Commonwealth Association of Legislative Counsel

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Editorial Policies

The Loophole is a journal for the publication of articles on drafting, legal, procedural and management issues relating to the preparation and enactment of legislation. It features articles presented at CALC's bi-annual conferences. CALC members and others interested in legislative topics are also encouraged to submit articles for publication.

Submissions should be no more than 8,000 words (including footnotes) and be accompanied by an abstract of no more than 200 words. They should be formatted in MSWord or similar compatible word processing software.

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Editor's Notes

Welcome to another edition of *The Loophole*! It is with great pleasure that we present this second edition of 2025, which includes four articles that were originally presented at CALC regional conferences in 2025, as well as an article that was circulated at one of the CALC regional conferences and a thesis review.

The first two articles were presented at the joint Australian Parliamentary Council Committee and CALC conference in Perth, Western Australia in February of this year. Manfred Kohler asserts that overly simple or general legislation inevitably requires significant interpretation and is therefore insufficient to address the complexity of modern life. In the author's bold words, "… anyone who pursues the goal of creating laws that are short, simple, easy to understand, clear, and do not give rise to many questions of interpretation, while at the same time comprehensively regulating complex aspects of life, is probably chasing a phantom." Kohler advocates for granularity in law-making and suggests several strategies to mitigate the resulting (and necessary) complexity.

In the second article presented at the Perth conference, Roy Lee picks up on one of the mitigating strategies discussed by Kohler, namely AI employing large language models, and gives a practical example of how such AI can be used to identify all of the detailed policy questions to be answered before drafting legislation. Lee rates the performance of several AIs in identifying policy details and demonstrates how AI can assist legislative drafters in asking the right questions of their policy officers.

Graham Halpin's article on his experience as a non-legally trained editor and reviewer of draft legislative text is the first article from the CALC Europe regional conference held in Belfast in September. Halpin discusses the value that the editorial and technology team brings to the Jersey Legislative Drafting Office: rather than viewing themselves as imposters in the world of legislative drafting, non-legally trained editors should recognize the value that they bring in improving the clarity and precision of the texts they review. We have a robust editorial process in my own jurisdiction (the federal level in Canada) and I can attest to the immense improvement that an editorial team can bring to the quality of legislative texts.

Ian Rennie's article, also from the Belfast conference, is a fascinating weaving of the history of colonialism, the history of telecommunications and of efforts to recognize Indigenous languages in legislation in the Northwest Territories of Canada. Rennie's article demonstrates how the ongoing efforts to reconcile imposed legislative practices with Indigenous languages, names and places names both drive and are driven by technological advancements.

John Mark Keyes, the former editor in chief of *The Loophole*, returns to these pages with an article on the evolution of drafting style in English, tracing the development of modern legislative drafting in the Commonwealth from its earliest origins in England to its modern expression in four Commonwealth countries.

Finally, Anna Logie, also a regulator contributor to this journal, reviews a thesis by Nicholas Godfrey on the "fidelity model approach" to encoding legislation. The thesis discusses what conceptual framework to apply to transforming legislative coding: staying faithful to the text itself, to the legislative intent, or to the function of the text in regulating any given sector of society. This is a question which all legislative drafting offices will undoubtedly need to address if (or more likely when) encoding legislative rules becomes the norm.

We hope you will enjoy the latest offerings. Please reach out to us at loophole.calc@gmail.com with any comments or questions. We'd love to hear from you.

Aleksander Hynnä
Ottawa, December, 2025

Better Complete and Detailed than Short and Simple Legislation – and What Else We Can Do for Clarity and Better Understanding

Manfred Kohler[1]

Abstract

The maxim "keep it short and simple" appears to be a suitable maxim for application to legislation. The present article challenges this advice in a first analytical part. The argument is made that short and simple legislation cannot regulate the complex realities of the present age. In the subsequent practical part, the article recommends welcoming "every additional meaningful sentence" clarifying interpretation issues and supporting implementation. Laws should be complete and granular. The second part also examines the numerous tools at hand to facilitate clarity and better understanding.

1. Does "short and simple" legislation work for complex realities?[2]

In this section, we will firstly examine two legislative examples and a medieval argumentation to assess why "short and simple" legislation might not be appropriate for

[1] Manfred Kohler is the founder of the Regulatory Institute (www.howtoregulate.org), an independent consultant for law-making and member of the CALC artificial intelligence working group. He has spent most of his career at the European Commission, first by revising over 100 UNECE regulations on motor vehicles and the EU law on medical devices. Since 2018, he has been a team leader and pen-holder on a new Construction Products Regulation. Over almost two decades, he has contributed to dozens of other pieces of EU legislation. In parallel to his assignments, he inventoried the regulatory techniques used in EU legislation and worldwide. From late 2010 to early 2014, he trained over 300 colleagues in regulatory techniques and provided support for their regulatory projects. He also developed a working method for legislative drafters and lawmakers. This method and his collection of regulatory techniques became the 1st edition of the Handbook "How to Regulate?" which is the methodological backbone of the Regulatory Institute, created in late 2015.

[2] This article is an extended version of a paper presented at the University of Lisbon (Lisbon Public Law Research Centre) and the *International Association of Legislation* conference "Crystal Clear: The Importance of Clear Legislation for Democracy and the Rule of Law", May 30th 2025, Lisbon University.

complex realities. We examine the limitations of the "deduction" method for describing the world and regulating it. We then proceed to outline the expectations and limitations of language in general. This leads us to conclude that "short and simple" legislation may not be the most suitable approach for complex realities.

1.1. The example of a high-level product legislation provision

The following discussion will commence with an examination of Article 5 of the EU *General Product Safety Regulation*: "Economic operators shall place or make available on the market only safe products." To what extent can this concise sentence effectively and fairly govern our current reality, which encompasses millions of different product types with billions of characteristics and thousands of use contexts? Below are some of the myriad questions surrounding the interpretation of this sentence, along with numerous missing elements at the implementation level.

- What constitutes safety? Which safety parameters should be applied? Over 15 parameters are outlined in the Handbook "How to Regulate?".[3] What is the relevant statistical probability of a hazard occurring: 1 in 10,000 or 1 in 100,000? Should this be measured per use or per year? At what level of harm does a hazard become significant? Does the level of harm and the relevant statistical probability depend on the product's utility?
- Which assessment methods must be used for the applicable safety parameters? Should international standards be applied? If so, which ones and which versions? Should we use the standards as last amended, with their internal dynamic references, or the references in force when the regulation was adopted? What if the assessment methods do not apply precisely to the product in question?
- What is the reference date for the safety assessment? Should it only consider the time of placing the product on the market, or must safety be assured for the time of normal use? If the former, does this include cases of planned obsolescence or unsafety?
- Does the safety assessment include an evaluation of the instructions for use and warnings on the product, its labels, and packaging? Are packaging and accessories part of the safety assessment? Must their interaction also be assessed?
- For which uses should safety be assessed: unintended uses, all foreseeable uses, or only those intended by the economic operator? What if the economic operator limits the intended use to a minimal fraction of the foreseeable uses, such as a car meant only to be used as collection item?

Most other papers presented will be published in a special issue of *The Theory and Practice of Legislation,* https://www.tandfonline.com/journals/rtpl20.

[3] Regulatory Institute, *How to Regulate*, 2nd ed (Regulatory Institute, 2021); see in particular section 15.2.4. *How to Regulate is* available at the Regulatory Institute's website www.howtoregulate.org or directly here.

- For which types of users should safety be assessed? Should it include children who might play with the product, such as using a laser-based hair removal device as a laser gun?
- Can the safety assessment assume that users have read and understood the instructions for use and warnings on the product, its labels, and packaging?
- How is the "product" defined: the specific item, the type of product, or both?
- What if the manufacturer changes the design of the product type after some incidents? Is it still considered the same product under the regulation? What happens if the design, its packaging, or the instructions for use are modified by an economic operator other than the manufacturer?
- Who is ultimately responsible for assessing safety, and who has the final say? What are the tasks and powers of the authorities? What must they check before, during, or after marketing? Are these powers sufficient, even for international marketing?
- What happens if the authorities lack human, financial, and technical resources? How should authorities be coordinated, and what if different authorities have differing views? Which procedures apply, and what legal remedies are available both for the economic operator targeted by authority measures and for persons seeking redress after having been damaged by a product?
- Who is responsible for what? What must a manufacturer, importer, wholesaler, or retailer check before marketing? What are the obligations of those supporting the marketing or the suppliers? What are the obligations and rights of natural persons involved in marketing or supporting activities? Do they have the right or even the obligation to blow the whistle?
- What are the sanctions and other legal consequences of non-compliance with the obligations set out in the regulation, both for economic operators, their supporting actors, and natural persons acting on behalf of any of them? Is there a kind of liability?

The list of questions could be extended significantly. The questions listed here are merely the tip of the iceberg. Despite its incompleteness, this list demonstrates that the examined short and simple provision alone cannot ensure clarity and uniform application. Complementary provisions are necessary to:

- guide the divergent practices of those who must comply with the law,
- avoid weak and inconsistent enforcement, and
- ensure that policy objectives are met.

1.2. The example of a generic care for children provision

One might argue that these complexities arise because the previous example deals with products whilst products are determined by many technical factors. However, consider the following example of a "short and simple" provision dealing with an abstract concept free of any technical factors, specifically an ancient question of family law. Section 1626 of the German *Civil Code*, which, similarly to other civil codes or dedicated laws on the topic, states: "Parents have the duty and the right to care for their minor child."[4]

Again, there are many questions of interpretation and cases that are not resolved by the "short and simple" provision:

Duty of Care

- What kind of care is due? Does it include music lessons to develop the child's specific talents? What about help with math, even if the parent is not proficient in it?
- What intensity of care is required? For example, in terms of supervision: is it sufficient to check on the child regularly? What is the minimum frequency, and how does it vary with the child's age?
- Is delegation of care permissible, or does only personal care fulfil the duty?
- What if the child exhibits verbal or physical aggression beyond the parent's control?
- What if the child has committed a criminal act against the parent?
- What if caring for the child comes at the expense of another child or dependent vulnerable person?
- What if fulfilling the duty of care, in addition to one's job, leads to burnout?
- What if one parent can only provide limited material care, while the other can provide luxurious care? Does the less well-off parent still have to provide care?
- What if everyone agrees that the child would be better off elsewhere, such as in a boarding school or with an aunt?

Right to Care

Do I have the right to:

- provide a form of care that the child and the other parent do not accept? What if it's a necessary medical treatment? Or a treatment with a questionable risk-benefit ratio? Or just a haircut that reduces the likelihood of lice?

[4] We have chosen this example because of its exemplary shortness, simplicity and superficial clarity, which (as we will see) is illusory. However, its content is not specific to Germany. Similar provisions can be found in the law of Commonwealth jurisdictions. See for instance subsection 3(1) of the UK *Children Act 1989:* "In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property."

- take the child to church against their will and the will of the other parent?
- take the child to a certain music festival where drug consumption and sex happen in public?
- extend the school holidays so I can take the child on vacation?
- provide care, even if it leads to part-time poverty for the child because I am poor myself?

Do I have a right to care for the child even if:

- I have occasionally neglected the child in the past? If so, what is the limit?
- I have moved a significant distance away, such as 100 km? What if doing so was necessary to get a job?
- I use substances like heroin, cocaine, alcohol, or medical marijuana? What if it has no effect on my parenting?
- I allow the child to play endless online games that trigger addiction and sleep disorders?
- I binge-watch films 24/7 or am an extremely messy person?
- I play violent online games in the presence of the child?
- I am attracted to photos of naked children?
- I practice flagellation or other physical self-harm, whether for religious reasons or not?
- I worship a religion that does not accept the rules of the state?
- I am a political radical who does not recognize the state and societal rules?
- I have multiple personalities that confuse the child?
- I am obliged to work as a sex worker with no alternative place to work?
- I insult or undermine the authority of the other parent?
- a division of care between the two parents causes mental disorders in the child?

Even if interpretative rays from other parts of the *Civil Code* clarify certain uncertainties, it usually takes decades for questions of interpretation to be resolved by case law. Meanwhile, ever more complex realities emerge, and every judge is free to decide differently. This creates incredible legal uncertainty, cost, and suffering. Additional rules would limit the extreme variety of interpretations observed in practice.[5]1.3. A medieval argumentation as illustration for the limits of deduction

[5] It must be recognized that most of the investigated jurisdictions, including Germany, have now adopted additional bills or provisions to provide more detail and, presumably, to clarify some of the listed questions.

In the Middle Ages and until the French Revolution, people argued along these lines:

> *(1) God is almighty and good. (2) Because God is almighty, God created the world. (3) Since God is good, and since God created the world, the world is good.*[6] *(4) Because the world is good, we must obey its laws and accept the given order (the 'ordo').*[7] *(5) The laws and orders to be followed are therefore those given by God (the Bible) and those given by those whom God has entrusted to rule.*[8] *(6) Therefore, we must do what the bishops, priests, kings, dukes, or earls say. (7) The bishop, priest, king, duke, or earl can do no wrong and may ask us to build a new road without payment or to denounce heretics and witches. (8) Regardless of what he requests, we must obey unconditionally.*

However, as we can see from this example, deduction does not work without additional conditions and assumptions. For the sentence (1) to be meaningful, we must imply that God exists. For the sentence (2), we also need to inject at least one condition. God could be omnipotent but still not have created the world simply because it chose not to use its power, as another chain of causality was underway and sufficient to create the world. So, for our deduction to work, we must include the condition: God decided to use its power. For the sentence (3) to be correct, we need to imply that God decided the world should be only good, containing no negative elements. And so on for each sentence in the medievally inspired chain of reasoning set out above.

Since deduction requires the injection of additional conditions for each new statement, it cannot serve as a method to explain the world and find out "the truth". This has been

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However, none of the references found come close to answering the vast majority of these questions, while all operate with very generic principles. Therefore, the fundamental criticism of this article remains valid.

[6] Underpinning this are a few further quotes. First, a quote from St. Thomas Aquinas: "God is called omnipotent because He can do all things that are possible absolutely" (*Summa Theologica*, 1st Part, Question 25, accessed on September 29 2025 at http://www.documenta-catholica.eu/d_1225-1274-%20Thomas%20Aquinas%20-%20Summa%20Theologiae%20-%20Prima%20Pars%20-%20EN.pdf). Second, two quotes from St. Augustine: "The highest good, than which there is no higher, is God, and consequently He is unchangeable good, hence truly eternal and truly immortal. All other good things are only from Him, not of Him. For what is of Him, is Himself." (*The Nature of Good*, Section 1, accessed on September 29 2025 at https://archive.org/stream/the-complete-works-of-saint-augustine/The%20Complete%20Works%20of%20Saint%20Augustine_djvu.txt), and "For the Almighty God, who, as even the heathen acknowledge, has supreme power over all things, being Himself supremely good, would never permit the existence of anything evil among His works, if He were not so omnipotent and good that He can bring good even out of evil" (*Enchiridrion*, Chapter 11, accessed on September 29 2025 at https://archive.org/stream/the-complete-works-of-saint-augustine/The%20Complete%20Works%20of%20Saint%20Augustine_djvu.txt).

[7] J. Kilcullen and J. Robinson, "Medieval Political Philosophy" in E.N. Zalta, ed, *Stanford Encyclopedia of Philosophy Archive*, Winter 2018 Edition (2018), accessed on September 30 2025 at https://plato.stanford.edu/archives/win2018/entries/medieval-political/; see in particular Section 2.1.

[8] Concept of "divine right" according to which a monarch's authority was directly granted by God, making their rule unquestionable and absolute. See for details, see B. Duignan, "Divine rights of kings", *Encyclopedia Britannica* (2025) accessed on July 1 2025 at https://www.britannica.com/topic/divine-right-of-kings.

recognized in virtually all university disciplines except theology and law.[9] Some lawyers still think, or pretend, that deduction can generate true statements or solve the world's problems with machine-like precision. However, deduction does not work as a means of explaining the world, nor does it work as a means of establishing a single correct and uncontroversial interpretation of the law, because deduction, when not just repeating content, always implies the implicit or explicit injection of additional assumptions.[10] This is the reason for diversity of legal views, including with regard to the questions raised by the first two examples.

1.4. Induction, modern approaches towards language and recognition of their limits

Induction — the process of formulating general rules or laws from the observation of particular cases — has long been considered a foundational method in the sciences, and was widely adopted by scientists since at least the 19th century.[11] However, induction is not infallible. For example, the classic problem of induction arises when we consider the statement "all swans are white." Even after observing countless white swans, there is always the possibility that the next swan observed might be black, brown, yellow, or even green. Yet, regardless of its colour, if the animal shares the relevant genetic and physical properties, it remains a swan. Thus, it is pragmatically appropriate to continue calling it a swan, regardless of colour, because the definition of "swan" is not strictly determined by colour but by a cluster of properties and conventions.[12] This example illustrates that definitions are conventional and context-dependent. We cannot truly "prove" that all swans are white, but we can debate whether it is pragmatically meaningful to define "swan" in a particular way. This insight highlights the conventional and pragmatic nature of language and interpretation.

Since the mid-20th century, the mainstream in science has adopted a pragmatic approach to knowledge and language. The influential work of Karl Popper, especially *The Logic of Scientific Discovery*,[13] emphasized the importance of falsifiability and the provisional nature of scientific theories. Popper argued that scientific hypotheses are never conclusively

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[9] Ironically, a similar statement has already been made in 1908: "Jurisprudence is last in the march of the sciences away from the method of deduction from predetermined conceptions."; see R. Pound, "Mechanical Jurisprudence" (1908) 8:8 *Columbia Law Review* at p 610.

[10] Unfortunately, the author could not find any clear scientific references to support this statement. Instead, the legal discussion focuses on the limitations of "legal syllogism" and highlights its implicit interpretative choices. Nevertheless, this discussion of the limits of "legal syllogism" essentially leads to the same conclusion: additional values, legal principles, premises or other assumptions must be introduced to justify one's interpretation. See as example C. Codrea, "Judicial syllogism - integrating non-monotonic logic in a deductive logical form", (2024) 15:2 *Eastern Journal of European Studies* at pp 319-336, and in particular the example on pp 328-9 where the need for inserting additional 'premises' is demonstrated.

[11] J.S. Mill, *A System of Logic*, 8th ed, (Harper and Brothers Publishing, 1881) at p 207, accessed on July 1 2025 at https://archive.org/details/systemoflogicrat00milluoft/page/206/mode/2up.

[12] N. Goodman, *Fact, Fiction, and Forecast*, 1st ed, (Harvard University Press, 1955) at pp 59-83; W.V.O. Quine, *Word and Object* (MIT Press, 1960) at pp 26-79 (especially pp 68-79).

[13] K. Popper, *The Logic of Scientific Discovery* (Routledge, 2002), at pp 17-20, 38-50.

verified, but only tentatively accepted until they are falsified. This approach was preceded by the pragmatic philosophy of Charles Sanders Peirce, who advocated for fallibilism and the idea that all beliefs are subject to revision in light of new evidence.[14]This pragmatic turn does not imply a descent into relativism. Rather, it recognizes the limits of language and knowledge: language cannot provide absolute truth or unequivocal statements, but it can offer pragmatic orientation and facilitate mutual understanding within specific contexts.[15] Language is a tool for communication and coordination, not a mirror of reality.[16]In both scientific and legal discourse, definitions and interpretations are always provisional and context-dependent. Legal language, despite its formal and authoritative appearance, is not exempt from the general limitations of language.

In summary: the mainstream of current epistemology, philosophy of science, and linguistics has largely embraced a pragmatic approach to language. Language is understood as a tool for orientation and communication, not as a means to absolute truth or unambiguous interpretation. This perspective is well-supported by the works of Popper, Peirce, Quine, Goodman, and many others, and it should be reflected in both legal and legislative practice.

1.5. Concluding hypothesis: short and simple laws cannot regulate comprehensively complex realities

Let us return to our initial question of whether "short and simple" is a viable approach in legislation. We have illustrated[17] with the three examples why short and simple texts have only limited power in steering human behaviour in an unequivocal way. They raise too many questions of interpretation and implementation. It appears that the underlying reason for their failure is that additional conditions or unquestionable statements are required to generate a definitive interpretation. In the absence of a consensus on the additional conditions or the unquestionable statements to be injected, the result of interpretation is anything but clear and predictable.

There are reasons for legislative texts becoming ever longer: the increased length is a response to the open questions of interpretation and implementation that are not answered in short legislative texts and that emerge over time. In parallel, our realities become ever more complex. When reviewing the questions raised in the first two examples examined, we can note that quite a few questions arose only in recent decades. This mirrors the increased complexity of our lives, societies, and technological and economic contexts.

