

LAW FOR THE NON-LAWYER

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When John Selden stated in the seventeenth century that ignorance of the law excuseth no man he presented the layman with a dilemma which has become increasingly acute with every passing year.

2. In fact very few laymen can be said to understand the law, and in many areas this is equally true of lawyers themselves. That the law is complex and frequently capable of being comprehended only by experts is no doubt to some degree a consequence of the complexity of the society in which we choose to live. But the statement of the Report on the Preparation of Legislation, the Renton Report, published in Great Britain in 1975 on the political implications of a law which has become too intricate for the layman to grasp should be kept in mind. There it was said that:-

"It is of fundamental importance in a free society that the law should be readily ascertainable and reasonably clear..... Whatever may be the pressure to increase the volume and extend the scope of legislation, it is our firm view that legislation which is complex and obscure may for that very reason be oppressive".

3. This passage refers specifically to the law embodied in the statutes.

4. The difficulties of the layman faced with his country's statute law, have been drawn attention to in other Commonwealth countries. In a book entitled Access to the Law, written by M.L. Friedland and published by the Law Reform Commission of Canada in 1975, it is stated that:-

"Statutes are not only the most commonly used source of law and probably the most available source of law, they are the most important source of law. They impose many positive obligations on citizens and regulate much of their daily lives. To respond to these obligations and regulations the citizen must be able to find out the contents of statutes."

5. The Renton Report in examining the causes for the complexity which renders the statutes so frequently impenetrable to the layman, found four reasons. These were (1) the language is frequently gratuitously obscure and complex, (2) the desire for certainty of interpretation leads too often to over elaboration of the text, (3) the structure is often illogical and unhelpful, and (4) the arrangement of Acts and amendments is often confusing.

6. We have so far discussed the law in terms of legislation. I will return in a moment to a discussion of statute law and examine how we are attempting to cope with some of these difficulties in New Zealand. But the layman comes into contact with the law in many other ways. He may for instance come in contact with it in legal documents prepared by his lawyer, in documents such as insurance policies, which he signs in entering into a contract with another layman. Certainly incomprehensibility here may be as oppressive, if in a rather different way, as is obscurity in the statutes: gratuitously complex and obscure language and over-elaboration in pursuit of certainty are applicable to all legal documents and cause similar vexation to the layman.

7. In New Zealand, the language of legal documents has come under sharp criticism from the point of view of both the layman and the lawyer. The former has found in the Consumers Institute a vigorous defender of his right to find in the legal document he signs, texts which he finds comprehensible. And Mr. Ian L. McKay, a Vice President of the New Zealand Law Society at that Society's annual Conference in 1981, presented a paper on "Intelligible Drafting". The Law Society subsequently set up a Simplicity of Drafting Committee under Mr. McKay which is at present examining the problem.

8. Mr. McKay in his paper pointed to the fact that the drafting of documents is one of the most important aspects of the lawyer's work. "The document in most cases", he pointed out, "is intended to give effect to the client's instructions. Once executed it has a life of its own. It takes the place of the client's instructions and even of the draftman's

intentions. It must be construed as to its own meaning. If it is not well drawn it may fail in its purpose, or may cause misunderstanding and expensive litigation". That well drawn in this context means simple and comprehensive to the layman is clear enough when it is considered that, as Mr. McKay further points out, "Most legal documents have to be applied by laymen. The lessee cannot observe his covenants if he cannot understand them. The trustee and the accountant need to understand the will or trust deed if they are to avoid an unwitting misapplication of funds or other breach of trust".

9. Both Mr. McKay and the Consumers' Institute have pointed to numerous specific examples of obscure legal drafting. There is no need to be specific here, except to point to such practices as the use of archaic words, unnecessary synonyms, jargon such as "hereby", "hereinafter" and "hereinbefore", complicated syntax and overlong sentences. Both reject the defence of existing forms as having stood the test of time. The Consumers Institute suggests that if they have been tested at all they must have been badly drafted in the first place. Mr. McKay has stated that, "Many of our precedents represent the accretions made by those who added words out of caution and omitted to delete existing words out of even greater caution. It represents the laziness or lack of time of lawyers who found it easier to follow the known path..." than to find a text that was satisfactory to the client. Lawyers "rely on precedents", he said, "which we do not take time to revise and we follow traditional formulae without stopping to consider whether they could be improved". These words are not intended as criticism of the legal profession which has after all been active in taking steps to put its own house in order.

