CHAPTER VI

THE DRAFTSMAN AND HIS EQUIPMENT*

LEGAL DRAFTING IN GENERAL

A brief outline of qualifications and attitudes which are essential for becoming a draftsman will throw some light on the challenging nature of the job.

COURTENAY ILBERT

According to Ilbert legal drafting is an extremely onerous and highly skilled task and only those who have essayed it can appreciate how hard it often is to express exactly in words what is clearly in mind. It is common knowledge that a man is not necessarily a good draftsman merely because he is a lawyer or a Judge.

It may be said that the rules of good drafting are simply the rules of literary composition, as applied to cases where precision of language is required, and that accordingly any one who is competent to draw in apt and precise terms a conveyance, a commercial contract, or a pleading, is competent to draw an Act of Parliament. But this is obviously a superficial view. Just as an excellent conveyancer may be a very poor pleader, and vice versa, so an accomplished and experienced conveyancer or pleader may find himself

* For much of the material in this Chapter, recourse has been had to Ilbert's lectures published by Columbia University Press, New York, (1914), under the title, The Mechanics of Law Making, Sir Alison Russell's Legislative Drafting and Forms 4th, Ed. (1938); C.K. Allen's Law in the Making, (1951), Chapter relating to Legislation, Halsbury's Laws of England, First Ed., XXVII, paragraphs 416 et seq; an article on "Legislative Drafting" by F.A. Driedger, 27 Canadian Bar Review, at 291 (1949), and an article by the same writer entitled "The Preparation of Legislation", in Canadian Bar Review at 33 (1953); Reed Dickerson, Legislative Drafting (1954) "Note on Drafting" by A. Eggar, Government Advocate, Burma, (1937); Barley's General Clauses Act, 1897 (1940).

1 Reed Dickerson defines legal drafting as "the crystallization and expression in definitive form of a legal right, privilege, function, duty or status".
quite at sea if called upon to draw a Parliamentary statute.\textsuperscript{2}

If a Parliamentary draftsman is to do his work well, he must be something more than a mere draftsman. He must have constructive imagination, the power to visualize things in the concrete, and to foresee whether and how a paper scheme will work out in practice.\textsuperscript{3}

Again, the draftsman of an Act of Parliament has to prepare a document which has to be considered and possibly modified by a large number of persons, over when he can only exercise a very imperfect control after it leaves his hands, and the provisions of which may have to be settled on the spur of the moment and in the heat of debate. If its several parts are too tightly dovetailed together, if it is so constructed that a modification of one part necessarily involves numerous modifications of other parts, an amendment made in the course of debate may throw it hopelessly out of gear. For these reasons, the Parliamentary draftsman is obliged, by the conditions of his craft, to employ a generality of expression, and to give his framework an elasticity of construction, which would shock the conveyancer.\textsuperscript{4}

Then, between the point of view of the lawyer and the point of view of the legislator there is a material difference. The lawyer proceeds on the basis of the existing law. He endeavours to ascertain what that law is, and to apply it to the facts. The legislator proceeds on the view that the existing law is defective or insufficient, and considers how the law should be changed in order to meet the requirements of the case. It is often difficult for the trained lawyer to change his accustomed point of view, and consider, not merely what the law is, but what it ought to be.\textsuperscript{5}

Lastly, the draftsman of a public Act of Parliament has to be guided by rules, not only of logic, but also of rhetoric. A Bill for such an Act may be regarded from two points of view. From one point of view it is a future law. From another point of view it is a proposal submitted for the favourable consideration of a popular assembly. And the two points of views are not always consistent. The mode of expression and arrangement which is most suitable to officials who have to administer the law, or to lawyers who have to explain the law, is not always that which is most suitable to the minister or other Member of Parliament who has to pass the law. Lord Thring’s aphorism, ‘that Bills are made to pass, as razors are made to sell,’ expresses an

\textsuperscript{3} \textit{Id.} at 240.
\textsuperscript{4} \textit{Ibid.}
\textsuperscript{5} \textit{Ibid.}
important half-truth namely that “the Minister in charge of a Bill will often insist, and wisely insist, on departure from logical arrangement with reference to exigencies of discussion.”

