at its head continued to enjoy the enviable reputation it had long established throughout the Irish public service. However, during the late 1980s, the legislative drafting staff was considerably increased to cope with the greatly increased workload. At the time of Lany's death, Parliamentary Counsel (including consultants) numbered 21. Much of the increased workload is attributable to the need to draft statutory instruments in order to give effect to the vast number of European Union Directives produced by the European Commission since 1972, when Ireland became a member of the European Communities.<sup>4</sup>

In 1970, Lany became Chief Parliamentary Draftsman and could have remained in that post till 1990. But with ever increasing pressure, due to lack of professional staff, he opted for early retirement in 1985. For it was the Parliamentary Draftsman's Office practice that the Parliamentary Draftsman prepared (on his own) the annual, dreaded, Finance Bill - an intense process that usually lasted several months. And not only did Lany prepare all Finance Bills required during his term as the head of the Office, he also had to deal with two others when his immediate predecessor, P.W. Joyce, recovered from a long illness. Thus, Lany drafted 17 Finance Bills in all and so by 1985 had probably had enough. He was, however, persuaded to continue in the Office as a consultant. For Lany, the great advantage of this move was that he was no longer expected to draft Finance Bills, thus leaving him to determine his own work load. Despite this, he still willingly produced a large number of Bills right up to the time of his death. By that time, he had served under 19 different Irish Attorneys General!

Even when, prior to 1985, the pressure was becoming very great, Lany, who frequently had to work long hours, managed to continue his sporting activities and pursue a varied "extra mural" social life. Thus, he avoided being subsumed by the Parliamentary Draftsman's Office and this is probably why he was a very pleasant and easy colleague to work with. Besides, he was well informed, could be an entertaining but ever discreet gossip and spoke excellent colloquial French. His ability to do so was probably due to his enthusiasm for French literature both classic and modern, much of which he had read. Even Flaubert seemingly did not daunt him.

As a draftsman, Lany Bacon was simply second to none. The *Freedom of Information Act 1997* is a noteworthy example of his work, but there are very many others. He was also a man of many parts and, what is more, one with a sense of charitable obligation. This was evident from the many years he spent as an active trustee of the MacNamara Home, a Dublin charity. Although Lany will be greatly missed by his relatives, friends, colleagues and others who knew him, their lives will have been enriched by their memories of a life so successfully and happily lived.

*Fidelitur ministerium duo et quinquaginta annis emeritus R.I.P.*

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## **Jersey statutes revised and updated**

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<sup>4</sup> Now the European Union.

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As a result of the initiative of the Jersey Legal Information Board under the chairmanship of the Bailiff of Jersey, Jersey now has an online database of its legislation that should be the envy of all jurisdictions ([www.jerseylegalinfo.je/Law/LawsInForce](http://www.jerseylegalinfo.je/Law/LawsInForce)). The system is the culmination of 5 years' work. As well as being a consolidation of all statutory laws enacted since 1771, the database embodies an entire revision of the statute law of Jersey. This means that all Jersey legislation in force (including countless amendments) has been restated as a new, coherent body of law. It is understood that the revision will come into operation on 1 July next.

The revised laws will be available not only in print (hard copy) but also 'on line'. In consequence, a version of Jersey legislation will be readily available in electronic form that corresponds to the authorised text. This is part of a broader strategy to make the law more accessible in Jersey. To assist users further, the revised law is organised intuitively under a series of 26 chapters, which cover topics such as family law, crime and sentencing and financial services.

Looking to the future, as new revised editions are prepared, earlier versions and any laws omitted from the revision will still be accessible in a chronologically arranged "laws as enacted" section.

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## **Tasmanian legislation website**

The Tasmanian Legislation Website gives free public access to Tasmanian legislation. Acts that were in force as at 1 February 1997 are available in consolidated form and Acts passed after 1 February 1997 are available in sessional and consolidated form. Statutory Rules made after May 1998 are available in sessional and consolidated form. Point-in-time searching is available on Acts from 1 February 1997 and Statutory Rules from May 1998. The Website features advanced searching and browsing capabilities with all cross-references and amendment history stored as electronic hyperlinks.

All users, whether legal practitioners, business people, academics, students or indeed anyone with an interest in knowing how Tasmanian legislation stands or stood at a particular time, should find this site an invaluable tool.

### ***New Features***

The Tasmanian Legislative Drafting and Automatic Consolidation System "EnAct" has recently been redeveloped. Part of the redevelopment includes changes to the Tasmanian Legislation Website. Some of the new features are:

- You can now view and print individual Parts, Divisions and Subdivisions and Schedule Parts, Divisions and Subdivisions.
- Searching has been refined; you can filter searches by Principal or Amending Acts or Statutory rules.
- You can now view a point-in-time summary, which allows you to view components of legislation as they have changed through time.
- You are able to request a list of Acts or Statutory Rules that have been commenced from a selected time point to the present.
- There is a list of the frequently requested pieces of legislation.

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- You can sort your results by Title, Year, Number or Type

### ***What is on the Enact Website***

The database was initially loaded with consolidations of Acts current as at 1 February 1997. All Acts since 1 February 1997, except those as listed under the title "What is not on the EnAct website" are on the database. All Statutory Rules since 23 March 1998 and some consolidations of Statutory Rules in force as at 23 March 1998 have been loaded onto the database.

The database uses the concept of both sessional and historical versions of legislation. In the case of an Act, the sessional version is the version as assented to by the Governor of Tasmania. In the case of a Statutory Rule, it is the version the making of which is notified in the *Tasmanian Government Gazette*. The historical version of any legislation is the legislation consolidated at any particular "point-in-time". A consolidation contains all commenced amendments and any reprint changes made under any Act authorising the reprint of Acts and Statutory Rules. Acts loaded as at 1 February 1997 are only available in historical form.

