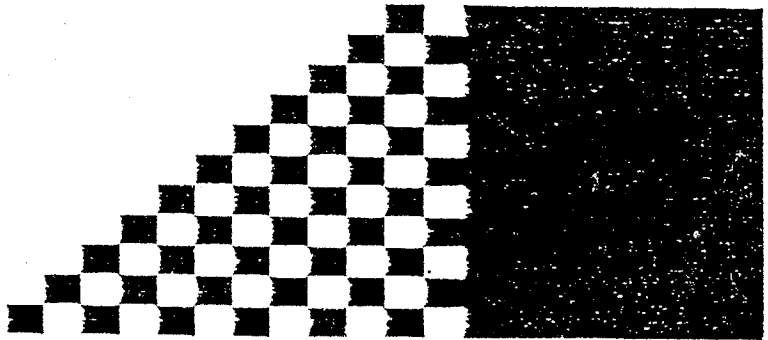


The Loophole

The newsletter of the
Commonwealth Association
of Legislative Counsel (C A L C)



VOLUME 2, ISSUE 5
OCTOBER, 1989

"The Loophole" is the 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, Q.C. (President)	NEW ZEALAND
Mr. Justice Gerry Nazareth (Vice President)	HONG KONG
Mr. Peter Pagano (Secretary)	CANADA
Mr. Arthur Buluma (African member)	KENYA
Mr. N.J. Abeysekere (Asian member)	SRI LANKA
Ms. Hyacinth Lindsay (Caribbean member)	JAMAICA
Mr. Neil Adsett (Pacific member)	TONGA

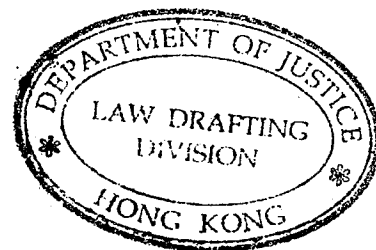


TABLE OF CONTENTS

	Page
1 Comments from the Secretary	1
2 Meetings of the Commonwealth Association of Legislation Counsel	2
3 Commonwealth Law Conference	3
4 List of New members, and Address Changes	16
5 Drafting Opportunities	17
6 Efficiency in Legal Drafting by Professor Robert D. Eagleson as published in "Essays on Legislative Drafting"	18
7 Membership list	

COMMENTS FROM THE SECRETARY

Welcome to Volume 2, Issue 5 of the LOOPHOLE, the Newsletter of the Commonwealth Association of Legislative Counsel.

There are a few matters that I would like to bring to your attention:

1. I am pleased to advise you that Mr. Iles has been appointed Q.C. It is quite an honour to have a member of the drafting profession appointed as a Q.C.

2. CALC's annual meeting is only 6 months away. This issue contains information on the meeting. In addition, I've included information on the Commonwealth Law Conference.

If you wish to present a paper at CALC's general meeting please contact Mr. Iles as soon as possible.

It would help the organizers to know how many members are proposing to attend.

If you are proposing to attend, please inform Mr. Iles or myself as soon as possible. If you wish to provide information by FAX, Mr. Iles' FAX number is 64-04-499-1724 and my FAX number is 403-422-7366.

3. Also included in this issue is an updated membership list. I hope there are no errors or omissions. One change that I did make was to place England and Wales, Scotland and Northern Ireland into sub-headings under the general heading "United Kingdom".

4. Mr. Alan Roger of Hong Kong sent me the "Report of Working Group on the Revised Laws of Hong Kong". I've printed a couple of paragraphs that will be of interest to those jurisdictions who have or are planning on having looseleaf systems.

I will be putting out another issue of the LOOPHOLE before the CALC meetings.

MEETINGS OF THE COMMONWEALTH
ASSOCIATION OF LEGISLATIVE COUNSEL

A 2-day programme is being proposed for the up-coming meetings of the Commonwealth Association of Legislative Counsel. The proposed programme is as follows:

DAY 1 - MONDAY, April 16, 1990

10:00 a.m.	Official welcome and morning tea
10:30 a.m. to 11:30 a.m.	Formal session: The printing of Legislation (including matters arising from the privatization of Government Printers)
11:30 a.m. to 12:30 a.m.	A round table discussion on current drafting practices and problems
12:45 p.m. to 2:00 p.m.	Lunch

DAY 2 - THURSDAY, April 19, 1990

9:00 a.m. to 10:15 a.m.	Formal session - Database Systems for Legislation
10:15 a.m. to 10:45 a.m.	Morning tea
10:45 a.m. to noon	Formal session - Revisions and Consolidation of Statutes
12:30 p.m. to 2:00 p.m.	Lunch
2:15 p.m. to 3:15 p.m.	Panel discussion on specific drafting practices and problems
3:15 p.m. to 3:45 p.m.	Afternoon tea
3:45 p.m. to 5:00 p.m.	General meeting of CALC

VENUE

Because of the pressure on space in the Aotea Centre, it is likely that the venue, on both the Monday and the Thursday, for the activities organized by CALC will be one of the central city hotels, possibly the Sheraton. (See registration information for location.) The place will be confirmed as soon as possible and you will be informed in the next issue of the LOOPHOLE.

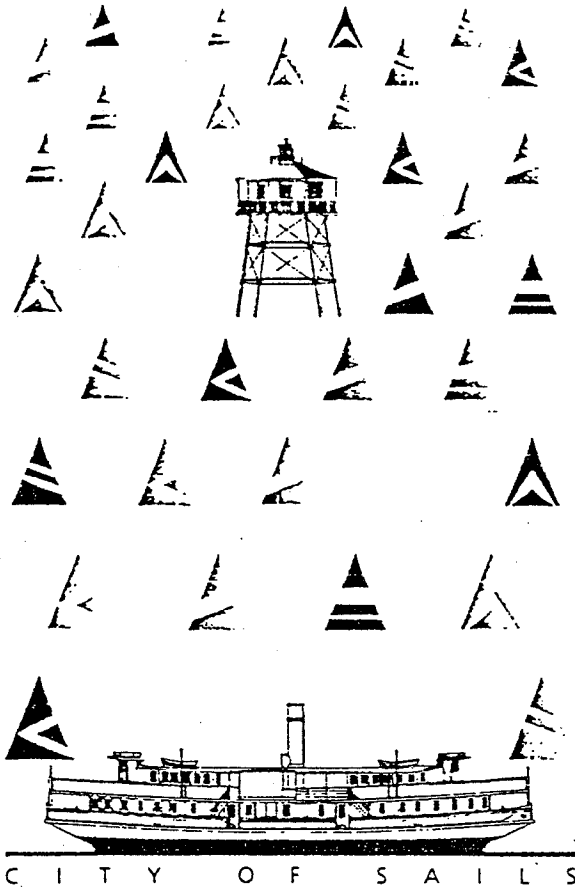
It is strongly recommended that members arrive no later than Sunday and members should try to register for the Commonwealth Law Conference on the Sunday also. Trying to register on Monday prior to the opening ceremonies of the Conference may interfere with our meetings.

SPEAKERS

Speakers on the topics set out in the programme are yet to be confirmed. If you are interested in speaking on any of those topics or any other topic, please contact Mr. Iles.

COMMONWEALTH LAW CONFERENCE MEETINGS

Of particular interest to members attending the Meetings of the Commonwealth Law Conference will be the session entitled "Plain Speaking". This session is being held on the afternoon of Tuesday, April 17, 1990. Mr. Garth Thornton has been confirmed as speaker.



C I T Y O F S A I L S

9TH
COMMONWEALTH LAW
CONFERENCE

AUCKLAND NEW ZEALAND APRIL 16-20TH 1990



REGISTRATION BROCHURE

WEDNESDAY

18TH
APRIL
AM

Indigenous Peoples and the Law
Four sessions running for the full day will explore the law relating to the rights of indigenous people throughout the Commonwealth including the jurisprudence which has developed from New Zealand's Treaty of Waitangi.

Violence in the Family

The problem of violence and abuse in the family affects every society. An opportunity to compare experiences and look for long term solutions.

Arbitration of Commercial Disputes

The International Bar Association co-hosts a session which will examine recent developments in the law and practice relating to arbitration of commercial disputes.

Transnational Law Enforcement

The need for international co-operation is highlighted in this session which focuses on problems associated with such matters as child abduction, extradition and the recovery of proceeds of crime.

Taxation Reform and the Reform of Tax Reform

The what, how and why of tax reform in Commonwealth jurisdictions. What procedures can be used to bring about reform? Can they be improved? What are the roles of lawyers and the courts?

Crime and the Crisis in Sentencing

The worldwide increase in crime and the prison population demands a radical reassessment of sentencing options. Experts from throughout the Commonwealth ponder the problems and suggest some startling solutions.

Legal Partnerships

A panel of experts addresses some of the most difficult issues which confront partners in law firms – partnership entry and exit, profit sharing and practice financing.

WEDNESDAY

18TH
APRIL
PM

Technology on Trial and Trial by Technology

Experts evaluate the impact of technological advances on the adversary system and explain how the computer helps to simplify complex litigation.

China and Hong Kong in the 1990s

In the wake of the upheavals in China Lawasia co-hosts a session which will address issues arising from the resumption by China of sovereignty over Hong Kong in 1997.

Medical Malpractice and Compensation

Is the tort action the best way of maintaining medical standards and compensating the victims of medical malpractice? An opportunity to reflect on different systems of compensation from both a legal and a medical viewpoint.

Hearsay – Gone Tomorrow?

Are the traditional common law rules of evidence obsolete? This session asks some challenging questions about the relevance of our basic rules of evidence and suggests some radical answers.

Liability for Technological Disasters

Modern technology has given rise to massive and complex claims for personal injuries – thalidomide, agent orange and Bhopal. Are existing laws and procedures able to cope with claims on this scale?

Protection of Intellectual Property Rights

A comparative review of developments in intellectual property law with special focus on the boundaries and future development of the passing-off action.

