February 1986

COMMONWEALTH ASSOCIATION OF LEGISLATIVE COUNSEL

Newsletter No. 9

The eighth Commonwealth Law Conference is getting nearer and it would help the organisers of the CALC Wednesday session and the CALC luncheon if they had some idea of the number of persons proposing to attend.

Will any member who expects to be present please inform the President or the Secretary as soon as possible.

A number of persons have already indicated that they propose to speak at the CALC sessions. Any other potential speakers are requested to notify Gerry Nazareth (c/o Supreme Court, Hong Kong), in the case of the morning session, or Gerard Bertrand (c/o Department of Justice, 344 Wellington Street, Ottawa, K1A 0H8, Canada), in the case of the afternoon session, as soon as possible. It would be particularly helpful in the case of the morning session if some speakers from less developed countries were available to inform the meeting of the situation in their jurisdictions.

Could any member proposing to speak to a previously circulated paper please forward the paper well in advance so that copies can be made for distribution.

(Geoff Kolts)
Secretary

FINDING THE STATUTE LAW

Members will be aware that one of the topics for the CALC program at Jamaica is "Statute Law: Consolidation, Publication, and the Keeping of Published Texts Up-to-Date". This area is a difficult one and some of the problems have been highlighted by a recent letter from Merrilee Rasmussen, the Saskatchewan Legislative Counsel and Law Clerk. She writes as follows:

"I read with interest the note attached to Newsletter No. 8 re the "plain English" movement in Australia.

The problems faced by drafters of legislation are the same everywhere and I am in complete agreement with the points made by the author of that note. The plain English movement is not a new phenomenon and, indeed, drafters of legislation should be constantly and consciously aware of the need to make the statute law as intelligible as the constraints imposed on the drafting process permit. However, I am struck by the lack of criticism, constructive or otherwise, with respect to a matter which, in my view, is much more fundamental and that is the ability to locate the statute law in the first place. The intelligibility of a statute can only be criticized if it can be found.

I am, of course, only familiar with the practices of Canadian jurisdictions and specifically of my own jurisdiction, Saskatchewan. In my nine years as Legislative Counsel and Law Clerk in this province, it has become clear to me that lawyers, as well as lay people, are not completely aware of the manner in which the statute law is collected together. The reasonably well-educated lay person generally knows nothing about the concept of a revision of statutes or the distinction between a revision and a sessional volume. Even lawyers appear to be generally unaware that a revision

does not necessarily include all statutes that are in force in the jurisdiction. The distinction between Royal assent and coming into force is not always appreciated. Loose-leaf versions of statutes which have been produced in Canadian jurisdictions in recent years are a major step forward in improving accessibility to the law but the manner in which those loose-leaf versions are prepared is not fully understood. Specifically, the necessary delay between the time when legislative change is implemented and when new pages of the loose-leaf statutes can be prepared, printed and distributed is not appreciated, a fact which may at times have disastrous effects. At present, in Saskatchewan, for example, it is essential to have access to the bound version of the 1978 revision of statutes and all subsequent sessional volumes, or the loose-leaf version of those statutes, as well as to first reading Bills, Votes and Proceedings of the Legislature, Separate Chapters (i.e. Bills as passed by the House) and The Saskatchewan Gazette. It is a complicated system by which the statute law must be ascertained and perhaps that it is necessarily so. My point is that, while much legitimate and worthwhile criticism has come about as a result of the Plain English movement, it in many respects may have put the cart before the horse."

The following article is a shortened and slightly edited version of a paper that was delivered at a conference of Australian Law Reform Agencies held at Brisbane in 1983.