Sessional versions of Acts assented to since 1 February 1997 and Statutory Rules notified in the *Tasmanian Government Gazette* after May 1998 are available. Historical versions of legislation are available at any point in time from commencement of the legislation until it ceases to have effect.

After legislation is repealed, historical versions are available by specifying dates within the time frame of operation of the legislation.

### ***What is not on the EnAct website and what is on the Enact Website and requiring correction***

The site also contains information as to what is not on the website. This will include information regarding legislation that has been taken off the site and legislation that is on the site without certain amendments being incorporated because of processing difficulties.

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## **Are Australian judges retreating from adopting a purposive approach to judicial interpretation?<sup>5</sup>**

Justice Michael Kirby<sup>6</sup> has delivered a stinging attack on his fellow High Court judges after they ruled a business trading as Cash Counters was not a pawnbroker.

Palgo Holdings Ltd ('Palgo') had been fined A\$6,000 for carrying on business as a pawnbroker in the New South Wales town of Byron Bay without having obtained a licence. Palgo's appeal to the Court of Appeal was rejected. Palgo therefore appealed to the High Court of Australia, which, by a majority of 4-1, held that the New South Wales Pawnbrokers Act did not cover Cash Counters

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<sup>5</sup> Reported in the Sydney Morning Herald, 26 May 2005.

<sup>6</sup> Justice Kirby is one of seven judges who comprise the High Court of Australia, which is the 'supreme' court of that country.

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because it "lent money on the security of chattel mortgages" and its loan documents recorded title passing to the lender.

According to Chief Justice Murray Gleeson and Justices William Gummow, Ken Hayne and Dyson Heydon, the Act was not intended to cover all cases where a lender took possession of the goods and that a "revision of pawnbroking legislation may have to be undertaken".

Justice Kirby accused the majority of failing to take into account the purpose behind the legislation, which he said was to cover money lent for pawned goods. "We should be on guard against any temptation to return to the dark days of literalism," he said. Furthermore, "the important social purposes of the legislation" had been frustrated. "Supposedly clever legal drafting of the appellant's document is rewarded. The interests of borrowers and the victims of household thefts of pawnable goods and police are defeated. The result is undesirable. In my opinion, it is unnecessary and legally wrong. Cash Counters had given the borrower no option but to part with the goods and held them until the money was repaid." He went on to recount the evidence of one man, Ferris, who borrowed A\$80 on the security of a portable radio and mobile phone. "Mr Ferris assumed he had to leave the goods with [Cash Counters] because that is the way a pawnbroker normally works". According to Justice Kirby, the facts "could not have been more different from those represented in the [loan] documents".

"The most that can be said for the appellant's argument is that Parliament, in enacting the 1996 Act, could have defined 'pawned', and failed to do so. Yet it is possible that the word 'pawned' was not defined because the drafter in the 1996 Act took this Court [the High Court of Australia] at its word when, as it has repeatedly done, it proclaimed that the purposive and not the literal approach is the method of statutory construction that now prevails in Australia."

In the light of the High Court's decision to the effect that the definition of "pawnbroker" was not adequate, the New South Wales Fair Trading Minister, John Hatzistergos, has intimated that the Government would consider introducing legislation to amend it.

Looking at statutory interpretation from a legislative drafting point of view, one hopes that this is an isolated case. If the Court's decision portends a return to the dark days of literalism, it is to be very much regretted. [Ed]

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## **Drafting laws in Sri Lanka**

All Legislation in the initial stages follows the same procedure, which is as follows

### ***Cabinet Memorandum***

Legislation is initiated with the formulation of a Cabinet Memorandum by the relevant Ministry. The Memorandum will embody the policy of the government in relation to the subject matter of the Bill to be drafted, giving reasons of the necessity for the Legislation.

### ***Cabinet Decision***

On the Cabinet Memorandum being forwarded, the Cabinet will decide whether the proposed legislation is needed, whether any changes are essential to the proposed policy and what the

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financial implications of the proposed legislation are. The Cabinet Decision will confirm with or without amendments, the matters contained in the Cabinet Memorandum, which will then be forwarded by the relevant Ministry to the Legal Draftsman's Department, for the preparation of the necessary legislation.

### ***Drafting Process***

The Legal Draftsman's Department will then proceed to draft legislation on the lines set out in the Cabinet Memorandum. Officials of the relevant Ministry will give the necessary instructions and clarifications. A preliminary draft of the Bill will be prepared first and forwarded to the relevant Ministry for its observations thereon. If any observations are made on the preliminary draft, these will be incorporated in the Bill and the final draft of the Bill will then be prepared. The final draft of the Bill will thereafter be sent to the relevant Ministry and also to the Attorney-General for his observations.

### ***Constitutionality***

It is the duty of the Attorney-General to examine the constitutionality of the draft legislation submitted to him in terms of Article 77 of the Constitution (i.e. to examine whether the provisions of the Bill are in conformity with the provisions of the Constitution). The Attorney-General is required to issue a Certificate to the effect that "the provisions of the Bill are not inconsistent with the Constitution". This has to be tabled in Cabinet together with the final draft of the Bill.

### ***Publication in Gazette***

When a Bill is sent back to the Cabinet in its final form, accompanied by the Attorney-General's Certificate, the Cabinet will approve the Bill and issue instructions to the Government Printer to forthwith publish the Bill in the Gazette (Article 78 of the Constitution). A Bill must be published in the Gazette at least one week before it is placed on the Order paper of Parliament.