**George Engle on Lord Thring’s Aphorism “Bills are Made to Pass as Razors are Made to Sell”**

George Engle throws some light on this aphorism of Lord Thring. A country bumpkin with a heavy beard buys a dozen of these bargain razors and, on finding them useless, complains vigorously to the razor-man. The crucial ending part of the poem ends as follows:-

‘Friend’, quoth the razor-man, ‘I am no knave;  
As for the razors you have bought,  
Upon my soul, I never thought  
That they would shave’.  
‘Not think they’d shave! quoth Hodge with wondering eyes,  
And voice not much unlike an Indian yell;  
‘What were they made for then, you dog? He cries—  
‘Made! quoth the fellow with a smile-’to sell’.

Engle discovers the background against which this statement was attributed to Thring. He maintains that he discovered in a forgotten pamphlet on simplification of law which Thring published in 1875. Engle maintains that ‘Thring’s remark that “Bills are made to pass as razors are made to sell” was not meant cynically, but as a joke. Since Lord Thring had devoted most of his working life to improving the language, arrangement and intelligibility of Acts of Parliament Engle thinks it is unthinkable that he would have wished to give impression that his attitude to them was “Upon my soul, I never thought that they would shave.” Engle wants us to believe that, like Lord Thring, today’s Parliamentary Counsel not only want their Bills to shave, but also want them to give as easy and comfortable a shave as the thickness and luxuriance of the beard in question allows. But just as, at least in a capitalist economy, razors must indeed sell before they get a chance to shave, so under our system of government Bills must pass before they can become law and do their work.” According to Francis

6 *Id.* at 241; see also *infra* note 7.
8 *Id.* at 9.
Bennion this aphorism meant that it is no use presenting to Parliament a Bill entirely suited to carrying into effect a policy scheme if it is in a form which would provoke so much Parliamentary disagreement that its provisions would not get through. These considerations might prevent the Bill being arranged in the most convenient way, and require, for example, that controversial provisions should be put near the end of the Bill, and that the matter in the Bill should be arranged in as few clauses as possible. This every draftsman must bear in mind.\(^\text{10}\)

**Art of Legal Draftsmanship**

The art of draftsmanship consists of a sense of the use of language, precise conception of the objects desired and knowledge of the technical interpretations which are placed by law on certain forms of language.\(^\text{11}\) Learning drafting by experience alone will be costly to the public. In drafting statutes the draftsman has to aim at clarity, conciseness and comprehensive coverage rather than aesthetic beauty. As the Donoughmore Committee on Minister's Powers (1932) has observed:

"A man may either be a solicitor or counsel (to which the author would like to add a judge) and yet not have had the training which is essential to make a good draftsman, for good draftsmanship is an art which calls for special qualifications and long experience. By it we mean the power of clear, lucid and simple expression of the intended purport."

Drafting is a skilled task.\(^\text{12}\) The draftsman should also remember the warning of the Renton Committee that the life of the ordinary citizen at the present

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11 C.K. Allen, *Law and Order, 116 - 117 (1956),* he observes that the first of the above requirements can be supplied only by natural gift which has not necessarily anything to do with legal attainments while the last requirement can be satisfied only by technical knowledge and experience in a very wide and complex field.

12 Austin makes the following observations in his Lectures on Jurisprudence. "To conceive distinctly the general purpose of a statute, to conceive distinctly the subordinate provisions through which its general purpose must be accomplished and to express that general purpose and those subordinate provisions is perfectly adequate and not unambiguous language is a business of extreme delicacy and of extreme difficulty, though it is frequently tossed by legislators to inferior and incompetent workmen. I will venture to affirm that what is commonly called the technical part of legislation is incomparably more difficulty than what would be useful law than so to construct that same law that it may accomplish the design of the law giver."
day is affected by various laws from cradle to grave. The Committee’s term of reference were:

“With a view to achieving greater simplicity and clarity in statute law, to review the form in which public Bills are drafted, excluding consideration of matters relating to policy formulation and the legislative programme; to consider any consequential implications for Parliamentary procedure; and to make recommendations”.