PROBLEMS OF LEGISLATIVE DRAFTING

by I.M.L. Turnbull

Introduction

Legal drafters have never been popular. Shakespeare had the drafters of legal documents in mind when he made Dick the Butcher say "The first thing we do, lets kill all the lawyers.".[1] Today, the colloquial expressions "small print" and "bottom line", signifying something unpleasant foisted on the unwary by the unscrupulous, have their origin in legal documents. Turning to legislative drafters in particular, their work is constantly criticized in Parliament. When politicians have run out of arguments against the policy of a Bill they frequently end by stating that it is badly drafted. The judiciary, too, when interpreting statutes, occasionally let fall a jibe that the drafter had made a mistake, misunderstood the law or omitted to deal with a particular problem or could not express himself clearly. In recent years the proliferation of ever more complex legislation has given rise to much public discussion - but still the main theme is the shortcomings of the drafting, although some concessions are made to the difficulty of the task. In this paper I attempt to redress the balance to a slight degree by discussing some of the common problems that confront drafters, over and above the particular problems attached to particular legislation. I should add that the problems are discussed from the personal point of view of a Commonwealth drafter, and the Acts referred to are Commonwealth Acts unless stated otherwise.

Simplicity

Perhaps the greatest problem is that of achieving simplicity in legislation. Henry Thoreau's famous dictum "simplify, simplify" was not addressed to legislative drafting, although it could well have been. It seems from public discussion that complexity or obscurity is the main criticism of legislation today.

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1 King Henry VI, Part II, Act IV, Scene ii

There is no doubt that many of our statutes are remarkably difficult to understand. The income tax laws are notorious, but the problem exists in many other areas. The ownership and control provisions of the Broadcasting and Television Act 1942, the officers' rights provisions of the Public Service Amendment Act 1978, the provisions of the Petroleum Retail Marketing Acts of 1980, indicate that it is not only in the tax area that one finds extremely complex provisions. These examples respectively involve shareholding and other interests in companies, problems of time and length of service, and problems connected with possible variations in provisions of contracts. There are provisions in these examples that are almost unreadable by lawyers, let alone members of the public. What are the reasons for this complexity?

One answer, which has been repeated many times before by drafters, is that a complex proposition cannot be expressed simply. To take only one example, in the ownership and control provisions of the Broadcasting and Television Act, the prohibitions occupy about 10 lines of print, but the provisions as a whole occupy 52 pages, the bulk of which consists of definitions by which loan and shareholding interests are traced through chains of connected companies in order to arrive at a specified degree of control of a licence. The extraordinary length of the definitions required to make 2 simple prohibitions demonstrates the extreme complexity of the concepts concerned. The provisions were drafted by a former First Parliamentary Counsel, Charles Comans, QC, a master of the art of synthesis, and if he could not make them simpler, I very much doubt whether anyone else could.

Another reply to the charge of unnecessary complexity is the need for accuracy. Sir John Rowlatt, a former First Parliamentary Counsel in the United Kingdom, had a favourite dictum "the intelligibility of a Bill is in inverse proportion to its chance of being right"[2]. Sir Ernest Gowers said "being unambiguous ... is by no means the same as being readily intelligible; on the contrary, the nearer you get to the one, the further you are likely to get from the other".[3] Frankfurter J.

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[2] Sir Harold S. Kent, In on the Act, Macmillan 1979, p.97

once said "The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification."[4]

The principal aim of drafting is to convey the intention of the legislature, no more and no less. If to convey the intention with accuracy one must sacrifice clarity, then clarity must go. Lord Thring, the famous 19th Century English draftsman, quotes Sir James Stephen's famous remark -

> "... it is not enough to attain to a degree of precision which a person reading in good faith can understand; but it is necessary to attain, if possible, to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it."[5]

In totalitarian regimes the meaning of the law is less important than the will of the rulers, but in a free country, the subject has a right to know precisely what the law says may or may not be done. A company needs to know the precise extent to which it may hold interests in a company owning a television licence; a public servant needs to know the precise extent of his rights in respect of his service; a taxpayer needs to know the precise amount of tax he is to pay. There is no doubt that in these instances the need for precision is the main cause of the complexity.