### ***Procedure in Parliament***

The Second Reading of the Bill can be taken after the lapse of one week from the first reading of the Bill. Any citizen may challenge the Bill in the Supreme Court for inconsistency with the constitution, within one week of its being placed on the Order paper of Parliament. If the Bill is challenged in the Supreme Court, the Second Reading can only be taken after the Supreme Court has made its determination on the Bill, and communicated it to the Speaker.

In the Second Reading of the Bill the principles underlying the Bill are debated and a vote is taken at the end of the debate. The Bill is then referred either to a Committee of the whole House (consisting of all members of Parliament) or to a Standing Committee (consisting of about 15 members of Parliament). In Committee, the Bill is examined clause by clause and a vote taken thereon. Amendments may be moved to the Bill at the Committee Stage. An officer of the Legal Draftsman's Department is present in Parliament during the Committee Stage of the Bill to help draft the necessary amendments.

After the Bill is passed in Committee, it is then read for the Third time. Formal amendments may be moved to the Bill at this stage. A vote is taken at the end of the Third Reading. If the Bill is passed it can be said to have been passed by Parliament, but it does not have the effect of law.

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### ***Speakers Certificate***

A Bill passed by Parliament becomes law only when the Speaker endorses it (i.e. when he certifies the Bill as having been “duly passed by Parliament”. The Bill then becomes an Act of Parliament and a number is assigned to it (e.g. Act, No. 12 of 1997).

### ***Reference to the Supreme Court and determination of the reference***

Within one week of a Bill being placed on the Order Paper of Parliament a Bill may be referred to the Supreme Court by the President or challenged by a citizen as regards the constitutionality or otherwise of a Bill (Article 121 of the Constitution). The determination of the Supreme Court shall state whether the Bill or any provisions thereof are inconsistent with the Constitution and its reasons for so determining (Article 123 of the Constitution). The Supreme Court may also suggest any amendments necessary to make the Bill consistent with the Constitution.

### ***Special categories of Bills***

#### ***1. Urgent Bills***

These Bills are drafted in the manner set out above. However when the Bill is sent back to the Cabinet in its final form, the Cabinet of Ministers certifies the Bill as being “urgent in the national interest”. These Bills can be presented to Parliament as soon as they are notified in the Government Gazette. The period of one week set out in Article 78(1) of the Constitution will not apply to this category of Bills. Unlike other Bills, the President can refer these Bills to the Supreme Court (in which case Article 121(1) will not apply). In such a case, the Supreme Court is required to make its determination within 24 hours, or within 3 days at most.

#### ***2. Bills to amend the Constitution***

These Bills are dealt with in Article 82 of the Constitution. The Amendment or Repeal proposed must be expressly stated in the Bill. These Bills will become law upon its being passed in Parliament by not less than two-thirds of the whole number of members (including those not present) voting in favour of such Bill, such a Bill will become law on its being Certified by the President, except in cases where the amendments or repeal require to be approved at a referendum, in which case the Bill becomes Law, on its being approved at a Referendum and the President certifies that it has been so approved.

#### ***3. Private members' Bills***

If a private member presents a Bill to Parliament, Parliament can authorise publication of the Bill in the Government Gazette. When this happens, the Bill is sent to the Legal Draftsman's Department for revision before being debated by Parliament. It then has to go through the procedure set out in Article 79 of the Constitution, as in the case of all other public and general Bills.

### ***Drafting of subordinate legislation***

This is in effect delegated legislation within the meaning of Article 76 of the Constitution. To this category belong Regulations, Rules, Orders, By-laws, Notifications, Proclamations etc, made under the provision of an existing law and which when made have the effect of law. Subordinate

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legislation must always be seen to be within the limits of the powers delegated by the parent statute (i.e. it has to be *intra vires* the enabling law). Otherwise, it is liable to be struck down by the Courts as being *ultra vires* the principal statute.

Subordinate legislation according to Chapter XXXII of the Establishments Code, must be prepared by the relevant Ministry and is required to be sent to the Legal Draftsman only for revision. In revising subordinate legislation the Legal Draftsman endeavours to ensure that it is within the powers delegated by Parliament.

Subordinate legislation is made either by the relevant Ministry or Authority as the case may be, and will take effect only upon publication of the same in the Gazette. The gazetted subordinate legislation must then be tabled in Parliament. In some cases, delegated legislation takes effect immediately on being published in the Government Gazette. In such a case, Parliament can pass motion disallowing the legislation.

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## **Anomalies in Child Support Regulations—Smith v Smith and Another**

In a decision handed down on 19 October last year, the English Court of Appeal (Lord Justice Ward, Lord Justice Wall and Sir Martin Nourse) made some rather caustic comments about the drafting of the *Child Support (Miscellaneous Amendments) Regulations* (S.I. 997 of 1999).

In allowing an appeal by a non-resident self-employed father, Robert Smith, from a decision by the Child Support Commissioner, Mr. P. L. Howell, QC, in October 2003 in favour of the mother, Helen Smith, and the Secretary of State for Work and Pensions, the Court of Appeal held that, despite glaring anomalies, paragraph 2A(2) of Schedule 1 to the Regulations required the income of a self-employed absent parent to be calculated *after* deduction of any entitlement to capital allowances and remitted the matter for the necessary assessment to be made.