10. And while Mr. McKay has been primarily interested in improving the service lawyers offer their clients he has no doubt been aware of the threat of injustice to the layman that bad drafting presents and which has been the main concern of the Consumers' Council. It has shown particular concern over those contracts which are one-sided in that the terms are drawn up by one party, and the other party is placed in the position of signing a legal document he may not in fact be able to understand. Many contracts, such as hire purchase and insurance agreements, or carriers' contracts, are of this kind, and it is imperative that in such a situation the party which had no part in the drawing up of the document should clearly understand the contents of what he or she is signing.

11. Simplified language is not of course, by itself, a panacea for consumers. In 1979 in New York the Understandable Language Act came into force. Comparable legislation has since followed in other States. Attempts to enforce statutorily a simplification of insurance policies, in particular, have also been made in the United States. The experience with these attempts to simplify the language of legal documents has not been entirely successful and I am not sure that they offer satisfactory models for adoption in my own country. The trend in the United States is apparently in any case, towards the use of a simpler and better form of legalese rather than towards the colloquial narrative style of writing which is so often offered as a solution to this problem. Paradoxically, the aims of clarity and brevity and simplicity in legal drafting are often inconsistent. Placing too great an emphasis on simplicity can often result in a loss of meaning. Moreover it is clear that simplification gives rise to a number of problems of its own. One of these is that simplified contracts are often considerably longer than the legal documents they displace. Legal phrases are inevitably shorter than any colloquial narrative describing them and the problem of bulk in many standard contracts containing complex terms can often be as great a bar to understanding as the use of legal jargon. Even the best drafted legal documents make far from interesting reading and obviously it would be no more difficult to hide terms of deceptive meaning in the midst of a ten or twelve page document than it would to hide the same terms behind a fog of legalese in a one or two page closely printed form.

12. Even so, the Consumers' Institute's point that "To 'tell' people their rights in a way they cannot understand is absurd, and, more than that, it is unjust", remains valid.

13. In my own department, the establishment in 1981 of the Family Courts has given us an excellent opportunity to break down the barriers which have stood in the past between the layman and the law. This had particularly been the case with the final legal dissolution which takes place two years after the initial separation. As a result of the Family Proceedings Act 1980, the concept of divorce has been replaced by that of dissolution of marriage. The procedure appropriate has also been greatly simplified.

14. In general, working through the stages that can be involved in marriage break-up, I should perhaps explain that at an initial stage there is provision for married people to request a Family Court Registrar to arrange marital counselling. The form for this is simple, and readily available at Courts.

15. If a husband and wife wish to separate by mutual consent, although there is no legal requirement, consultation with solicitors is generally desirable. If the couple cannot reach an agreement and Court proceedings become necessary, particularly if such proceedings include custody, access, maintenance or property issues, it would be expected that people would obtain legal advice, and that the lawyer, as they have in the past, would file applications on their behalf.

16. But in relation to dissolution, while the department has not printed specific application forms, at each District Court a copy of the prescribed wording is available to applicants on request. About half the applicants prepare their own papers, the other choosing to consult a solicitor. Whilst it is recognised that staff are not authorised to give legal advice, they check that documents are complete for filing, and advise applicants of service requirements.

17. At eight major city Courts, throughout New Zealand there is now a Counselling Coordinator, whose responsibilities include educating the public on the work of the Family Court. It is expected that nine part-time co-ordinators will be appointed in March or April of 1983.

18. The need for clarity in the language of legal documents raises the question of the need for greater clarity in what, as has already been noted, are the most important legal documents of all, namely the statutes.

19. This is a matter which has aroused much interest overseas. In 1968 the Statute Law Society was formed in England. Its purpose was to lobby for "technical improvements in the form and the manner in which statutes... are expressed... with the view to making the same more intelligible", and to disseminate information for the public to educate them about legislation, and the legislative process. In the UK the Renton Committee on the Preparation of Legislation was established in 1973 and published its report two years later. The Law Reform Commissions in Scotland and Canada have also in recent years been doing work in this area.