Put another way, anyone who pursues the goal of creating laws that are short, simple, easy to understand, clear, and do not give rise to many questions of interpretation, while at the

[14] C.S. Peirce, "What Pragmatism Is" (1905) 15:2 *The Monist* at pp 161-181.

[15] R. Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Harvard University Press, 1994), see especially pp 495-613.

[16] R. Rorty, *Contingency, Irony, and Solidarity* (Cambridge University Press, 1989) at pp 3-16.

[17] It is only an illustration, not a proof. A proof would imply that induction is sufficient to ascertain truth, a theory we have just contested in line with the majority of epistemological specialists today.

same time comprehensively regulating complex aspects of life, is probably chasing a phantom.

Instead of chasing a phantom, it might be better to have additional detailed rules that act as beams of light in a dense interpretative fog created by high-level legal principles such as the two provisions presented as examples and their millions of peer "short and simple" provisions.

2. Practical Consequences and Recommendations

Given this admittedly disappointing and unfortunate result of our analysis, what can be done in practical terms when conceiving, drafting, and managing regulation?

2.1. Welcoming every additional sentence aka beam of light

First, we should anticipate questions of interpretation and real-life scenarios and address both through more comprehensive and detailed regulation. I therefore recommend pursuing the objectives of "regulatory completeness" and "granularity", as both are essential to achieve regulatory efficiency and relative legal certainty in less than decades of meandering jurisprudence. Consistent and effective implementation as a precondition for achieving these legislative objectives should be an absolute priority, also in terms of maintaining a level playing field for all and the efficiency and credibility of the state. Every additional beam of light projected into the dense fog of interpretation, every additional meaningful sentence, should be embraced and not condemned. Let us use all means to make laws complete and granular, with the help of the means listed in the author's previous article in *The Loophole*.[18] Any omission of policy and regulatory elements can have disastrous consequences. See the first diagram in that article:

Absent or weak provisions on (the) …	**… may cause that …**
authorities' powers to act against private actors	cannot be fully enforced
cooperation with / of other national authorities	
cooperation with / of foreign authorities	
compliance control by private actors	

[18] M. Kohler, "How to Ensure Regulatory Completeness, with Classic Tools and Large Language Models" (2025) 1 *The Loophole* at pp. 54-73.

incentives for compliance	the degree of compliance is unnecessarily low
sanctions also for responsible mother or sister companies + other resp. natural or legal persons	sanctions can be circumvented and do not deter
protection of witnesses and whistleblowers	infringements stay unsanctioned
definitions and interpretation rules	diverging views and disputes hamper the effective, efficient and even application of legislation and that there is legal uncertainty
mechanisms for alignment of authorities' views	
effective, efficient and affordable conflict resolution mechanisms	legal uncertainty
transition to the new legal regime, including on the validity of acts adopted under the old	legal uncertainty, unnecessary burden and disruption
relation to other legal acts	
powers to adapt the law to technical progress or unforeseen situations	the law falls behind reality and becomes inapplicable or even hampers technical progress

The issues of "regulatory completeness" and "granularity" lie at the intersection of policy-making and legislative drafting.[19] In some — typically very small — jurisdictions, decisions on these matters are left entirely to the drafters. Elsewhere, policy-makers assert the right to determine both. In a third group of jurisdictions, policy-makers decide on certain aspects and drafters on others. Ideally, however, the degree of regulatory completeness and granularity should be a joint decision. Policy-makers and drafters bring different perspectives and types of expertise to the table, and combining these can lead to more coherent and workable legislation. Even in systems where policy-makers insist on taking sole responsibility, it remains important for drafters to flag the risks of laws that are too

[19] Evidently this statement just refers to the jurisdictions where the two functions are split.

incomplete or overly superficial. After all, drafters have (and policy-makers ought to have) no interest in spending their time on legislation that is unlikely to work in practice.

2.2. Creating relative clarity by additional means

Second, we should strive to create relative clarity and mitigate the negative effects of — consequently — voluminous legal texts through a comprehensive set of measures. Some approaches are evident and commonplace, while others represent more innovative solutions:

1. Sentence Length and Structure

Writing short sentences remains the most frequently recommended approach. However, this strategy involves a fundamental trade-off: expressing the same content requires significantly more sentences, potentially resulting in even lengthier legal texts. Moreover, readers sometimes become lost navigating numerous short sentences. Occasionally, a few medium-length sentences can more effectively convey complex interconnections than an extended series of brief statements. This observation does not, however, excuse the ultra-long sentences that characterised legal writing in past centuries.

2. Plain Language

Plain language represents a widely endorsed approach in legal writing, supported by an established academic movement with organizations like the Plain Language Action and Information Network (PLAIN) and the Center for Plain Language.[20] However, adoption among legal practitioners remains inconsistent, with some arguing that simplified language may compromise the precision and legal certainty that technical terminology provides.[21]

3. Integration of Examples

Many jurisdictions prohibit the insertion of examples in legal texts. Nevertheless, as in everyday communication, examples substantially enhance understanding. They serve not only to illustrate concepts but also to support uniform interpretation. Examples function as references for analogical reasoning and sometimes as contrasts that help elaborate crucial distinction criteria.

Furthermore, examples can clarify borderline questions. For instance, whether software can constitute a medical device in its own right has been questionable in many jurisdictions. Including software as an explicit example provides one method of clarifying this issue.

Sometimes examples offer no additional legal value or certainty but simply enhance reader comprehension. Certain readers grasp concepts more readily through concrete examples

[20] M. Adler, "The Plain Language Movement" in L.M Solan and P.M. Tiersma, eds, *The Oxford Handbook of Language and Law* (Oxford University Press, 2012) at pp 67-86.

[21] Z. Ződi, "The limits of plain legal language: understanding the comprehensible style in law" (2019) 15:3 *International Journal of Law in Context* at pp. 246-262.

rather than abstract descriptions. However, this added clarity comes at the cost of increased text length.

4. Mathematical Precision

Mathematical terms can substantially increase the precision of legal texts. This advantage is most apparent when the terminology inherently derives from mathematics. Rather than referring to something as "large", it is preferable to define a minimum size threshold that triggers coverage under a particular provision. While this principle seems self-evident, terms like "proportionality" frequently appear in legal texts without accompanying weighing factors, scales, or reference points. In the absence of such specifications, legal practitioners can either exercise complete discretion or must independently determine weighing factors, assessment scales, reference points, and evaluation methods. When legislators leave these variables undefined, they should not be surprised that assessments of identical situations vary dramatically across different practitioners.

The value of mathematical precision becomes even more apparent when replacing conventional terms not typically associated with mathematics. Product legislation sometimes employs terms like "particle" without defining size parameters or molecular quantities. Establishing a precise minimum number of molecules (creating a lower boundary relative to individual molecules) and a maximum diameter or length could render provisions unambiguous.

5. Tables

Tables facilitate understanding for readers who struggle with mathematical formulas. They are also more accessible than sequential lists for practical application.

6. Diagrams

Diagrams can significantly enhance comprehension by explaining decision trees or complex procedures more effectively than text alone. They can also illustrate interactions among various actors or factors within a system.

7. Reader-Specific Entry Points

Dedicated sections or articles tailored to specific target audiences can provide better orientation within lengthy or complex legal texts. Rather than dispersing obligations across multiple articles or sections, a single provision can consolidate all obligations for particular actor types — manufacturers, importers, wholesalers, retailers, or consumers. These reader-specific entry points can be adapted in style and content to match the audience's expertise level. However, this reader-friendly approach requires slightly longer texts. For example, if registration obligations are included in actor-specific sections, the database provision must reference data submitted by each actor type, rather than simply listing database-related obligations chronologically in a single section.

8. Supplementary Information Materials

Beyond the legal texts themselves, we can provide information materials that highlight entry points and simplify complex provisions, balancing precision with accessibility. When legal texts lack these entry points, information materials can partially substitute by organizing obligations according to actor types. This approach is suboptimal since many readers skip supplementary materials. Information materials work best when structured in layers: providing foundational system understanding for all readers, then presenting obligation overviews by actor type, and finally offering expert-level detail.

9. Interactive Information Tools

Traditional information materials are not always the most effective means of conveying information. Software applications, interactive websites, and AI chatbots can better facilitate legal navigation. These tools can provide compliance assessments, whether voluntary or mandatory.

10. Standardized Architecture

Common structural frameworks across laws facilitate reading comprehension. When readers become familiar with particular bill structures, they can more easily understand subsequent laws of the same type. Economic actors, who must navigate multiple laws covering different products and services, particularly benefit from this consistency. Having mastered one or two product-related laws, they can more readily comprehend additional laws following identical structures. Similar benefits arise from establishing horizontally applicable laws covering broad product or service ranges. See, as illustrations, the legislative architecture Models D and C in Section 2.2, pages 22 and 23, of the Handbook "How to Regulate?".[22] The Model D is largely followed by the EU product legislation, whilst the Brazilian product and service legislation almost perfectly exemplifies the Model C.

11. Architectural Clarity

Legal comprehension depends not only on word choice but also on legislative architecture. Structural frameworks can be either self-explanatory and logical or complex and difficult to navigate. Unfortunately, architectural simplicity often conflicts with text length. For complex subject matters, establishing sections that interact with multiple other sections is more concise, even when readers must establish connections independently. For example, legal capacity provisions should appear in one code location while applying throughout the entire code. However, legally untrained readers find it easier to locate related sections in proximity, even if this creates repetition. Such readers typically expect clarifying references like "sections ... on legal capacity apply," while lawyers worry about the opposite to be concluded in sections lacking such references.

[22] Regulatory Institute, *How to Regulate*, 2nd ed (Regulatory Institute, 2021). *How to Regulate is* available at the Regulatory Institute's website www.howtoregulate.org or directly here.

Despite these challenges, thoughtful legislative architecture remains essential for conveying legal understanding. Too many laws appear to have accidental rather than intentional structures. The situation is certainly no better regarding entire legislative system architectures. At times, they can only be explained by history, not by reason.

12. Citizen-Focused Architecture

Helen Xanthaki proposed dividing laws into three parts: provisions for ordinary citizens (lay persons), provisions for non-legally trained professionals who use the legislation in the course of their employment, and provisions for legal specialists and implementing public authorities.[23] While excellent for citizen accessibility, this approach involves costs. Placing all citizen-relevant content at the beginning requires repetition in specialist and authority chapters. Citizens reading only their designated chapters might miss crucial information explained elsewhere. Additional risks include over-simplification in initial chapters and potential contradictions among the three parts. Furthermore, when citizen obligations appear before system mechanisms are explained, they must reference later sections, complicating understanding and requiring readers to navigate back and forth. Despite these drawbacks, this concept merits consideration, particularly for relatively simple laws with immediate citizen relevance. For other laws, it might be more suitable just to create reader-specific entry points as suggested in Section 7.

13. Visual System Mapping

Graphics can illustrate interactions among different chapters, sections, or modules, as well as relationships between different laws. They effectively demonstrate a law's scope and its overlap with other legal frameworks. Such visual aids work well in information materials and sometimes within laws themselves.

14. Tables of Contents

Tables of contents, observable in some Commonwealth jurisdictions,[24] serve multiple functions beyond helping readers locate relevant sections. They provide insight into legal architecture and offer content overviews.

15. Indexes and Keyword Registers

Indexes and keyword registers provide content overviews and clearly facilitate the location of reader-relevant sections.

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[23] H. Xanthaki, "On the Comprehensibility of EU Legislation: Reform for a sustainable EU" (2021) *Zeitschrift für europäische Rechtslinguistik* at pp. 7-9, accessed on September 30 2025 at: https://zerl.uni-koeln.de/rubriken-sections/sonderausgabe-2021-special-issue-2021/xanthaki-2021-comprehensibility-legislation-reform; H. Xanthaki, "The limits of legislation as a product" (2018) 11 *Hukim – The Israeli Journal on Legislation* at pp 153-172.

[24] The author remembers having seen content pages in laws from Australia, Canada, India, New Zealand, South Africa, and the United Kingdom.

3. Conclusion and Outlook

It has been demonstrated that concise and straightforward provisions and laws are unlikely to regulate complex realities in a comprehensive manner without resulting in significant legal uncertainty and loopholes in the implementation process. The necessity for more and increasingly detailed provisions has led to an inevitable increase in the length and number of laws. It is possible to mitigate the negative effects thereof by creating clarity and overviews of the laws and how they interact. It is evident that there is a significant margin for improvement in this regard.

Nevertheless, several of the methods employed to establish clarity and overviews have drawbacks or are incompatible with other legitimate policy or drafting goals. Therefore, it may be concluded that drafters do not always have easy solutions at their disposal.[25] Instead, a tailor-made balance is required between various policy and drafting goals, with particular attention paid to the actual implementation of the law. How can we reach that balance?

The author acknowledges that it has become almost a cliché to express hope in the potential of artificial intelligence — particularly Large Language Models (LLMs) — to assist in navigating the growing complexity of policy-making and legislative drafting. While it is clear that decision-making must remain a human responsibility, LLMs can nonetheless play a valuable supporting role. When multiple models are employed and encouraged to apply diverse reasoning strategies, drafters may be surprised by the breadth of solutions generated. These tools can illuminate new pathways through the intricate web of sometimes conflicting policy and drafting goals. The "creativity" and insightfulness demonstrated by today's most qualified LLMs[26] are, already today, on par with those of a skilled and seasoned colleague. And what about tomorrow?

Regardless of technological advances, there will always remain a vital role for human judgment in crafting comprehensive and detailed legislation — laws that are not only implementable in practice but also achieve the highest possible degree of clarity. This clarity must be pursued through a full spectrum of tools, both within the legal text itself and through complementary measures designed to support its interpretation and application.

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[25] Multiple academics presenting at the aforementioned conference (cf. footnote 1) claimed to offer straightforward recommendations, often without fully engaging with the complexity of the environment in which legislative drafters actually work. There is a significant potential for enhancement of the discourse between academics and practitioners. The author, as a practitioner, has observed that academics appear to be unaware of the constraints and multiple goals that practitioners must address. Conversely, it can be argued that academics have a valid standpoint when expressing concerns that practitioners are continuously reinventing the wheel or missing opportunities to regulate more effectively due to a lack of awareness regarding the available regulatory tools that have already been scientifically documented.

[26] According to findings by the Regulatory Institute (www.howtoregulate.org), the most commonly used LLMs are not necessarily those best suited for legislative tasks. Popularity, it seems, does not always correlate with performance in this specialized domain. The Regulatory Institute regularly publishes comparative reports assessing the capabilities of various LLMs.

Crafting by Prompt: Using LLMs to Review and Supplement Instructions for Legislation

Roy Lee[1]

Abstract

This article examines how large language models (LLMs) can enhance legislative drafting by identifying comprehensive policy and micro-policy questions that must be addressed before drafting legislation. Through experiments on drafting laws for citizens' assemblies and Goods and Services Tax implementation, multiple LLM models were systematically prompted to generate policy considerations, which were then compiled into checklists. The research demonstrates that this approach enables drafters to rapidly develop comprehensive question sets in approximately two days — a significant improvement over traditional research methods that typically require six weeks. Performance analysis across 12 different LLM models revealed that while Claude Sonnet 3.5 consistently performed best, no single model identified all relevant topics, suggesting optimal results require using multiple carefully selected models. This methodology provides legislative drafters with an efficient way to review instructions for completeness, identify gaps requiring further research, and ensure comprehensive legislation, though caution regarding LLM limitations remains essential. The approach potentially represents a powerful new tool in the legislative drafting toolkit.

1. What we need vs. what AI can produce

When large language models (LLMs) as a form of artificial intelligence burst into public consciousness early last year (2024), I wrote a couple of prompts to draft a law to ban the

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importation, sale and possession of XL Bully dogs. It produced a credible looking draft. Back then, I was aware of LLM problems like hallucination[2] or simply making basic mistakes, but I found no obvious errors. Instead, it produced a draft which in theory I could reformat and use as a law on XL Bully dogs.

But I could only check what the model had written, not what it had omitted: *how do I know what's missing if it's not there?*

I came back to the drafter's perennial bugbear: *How do I know if any **elements** of a good law are missing in the law that the LLM model just drafted?* Taking a step back: *How do I know if a set of drafting instructions I get are **complete** and **sufficient** in the first place?*

It goes back to the basic need of a drafter: we need to ensure we have **identified and addressed** all the key topics before we draft.

To some extent this need is mitigated if the drafter has a detailed set of drafting instructions, or is lucky enough to be instructed by a policy officer who is very thorough and meticulous, has researched the topic in depth and is able to give a detailed set of drafting instructions. But even then, there may be potentially useful regulatory and other legislative elements that have not been considered when crafting those drafting instructions, or gaps in those instructions that, if left unaddressed, would result in legislation that is less effective than it could be.

2. CALC AI Working Group and Subgroup

The CALC AI Working Group — Legislation and Artificial Intelligence[3] was formed in 2024. Members formed subgroups and I had the privilege of chairing the "Reviews and Models" subgroup,[4] with this brief:

1. See if AI can generate references to assist a drafter to prepare and draft legislation more effectively and efficiently than conventional methods.
2. Provide recommendations as to the best AI model for this.
3. Produce and publish references to help prepare and draft legislation on a given subject.

I then embarked on our first task in consultation with the subgroup:

[2] Wikipedia, "Hallucination (artificial intelligence)" (2 November 2025) https://en.wikipedia.org/wiki/Hallucination_(artificial_intelligence).

[3] The Working Group is a collaborative, invitation-based group of drafters and legislative counsel from across the Commonwealth and beyond. Its aim is to share insights, ask hard questions, and explore innovation — together and safely. If you are interested in joining or sharing innovations please contact Dr Guzyal Hill, Chair. Email: guzyal.hill@outbacksafety.com.au.

[4] Special thanks are due to its members, who contributed ideas, challenge and practical support: Manfred Kohler, Luke Norbury, Matt Lynch, Rumana Ferdausi and Tracey Ren, later joined by Jessica Chanin and Karnal Bhasa.

To use LLM models to identify policy and micro-policy issues that need to be resolved in order to draft a law on a particular topic.

I ran two experiments over a period of about 8 months.

3. Citizens' assemblies

I chose citizens' assemblies as the first topic to experiment on. Citizens' assemblies are used in several countries to tackle complex and controversial topics that politicians are reluctant to address. For example, Ireland used it to address abortion reform.[5]

I fed the following prompts, one after the other, into 12 different LLM models with the assistance of subgroup members and a subscription to you.com. The models were: Claude Sonnet 3.5, ChatGPT 4o, Mistral Le Chat, You.com (research), Perplexity AI Pro, Sonar Huge, Llama 3.2 90B, Mistral Large 2, Microsoft copilot, Gemini 1.5 Pro, DeepaAI.org, and Grok 2.

A few models were chosen on the recommendation of subgroup members, others because they were accessible free of charge, and yet others because I gained free access to them on you.com.

Initial prompt:

I need to draft a new Act of Parliament to establish a form of citizens' assemblies to involve the community in preparing a Climate Change Action Plan for a country. The assemblies will give advice to support the preparation of the plan, and monitor its implementation.

What policy questions and micro-policy questions will I need to resolve or get instructions on before I begin to draft the new Act?

Further prompt after getting a response:

Thank you for your helpful response. Are there any further policy or micro-policy topics or issues that I can usefully research, investigate or get further instructions on, in order to ensure that the Act that I draft will be as complete and comprehensive as possible?

I copied out both sets of responses from all 12 models. Then I distilled their responses into an Assessment Table. This table —

(a) aggregated all topics identified by the models and listed them in the first column, and

(b) noted options, suggestions, considerations and other valuable points mentioned by each model in connection with each topic that the model had identified.

[5] M. Palese, "The Irish abortion referendum: How a Citizens' Assembly helped to break years of political deadlock" (29 May 2018) https://electoral-reform.org.uk/the-irish-abortion-referendum-how-a-citizens-assembly-helped-to-break-years-of-political-deadlock/.

I only included topics which in my opinion **might** merit a statutory provision. For example, I left out "consider using IT creatively to enhance participation". The models collectively identified 71 topics relating to citizens' assemblies. Schedule 1 sets out an extract from this Assessment Table.

I then used this table to **score** and **assess** the performance of each AI model. I gave each model:

(a) one point for each topic identified, **AND**

(b) **EITHER** (i) an extra half-point for adding some value to the topic,

OR (ii) a whole extra point for adding substantial value.