Paragraph 2A(2) of Schedule 1 to the 1999 Regulations defined “Earnings” as the total taxable profits from self-employment of that earner as submitted to the Inland Revenue. Under amendments introduced by the *Child Support Act 1995* and implemented by the *Child Support (Departure Direction and Consequential Amendments) Regulations* (S.I. No. 2907 of 1996) the Secretary of State was empowered in certain circumstances to make a departure direction from the strict application of the assessment formula. In delivering the main judgment in the case, Lord Justice Ward said that the main issue was whether the 1999 Regulations required capital allowances to be included or excluded for the purposes of calculating net income. But according to his Lordship, “the effect of sloppy and untidy Parliamentary drafting<sup>7</sup> that had sought to introduce changes to simplify the administration by the Child Support Agency of the child maintenance legislation created muddle resulting in absurdity and injustice.”

Legislative reforms in 1995 had allowed the Secretary of State to direct a departure from an assessment in certain circumstances and a subsidiary question arose as to the mother’s rights

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<sup>7</sup> It should be emphasised that, with certain very limited exceptions, the Office of Parliamentary Counsel in London has no responsibility for drafting statutory regulations. Ed.

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under those provisions. The parties' marriage had ended in 1997, with the mother applying to the Child Support Agency for maintenance for her three children. The father was a sole trader in the car hire trade and entitled to substantial capital allowances. (See section 140 of the *Capital Allowances Act 1990*, now section 247 of the *Capital Allowances Act 2001*).

The Commissioner held that for the year to March 2000 the father was not entitled to any deductions for capital allowances and the formula for assessment of his income (Basis A) resulted in profits of £169,520. Had the allowances been deducted (Basis B) his taxable income would have been only £20,892, and would have resulted in an assessment of £11.28 a week for the three children. For tax purposes capital allowances were, subject to complicated rules, treated as an expense of the trade and as such were deductible from profits. It was a system used by the Chancellor of the Exchequer to stimulate investment in one form of business or another. An absent parent carrying on a certain kind of business, for example, in the film industry giving 100 per cent allowances, might thereby be able to distort his taxable profits. According to Lord Justice Ward, the phrase "total taxable profits" was not a term of art, since it was nowhere defined in the child support Acts or the taxes Acts. The words would ordinarily be taken to mean "the amount of profit on which liability to tax has to be calculated".

The only relevant identified requirement of the Inland Revenue was contained in section 8 of the *Taxes Management Act 1970* "to make and deliver a return containing such information as may reasonably be required...". In his Lordship's opinion, "the issues arising in the case revealed sloppy and untidy drafting, the draftsman simply not spotting the muddle he was creating". An award on Basis B seemed so far removed from financial reality as to be regarded as inflicting injustice on this mother. But notwithstanding the anomaly, the Court was compelled to give to the phrase "total taxable profits" its ordinary meaning and not a meaning that would have the effect of equating taxable profits to net earnings.

His Lordship considered that if the legislature had wished to exclude capital allowances in paragraph 2A it could easily have said so. He thought that it was lamentable that the anomaly had not been spotted and dealt with before. In his view, it was not for the Court to draft changes. It was the responsibility of the Secretary for State. The Commissioner's decision was wrong. Capital allowances should have been deducted in order to properly arrive at the absent parent's total taxable income.

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## **International conference: "Clarity and obscurity in legal language"**

***To be held at the Université du Littoral Côte d'Opale Boulogne-sur-Mer, France, 5 to 9 July 2005***

Organised under the auspices of CERCLE, équipe VolTer (Vocabulaire, Lexique et Terminologie) and of LARJ (Laboratoire d'Analyse et de Recherche Juridiques) – Université du Littoral Côte d'Opale in collaboration with "Clarity".

**PROGRAM—TUESDAY, 5 JULY**

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2:00 pm—REGISTRATION

3:00 pm—OPENING OF THE CONFERENCE

5:00 pm—RECEPTION AT THE TOWN HALL AND COCKTAIL

**PROGRAM—WEDNESDAY, 6 JULY**

8:30 am—KEYNOTE SPEAKERS: Madame Catherine Bergeal, Director of Legal Affairs, French Ministry of Defence and the Honourable Justice Michael Kirby, High Court of Australia.

10:00 am—BREAK

10:30 am —“WRITING THE LAW”

Panel Chair: Sir Edward Caldwell, Law Commission, UK

Speakers: Eamonn Moran, QC, Chief Parliamentary Counsel, Victoria, Australia; Francis Delpérée, Senator and Law Professor, Catholic University of Louvain, Belgium.

12:00 pm—LUNCH

2:00 pm—MASTER CLASSES (concurrent English and French sessions)

Master Class in English: WRITING THE LAW IN PLAIN LANGUAGE

Panel Chair: Conrad Dehn, QC, Barrister, Fountain Court Chambers, Statute Law Society Council, UK.

Panelists: Don Macpherson, Legislative Counsel, Department of Justice, Canada; Robert Dormer, Office of the Parliamentary Counsel, London, UK; Ben Piper, Office of the Chief Parliamentary Counsel, Victoria, Australia.

*Or*

Master Class in French: WRITING THE LAW IN PLAIN LANGUAGE—Bilingual or multilingual law and the search for clarity

Panel Chair: Lionel Levert, Special Advisor, Legislative Drafting, International Cooperation Group, Department of Justice, Canada

Speakers: Véronique Champeil-Desplats, Professor, Université du Littoral Côte d’Opale, France; Eva Steiner, Professor, King’s College London, UK; Richard Tremblay, Coordinator, Legislative Drafting Development and Training, Ministry of Justice of Quebec, Canada; Stéphane Beaulac, Professor, Université de Montréal and Randal N. M. Graham, Professor, University of Western Ontario, Canada.

3:30 pm—BREAK

4:00 pm—MASTER CLASSES

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Master Class in English: WRITING THE LAW IN PLAIN LANGUAGE

Panel Chair: Joe Kimble, Professor, Thomas M. Cooley Law School, USA

Panelists: Michèle Asprey, Editor of Clarity, Plain Language Consultant, Australia; David C. Elliott, Lawyer and Legislative Drafter, Canada; Eamonn Moran, QC, Chief Parliamentary Counsel, Department of Premier and Cabinet, Victoria, Australia.