Size and Structure of Legal Firms

Is there still a place for small and medium sized law firms? The advantages and disadvantages of growth are considered including an assessment of the merits of merger – marriage or misery?

THURSDAY

19TH
APRIL
AM

Medical Law and Ethics

The AIDS pandemic has focussed attention on vital legal and ethical issues associated with medical treatment. Two sessions will examine some of the key issues including consents to treatment; individuals' rights versus public welfare; the accountability of medical professionals; and patients' rights.

Administrative Law

An overview of the law of judicial review is presented, by one of the world's leading administrative lawyers.

Legal Representation in Small States

An opportunity for practitioners in smaller jurisdictions to discuss the complications which can arise when there are not enough lawyers to go around.

International Securities Markets – Legal Implications

The internationalisation of securities markets reflects the increasing interdependence of national economies and financial systems. Speakers will discuss the need for greater co-operation to optimise efficiency and prevent abuse.

Juveniles and the Legal Process

The special needs of children – as witnesses, victims and defendants – are considered and the ways in which their needs are met in Commonwealth jurisdictions compared.

Contract – New Forms of Obligation?

Recent developments in tort and equity appear to have blurred the edges of contract. Are they an extension of contract or independent doctrines having their own rules and with their own potential for development and growth?

Marketing Legal Services

An international panel will discuss developments in the marketing of legal services.

Technology in the Law Office

The benefits and limitations of the latest office equipment are examined.

THURSDAY 19TH PM
Reserved for special events and specialist meetings.

FRIDAY

20TH
APRIL
AM

International Environmental Problems – Exporting Pollution

A consideration of the legal implications of some of the major environmental threats facing the planet – dumping of toxic wastes, the "greenhouse" effect and ozone depletion.

The Ideology of Planning – Private Interests v Public Needs

An examination of value conflicts in the allocation of environmental resources and how these conflicts can be reconciled and regulated.

Anti-Trust Regulation in the Commonwealth: Future Directions

A look at the role of economics in shaping the laws of competition and of competition law in shaping an economy. Is regulation of competition necessary at all?

Judges

A critical appraisal of the selection, function and performance of judges.

Transportability of Legal Qualifications

This session will consider whether and how suitably qualified lawyers can practise in other Commonwealth jurisdictions.

Quality Control and the Quality of Life

How to achieve and maintain quality control in the office, avoid stress and enjoy the lifestyle you dream about!

**MOOTING
COMPETITION**

Eight regional teams will participate in a mooting competition organised by the Commonwealth Legal Education Association and the Faculty of Law, University of Auckland.

BUSINESS PROGRAMME

FRIDAY
20TH
APRIL
PM

Three concurrent sessions will draw together the main themes of the Conference and commentators will seek to identify the challenges which confront lawyers as we move towards the 21st century.

Human Rights

What human rights should be recognised at the beginning of the 21st century and which steps need to be taken during the 1990s to achieve them?

The Common Law

How will the common law cope with the challenges of a world threatened by pollution, riven by intolerance and beset by inequality and injustice?

The Legal Profession

How should law teachers, practitioners and the judiciary respond to the challenges of the 1990s?

The business programme is stated as at May 1989. Some changes and additions will be necessary to ensure that topical issues are addressed. Registrants will be sent the final programme before the Conference.

SPECIALIST MEETINGS

During the Conference there will be a number of groups and organisations holding specialist meetings. The following groups and organisations have already expressed interest:

- Human rights agencies
- Law Reform Commissioners
- Commonwealth Legal Education Association
- Corporate counsel
- Law Societies
- Military lawyers
- Commonwealth Association of Legislative Counsel
- Judges
- Law librarians
- Lawasia
- International Bar Association
- Corporate Counsel for Aviation
- Women Lawyers' Association

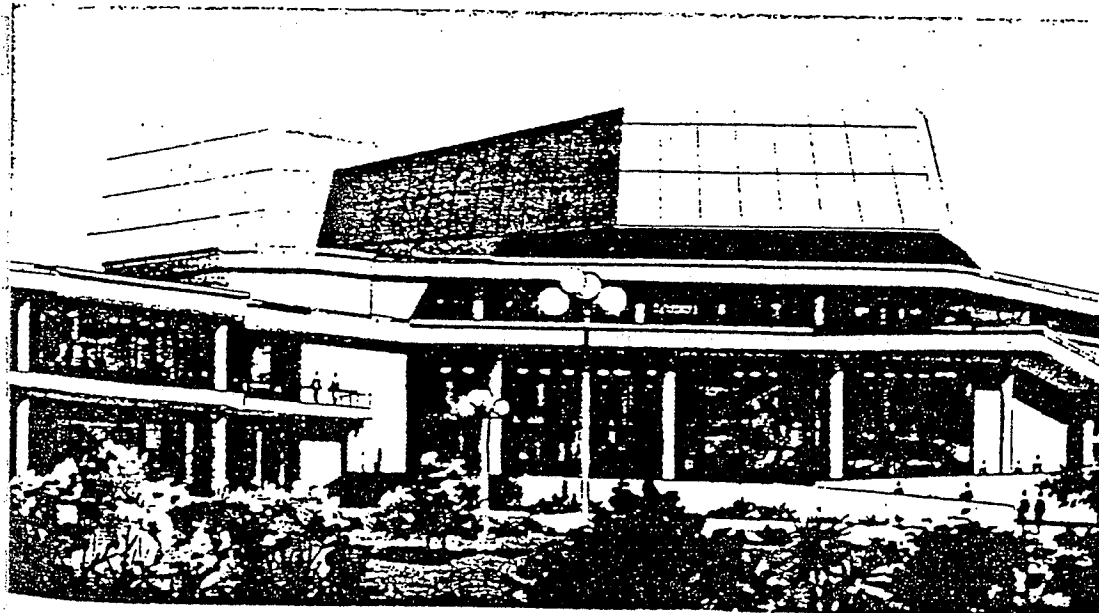
Registrants interested in holding or attending a specialist meeting should contact the Secretariat.

SPECIAL INTERESTS

The Organising Committee will be pleased to help persons with interests, hobbies or sports not provided for in the Conference programme, to make contact with New Zealanders with similar interests. Please write to the Secretariat for further information.

TRADE EXHIBITION

A trade exhibition will be held at the main Conference venue featuring displays of law office technology, legal publications and other services to lawyers.



Conference venue
Auckland's
magnificent new
Aotea Convention
Centre will be the
focal point for
Conference activities.
Situated in the
central business
district, the Centre
is close to the
major hotels.

Monday 16 April

Marae Visits

Registrants have been invited by the tangata whenua (people of the land) to Hoani Waititi and Orakei marae, to talk and learn about many facets of Maori culture. The marae is the chiefly place where the special values of Maoridom have their highest expression. It is not only a meeting place but the home of generations that have gone before, the standing place of the present generation and those to come. The marae is the waahi rangatira wairua (place of greatest spirituality) and waahi rangatira tikanga Maori (place in which Maori customs are given ultimate expression). Includes transport and lunch. Cost \$20.00.

9TH
**COMMONWEALTH LAW
CONFERENCE**

Opening Ceremony

Guests will be welcomed and entertained at a colourful opening ceremony in the Aotea Centre. The 1½ hour programme will include a range of music and dance which will introduce registrants to a cross-section of New Zealand culture, with its Maori, Polynesian and European elements. (Included in Registration.)

Home Hosting

Auckland practitioners will host visitors in their homes for dinner. Groups will vary in size from 5-15. Guests may look forward to local food and wine and the opportunity to meet other visitors to the Conference. Please indicate on the registration form if you wish to take advantage of this opportunity. (No charge.)

Tuesday 17 April

Marae Visits

(as for Monday)

Luncheon Programme

Lunches will be informal and varied, in keeping with the spirit of the Conference.

Buffet-style meals will be served and registrants will be able to select each day from a range of entertainment and not-too-serious speakers, before the working sessions resume. Delegates are encouraged to purchase vouchers for luncheons in advance by completing the registration form. Cost \$25.00.



Evening

37° South:

A Pacific Spectacular

Created exclusively for the Conference, a showcase of New Zealand entertainment, including Maori and Pacific Island groups, in the magnificent new Aotea Centre. It could happen only in Auckland, the largest Polynesian city in the world - it will happen only once. A fast-moving, high standard show is assured, and the festive night will continue with fine wines, supper and dancing. Cost \$75.00 single. Double \$130.00.

Wednesday 18 April

12.30 pm

Luncheon Programme
(as for Tuesday)

6.00 pm

Office Entertainment
Auckland practitioners will host registrants and accompanying guests in their offices. Light refreshments will be served. This is an opportunity for visitors to meet Auckland practitioners. Visitors may choose between the larger city offices and smaller suburban practices. This function is expected to be a pre-dinner option. (No charge.)

7.00 pm

Dine and Dance Cruise
Up to 200 passengers may be accommodated on a luxurious vessel, cruising the beautiful Hauraki Gulf between 7.00 pm and 11.00 pm, with dancing to a live band and a buffet style meal. Cost \$59.00.

8.00 pm

Dinner with Maori Entertainment

A specially selected group of Maori entertainers will be performing at the Hyatt Kingsgate Hotel from 8.00 pm on Wednesday 18 April and Thursday 19 April. Dinner will be served for up to 300 persons. A cash bar will be available. Cost \$68.00.