On the other hand, a recent example of a provision whose lack of complexity led to imprecision is sub-section 8(3) of the Crimes (Hijacking of Aircraft) Act 1972. The sub-section reads as follows:

> "(3) The punishment for an offence against this section is imprisonment for life.".

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3 The Complete Plain Words, Pelican Books, 1962, pp. 18-19

4 United States v. Monia (1943) 317 U.S. 424 at p.431

5 Practical Legislation, John Murray, 1902, p.9

Nobody would deny that the provision is expressed briefly and in simple language. But in the case of R. v. Sillery the question arose whether the provision imposed a mandatory penalty or whether the court had a discretion to impose a penalty less than life imprisonment. The trial Judge and, on appeal, the Supreme Court of Queensland held that the penalty was mandatory. However, on appeal to the High Court, it was held by Gibbs C.J., Murphy and Aickin JJ. (Wilson and Brennan JJ. dissenting) that the penalty was discretionary. Having regard to this division of opinion, it is interesting to note the following comments on the language of the provision.

First, from the unanimous judgment of the Supreme Court of Queensland:

> "Nothing, in my view, could be plainer than the words of s. 8(3) of the Act".[6]

Second, the dissenting judgment of Wilson J. in the High Court:

> "The difficulty confronting the applicant is to expose an ambiguity lurking in what appears on its face to be a perfectly clear statement. That difficulty appears to me to be plainly insurmountable. Whatever the Parliament may have in fact intended, it has expressed its mind in such clear terms that, in my opinion, this court has no option but to so declare it.".[7]

The drafter of the sub-section could take little comfort from these statements for, paradoxically, it appears from the Parliamentary debates that the Judges who praised the clarity of his wording were mistaken as to his intention.

The dangers of over-simplicity in drafting style were mentioned by Windeyer J., in a judgment concerning the meaning of the word "owner" as defined in the Customs Act 1901:

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6 R. v. Sillery (1980) 30 A.L.R. 653 at p. 656

7 (1981) 35 A.L.R. 227 at p.239

> "The late Dr Wollaston, who had much to do with the establishment of the Commonwealth Department of Customs, wrote in the Preface to his book Customs Law of Australia (1904) that the Act of 1901 was 'acknowledged by experts in the legal profession, as well as by those having special knowledge of the subject of which it treats, in England, Canada, and Australia to be a model of drafting. The language throughout is terse, modern, comprehensive and free from ambiguity. It is not too much to say that there is scarcely a redundant word in the whole of its two hundred and twenty-seven sections'. But, regrettable though it be, terseness and an absence of redundancy may be more productive of literary elegance than of an indisputable meaning."[8]

This conflict between simplicity of expression and certainty in meaning has been the subject of much discussion in connection with the suggestion that English drafters should adopt the European style of drafting, which is claimed to be in the form of statements of general principle with little attention to detail. I say "is claimed to be", because Professor Kahn-Freund, in giving evidence to the Renton Committee, gave several instances of continental laws that are full of detail.[9] Sir William Dale, in his book comparing the two styles of drafting, despite his advocacy of the continental style is forced to concede "At all events the common idea, that continental legislation is drafted only in terms of principle, is demonstrably mistaken."[10]

Even if it is accepted that in some degree the continental style is more concerned with general statements of principle, any lack of certainty in meaning has serious disadvantages. First, under our present system, the subject is

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8 Scott v. James Patrick & Co. (1968) 117 C.L.R. 242 at p. 247

9 The Preparation of Legislation (1975), Cmnd. 6053, par. 9.10

10 Legislative Drafting: A New Approach, Butterworths, 1977, p.333

intended to be able to ascertain his rights with as much certainty as possible, even if he has to employ a lawyer to advise him. Under the system advocated, he must resort to litigation to ascertain his rights. The resulting increase in legal expense is highly undesirable, particularly in the case of a non-corporate person. Secondly, the Government when introducing a Bill, and the Parliament when passing it, intends to give effect to a particular policy. They expect the drafter to ensure that the Bill will give effect to that policy alone and not to some other policy that the judiciary may read into the Bill. If the meaning of the Bill is uncertain, the Government does not know what it is doing and the Parliament does not know what it is talking about.