I added up each model's **topics**, and ranked them for **breadth** of coverage (based on the number of topics):

Citizens' Assemblies — Rank by breadth of coverage		
No.	**AI model**	**No. of topics**
1	Claude Sonnet 3.5	42
2	ChatGPT 4o	39
3	Mistral Le Chat	38
4	You.com (research)	34
5	Perplexity AI Pro	32
5	Sonar Huge	32
7	Llama 3.2 90B	31
8	Mistral Large 2	31
9	Microsoft copilot	30
10	Gemini 1.5 Pro	29
11	DeepaAI.org	26
12	Grok 2	25

Next, I ranked the models by **breadth and depth combined** (based on the total number of points):

Citizens' Assemblies — Rank by breadth and depth of coverage		
No.	**AI model**	**Total point score**
1	Claude Sonnet 3.5	61.5
1	ChatGPT 4o	61.5
3	You.com (research)	52.0
4	Mistral Le Chat	47.0
5	Llama 3.2 90B	46.0
6	Sonar Huge	42.0
7	Gemini 1.5 Pro	41.5
8	Mistral Large 2	39.5
9	Perplexity AI Pro	37.0
10	Grok 2	34.5
11	DeepAi.org	33.5
12	Microsoft copilot	33.0

The **best performer** Claude Sonnet 3.5 covered only 42 out of 71 topics: less than 60% of the total number of topics. There was also a big difference in quality of responses from the best to worst performer: Sonnet 3.5 covered 42 topics compared to Grok 2's 25. Sonnet 3.5 scored a total of 61.5 points for breadth and depth, compared to Copilot's 33.

To complete this experiment, I wrote a list of **legislative policy questions** based on the topics, options, suggestions, considerations and other added value in the table. The idea was to note the issues which I considered should be addressed by the instructor, the drafter or both, in drafting a comprehensive law on the topic. I came up with 65 questions. Usefully, most models provided headings in their responses, which I used to group the questions by topic. Schedule 2 sets out these questions.

I now had a checklist for use to help ensure that any instructions I get to draft a law on citizens' assemblies are adequate and complete. This allows me to see what gaps I need to fill by questioning the "client", asking other people or carrying out research. I can also use this checklist to review draft legislation to ensure that it addresses key policy questions.

This whole exercise took me about **15 hours** (two working days), excluding some five hours spent assessing and ranking the models.

In comparison, when preparing a list of issues and topics for a National Policy Statement and Postal Law as a consultant on a World Bank project some 15 years ago, it took me about six weeks to read, digest and distil papers, articles, a book and several postal laws around the world, in order to compile a similar checklist.

4. Goods and Services Tax

I wanted to see if I could repeat the result in another experiment to draw a conclusion. So I repeated these steps with the proposed introduction of a Goods and Services Tax.

Again, I used two simple prompts:

> ***Initial prompt***:
>
> *I need to draft a new Act of Parliament to impose a Goods and Services Tax in a country without any. What policy questions and micro-policy questions will I need to resolve or get instructions on before I begin to draft the new Act?*
>
> ***Further prompt after getting a response:***
>
> *Thank you for your helpful response. Are there any further policy or micro-policy topics or issues that I can usefully research, investigate or get further instructions on, in order to ensure that the Act that I draft will be as complete and comprehensive as possible?*

I then copied out the responses of the 11 LLM models (Sonar Huge was omitted as I did not have access to it then), scored and assessed these, and then ranked the models again by breadth of coverage, and breadth and depth of coverage, separately:

GST — Rank by breadth of coverage		
No.	**AI model**	**No. of topics**
1	Claude Sonnet 3.5	52
2	You.com (research)	42
3	Mistral Large 2	36
4	Gemini 1.5 pro	33
4	ChatGPT4o	33
6	Mistral Le Chat	30
6	Llama 3.2 90B	30
8	Microsoft copilot	26
8	Grok 2	26

GST — Rank by breadth of coverage		
10	DeepAI	23
11	Perplexity AI Pro	17

GST — Rank by breadth and depth of coverage		
No.	**AI model**	**Total point score**
1	Claude Sonnet 3.5	77.5
2	You.com (research)	62
3	ChatGPT4o	49.5
4	Gemini 1.5 pro	47.5
5	Mistral Large 2	45
6	Mistral Le Chat	41.5
7	Llama 3.2 90B	37
8	Grok 2	34
8	Microsoft copilot	33
10	DeepAI	31.5
11	Perplexity AI Pro	22.5

Again, there was a significant variation in the quality of responses.

While Claude Sonnet 3.5 covered 52 out of 71 topics, Perplexity AI Pro only managed 17. Also, Sonnet 3.5 scored 77.5 points, compared to Perplexity AI Pro's 22.5**.**

Sonnet 3.5 was the top performer across all four ranking tables, for both citizens' assemblies and GST. But it only covered 59% of all topics in assemblies, and 73% of all topics in GST. This confirmed that I would need to use several models for optimum results in using LLMs for this type of work.

Interestingly, Claude Sonnet 3.5, you.com (research) and ChatGPT 4o were in the top five of all four ranking tables.

Gemini 1.5 pro and Mistral Large 2 were in the top five in the two GST ranking tables, but not in the citizens' assemblies ranking tables.

Conversely, Mistral Le Chat was in the top five in the two assemblies ranking tables, but not in the GST tables.

This suggests that an LLM model might be stronger on some topics, but weaker on others.

I then compiled a list of legislative policy questions for GST, which is set out in Schedule 3.

Sometimes LLM models use jargon and special terminology. For example: "input tax credits" or "capital goods credit mechanism". If you are not a specialist in the terminology of the given area of law, you can simply google these terms together with, in this example, "Goods and Services Tax".

5. Conclusions

My conclusions from the two experiments:

(a) I can use LLM models to craft policy and micro-policy questions for drafting, by using two simple prompts.

(b) This method is **effective and simple**, but a bit of skill is required to distil the models' responses into legislative policy questions.

(c) This method is far more **efficient** than reading five or 10 of the best papers available on a topic, and reviewing and reverse-engineering 300-page laws from other jurisdictions. I can do in two days what used to take me about six weeks.

(d) Different LLM models will yield different **breadth and depth** of responses. But using even the top performer alone yields sub-optimal results, compared to using a range of models. The optimum approach is using a range of carefully selected LLM models.

(e) As at the time of these experiments, I would recommend three models for this kind of work: **Claude Sonnet 3.5, ChatGPT 4o, and you.com (research)**. The next three on the list are: **Mistral Large 2, Gemini 1.5 pro, Mistral Le Chat**.[6]

(f) **Ideally**, I would use the legislative policy questions to assist the policy development process, to review and supplement drafting instructions, or to interrogate the client. These questions can also be used as a checklist to review draft legislation for completeness.

6. Cautions

While these experiments convinced me that LLMs are very useful tools for legislative drafting, we need to bear in mind the following cautions:

(a) LLMs and AI are evolving and changing rapidly. Most of the LLM models used in these experiments have already been upgraded to different versions, and new LLM

[6] M Kohler, "How to Ensure Regulatory Completeness, with Classic Tools and Large Language Models" (2025) 1 *The Loophole*.

models are being introduced all the time. If I run the same experiments now using these upgraded versions, I might rank the current models differently.[7]

(b) The assessment and rankings were inevitably subjective. They were based on my personal judgment of the types of things one might want to legislate for. I have 30 years' experience to inform my judgment, but it is still my personal judgment and others might assess and rank the models differently.

(c) My methods involve a lot of human labour and some level of skill: about two days' work. It may be difficult for a less-experienced drafter to replicate this experiment.

(d) At this stage, LLM models are not precision tools. If I feed the same prompt into the same model five minutes later, I get a slightly different response. If I use Claude Sonnet 3.5 in the morning, I get a long response, but in the afternoon (when people in the USA wake up), I get a shorter response.

(e) Unfortunately, I did not have the time or capacity to carry out "control experiments" by doing the work the old-fashioned way, by reading the material. This comparison would have enabled me to determine more definitively whether the results of these experiments (the legislative policy questions) are complete and accurate, and how much time using LLM models saved me. For that, I would welcome feedback from CALC members who have drafted laws dealing with citizens' assemblies or GST on whether the respective legislative policy questions are in fact fairly complete and accurate.

(f) I have a long and impressive list of questions for the client, but I am not much wiser than when I started. I did not read 15 articles and research papers, review several laws, and so on. I have not become an "armchair expert" in citizens' assemblies or GST in the same way I might have if I had done all this work the old-fashioned way, by reading and digesting the material and compiling notes.

(g) While useful, these legislative policy questions themselves require considerable thinking, analysis and often consultation to resolve. They are often the 'tips of the iceberg' – themselves 'prompts' for more work to be carried out.

(h) Finally, this method tackles the process of preparing legislation from the top down — a policy and micro-policy-based approach commonly practised in common law jurisdictions. It does not produce the "regulatory" elements needed to give the policies effect and "teeth". Both drafter and legislative policy officer will as usual

[7] One useful resource for learning about developing models is the Regulatory Institute's blog www.howtoregulate.org, which will periodically provide updates and recommendations on which LLMs to use for particular purposes.

have to turn their minds to the selection of regulatory elements and the types of provisions to be used to give effect to these policies and micro-policies.[8]

[8] There are myriad regulatory elements that could be considered and multiple countries from which hundreds if not thousands of these elements can be derived and cherry-picked. This is work that can be done by LLMs and are likely to be the subject of further studies and articles.

SCHEDULE 1

EXTRACT FROM ASSESSMENT TABLE FOR CITIZENS' ASSEMBLIES

TOPICS	Microsoft copilot	Perplexity AI Pro	Claude Sonnet 3.5	Mistral Le Chat
Purpose, principles and scope				
Purpose or role of assemblies	√	√		√ expandable to other topics (beyond climate change)
Principles of operation/ Act		√ inclusivity, transparency, accountability		√ independence, inclusivity, transparency, and fairness
What specific climate change issues will be addressed		√	√ scope of issues to be addressed; assessing technology and innovations;	√
Role of Assemblies on Climate Change Action Plan				
Aspects of Climate Change Action Plan (CCAP) to be addressed	√		√	√ emissions reduction, adaptation, public awareness; how they prioritise these issues?

TOPICS	Microsoft copilot	Perplexity AI Pro	Claude Sonnet 3.5	Mistral Le Chat
Role of assembly in advising and monitoring CCAP	√		√ At which stages of the CCAP will assemblies be involved; how will recommendations be incorporated into final CCAP	√
Mechanism to monitor implementation of CCAP	√	√ criteria to assess progress	√	√
Governance, composition, structure				
Governance		√ Committee or board to oversee	√ Who does media relations	
Number of assemblies		√ One or multiple assemblies addressing different aspects	√ national or regional assemblies	√ national or regional assemblies; one or multiple
Permanent or temporary (fixed duration)				
Sub-committees on specific sectors (e.g. energy, transportation, agriculture)			√	

TOPICS	Microsoft copilot	Perplexity AI Pro	Claude Sonnet 3.5	Mistral Le Chat
Number of members on each assembly	√		√	√
Method of selection of members	√	√ random selection	√ random selection or stratified sampling	√sortition, election, appointment

SCHEDULE 2

LEGISLATIVE POLICY QUESTIONS FOR CITIZENS' ASSEMBLIES

Purposes, principles and scope

1. What is the purpose and role of the citizens' assemblies?
2. What principles underpin the new Act?
3. Which specific climate change issues will be addressed by these assemblies?

Role of assemblies in relation to Climate Change Action Plan

4. Which aspects of the Plan will be addressed by these assemblies?
5. What is the role of the assembly in advising and monitoring the Plan?
6. What mechanism will be put in place to monitor the implementation of the Plan?

Governance, composition and structure of the assemblies

7. How many assemblies should there be?
8. What governance arrangements should be put in place for these assemblies?
9. Should the assemblies be permanent or temporary?
10. Should the new Act provide for subcommittees on specific sectors (e.g., energy, transportation, youth)? If so, suggest the sectors which could merit a subcommittee each.
11. How many members should sit on each Assembly?
12. How should members be selected?
13. Should there be a minimum age for members? If so, suggest what age.
14. What provision should there be to ensure representativeness, diversity and inclusivity?
15. What provision should be made to remove barriers to participation?
16. Should members be paid remuneration and reimbursed for expenses? If so, suggest an appropriate remuneration and formula for reimbursing expenses.
17. What provision should be made for the education and training of members?
18. How should these assemblies be funded?

Procedural and governance rules

19. Who should make these rules?
20. What principles should underpin these rules and the governance of these assemblies generally?

21. Who should set the agenda for each assembly sitting?
22. How frequent and how long should each sitting of an assembly be?
23. What provision should be made for online or remote participation of members in each assembly?
24. How should the chairperson of each assembly be selected?
25. How should each assembly make its decision and arrive at a resolution on an issue considered by it?
26. How should potential conflicts of interest be resolved in each assembly?
27. What provision should be made to protect each assembly against lobbying and the undue influence of special interest groups, in particular corporate interests?
28. What processes should be used for each assembly to gather and analyse evidence?

Supporting structure and resources

29. Should facilitators be involved in each assembly sitting, and if so, how?
30. Should experts be involved in each assembly, or sitting of an assembly, and if so, how?
31. How should experts be selected for these purposes?
32. Should stakeholders be represented in the membership of each assembly, and if so, how?
33. Should stakeholders otherwise be represented or involved, when an assembly deliberates on a topic which directly and substantially affects these stakeholders? If so, how?
34. Should stakeholders be given a role in supporting and advising assemblies? If so, how?
35. What provision should be made for assemblies to be given access to other resources, for example data, databases and other sources of advice and support?
36. How should all these additional support and resources for assemblies be funded?

Role of assemblies in government machinery and processes, and legal ecosystem

37. Should the resolutions of assemblies be aligned with, or conform to, national commitments (e.g., nationally approved policies or targets)? If so, what provision should be made to ensure this?
38. Should the resolutions of assemblies be aligned with, or conform to, international commitments (e.g., international agreements)? If so, what provision should be made to ensure this?
39. What provision should be made to implement, or integrate, recommendations of the assemblies in the policies made or approved by the Government?

40. What provision should be made to deal with intersecting responsibilities? For example, steps to mitigate or adapt to climate change may impact on the health sector, the economy and the education sector.
41. What provision should be made to define the relationship between these assemblies and organs of government such as government departments and agencies?
42. What mechanism should be put in place to resolve any conflict between recommendations made by these assemblies and existing laws and national policies, or the policies and practices of government departments and agencies?
43. What legal and constitutional basis should underpin these assemblies?
44. How should the new Act be integrated with existing laws and policies, and how should the need for amendments to existing laws be addressed?
45. What mechanism should be put in place to monitor the implementation of recommendations made by each assembly?

Legal powers, protections and privileges

46. What, if any, legal powers should be given to the assemblies? For example, what authority should assemblies be given over government departments and agencies?
47. Should one or more assemblies be given special powers in the event of emergencies or disasters?
48. What legal status should these assemblies be given?
49. What legal privileges and protections should each member of an assembly be given?
50. What provision should be made to enforce the implementation of the Act?

Transparency, accountability and public involvement

51. What timelines, milestones and deadlines should each assembly be required to work to?
52. What provision should be made to ensure that assemblies operate transparently and keep the public informed and aware of their activities and the outcome of each assembly (sitting)?
53. What provision should be made to make assemblies accountable for their performance and outcomes?
54. How should the effectiveness of assemblies be evaluated? And what mechanisms should be put in place to ensure regular evaluation?
55. What provision should be made to allow citizens to express their views on the effectiveness of these assemblies?
56. What provision should be made to allow further public participation in, and public feedback to be given on, the performance and outcomes of these assemblies?

57. What provision should be made for periodic review and renewal of the mandates of each assembly?

Sustainability and durability

58. What provision should be made to ensure the long-term sustainability of these assemblies, for example to allow them to evolve to remain relevant as climate change and its threats evolve?
59. What provision should be made for winding down or terminating assemblies and ensuring a smooth hand-over to new assemblies?
60. What provision should be made to allow the new Act to be reviewed and amended as necessary to adjust and reform the roles, functions, powers and privileges of these assemblies?

Administrative provisions

61. What provision should be made to ensure confidentiality and data protection in the work of each assembly?
62. What provision should be made for assemblies to cooperate with international climate bodies and agencies, or similar assemblies in other countries?
63. What key terms will need to be defined? Suggest definitions for each term.
64. How do we ensure that lessons learnt by each assembly are available for consideration and use in by future assemblies?
65. How do we ensure that lessons learnt by each assembly are available for consideration and use in relation to future climate-related activities?

SCHEDULE 3

LEGISLATIVE POLICY QUESTIONS FOR GOODS AND SERVICES TAX

Structure and rate

1. What is the rate of GST? Will there be provision for adjustment of this rate over time?
2. Will there be a single rate for everything, or different rate for some goods and services, e.g. essential items like food, healthcare, education.

Tax base

3. Which goods and services will be taxable?
4. Definition of "goods" vs. "services". How will these apply to intangibles, e.g., digital services and items?
5. Definition of "supply" (sale).
6. Definition of "taxable territory", i.e., application to different territories within the Bailiwick (Alderney/Sark).
7. How should special sales charges be treated? E.g., discounts and incentives, subsidies, reimbursements, incidental expenses such as packing charges.
8. Exemptions: should any of these be exempt?
    - Essential items such as food, healthcare, medicines, education
    - Charitable, non-profit organisations and religious activities (supply)
    - Vulnerable sectors/consumers
    - Raw agricultural products
    - Real estate and property: sales, leases, construction projects & works, other transactions
    - Job work
    - Telecommunications
    - Manufacturing
    - Tourism and hospitality
    - Public transport, i.e., buses
    - Second-hand goods
    - Employee benefits
    - Exports
9. How will e-commerce be taxed or treated? E.g. –

- digital or electronic services
- online marketplaces
- cloud computing services
- online sales
- online subscriptions and streaming
- e-books
- digital platforms
- software subscriptions/downloads
- virtual currencies and NFTs
- services provided remotely

10. Will non-resident suppliers of goods and services (including e-goods and e-services) be treated equally with resident suppliers?
11. How will imports and exports, and other cross-border transactions, be taxed or treated? E.g.–
    - will domestic vs international transactions be treated equally?
    - if imports are taxable, how to levy and collect
    - refunds on GST paid for exports?
12. How will inter-island supply be treated (e.g. Gsy to Aldy or Gsy to Sark)? Will there be a special (e.g., clearing house) mechanism to manage this?
13. How will various financial services supply be taxed or treated? E.g., banking, insurance, investments, transaction fees, interest, insurance premiums, complex financial products.
14. How will joint ventures and partnerships be taxed or treated?
15. How will government services, transactions and procurement be taxed or treated? Includes government entities (e.g., STSB-operated utilities, or States-subsidised goods or services)
16. Will there be a low-value threshold for GST taxation on any items? E.g., imports.
17. Special schemes: should there be a special scheme for any of the sectors/items/providers mentioned in Nos. 8 to 15?
18. Zero-rating: should there be zero-rating for any sector/items mentioned in No. 8 or 9, or other sectors/items? Meaning no GST payable but supplier can claim for input tax credits (e.g., GST credits in the making of goods or work involved in the supply).
19. How should the informal sector be taxed or treated? I.e., cash jobs. How to "bring them in".

Place, time, value of supply

20. What rules need to be in place (consistent with any international tax principles or agreements) to determine place of supply? E.g. —
    - cross-border services/transactions
    - multi-location services
    - digital services
    - transportation services
    - insurance services
    - telecommunications
    - online information services
21. What rules need to be in place to determine time of supply? E.g. –
    - continuous supply of services
    - progressive supplies
    - reverse-charge supplies (where the consumer pays the GST)
    - sale and redemption of vouchers and gift cards
    - instalment sales
    - leasing and rentals
    - licensing (e.g., intellectual property licensing)
    - hire-purchases
    - advance payments
22. What rules need to be in place to determine value of supply? E.g. —
    - discounts
    - subsidies
    - other adjustments
    - auctions

Revenue allocation & Bailiwick coordination

23. Will there be any special arrangements to allocate revenue or compensation to the other territories, i.e., Alderney and Sark? E.g., a compensation mechanism for revenue loss or formula to distribute revenue.
24. Any "earmarking"/ringfencing of GST revenue for certain Govt. goods/services?

25. What coordination and cooperation is needed with Alderney and Sark to administer and enforce GST effectively?

Administration — administrators and special procedures

26. Which agency will administer and collect GST?
27. What powers and procedures for assessment are needed?
28. What integration will there be with existing portals, platforms, systems for collection, and will this need amendments to legislation?
29. Should there be a compliance rating system to encourage compliance?
30. What special procedures should be provided for? E.g., eligibility criteria and benefits of —
    - tax deduction at source
    - composition schemes for small businesses
    - group registration
31. Should provision be made to require public awareness and education?
32. What confidentiality provisions are needed?