Thursday 19 April

12.30 pm

Luncheon Programme
(as for Tuesday)



2.00 pm

Harbour Yacht Racing and Barbecue Function

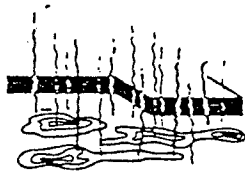
An exciting afternoon's yacht racing on Auckland Harbour and Gulf. A unique America's Cup style opportunity to be one of the crew of a racing yacht. No previous sailing or boating experience is necessary. Spectator vessels will also follow the racing for those who would rather watch from a discreet distance. After the race, everyone will return to shore for the prizegiving and a tot of rum ... or two... prizes for the best and worst sailors of the day! A maximum of 250 competitors may be accommodated, but there will be no restrictions on numbers of spectators. Competitors \$75.00 Spectators \$45.00

3.00 pm

Vineyard Barbecue and Entertainment

Travel to Corbans' Vineyard in West Auckland's Henderson Valley, where several of New Zealand's leading winemakers will be represented at a festival of wine, food and country-style entertainment. Transport will leave soon after lunch, and be provided to arrive back in the city from 6.30 pm onwards. Cost \$75.00.





- 6.30 pm **Waiwera Hot Pools Excursion**
Relax after a hard day's work at the Conference in the Waiwera thermal pools, just a few kilometres north of Auckland. The cost covers transport, dinner, and admission to the attractive Waiwera Hot Pools complex. (Cash bar.) Coaches will return at approximately 10.30 pm. (Cannot be undertaken if participating in either Harbour Yacht Racing or Vineyard Barbecue.) Cost \$45.00.
- 7.00 pm **Dine and Dance Cruise**
(as for Wednesday)
- 8.00 pm **Dinner with Maori Entertainment**
(as for Wednesday)

Friday 20 April

- 12.30 pm **Luncheon Programme**
(as for Tuesday)
- 5.00 pm **Closing Ceremony and Entertainment**
When the speeches are over, the Aotea Centre will be the venue for a party which is expected to be a truly memorable occasion. Top entertainers will perform, food and wines will be served, and bands will play for dancing until the small hours. (Included in Registration.)

Saturday 21 April

- 10.00 am **Horse Racing at Ellerslie**
A day at the races, to wind up the conference as guests of the Auckland Racing Club. Some of the world's finest thoroughbreds will be competing at the attractive Ellerslie Racecourse. Experts will be on hand to answer your questions and advise on likely prospects. A buffet lunch will be served. Cost \$35.00.



Theatre and Ballet

The Royal New Zealand Ballet is expected to be performing in Auckland during the Conference, before its departure for a tour of Europe. Auckland's main professional theatre, the Mercury, will also be presenting plays in its two auditoriums.

Programme details were not available when this brochure was printed, but information will be supplied to registrants who will be able to book through the Conference Secretariat for any of these productions. Please signify on the registration form if you wish to receive further information.

PACIFICA PRODUCTIONS PROUDLY PRESENTS



37° SOUTH



A PACIFIC SPECTACULAR

specially produced for

THE 9TH COMMONWEALTH LAW CONFERENCE

PACIFIC CULTURES - MUSIC - DANCE - COMEDY

Experience the excitement of Auckland, the world's largest Polynesian City.

The stars of a Commonwealth of Cultures - European, Maori and Pacific Island - brought to the stage in Auckland's magnificent ASB Theatre in the Aotea Centre.

Complimentary 37° South Cocktail, supper and dancing after show included in admission.

Single \$75.00 - Double \$130.00

IT COULD HAPPEN ONLY IN AUCKLAND.

IT WILL HAPPEN ONLY ONCE! ON TUESDAY 17TH APRIL 1990



ASB
BANK

The Official Bank of
the Conference

Category	Early (if paid before 30 Sept 1989)	Standard (if paid before 15 Dec 1989)	Late (if paid after 15 Dec 1989)
A. Member New Zealand Law Society	430.00	485.00	535.00
B. Member Commonwealth Lawyers Association (See below)	485.00	575.00	660.00
C. Non N.Z. Law Society/ CLA Member	525.00	605.00	680.00
D. Young Practitioner (under 30 as at 15 April 1990)	360.00	395.00	430.00
E. Accompanying Guest	150.00	195.00	240.00

Registration fee includes:

- Attendance at all business sessions
- All Conference literature
- Satchel and contents
- Opening Ceremony and home entertainment, Monday evening
- Morning and afternoon teas at the Aotea Centre, Tuesday to Friday
- Closing Ceremony and entertainment, Friday evening

Accompanying Guest fee includes:

- Entitlement to register for all social, sporting and sightseeing activities
- Attendance at all business sessions
- Opening Ceremony and home entertainment, Monday evening
- Morning and afternoon teas at the Aotea Centre, Tuesday to Friday
- Closing Ceremony and entertainment, Friday evening

All fees are inclusive of 12.5% Goods and Services Tax.

Category A Member New Zealand Law Society

The reduced registration fee takes into account the annual conference levy paid by all members of the New Zealand Law Society.

Category B Individual Member Commonwealth Lawyers Association

A reduced registration fee is available to any individual who is currently a member of the Commonwealth Lawyers Association, or who joins before 30 September 1989. Registrants may join the Association by completing the appropriate section of the registration form and forwarding an additional NZ\$50.00 with their registration form.

Acknowledgement

On receipt of registration form and fees, a letter of confirmation detailing all items reserved and payments made will be forwarded. No person will be registered, nor accommodation reserved, without payment of all necessary fees.

Conference Materials and Information

Satchels, tickets and other Conference materials will be available from the Registration Desk situated in the Main Foyer of the Aotea Centre, Queen Street, from Sunday, 15 April 1990 at 10.00 am.

HOW TO REGISTER

Application to register for the Conference should be made on the enclosed registration form which should be returned as follows:

By residents of Canada to

P Lawson Travel
5353 Dundas Street West
Suite 400
Islington
Ontario M9B 6J3

Telephone (416) 236-1921
Facsimile (416) 236-1562

By residents of Hong Kong to

Travelove Ltd
17/F Hong Kong Computer Centre
54-62 Lockhart Road
Hong Kong

Telephone (5) 270-305
Facsimile (5) 834-4330

By residents of England, Wales, Europe, West Africa and the Caribbean to

Telephone (01) 483-2297
Facsimile (01) 586-0639

By residents of Scotland to

Lawries Travel Agency
12 Leith Walk
Edinburgh EH6 5AA
Scotland

Telephone (31) 554-0471
Facsimile (31) 554-2856

All others

should return the registration form to
The Secretariat
9th Commonwealth Law Conference
PO Box 12-442
Auckland
New Zealand

ACCOMMODATION

Special Conference group rates have been negotiated with hotels and some motor inns and motels.

To take advantage of these rates, reservations must be made on the registration form which is to be forwarded with remittance or credit card authority for the deposit specified. Applications for accommodation should be made through the Secretariat and not directly to the hotel, motor inn or motel.

All accommodation allocation will be on a first come, first served basis. As a large attendance is expected at the Conference, accommodation will be at a premium and registrants are urged to book early.

All hotel rooms not booked by 15 March 1990 will be released back to the hotels. After this date, no guarantee of accommodation can be given by the Conference Secretariat, although best endeavours will be made to find accommodation for late registrants.

Categories of Accommodation

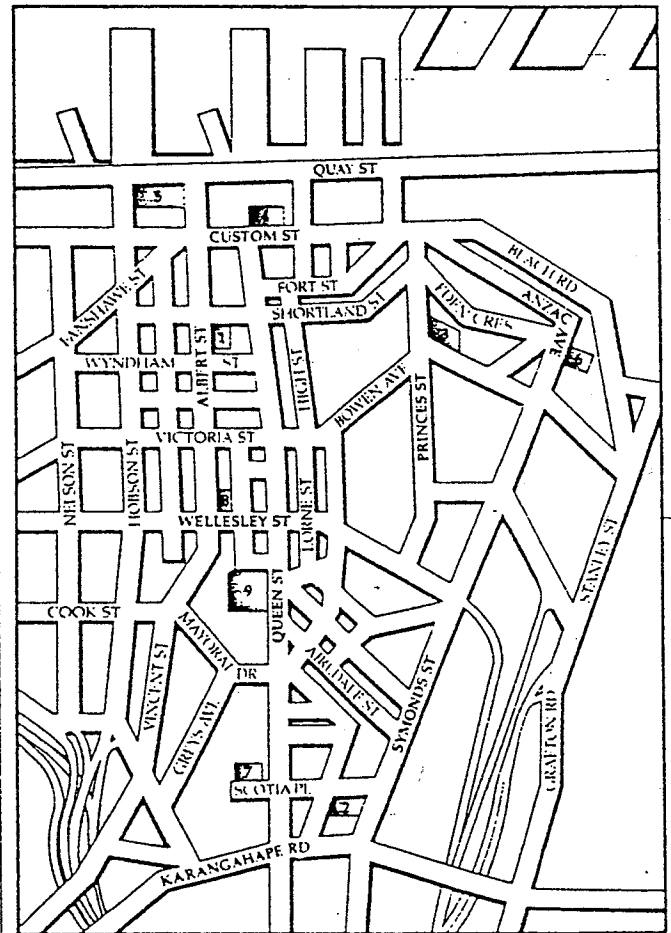
Please indicate category and price range you prefer when requesting accommodation. All rooms have private ensuite facilities unless otherwise stated. Prices quoted are Room Rate, Per Night, Twin or Single Occupancy, GST Inclusive.

Category 1	Central City Hotels	
Price Range	Hotel	
Upper	Regent of Auckland	\$282.00
	Sheraton Hotel & Towers	\$248.00
	Hyatt Kingsgate	\$242.00
	Parkroyal	\$225.00
Medium	Auckland City Travelodge	\$189.00
	Quality Inn	\$160.00
Lower	Park Towers	\$114.00
	Park Towers (without shower and toilet)	\$55.00
	Abby's Hotel	\$74.00
Category 2	Suburban Hotels	
	(within 15 minutes drive of Aotea Centre)	
	Price range	\$102.00 to \$153.00
Category 3	Suburban Motor Inns	
	(within 15 minutes drive of Aotea Centre)	
	Price range	\$62.00 to \$124.00
Category 4	Suburban Motels and Apartments	
	(within 15 minutes drive of Aotea Centre)	
	Price range	\$62.00 to \$160.00
Category 5	Airport Hotels/Motor Inns	
	(within 30 minutes drive of Aotea Centre)	
	Price range	\$89.00 to \$149.00

Motels and Motor Inns

Motels in New Zealand offer a less expensive yet acceptable standard of accommodation for overseas tourists. Motels are self-contained units with individual kitchen, bathroom and toilet facilities, and at least one separate bedroom if accommodating more than two persons. Accommodation for up to four persons per unit is usually available for a modest additional tariff.