20. In New Zealand, criticism of the language of the country's statutes has been rather more low keyed. It is true that in 1974 Mr Harold White of the Booksellers Association of New Zealand suggested - not entirely seriously, it is hoped - that all legislation should be written at the reading level of a twelve year old child. Whatever the value of his arguments about the incomprehensibility of our legislation it no doubt did not go unnoticed that such a remark was far more insulting to the general populace than to the law draftsmen.

21. That particular criticism received little sympathy from the Minister of Justice at the time, the Hon. Martyne Finlay. In a letter published in the New Zealand Law Journal in the following year, he commented:

"It must be remembered that a Bill must not only do the job it is intended to do, but the draftsman must endeavour to anticipate every possible contingency and draft in such a way that no one will be able, because of a defect in the drafting, to evade responsibility for any breach or obtain a benefit that he was not intended to have. As an eminent English lawyer once said - an Act must be written in such a form that not only must persons reading it in good faith be able to understand it but persons reading it in bad faith must not be able to misunderstand it."

22. The question of expressing legislation in simple language has engaged the attention of experts for years, but the problem permits of no easy answer. But I question whether the position is as bad as many critics would have the public believe. The following extract is from an address on "Public Administrators and Legislation" by Elmer A. Driedger, formerly Parliamentary Counsel in Canada, and a world authority on legislative drafting:

"Despite the popular notion to the contrary, a good draftsman does try to write a statute so that it can be understood by those to whom it is directed and those who have to administer it, and he does try to write it in plain, simple language. Admittedly there are statutes that are complicated and difficult to comprehend, but the draftsman is not necessarily the culprit. Statutes are laws; they are intended to regulate human relationships. If those relationships are complicated, the laws to regulate them must be too..."

23. There has then, in general, been little serious or concerted criticism of the standard of drafting of New Zealand statutes.

24. This might at first be considered surprising in view of the apparent flexibility of approach of law draftsmen to the question of style, in this country. Mr D.A.S. Ward, the Chief Parliamentary Counsel, from 1967 to 1972, saw style as too 'intangible' to categorise and gave five reasons:-

- (i) Acts are drafted by a number of draftsmen who are largely independent once they have shown competence.
- (ii) Any particular draftsman's "style" was subject to change as he progressed.
- (iii) An original draft might have been redrafted by another person.
- (iv) Draftsmen have highly individual personal styles.
- (v) It is not the practice of the Parliamentary Counsel Office to set down standard style policy in the same way as presentation style can be. This is because it is felt desirable to give the individual counsel as much freedom as possible to tackle any draft in the best way to obtain the object of the draft.

25. Thus the very flexibility which many concerned to simplify legal language might wish to curtail, is seen by the draftsmen themselves as ensuring that very simplicity itself.

26. It may further be noted that section 5 of the Statutes Drafting and Compilation Act 1920, places on compilers of statutes a statutory obligation to concern themselves with the quality of legislative language:-

- "b. To report to the Prime Minister or the Attorney-General upon verbal or technical alterations of language which may be adopted for the purpose and in the course of any compilation.
- c. To consider the language and effect of the statutes, compilation whereof is directed, and to state for the consideration of the Prime Minister or the Attorney-General suggestions or proposals for the alteration of the law enacted by such statutes, or for the extension or limitation of the effect of such statutes, or for amendment of the wording of any such statute".

27. Thus neither policy nor legislation relative to the drafting of statutes can be said to lack concern for the need where possible of clear and understandable laws.

28. In fact, New Zealand can, with some justification be proud of the standard of law drafting of its Parliamentary Counsel. When Dean Griswold of Harvard University visited New Zealand in 1951, this was certainly his view. Harvard University then used New Zealand Acts as models for study.