Muddled thinking on the part of a draftsman cannot produce clear language, and a draftsman who does not know what has got to be said will be defeated in his object at the outset. After understanding what is wanted, he must find appropriate and clear language to express himself.

As Stephen J. remarked in Re Castioni, that Acts of Parliament may be easy to understand but people continually try to misunderstand them. So he said that:

“it is not enough to attain a degree of precision which a person reading in good faith can understand; but it is necessary to attain if possible 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.”

Professor Glanville Williams points out how difficult if not impossible, it is to achieve these objectives by citing the decision of the Appellate Committee of the House of Lords in ‘Anderton v. Ryan’. Professor Williams cites the

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13 The late Speaker of the Lok Sabha (Shri Mavlankar) had this to say about draftsmen in one of his minutes.

“Drafting of a Bill is not an easy matter as it may appear at first sight. It requires men who are not only well conversant with law and are besides jurists, but men who have an amount of experience in drafting. It is necessary that they should not only possess thorough mastery of the requisite technique but must have knowledge of judicial precedents and legal principles as well as important statutory provisions for they have to understand and weigh the implications of every word used in a Bill. Above all they should have enough time to digest their own drafts and consider the implications of what they have drafted.” See also Reed Dickerson, Legislative Drafting, (1954).


14 (1891) 1 QB 149, 167.

15 See Glanville Williams, “The Lords and Impossible Attempts, or Quis Custodiet Ipsos Custodes?,” Cambridge Law Journal: 45(1) March 1986 at 33-83.
case to prove the point, how the common law on impossible attempts was impolitic and irrational and one of the principal objects of the Criminal Attempts Act 1981 was to change it following Law Commission Report. According to Professor Williams:

"Law Commission recommended this legislation because experience showed that the whole subject was an intellectual minefield; so the only thing to do was to fence off and erect a Keep Off notice, to prevent the courts from continuing to make asses of themselves, as they have done and to save purposeless drains upon the public purse in state subsidized litigation ..... Alas for law reform! Parliament proposes, but the Appellate Committee disposes. In Anderton v. Ryan, the Law Lords re-entered the forbidden ground like wilful school boys, as insouciantly as though its dangers have never been revealed. They ignored the scheme of the Act and failed to give any clear meaning to provisions of the Act. the opinions of the majority of the court were delivered by Lord Roskill and Bridge, who concurred with each other, the other majority Lords concurring with both of them." 

WORDS—VEHICLES OF MANY MEANINGS

According to Brian Hunt where a word is capable of having a number of different meanings, the drafter must ensure that word chosen will carry the same meaning for each reader. Another problem faced by drafters is the challenge to find and use words which are not vague. Some words have clear meanings: numbers, days of the week, periods of time are all capable of precise expression. Some words became vague in accordance with their usage. Some words are designedly imprecise and permit of a subjective interpretation by a third party such as a judge. Examples of these words are: 'satisfactory', 'necessary', 'fair', 'reasonable', and 'viable'. It is also salutary to point out that words take on the character of those in whose company they are to be found. Heffelf warned long ago chameleon hued words are a peril both to clear thought and to lucid expression. This point was succinctly expressed by Holmes J in the following passage, namely: -

16 Id. at 37.
17 Id. at 38.
"A wood is not a crystal, transparent and unchanged, it is the skin of a living though and may vary greatly in colour and content according to the circumstances in which it is used." \(^{20}\)

A similar lesson was taught by Humpty Dumpty to Alice-

"When I use a word, Humpty Dumpty said, in a rather scornful tone, 'it just means what I choose it to mean—neither more nor less. The question is, said Alice, 'whether you can make words mean so many different things". \(^{21}\)

Bennion calls this as Humpty-Dumptyism, \(^{22}\) being another example of defect in meaning concerns the case where the drafter decides to flout an established definition. Since he is composing what is to be overriding law, he possesses a power denied to other authors. Occasionally this fact goes to his head. He employs a word with one meaning to denote something quite different.