Motor inns are similar to motels, but usually offer a higher standard of accommodation and many provide licensed restaurant facilities.



HOTELS

- | | |
|----------------------|----------------|
| 1 Regent of Auckland | 6 Quality Inn |
| 2 Sheraton | 7 Park Towers |
| 3 Hyatt Kingsgate | 8 Abby's Hotel |
| 4 Park Royal | 9 Aotea Centre |
| 5 Travelodge | |

Travel Agents

Official overseas travel agents appointed for Canada, England, Scotland and Hong Kong will be able to obtain airline concessions. Registration forms received from these agents should be returned to them at the addresses shown on the Form. Where no official agent is listed, you should book air travel through your normal travel agent or airline office and return registration forms directly to the Secretariat.

Official Airline

The Conference enjoys the generous support of Air New Zealand which is the official airline for the Conference. Registrants are recommended to include Air New Zealand in their travel arrangements, where possible.

Air New Zealand has won many prestigious international awards for excellence in passenger service including, for six successive years, "Best Carrier to the Pacific" citation by "Executive Travel Magazine".

Visas

Check with your travel agent or airline as to visa requirements for New Zealand as these vary from country to country.

Travel Insurance/Loss of Deposit

It is recommended that you obtain comprehensive travel insurance.

Cancellations and Refunds

- (i) **Registration Fees**
90% of registration fees paid will be refunded if notice of cancellation is received in writing prior to 15 March 1990. After this date, refunds will not be made. However you are welcome to provide a replacement in lieu of your attendance.
- (ii) **Accommodation**
Deposits paid on hotel, motor inn or motel reservations which have been cancelled by written notice to the Secretariat received more than 40 days prior to the commencement of the Conference will be refunded. Refunds for any cancellations received within the 40 day period will be at the discretion of the hotel, motor inn or motel in question.
- (iii) **Social, Sightseeing and Sports Activities**
Activities cancelled more than 48 hours prior to commencement will be refunded in full, less a handling fee of \$6.00 per person, per activity. Cancellations within 48 hours will not be refunded.
- (iv) **Pre and Post Conference Tours**
Fees for pre and post tours cancelled by written notice to the Conference Secretariat received more than 40 days prior to the scheduled departure date will be refunded in full, less a handling fee of \$60.00 per person.

Refunds for any tours cancelled within 40 days of the scheduled departure will be at the discretion of the tour company and associated hotels, subject to a minimum administration charge of \$120.00 per person.

Rental Cars

A 20% discount off normal rental rates is available on all HERTZ rental car reservations made through the Secretariat. A heavy demand is expected and it is recommended that reservations be made on the registration form. No advance deposits are necessary.

Motor Home

A 10% discount off normal rental rates is available on all motor home reservations made through the Secretariat.

Driving Licence Requirements

A current New Zealand, Australian, International or approved overseas licence is required.

Transport

Transport will be provided for registrants between principal Conference hotels/motor inns/motels and the Aotea Centre.

Weather and Clothing

The Conference will be held during Auckland's late Autumn. Registrants are advised to bring clothing suitable for temperatures ranging from pleasantly warm (20-22°C) to cool (14-16°C). The emphasis will be on informality; national dress or lounge suits may be worn at some functions, but men will not need to bring dinner suits.

Dietary Requirements

Special dietary preferences should be noted on the registration form. The organisers will try to ensure that special requirements are catered for.

Crèche Facilities

Creche facilities will be available for children aged 2-8 years. Please indicate on the registration form whether you are likely to require use of the creche and, if so, the names and ages of the children.

9TH COMMONWEALTH LAW CONFERENCE

AUCKLAND NEW ZEALAND APRIL 16-20TH 1990

REGISTRATION FORM

TAX INVOICE GST NO. 29-913-314

IMPORTANT

1. Please forward registration form together with full payment or credit card authority to: appropriate Travel Agent as listed on page 17 of the brochure
or: The Conference Secretariat
9th Commonwealth Law Conference
PO Box 12-442
Auckland New Zealand
2. Please type or print with ballpoint in block letters.
3. Bank drafts and cheques in New Zealand dollars should be made payable to 9th Commonwealth Law Conference.
4. Personal cheques drawn on bank accounts outside New Zealand cannot be accepted.
5. Refer to cancellation clauses in brochure.

Registrant _____

Surname _____

Title _____
(e.g. Mr/Mrs/Justice:rof.)

First Name _____
(for lapel badge)

Judicial office held _____

Other special status _____
(e.g. Minister)

Postal Address _____

Country _____

Facsimile _____

Telephone _____

Accompanying Guest _____

Surname _____

Title _____

First Name _____
(for lapel badge)

Arrival Details _____

Arrival date _____
(in Auckland)

Arriving by _____
(airline/flight no.)

Other _____

Rental Reservations
No payment required
at time of booking

Small Car (3 Door) Medium Car (Auto Sedan)

Family Estate (5 Door Auto) Mini Van

Motorhome (Information only) Full details will be forwarded if box ticked.

Pick Up Date _____ Hotel or Airport (delete one)

Drop Off Date _____ Hotel or Airport (delete one)

Creche (CRI) _____
Please indicate if creche facilities are required.

Children's Names _____ Age _____

Day/Date and Times _____

Dietary Requirements (DRI) _____
Please indicate dietary preferences if special arrangements are required:

Theatre & Ballet (TB1) _____
 Please tick for further information

SECTION A

Type of room required (Enter number of rooms required in box)

Single Twin
 Double Family

If family, state number of room or rooms required, total number of adults and children, preferred number of beds per room, etc.

Date of Arrival _____

Date of Departure _____

Category _____

Please indicate preference by ticking appropriate box. (Refer page 18 of brochure for rates.)

Central City Hotel

upper Deposit NZ\$300.00

medium Deposit NZ\$200.00

lower Deposit NZ\$150.00

Suburban Hotel

medium Deposit NZ\$200.00

Suburban Motor Inn Deposit NZ\$200.00

Suburban Motel & Apts Deposit NZ\$150.00

Airport Hotel/ Motor Inn Deposit NZ\$150.00

If you have a preference for a particular hotel, motor inn or motel, please indicate. If your nomination is already fully booked we will allocate the nearest alternative.

Preference _____

NB Accommodation will only be reserved upon receipt of deposit as indicated above. See column on next page for payment. Deposit will be credited to your hotel account - balance payable upon departure.

TOTAL SECTION A \$ _____

panel below. All costs in New Zealand dollars.

Category	Early (if paid before 30 Sept 1989)	Standard (if paid before 15 Dec 1989)	Late (if paid after 15 Dec 1989)
A. Member New Zealand Law Society	430.00	485.00	535.00
B. Individual Member Commonwealth Lawyers Association (For current members or those joining the Association before 30 September 1989 by completion of F. below.)	485.00	575.00	660.00
C. Persons other than NZLS or CLA members	525.00	605.00	680.00
D. Young Practitioner (under 30 as at 15 April 1990)	360.00	395.00	430.00
E. Accompanying Guest	150.00	195.00	240.00
F. Commonwealth Lawyers Association membership fee (only applicable if paid before 30 September 1989)	50.00	N/A	N/A

TOTAL SECTION B

\$

SECTION C

FUNCTIONS/SPORTS/SIGHTSEEING

NB

Please enter number of persons and total cost (where applicable) for each activity you wish to participate in. All costs in New Zealand dollars.

MONDAY 16	Cost	Code	No.	Total \$
Fun Run (early am)	No Charge	FR1	_____	_____
Marae Visit (9.00 am)	20.00	M01	_____	_____
Maori Culture/ Museum (10.00 am)	26.00	M02	_____	_____
Art Gallery/Highwic House (10.00 am)	22.00	M03	_____	_____
Scenic Auckland Highlights (9.00 am)	30.00	M04	_____	_____
Harbour Coffee Cruise (2.30 pm)	32.00	M05	_____	_____
Opening Ceremony (5.00 pm)	No Charge	OC1	_____	_____
Home Hosting (7.00 pm)	No Charge	OC2	_____	_____
TUESDAY 17				
Run Run (early am)	No Charge	FR2	_____	_____
Waitomo Caves Day Tour (8.00 am)	95.00	M06	_____	_____
Rotorua Day Tour (8.00 am)	103.00	M07	_____	_____
Marae Visit (9.00 am)	30.00	M08	_____	_____
Scenic Auckland Highlights (9.00 am)	30.00	M09	_____	_____
Day in the Vineyard (10.00 am)	59.00	M10	_____	_____
Tennis Yankee Tournament (10.30 am)	55.00	SP1	_____	_____
Golf (10.30 am)	55.00	SP2	_____	_____
Lunch - Aotea Centre (12.30 pm)	25.00	LU1	_____	_____
Harbour Coffee Cruise (2.30 pm)	32.00	M11	_____	_____
Scenic Auckland Highlights (2.00 pm)	30.00	M12	_____	_____
37° South (8.00 pm)				
Single ticket	75.00	OC3 A	_____	_____
Double ticket	130.00	OC3 B	_____	_____