29. And Mr. T.Y. Chan, in an article entitled "Changes in Form of New Zealand Statutes", which has been extensively used for the historical material in this paper, and which was published in the Victoria University Law Review, in 1976, stated that, "In presentation and form the improvements made to New Zealand statutes have probably reached their ultimate... very little else needs to be done to the existing format, which... is both neat and effective. In this, it is as good as any in the world". He did nevertheless go on to make a number of qualifications. He continued:

30. "It must be stressed however, that the present format has been used for over 120 years, and whilst it is the best present format it may need to be changed to suit the requirements of changing time. More and more people without legal training are now seeking to understand statutes for themselves. For this reason... there has perhaps to be some change in emphasis," he continued:

31. "It may well be that their cautiousness for change is to the credit of the draftsmen of New Zealand Acts as they have maintained a style that the profession knows and understands. But outside the field of law, and one need only take the up-dating of the

language used in the Bible as one most striking example, a changed emphasis in favour of attracting lay understanding is apparent. Perhaps the draftsman's work should reflect an appreciation of this," he concluded.

32. Against this statement, however, might be placed that of Mr. Ian McKay, on the occasion of his introducing his paper, already alluded to, on "Intelligible Drafting", at the Law Conference of 1981.

33. There he said that:-

"Some of you when you saw the title of this paper may have thought that I was going to have a tilt at the law draftsmen, because when one talks of intelligible drafting the prime target is usually the poor old law draftsman. I have not mentioned him. That is deliberate, because I think generally in New Zealand the standard of drafting of our statutes is very high, and I do not think that we in the profession set such a high standard in our own documents that we can afford to be too critical. If we had to draft under the sort of pressures that Parliamentary Counsel work I shudder for the results. They do sometimes err, one knows that, but I think those of us who have served on law reform committees, and have worked closely with the draftsmen where they have not been under the same pressure have a very high respect for their skills. I think we could learn quite a lot in many areas from the techniques that they use and which they certainly brought in before many of us followed".

34. The quality of the statutes of New Zealand is the result of the developing history of law drafting in this country.

35. At present almost all statutes in New Zealand are drafted by the Parliamentary Counsel Office. It is a separate office of the Crown under the control of myself as Attorney-General and headed by the Chief Parliamentary Counsel. He has under him three Chief Parliamentary Counsel, and four Parliamentary Counsel. The office has not always had this form or name, but its duties have, since its inception, always been well defined.

36. From 1841, when the first New Zealand enactment was passed, till 1907, there was no separate office for the drafting of statutes. At first, drafting was done by the Attorney-General and then, when New Zealand ceased to be a Crown Colony, by the Solicitor-General or Assistant Law Officers. In 1877, there was created a position of Counsel to the Office of Law Drafting, but it was not until 1907 that it became separate from the Crown Law Office. This lasted for only three years, however, before it was absorbed back again by the Crown Law Office. In 1920, the Statutes Drafting and Compilation Act set up the office as it now is. The Law Drafting Office was to be in two departments - one for the drafting of Bills and the other for the compiling of statutes. Finally, in 1973, an amendment Act changed the name of the Law Drafting Office to Parliamentary Counsel Office, and the law draftsmen became Parliamentary Counsel.

37. The drafting of legislation in New Zealand has been the responsibility of a series of distinguished public servants.

38. The first New Zealand Ordinance, in 1841, was drafted by William Swainson, the first Attorney-General, in collaboration with the first Chief Justice, Sir William Martin.

39. The statutes of those early years were naturally enough modelled on English enactments of the time but Swainson was no mere copier, and he set a high standard from the beginning. It has been said by R.B. Cooke, QC, (now Mr. Justice Cooke), in his book Portrait of a Profession, 1969, that he was a legislator-draftsman of exceptional skill.

40. He combined, "the kind of technical skill which we associate with such draftsmen of the Victorian Age in England as Sir Mackenzie Chalmers... with the creative resourcefulness called for in a pioneer statesman".

41. In 1877, John Curnin appears as the first recorded holder of the office of Law Draftsman. He was succeeded in 1894 by Dr. Frederick Fitchett who was appointed Solicitor-General in 1900. From 1900-1916, William Jolliffe held the office. During this period, he prepared the five volumes of the 1908 Consolidated Statutes, as the Secretary to the Commission set up under the Statutes Reprints Act 1985. It is in these 1908 statutes that the character of New Zealand's law drafting style first began to emerge. Opportunity

was taken at the time to correct many previous faults.

42. No doubt it was to alleviate a heavy work load that in 1907 Professor John W. Salmond was appointed to the new position of Counsel to the Law Drafting Office. He was immediately involved in drafting major legislation, and turned out to be an able innovator and trend setter. With his drafting he laid the foundations for our modern methods and style of drafting, and his influence is apparent even today.