Master Class in French: WRITING THE LAW IN PLAIN LANGUAGE

Panel Chair: André Labelle, Chief Jurilinguist and Legislative Counsel, Department of Justice, Canada.

Speakers: Rose-Marie Gerbe, PhD Student, University of Grenoble, France; Josée Baril, Jurilinguist, Department of Justice, Canada; Mathieu Devinat, Professor, Université de Sherbrooke, Canada; Andreas Loetscher, Legislative Drafter, Federal Chancery, Switzerland; Michel Leys, Author and Consultant, Belgium.

**PROGRAM—THURSDAY, 7 JULY**

8:30 am—KEYNOTE SPEECH: James Kessler, QC, Practitioner, English Revenue Bar, UK: “Objectivity and subjectivity in interpretation”

9:00 am—PLAIN LANGUAGE IN THE JUDICIAL CONTEXT

Chairs: Lawrence Solan, Professor, Brooklyn Law School, USA ; Pierre-André Lecocq, Professor, Université de Lille, France

Speakers: Michael Kirby, Justice of the High Court of Australia; Anne-Françoise Debruche, Professor, University of Ottawa, Civil Law Section, Canada; Thierry Verheyde, Judge, Douai Court of Appeal, France; Xavier Samuel, Judge, Legal Services, Conseil Constitutionnel, Paris, France ; Michel Leys, Author and Consultant, Belgium; Samer Al Nasir, Judge in Iraq, Law Professor, University of San Pablo, Madrid, Spain.

*Or*

THE COMPUTER TOOLS OF PLAIN LANGUAGE: Technical workshop

Panel Chair: Jean-François Richard, BridgeTerm, Canada (TBC)

Speakers: Catherine Rawson, Legal Writing Consultant and Trainer, Australia; Helena Englund and Anki Mattson, Plain Language Consultants, Sweden; Jean-François Richard, BridgeTerm, Canada; Nathan McDonald, Maroubra, Australia, Mustor Power Patterns.

10: 45 am—BREAK

11:00 am—FUZZINESS IN LEGAL LANGUAGE

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Panel Chairs: Jan Engberg, Professor, Aarhus School of Business, Denmark; Anne Wagner, Senior Lecturer, Université du Littoral Côte d'Opale, France.

Speakers: Lucia Morra and Piercarlo Rossi, PhD, University of Turin, Italy; Jan Engberg, Professor, Aarhus School of Business, Denmark; Louis Wolcher, Professor, University of Washington Law School, USA; Alexandre Flückiger, Professor, University of Geneva, Switzerland; Christopher Williams, Professor, University of Bari, Italy.

*Or*

#### CLARITY IN COMMUNICATION WITH CITIZENS

Panel Chair: Peter Tiersma, Professor, Loyola Law School, USA; Lawrence Solan, Professor, Brooklyn Law School, USA.

Speakers: Emma Wagner, Consultant, UK; Deborah Bosley, Professor, UNC Charlotte, USA; Nancy S. Marder, Professor, Chicago-Kent College of Law, USA; Ben Piper, Office of the Chief Parliamentary Counsel, Victoria, Australia.

12:30 am—LUNCH

#### 2:00 pm—READABILITY IN EUROPEAN INSTITUTIONS

Panel Chairs: Pascale Berteloot, Head of Unit on Access to Law, Publications Office of the European Union, Luxemburg; Daniel Fasquelle, Professor, Université du Littoral Côte d'Opale, France.

Speakers: Gilbert Lautissier and William Robinson, Legal Revisers Group, Legal Service, European Commission; Richard Foley, Lecturer, University of Lapland, Finland; Metoda Paternost-Bajec and Anna de Chassiron, Jurilinguists Division; Jean-Claude K. Dupont, Research Fellow, Université Libre de Bruxelles, Université Nancy.

3:45 pm—BREAK

#### 4:00 pm—THREE SIMULTANEOUS SESSIONS (one in English, one in French, one Bilingual) ISSUES IN PLAIN-LANGUAGE WRITING

Panel Chairs: Anne Wagner, Senior Lecturer, Université du Littoral Côte d'Opale, and Olivier Carton, Member of the LARJ, Lecturer, Université du Littoral Côte d'Opale, France.

Speakers: Nicola M. Langton, Senior Lecturer, Cardiff University, UK; Joe Kimble, Professor, Thomas M. Cooley Law School, USA; Ronald Shook, Professor, University of Utah, USA; Douglas Bellis, Deputy Legislative Counsel, US House of Representatives, USA; Duncan Berry, Consultant Parliamentary Counsel, Office of the Parliamentary Counsel to the Government, Ireland.

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4:00 pm—PLAIN LANGUAGE IN CIVIL LAW CULTURES (French-speaking and others)

Panel Chair: Nicole Fernbach, Jurilinguist, Centre International de Lisibilité, Montréal, Canada

Speakers: Jean-Marie Quairiat, Judge, Labour Tribunal of Mons, President of the Judicial Association, Belgium; Jean-Claude Bourquin, Vice-President, COSLA, France; Arnaud Suspène, Docteur EPHE, Délégations aux Usagers et aux Simplifications Administratives (DUSA), France; Michel Sironneau, Regional Delegate, Médiateur de la République, Paris, France

*Or*

PROFESSIONAL DEVELOPMENT OF LEGAL WRITERS & DRAFTERS

Panel Chair: Richard Foley, Lecturer, University of Lapland, Finland.