Fun Run (early am)	No Charge	FR3	_____	_____
Whitewater Rafting Full Day (7.00 am)	158.00	M13	_____	_____
Waitomo Caves Day Tour (8.00 am)	95.00	M14	_____	_____
Rotorua Day Tour (8.00 am)	103.00	M15	_____	_____
Scenic Auckland Highlights (9.00 am)	30.00	M16	_____	_____
Trout Fishing Lake Taupo (9.30 am)	163.00	M17	_____	_____
Day in the Vineyards (10.00 am)	59.00	M18	_____	_____
Art Gallery/Highwic House (10.00 am)	22.00	M19	_____	_____
Lawn Bowls (10.00 am)	55.00	SP3	_____	_____
Cricket - Players (10.00 am)	55.00	SP4	_____	_____
Tennis Yankee Tournament (10.30 am)	55.00	SP5	_____	_____
West Coast and Karekare (12.30 pm)	32.00	M20	_____	_____
Lunch - Aotea Centre (12.30 pm)	25.00	LU2	_____	_____
Scenic Auckland Highlights (2.00 pm)	30.00	M20	_____	_____
Harbour Coffee Cruise (2.30 pm)	32.00	M21	_____	_____
Office Entertainment (6.00 pm)	No Charge	OC4	_____	_____
Dine & Dance Cruise (7.00 pm)	59.00	OC5	_____	_____
Dinner with Maori Entertainment (8.00 pm)	68.00	OC6	_____	_____
THURSDAY 19				
Fun Run (early am)	No Charge	FR4	_____	_____
Scenic Auckland Highlights (9.00 am)	30.00	M22	_____	_____
Maori Culture/ Museum (10.00 am)	26.00	M23	_____	_____
Lunch - Aotea Centre (12.30 pm)	25.00	LU3	_____	_____
Harbour Yacht Racing (2.00 pm)				
Option 1 Racing, Prizegiving & Refreshments	75.00	OC7A	_____	_____
Option 2 Spectator, Prizegiving & Refreshments	45.00	OC7B	_____	_____
Vineyard Barbecue & Entertainment (3.00 pm)	75.00	OC8	_____	_____
Waiwera Hot Pools Excursion (6.30 pm)	45.00	OC9	_____	_____
(Cannot be undertaken if participating in OC7 or OC8 above)				
Dine & Dance Cruise (7.00 pm)	59.00	OC10	_____	_____
Dinner with Maori Entertainment (8.00 pm)	68.00	OC11	_____	_____
FRIDAY 20				
Fun Run (early am)	No Charge	FR5	_____	_____
Lawn Bowls (10.00 pm)	55.00	SP5	_____	_____
Visit to Horse Stud Farm (11.30 am)	58.50	M24	_____	_____
Afternoon in the Country (12.30 pm)	63.50	M25	_____	_____

Friday 20 (continued)	Cost	Code	No.	Total \$
Scenic West Coast (12.30 pm)	32.00	M26	_____	_____
Lunch - Aotea Centre (12.30 pm)	25.00	LU4	_____	_____
Scenic Auckland Highlights (2.00 pm)	30.00	M27	_____	_____
Harbour Coffee Cruise (2.30 pm)	32.00	M28	_____	_____
Closing Ceremony, Entertainment and Dancing (5.00 pm)	No Charge	OC12	_____	_____
SATURDAY 21				
Horse Racing	35.00	OC13	_____	_____
Yachting	No Charge	OC14	_____	_____

TOTAL SECTION C \$ _____

SECTION D PRE & POST CONFERENCE TOURS

Costs quoted are per person. Please circle appropriate tour cost, enter number of persons and total cost. All costs in New Zealand dollars.

PRE CONFERENCE

Accommodation	Cost	Code	No.	Total \$
Six Day Kiwi Adventure				
Option 1 Standard Single	1,577.00	PT1S1	_____	_____
Share Twin	1,305.00	PT1T1	_____	_____
Option 2 Deluxe Single	2,013.00	PT1S2	_____	_____
Share Twin	1,573.00	PT1T2	_____	_____
Six Day Southern Lakeland				
Option 1 Standard Single	1,281.00	PT2S1	_____	_____
Share Twin	1,025.00	PT2T1	_____	_____
Option 2 Deluxe Single	1,669.00	PT2S2	_____	_____
Share Twin	1,281.00	PT2T2	_____	_____
Two Day Waitomo Caves and Rotorua				
Single	390.00	PT3S	_____	_____
Share Twin	328.00	PT3T	_____	_____
Two Day Bay of Islands				
Single	314.00	PT4S	_____	_____
Share Twin	252.00	PT4T	_____	_____

POST CONFERENCE

Six Day Kiwi Adventure				
Option 1 Standard Single	1,577.00	PT5S1	_____	_____
Share Twin	1,305.00	PT5T1	_____	_____
Option 2 Deluxe Single	2,013.00	PT5S2	_____	_____
Share Twin	1,573.00	PT5T2	_____	_____
Six Day Southern Lakeland				
Option 1 Standard Single	1,281.00	PT6S1	_____	_____
Share Twin	1,025.00	PT6T1	_____	_____
Option 2 Deluxe Single	1,669.00	PT6S2	_____	_____
Share Twin	1,281.00	PT6T2	_____	_____
Two Day Waitomo Caves and Rotorua				
Single	390.00	PT7S	_____	_____
Share Twin	328.00	PT7T	_____	_____

TOTAL SECTION D \$ _____

PAYMENT SUMMARY

SECTION A	Accommodation Deposits	_____
SECTION B	Registration Fees	_____
SECTION C	Functions/Sports/Sightseeing	_____
SECTION D	Pre and Post Tour Payments	_____
TOTAL	\$	_____

Send draft in New Zealand dollars made payable to 9th Commonwealth Law Conference or complete credit card section below.

Please forward registration form together with full payment

to: appropriate Travel Agent as listed on page 17 of the brochure
 or: The Conference Secretariat
 9th Commonwealth Law Conference
 PO Box 12-442
 Auckland New Zealand.

CREDIT CARD AUTHORITY

Please tick as appropriate Amex Diners Visa Mastercard (Bankcard)

Account No. _____

Expiry Date _____

Card Holders Name _____

Card Billing Address _____

Signature _____

Date _____

Office Use Only

Date _____

Amount Received _____

Authorisation Code _____

Cross Reference File With _____

Phillippe Bentz
(formerly Canada (Quebec))

Privy Council Office
West Memorial Building
344 Wellington Street
OTTAWA, Ontario
CANADA K1A 0H8

DRAFTING OPPORTUNITIES

The Hong Kong Government can offer competitive salaries, on 3-year contracts, with an end of contract 25% gratuity, housing and relocation assistance and annual paid travel leave. Hong Kong's low 15% salaries tax is an added attraction.

It is expected that one or more vacancies at a senior level will arise within the next 6 - 9 months.

Traditionally the Hong Kong Government has hired lawyers who have professional qualifications from the United Kingdom, Australia, Canada, New Zealand and the Republic of Ireland.

If any CALC member is interested in being considered for drafting vacancies when they arise in Hong Kong, please write, enclosing a resume, to -

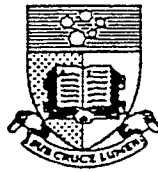
The Law Draftsman,
Law Drafting Division,
Legal Department,
8/F, Queensway Government Offices,
66 Queensway, High Block,
Hong Kong.

ESSAYS ON LEGISLATIVE DRAFTING

IN HONOUR OF J Q EWENS, CMG, CBE, QC

Editor: David St L Kelly

Chairman, Law Reform Commission of Victoria



The Adelaide Law Review Association, Law School,
University of Adelaide

Efficiency in legal drafting

Professor Robert D Eagleson¹

My first contact with John Ewens came when we collaborated in the preparation of the plain English version of the Companies (Acquisition of Shares) (Victoria) Code as part of the Plain English reference of the Law Reform Commission of Victoria. I valued the liveliness and generosity of his mind in the many penetrating exchanges on what the plain English movement was saying. His own lifelong commitment to clear expression and the practice of it is both an encouragement and a quality for emulation.

Language — and therefore legal drafting as a manifestation of it — is a social as well as a purposeful activity. It exists not just to express a message but also to communicate it successfully to others. It cannot be said that an act of language has really occurred unless the message is comprehended; and no law can accomplish its task of regulating behaviour unless it can be understood. The most competent version of language and legal drafting then is that version which enables the message to be grasped readily, without difficulty and confusion. This is none other than plain language — language which gets its message across in a straightforward, unentangled way, that lets the message stand out clearly and does not enshroud or enmesh it in convolution or prolixity.

Accuracy and comprehensibility

It is important that we keep in mind this dual character of language: communication as well as content. Too often overriding emphasis in legal drafting has been placed on content, and in particular accuracy of content. Criticism of the difficulty so common in legal drafting has been regularly answered with the quotation from Gowers:

The only difference between the language of Acts of Parliament and that of private legal documents is that in the skilled and experienced hands of Parliamentary Counsel its inevitable peculiarities are less obtrusive and ungraceful than they are in the hands of the ordinary private practitioner. Such as they are, they are caused by the necessity of being unambiguous. That is by no means the same as being readily intelligible; on the contrary, the nearer you get to the one, the further you are likely to get from the other.

¹ Associate Professor of English, University of Sydney (1973-).

... He [the draftsman] must avoid all graces, not be afraid of repetitions, or even of identifying them by *aforesaid*s; he must limit by definition words with a penumbra dangerously large, and amplify with a string of near-synonyms words with a penumbra dangerously small; he must eschew all pronouns when their antecedents might possibly be open to dispute, and generally avoid every potential grammatical ambiguity.²

There is a flaw and confusion in Gowers' statement. Accuracy and intelligibility are not philosophically in conflict, and the accomplishment of one does not necessarily rule out the attainment of the other. Certainly an increase in unintelligibility is no safeguard against ambiguity. On the contrary it may only reflect ambiguity or uncertainty in thought and can conceal imprecision. Moreover, the examples that Gowers cites, such as a string of near synonyms, show that he was confusing intelligibility with elegance of style. He even shifted towards the notion of gracefulness himself as he sought to explain his view. The two matters are very different: a string of near-synonyms may not make for pleasurable reading but that does not make it convoluted or unintelligible.