Amending old laws

A factor that is often overlooked by critics of drafting is the constraints on drafters when drafting an amending Bill.

Where the Principal Act is complex, or is obscure because it uses old fashioned terminology, the drafter often finds himself forced to make the law still more complex or obscure. This does not necessarily mean that the drafter suffers from tunnel vision - he may be well aware that the law as proposed to be amended could, and should, be recast in a simpler, clearer, form, but extraneous reasons may prevent him from doing so.

The commonest reason is lack of time. The drafter usually has enough difficulty finding time to work out the changes themselves without recasting the original Act. Another reason is that Ministers want the Parliament to appreciate more clearly the precise scope of the changes - they do not want the changes concealed in a general revision. Another reason is that the drafter is often faced, especially in the case of old Acts, with the difficulty of having to interpret exactly what they mean in order to be able to recast them. It is a bold drafter who takes on this task when he is not obliged to do so. A further reason is that where provisions have received judicial

interpretation, a revision of their wording may well lose this valuable gloss on the text.

Time

Drafters are obsessed with the problem of shortage of time. Governments are notoriously impatient, and they frequently make impossible demands on their drafters. The result is that drafters are constantly faced with the dilemma whether to deliver a quick Bill or a good Bill. According to Sir Harold Kent, Parliamentary Counsel in the United Kingdom boast that they have never yet failed to deliver a Bill by the deadline "right or wrong". In Australia, drafters try to ensure that the Bill is right and meets the deadline, but this places great stress on the drafters and sometimes proves impossible.

The difficulty is that most people - even drafters - underestimate the time that it takes to draft a Bill. The late Prof. Elmer Driedger mentioned an instance where a Department requested a Bill in 3 weeks and gave public assurance that it would be ready in that time. In the event, the Bill required the full-time attention of an experienced drafter for 18 months.[11]

These remarks concerning time are more than a plea for sympathy. Lack of time, besides causing other obvious defects, can lead to unnecessary complexity in legislation. After one has brought a provision to the point where it correctly sets out all the matters it is required to cover, the final step is to re-examine it with a view to simplifying the language and, if necessary, recasting the whole provision. On many occasions the lack of time prevents this final step.

The courts

The association of the drafter with the courts is something of a love-hate relationship. When a drafter makes a mistake in his drafting and creates an ambiguity or leaves a gap, he is warmly grateful when a court remedies his oversight (if the decision is correct). But if the words of the statute are clear

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11 Composition of Legislation (2nd ed.) Department of Justice, Ottawa, 1976, p.xix

and unambiguous, yet the court interprets them contrary to the intention of the drafter, the reaction is more cool.

In a recent case the High Court of Australia was considering a provision that read as follows:

> "The Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, without limiting the generality of the foregoing, has power -
>
> (a) ...;
>
> (b) ...;
>
> (c) ...;"

The paragraphs contained specific powers. The question to be decided was whether the presence of the specific powers narrowed the scope of the general power. The court held that they did not. But Mason and Aickin JJ. sounded a note of caution that, in the ears of drafters, was more like an alarm bell. Aickin J. said:

> "The formula 'without limiting the generality of the foregoing' has been extensively used in Commonwealth legislation and regulations, but so far as appears it has not previously been the subject of judicial consideration in Australia. At first sight it would appear to indicate a parliamentary intention that the general words which precede the expression should be construed as if the more particular words which follow were not there. That however is too wide a proposition for in every case it must depend on the whole of the context. In some cases the particular words which follow may be such as necessarily to indicate an intention to restrict the operation of the preceding general words. In each case it will be a matter requiring examination of the actual words used, both general and particular, as well as the context as a whole"[12]