**PRINCIPLES OF DRAFTING**

**Blackstone's Analysis**

The earliest analysis of the elements of legislation identified is that of Blackstone in 1765. His classification noted four parts to every law, these being:

1. the declaratory part,
2. the directory part,
3. the remedial part, and
4. the sanction or vindicatory part.

The classification was a description of the functional parts of legislation, but it failed to relate the functions. He further classified remedial Acts as either:

1. enlarging, or
2. restraining.

Bennion was critical of the classification as being of little point and misleading. \(^{23}\)

**BENTHAM**

On the principles of drafting itself, Bentham's work may be said to be the

\(^{20}\) *Town v. Eisner* 245 US 418 at 425.

\(^{21}\) Lewis Carroll, *Through the Looking Glass*, Chapter 6.

\(^{22}\) Supra note 10 at 260.

starting point from which the modern theory of drafting is derived. He divided legislative imperfections more than a century ago into imperfections of the first order and second order.\textsuperscript{24}

Imperfections of the First Order are ambiguity, obscurity and overbulkiness, which he defines as follows: \textsuperscript{25}

**Imperfections of First Order**

1. *Ambiguity* is where the effect of the expression employed is to present in conjunction divers imports, in such sort, that though to the individual mind in question it appear clear enough that in one or other of them is to be found the import which by the legislator was intended to be conveyed, yet which it is that was so intended to be conveyed is matter of doubt.

2. *Obscurity* is where, of the expression employed, the effect is, for the present at least, not to present any one import, as that which by the author or authors of the portion or portions of law in question, was on the occasion in question intended to be conveyed.

In the case of ambiguity, the mind is left to float between two or some other determinate number of determinate imports: in the case of obscurity, the mind is left to float amongst an indeterminate, and it may be an infinite number of imports. Obscurity is ambiguity taken at its maximum.

3. *Overbulkiness*. Ambiguity and obscurity are imperfections, capable each of them of finding its seat in any the minutest part of a mass of the matter of law: overbulkiness is an imperfection not capable of being brought into existence but by the accumulation of a large number of such points.

**Imperfections of Second Order\textsuperscript{26}**

These Imperfections of the First Order, according to Bentham, flow from Imperfections of the Second Order, namely:

1. *Unsteadiness in respect of expression* – when for the designation of the same import, divers words or phrases are employed.

2. *Unsteadiness in respect of import* – when to the same word or phrase, divers imports are attached in different places.


\textsuperscript{25} Ibid.

\textsuperscript{26} Ibid.
3. **Redundancy** — when of any number of words employed in connexion with each other, the whole or any part might without prejudice to the sense — i.e. to correctness, completeness, and facility of intellection — be simply omitted, or others in less number be inserted in the room of them. Redundancy is either curable by simple omission, or not curable but by substitution.

4. **Longwindedness** — when a portion of legislative matter, the elements of which are in such sort connected with each other, that to comprehend in a complete and correct manner any one part, the mind finds itself under the necessity of retaining within its grasp the whole, is drawn out to such length as to be liable to overpower the retentive faculty of the minds on which the obligation of taking cognizance of its is imposed.

5. **Entanglement** — when propositions distinct in themselves are forced together into one grammatical sentence, and in this state carried on together throughout the course of it.

6. **Nakedness in respect of helps to intellection** — especially if in respect of such as are in general use:— such as division into parts of moderate length,—designations of those parts by concise titles and figures of arithmetic expressive of numbers, for indication of such respective parts — and reference by titles and numbers as above, instead of by general description of their contents.

7. **Disorderliness** — (1) In respect of the arrangement given to the several matters,— whether by including under one and the same name, and thence under the same treatment, matters which, in respect of the diversity of their nature, require each a different treatment; (2) By placing at a distance from each other those which for facility, and clearness, and correctness of intellection, ought to stand contiguous to each other, or near at least to each other; or contiguous or near those which ought to be at a distance; (3) By giving to this or that article the precedence over this or that other, which for clearness or facility of intellection, ought to have been placed before it.