Speakers: Lena Blomquist, Senior Information Officer, Supreme Court of Sweden; Rachel Spencer, Flinders University, Australia; Halton Cheadle, Professor, University of Cape Town, South Africa; Frédéric Houbert, Legal Translator and Author, France.

8:00 pm—GALA DINNER

### **PROGRAM—FRIDAY, 8 JULY**

8:30 am—KEYNOTE SPEECH: Jean-Paul Gauzès, Member of Parliament, European Parliament

9:00 am—SIMULTANEOUS SESSIONS (in English and in French):

#### FROM PLAIN ENGLISH TO PLAIN LANGUAGES

Panel Chairs: Vijay Bhatia, Professor, City University of Hong Kong, China, and Sophie Cacciaguidi-Fahy, Lecturer, National University of Ireland, Galway, Ireland.

Speakers: Maurizio Gotti, Professor, University of Bergamo, Italy; Rachael Anneliese Radhay, PhD Student, University of Brasilia, Brazil; and Dominic McCormack, Lawyer, Darwin, Australia; Tunde Opeibi, Senior Lecturer, Department of English, University of Lagos, Nigeria.

9:00 am—IMPACT OF TECHNOLOGY ON ACCESS TO LAW

Panel Chair: Danièle Bourcier, Laboratory Director, CERSA, Université, Paris, France.

Speakers: Elizabeth Catta, Véronique Tauziac, Hel Chamroeun, Researchers, CERSA, Paris, France; Jennifer Dahan Templier, Founding Director, Droit In-Situ, Paris, France; Filipe Borges, Researcher, CERSA, Paris, France.

10:30 am—BREAK

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11:00 am—PLAIN LANGUAGE IN MULTIDISCIPLINARY CONTEXTS

Panel Chairs: Maurizio Gotti, Professor, University of Bergamo, Italy, and Ross Charnock, Senior Lecturer, Université Paris 9, France.

Speakers: Sophie Cacciaguidi-Fahy, Lecturer, National University of Ireland, Galway, Ireland; Robin Ford, Commissioner, British Columbia Securities Commission, Canada; Lone E. Olebile, Senior Lecturer, University of Botswana; Philippe Barbaud, Honorary Professor, Consultant in Linguistics, University of Québec, Canada.

*Or*

PAST AND FUTURE OF PLAIN LANGUAGE, OR PLAIN LANGUAGES (EUROPEAN):  
INFORMAL ROUNDTABLES

Panel Chairs: Nicole Fernbach Jurilinguist, Centre International de Lisibilité, Canada, and Catherine Rawson, Legal Writing Consultant and Trainer, Australia

Speakers: Barbro Ehrenberg-Sundrin, Ministry of Justice, Sweden; Jan Engberg and Kirsten Wølch Rasmussen, Professors, Aarhus School of Business, Denmark; Nigel Grant, Plain Language Commission, UK; Éric Battistoni, Judge, Belgium; Stefanos Vlachopoulos, Researcher, Technological Educational Institute of Epirus, Greece; Jerome Tessuto, Researcher in English Language and Legal English, University of Naples, Italy.

12:15 pm LUNCH

2:00 pm—TWO SIMULTANEOUS SESSIONS

PAST AND FUTURE OF PLAIN LANGUAGE, OR PLAIN LANGUAGES (INTERNATIONAL):  
INFORMAL ROUNDTABLES

Panel Chair: Peter Butt, Professor of Law, University of Sydney, Australia.

Speakers: Vicki Schmolka, Lawyer and Plain Language Consultant, Canada; David C. Elliott, Lawyer and Legislative Drafter, Canada; Annetta Cheek, Federal Aviation Administration, Dept. of Transportation, Washington DC; Susan Kleimann, Executive Director, Center for Plain Language, USA; Neil James, Director, Plain English Foundation, Australia; Annelize Nienaber, University of Pretoria, South Africa; Salome Flores Sierra, Ministry of Public Administration, Mexico.

*Or*

ISSUES IN FRENCH LEGAL WRITING: TWO DEBATES (Gender-free writing and simplification of spelling)

Panel Chairs: Michèle Lenoble-Pinson, Professor, President of the Belgium Association for the Implementation of Spelling Recommendations

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(APARO), Belgium; and Olivier Carton, Member of the LARJ, Lecturer, Université du Littoral Côte d'Opale, France.

Speakers: Renée Honvault, Professor, Laboratoire DYALANGCNRS, Secrétaire générale de l'Association pour l'information et la recherche des orthographes et des systèmes d'écriture (AIROE), France; James Archibald, Professor, McGill University, Canada; Dino Bressan, Associate Professor, University of Melbourne, Australia; Bozena Tieszen and Heather Pantoga, Professors, University of Wisconsin, USA; Isabelle Carignan, PhD Student, Université de Montréal, Canada.

4:00 pm—BREAK

4:30 pm—HOW TO MAKE CLARITY MAINSTREAM: OVERCOMING THE OBSTACLES TO PLAIN LANGUAGE

Panel Chair: Christopher Balmford, CEO, Cleardocs.com, Sydney, Australia.

Speakers: Michèle Asprey, Editor of Clarity, Plain Language Consultant, Australia; William D. Lutz, Professor, Department of English, Rutgers University, USA; Sean Kidney, CEO, Social Change Online, Australia.

5.30 pm—CLOSING OF THE CONFERENCE (Vice-President, Conseil scientifique, ULCO)

### **PROGRAM—SATURDAY, 9 JULY**

GUIDED EXCURSION AND LUNCH—Visit to “La Coupole” (gigantic underground bunker designed by the Nazis, in 1943-1944, to store, prepare and launch V2 rockets. Visit to “Les deux Caps”: Cap Gris-Nez and Cap Blanc-Nez.