Furthermore, those who adopt this line of reasoning are choosing the easy way of legal drafting. They set themselves only the goal of accuracy. Plain language is more demanding and intellectually challenging. It requires that drafters be not just accurate but also clear. It seeks to be true to the dual character of language.

Plainness in language

As well as recognising the dual character of drafting, it is equally important to grasp the meaning of *plain* in the phrase *plain language* or *plain English*. There is no one absolute form of *plain language*. It does not consist only of one syllable words and one clause sentences. It is not simplified or reduced English. It is the opposite not of elaborate language but of obscure language, seeking to have the message understood on the first reading. The plainness of a passage is defined in terms of the audience for that passage. It is clear, straightforward language for that audience. As a result the following extract can be held quite properly to be plain:

An interesting description of the filamentous gills of lepidopterous larvae is given by Welch (1922), who finds that each gill filament contains a tracheal branch from the main lateral trunk of the tracheal system, and that the inner surface of the gill is covered by innumerable tracheoles lying parallel with one another. Nearly five hundred gill filaments may be present on a single individual of *Nymphula obscuralis*.³

The heavy use of technical terms is appropriate and is no bar to ready comprehensibility given that the passage comes from a text for advanced students who would be familiar with the terms of entomology. Even so the sentence structures are clear and readers without any knowledge of the terms can still isolate subjects from verbs with ease and follow the direction of the communication: it is not an impenetrable maze.

2 E Gowers, *The Complete Plain Words*, Penguin, London (1963), 18-19. The chapter containing this quotation has been omitted from the third edition (1986) by S Greenbaum and J Whitcut. The quotation is cited favourably by I M L Turnbull, 'Problems of Legislative Drafting', [1986] *Statute LR* 68; Commonwealth Office of Parliamentary Counsel, *Annual Report*, AGPS, Canberra (1985), 250.

3 I am indebted to Professor F McDonald for this extract.

Rejuvenating the status of the audience

A major contribution of the plain English movement which arose in the seventies has been to restore the rights of the audience and hence to bring back into consideration the communicative role of legal drafting. It arose from the keen recognition that all too frequently one party to a legal agreement was seriously disadvantaged through inability to understand the language of the agreement; that members of the public were being deprived of benefits being offered to them or placed at risk when obligations were imposed on them because the documents setting out those benefits or obligations were framed in an unnecessarily complicated style.

Along with this advocacy of the audience's rights, however, has gone the equal insistence that documents must be complete and legally accurate. Rights and privileges of parties would not be protected otherwise. Consequently the movement has not sought to replace concerns for accuracy with concerns for audience. It has sought rather a revival to proper status of a component that has tended to be ignored or treated at discount. The goal — and the achievement — has been documents that are legally valid and readily comprehensible.

There is nothing very novel about the thrust of the movement. Protests against incomprehensible legal documents have been regularly made down the centuries and earlier in this century.⁴ To be fair, Gowers also was a staunch opponent of gobbledegook and is far more in tune with the principles of the plain English movement than those drafters in the traditional style who seek to use him as their champion.

Nor is it only non-legal members of the public who are disaffected. Complaints and admissions of personal difficulty in reading all types of legal documents abound from judges and lawyers.

The affirmative response to the report of the Law Reform Commission of Victoria *Plain English and the Law* from members of the legal profession worldwide and the desire to see its recommendations taken up in other countries is further evidence of extensive dissatisfaction with the current state of legal drafting.

Where the current plain English movement differs to an extent from the past is in its more systematic engagement in the production of legal documents in plain language, and its more extensive research into what constitutes plainness for different audiences and how documents may be tested for comprehensibility. It has gone beyond exposures of weaknesses in traditional drafting to the building up of a body of knowledge on clear drafting practice and the presentation of models which demonstrate what can be done and provide a basis for further progress.⁵

⁴ For example, R Flesch, *The Art of Readable Writing*, Harper & Bros New York (1949); S Chase, *The Power of Words*, Harcourt Brace, New York (1954).

⁵ Members of the legal profession have aligned themselves with the movement (for example the organisation 'Clarity' in the United Kingdom) and have participated actively in a number of these developments. Carl Felsenfeld and Duncan McDonald, both lawyers, initiated the plain English version of Citibank's Consumer Loan Note which was released in 1975 and which is regarded along with Sentry Insurance's Plain Talk Car Policy as the founding documents of the movement. It was another lawyer — the Hon Jim Kennan, then Attorney-General in Victoria — who recognised the merits in the substantive work of the movement and formulated the Plain English reference in 1985 which resulted in the report *Plain English and the Law* by the Law Reform Commission of Victoria (VLRC 9, 1987).

A mistaken response

Perhaps inevitably but unfortunately the response of some legal practitioners and drafters to the developments in plain English has been somewhat hostile. Some have misinterpreted exposures of poor drafting, seeing them as criticisms of drafters rather than as perceptive observations designed to be helpful and to lead to improvement, concerned not with demolishing reputations but with ameliorating the lot of readers of legal documents. A common response, as a result, has been to offer a series of defences for the current standard of drafting, such as shortage of time, insufficient staff, constant amendments and corrections as a Bill is passing through Parliament, the eccentric interpretation of courts, inadequate instructions and poorly formulated policies, and the constraints imposed by the language of an Act which is being amended.⁶

The proponents of plain English are mindful of these impediments and are sympathetic to the problems of drafters. After all they too are writers and are all too aware of difficulties. But not only do these defences imply that current drafting is far from plain — otherwise there is no need for them — they also reveal that some legal drafters lack a knowledge of the principles of language being expressed by plain English advocates.⁷

The reasons advanced for failure relate predominantly to external factors and scarcely at all to drafting practice itself. This is where a gulf has arisen. The plain English movement has been concerned with the writer's contribution to the success of a document. Elimination of the external forces which inhibit good drafting will not eradicate all the deficiencies in current documents because much of the cause resides in bad drafting practice and in a misunderstanding of the nature of language. Some objectionable features in current documents, for instance, are the result not of shortage of time but of the availability of time: they occur because the drafter has time.

The overlong sentence

A good case in point is the overlong sentence. All readers — including lawyers — find it unbearable and condemn instances of it. In *The National Bank of Australasia Ltd v Mason* Stephen J commented about one of the documents involved:

However the remainder of Cl.1 (i) must be read, no easy task consisting as it does of one unpunctuated sentence of over 450 words of small print which is presented to the reader in twenty-five closely set lines, each of excessive length. There, the resolute and persevering may find, in the midst of much else, the phrase 'and whether contingently or otherwise'.⁸

⁶ See, for instance, I M L Turnbull, 'Problems of Legislative Drafting', [1986] *Statute LR* 67.

⁷ This could reflect inadequacies in legal education.

⁸ (1975) 133 CLR 191, 203.

No-one can take in the meaning of a long sentence — and certainly not one of 450 words — at the first reading. It requires perseverance and several re-readings to disentangle the constituents.

Despite even their own aversion to long sentences when they come across them in the writings of others, drafters still produce them themselves and devote a lot of time to the undertaking. Consider sub-section 25(3) of the *Credit Act 1984 (Vic)*:

25(3) Where, by reason of sub-section (1), a tied loan contract is discharged when a contract of sale is rescinded or discharged —

- (a) The credit provider is liable to the buyer for the amount (if any) paid by the buyer to the credit provider under the tied loan contract to the extent that it is discharged;
- (b) the supplier is liable to the credit provider for —
 - (i) the amount (if any) paid under the tied loan contract, to the extent that it is discharged, by the credit provider to the supplier;
 - (ii) the amount paid under the tied loan contract, to the extent that it is discharged, by the credit provider to the buyer and paid by the buyer to the supplier; and
 - (iii) the amount of the loss (if any) suffered by the credit provider by reason of the discharge of the tied loan contract being an amount not exceeding the amount of the accrued credit charge under the tied loan contract; and
- (c) the buyer is liable to the credit provider for the amount (if any) paid under the tied loan contract, to the extent that it is discharged, to the buyer by the credit provider, other than amounts paid to the buyer and paid by him to the supplier —

and, where the contract of sale is a contract of sale of goods or services —

- (d) if the goods are in the possession of the buyer —
 - (i) where, before the rescission or discharge of the contract of sale, there was not a mortgage relating to the tied loan contract, the buyer shall deliver the goods to the supplier; or
 - (ii) where before the rescission or discharge of the contract of sale, there was a mortgage relating to the tied loan contract to the extent that it is discharged, the buyer shall deliver the goods to the credit provider; and
- (e) if the goods are in the possession of the credit provider and no amounts are owed to the credit provider under paragraph (b), the credit provider shall deliver the goods to the supplier.

Here are 345 words crammed into one sentence, and even though it is divided into paragraphs, and subdivided again into subparagraphs, these devices can bring little relief to its sheer complexity. To scratch only the surface of the convolution, consider the structure of (d)(i). It begins with a subordinate clause:

where, before the rescission . . .

which follows immediately on another subordinate clause:

if the goods are in possession . . .

which follows on a third subordinate clause:

where the contract of sale . . .

which is coordinated with a fourth subordinate clause, introduced some 200 words earlier at the beginning of the sub-section:

Where, by reason of . . .

and which itself contains a subordinate temporal clause:

when a contract of sale . . .

This labyrinth of clauses associated with (d)(i) forces readers to go back and forth several times to discover the syntactic structure and the relationships between the subordinate clauses before they can begin to absorb the material. This labyrinth is complication enough in itself, but its difficulty is aggravated by its inclusion in the structure of sub-section 25(3) so that the clauses constitute only a small segment of the total sub-section. Readers come upon them after having already negotiated a stretch of over 200 words and still have to reach the main clause which provides the context for interpreting them.

The excessive complicatedness of the sentence results from compressing too many ideas and qualifications into the one sentence. No-one would speak like this; nor would anyone write like this spontaneously. The sentence would have come into being only after a lot of effort in manipulating several sentences into one. It is contrived, an artifice. It is a product of time, not of a lack of time.