Duties of tax payers

33. What registration duties are needed? E.g. —
    - annual turnover threshold and other criteria for registration
    - different threshold for selected sectors (e.g., small businesses or small farmers, e.g., hedge veg)
    - online or physical registration
    - branch registration
    - intra-Bailiwick operations
    - foreign companies
    - non-resident suppliers
    - should voluntary registration be provided for
    - information required to be submitted for registration
34. Will there be a unique identification number for each registered supplier?
35. What provision is needed for changes in registrations? E.g. —
    - business reorganisation
    - mergers and acquisitions

- transfer of businesses
- cancellations

35. What filing requirements should be imposed? E.g. —
    - frequency of filing returns (annual, quarterly, monthly)
    - deadlines for filing
    - electronic vs paper filing
    - reduced duties for small businesses
    - non-resident providers
    - information required in returns
36. What record-keeping requirements should be imposed? E.g. —
    - what records must be kept
    - for how long
    - digital records and electronic standards?
37. What method of invoicing is required/permitted? E.g. —
    - information required on GST invoice
    - e-invoicing permitted or mandatory
    - special rules for digital platforms
    - technical standards for compliance
    - integration with the tax administration
    - real-time reporting
    - automated tax filing and payment systems
38. What method of accounting is required/permitted? E.g. —
    - invoice-based
    - cash accounting
39. When and how are tax payments to be made?
    - deadline
    - methods of payment
    - incentives for electronic payments
40. In which cases should there be a reverse charge mechanism (recipient not supplier liable to pay GST)? E.g., imports of goods or services?

41. Should there be a simplified compliance scheme for e.g. small businesses? E.g. —
    - lower flat rate
    - no provision for input tax credits
    - simple accounting scheme (e.g., cash).

If so, what are the criteria for eligibility?

Anti-avoidance

42. What rules are needed to prevent GST evasion and avoidance? E.g. —
    - general anti-avoidance rules (GAAR) and criteria for invoking these
    - specific anti-avoidance rules (SAAR)
    - under-invoicing
    - fraud
    - aggressive tax planning (shell companies, false invoicing)
    - tax evasion
43. What SAAR are needed for these?
    - Branch and head office transactions
    - Related party transactions
    - Valuation rules
    - Anti-splitting provisions
    - Barter transactions
    - Artificial business structuring
    - Business purpose tests
    - Economic substance requirements
    - Pure agent concepts
    - Employee benefits
    - Composite supplies
    - Mixed supplies
    - Base erosion
    - Profit-shifting
    - Transfer pricing
    - Complex financial instruments and derivatives

Future-proofing

44. How can future developments be anticipated? E.g. —
    - sharing economy
    - blockchain (e.g., use in compliance audits and verification)
    - AI implementation (e.g., GST system and fraud detection)
    - real-time reporting systems
    - API framework (allows a third-party ERP system or return-filing platform to connect directly to the GST Network (GSTN), allowing data to flow seamlessly and the user to undertake tasks such as registration and return filing)
45. Will there be provision for regular periodic reviews and evaluation?
46. How can public and supplier feedback be taken on board for improvements?

Dispute resolution

47. What provisions are needed for dispute resolution?
    - Advance ruling mechanism (scope, process and fees)
    - Appeals
    - Special tribunal or court
    - Judicial reviews
    - ADR, e.g., mediation
    - Settlement commission
    - Time limits for proceedings

Enforcement

48. What provision is needed for compliance checks and audits?
    - Power to direct an audit
    - Procedures
    - Other enforcement mechanisms
    - Taxpayers' rights
49. What general inspection, and search and seizure powers are needed? Consider use of AI to detect irregularities, fraud.
50. What penalties are needed for non-compliance? E.g. —
    - late filings

- late registration
- non-payment
- delayed payments
- underpayments
- fraud
- interest payments for delayed or under-payments

51. What offences need to be created? What penalties should be imposed for each offence?

52. Should there be provision for a voluntary disclosure programme?

Tax credits and refunds

53. What provision should be made for input tax credits? E.g. —

- which items are claimable
- rules for claiming (eligibility of purchases, procedures, conditions and restrictions)
- cross-utilisation of credits between goods and services
- pre-registration credits
- capital goods credit mechanism
- entertainment expenses
- construction materials and services
- apportionment among different business activities and supplies
- treatment of mixed-use assets (personal and business use)
- rules for calculating
- refund or carrying forward of excess credits.

54. What provision should be made for refunds? E.g. —

- rules for claiming and processing (eligibility criteria, procedures, conditions and restrictions)
- rebates
- time limit for claims (and for processing)t
- Treatment of bad debts
- documentation required
- priority sectors e.g. exporters, businesses with high capital investments
- excess GST paid

- interest on delayed refunds
- treatment of accumulated credits
- foreign tourists
- non-resident suppliers, foreign businesses
- diplomatic missions/international organisations.

Alignment with domestic law

55. Constitutional/human rights — any conflict with ECHR?
56. Interactions with other taxes and laws? E.g. —
    - income tax
    - property tax
    - customs tariffs
    - excise duties
    - customs laws
    - any other applicable sales tax
    - any applicable indirect or other taxes
57. Whether any tax-free zones need to be created (e.g., special economic zones).

International alignment and coordination

58. Any conflict and need to reconcile with international and bilateral treaties and agreements? E.g. —
    - cross-border transactions
    - tax agreements, e.g., double taxation
    - free trade agreements, e.g., WTO rules
59. Any conflict and need to reconcile with international tax standards and best practices? E.g., OECD Guidelines and GST/VAT.
60. Should provision be made for international cooperation? E.g. —
    - information exchange mechanism with other countries
    - mutual administrative assistance
    - cross-border tax recovery

Social and environmental considerations

61. What provision should be made to protect consumers/vulnerable groups?

- anti-profiteering/price gouging provisions
- different rates
- measures to ensure businesses pass on input tax credits to consumers
- price monitoring and punishment
- discouraging consumption of harmful products
- rural communities
- cash transfers, compensation or social welfare programmes for the poor/vulnerable (Income Support Amendments)

62. What provision should be made for environmental and climate objectives? E.g. —
    - green tax element (differential taxation)
    - circular economy incentives
    - environmental integration
    - carbon pricing or emissions trading
    - reduced rates or tax credits for green technologies
    - encouraging sustainability (second-hand goods, sharing economy, circular economy): registration and compliance requirements
    - disincentives for environment or climate hostile items

Transparency and reporting

63. Any provision for public reporting on GST collection and administration? E.g., how to incorporate public/taxpayer feedback.
64. Will there be any other mechanism to ensure public accountability in administration?

Emergency provisions

65. Any provision for force majeure events? E.g. —
    - natural disasters
    - pandemics
    - economic emergencies
    - special government powers.

Transition

66. Date of commencement of new tax. E.g. —
    - single date or phased commencement/implementation

- any pilot programmes?

67. How to transition from current tax regime to regime with GST?
    - transition "grace" period?
    - incentives to adapt to new GST requirements?
    - sector-specific transitional provisions?
    - relief measures
68. How will existing contracts be treated from commencement date?
69. How will existing inventory be treated?
70. How will services or work-in-progress be treated?
71. How will advances received before commencement be treated?
72. Will there be transitional input tax credits (e.g., on supplies received before commencement)? Will refunds be claimable on supplies made/received before commencement?

…

Imposter or improver? An exploration of the value that a team of non-legally trained editors and reviewers adds to the legislative drafting process

Graham Halpin[1]

Abstract

The Legislative Drafting Office in Jersey established an editorial team in 2019. Drawing on the development of the team to date, this paper highlights the value and vital roles carried out by non-legally trained personnel in legislative drafting. The paper covers the at team's day-to-day functions, the relationship between drafters and editors, the team's perspectives on error reduction, drafting conventions and style, and the impact editorial correction powers have on maintaining standards.

Introduction

This paper explores the value to the legislative drafting process brought by non-legally trained personnel. Rather than imposters in a house of lawyers, they are personnel with wide-ranging experience who are well placed to improve processes and output.

The paper is based on the experience of the Jersey Legislative Drafting Office, which has had a small editorial team since 2019, more recently restyled as the editorial and technology team to reflect its expanded functions. The team consists of this author in the role of legislation editor, with a varied editorial background encompassing print media, technical journals, business proposals and corporate reports, as well as two assistant legislation editors or legislation clerks: one who has worked in the department for five years, coming from a legal secretarial background, and the other who has worked in the same or similar roles for

[1] Graham Halpin joined the Legislative Drafting Office in Jersey as its Legislation Editor in 2022. He has enjoyed a varied career as an editor of trade journals, newspapers, educational materials, and corporate reports. He also spent 13 years teaching in the UK and Italy, in primary, secondary, special needs and adult education settings. This paper was originally presented at the CALC Europe 2025 conference in Belfast on 17 September 2025.

nearly 30 years, amassing vast experience and knowledge. The team also has oversight support from a dedicated senior legislative drafter and an external consultant.

These are the solid foundations on which the value of the team is built. This paper explores that value from a few different angles:

- day-to-day activities
- the manner and benefits of collaboration between drafters and editors
- the team's contribution to the elimination of errors
- the team's contribution to current drafting practice and style guidance
- editorial and delegated powers provided for by the Legislation (Jersey) Law 2021 (the "Legislation Law") and
- involvement in editorial networking opportunities.

The team was formed in 2019 as the Jersey Office's functions expanded to include preparation and publication of official consolidated legislation, and the ability to make certain administrative corrections.

As the team has grown in reputation and stature, we have resisted being categorized as "support staff", such as a secretarial or drafter's assistant role. This resistance comes from the recognition of the team's influence on the office's achievement of its main objectives.

Day-to-day activities

The day-to-day activities of the team include:

- carrying out editorial reviews by conducting a thorough reading of the draft covering a multitude of elements including spelling, style, sequencing suggestions, cross-reference checks, citations, general sense and logic, and any other apparent issues
- formatting drafts in the office's bespoke Word template
- assisting with technology
- creating the various versions of drafts throughout the process
- publishing enacted legislation
- consolidating and publishing current law
- maintaining records of the passage of legislation from final draft to current law
- maintaining records of current and superseded versions of legislation in the consolidated collection
- various other tasks, including ordering office equipment, monitoring the budget, watering the plants, and decorating the office for Christmas… and still many more.

Collaboration between drafters and editors

Mutual trust and respect between the legislative drafters and the editorial team is crucial to the smooth and efficient operation of processes. This has been achieved through our rapid turnaround times, our adaptability and flexibility to respond to virtually any request no matter how obscure or challenging, and the quality of editorial input which contributes to the quality of the final output.

Typical interactions between drafters and editors are made in Word comments when reviewing a draft, or more generally by email, or in Teams or face-to-face meetings. Drafters will often leave replies to editorial comments, which is a really useful interaction. Essentially, the communication, however it is administered, is very much two-way and fosters a high level of mutual trust, respect and appreciation, which in turn fosters quality conversations. Ultimately, that combination results in a more refined, consistent and considered final product, and more people carefully reviewing drafts for errors will almost certainly lead to better results.

Contribution to the elimination of errors

The editorial team supports the drafter and the office throughout the interactive complexity of drafting and publishing legislation. As non-legally trained personnel, do we have any right to be interpreting legislation? It may be at this point that we would risk being viewed as imposters, were it not for our own levels of experience and the reputation for quality that we have gained over time. Through sheer bloody-mindedness, tenacity and perseverance, we have honed our skills in navigating complex webs of legislation to be able to identify and resolve conflicting amendments, suggest amendments that are then recorded on our law revision tracker, advise on tied commencements, split commencements, etc., etc.

A series of very effective checklists is used to ensure that the reviews are comprehensive and catch as much as possible. These include an editorial review checklist, a formatting checklist, a law revision tracker, a record of editorial changes, and a couple of database trackers covering the passage of legislation before and after enactment. The editors also frequently rely on the publishing website, jerseylaw.je,[2] which shows point-in-time consolidated legislation as well as all as-enacted legislation (or near as-enacted) back to the 18th century.

As mentioned earlier, the comments and suggestions made for the drafter in review copies are made in Word comment boxes and, occasionally, in track changes. Drafters are often keen to respond, either to explain their rationale in more detail, to invite further comment, or to request further review of specific elements of the draft if they change something. This interactive, complex work generates a high level of mutual appreciation between the drafter and the editors. Although the drafter may not act on every editorial suggestion, and the draft remains their responsibility, the editors are able to apply a dual perspective — the non-legal

[2] Jersey Legal Information Board, "Current Laws" https://www.jerseylaw.je/laws/current/search?size=n_50_n.

approach to reading, with the ability to navigate legislation — to their objective of highlighting anything that looks odd or that is difficult to follow.

Contribution to current drafting practice and style guidance

A comprehensive drafting practice manual already existed when I joined the Jersey office in 2022, and some less *legal* style preferences were documented in the office wiki (an internal online repository of research links, discussions and guidance notes on all manner of drafting and editorial topics). But with a traditional print media background, I could see the advantages of developing a style guide to deal with such topics as consistent spelling preferences, word choices and capitalisation.

The editorial team often suggests an approach that breaks out of traditional forms of legal syntax and expression, with the result that much of today's drafting style in Jersey seems more closely aligned with plain English standards. It is important that the editors maintain their role as the non-legal voice, eye and ear to maintain plain, accessible legislative expression, where it is possible to do so. Essentially, the editors can be seen as the guardians of the balance between accessibility, meaning, *legal* meaning, the formal register required in legislation, and consistent expression.

The style guide is expanding and is an important tool for the editorial team. For the drafters, it also gives them something to hang certain choices on. This could be seen as similar to the Mark Zuckerberg white t-shirt effect, described as "a strategic move to combat decision fatigue and maximize productivity. By simplifying his wardrobe [or *word*-robe, in our case], he ensures that his mental energy is reserved for the decisions that truly matter."[3] For the editors, the style guide supports editorial comment — it's not *me* asking you to use this word or this structure, it's the style guide that documents it.

So what can be concluded from this ongoing adventure in style? Firstly, if you've come from an environment in which a style guide is a given, is complete, is followed unquestionably, and is not a matter for discussion, then attempting to replicate that tool in an office full of lawyers is a bold, some might say reckless, move. Nevertheless, starting from a relatively blank slate can mean that everyone gets involved, which engenders greater equity throughout the office and makes buy-in to the *concept* a lot easier, if not buy-in to each individual matter. In the Jersey office, both drafters and editors may make proposals on a variety of style guidance matters, which are then presented to the team for discussion — some more complex than others — and then, hopefully, ratification. This process avoids springing surprises on anyone or making decisions without consultation. Overall, consistency of expression has been achieved in some areas, and work carries on. The development of the style guide is very much filed under the category of "to be continued…"!

[3] "Why Mark Zuckerberg Wears the Same Plain T-Shirt Every Day: The Science Behind Decision Fatigue" (7 March 2025) https://greylongg.com/blogs/article/mark-zuckerberg-wears-the-same-plain-t-shirt-every-day.

Editorial/delegated powers

The Legislation Law sets out the Principal Legislative Drafter's functions, including consolidation and publication of legislation, and making certain corrections, known as editorial changes. These functions may be delegated to any appropriate person and are currently delegated to the legislation editor and their team.

The nature of each of these functions is set out below.

Publishing: A major part of the editorial team's remit is the publication of the legislation on jerseylaw.je. The team publishes all legislation as it is enacted, prepares and publishes consolidated legislation on the day it comes into force (or as near as possible), and manages the entire database of legislation that makes up the consolidated collection.

Consolidation: Up to 2019, the statute book was kept up to date annually by means of the law revision process. Consolidated versions dated 1 January 2019 were then set as the baseline for the continuous consolidation process to be phased in, and this has continued ever since. To be able to update the law on the day it comes into force is vital to accessibility and usability of legislation and we are very proud of our ability to offer this service. It is primarily a manual process which involves transferring the text from the amending instrument into a new version of the current instrument. The superseded version of the amended instrument, and all its previous superseded versions, are retained and have recently all been uploaded to the website to form an even greater service to accessibility, referred to as the point-in-time collection. This facility enables the user to access legislation as it looked at a given date at any point within the lifespan of the consolidated collection.

Editorial changes: Article 14 of the Legislation Law gives the Principal Legislative Drafter the power to make certain corrections to consolidated legislation. This function is also delegated to the legislation editor and the editorial and technology team. We keep a record of all changes made using these powers, and each change is noted in the endnotes of the legislation itself. They largely represent "tidying-up" corrections, particularly from times past, pre-editorial team and pre-computer. These changes can be made and published immediately, which saves the drafter and States Assembly[4] time as there is no need to draft amendments of that kind or consider them as part of a proposition. These editorial changes are, of course, corrections that have no change to the legal effect or meaning of a provision.

Legislation Editors Network Group

The Jersey Office proposed forming a Commonwealth networking group for legislation editors in 2019 as a platform for sharing experiences and learning from each other. This began as an online gathering of editorial staff from the Crown Dependencies drafting offices — Jersey, Guernsey and the Isle of Man — and has since grown modestly to welcome members from the Republic of Ireland at the end of 2023 and English and French legistic

[4] The States Assembly is the legislative assembly for Jersey: Jersey States Assembly, "States Assembly: Jersey's Elected Parliament" https://statesassembly.je/home.

revisors from Canada earlier this year.[5] We now number around 12 members and meet online three or four times a year to discuss and compare our various experiences, developments, techniques, processes, procedures, ambitions, ideas and projects. The meetings are always well attended and valuable for the intended purposes of networking, sharing and learning. If you would like to find out more, join the group, or introduce a colleague to it, please email g.halpin@gov.je.

Conclusion

Since incorporating editorial staff into its team, the Jersey office has seen that suitably experienced editors bring tangible improvements to legislative products, processes, publication and accessibility. The feeling of being an imposter, if that weighs on non-legally trained personnel, should be swiftly rebutted and replaced with the knowledge that being able to carry out confident, careful reviews of legislation has a positive effect on the final product and on the team.

[5] Following the presentation of this paper at the CALC Europe conference, representatives of Bermuda, Singapore and Tanzania have shown an interest in engaging with the group.

What Is in a Name? Mitigating Technological Colonialism as Applied to Toponyms

Ian Rennie[1]

Abstract

Language is an important expression of people and their culture and how they identify themselves. Language is critical for making access to justice possible. Colonialism has a legacy of attempting to diminish or even extinguish Indigenous languages. Technological colonialism uses technology and the languages of colonizers to diminish or extinguish in a manner that is subtle and almost unseen. Yet that very same technology is now being employed to revitalize Indigenous languages and Indigenous cultures. In this paper the impact of telecommunications on the use of language — technological colonialism — is briefly considered. The advent of Unicode 16.0 — a seemingly mundane information technology tool – is described along with its impact on Indigenous languages. The use of Indigenous diacritics using Unicode is considered, especially with respect to place names (toponyms) and the conversion of colonial names (exonyms) to Indigenous names (endonyms). Some of the damage that colonialism and technological colonialism have wrought is now being undone. Some of the challenges facing drafters of legislation are considered.

Introduction

While the advancement of technology reduced the richness and variety of orthography in many languages, in the 21st century, new technologic innovation is promising to undo some of that damage. The concepts in this paper are applicable well beyond the Northwest

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Territories, Canada, but the focus of this paper is on Indigenous languages of the Northwest Territories.

In Part 1, we will consider the impact of technological innovation, during the Industrial Revolution, on some "lost" characters of the English language such as the "ash". International Morse code, the typewriter and computer-based orthography are considered. Attempts to accommodate other languages are briefly examined followed by the rise of the "legacy fonts" for Dene languages.[2] In Part 2, we explore the development of Unicode, and its use in some common software applications. In Part 3, we consider a practical example of the use of Unicode in respect of place names or "toponyms". In Part 4, this paper concludes with practical suggestions that may assist legislative drafters and other lawyers in their daily practice.

Written language is the primary expression of law. While the focus of this paper is the Northwest Territories, the use of languages beyond English, that is, languages that contain diacritics, is very common throughout the Commonwealth, including: Gàidhlig/Gaeilge (Gaelic) to Cymraeg (Welsh); Sanskrit to Māori; Èdè Yorùbá to Maltese; and Malay to French. Therefore, the issues in this paper are broadly applicable beyond the Northwest Territories.

Part 1 — Technical Innovation

Technical innovation has been around since at least the Industrial Revolution. The widespread adoption of technology has often resulted in major changes to lifestyle patterns. In this Part, the impact of the advent of International Morse Code is considered. A form of colonialism resulted from the exclusive use of English characters. While this use was to be expected as the leading industrial powers at the time developed the technology, even their languages were affected. Some characters were discarded due to the difficulties in incorporating those characters. This included ligatures such as the ash ("æ") and diacritics such as the cedilla, various accents, umlauts (i.e., indicators of pronunciation). For Indigenous languages, the effect was even more pronounced, in that those languages were largely unwritten and discouraged by colonial assimilation. Attempts were made to expand the use of character sets for typewriters, teletypes and computers. This gave rise to the legacy fonts. The expansion was largely due to increased English and French bilingualism in the Northwest Territories and a corresponding effect for Indigenous languages in the Northwest Territories.