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## **Fifth international plain language conference—Plain language: Adding up the benefits**

*To be held at L'Enfant Plaza Hotel, Washington, DC 20024, USA, 3-6 November 2005*

Conference objectives:

- Share the results of research that prove the benefits of plain language
- Share knowledge, techniques, and news with plain-language practitioners, experts, and clients
- Advocate the use of plain language through a common set of principles, values, and techniques
- Raise awareness of the need for and importance of plain language

The conference is being hosted by two American organisations—

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the Center for Plain Language (CPL) ([www.centerforplainlanguage.org](http://www.centerforplainlanguage.org)); and

the Plain Language Action and Information Network (U.S. PLAIN) ([www.plainlanguage.gov](http://www.plainlanguage.gov)).

U.S. PLAIN is a government-wide group of volunteers working to improve communications from the U.S. Federal government to the public. The CPL is a non-profit, federally tax-exempt membership organization. As the leading resource of plain-language expertise in the United States, the CPL promotes the use of plain language in the public and private sectors.

The conference will feature people from varied backgrounds who have experienced and measured the value of plain language. Plain-language “clients” have carried the plain-language message around the world and we want to hear their stories at this conference. In particular, the conference will feature studies and research that prove the benefits of plain language in these areas:

- Cost savings
- Public relations benefits
- Increased efficiency
- Health, financial, and legal literacy
- Improved customer communications

*Topics and speakers:*

- To whom should one pander?—Martin Cutts, leading British plain language campaigner;
- Matching what you write to what you want to read—Christopher Balmford, CEO of Cleardocs Australia;
- Revising Hallowed Text: Lessons from Redrafting the Federal Rules of Civil Procedure.—Professor Joe Kimble, Thomas Cooley Law School and President of Clarity International;
- How IRS is writing plainly—one notice at a time—Ann Gelineau, US Internal Revenue Service, and Susan Keliman, Executive Director, Center for Plain Language and President, KleimannCommunication Group Inc., USA.
- Health Literacy: The Importance of Clear Communication for Better Health—Len and Cecilia Doak, Patient Learning Associates Inc, USA, and Rima Rudd, Harvard School of Public Health, USA;
- Plain language and the Web—Dr Janice Redish, President, Redish & Associates Inc., USA;
- Plain language in financial disclosures—William Lutz, Professor of English, Rutgers University, USA (editor of Doublespeak) and Nancy Smith, formerly of the US Securities and Exchange Commission.

Other speakers will include—

- Bryan Garner, one of the world’s pre-eminent experts on legal writing and legal language;
- Cynthia Glassman, the leading proponent of plain language use at the US Securities and Exchange Commission (SEC);

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- Bill Sabin, an author who has been wrestling with such stylistic issues as the hyphenation of the compound adjective for more than 30 years.
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## **14<sup>th</sup> Commonwealth Law Conference**

***To be held in London, 11-15 September 2005***

In September 2005, the Commonwealth Lawyers Association and the Law Society of England and Wales will host their first ever combined conference in London – Commonwealth Law 2005.

The conference will be the golden jubilee event of the Commonwealth Lawyers Association - it will be the first time the Commonwealth Law Conference has been held in London since the first Commonwealth Law Conference 50 years ago. The event will also include Solicitors 2005 – the Law Society Annual Conference.

As many as 1,500 lawyers are expected to attend the prestigious event, sponsored by Barclays, which will be held at the Queen Elizabeth II Conference Centre in Westminster. Highlighting the four-day gathering will be several keynote addresses, including a speech from Lord Bingham of Cornhill, the former Lord Chief Justice of England and Wales and now the senior Law Lord.

Colin Nicholls QC, President of the Commonwealth Lawyers Association, said:

“In the last 50 years, the conference has established itself as the premier legal event in the Commonwealth. All branches of the legal profession - judges, magistrates, public and private sector lawyers, academics, paralegals and executives of the Commonwealth’s law associations - meet to discuss vital issues affecting the Commonwealth’s law and its legal profession.

The theme of this year’s conference Developing Law and Justice embraces the momentous issues facing the Commonwealth’s lawyers today: globalisation and the environment; security and freedom; corporate social responsibility; discrimination and the protection of the under-privileged, family law and the child, access to justice, and the future of the legal profession itself. There are also sessions on HIV/AIDS, disaster relief, Islamic law and banking.”

In addition to keynote speeches, the programme also will feature workshop streams covering human rights; criminal law and practice (including constitutional law); the judicial officer; and the law and small states.

Specialist topics will include: environmental law; liabilities at sporting events; freedom of information and the regulation of the media; legal issues arising out of natural disasters; and liabilities of public authorities for exercise of statutory powers.

The social programme includes a welcome reception and dinners, as well as an accompanying guest program.