If we go back to the ideas underlying paragraph (d), we see that they have the following form:

- What happens to the goods in a contract of goods and services?
- The buyer gives them to the supplier if there is no mortgage relating to the tied loan contract.
- The buyer gives them to the credit provider if there is a mortgage.

These ideas form a neat coherent group. They should have been expressed in a separate sentence:

If the contract of sale is for goods and services, the buyer must deliver any relevant goods in his or her possession —

- (a) to the credit provider if there was a mortgage relating to the tied loan account; or
- (b) to the supplier in any other case.⁹

Not only does this solution disentangle the conditional clauses from each other and relieve readers from having to hurdle a whole series of them, but to the point in the present discussion it would take much less time to write the ideas in this form than to merge them with the early part of sub-section 25(3). Moreover, the incorporation is unnecessary: there are a number of items in the revised version of (d) to tie it to the earlier part of sub-section 25(3), such as the definite article before *buyer*. The cause of the incomprehensibility of sub-section 25(3) then has nothing to do with the complexity of content or pressure of time, but with faulty notions of sentence structure and cohesion in texts. These are matters in the control of drafters.

⁹ I am grateful to Mr Warren Pengilly, a partner in Sly & Russell, Solicitors, Sydney, who checked this wording and proposed improvements.

Consider how the drafter unnecessarily elongated a sentence in section 27 of the Takeovers Code:

- (12) Where an offeree who has accepted a take-over offer that is subject to a prescribed condition receives a copy of a notice under sub-section (10) in relation to a variation of offers under the relevant take-over scheme, being a variation the effect of which is to postpone for a period exceeding one month the time when the offeror's obligations under the take-over scheme are to be satisfied, the offeree may, by notice in writing given to the offeror within one month after receipt of the first-mentioned notice and accompanied by any consideration that has been received by the offeree (together with any necessary documents of transfer), withdraw his acceptance of the offer and, where such a notice is given by the offeree to the offeror and is accompanied by any such consideration and any necessary documents of transfer, the offeror shall return to the offeree within 14 days after receipt of the notice, any documents that were sent by the offeree to the offeror with the acceptance of the offer.

The last portion of this sub-section from 'and where such a notice . . .' should have appeared as a separate sentence. The insertion of 'and' is an abuse of the conjunction: it is nothing but a thinly disguised full-stop. Had the drafter used the stop instead, he or she would have provided readers with more manageable units of information rather than imposing on them a clumsy mass of 174 words.

The drafter can draw no proper defence from arguing that he or she is compelled to use 'and' to conform with the practice of having only one sentence in a section or sub-section. In the first place what type of understanding of good writing does it display when rigid adherence to one practice is going to breach another principle of communication and impose a heavy burden on readers? This is unthinking inflexibility not competent drafting. It also reveals a poor knowledge of drafting principles. As several drafting experts¹⁰ have correctly observed, the common practice of having only one sentence in a section is merely a convention not an obligatory rule.¹¹

The plain English version of sub-section 27(12) is:

- 1) If an offeree who has accepted an offer that is subject to a defeating condition receives under sub-section 21(1) a copy of a notice of a variation that would postpone the fulfilment of the offeror's obligations for a period exceeding one month, the offeree may withdraw his or her acceptance by —
 - a) giving the offeror written notice of the withdrawal within one month after receiving the notice; and
 - b) returning any consideration received by the offeree, together with any necessary documents of transfer.
- 2) Within 14 days after receiving the offeree's notice, the offeror must return any document that the offeree sent with the acceptance of the offer.¹²

¹⁰ See, for example, F Bennion, *Statute Law*, Oyez Longman, London (1983) 48; Renton Committee, *The Preparation of Legislation*, HMSO, London (1975), 150; G C Thornton, *Legal Drafting*, Butterworths, London (1987), 61.

¹¹ Other drafters have shown a keener appreciation of sound drafting techniques. The *Companies Act 1985* (UK) has several instances of sub-sections with more than one sentence — for example, s 103(4).

¹² *Plain English and The Law*, Appendix 2.

It reveals that the original drafter has intertwined material in an unnatural way. The returning of the consideration and documents of transfer belongs to the actions to be taken by the offeree. It should have appeared with them and not with the offeror's actions. The comparison also demonstrates how complicated in structure the original is. The flow of ideas is interrupted time and time again as modification is built into modification. The drafter has managed to get the modifications in the grammatically correct position, but the exercise would have expended considerable time — far more time than the more straightforward approach of the plain English version would have taken.

Nouns for verbs

The partiality for abstract nouns derived from verbs, technically known as *nominalisation*, demonstrates this point in another way. An example of this is:

In default of the appearance of the objector before the Tribunal for the purposes of review, the Tribunal shall. . .¹³

This is another way of saying:

If the objector fails to appear before the Tribunal. . .

or:

If the objector does not appear before the Tribunal. . .

Writers and speakers are far more likely to start with one of these forms and only move to the more ornate transformation later. In effect the provision involves a second step in composition. If drafters bypassed it on many occasions, they would reduce their workload.¹⁴ Any loss of time wasted on it is a self-inflicted wound and cannot be blamed on others. In other words outside pressures are not the only cause of problems for writers: false notions of language and of what is fitting are other factors leading to a shortage of time.

Unnecessary material

Drafters regularly show a lack of confidence in the regular procedures of language. They fail to treat their documents as coherent texts and proceed as if each sentence occurred in isolation. The result is a mass of repeated material which readers have to scrape away to find the core message.

¹³ *Accident Compensation Act 1985 (Vic)*, s 222(2).

¹⁴ W L Chafe, 'Integration and Involvement in Speaking, Writing and Oral Literature', in D Tannen (ed), *Spoken and Written Language*, Ablex Publishing, Norwood, NJ (1982), found that 'there were about eleven and a half times as many occurrences of nominalisations in our written data'. He attributed this to 'the greater amount of time available in writing'. The argument here is not concerned with barring nominalisations. They have an important function in integrating material. It is their needless use that is under discussion.

While insufficient material can only leave readers puzzled, excess material is not an advantage. On the contrary it can be detrimental, the mass of material making it harder for readers to discover the main point and to concentrate on it. Consider, for example, sub-section 33(3) of the Companies (Acquisition of Shares) (Victoria) Code:

If, after the making of a take-over announcement in relation to shares in a company and before the end of the period in which offers constituted by the take-over announcement remain open, being a take-over announcement made on behalf of a natural person or on behalf of two or more persons at least one of whom is a natural person, that natural person, or if there are two or more natural persons, either or any of them-

- (a) dies; or
- (b) becomes bankrupt; or
- (c) is declared in court to be incapable of managing his affairs;

such of the offers made by virtue of the take-over announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the person died, became bankrupt or was declared to be so incapable, as the case may be.

There is a lot of useless information here. Readers are already well into a document on takeovers by the time they reach section 33. The context is clear. Even if they are following up a cross-reference and are just consulting this section, they would be aware of its background. The opening four or five lines could be dispensed with for there is no need to traverse again the making of the announcement. The drafter could have launched straight into the point at issue along these lines:

An offer that has not been accepted is withdrawn when the offeror or one of the offerors

- a) dies; or
- b) becomes bankrupt; or
- c) is declared by a court to be incapable of managing his or her affairs.¹⁵

Inattention to underlying principle

Another case for the unnecessary piling up of words is the failure to draw out the underlying principle unifying sub-sections in an Act. This forces tedious repetition of material as each particular instance is taken up. It is left to the readers to discover for themselves that the various sub-sections are concerned with the same general principle. Section 39B of the Companies (Acquisition of Shares) (Victoria) Code is a telling illustration:

(1) Where —

- (a) a person acquires shares included in a class of shares in a company;

¹⁵ The plain English version of the Code was able to go further and merge subs (3) and (4).

- (b) within 6 months after the acquisition referred to in paragraph (a) —
 - (i) an offeror makes takeover offers under a takeover scheme; or
 - (ii) an on-market offeror causes a take-over announcement to be made; in respect of shares included in that class;
- (c) at a particular time, whether before, at or after the end of the period (in this sub-section referred to as the 'offer period') during which the take-over offers, or offers constituted by the take-over announcement, as the case may be, remain open, a person (in this sub-section referred to as the 'relevant person') being the offeror or a person associated with the offeror, or being the on-market offeror or a person associated with the on-market offeror, as the case may be—
 - (i) gives, offers to give, or agrees to give, a benefit to; or
 - (ii) receives, or agrees to receive, a benefit from,a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares first referred to in that paragraph, or a person who is associated with a person who so had such a relevant interest;
...

the relevant person contravenes this sub-section.

(2) Where —

- (a) a person acquires shares included in a class of shares in a company;
- (b) as at a particular time within 6 months after the acquisition referred to in paragraph (a) —
 - (i) an offeror proposes to dispatch take-over offers under a take-over scheme; or
 - (ii) an on-market offeror proposes to cause a take-over announcement to be made,in respect of shares included in that class.
- (c) at the time referred to in paragraph (b), a person (in this sub-section referred to as the 'relevant person'), being the offeror or a person associated with the offeror, or being the on-market offeror or a person associated with the on-market offeror, as the case may be —
 - (i) gives, offers to give, or agrees to give a benefit to; or
 - (ii) receives, or agrees to receive, a benefit from,a person who had, immediately before the acquisition referred to in paragraph (1), a relevant interest in any of the shares first referred to in that paragraph, or a person who is associated with a person who so had such a relevant interest;
...

the relevant person contravenes this sub-section.