43. Following Salmond in 1918 was James Christie, once described by Lord Bledisloe as one of the finest draftsmen in the Commonwealth. He was Law Draftsman for 20 years, and spent a further seven years as Counsel to the Law Drafting Office. In 1945 he was appointed a temporary judge of the Supreme Court. Christie visited England to study methods of drafting in 1925, and in 1930 went there for consultations over the drafting of the Statute of Westminster and the 1931 Reprints. Christie's principle quality was that of clarity. This attention to detail is revealed in the 1931 Reprints. They are comprehensive and contain meticulous editing.

44. H.D.C. Adams was appointed Law Draftsman in 1938. He was a brilliant, modest, but blunt and direct man. In 1956, he was appointed editor of the voluminous 1957 Reprints. He planned the whole work, and completed the final version of volume 1 before he died in 1958. D.A.G. Ward was then appointed Law Draftsman. In 1967 he became Counsel to the Law Drafting Office, remaining so until 1974. J.G. Hamilton held the post of Law Draftsman from 1967 to 1971 when he was succeeded by J.P. McVeagh. On the latter's retirement in 1975 W. Iles, a member since 1959, was appointed head of the office.

45. At the same time the need for continued vigilance has by no means been forgotten. Particular attention has been given to the question of simplicity of language in such legislation as the Human Rights Commission Act 1977. This Act, which is the most important legal defence of the layman against discrimination on racial, religious, and sexual grounds and is consequently one which he or she might be particularly likely to consult in person, is a piece of legislation where simplicity and case comprehension are of paramount importance.

46. Further, we have been aware in New Zealand that there is often a need in the statutes as much for clear statement of the principles with which the particular Act is concerned, as for an over-elaborate covering of all possible contingencies. This matter has been widely discussed. The Renton Report quotes a parliamentary draftsman as saying "The object is to secure that in the ultimate resort the judge is driven to adopt the meaning which the draftsman wants him to adopt". It will be readily admitted that this principle, and the avoidance of ambiguity which it applies, has been of great importance in the law drafting traditions of this country. We are also aware of the statement of Lords Emslie and Wheatley in the same Report, that the suspicion of the judges, which such an approach implies, may not necessarily be well founded. We have therefore in some recent legislation attempted, while preserving the traditional style of drafting, to introduce clear statements of principle. This can be done for instance by incorporating them on the title of the Act. In the Credit Contracts Act 1981, for example, if you will bear with me for a moment the full title reads as follows:-

"An Act to reform the law relating to the provision of credit under contracts of various kinds in order to -

- (a) Prevent oppressive contracts and conducts;
- (b) Ensure that all the terms of contracts are disclosed to debtors before they become irrevocably committed to them;
- (c) Ensure that the cost of credit is disclosed on a uniform basis in order to prevent deception and encourage competition; and
- (d) Prevent misleading credit advertisements; and to repeal the Money-lenders Act 1908?"

47. But while the Government has kept a wary eye on the content of statutes, the method it has found most satisfactory for facilitating the layman's understanding of the law has been the providing of adequate supplementary explanatory material.

48. In this context of course the layman includes the parliamentarian and it has since 1950 been the policy for the draftsmen to accompany Bills with a supplementary document explaining for him the purport of each of their sections.

49. In general though, most supplementary material has been supplied after enactment, and has been directed towards the ordinary citizen. The Renton Report summed up well what has been our experience in this area:-

"Such material does not purport to give authorities advice on the legal interpretation of the provisions referred to, or about the legislative intent of Parliament. Those to whom departmental circulars and other similar documents on new Acts are addressed are well aware of the limitations of such papers. But they are nevertheless widely relied upon as practical guides to what may be highly complicated and technical Acts, and they are of considerable value to those who must understand and administer the provision of new legislation".

50. Thus our Transport Department issues a Road Code which, while it is not legally binding, sums up adequately for the layman the content of the various Traffic Regulations it administers.

51. In my own department the Planning and Development Division has produced many pamphlets over the last four years. A brief summary of the subject matter of those pamphlets will perhaps give some idea of the areas of the law which in New Zealand have been found most urgently in need of explanation to the layman.