Bentham's further analysis of legislation was directed at reforming styles and presentation and did little in the way of functional analysis in terms of relating the elements in a logical way. He did though recognize a significant difference between substantive law and what he described as adjective law. This distinction becomes very relevant when we move on to the work at George Coode.
MONTEQUIEU

Montesquieu in his *Spirit of Laws* published in 1748, lays down seven succinct rules of legislative diction and there are summarized by C.K. Allen as follows:

1. the style should be both concise and simple; grandiose or rhetorical phrases are merely distracting surplusage;

2. the terms chosen should, as far as possible, be absolute and not relative, so as to leave the minimum of opportunity for individual differences of opinion;

3. laws should confine themselves to the real and the actual, avoiding the metaphorical or hypothetical;

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27 Charles de Montesquieu, *Spirit of Laws*, XXIX. Of the Manner of Composing Laws at paras 16 & 17, outlines what are things which a drafter of laws has to observe:

“16. Things to be observed in the composing of Laws. They, who have a genius sufficient to enable them to give laws to their own, or to another nation, ought to be particularly attentive to the manner of forming them. The style ought to be concise. The laws of the Twelve Tables are a model of conciseness; the very children used to learn them by heart Justinian’s Novellae were so very diffuse that they were obliged to abridge them. The style should also be plain and simple, a direct expression being better understood than an indirect one. There is no majesty at all in the laws of the lower empire; princes are made to speak like rhetoricians. When the style of laws is inflated, they are looked upon only as a work of parade and ostentation. It is an essential article that the words of the laws should excite in everybody the same ideas. When there is no necessity for exceptions and limitations in a law, it is much better to omit them: details of that kind throw people into new details. No alteration should be made in a law without sufficient reason. When a legislator condescends to give the reason of his law it ought to be worthy of its majesty.

17. Bad Method of Giving Laws. The Roman Emperors manifested their will, like our princes, by decrees and edicts; but they permitted, which our princes do not, both the judges and private people to interrogate them by letters in their several differences; and their answers were called rescripts. The decretals of the popes are rescripts, strictly speaking. It is plain that this is a bad method of legislation. Those who thus apply for laws are improper guides to the legislator; the facts are always wrongly stated. Julius Capitolinus says that Trajan often refused to give this kind of rescripts, lest a single decision, and frequently a particular favour, should be extended to all cases. Macrinus had resolved to abolish all those rescripts; he could not bear that the answers of Commodus, Caracalla, and all those other ignorant princes, should be considered as laws. Justinian thought otherwise, and he filled his compilation with them”.

(4) they should not be subtle “for they are made for people of mediocre understanding; they are not an exercise in logic, but in the simple reasoning of the average man”;
(5) they should not confuse the main issue by any exceptions, limitations or modifications save such as are absolutely necessary;
(6) they should not be argumentative; it is dangerous to give detailed reasons for laws, for this merely opens the door to controversy;
(7) above all, they should maturely considered and of practical utility and they should not shock elementary reason and justice and la nature des choses; for weak, unnecessary and unjust laws bring the whole system of legislation into disrepute and undermine the authority of the State.

**LORD THRING**

Chapter III describes in great detail the origins of the Parliamentary Counsel’s Office and the appointment of Lord Thring as the First Parliamentary Counsel to the Treasury. Lord Thring had issued the substance of his book *Practical Legislation* (first printed in 1877) as *Instructions to Draftsman* in 1869 in notes printed for the private use of draftsmen in the newly created Parliamentary Counsel’s office in England. The year 1854 was a big step forward when Thring’s Merchant Shipping Bill was passed into law. This Act was the first to use subsections, Arabic numerals and parts with separate headings. All of these were visual benefits in the presentation of law as Bentham had noted as lacking in earlier legislation. The use of part headings with a table of contents provided flags that allowed the user to find a path through the provisions. Unlike section’s marginal note, these headings were part of the statute. However, they could not be described as law as defined by Coode.