[2] Dene languages is a family of Indigenous languages in Alaska, western Canada, northwestern California and parts of Oregon and in eastern Arizona and western New Mexico. It is the predominant family of Indigenous languages in the Northwest Territories, but does not include Inuvialuktun, the Inuit languages or dialects in Alaska, the northern Northwest Territories, Nunavut and Greenland. This paper focuses on Dene languages of the Northwest Territories.

International Morse Code

The first electric telegraph was patented in the United Kingdom around 1837 by Cooke and Wheatstone. In 1838, the Morse code system was devised by Samuel Morse, Joseph Henry and Alfred Vail. The system was widely adopted in railways and eventually adapted for international communications as International Morse code. International Morse code came into being in 1844 and evolved, with the latest version adopted in 2009.[3] Guglielmo Marconi developed wireless telegraphy in 1901, successfully accomplishing a transatlantic communication between St. John's, Newfoundland (now part of Canada) and Poldhu, Cornwall, United Kingdom. Wireless telegraphy became invaluable for ships at sea and for long-distance communications across the planet.

International Morse code is largely based on the English Latin (or Roman) alphabet, which should not be surprising since most of the innovations in telegraphy originated from the English-speaking world and western Europe in the late 19th century. International Morse code consists of 26 basic Latin characters, one accented "é" and Arabic figures (0 to 9).

In time, the teletype came into being. That made it possible for messages to be sent automatically by telegraph and be automatically deciphered and typed at the receiving end. The teletype emerged in the 1870s, around the same time as the typewriter. By about 1910 the standard QWERTY keyboard in English appeared. This is, of course, the standard layout on a computer keyboard today in English.

Telegraphy continued to evolve and by the early 1960s through the development of the teletype machine. A character encoding standard was established around 1963 consisting of 128 characters – the American Standard Code for Information Interchange (ASCII).[4] The standard did not support the use of accents or other diacritical marks. Extensions to ASCII were developed on an *ad hoc* basis to accommodate non-standard characters from other languages.

The Typewriter and the Ash

The grapheme (or character) "ash" ("æ") once appeared in words such as *curriculum vitæ*, *encyclopædia* or *mediæval*. This grapheme has its origins in the Latin diphthong "ae". The ash was too difficult to implement on the typewriter keyboard. It was dropped in favour of either an "a" or "e" or the letters "ae" (for example: *curriculum vitae*, *encyclopaedia* or

[3] I International Telecommunication Union (*Recommendation ITU-R M.1677-1 (10/2009) International Morse Code M Series*) https://www.itu.int/dms_pubrec/itu-r/rec/m/R-REC-M.1677-1-200910-I!!PDF-E.pdf accessed 17 September 2025 at pp. 1-2. There are also about 20 punctuation codes. The standard does not include other accented characters, although these do exist.

[4] C. E. Mackenzie, *Coded Character Sets, History and Development* (Addison-Wesley Publishing Company Inc., 1980).

medieval). Thus, technological innovation diluted the diversity of orthography in the English language.[5]

Diacritics

The international reach of telegraphy created problems in that not all nations made use of the English alphabet. Those that did often used diacritics: variations using the base character (or grapheme) such as "e" and attaching an annotation or "diacritic" such as an acute accent (*accent aigu*) to make up "é". The English language often uses diacritics, but they are in respect of words "borrowed" from other languages: *resumé* or *façade*.

Legacy Fonts

In 1984, the Legislative Assembly of the Northwest Territories passed the first *Official Languages Ordinance*.[6] This statute guaranteed equal status for English and French.[7] Indigenous languages were officially recognized in the Act, but only in 1990; after that, greater status was given to those languages and the need to revitalize them.[8]

In the 1990s, word processing was dominated by WordPerfect for MS DOS, although MS Word was also available.[9] While both programs provided some support for languages other than English and French, that support was limited, particularly when it came to Indigenous languages. Both programs made significant use of fonts that were not applicable to Indigenous languages.

[5] A number of other characters have been rendered obsolete over time including the eth (Ð/ð), thorn (Þ/þ), wynn (Ƿ/ƿ), yogh (Ȝ/ȝ), long S (ſ) and œthel (Œ/œ). Many of these characters became obsolete as Old English gave way to Middle English and then to Modern English. One might argue that the ash was already obsolete going into the Industrial Revolution and that the difficulty in adding it to the typewriter keyboard was the *coup de grâce*.

[6] *Official Languages Ordinance*, ONWT 1984, c 2. In 1984, statutes of the Northwest Territories were called "ordinances" but this changed to "statutes" in 1985.

[7] The need for this Act flowed from the ongoing Manitoba Minority Languages case (*Re Manitoba Language Rights*, [1985] 1 SCR 721). See K. Pue, "Reference re: Manitoba Language Rights" (11 July 2012) https://www.constitutionalstudies.ca/2012/07/reference-re-manitoba-language-rights/?print=print accessed 17 September 2025 for a summary. Also see *Northwest Territories (Attorney General) v Fédération Franco-Ténoise*, 2008 NWTCA 6. A summary of that case is at https://www.clo-ocol.gc.ca/en/decisions/court-decisions/federation-franco-tenoise-v-attorney-general-canada accessed 17 September 2025.

[8] *An Act to Amend the Official Languages Act*, SNWT 1990, c 7. For a more detailed history, see Languages Commissioner of the Northwest Territories, "Annual Report 2021-2022: Explore Our Land" (1 July 2022) https://www.ntlegislativeassembly.ca/sites/default/files/legacy/td_812-192.pdf at p 8.

[9] According the Wayback Machine (Internet Archive), the earliest captured website for <www.gov.nt.ca> is January 28, 1998. Statutes of the Northwest Territories from this date are available in MS Word 2.0 or WordPerfect 5.1 format: https://web.archive.org/web/19970626092809/http://legis.acjnet.org/acjnet/TNO/1988_en.html accessed 17 September 2025. Note that the Word 2.0 file can be opened but by default it can not be opened in Word365 for security concerns. WordPerfect 5.1 files can be opened in WordPerfect 2021.

Around 1994, development began on a new font set for use with MS Windows-based software: the WinMac SILDoulos Dene font set or "legacy fonts".[10] The legislation of the Northwest Territories immediately started using this font set, mostly in WordPerfect.

The fonts were general Windows fonts and appeared in the dropdown box for font-sets in most Windows-based programs. A font-set was also available for the Macintosh operating system.

Part 2 — Unicode

Recent Technological Innovation

In this Part, a closer look at more recent technological innovation in respect of Indigenous languages is made. While the legacy fonts mark a significant step forward at a local level, a more systematic approach was also being undertaken in the 1990s. Unicode started to be developed and would eventually extend language character sets and orthography globally. New languages and characters were added, including the ash. Indigenous language alphabets were added, including Dene fonts and Aboriginal syllabics. A massive international database was compiled, currently with 154,998 characters and capable of including about 1.1 million characters. These characters are at the heart of symbol insertions in major word processing software. Modern programs are somewhat compatible with Unicode. Despite such innovation, the legacy fonts remain useful for older software that is not Unicode compatible. This Part looks at the development of Unicode and its application in WordPerfect, Word and open-source software such as LibreOffice.

History

Unicode 1.0.0 came into being in October of 1991.[11] The ASCII character set was incorporated into the newly formed Unicode and comprised the first 128 characters or "code points". Unicode was (and continues to be) maintained by a non-profit organization: Unicode Consortium (Unicode, Inc.).[12] The aim of the Consortium is the "...internationalization of software and services, including the encoding of text for all modern computer systems..."[13]

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[10] Obtained by looking at the copyright information for WinMacSILDoulos Dene through the Windows control panel and fonts. [Copyright Information] The copyright notice is as follows:

> Version 3.0 (c) Copyright 1994-1997 Summer Institute of Linguistics. 7500 W. Camp Wisdom rd., Dallas, TX 75236 USA (972) 708-7495.

[11] Unicode Consortium, *The Unicode Standard: Worldwide Character Encoding,* Version 1.0.0 (Addison-Wesley Publishing Company, Inc., 1991) https://www.unicode.org/versions/Unicode1.0.0 accessed 17 September 2025.

[12] See Website for Unicode <https://home.unicode.org/ accessed 17 September 2025. Also see "About the Unicode Consortium" https://home.unicode.org/about-unicode/ accessed 17 September 2025.

[13] Unicode, "Technical Quick Start Guide https://home.unicode.org/technical-quick-start-guide/ accessed 17 September 2025.

Canadian Aboriginal syllabics were introduced into Unicode in September 1999 with Unicode 3.0.[14] In 2009, Unicode 5.2 introduced code points for Dene languages and Unified Canadian Aboriginal Syllabics Extended block.[15] Canadian Aboriginal syllabics include Qaniujaaqpait Syllabics which are used in some locations of the eastern Arctic (including Nunavut); but English orthography (or Qaliujaaqpait Roman Orthography) is more common in the western Arctic (including the Northwest Territories).[16]

The latest version is Unicode 16.0, published in September of 2024.[17] There are 154,998 characters in the Unicode 16.0 database, with the capability of encoding more than 1.1 million characters. There are about 3,790 emojis.[18]

A conversion table maps the legacy font set against the Unicode font, and the table is readily available in the public domain.[19]

WordPerfect

Some argue that the inclusion of Dene fonts in Unicode rendered the legacy font set obsolete.[20] Yet the legacy font set continues to be used by some elements of the Government

[14] Generally, the use of syllabics is confined to the eastern Arctic (the Canadian territory of Nunavut), although it may be in use with other Indigenous peoples of Canada (such as the Cree or Ojibwe). See:

- Unified Canadian Aboriginal Syllabics (U+1400–U+167F)
- Unified Canadian Aboriginal Syllabics Extended (U+18B0–U+18FF)
- Unified Canadian Aboriginal Syllabics Extended-A (U+11AB0–U+11ABF)

Note that the "U" indicates Unicode and the numbers are hexadecimal numbers (base 16). The use of such numbers is an indicator of the sheer size of the underlying database. Note that the word "Aboriginal" is used deliberately as this is how the syllabics are identified in Unicode. Canada did not formally endorse the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) until May 2016. The term "Indigenous" is now used in place of "Aboriginal" to reflect UNDRIP. See Government of Canada, "The UN Declaration explained" (21 August 2025) https://www.justice.gc.ca/eng/declaration/what-quoi.html accessed 17 September 2025.

[15] "Unified Canadian Aboriginal Syllabics Extended" https://codepoints.net/unified_canadian_aboriginal_syllabics_extended accessed 17 September 2025.

[16] Government of Nunavut, "Indigenous Languages Alphabets" https://www.ece.gov.nt.ca/en/services/indigenous-language-resources/indigenous-languages-alphabets accessed 17 September 2025. See *Official Languages Act*, SNU 2008, c 10 at s 3. Nunavut does not have the large diversity of Indigenous languages that is present in the Northwest Territories.

[17] The Unicode Consortium, *The Unicode Standard, Version 16.0.0* (The Unicode Consortium, 2024) https://www.unicode.org/versions/Unicode16.0.0 accessed 17 September 2025.

[18] Consider: L. Li & Z. Xiangwen, "Cross-Cultural Communication in the Digital Age: An Analysis of Cultural Representation and Inclusivity in Emojis" (June 2024) https://www.researchgate.net/publication/383985670_Cross-Cultural_Communication_in_the_Digital_Age_An_Analysis_of_Cultural_Representation_and_Inclusivity_in_Emojis accessed 17 September 2025. Note at page 24 the acknowledgement of the use of generative artificial intelligence such as ChatGPT.

[19] See website of Unicode Dene Keyboards for the EXCEL file <WinMac-Unicode-Conversion-Reference-Tables.xlsx> in the zip file https://denefont.com/elements/Win_Dene_Fonts.zip accessed 17 September 2025.

[20] See website of ScriptSource https://scriptsource.org/cms/scripts/page.php?item_id=language_detail_font&key=chp accessed 17 September 2025. Whether legacy codes are obsolete has to be a question of perspective. For users of WordPerfect or other software that is not Unicode compliant, legacy codes must still be relevant.

of the Northwest Territories in the generation of legislation. While WordPerfect 2021 is not Unicode compatible, the continued use of the legacy font is practical in that it allows continuity with already published enactments and the continued use of this legacy software.

The claimed obsolescence of the legacy font set creates some interesting anomalies for legislative drafters in the Northwest Territories. In the online version of the *Délı̨nę Final Self-Government Agreement Act*, the Indigenous place name (or "endonym") "Délı̨nę" occurs frequently.[21] If one copies that name from the online version and pastes it as unformatted text in Word, the following appears:

> Délîne

The letter "i" without a dot ("tittle") and reverse cedilla ("ogonek") have been replaced with an "i" with a hat ("circumflex"). The "î" is the character in the default font (Times New Roman). When the font is changed to WinMacSIL Doulos Dene, the "ı̨" reappears.[22] This is the same problem with the missing ogonek on the last "e". When the font is changed, the "ę" reappears. This is exactly how the legacy fonts should be working. The cut and paste anomaly is not an error but it demonstrates the limitations with the legacy font-set.

Unfortunately, this type of error can be propagated through the Internet and may lead to confusion about the spellings of Indigenous words.[23] Confusion about spelling also arises from the absence of the legacy font or Unicode in the past (or perhaps the non-standardization of the endonym). For example, consider the different online spellings of "Délı̨nę" as follows:

- *Déline Final Self-Government Agreement Act*[24]
- *Délı̨nę Final Self-Government Agreement*[25]
- *Délı̨ne Final Self-Government Agreement Act*[26]

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[21] *Délı̨nę Final Self-Government Agreement Act*, SNWT 2015, c.3, The online version is in PDF at https://www.justice.gov.nt.ca/en/files/legislation/deline-final-self-government-agreement/deline-final-self-government-agreement.a.pdf accessed 17 September 2025. An "endonym" is a place name (or toponym) that people in a particular place or group use – the Indigenous name. An "exonym" is a non-Indigenous name for a group of people or place. "Dogrib" is an exonym but "Tłı̨chǫ" is an endonym.

[22] Note that the ogonek in Word is not centred under the base character. It should be centered. See "Jim's original number" 38 under each of the tabs in the EXCEL spreadsheet referred to in footnote 19. Is Word really fully Unicode compliant?

[23] For another example, see letter to the editor: J.B. Zoe, S, Jerome, T.D. Andrews & L. Saxon, "Tłı̨chǫ or Tåîchô?" *Arctic: Journal of the Arctic Institute of North America* (2012) 65:3 at pp 356-357 https://journalhosting.ucalgary.ca/index.php/arctic/article/view/67276/51186 accessed 17 September 2025.

[24] See the *Déline Final Self-Government Agreement Act,* SC 2015, c. 24 https://laws-lois.justice.gc.ca/eng/acts/D-1.5/page-1.html accessed 17 September 2025.

[25] See the Northwest Territories Department of Executive and Indigenous Affairs https://www.eia.gov.nt.ca/sites/eia/files/2015-02-18_deline_final_self-government_agreement_signed.pdf accessed 17 September 2025.

[26] See *Délı̨ne Final Self-Government Agreement Act*, SNWT 2015, c.3 https://www.justice.gov.nt.ca/en/files/legislation/deline-final-self-government-agreement/deline-final-self-government-agreement.a.pdf accessed 17 September 2025.

- *Deline Final Self-Government Agreement Act*[27]

There is probably little legal risk in terms of these variations of spellings.[28] The variations in spelling are most likely due to the inability of the word-processing software or content management system software (running the website) to handle legacy fonts or modern Unicode.[29] The variations may also be due to an evolving or incomplete standardization of orthography for endonyms over time.

Microsoft Word 365

The modern Windows environment uses the Unicode Transformation Format 8 (UTF-8) character encoding, which is claimed to support all the valid code points in Unicode.[30] If one is working with file names (or in the PowerShell), some customization may be needed, otherwise it may just use ASCII by default.[31] Generally, most Microsoft Office 365 products run using UTF-16. This means that Word, Excel, PowerPoint and Access are all supposed to be Unicode compatible.[32] Other software is also Unicode compatible but whether that other software uses a current version of Unicode may vary, especially if the software has not been updated for some years. Older versions of Windows applications may not be modern Unicode compliant.[33]

Other Software and Linux

The opensource office suite, LibreOffice 25.2.5, is fully Unicode compliant.[34] The opensource typesetting program, LaTeX, is also fully Unicode compliant.[35] The key codes

[27] See Northwest Territories, Department of Justice Legislation Division, "Legislation of the Northwest Territories" https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0:/d/ accessed 17 September 2025.

[28] Consider: *Auberge & Spa Le Nordik Inc. v THERME Development (CY) Ltd.*, 2024 FC 1765 and *Yogen Früz Canada Inc v Industries Lassonde Inc*, 2014 TMOB 169 (CanLII). These are trademark cases.

[29] Consider the Legislation Division website spelling of Deline without diacritics, at Northwest Territories, Department of Justice, "Legislation of Northwest Territories" https://www.justice.gov.nt.ca/en/legislation/#gn-filebrowse-0:/d/ accessed 17 September 2025. Yet the diacritics are present on other websites, such as the website of the Department of the Executive and Indigenous Affairs: Northwest Territories, Department of Executive and Indigenous Affairs, "Concluding and Implementing Land and Resources Self-Government Agreements" https://www.eia.gov.nt.ca/en/priorities/concluding-and-implementing-land-and-resources-and-self-government-agreements/deline accessed 17 September 2025. This issue has now expanded to websites.

[30] Microsoft Ignite, "Naming Files, Paths, and Namespaces" https://learn.microsoft.com/en-us/windows/win32/fileio/naming-a-file accessed 17 September 2025.

[31] Microsoft Ignite, "about_Character_Encoding" https://learn.microsoft.com/en-us/powershell/module/microsoft.powershell.core/about/about_character_encoding?view=powershell-7.5 accessed 17 September 2025.

[32] See footnote 23 above. That example may illustrate limited compatibility of Word with Unicode.

[33] This paper has been written using Word 365.

[34] LibreOffice is an opensource office program originally based on Sun Microsystem's OpenOffice. MS Office is partially based on it. See LibreOffice, "Download LibreOffice" https://www.libreoffice.org/download/download-libreoffice/ accessed 17 September 2025.

[35] LaTeX is an opensource typesetting program rather than a word-processor or desktop publisher. See LaTeX, "LaTeX — A document preparation system" https://www.latex-project.org/ accessed

to enter Unicode characters may have a different sequence though. This can be looked up either in the software's documentation or online.

Part 3 — Toponyms

Toponyms, Exonyms and Endonyms

This Part considers how Indigenous diacritics are used in the context of

(a) names applied to Indigenous peoples and places by colonial officials (exonyms); and

(b) names applied to Indigenous peoples and places by Indigenous peoples (endonyms).

In the case of place names, this Part considers how official place names (toponyms) are determined and the continuing work of the Geographical Names Board of Canada in recognizing endonyms. This is an on-going task nationally, given the geographical expanse of provinces and territories, including the Northwest Territories. While legal aspects may be negligible, endonyms represent recognition of the diverse cultures within the Northwest Territories (and nationally), the inclusion of those cultures in governance and reconciliation between colonists and Indigenous peoples.

There are challenges facing legislative drafters. These include endonym spellings that continue to be standardized and legacy computer software that pre-dates Unicode and fails to use Indigenous diacritics. An example of this is considered with the spellings of "Déljnę".

Legal and Policy Aspects

The *Official Languages Act* sets out the 11 official languages of the Northwest Territories: Chipewyan (Dëne Sųłiné), Cree, English, French, Gwich'in, Inuinnaqtun, Inuktitut, Inuvialuktun, North Slavey, South Slave and Tłįchǫ.[36] The official languages

17 September 2025. Also consider Stack Exchange, "Entering Unicode characters in LaTex" https://tex.stackexchange.com/questions/34604/entering-unicode-characters-in-latex accessed 17 September 2025. For an overview see Wikipedia, "LaTex" https://en.wikipedia.org/wiki/LaTeX accessed 17 September 2025. The program separates layout from content – while an old approach used in DOS-based programs like WordPerfect is surprisingly modern again with website content management systems. Both LaTeX and LibreOffice are types of opensource software. Opensource software is increasingly used by governments worldwide, including the Government of Kerala in India, the Government of Malaysia and several governments in the European Union. See Wikipedia, "Adoption of free and open-source software of public institutions" https://en.wikipedia.org/wiki/Adoption_of_free_and_open-source_software_by_public_institutions accessed 17 September 2025. The Government of Canada also has a policy on this: Government of Canada, "Guide for Using Open Source Software" https://www.canada.ca/en/government/system/digital-government/digital-government-innovations/open-source-software/guide-for-using-open-source-software.html accessed 17 September 2025.