52. Pamphlets have been produced explaining the following statutes: the Matrimonial Property Act 1976, the Small Claims Tribunals Act 1976, the Human Rights Commission Act 1977, the Property Law Amendment Act 1975, the Layby Sales Act 1975, the Carriage of Goods Act 1979, and the Unsolicited Goods and Services Act 1971.

53. In the area of family law, pamphlets have been produced explaining the law as it relates to separation and dissolution of marriage, guardianship, custody and marriage, and describing the workings and services of the Family Courts. Others have concerned themselves with such subjects as searching a Land Transfer Office title, copyright information, obtaining legal aid - both for people charged with an offence, and for civil cases - and summary instalment orders. Booklets explaining their legal rights are also given to inmates on remand or sentenced in our prisons.

54. Many of these pamphlets are available in translated form in the New Zealand Maori and other Pacific Island languages. Further, in producing new material, particularly that relating to new legislation, we aim to produce also a package that can be used in the social studies, economic studies or clerical studies curriculum in schools.

55. In 1979 I established a number of objectives for the Department of Justice, which included one to improve the law of the country, and the public's knowledge of that law.

56. If our laws are out of date they quickly lose public respect, and when that happens it is likely that they will not be obeyed. That in turn is inevitably a threat to the rule of law itself, and to the peace and well being of the community at large.

57. So it is very important that government should accept a responsibility to improve, modernise and update our law - basically to engage in a moderate but forward looking programme of law reform. This is further the fourth of the means of simplifying the law already mentioned, that of consolidating the statutes.

58. In 1979, as Minister of Justice, I convened for the first time in three years a meeting of the Law Reform Council (the body responsible for co-ordinating law reform in New Zealand). It was my intention that this body should meet more regularly in the future. One of the matters that I put before the Council for discussion was the question of the structure of our law reform bodies.

59. It is perhaps not widely appreciated that New Zealand was one of the first countries in the world to have a formal law reform system. The first Law Revision Committee was established in New Zealand in 1937 with six members. Over the next 25 years the Committee grew in size until it became an unwieldy body of more than 16 members. It was replaced in 1956 by the Law Revision Committee, a body of 12 members under the

chairmanship of the Minister of Justice and with a member of each of the standing committees (By 1975 there were five in all).

60. Like its predecessor the Commission proved to be a large, unwieldy and ineffective body, and it was replaced in 1975 with a two-tiered system comprising the five Law Reform Committees acting under a Law Reform Council, again chaired by the Minister of Justice, who has the overall responsibility for law reform. Other members are the Solicitor-General, the Chief Parliamentary Counsel (or law draftsman), the Secretary for Justice, and the chairmen of the five standing Law Reform Committees.

61. As I have indicated in the past this body had met infrequently and has adopted essentially an advisory role. It was my hope that for the future, the Council would meet more regularly and adopt a more positive role. Specifically, I asked the Council to undertake over-all responsibility for co-ordinating a programme for the review of all laws, whether statutes or regulations, passed more than fifty years ago.

62. As a preliminary to this exercise it is, however, necessary to determine what those laws might be. This has been done by means of a Bill, the Imperial Laws Application Bill, which is at present before Parliament. It attempts to resolve the question - one of considerable uncertainty in New Zealand Law - of which English statutes still have the force of law in this country.

63. The background of the Bill is that when New Zealand became a British colony in 1840 it also became subject to the laws of England. However, there were some doubts as to what English laws had in fact been thus inherited, and in 1858 the New Zealand Parliament enacted the English Laws Act.

64. The Act provided that all Imperial Acts existing on 14 January 1840, as far as they were applicable to the circumstances of New Zealand, were deemed to have been in force in the colony on that date and were to continue to be applied in the administration of justice in this country.

65. A similar provision was included in the English Laws Act 1908. The schedule to that Act also lists a number of Imperial enactments that are to continue in force in New Zealand; and other Imperial Acts have been expressly declared by other statutes to be in force here.

66. However, no definitive list of Imperial Acts that are in force in New Zealand has ever been prepared.

67. Thus, there is considerable uncertainty about which Imperial Acts are in force in this country; and even if it is known that a particular statute is in force, the antiquity of some statutes means that there is often some doubt about what they mean.