The draftsman should recollect that an enactment (section), in its most complicated form, is made up of the following parts:

1. The case;
2. The statutory declaration;
3. The conditions;

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29 In the Parliamentary Counsel Office in London there is a cartoon of Lord Thring. He was the first head of the Office when it was founded in 1869. The cartoon is accompanied by a description. It includes the warning that by the time he retired he was “warped into detailed narrowness by a long life of drudgery, spent in the unwholesome drafting of Parliamentary documents”. It isn’t really like that. It is actually much worse! - Geoffrey Bowman, Commonwealth Association of Legislative Counsel (CALC) Newsletter, August 2006.
The statutory declaration of Thring was a combination of the legal subject and legal action proposed by Coode. Thring may have been trying to accommodate the common law codes that were written during his time as Parliamentary Counsel, although not by him directly. If Thring saw the 'legal subject-legal action' as a single composite concept it might be reasonable to see 'case-condition' sector of the legislative statement as a similar single composite concept that could be called 'the qualifications'. This would lead to a higher level of analysis that the following figure displays. Coode had described the proviso as 'the bane of correct composition' and referred to the material that often appeared in the legislation of his day as the wretched provisos, and after limitations and qualifications with which the law is disfigured and confused.

**OTHER ADVANCEMENTS UNDER THRING**

The other major step forward that occurred as a result of Thring's period of tenure as Parliamentary Counsel was the use of subsections. In Coode's time the section had the inherited complexity of being a single sentence. At the same time the section was effectively and legally a separate enactment. In such a section, multiple legal subjects and multiple legal actions, not to mention a multitude of cases and conditions and a plethora of provisos were found.

As pointed out earlier Thring tried to bring a little more sense to the section by dividing it into subsections. The first example of this is found in the 1854 Merchant Shipping Act, although a previous Colonial Bill in 1850 written in a similar style had failed to get government support for policy reasons and so failed to reach the statute book. Even by the end of the nineteenth century, however, cases and conditions were rarely found isolated in a separate subsection. They remained firmly attached to the 'statutory declaration' in the Thring model legislative sentence. Thring's subsections usually included related laws with concurrent legal subjects or concurrent legal actions. This further step of using separate sentences, usually subsections, to express a case or condition is a relatively modern, and probably accidental, evolutionary development.

30 Supra note 23 at 37.
ARTHUR SYMONDS

But Thring was anticipated by Arthur Symonds who as early as 1838 in his *Papers relating to the drafting of Acts of Parliament*, evolved many of the improvements credited to Thring and many of the rules of construction which when enacted in Brougham’s Act and the Interpretation Act, 1889, did so much to simplify the language of statutes. Symonds\(^{31}\) prescribes the following factors which every draftsman should meticulously observe:

1. The Act of Parliament being before you, first strike out every word that is not required to fill up the meaning, and which may be omitted without affecting the structure of the sentence. At first the process will be tedious: the paper will be covered with blots: and if you are not very cool tempered, you may lose your patience, and be disposed to run the pen through the entire Act. A repetition of the labour will give skill and readiness; and after a little while, the mind will perform the task at once, without pen and ink or pencil, or the risk of confusion.\(^{32}\)

2. After the rejection of all unnecessary words, the Act will have undergone a great improvement; but it will be found that in consequence, the structure of the sentences is susceptible of very advantageous modification. The necessity, created by the verbal elongation and diffuseness, of referring backwards and forwards to other parts of the same Act, leads to a further necessity for elongation and diffuseness in the general style. By reducing the length, such references may also be rejected. By this time the language assumes the English character, and plain people may begin to understand it.\(^{33}\)

3. It would be almost always a safe rule to strike out such phrases “as aforesaid”, “hereinbefore mentioned,” or “hereinafter mentioned,” or “by this Act required,” or similar terms of reference. At least, they should excite caution. “As aforesaid,” can never be necessary where “so”, or “such,” or the like.\(^{34}\)

4. The other terms referring “to this Act,” need seldom be used, for it is presumed that every thing is to be done according to it, and not according to any other Act: and where it is especially necessary to be guarded, as “under any Act or Acts now in force,” it will usually be the


\(^{32}\) *Id.* at 3.