[36] *Official Languages Act*, RSNWT 1988, c O-1 at s 4 [*Official Languages Act*].

> ...have equality of status and equal rights and privileges as to their use in all government institutions.[37]

In practice, English and French are the primary languages used, largely because their equality of status is set out in the *Constitution Act, 1982*.[38] This might suggest that there is no need for the use of Indigenous diacritics in legislation.

Around November 1997, the Executive Council issued a Policy in respect of geographical and community names — toponyms.[39] The purpose of the Policy is, in part, the recognition of:[40]

> … the importance of traditional names for geographical features and populated places to the language, culture and history of the Indigenous people of the Northwest Territories ...

Geographical Names Board of Canada (GNBC)

The Policy outlines the responsibilities of the Minister and Deputy Minister of the Department of Education, Culture and Employment and an advisory role of a representative of the Northwest Territories on the Canadian Permanent Committee on Geographical Names.[41] The Canadian Permanent Committee on Geographical Names is now known as the Geographical Names Board of Canada (GNBC).[42] The Northwest Territories representative is the Territorial Archaeologist. Part of the mandate of the Board is to be a national coordinating body that develops

> ... standard policies for the treatment of names and terminology, the promotion of the use of official names, and the encouragement of the development of international

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[37] *Official Languages Act* at s 5.

[38] See *Canadian Charter of Rights and Freedoms* at s 16, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982*, 1982, c 11 (UK). There is also an "Executive Council Policy 71.10: Official Languages" that outlines procedures for making government programs and services accessible to the public: Government of Northwest Territories, "Executive Council Policy 71.10: Official Languages" (29 January 1988) https://www.eia.gov.nt.ca/sites/eia/files/content/71.10-official-languages.pdf accessed 17 September 2025. The Policy was last revised on January 29, 1998, and still refers to Tłı̨chǫ as "Dogrib". The use of French in legal proceedings is not new and was common in England between 1066 and 1362 but that ceased with the *Pleading in English Act 1362*, 36 Edw. 3 Stat 1 c 15. See: S. Cunningham, "The Language of Government and the power of plain English" (19 April 2017) https://history.blog.gov.uk/2017/04/19/the-language-of-government-and-the-power-of-plain-english/#:~:text=The%201362%20Pleading%20in%20English,about%20what%20happened%20in%20court accessed 17 September 2025.

[39] Northwest Territories, Government of the Northwest Territories, "Executive Council Policy 71.09: Geographical and Community Names (24 November 1997) https://www.eia.gov.nt.ca/sites/eia/files/content/71.09-geographical-and-community-names.pdf accessed 17 September 2025. [Executive Council Policy 71.09].

[40] Executive Council Policy 71.09 at s 1.

[41] Executive Council Policy 71.09 at par 5(2)(b).

[42] Canada, Natural Resources Canada, "Geographical Names Board of Canada" https://natural-resources.canada.ca/maps-tools-publications/maps/geographical-names-board-canada accessed 17 September 2025. [Geographical Names Board website].

> standards in cooperation with the United Nations and other national authorities responsible for naming policies and practices.[43]

The GNBC Secretariat is run by the Government of Canada (Natural Resources Canada). One of the products of the GNBC and Natural Resources Canada is the Canadian Geographical Names Database (CGNB). From this database is constructed the Gazetteer of Canada. The webpage where the data files are located contains the following advisory:

> Content advisory: The Canadian Geographical Names Database contains historical terminology that is considered racist, offensive and derogatory. Geographical naming authorities are in the process of addressing many offensive place names, but the work is still ongoing. For more information, please contact the GNBC Secretariat.[44]

Offensive names could include names imposed on Indigenous toponyms as a legacy of colonialism — exonyms.[45]

The actual data files are available in various formats and available in filtered form by province or territory. For the Northwest Territories, there are 4,778 toponyms listed in a comma separated values (CSV) file. While the file is a plain text file, it does use Unicode and, as such, Indigenous diacritics are present in some of the names. This enables one to simply copy and paste to a document if the underlying software is Unicode compatible. A CSV file, with thousands of entries, is not easy to read but it can be imported into a local database. This can result in a locally produced report or Gazetteer of the Northwest Territories, with all of the toponyms expressed, including their location, the language used and a national toponym ID number in hexadecimal format. The CGNB is also an attempt to standardize names. Whatever appears in the Gazetteer is the official spelling to be applied when new topographic maps are printed.[46]

Déljnę Revisited

From the CNGB Database, the following records exist for Déljnę:[47]

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[43] Geographical Names Board website.

[44] Canada, Natural Resources Canada, "Download Geographical Names Data" https://natural-resources.canada.ca/maps-tools-publications/maps/geographical-names-canada/download-geographical-names-data accessed 17 September 2025.

[45] For example, "Port Brabant" was imposed on an Inuvialuit hamlet on the Mackenzie River delta. In 1950 it became one of the first Indigenous communities to reclaim its Indigenous name: Tuktoyaktuk. See Edmonton Public Library, "Infofile Detail — Native Names for Native places" (30 July 2013) https://web.archive.org/web/20130730041125/http://www.epl.ca/infofile-detail?subject_detail=Native%20Names%20for%20Native%20Places accessed 17 September 2025. This suggests a continuing effort at decolonization since at least 1950.

[46] Topographic maps are the responsibility of Natural Resources Canada and must comply with the National Topographic System (NTS) of Canada. See Canada, Natural Resources Canada, "Topographic maps" https://natural-resources.canada.ca/maps-tools-publications/maps/topographic-maps accessed 17 September 2025.

[47] Note the difference in the number of significant figures for the longitude between these two locations. Deline First Nation is within the area of Déljnę. The hexadecimal identification number is not important for

Déljnę					f580205cd05211d892e2080020a0f4c9
Language	*Dene Kədə, North Slavey*	*Latitude*	*65.1888889*	*Longitude*	*-123.4225*
Deline First Nation					6b7aa34d2e274a6fadec8c6f6e8043e4
Language	*Undetermined*	*Latitude*	*65.1885569*	*Longitude*	*-123.425492*

There is a "e" with the acute accent, an "i" (with the tittle) and an ogonek, and an "e" with an ogonek. The official standardized spelling of the toponym is therefore "Délįnę". Most of the legislation in the Northwest Territories does not use this spelling. It will need to be corrected and can be corrected easily once Bill 22-19(1), the *Legislation Act*, is assented to and comes into force.[48]

But notice the accompanying record where "Deline First Nation" is spelled with no Indigenous diacritics. A search for "Deline First Nation" on the Justice Laws Canada website reveals "Déline First Nation" in all four hits.[49] This reflects the earlier content advisory on the CNGB website that the renaming of toponyms (specifically exonyms and endonyms) is an on-going process. That would include the "proper" use of Indigenous diacritics. This spelling could be an artefact that predates standardized spelling or a limitation in the technology from using software that predates the advent of Unicode or that is not up to date.[50]

Part 4 — Suggestions for Legislative Drafters

In this Part, we consider suggestions for legislative drafters on how to deal with the dynamic and sometimes confusing situation surrounding the use of legacy fonts and Unicode.

Legislative drafters should not be intimidated by the information technology aspects of Unicode or of the impact of rapid technological change. Most of all, they should be willing to experiment and test new ideas and new approaches to their work. Legislative drafters need to make efforts to understand the technology that is before them, including the capabilities and limitations of that technology.

The legacy font set represents one adaptation of technology for the purposes of applying Dene fonts to legislation (and documents generally). At the heart of that adaptation is the intention to be more inclusive and reflect the diversity of the peoples of the Northwest Territories. The advent of Unicode and its ability to handle Dene fonts represents another

this paper, but it does reflect that Canada is a rather large country geographically and that the database holds many records.

[48] Northwest Territories, Legislative Assembly, "Bill 22-20(1) — Legislation Act" https://www.ntlegislativeassembly.ca/documents-proceedings/bills/legislation-act accessed 17 September 2025. Consider sections 20 and 34 of that bill.

[49] Canada, Department of Justice, "Advanced Search" https://laws-lois.justice.gc.ca/Search/Advanced.aspx accessed 17 September 2025.

[50] This is not unlike the problem of incorporating website addresses (Uniform Resource Locators – URLs) into legislation (or cross references for that matter). Addresses (and legislation) change over time and invariably one will end up with a broken hyperlink, unless one maintains the currency of the links.

adaptation and even greater inclusivity. One must be adaptable in the face of technological change.

There are challenges. Variations in spellings in endonyms demonstrate a need for standardized spellings. Trying to identify standardized spellings is difficult. Legacy legislation might not have used such spellings. Who sets the standard? For toponyms, the standardized spellings are set by means of a committee (GNBC) composed of local and government officials, including representatives from Indigenous governments and organizations. The Canadian Geographical Names Database remains a work in progress. For the legislative drafter, keeping current on changes is important.

There remain limits to undoing the effects of colonization. The limits of technology are in of themselves a form of colonization – technological colonization. While Unicode is undoing some of the effects of technological colonization (for instance extending characters beyond those of ASCII), the technology still has its limits in terms of universality as demonstrated by a limited compatibility of WordPerfect 2021 and Word with Unicode, especially in older versions of the software. Inconsistent spellings are another factor to consider as oral Indigenous languages are mapped into written form. Legislative drafters need to keep in mind the limits of technology and the impact such limits may have on their work.

Conclusion

Colonialism has forced changes in language, culture and relationships with groups. Technological innovation, with its component of technological colonialism, has had a similar effect. The innovations of Morse code, the teletype and typewriter allowed English characters to dominate the globe, but it also came at an expense to the English language and other languages. The loss of the ash character demonstrates the effect in English. As telecommunications became a world-wide technology, some degree of accommodation became necessary as a multitude of peoples and cultures became part of a global network. The use of diacritics became more commonplace. In the Northwest Territories, a renewed sense of inclusion and equality of English and French speakers emerged. Centuries of suppression of Indigenous peoples gave way to a greater recognition of their contribution to the diversity of the nation, recognition of the equality of their language and greater inclusion through recognition of endonyms. Technology was adapted to accommodate this greater inclusivity, initially through the introduction of legacy fonts and then Unicode. Unicode enabled the enhanced use of Dene fonts and Syllabics with word-processing software. As pointed out above, not all software was (or is) Unicode compliant. Indigenous fonts have become even more relevant to facilitate the conversion of exonyms to endonyms, whether that is the names of Indigenous peoples, place names or languages. The standardization of those names is a challenge for legislative drafters. This was illustrated with the variations in the name “Dél̨ı̨ę”. Eventually, Northwest Territories legislation will need to catch up with the evolving spellings and naming conventions.

The use of the legacy fonts and Unicode demonstrates on-going efforts to promote reconciliation between Indigenous peoples and non-Indigenous peoples in the Northwest

Territories. There remain technical issues to be overcome, but technological innovation seems to be undoing some of the damage wrought by the impact of technological colonialism through the suppression of parts of language for technological convenience and the dominance of colonial languages in that technology.

Evolution of Legislative Drafting Style in English

John Mark Keyes[1]

Abstract

This article considers how legislative drafting in English has evolved in four jurisdictions from its medieval origins in England to the present day. It traces successive developments aimed at improving legislation to meet evolving political and social changes, particularly in terms of communicating the law effectively. The article also examines recent legislation in the four jurisdictions dealing with the same subject- matter (preventing harmful on-line communication) and notes considerable congruence among their drafting styles with some notable diverging aspects.

Introduction

This paper looks at styles of drafting legislation in English. It begins by considering what legislative drafting style is and then recounts the main stages of its development from the Middle Ages in England to the present in the national drafting offices of four jurisdictions: the United Kingdom, Canada, Australia and New Zealand. It then considers the main features of drafting style and, on the basis of the review of drafting developments in the four offices, concludes there is remarkable similarity in the drafting styles of these offices, focused as they are on communicating the law effectively to those it applies to. The differences among them pertain to a few drafting techniques that have been more recently suggested under the rubric of plain language and reflect ongoing debate about their merits. These differences are highlighted in a comparison of recent legislation in Canada, Australia and New Zealand dealing with harms arising from online communications.

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What is legislative drafting style?

Writing style is generally understood to involve the manner of writing, as distinct from the content it expresses. One of the meanings the Oxford English Dictionary gives for "style" is

> [t]he manner of expression characteristic of a particular writer (hence of an orator), or of a literary group or period; a writer's mode of expression considered in regard to clearness, effectiveness, beauty, and the like.[2]

Drafting is a form of writing associated with legal documents, notably those having legal force. Like other forms of writing, drafting is also associated with particular writing styles that differ somewhat among drafters and the types of documents they draft. This reflects the different perspectives people bring to drafting legislation in different jurisdictions. The sovereignty inherent in legislative authority extends not only to its substance but also to the manner of its exercise. Legislative style is more a matter of convention than the application of firm rules, as the following discussion of legislative drafting style demonstrates.

One of the most extensive accounts of the history of English legislative drafting is that of Courtnay Ilbert in *Legislative Methods and Forms*, published in 1901.[3] Chapter IV is entitled "Stages in the Improvement of the English Statute Law". It begins with "Proposals under King Edward VI" and concludes with a discussion of the *Short Titles Acts* of 1892 and 1896.[4] This history demonstrates that legislative style has not been static. It has developed with a view to improving how legislation functions as a means of creating and disseminating law. This paper outlines the main stages of the development of legislative drafting in English, beginning with its origins in the 13th century and continuing into the present age.[5]

How has Legislative Drafting Style Evolved?

English Origins

The origins of legislative drafting are tied up with those of law-making itself. Parliament, as a body composed of the monarch and their advisors, began to take shape at the beginning of the 13th century. It has been observed that by the time Henry III reissued the *Magna Carta* in 1225 there were "at least the beginnings of an understanding that [the King] could not legislate for the whole realm without the advice and concurrence of his magnates".[6] Driedger has described the style of legislation in these early years:

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[2] *Oxford English Dictionary* https://doi.org/10.1093/OED/1075024746 "style" sense II.13.a.

[3] C. Ilbert, *Legislative Methods and Forms* (Clarendon Press, 1901).

[4] Ilbert 1901 at pp 43-76.

[5] The commentary discussed below focuses particularly on legislative drafting. However, many other authors have touched on this topic in their accounts of legislation generally: see, for example, W.F. Craies, *A Treatise on Statute Law* (Stevens & Haynes, 1907); F.A.R. Bennion, *Statute Law* (Oyez, 1980); J.F. Burrows, *Statute Law in New Zealand* (Butterworths, 1992).

[6] C.K. Allen, *Law in the Making*, 7th ed (Oxford University Press, 1964) at p 437.

> Statutes were short. They were in effect statements of policy, and judges applied the policy as they saw fit to the facts before them. They put things into the statute that were not there, they took out things that were there, and they filled in gaps.[7]

This style reflected the primary law-making role of the monarch (the King), albeit attenuated by an advisory role conceded to the monarch's council of nobles. If the monarch accepted the council's petitions, they were sent to judges of the court to draft into statutes.[8] This explains the generalized and purposive mode of drafting, as well as a corresponding approach to interpreting legislation, which Plucknett describes as "free interpretation", unconstrained by the text.[9]

By the middle of the 14th century, this interpretive approach began to give way to one strictly based on the text, incorporating rules of logic and grammar and developing into "a system of great complexity".[10] This shift was driven by the development of a second drafting style originating in the 15th century as the Houses of Lords and Commons became established and asserted more control over law-making.[11] Rather than sending petitions to the King, they sent the text of proposed legislation (bills), which were drafted by conveyancers (property lawyers) in lengthy blocks of dense text.[12] This style of drafting was employed because the Lords and Commons did not trust the monarch's judges to draft generalized petitions into law. They wanted to assert control over the content of legislation by drafting its details and presenting it to the monarch for a simple yes or no (assent).

19th Century Reforms

At the beginning of the 19th century, the prevailing style of legislative drafting began to attract considerable criticism, notably by Jeremy Bentham. He realized the potential of legislation as a vehicle for social reform that was, in turn, activated by electoral reforms expanding the vote and the democratic legitimacy of law-making bodies in the UK and elsewhere.

Bentham's *A General View of a Complete Code of Laws* contained a chapter entitled "Of the Style of Laws". It began with a discussion of those to whom laws are addressed:

> The desirable object of the laws in regard to style is, that it may be such that at every moment in which they ought to influence the conduct of a citizen, he may have

[7] E.A. Driedger, *A Manual of Instructions for Legislative and Legal Writing* (Minister of Supply and Services Canada, 1982), Book 1 at p 9.

[8] S.G.G. Edgar, *Craies on Statute Law*, 7th ed (Sweet & Maxwell, 1971) at p 21.

[9] T.F.T. Plucknett, *A Concise History of the Common Law*, 5th ed (Little, Brown and Company, 1956) at pp 331-332.

[10] Craies at p 22.

[11] Edgar at p 22. See also Driedger 1982 at p 12.

[12] Edgar at p 22.

> presented to his mind an exact idea of the will of the legislator in this respect. … Hence we discover that clearness, precision, is one of the essential qualities of this style.[13]

Bentham went on to advocate the use of legal terms "as are familiar to the people" and definitions using "common and known words".[14]

In a further work entitled *Nomography; Or the Art of Inditing Laws*, Bentham inveighed against "the several imperfections, of which examples are to be found in the language habitually employed … by framers of English statute law".[15] He divided these "imperfections" into two groups. The first consisted of ambiguity, obscurity and "overbulkiness".[16] The second entailed "unsteadiness" (inconsistency) of words and phrases, redundancy, "longwindedness", "entanglement" (combining distinct propositions in one sentence), lack of "helps to intellection" (reading aids such as headings and division of sentences into parts) and "disorderliness" (disorganization).[17]

Bentham's work is a remarkable precursor to the plain language movement in the latter part of the 20th century. And although much of it appears to have had little immediate influence on legislative drafting, it may have inspired those who wrote about legislative drafting afterward.

In the mid-19th century, George Coode endorsed a more "natural" way of drafting:

> Arbitrary or artificial rules of composition cannot be insisted on. … None but natural rules, that is to say rules that are strictly derived from the nature of the subject matter, and therefore of universal application to it, can ever be maintained.[18]

He identified the core elements of legislative sentences and advocated clarity in identifying their legal subjects (including admonishing the passive voice) and simpler modes of expressing legal action (using "may" and "shall" instead of verbose expressions such as "it shall be lawful").[19]

In 1877, following the establishment of the Office of Parliamentary Counsel and his appointment as its head, Henry Thring published *Practical Legislation*.[20] It was based on *Instructions to Draftsmen* in that Office and was divided into four parts:

> (1) the "mode of work, getting up [the] subject";

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[13] J. Bentham, *A General View of a Complete Code of Laws* in John Bowring, ed, *The Works of Jeremy Bentham* (William Tait, 1843) at vol 3, p 369 ["Bentham General View"].

[14] Bentham General View at pp 372-373.

[15] Jeremy Bentham, *Nomography; Or the Art of Inditing Laws* in John Bowring, ed, *The Works of Jeremy Bentham* (William Tait, 1843) at vol 3, pp 423-424 ["Bentham Nomography"].

[16] Bentham Nomography at p 425.

[17] Bentham Nomography at pp 426-427.

[18] G. Coode, "Coode on Legislative Expression" in E.A. Driedger, *The Composition of Legislation*, 2nd ed (Supply & Services Canada, 1976) at pp 317-378.

[19] Coode at pp 328-329.

[20] M. MacKenzie & D. Purdie, eds, *Thring's Practical Legislation: The Composition and Language of Acts of Parliament and Business Documents*, 3rd ed (Luath Press, 2015).

(2) arrangement of the subject-matter of an Act of Parliament;

(3) composition of sentences; and

(4) observations and suggestions with respect to preambles, the commencement and construction of Acts and other formal matters.[21]

His recommendations relating to arrangement and the composition of sentences resonate with modern notions of good drafting practice.

In "Simple Acts", he advocated identifying and stating the "principle or leading motive"[22] and a similar approach for complex Acts.[23] He also advocated putting provisions "declaring the law" before administrative provisions, and "simpler propositions" before more complex ones.[24]

As for the composition of sentences, he advocated "clarity" achieved through "the proper selection of words" and the "arrangement and construction of sentences."[25] This entailed distinguishing each component of a legal proposition and "expressing them in a short sentence or sentences" and avoiding "Latin words and, where possible, without a sacrifice of accuracy, technical phraseology."[26]

The guidance of Bentham, Coode and Thring continued to be noted through the latter part of the 19th century and into the 20th.[27] It evolved into a style that continued in the UK well into the 20th century and included non-textual amendment of prior legislation.[28] This approach to amendment did not indicate how (if at all) the prior legislation was to continue to apply. Although the objective was to make it easier for legislators to grasp the substance of amendments, it became much more difficult for those affected by the legislation to understand and apply it.