68. Accordingly, there is a considerable body of statute law which is not readily ascertainable by, or accessible or intelligible to the legal profession, much less than general public.

69. This Bill has three main features:-

- (a) First, it will repeal, in relation to New Zealand, all obsolete enactments of the United Kingdom Parliament and its predecessors.
- (b) Second, it contemplates the enactment of a definitive list of Imperial Acts that are, in the meantime, to be preserved in force in their existing or an amended form. These include statutes which are important not only from a legal but also from a constitutional and historical point of view. For example, we are preserving such statutes as the Petition of Right, and the Bill of Rights, and more recent statutes such as the New Zealand Constitutional Act 1852 and the Statute of Westminster 1931.
- (c) Thirdly, the Bill contemplates the enactment of revised substituted provisions to take the place of certain Imperial Acts that can appropriately be dealt with in this way. However, this Bill is somewhat unusual, in that it is not intended that it be passed, in its present form.

70. It was introduced in an incomplete form to provide those interested with an opportunity to make representations and suggestions in relation to the proposed legislation at an early

formative stage. This is a large and complicated exercise, and we need all the help we can get from lawyers, both practising and academic, to ensure, as far as possible, that we have complete and accurate information as the basis for us to decide which Imperial statutes we can safely repeal and which we should preserve.

71. Once we have finally determined a definitive list of statute law that is in force in New Zealand we can then proceed to the next stage - which is a review of all those laws that are more than 50 years old.

72. When that is completed it will be possible, perhaps, to reduce the review period down to 40, and then maybe even 30 years, so that each Act of parliament is after a period of time subjected to detailed scrutiny as to its continued effectiveness and utility. This is in itself a major exercise but in my opinion an essential part of any process to modernise and update our laws.

73. As an example of the necessity of such review procedures, I may perhaps point to the consequences of the replacement, in February of 1982, of the Police Offences Act of 1917 by the Summary Offences Act. As a result of that change, it is no longer an offence in New Zealand to allow the eaves of your building to drip onto a street, to beat carpets in public, or allow a horse to serve a mare within view of a public place!

74. Although these facts need not perhaps be taken too seriously, they do remind us that it is important to realise that an improvement of the law need not involve an increase in the amount of law but may equally be achieved by a reduction of the amount of law available.

75. I firmly believe that we must realise that the law cannot remedy all social ills. In fact the law is very often an unsuitable instrument for improving our way of life. In a free and diverse society the law should, in my opinion, emphasise individual responsibility. We must get away from the philosophy that the best way of dealing with an evil is necessarily to pass a law about it. Such an approach quite often debases respect for the law generally. In short, although the reform of the law necessarily involves legislative change, it equally involves a recognition that good law reform may well mean less, rather than more legislation.

76. As an example of the decriminalisation such an approach entails, I will refer again to the Summary Offences Act. There, the old offence of public drunkenness - not associated with any other criminal or undesirable activity - has been done away with. Instead the police now have the power to pick up those people who are obviously drunk, and who are unable to look after or protect themselves, and to take them home, or to a temporary shelter or detoxification centre.

77. Such a change in the law is indicative of changed attitudes within the community - in no way condoning drunkenness, but recognising the fact that the previous law was by and large used, not to protect the community, but rather to protect individuals from themselves, and also recognising the fact that much public drunkenness is in reality a medical rather than a social or legal problem.

78. Further, the purpose of much legislation that is passed by Parliament is frequently misunderstood. Parliament in New Zealand is often accused of passing too many laws and sometimes that there has been a valid criticism. However, many of those who would criticise forget that much of the law that we pass involves the repeal of old laws and the reform, improvement, and modernisation of the legal rules that govern our society.

79. An example of this kind of legislation was the Illegal Contract Act, passed in 1970, which clarified and greatly improved the rules applicable where a contract is treated as illegal because it contravenes either a statute or a rule of public policy embodied in the common law. The law previously had been very rigid and had led to serious injustices where one party who may have been equally at fault had taken advantage of the illegality of an agreement and retained a benefit for which he had refused to pay. The courts now have a discretion to do substantial justice.