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12 Leon Fink Holdings v. Australian Film Commission (1979) 141 C.L.R. 672 at p. 680

Mason J. expressed a similar view[13]. These views are no doubt in accordance with the recent move of the courts from the literal rule of interpretation to the rule which gives more weight to the intention of the Parliament, but the result is that the formula in question becomes almost superfluous. In a case where the drafter knows that the specific words may otherwise imply a limitation on the general words, yet he intends them not to have that implication, it is interesting to speculate what formula, if any, could be used to ensure that his intention is given effect. The words of the formula quoted above contain no ambiguity or obscurity, and are as plain as can be. Yet even a more lengthy formula could be ignored by the court on the assumption that it had been inserted by mistake. The answer is that the drafter must accept the fact that, if he is to be rescued by the courts when he does make mistakes, the courts must have the last word.

Objects clauses

One of the recommendations of the Renton Committee,[14] and a recommendation that has been repeated recently in Australia[15], is that Bills should include clauses setting out their general purpose.

Although it sounds like a good idea in theory, it is very different in practice. If the clause is to cover the scope of the whole Bill, it must necessarily be drafted in very general terms. Yet its very generality will render it redundant and it will be little more than what Professor Reed Dickerson, the American draftsman and author, has described as a "pious incantation". The general purpose of a Bill will be apparent on the reading of its clauses: the problems of interpretation do not arise from the main body of cases that fall within the scope

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13 ibid., pp. 679-680

14 op. cit., par. 11.8

15 Extrinsic Aids to Statutory Interpretation, Australian Government Publishing Service 1982; also Symposium on Statutory Interpretation, Canberra 5 February 1983

of a Bill, but from the cases that are on the border-line, requiring a consideration of the details of the legislation.

For example, section 2 of the Conciliation and Arbitration Act 1904 sets forth the chief objects of the Act as being -

"(a) to promote goodwill in industry;

(b) to encourage, and provide means for, conciliation with a view to amicable agreement, thereby preventing and settling industrial disputes;

(c) to provide means for preventing and settling industrial disputes not resolved by amicable agreement, including threatened, impending and probable industrial disputes, with the maximum of expedition and the minimum of legal form and technicality;

(d) to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;

(e) to encourage the organization of representative bodies of employers and employees and their registration under this Act; and

(f) to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the Organization."

I suggest, first, that there is nothing in section 2 that is not apparent on the reading of the 200 sections of the Act, and secondly, that section 2 is of very little assistance, if at all, in the interpretation of the details of those sections. It is interesting to note that, notwithstanding the hundreds of amendments that have been made to different provisions of the Act since it was first enacted, section 2 has been remade once and amended twice. If the terms of the section have been wide enough to encompass so many alterations made by the legislature, they are wide enough to encompass an equal number of different interpretations made by the judiciary.

The Renton Committee recognized the problem of the generality of such clauses:

> "a distinction should, however, be drawn between a statement of purpose which is designed to delimit and illuminate the legal effects of the Bill and a statement of purpose which is a mere manifesto. Statements of purpose of the latter kind should in our view be firmly discouraged"[16]

Yet it is difficult to conceive of an objects clause that can "delimit and illuminate" the legal effects of the Bill with sufficient accuracy to be of any use unless it is comparable in length with the clauses of the Bill.

Explanatory memoranda

Another suggestion that is gathering general support is that courts interpreting a statute should be empowered to have regard to the official explanatory memorandum prepared at the time of the passage of the Bill.[17]

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16. loc. cit.

17. The Acts Interpretation Act has since been amended to permit this.

Inevitably, the memorandum as drafted at present deals with the main purpose of the legislation, and does not cover all the cases or deal with all the exceptions. It is hard to see how such a document can be of assistance in applying an Act to border-line cases - yet it is only the border-line cases that present the problems.