Modern Reforms

United Kingdom

Despite the drafting reforms advocated in the 19th century, dissatisfaction with legislative style continued in the UK, manifesting itself in the report of the Renton Committee in 1975.[29] The Renton Report noted that UK legislation "lacks simplicity and clarity". It elaborated on this criticism in terms of

[21] MacKenzie & Purdie at pp 31-32.

[22] MacKenzie & Purdie at pp 45-48.

[23] MacKenzie & Purdie at pp 49-51.

[24] MacKenzie & Purdie at pp 55-56.

[25] MacKenzie & Purdie at pp 73.

[26] MacKenzie & Purdie at pp 90.

[27] See C. Ilbert, *The Mechanics of Law Making* (Columbia University Press, 1914) at p 91ff.

[28] Driedger 1982 at p 12 describes this method of amendment as a statute saying "that a particular provision of an Act 'shall be read and construed as' as if certain words were added or substituted."

[29] *The Preparation of Legislation,* Cmnd 6053 (Her Majesty's Stationery Office, 1975) ["Renton Report"].

- language "obscure and complex", meaning is "elusive" and effect is "uncertain";
- over-elaboration – excessive detail;
- structure – "illogical and unhelpful to the reader";
- arrangement and amendment – legislative subject-matter scattered across the statute book and non-textual amendment.

The Report noted with approval a recent shift toward textual amendment[30] and made a series of Recommendations (18 to 31) related to drafting techniques, including

- the inclusion of statements of purpose (15);
- few subordinate clauses before the main clauses in sentences (16);
- avoiding long unparagraphed sentences (18);
- user-oriented arrangement (19);
- increased use of fractions and simple mathematical formulas (24).[31]

More recently, the Good Law Initiative, begun in 2013, aimed to improve the content, language, architecture and publication of legislation.[32] It led to the publication of drafting guidance for members of the Office of Parliamentary Counsel, which begins with a discussion of clarity framed in terms of

- telling the story – providing an overview or tables of contents;
- finding a logical order and structure;
- getting to the point (the main proposition);
- keeping propositions short;
- employing simple, logical sentence syntax;
- using standard English vocabulary that avoids archaisms.[33]

The guidance goes on to address particular aspects of language, style and structure, including

- gender neutrality,
- numbering provisions;
- headings and overviews;
- formulas, method statements and tables;

[30] See footnote 28.

[31] Renton Report at pp 150-151.

[32] See "Good Law: the Vision" (16 April 2013) https://www.gov.uk/guidance/good-law.

[33] Office of Parliamentary Counsel (UK), "Drafting Guidance" (4 April 2024) https://www.gov.uk/government/publications/drafting-bills-for-parliament/2024-03-19-drafting-guidance.

- conjunctions;
- lists and schedules;
- cross-references;
- definitions.

The UK Office of Parliamentary Counsel has now clearly adopted a user-oriented approach to drafting that resonates with many of the elements of plain language.

Canada

The Uniform Law Commissioners was founded in 1918 with a view to drafting model legislation for enactment across Canada's many federated jurisdictions. Uniformity of legislation from one province to another, or in matters having both federal and provincial aspects, was considered helpful in binding the country together and facilitating interjurisdictional transactions. However, the commissioners realized that drafting uniform laws also required uniformity in drafting style. To that end, one of the first things they did was establish a committee to prepare "a set of rules and suggestions for use in drafting uniform Statutes".[34] The committee responded as follows:

> The committee in preparing this pamphlet has not presumed to formulate rules for the guidance of the Conference in drafting Statutes, but is placing before the Commissioners certain suggestions in the form of extracts from the writings of those who from their long experience and acknowledged ability are best able to speak with authority on this subject. The work of the committee has been directed to the selection of the material most likely to be found useful by those who may be engaged in the drafting of uniform Statutes.[35]

The extracts were taken from Coode, Thring and Ilbert as well several American commentators[36] and organizations.[37] Over the next 70 years, the guidance evolved into a set of Drafting Conventions that were most recently revised in 2023.[38] They now begin by saying

> 1. (1) A legislative text should be drafted simply, clearly and concisely, with the required degree of precision, and as much as possible in ordinary language.

The Conventions go on to elaborate on legislative language, address the formal elements of legislation and the arrangement of its provisions and state drafting principles about verbs,

[34] Uniform Law Conference of Canada, *Proceedings of the 2nd Annual Uniform Law Conference of Canada, Winnipeg, 1919* at p 9 (adopting the report of the committee on legislative drafting in Appendix B).

[35] Uniform Law Conference of Canada 1919 at p 26.

[36] C.L. Jones, *Statute Law Making in the United States* (The Boston Book Company, 1912) and A. Willard, *A Legislative Handbook* (Hurd & Houghton, 1890).

[37] National Conference of Commissioners of Uniform State Laws, State Historical Society of Iowa, Iowa City.

[38] Uniform Law Conference of Canada, "Revision of the Drafting Conventions" (22 August 2023) https://www.ulcc-chlc.ca/ULCC/media/Civil-Section-documents/Drafting-Conventions-approved-approuvees-Conventions-only-final.pdf.

types of provisions that occur frequently, internal references and non-textual elements (tables, formulas and graphics).

Beginning in the middle of the 20th century, Elmer Driedger published a series of articles inveighing against "the notion that [the drafter] must make the statute sound 'legal'" by using verbose legalistic expressions such as "hereinafter" or precede nouns with "such" and "said". He, asserted, "[s]tatutes must be written in good English. The advice of Fowler and other authorities on language if valid for the draftsman too. There is no special language for statutes."[39] He also noted a Canadian style originating through the efforts of the Department of Justice (Canada) and the Uniform Law Commissioners.[40] Its objectives were to "remove archaic 'legalese' from the statutes; … to write shorter sections and make them more presentable and comprehensible." Driedger went on to quote the tongue-in-cheek comments of Sir Robert Megarry about Canadian legislation:

> The complaint is about your statute books, both federal and provincial. They are too plain. I have read many, many pages of them; and I found that I could understand all that I read or nearly all. That is not the sort of thing that one ought to find in any well-mannered statute book.[41]

Driedger illustrated his points by annotating a 1933 Canadian Act closely modeled on its British Act and indicated the many stylistic differences in the Canadian drafting practices, including a more limited use of "shall" and the division of long sentences into shorter ones or paragraphs.[42]

Driedger also acknowledged, "there is undoubtedly much room for improvement in the quality of our statute law" and the persistence of "a common law lawyer's style – ancient, verbose, complicated."[43] This was echoed in a report of the Canadian Bankers' Association and the Canadian Bar Association in 1990 entitled *The Decline and Fall of Gobbledygook*.[44] Although it principally addressed the drafting of commercial and private legal documents, it noted a plainer style of drafting in French in the province of Quebec and recommended "all governments in Canada to adopt plain language techniques in the drafting of legislation, regulations and government forms".[45]

More recently, Paul Salembier has discussed drafting style in Canada, beginning with a quote from Ruth Sullivan that legislative style is "formal, serious and impersonal" and is

[39] Driedger 1982 at p 1.

[40] Driedger 1982 at p 12.

[41] (1979), 5 Commonwealth Law Bulletin 963.

[42] Driedger 1982 at pp 13-26.

[43] Driedger 1982 at p 13.

[44] Canadian Bar Association and Canadian Bankers' Association Joint Committee on Plain Languages, *The Decline and Fall of Gobbledygook: A Report on Plain Language Documentation* (Canadian Bar Association and Canadian Bankers' Association, 1990) ["Decline and Fall of Gobbledygook"]

[45] Decline and Fall of Gobbledygook at p 48.

"remote not only from everyday speech but from most other forms of expression as well."[46] He ties this style to principles of statutory interpretation that assume consistency of expression, no tautology and implied exclusion.[47] However, he also acknowledges the stylistic features Driedger and his predecessors identified and the complaints about the length of legislative sentences, legalistic or archaic language and double negatives as undesirable stylistic features.[48] He speculates on the reasons for continued recourse to these features (mischievous drafters, recycling old precedents in the face of time pressures, the conservativism ingrained by teaching in common law faculties in Canada and an absence of courses on drafting), but ventures to take "at least tentative steps towards remedying this gap by providing a framework within which drafters can improve the documents they produce".[49]

In the 1990s, the Government of British Columbia established a Plain Language Institute dedicated to improving government communication. This initiative had a significant effect on legislative drafting in that province, including on the 1996 revision of BC Statutes. The objectives of the revision were

- to replace the traditional "he includes she" approach with a gender-neutral drafting style;
- to replace unnecessarily legalistic terms and writing style with more common forms of expression;
- to redesign the statute format using plain-language principles.[50]

The revision advanced these objectives by, among other things, replacing "shall" with other verb forms expressing obligation, notably "must".

The Federal Government has also embraced many elements of plain language drafting[51] and engaged in two projects to improve the readability of legislation. The Department of Justice, along with two other government departments, undertook projects in the 1990s to redraft the *Employment Insurance Act*[52] and regulations under the *Explosives Act* dealing with

[46] P. Salembier, *Legal and Legislative Drafting*, 2nd ed (Lexis Nexis, 2018) at p 7, citing R. Sullivan, "Some Implications of Plain Language Drafting" (2001) 22 *Statute Law Review* at p 183.

[47] Salembier at pp 7-10.

[48] Salembier at pp 11-12.

[49] Salembier at p 14.

[50] See Office of Legislative Counsel, Ministry of Justice of British Columbia, "Part 4 Statute Revisions" in *A Guide to Legislation and Legislative Process in British Columbia* (August 2013) https://www.crownpub.bc.ca/Content/documents/4-StatuteRevision_August2013.pdf at p 3.

[51] Justice Canada Evaluation Branch, "Evaluation of Legislative Services Final Report" (June 2023) https://www.justice.gc.ca/eng/rp-pr/cp-pm/eval/rep-rap/2023/ebiaes-desaie/pdf/ebiaes-desaie_FinalReport-en.pdf at p 33, stating: "evaluation findings confirm that the [Legislative Services Branch] has been pursuing efforts to simplify and enhance the clarity of the language used during the drafting process, by incorporating more lay terms."

[52] Development and Special Projects Unit, *Employment Insurance Act Plain Language Project* (Department of Justice Canada, 2001) ["EI Act"].

consumer fireworks.[53] The Report on the Employment Insurance project begins by stating its objective in terms of drafting style as

> to simplify the expression of concepts and to make it easier to locate information so that both new and regular readers of the Act would know where to find the information without having to read all the whole Act.[54]

The project involved applying a range of drafting techniques and testing the resulting drafts with various user-groups. The techniques involved shorter sentences, reduced cross-references, word choice, explanatory notes and highlighting defined terms. It also addressed the page layout of legislation, ultimately resulting in a revised layout reflecting modern document design considerations.[55]

The Department of Justice has also supported governmental regulatory policies through its commitment " 'to develop tools to foster the intelligibility of legislative texts' to improve the clarity and predictability of regulation for business and improve the understanding of regulatory requirements."[56] To this end, the Department has issued the *Guide to fostering the readability of legislative texts* "so that legislation is as accessible and as easy to understand as possible."[57] It promotes a series of drafting principles associated with plain language:

A. writing for the readers;

B. giving readers enough overall context to understand the purpose of the text;

C. organizing the material well;

D. showing readers the overall organization of the text;

E. helping readers find the information they are looking for;

F. giving readers the key structural elements of each legislative sentence as early as possible;

G. creating a logical flow from sentence to sentence;

H. using paragraphing when the elements of a legislative sentence lend themselves to a list;

I. keeping the language as simple as possible.

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[53] S. Trevethan, W. Gordon and M.A. Roy, *Consumer Fireworks Regulations – Final Report* (Ottawa: 1995).

[54] EI Act at p 13.

[55] Department of Justice Canada, "New Layout for Legislation" https://laws-lois.justice.gc.ca/eng/PDF/.

[56] Department of Justice Canada, "Guide to fostering the readability of legislative texts" https://www.justice.gc.ca/eng/trans/ar-lr/rg-gl/p1.html ["Guide"], citing Canada, Red Tape Reduction Commission, "Recommendations Report" (January 2012) https://publications.gc.ca/collections/collection_2012/sct-tbs/BT22-124-1-2012-eng.pdf at p 59.

[57] Guide.

These principles are also reflected in the Department's *Legistics*, an English legislative drafting guide addressing particular words and expressions, drafting sentences, paragraphing and punctuation.[58] This guidance is generally oriented towards improving the readability of legislation promoting, for example, the use of "must" instead of "shall", shorter sentences, and avoiding legal jargon and unnecessary cross-references.

Australia

In his comments on drafting style, Driedger remarked that Australia "has a style of its own too; not unlike the Canadian style, but they do some things that in my opinion should be done here and vice versa."[59] His generally positive view of this style was perhaps overstated. In 1985, the Attorney General of the State of Victoria (JH Kennan) requested the Law Reform Commission of that State to study how the language used in legislation, legal documents and government forms could be improved, particularly in terms of developments relating to plain English. The Commission's report in 1987 begins with an assessment that

> legal language remains largely unintelligible to most members of the community. It even causes problems for members of the legal profession. … Letters, private legal documents and legislation itself are still drafted in a style which poses unnecessary barriers to understanding.[60]

The report reviewed the problematic stylistic features of the legal documents, identifying substantially similar problems to those Driedger mentioned in his discussion of earlier legislative styles. The report summarized them as follows:

> Many legal documents are unnecessarily lengthy, overwritten, self-conscious and repetitious. They consist of lengthy sentences and involved sentence construction. They are poorly structured and poorly designed. They suffer from elaborate and often unnecessary cross-referencing. They use confusing tautologies such as "ordered, adjudged and decided" and "let, allow and permit". They retain archaic phrases such as "know all men by these presents" and "this indenture witnesseth". They use supposedly technical terms and foreign words and phrases, such as *inter alia* and *res ipsa loquitur*, even when English equivalents are readily available. They are unintelligible to the ordinary reader, and barely intelligible to many lawyers. Language which suffers from some or all of these defects is called "legalese". Linguists regard it as an identifiably different dialect or class of language.[61]

[58] Department of Justice Canada, "Legistics" https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/toc-tdm.html.

[59] Driedger 1982 at p 13.

[60] Law Reform Commission of Victoria, *Plain English and the Law, Report 9* (Victorian Law Reform Commission, 1987) at p 8.

[61] Law Reform Commission of Victoria at p 9.

The report went on to consider how these features came to be associated with legal drafting. It found little reason to continue them in modern times and suggested ways of drafting more simply and intelligibly.[62]

The recommendations of the Commission have been taken up by the Commonwealth Office of Parliamentary Counsel. It released its *Plain English Manual* in 1993 and publishes it on its website along with a host of other Drafting Resources, including Drafting Directions.[63] The Manual now begins with a note about its status as a Drafting Direction and acknowledging the continuing issuance of Drafting Directions and Notes.[64]

More recently, the Parliamentary Counsel's Committee has produced a *Protocol on Drafting National Uniform Legislation*.[65] The Protocol is designed to promote consistency in the drafting of legislation to be enacted or adopted in or for multiple jurisdictions with a view to having consistent legislation across the jurisdictions.[66] Section 6 of the Protocol sets out drafting conventions addressing a wide variety of legislative matters and more particularly says "Plain English drafting (which has been the approach adopted in all Australian jurisdictions for some time) will apply to national uniform legislation".[67]

New Zealand

Garth Thornton's *Legislative Drafting* was first published in 1970. It was based on the author's remarkable drafting career that began in New Zealand and that took him around the world, ultimately to Hong Kong.[68] Now in its 6th edition under the auspices of Helen Xanthaki, it continues to address drafting style:

> And so far as style is concerned, no absolute judgments may be passed; no arbitrary line can be drawn between "good style" and "bad style". Style is a relative matter and the same criteria applicable to all prose writing are equally appropriate to the drafting of legislation. Good style must fit the purpose of the communication, and the degree to which the manner of expression achieves the purpose is the sole measure of the quality of the style.[69]

[62] Law Reform Commission of Victoria at p 88ff (Appendix 1).

[63] Australia, Office of Parliamentary Counsel, "Plain English Manual" (19 December 2013) https://www.opc.gov.au/sites/default/files/2023-01/plain_english_0_0.pdf ["Plain English Manual"].

[64] The cover page in Note 2 says:

> This Manual has the status of a Drafting Direction, although there are some practices suggested in the Manual that the Office of Parliamentary Counsel does not follow. If another Drafting Direction or Word Note is inconsistent with this Manual, the Drafting Direction or Word Note prevails (see Drafting Direction 2.1).

[65] Parliamentary Counsel's Committee, "Protocol on Drafting National Uniform Legislation" 4th ed (21 February 2018) https://pcc.gov.au/uniform/Uniform-drafting-protocol-4th-edition.pdf.

[66] This includes model legislation and legislation enacted by the Commonwealth Parliament under clause 51(xxxvii) of the *Commonwealth of Australia Constitution Act 1900* (Imp) 63 & 64 Vict, c 12.

[67] Parliamentary Counsel's Committee at p 11.

[68] G. Thornton, *Legislative Drafting* (Butterworths, 1970).

[69] H. Xanthaki, *Thornton's Legislative Drafting*, 6th ed (Bloomsbury Professional, 2022) at p 55.

This identification of good legislative style with advancing communication encapsulates the core of this style. It suggests its features should contribute to (and not impede) communicating its substance. This provides a useful criterion for determining what legislative style is.

Thornton's criterion of good style is reflected in the New Zealand *Legislation Act 2019*.[70] Subsection 3(1) states its purpose is "to promote high-quality legislation for New Zealand that is easy to find, use, and understand." Paragraph (2)(b) goes on to say the Act "allows legislation to be simpler, shorter, and more consistent".

Ross Carter provides a quite recent commentary on drafting style in New Zealand, including its shift towards plain English.[71] He concludes:

> Innovations in drafting, and progress towards plain English drafting, are generally considered demonstrable improvements. But they have not been welcomed universally or been completely unproblematic. Changes have been incremental, leaving various Acts and issues unaddressed wholly or in part.[72]

Main Features of Legislative Drafting Style

Thornton's criterion for good legislative style encompasses the features discussed by other commentators. There is also considerable consensus among them as to the main features, which, as Thornton and Xanthaki suggest, relate to the purpose of communication. I discuss these features next under the following headings:

- Terminology and Grammatical Structure
- Structural Features and Page-layout
- Arrangement
- Generality / Specificity
- Reading Aids

Terminology and Grammatical Structure

The most basic stylistic features have to do with the language in which legislation is drafted. Legislative drafting in English has traditionally employed terminology and grammatical structures, often identified as "legalese", that are distinct from those used generally. This approach has been largely rejected in the national drafting offices of the four jurisdictions discussed above.

[70] *Legislation Act 2019* (NZ).

[71] R.I. Carter, *Burrows and Carter Statue Law in New Zealand*, 6th ed (LexisNexis New Zealand, 2021) at ch 4 ("Drafting").

[72] Carter at p 177.

These offices have endorsed the use of ordinary language, albeit nuanced in terms of technical matters, including legal concepts. They also promote consistency and concision in terminology (words mean the same thing; different words mean different things) as well as in expressing rules and concepts more generally (differences in their formulation indicate different meaning). These stylistic features are supported by textual methodology adopted by the courts.[73] However, resistance to updating terminology often results from court decisions that have settled its meaning; updating it risks reopening legal questions that have been settled.[74] This resistance can be lessened in the context of legislative revision that is not intended to alter the meaning of the text, but this intent must be made clear.[75]

These offices have also endorsed shorter sentences, recognizing that assembling a complex series of ideas into a single sentence does not avoid syntactic ambiguity about how the ideas relate to each other; if anything, it increases the risk of ambiguity. Ideas can be connected by arranging sentences in a logical order, grouping them under headings, using the definite article ("the") to link references to the same thing, definitions and, if need be, cross-references. However, the degree to which this approach is implemented varies, notably in terms of the subject-matter of legislation. Legislation that is subject to intense judicial scrutiny (for example, legislation that imposes tax or penal liability) tends to be drafted in more traditional ways and with many cross-references.

Structural Features and Page-layout

Legislative drafting style also involves structural features consisting of particular elements of legislative text (for example, titles, enacting clauses, headings, parts, sections, definitions) and their numbering and presentation (for example, fonts and indentation). These elements distinguish legislation from other writing, but they also assist the communicative functions of legislative texts. They facilitate reference to particular elements when the meaning or application of a text is subject to debate (as it often is with legislative texts). They also help readers navigate a complex text to locate and understand its components.