80. The existence of specialised law reform committees has also been of assistance in avoiding as far as possible, piecemeal legislation and intricate case law, so as to deal with larger areas of law comprehensively in a single measure. A single piece of legislation replacing a whole segment of the common law is often more intelligible and more acceptable than a series of isolated amendments and it also contributes to the goal of making the law

more rational and ascertainable. Many minor anomalies and irritants can be removed in the process and it is often possible to simplify the law. Examples of legislation where this approach has been followed with advantage are the Guardianship, Illegal Contracts and Minors' Contracts Acts.

81. In 1980, in the area of criminal law, the law on self-defence was simplified by the Crimes Amendment Act, which implemented a Report by the Criminal Law Reform Committee.

82. The Credit Contracts Act, which was passed in 1981 was based on recommendations of the Contracts and Commercial Law Reform Committee. It repealed the Moneylenders Act 1908, and substantially reformed the law on the provision of credit. And as already mentioned the Summary Proceedings Act replaced the Police Offences Act 1927.

83. Subject to minor changes in the use of resources, the Law Reform Council is satisfied - and I believe with justification - that the current procedures for law reform best meet New Zealand's needs.

84. One of the problems with law reform in this and most other countries is the difficulty of obtaining a place in a busy legislative programme in Parliament.

85. Fortunately, perhaps, we cannot pass every law that people want in the time that is available.

86. With that thought in mind I recently decided to introduce a compendium piece of legislation - a Law Reform Bill - which contained a number of less controversial recommendations from Law Reform Committees. This was done for the first time at the end of 1981.

87. The Bill deals with several reports of Law Reform Committees, which contain recommendations for small but useful reforms and which, by themselves, could not command a high priority on a legislative programme.

88. It is intended that in the future, such a Bill will be introduced towards the end of each parliamentary session and studied over the period of the parliamentary recess.

89. Other major changes in the law in the process of being implemented include major freedom of information legislation. The over-riding philosophy of the changes embodied in this legislation is that official information should be made available unless there is good reason for withholding it; the previous presumption was that it should not be made available unless there were special reasons for disclosing it.

90. I regard this law as the most important constitutional innovation in this country since the establishment of the office of the Ombudsman in 1962; because it significantly increases the rights of individuals in their dealings with the State.

91. Domestic violence law is at present being implemented to protect women and children in particular from violence in the home. One of our Law Reform Committees is working on major reviews of the Sale of Goods Act (particularly in the field of consumer warranties) and the Arbitration Act.

92. We will continue to review and update our Companies Act - the legislation that governs the activities of all limited liability companies. The law relating to patents - very important to New Zealand's industrial and technological development - is undergoing a major review. So too is that law which governs the transfer of land. And there will be many other changes to the law besides, all intended to modernise and simplify the law, that is to reform the law.

93. However, I would like to re-emphasise a point I have already made. A change to the law is not necessarily always the best solution to a particular problem. Sometimes the best law reform may be no change in the law at all. That must be said in spite of the fact that I and my cabinet colleagues receive constant requests from individuals and organisations, advocating either a change to the existing law or some completely new law. If every one of those requests was to be actioned, not only would Parliament be inundated, but we would be getting close to the over regulated society that so many people fear. President Reagan recently said, "If it ain't broke, don't fix it", and at least in the file of law making I would certainly agree.

94. We now evaluate every proposal for a change to the law in simple and straightforward terms. Is it really required? Who will benefit as a result of the change? Who might really suffer or might be disadvantaged? Is there a better way of achieving the objective?

95. All in all, the process of law reform is a delicate balancing act between the need to achieve the modernisation, codification and clarification of the law on the one hand, and the danger of over-legislation on the other. Those two conflicting propositions heighten the dilemma that was perhaps best summed up by Henry Brougham, speaking in the House of Commons over 150 years ago:-

"It was the boast of Augustus... that he found Rome of brick and left it of marble; a praise not unworthy a great prince... but how much nobler will be the sovereign's boast, when he shall have it to say, that he found law dear and left it cheap, found it a sealed book - left it a living letter; found it the partrimony of the rich - left it the inheritance of the poor; found it the two-edged sword of craft and oppression -left the staff of honesty and the shield of innocence."