If the memorandum is to be used by the courts as suggested, as much time and care will have to be spent in drafting the memorandum as in drafting the Bill, so that the memorandum exactly conveys the meaning of every provision of the Bill. In effect, the Bill will have to be drafted twice in different versions, resulting in what Professor Reed Dickerson describes as a "split-level statute".

Treaties

Bills to give effect to treaties can create problems all their own. The difficulty is that in order to give proper effect to a treaty, it is necessary to know the exact purpose of the treaty. This of course is not possible, so one has to interpret the articles of the treaty as best one can and, having arrived at an opinion as to its meaning, give effect to that meaning. This approach was strongly criticized by Lord Denning in a judgment in which he was considering the Carriage By Air Act 1932 of the United Kingdom, passed for the express purpose of giving effect to the Warsaw Convention. The Act stated that the Convention as set out in the Schedule to the Act had the force of law in the United Kingdom. The problem arose from the fact that the Convention was drawn up in French, but the text set out in the Schedule was an English translation. Lord Denning said:

> "the English Parliament failed in their object. The translator whom they employed, by introducing the word 'and,' put his own gloss on the French text. He produced certainty where there was ambiguity: and clarity where there was obscurity. But this was a translator's gloss which he should not have inserted. In order to produce an exact translation, the translator should reproduce the

> French text faithfully, with all its defects, deficiencies, ambiguities and uncertainties."[18]

Although the case concerned a translation, rather than an interpretation, the principle is the same. However, this advice cannot always be followed. The treaty is seldom in such a form that one can merely state that it has the force of law in Australia, and in most cases this is not possible. For example, the treaty may be in a form expressly requiring the party to make provision for the matters in the treaty, or it may be expressed in terms that are foreign to our legal system. The latter problem is particularly important in the sphere of criminal sanctions. Where these problems exist, some interpretation must be done, even if it is kept to a minimum.

For example, the Crimes (Internationally Protection Persons) Act 1977 was passed to give effect to a Convention. Article 2 of the Convention required that the parties create, as crimes under its internal law, certain acts described as murder, violent attacks on premises, and threats and attempts to commit such acts, yet every offence was prefaced by the words "the intentional commission of". My instructing officers and I took it upon ourselves to regard these words as surplusage, and we omitted them. I can do no better in our defence than quote Lord Denning from another judgment where, finding himself in the same plight as the translator he previously condemned, he was equally eloquent in his own defence. He was discussing the difficulties faced by the courts in interpreting treaties.

> "What a task is thus set before us! The Treaty is quite unlike any of the enactments to which we have become accustomed. The draftsmen of our statutes have striven to express themselves with the utmost exactness. They have tried to foresee all possible circumstances that may arise and to provide for them. They have sacrificed style and simplicity. They have foregone brevity. They [sic] have become long and involved. ...

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18 Corocraft Ltd v. Pan American Airways Inc. (1969) 1 Q.B. 616 at p. 652

> How different is this Treaty? It lays down general principles. It expresses its aims and purposes. All in sentences of moderate length and commendable style. But it lacks precision. It uses words and phrases without defining what they mean. An English lawyer would look for an interpretation clause, but he would look in vain. There is none. All the way through the Treaty there are gaps and lacunae." [19]

Criticisms

So far, this paper has defended the drafter, but in fairness one must now look at the other side of the coin. There is no doubt that some drafting styles carry to absurd lengths the desire not to be misunderstood. For example, the law regulating motor traffic is addressed to everyone who uses the roads, and surely ought to surpass almost all other laws in its simplicity and clarity. However, in a certain part of the world, a driver approaching traffic lights showing a red arrow pointing at an angle between the vertical and horizontal must carry this command in his head:

> "The driver shall not proceed beyond the road marking applicable in relation to the light in the direction that makes with the direction directly ahead an angle that has approximately the same number of degrees as has the smaller of the angles that the direction in which the arrow is pointing makes with the vertical".