There is considerable uniformity in how these elements are treated by the four jurisdictions. The main differences have to do with numbering new provisions that are added between existing provisions (alpha-numeric versus decimal).

Arrangement

A further style feature has to do with the order in which legislative provisions are arranged. In most jurisdictions, provisions typically found in legislation (commencement, definitions, amending and transitional) are arranged in a particular order. Their arrangement is a stylistic

[73] See R. Sullivan, *The Construction of Statutes*, 7th ed (LexisNexis Canada, 2022) at ch 3 ("Ordinary Meaning"), ch 4 ("Technical and Legal Meaning, Statutory Definitions, Interpretation Acts and Recurring Legislative Terminology") and ch 8 ("Textual Analysis").

[74] A.G. Geddes, "How to Change Laws Without Changing the Law: Problems with the Presumption of Substantive Change for Plain Language Reforms" (2020), 51 *Ottawa Law Review* 109.

[75] Geddes at pp 140-149.

aspect that varies from one jurisdiction to another. Although arrangement should align with general notions of logic, much depends on whose logic should prevail. Good arrangement depends on reader expectations, which may vary from one audience to another. There may be no compelling logical argument for one arrangement over another, just as there is none for driving on the left as opposed to driving on the right. Consistency within a jurisdiction is what is compelling so that readers of legislation know where to expect these provisions to be in legislation.

With other (non-standard) provisions, arrangement can privilege one reader-group over another. Legislation has traditionally been drafted to deal with its administrative apparatus first, before the substantive provisions that are of more interest to those affected by the legislation. Provisions establishing administrative bodies precede the provisions about what they do and the benefits the legislation seeks to produce for others. Arranging these provisions before the administrative provisions is an exceptional stylistic choice found particularly in human rights legislation,[76] but rarely elsewhere.

Generality / Specificity

Yet another aspect of legislative style has to do with the generality or specificity of the text. Traditional style assumes the details of the provisions should be clear from reading them. However, this has been questioned as legislation and the matters it addresses have become more complex.[77] Flexibility is often needed to address these matters and generality or discretion to decide how provisions apply may be a better way of accomplishing legislative objectives. When detailed provisions are needed, leaving readers to find their way through them by themselves imposes greater burdens on them in terms of understanding what the provisions mean. General statements about the purposes or application of legislation can help them understand by providing a contextual framework for reading them. They can also assist in interpreting provisions drafted in general language.

Today, determining the degree of generality or specificity continues to be a challenge, but drafting offices have more fully embraced the utility of general statements of purpose or principles.[78]

Reading Aids

Legislative style encompasses elements beyond the provisions of the legislation. These "reading aids" aim to assist understanding the provisions. Many of them have a lengthy history, notably marginal notes and explanatory material such as "explanations" and "illustrations" (examples) intended to assist colonial magistrates.[79] Efforts to improve the

[76] See, for example, the *Canadian Human Rights Act,* RSC 1985, c H-6.

[77] See Carter at p 169.

[78] See Carter at pp 166-176; Plain English Manual at p 32.

[79] For example, the *Indian Penal Code*, 1860, Act No. 45 of 1860.

readability of legislation in the late 20th century have expanded on these aids to include tables of contents, formulas, diagrams, flow-charts and indexes.[80]

Tables of contents are now a standard feature of legislation as elements of on-line publication platforms.[81] Formulas have also become common elements of legislation in all four jurisdictions, particularly in fiscal legislation.[82] The use of diagrams and flow-charts is more variable. The Australian Office of Parliamentary Counsel appears to have embraced them more fully than the Canadian and New Zealand offices.[83]

Comparison of Recent Legislative Texts

Legislation dealing with online harms has been drafted in Canada, Australia and New Zealand.[84] A comparison of this legislation suggests the national drafting offices in these countries follow substantially similar drafting practices. For example, numbering and terminology of textual units are the same as is the use of the modal verb "must" instead of "shall". Similarities and differences in relation to a variety of stylistic features are illustrated in the chart contained in the Appendix. The differences relate mainly to matters that are debatable in terms of what is best to communicate the law. They include things like the placement of commencement provisions and the use of "sandwich" clauses in paragraphing.

Finally, I have used the Editor function in MS Word to assess the readability of the online harms legislation of the three jurisdictions. The scores for the Australian legislation were better than those for the others, notably a grade level of 12.7 as opposed to 17.9 for the Canadian and New Zealand legislation. However, all these scores suggest a high level of education beyond secondary (high) school is required to understand the legislation.

Conclusions

Legislative drafting style has evolved throughout the history of legislative drafting in English. It has responded both to political developments relating to law-making processes and democratic reforms as well as to concerns about communicating law effectively to its subjects. There is little doubt it will continue to evolve.

The predominant approach today to legislative drafting in the four jurisdictions considered here is oriented around the intelligibility of legislation. There is considerable consistency

[80] See, for example, Plain English Manual at ch 5 and EI Act at pp 17-20.

[81] See, for example, Canada, 'Justice Laws Website" https://laws-lois.justice.gc.ca/eng/; Australia, Federal Register of Legislation, https://www.legislation.gov.au/; United Kingdom, "UK Legislation" https://www.legislation.gov.uk/; and New Zealand, "New Zealand Legislation" https://www.legislation.govt.nz/.

[82] See N. Armstrong, "Mathematics in Legislation" (2018) 1 *The Loophole* 4.

[83] See Plain English Manual at pp 33-34.

[84] See the *Online Harms Act* at s 1 of Canada, Bill C-63, *An Act to enact the Online Harms Act, to amend the Criminal Code, the Canadian Human Rights Act and An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service and to make consequential and related amendments to other Acts*, 1st Sess, 44th Parl, 2024; Australia, *Online Safety Act 2021* (Cth); New Zealand, *Harmful Digital Communications Act 2015*.

among the national drafting offices of these jurisdictions as to the techniques to achieve this objective. All of them accept the use of ordinary language with allowances for technical language in legislation dealing with technical matters. They also promote similar stylistic approaches to the other main features discussed above. A comparison of three recent pieces of legislation from three of these jurisdictions (noted in the Appendix) suggests the differences are relatively minor and relate to some of the more contentious features promoted to improve the intelligibility of legislation. These features involve avoiding "shall" as a modal verb, paragraph "sandwich" clauses and graphical representation such as diagrams and flow charts. The differences are noted in the comparative chart in the Appendix.

What might the future hold for the development of legislative style? There seems little doubt that generative Artificial Intelligence (AI) will have an increasing role in the transmission, if not the creation, of legislation.[85] There has already been much discussion of "rules as code"[86] suggesting changes not only to drafting style, but also to the role of drafters themselves. If one thing is clear from the history of legislative drafting, change will come, albeit at a pace that it difficult to predict.

[85] See, for example, G. Hill, "Legislation for AI, Legislation with AI: Round No. 1 ChatGPT v Australian Law Council" (2023) 1 *The Loophole* 51.

[86] See, for example, M. Waddington, "Rules as Code" (2020) 37 Law in Context 179; M. Perron & A. Logie, "Rules as Code vs. ChatGPT: Lessons from Converting Canadian Federal Legislation into Code using Blawx" (2024) 3 *The Loophole* 73; Wolfgang Alschner, "Techno-Utopianism for Lawyers?: Abdi Aidid & Benjamin Alarie, *The Legal Singularity*" (2023) 55:2 *Ottawa Law Review* at p 191.

APPENDIX – COMPARATIVE TABLE OF DRAFTING STYLE

This table compares the treatment of particular aspects of drafting styles in

- *Online Harms Bill (CAN)* – 1st reading, February 26, 2024
- *Online Safety Act 2021 (AU)* – No. 76 2021
- *Harmful Digital Communications Act 2015 (NZ)* – No. 63 2015

Drafting Feature	Canada	Australia	New Zealand
Terminology and Grammatical Structure			
Paragraphing	Extensive use, but no sandwich clauses	Extensive use and sandwich clauses throughout	Extensive use, but no sandwich clauses
Verb used to express obligation	"must"	"must"	"must"
Complementizers	"if"	"if"	"if" (rarely "where")
Blocks of text	Generally under 40 words (3.5 lines), but up to 100 words in definition ***content that incites extremism or terrorism***	Generally under 35 words (3.5 lines), but up to 74 words in para. 46(1)(h)	Generally under 40 words (4 lines), but up to 58 in ss. 9(3)
Expression of numbers	Words ("one" to "nine"); numerals for 10 and above	Numerals	Numerals
Gender neutral	√, including singular **they**	√, but not singular **they**	√, including singular **they**
Readability Scores (MSWord) • Flesch Reading Ease • Flesch-Kinkaid Grade Level • Passive sentences	24.7 17.9 29.4	36.6 12.7 19.6	24.7 17.9 29.4

Drafting Feature	Canada	Australia	New Zealand
Structural Features & Page layout			
Section grouping / headings	√	√	√
Definitions	Not numbered; defined terms in **bold** *italics*; some multiple sentences	Not numbered; defined terms in **bold** *italics*; some multiple sentences	Not numbered; defined terms in **bold**
Cross-references	Not highlighted Less extensive use, particularly in FR version; reliance on definite article ("the")	Not highlighted Extensive use, including connecting contiguous subsections	Highlighted in **bold** Extensive use, including connecting contiguous subsections
Sentence numbering	Multiple sentences in some sections and subsections	Multiple sentences in some sections and subsections	Each sentence numbered as a section or subsection
Numbering added provisions	Decimal	Alpha-numeric	Alpha-numeric
Arrangement			
Interpretation / purposes	Interpretation before purposes; definitions in alphabetical order	Objects before interpretation; definitions in alphabetical order	Purposes before interpretation; definitions in alphabetical order
Commencement	At end	At beginning	At beginning
Binding Crown	Not included	Included with preliminary provisions – application	Follows interpretation

Drafting Feature	Canada	Australia	New Zealand
Main provisions	• Offices & Officials • Duties of regulated services • Access to data • Remedies • Administration and enforcement • Protections, reports, information sharing • General (cost recovery, regulations, review of Act)	• eSafety Commissioner (appointment, functions) • Complaints • Expectations • Reporting • Minimum Age – social media • Provisions dealing with abusive practices (cyber-bullying, intimate images, etc.) • Content removal, remedies • Enforcement • Administration / investigations) • Miscellaneous	• Enforcement agency • Court proceedings • Offences • Civil liability
Generality / Specificity			
Purpose Clause(s)	√	√	√
Size of bill	143 sections + amendments to other Acts; two language versions; 104 pages (pdf)	240 sections + endnotes; 224 pages (MS Word)	40 sections + schedule; 27 pages (pdf)
Reading Aids			
General summary / explanatory	√	none	√
Simplified outlines for Act and each Part	none	√	none
Tables of Contents	√	√	√

Drafting Feature	Canada	Australia	New Zealand
Headers-footers	Headers with part and section headings and numbers	Headers with part, division and section headings and numbers	Headers with part and clause numbers
Section / subsection notes	Each section and subsection	Each section with some subsection notes	Each section
Detailed Notes (defined terms & related provisions)	None	√	None

Thesis Review

A Fidelity Model Approach to Encoding Legislation

By Nicholas Godfrey

Reviewed by Anna Logie[1]

Encoding legislation (also known as "Rules as Code") involves transforming the rules of natural- language legislation into a language that computers can read and understand (code).[2] The conversion of legislative rules into code raises interpretative and coding challenges stemming from the ambiguous nature of legislation. In his recently published, 222-page doctoral thesis "A Fidelity Model Approach to Encoding Legislation",[3] Nicholas Godfrey argues that the challenges faced by legal coders may be addressed to some extent by adapting and applying the methods of modern legal translation. In doing so, his thesis appears to be the first publication to extend analyses from legal translation literature to the context of encoding legislation, making a novel contribution to the sparse but growing literature on legal coding methodologies.

In Chapter 2, Godfrey provides a review of literature relating to encoding legislation and legal translation. He begins by describing the types of interpretive and coding challenges that legal coders face when converting natural (legislative) language into deterministic code, including the presence of discretion, linguistic ambiguities and logical inconsistencies in the statute. He argues that debates surrounding these types of challenges often echo those present in the modern legal translation literature. While, for centuries, the approach taken to translating legislative texts from one natural language to another was literal, modern legal translation (starting with Rossel's non-literal translation of the *Swiss Civil Code* in 1907) acknowledges subjectivity and often prioritizes communication of the meaning of the law over a one-to-one approach. Likewise, while developers of encoded legislation have traditionally (i.e., since the 1980s) approached legal coding in a relatively literal manner, there have been a growing number of recent experiments using non-literal approaches.[4]

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[1] Legislative Counsel, Legislation Section, Department of Justice Canada. Any views expressed are my own and not those of the Department of Justice Canada.

[2] For background on Rules as Code, see Observatory of Public Sector Innovation, "Cracking the Code: Rulemaking for humans and machines" (12 October 2020) https://oecd-opsi.org/publications/cracking-the-code/ (accessed 16 November 2025); J. Rapson, P.A. McLaughlin, M.W. Wong, J. Morris, R. Pope, M. Schneider, T. Sinha & V. Tomaz, "Rules as Code for a More Transparent and Efficient Global Economy" (2 April 2025) https://www.think7.org/publications/rules-as-code-for-a-more-transparent-and-efficient-global-economy/ (accessed 16 November 2025). Encodings are best understood as a supplementary, digitized version of the rules (akin to guidance), to be read alongside the official legislative rules.

[3] N. Godfrey, "A Fidelity Model Approach to Encoding Legislation" (PhD Thesis, Queensland University of Technology, 2025) eprints.qut.edu.au/255183/1/Nicholas Godfrey Thesis%281%29.pdf.

[4] The growing experimentation with non-literal encoding approaches may be due to the increased involvement of lawyers (who are more sensitive to statutory interpretation issues) as well as the increased availability of user-friendly tools that are better suited to encoding legislative rules. For an example of an encoding experiment that aimed to encode the meaning and intent of a rule (a non-literal approach), see M. Perron & A. Logie, "Rules as Code vs. ChatGPT: Lessons from Converting Canadian Federal Legislation

Godfrey's core argument is that three "fidelity" models commonly applied in the context of legal translation could be used in the legal coding context to support consistent and deliberate encoding practices (see the table below). The "**Fidelity to Text**" approach is the most source-oriented and aims to encode the legislation as literally and objectively as possible, without considering context or purpose. The "**Fidelity to Legal Instrument**" model, which requires the coder to have legal expertise,[5] aims to encode the legal intent of the rule, taking into account relevant statutory interpretation strategies (e.g., the modern rule of statutory interpretation[6]) as well as the *ratio* of relevant judicial decisions. Finally, "**Fidelity to Function**" is a receiver-oriented approach that aims to create encodings that achieve the objectives of the intended user, which may involve encoding only certain rules (e.g., compliance-related rules) or including external non-legal rules (e.g., from guidance or business processes).

into Code using Blawx" (2024) 2 *The Loophole*, available at https://www.calc.ngo/publications/loopholes (accessed 16 November 2025).

[5] Note that user-friendly "no code"/"low code" Rules as Code tools are well-suited to support the Fidelity to Legal Instrument approach because they are designed to facilitate use by lawyers who are not programmers.

[6] Statutes are to be read "[…] in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21.

Fidelity model application to legal coding exercises[7]

	Fidelity to Text	Fidelity to Legal Instrument	Fidelity to Function
Objective	Encode the legislation as literally and objectively as possible.	Encode the legislation and maintain legal meaning and intent of law.	Encode relevant materials to achieve the objective ('skopos') provided in a client coding brief.
Interpretive method	Interpret and encode legislation literally. Maintain objectivity by avoiding subjective interpretation of the text.	Interpret and encode legislation contextually and purposively to align with modern statutory interpretation approaches which are relevant to the legislation's jurisdiction.	Interpret and encode legislation, and other materials which are appropriate to functionally achieve the assigned coding brief.
Encoded resources	Encode relevant legislative clauses only	Encoding of all of a given piece of legislation should include the legislation itself and any extrinsic materials relevant in determining the intent of the law.	Encode relevant parts of legislation and any other internal or external resources deemed necessary or useful for achieving the functional purpose provided in a coding brief.
Isomorphism	Encoding seeks as much structural and rule-based isomorphism as possible.	Encoding should utilise isomorphism where possible, but not at the cost of alignment with legal meaning and intent.	Encoding has a designated level of isomorphism based on coding brief functional requirements.

In Chapters 3-5, Godfrey describes the findings of an experiment where he assessed the impact of applying the three fidelity models to encoding legislation. For the experiment, he split seven law students with a legal coding background into three groups and each group was assigned and trained according to one of the fidelity models. They were then tasked with encoding a portion of Australia's *Corporations Act 2001* (Cth) that forms part of the financial services legislative framework, using s(CASP), a declarative programming language.

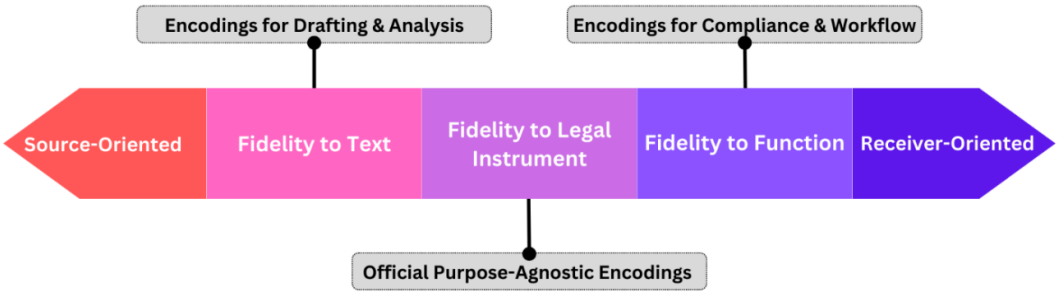
The coders were asked to encode the processes relating to the creation of a Product Intervention Order (PIO) by the Australian Securities and Investments Commission (ASIC). They were given a list of key provisions of the *Corporations Act 2001* (Cth) relating to the circumstances in which ASIC may make a PIO and the steps ASIC must take in making a

[7] Godfrey at ch 2, p 58, Table 2.2 (reproduced with author's permission). A similar table and much of the content of Chapter 2 can also be found in N. Godfrey & M. Burdon, "Fidelity in legal coding: applying legal translation frameworks to address interpretive challenges" (2024) 33:2 *Information & Communications Technology Law* at p 169, available at https://www.tandfonline.com/doi/pdf/10.1080/13600834.2024.2312620 (accessed 16 November 2025).

PIO. The key provisions included discretionary provisions, repetitive provisions and intra- and intertextual links to other provisions and legislative instruments. They also included a mix of principles-based and prescriptive clauses. Each coder was required to map and encode the same legal processes independently based on their assigned model's values and objectives. The experiment revealed that fidelity models can inform legal coder approaches, including the extent to which coders consider and incorporate extrinsic materials, legislative notes (e.g., footnotes in the statute) and redundant provisions. For example, Fidelity to Legal Instrument coders more frequently used in-code annotations to justify their interpretive and coding decisions compared with coders employing other fidelity models.

In Chapters 6 and 7, Godfrey explores the implications of the fidelity models and the findings of his experiment for encoding approaches. He argues that there is no "ideal" strategy for encoding rules, but rather that each strategy is more appropriate in certain circumstances (see figure below). Fidelity to Text, he contends, could be best suited when the goal is to use the encodings to test draft or existing legislative language to identify unintended gaps or inconsistencies. Fidelity to Legal Instrument could be the best approach when the goal is to create official, purpose-agnostic encodings. Finally, Fidelity to Function seems most appropriate when the encodings are created for the purpose of automating compliance and workflows.

The fidelity models and application examples which they best suit are mapped on a spectrum ranging from source-oriented to receiver-oriented strategies[8]



One area where more research would be helpful, particularly for Fidelity to Legal Instrument coders, is how to pragmatically address situations where a rule lends itself to more than one reasonable interpretation (and where there is no case law to clarify which interpretation to prioritize). While it is possible to create different sets of code corresponding to the differing interpretations of a rule — or to encode a rule at such a high level that it allows for multiple interpretations — to what extent is this necessary (as opposed to only encoding one interpretation)? For example, when governments provide guidance about legislation to the public, they generally prioritize one interpretation of the rules rather than

[8] Godfrey at ch 6, p 203, Figure 6.2 (reproduced with author's permission).

covering all interpretations; could a similar approach be taken by Fidelity to Legal Instrument coders?

Godfrey's thesis was a thought-provoking read that, in my view, provides a useful conceptual framework for encoding legislation. I look forward to seeing how this framework may be applied and adapted in different legal coding contexts in the future. The thesis' key insight — that legal translators and legal coders face many of the same challenges, and that legal coders can learn from how legal translators have approached those challenges historically — opens the door to promising new avenues for Rules as Code research and experimentation.