Visit the CLC website: [www.commonwealthlaw2005.com](http://www.commonwealthlaw2005.com) or call +44(0) 20 7407 9263

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Pacific and West  
Indies)

6:30 – 7:30 pm Reception—Dover House, Whitehall

Hosts: Office of the Scottish Parliamentary Counsel

**PROGRAM DAY 3: FRIDAY, 9 SEPTEMBER 2005**

<i>Event &amp; Time</i>	<i>Venue</i>	<i>Chairperson</i>	<i>Speaker</i>	<i>Topic</i>
CALC AGM 9:30 – 11:00 am	Beveridge Hall	Sir Geoffrey Bowman (President of CALC)	-	-
Break 11:00 11:30 am				
1 <sup>st</sup> Session 11:30 – 1.00 pm	Beveridge Hall	Sir Edward Caldwell (UK)	Neil Adsett (Queensland, Australia)  Duncan Berry (Australia, Ireland)  Janet Erasmus (British Columbia, Canada)	Consolidating, revising and rewriting legislation
Lunch 1:00 – 2:30 pm	Chancellors Hall (1 <sup>st</sup> Floor)			
2 <sup>nd</sup> Session 2:30 – 3:30 pm	Beveridge Hall	Sir Geoffrey Bowman (President of CALC)	Dame Mary Arden, Lady Justice of Court of Appeal (UK)	Human Rights
Break 3:30 – 4:00 pm				
3 <sup>rd</sup> Session 4:00 – 5:00 pm	Beveridge Hall	John McCluskie (Scotland)	Marc Cuerrier (Ottawa, Canada)  Colin Wilson (Scotland)	Drafting against a background of differing legal systems
Closing remarks 5:00 – 5:15 pm	Beveridge Hall	-	Sir Geoffrey Bowman (President of CALC)	
CALC Dinner—7:30 for 8.00 pm—The Old Hall, Lincoln's Inn				

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## **CALC conference registration**

The fee for the conference is £45 per day, including lunches and refreshments on the two days of the conference.

The conference dinner will be held in The Old Hall at Lincoln's Inn on Friday 9th September. You may bring a guest. The cost for the dinner will be £75 per person (excluding wine). If you wish to attend the CALC dinner, you must include payment with your registration for the conference. Please indicate on your form if you wish to attend the dinner.

The CALC conference is being held immediately before the 14th Commonwealth Law Conference. However, you should be aware that registration for the Commonwealth Law Conference does not entitle you to attend the CALC conference or vice versa. If you plan to attend both conferences, please ensure that you register for each conference separately.

CALC may give a list of those participating at the CALC conference to the organisers of the Commonwealth Law Conference. If therefore you do not wish your registration details to be passed to the organisers of that conference, please indicate on the form that you do not want those details to be passed on.

Please complete and return the registration form by post, fax or e mail, and send your full payment by post. When you have completed the registration form, please post it with your registration fee to:

Linda Fraser, Office of the Parliamentary Counsel, 36 Whitehall, London, UK SW1A 2AY.

If you require any further information, please contact her by fax at +44 20 7210 0956 or by e-mail at [Linda.fraser@cabinet-office.x.gsi.gov.uk](mailto:Linda.fraser@cabinet-office.x.gsi.gov.uk) Alternatively, she can be contacted by telephone at +44 20 7210 0955.

### *How to pay the conference fee and for the dinner*

Please send a cheque or bankers draft, in UK pounds, made payable to 'Cabinet Office Vote', for the amount you have entered as "Total payment due" on Section C of the form.

The payment should be sent to Linda Fraser at the address specified above. Note that all payments must be received by 23 July 2005.

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**Conference registration form**

**Section A: Delegate Information** (Please use block letters and print clearly)

Title:.....; Surname:.....

First names:.....

Position:.....

Preferred name for your badge .....

Postal address .....

Town/City:..... State/Province/County:.....

Postcode:.....Country:.....

Telephone (including country and area code) .....

Fax no:.....Mobile no:.....

E-mail Address (please print clearly).....

Employer/Organisation that your represent (if applicable) .....

Contact details during conference (if available) .....

Do you have any special dietary requirements?

.....

Do you have any other additional requirements, for example special equipment (such as a hearing loop) relating to a disability?

.....

Delete as necessary

- I will/will not be attending the reception on Wednesday 7 September 2005.
- I will/will not be attending the reception on Thursday 8 September 2005.
- I will/will not be attending the Dinner on Friday 9 September 2005.

If you do not wish to have your name passed to the organizers of the Commonwealth Law Conference (which take place in London during the week beginning on 11 September 2005, please tick the following box:

**Section B: Guest Information** (Please use block letters and print clearly)

Full name of accompanying guest: .....

Preferred name for your guest's badge .....

Does your Accompanying guest have special dietary requirements?

.....





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# Commonwealth Association of Legislative Counsel

## MEMBERSHIP APPLICATION FORM FOR NEW MEMBERS

The Secretary, Commonwealth Association of Legislative Counsel  
6/F, Office of the Attorney General, Government Buildings, Upper Merrion Street, Dublin 2, Ireland§

I, .....,

wish to apply to become an individual member/associate individual member\* of the Commonwealth Association of Legislative Counsel.

(signed) ..... Applicant

**\*Note:** Persons are eligible to become individual members of CALC if they are or have been engaged in legislative drafting or in training persons to engage in legislative drafting and are Commonwealth persons. A "Commonwealth person" is a person who is a citizen or a permanent resident of, or who is domiciled in, a country or territory that is a member of the Commonwealth of Nations. Persons who have been so engaged but who are not Commonwealth persons are eligible to become associate members of CALC.

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Please specify–

- (a) your office address .....  
..... Post code .....
- (b) your home address .....  
.....Post code .....
- (c) your office telephone no. § .....
- (d) your home telephone no. §.....
- (e) your office facs. no. ....
- (f) your e-mail address .....

I *object/do not object*\* to having my home address and telephone number being included in the publication list of members. [\*Delete the italicized words that you do not want to apply to you.]

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§ Please include your country and area codes.

Instead of sending the completed form by post, you can it by facs message or e-mail if you wish. The facs no. is 353 1 661 1287 and the e-mail address is [duncan\\_berry@ag.irlgov.ie](mailto:duncan_berry@ag.irlgov.ie) or [dr\\_duncan\\_berry@yahoo.co.uk](mailto:dr_duncan_berry@yahoo.co.uk)