The prohibition on giving additional benefits is the same in both time frames. If this uniformity had been brought out, readers would have been saved having to go through the struggle of unravelling sub-section (2) when they had already endured the task with sub-section (1). Again the drafter would have saved effort. The plain English version shows the benefits to be gained:

- 1) An offeror or an associate, or a proposed offeror or associate, is guilty of an offence if —
 - i) when he or she proposes to make offers before, during or after the end of the offer period; and
 - ii) within 6 months after a person acquires shares in the target company; he or she gives, offers to give or agrees to give a benefit to or receives or agrees to receive a benefit from a person who had a relevant interest in any of those shares immediately before they were acquired, or an associate of such a person; and

...¹⁶

Excessive words

Not only can the material in a legal document be superabundant, but many of the words too can be superfluous. Indeed, legal documents are noted for their verbosity.¹⁷ Section 19 of the Companies (Acquisition of Shares) (Victoria) Code is only one of countless examples of longwindedness:

(1) The Commission may, on application made by an offeror before the time by which the consideration specified in the relevant take-over offer is required by the terms of the offer to be paid or provided, fix a later time as the time by which that consideration is to be paid or provided and, where a later time is so fixed, the offer or, if the offer has been accepted, the contract that resulted from the acceptance shall be deemed to be varied accordingly.

(2) An offeror shall ensure that the consideration specified in the relevant take-over offer is paid or provided not later than the time by which that consideration is required by the terms of that take-over offer to be paid or provided or, if a later time has been fixed under sub-section (1), not later than the time so fixed.

Stripped of its verbiage, this section amounts to:

- 1) An offeror must ensure that the consideration specified in an accepted offer is provided on time.
- 2) The Commission may extend the time for paying the consideration if the offeror applies for an extension before the consideration is due.

Nothing more needs to be said. In particular, 'on time' encapsulates all the prolixity of sub-section (2).¹⁸

¹⁶ *Plain English and The Law*, Appendix 2.

¹⁷ See, for instance, *Inland Revenue Commissioners v Mobil North Sea Ltd* [1986] 1 WLR 296, 302-3. (Harman J).

¹⁸ The re-ordering of the material in the plain English version is also proper. The central concern of the section is the timely provision of the consideration. The extension of time is a concession to this basic principle, and its secondary nature should be reflected in the organisation.

How many times do readers have to negotiate tautologies such as 'observe and perform', 'permit or suffer', 'agreed and declared', and 'in accordance with and subject to'?¹⁹ Other documents run to 'due and payable' and 'on behalf of and for'. When one word will do, it is inefficient to use more. It is also likely to mislead readers who are enticed to search for some unintended nuance in the natural belief that an additional sense could be the only reason for the drafter using an extra term.

Bizarre definitions

The absence of practical consideration for the audience comes out not only in the products of these inefficient drafting practices but in a number of other ways as well. The treatment of definitions is a conspicuous case. Drafters allow their own convenience to dominate. The solution seems good, but it is only because the drafters have already worked through the problem. Readers who come to particular documents for the first time do not have the benefits of this more lengthy acquaintance with the topic.

The *Social Security Act 1947* (Cth) contains the definition:

'unmarried person' means a person who is not married.

Admittedly this had to be read in the context of the definition of married person which is presented earlier:

'married person' includes a de facto spouse but does not include —

- (a) a legally married person (not being a de facto spouse) who is living separately and apart from the spouse of the person on a permanent basis; or
- (b) a person who, for any special reason in any particular case, the Director-General determines in writing should not be treated as a married person.

This may be very neat, but only from the drafter's point of view. Are readers to be expected to remember that 'unmarried person' has an unusual sense whenever they come across it in the 177 pages of the Act, especially when the term is not identified in the text in any special way to show that it is a defined term? Dickerson has pointed out that:

it is psychologically impossible for a reader, even when fully and explicitly warned, abruptly to shift from an established meaning to a radically new one.²⁰

One wonders if the drafters themselves can continue to do this successfully. Could this be one of the reasons that they cling to the safety net of 'unless inconsistent with the context or subject matter' even though it intimates imprecision? Drafters need to take a different approach and one which attends more sympathetically to the way in which their readers use a term.²¹

19 All these come from paragraphs 6 and 7 of the standard Mortgage over Business prepared by the Law Institute of Victoria. On the initiative of the Institute, a plain English version was prepared in 1987.

20 R Dickerson, *Fundamentals of Legal Drafting*, Little Brown, Boston (1965), 13.

21 In this instance a solution was ready to hand. The drafter needed only to modify 'married person', for example, with 'eligible', and to delimit 'eligible married person'.

Unnecessary concepts

Along with this weakness in definition goes the practice of introducing unnecessary concepts. Consider the creation of the concept 'relevant price' in sub-section 17(8) of the Companies (Acquisition of Shares) (Victoria) Code:

Nothing in this section prohibits an on-market offeror from acquiring in accordance with paragraph 13(3)(b), during the period commencing when the take-over announcement is made and ending at the expiration of the sixth trading day before the expiration of the period in which offers constituted by the take-over announcement remain open, shares to which the relevant take-over announcement relates at a price (in this sub-section referred to as a 'relevant price') that is higher than the price specified in the announcement or is higher than any price that is deemed by a previous operation of this sub-section or of sub-section (11) to be specified in the announcement but, if the on-market offeror acquires shares at a relevant price during that period, that relevant price shall, for the purposes of any offer that is accepted after the acquisition takes place, be deemed to be the price specified in the announcement unless and until another price is deemed by virtue of the operation of this sub-section or of sub-section (11) to be specified in the announcement.

Readers are forced to memorise the meaning of 'relevant price' and continually recall this meaning while they grapple with new information. Once the sub-section is finished, they abandon this new piece of learning. It is a lot of trouble for a small return, especially when there was a more direct approach:

- 1) If, after a takeover announcement is made, but before the 5th trading day before the end of the offer period, the offeror or an associate pays a higher price for a share than that specified in the announcement, the higher price is substituted for the price specified in the announcement (or a lower price substituted for it under section 39) in relation to all subsequent acceptances.
- 2) From the 5th trading day before the end of the offer period until the end of that period, the offeror must not acquire shares in the same class at higher than the price specified in the announcement.

Subsection 17(8) is a rather innocuous illustration of the problem inasmuch as the definition of relevant price is contained in the sub-section. The more insidious instances of the practice — and the more frequent — are those in which the clarification occurs in a later sub-section. Rarely are readers given any indication of the existence or the location of this clarification.

Legal effectiveness

For all the awkwardness in expression that they produce, traditional drafting practices have been defended on the grounds that they produce legally accurate statements. While plain English documents are subjected to the closest scrutiny by opponents, the same rigour is not applied to traditional documents. When it is, the sweeping claims

that are made for them do not hold up. Errors, inadequacies, ambiguities and uncertainties are regularly found. The exercise to produce a plain English version of the Companies (Acquisition of Shares) (Victoria) Code revealed a number — for example, in sections 16(2)(h), 17(5), 18(2)(a), 34 and 48.²²

The preparation of plain English insurance policies in Australia has exposed errors and ambiguities in the original documents. These had remained undiscovered largely because of the convoluted and archaic language in which the original documents were written, but partly also because of the unquestioning acceptance of traditional legal language.

For over 12 months officers of the New South Wales Land and Housing Corporation worked on a lease for housing prepared in traditional legalese. When finally the Corporation decided to have a plain English version produced, officers discovered that the traditional version omitted several important policy matters. It may be argued that this was not the entire fault of the lawyer who drafted the original, but it cannot be denied that the traditional language was a serious hindrance to issues being covered. Moreover, the organisation of the original document with insurance, for example, being treated in four different places was bound to introduce the inconsistencies which the stricter arrangement in the plain English version highlighted.

The original version of the Victorian Law Institute's Mortgage over Business contains several inconsistencies. Paragraph 1(a), for instance, refers to 'business' alone, while paragraph 1(c) refers to 'trade or business'. In clause 1(c) goodwill is that of 'every . . . business which the Mortgagor may carry on in and from or in connexion with the premises', but in clause 10 it becomes the goodwill of 'any . . . business which the Mortgagor may . . . carry on from or in connexion with the premises or any premises in which the Chattels may hereafter be'.²³

These Australian experiences of inadequacies in traditional legal documents are repeated elsewhere. Redish concluded:

It is also a myth that regulations are always legally accurate and sufficient. The poor organisation and writing in regulations often obscures legal problems that surface only when the regulation is litigated or when someone tries to explain the rules in another document. In every case where we have been involved in helping to reorganise and rewrite a regulation, we have found legal inconsistencies and gaps in the original rules.²⁴

New directions

Traditional drafting methods then are not so efficient as expressions of legal accuracy, nor, as we have seen, are they efficient as a method of communication. But the selection of practices that have been discussed in this paper have been condemned by the acknowledged exponents on legal drafting such as Dick, Dickerson, Driedger, Piesse

22 See *Plain English and The Law*, Appendix 2.

23 For further details of the weaknesses in the Mortgage, see *Plain English and The Law*, Appendix 3, 64-65.

24 J C Redish, 'How to Write Regulations (and Other Legal Documents) in Clear English', in R A Givens (ed), *Drafting Documents in Plain Language*, New York Practising Law Institute (1981), 216.

and Thornton. That they are widespread and continue despite this guidance from within the profession indicates how ingrained they are. They are not just a response to external pressures but suggest habits of mind and notions about language and about writing in particular. If the standard of expression in legal documents is to improve and if lawyers are to use their time more productively, benefiting themselves as well as their clients, then it is to matters of drafting practice that attention must be given. Progress can result from this activity whether or not changes can be accomplished in the external hindrances. It is here that the products and research flowing from plain English activities can offer fertile assistance.²⁵

²⁵ It is encouraging to see changes taking place and drafters beginning to explore issues of language. Since the publication of the Victorian Law Reform Commission's *Legislation, Legal Rights and Plain English* (1986), the Commonwealth Office of the Parliamentary Counsel has begun studies of linguistic and psycholinguistic research along the lines set out in the discussion paper (see I M L Turnbull, 'Legislative Drafting — Use of Plain English' [1987] *Australian Current Law Articles* 360-47. Private legal firms — for example, Mallesons Stephen Jaques — are also engaging in similar investigations.