To be fair to the drafter, this is an ingenious solution of the problem of relating a sign that is on a vertical plane to a road that is on a horizontal plane, but the result is quite unintelligible to most people. In ordinary everyday speech a layman would say he should not "proceed in the direction of the arrow". He knows that a red arrow pointing upwards does not mean that his vehicle is prohibited from leaving the ground. Yet the drafter did not credit the layman, or the judiciary, with this degree of common sense. On the other hand, in another part of the world the expression "proceed in the direction indicated by the arrow" is used for a corresponding provision, and I presume that it is effective, as it has stood in that form for nearly 20 years.

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19. Bulmer Ltd. v. Bollinger S.A. (1974) 3 W.L.R. 202 at p. 215

Another cause of obscurity arising from excessive caution is a practice which, for want of a better description, could be called "referring back". At one time legislative enactments consisted of enormously long sentences. When the practice was introduced of breaking such sentences into sections and sub-sections, the practice of "referring back" emerged, under which drafters commence each provision by relating it to what has gone before, in an effort to bind every provision tightly to the preceding provision. This seems to be due to a fear that a person reading the Act might take the circumstances of one case and relate them to another case, a fear that must surely be groundless. The result is that provisions drafted in this style are filled with repetitions of words that are, in many cases, unnecessary.

A lesser evil of this kind, lesser because it imports fewer extra words in each instance, is the practice of writing "section 5 of this Act", "sub-section (3) of this section" and so on. Can it be seriously thought that a court, confronted by a simple reference in an Act to "section 5", would construe it as a reference to section 5 of any other Act? If it did, which other Act would it choose?

Another criticism that may fairly be made is the insufficient use of definitions. A definition can be used not only where an expression is to be given a particular meaning that it would not otherwise have, or to give precision to an expression. On the contrary, the frequent use of definitions allows the simplification of propositions by clearing away piles of words and leaving the structure of the propositions in plain view. This is even more effective if the defined terms themselves are short, as this too avoids needless repetition. An example from a provision that could well have been simplified by definitions reads as follows:

> "In the Nuts (Unground) (Other Than Ground Nuts) Order, the expression 'nuts' shall have reference to such nuts, other than ground nuts, as would but for this amending Order not qualify as nuts (unground) (other than ground nuts) by reason of their being nuts (unground)."

Another cause of obscurity is the use of cumbersome language. There seems to be a convention that legislation requires language that is more formal than everyday speech. For example, the phrase "by reason that" is almost universally used, where the word "because" would often be sufficient. In respect of periods of time, the word "expiration" is commonly used instead of "end". Perhaps it is thought that "end" is inexact as, strictly speaking, a period of time has two ends, one of them at the beginning, but this must be fanciful.

Another trap that can lead to cumbersome wording is the use of relative pronouns and auxiliary verbs where they could be avoided. This can lead to extremely awkward wording where a sentence has both a plural and a singular noun, even more awkward if alternative tenses have to be used in the auxiliary verbs. For example, one sometimes sees this kind of provision: "... a corporation that is or was, or corporations that are or were, served with a notice ... etc." This problem can often be avoided by using the participial form "a corporation or corporations served with a notice ... etc.". However, the participial form can be ambiguous, as in the following example of a law relating to the registration of dogs:

> "The owner of an unregistered dog found wearing a registration collar shall be guilty of an offence".

The technical faults referred to above are relatively minor, but they can have a cumulative effect and, particularly in lengthy or complex provisions, can result in the addition of a surprisingly large number of superfluous words.

Conclusion

When legislation is drafted, usually under pressure, the drafter has to try to give effect to his instructions, to imagine all possible contingencies and to anticipate all possible misunderstandings. Then his work has to stand for years. I have tried to show in this paper that his task is not easy, and that he can be forgiven if sometimes the legislation is hard to understand.