\(^{33}\) *Id.* at 16.

\(^{34}\) *Id.* at 21.
proper course to consolidate, or at all events, by a simple reference to the other Acts in one place to connect them with the present.\textsuperscript{35}

5. The next stage is the structure of the clauses: many things are brought in the same clause that would be more intelligible if separated. The confusion produced by the multiplicity of words and the complexity of the sentences, helps to conceal the absurdity of clubbing together topics sometimes not of a kindred nature; relating, perhaps, to different persons, times or places; and arising under different contingencies. To understand an Act of Parliament it is necessary to take each point separately.\textsuperscript{36}

6. Where the matters contained in a clause are not inappropriately brought together, the appearance of complexity and a jumble is produced by putting that first which should come last or by enumerating at the outset all the conditions to which the general rule intended to be conveyed by a clause, is to apply. It would be always better to state at first the rule: and then the special cases to which it is to apply either in the way of instance or as including the whole class.\textsuperscript{37}

7. The heterogeneous nature of clauses results from making them perform the office of a section, which is sometimes necessary in the present mode of drawing an Act of Parliament, from the want of some leading divisions to bind together the clauses that relate to them respectively, and not to other parts of the Act.\textsuperscript{38}

8. Having subjected each clause to the operation of a reduction of all useless words, a new modeling of all uncouth sentences, and the separation of all points that ought to be taken independently of others, or at least distinguishingly the Act will be in a state to be considered with a view to its general construction. This object ought to be assisted by a skilful arrangement of the clauses: but this is seldom attended to in our Acts of Parliament, as at present drawn. There is not, as in a deed, any scientific arrangement establishing an orderly sequence of the parts of the law, so that by the comparison of one with another, its peculiarity or correspondence may be judged. Each law proceeds after its own method, in the disposition of its provisions, as in the use of every variety of phrase. It is impossible, therefore, to give any specific rules to guide the reader. But there is this general rule; he must consider all the parts of

\textsuperscript{35} \textit{Id. at 22.}
\textsuperscript{36} \textit{Id. at 23.}
\textsuperscript{37} \textit{Id. at 27.}
\textsuperscript{38} \textit{Id. at 32.}
the Act such as they are: the tile, the body, the provision, the exceptions, and so on; and having separated the substantial from the accidental, the body of the enactment from the subsidiary provisions, he will have mastered, in some degree, the spirit of the law taken by itself. Until a scientific method of drawing an Act of Parliament shall be adopted in all cases, this is all that it is safe to pretend to for unless the statute embrace the whole subject matter of that branch of English law, it must be considered with reference to other laws that have been passed before on the same subject, as well as to the decisions that have taken place in the courts of justice. And here the work is not ended, the general principles and analogies of the law, statute and common, may be called in to assist in the instruction of the statute in hand. This is a consequence of the want of a recognized method of proceeding in all cases. The Acts of Parliament have now become, in another form, the decisions of the courts; more care is bestowed on adapting them to the notions of Westminster Hall, than to the plain law of reason, of which the law itself should be the counterpart and bodily resemblance to entitle it to the high distinction of being “the perfection of reason”. Our legislators are in fact slaves to the lawyer’s mode of legislating. They know not what they do; not one in fifty of them understands the body of words called an Act of Parliament; and though a man of ability devise a good law, by the time it is clothed in its customary garb he cannot discern the features of his own offspring.

According to Symonds there were Acts which due to the profuseness of unmeaningness, it would be impossible to convey to a reader, who has only an occasional necessity to refer to Acts of Parliament, the wild luxuriance of confusion which characterizes them. It is seldom that any one Act abounds in all the defects. The fault in some consists in want of arrangement, in verbosity in others, in an overlooking of the subject in a third class, in unnecessary and minute provisions in a fourth. But the grand pervading evil consists in this that there is no general plan of spirit, by which a construction of one Act may be known by a knowledge of the rest. In some it rests on a reference to minute facts specifically enumerated; in others on a reference to large principles and entire kinds of subject.

Symonds calls for hastening the amendment of a system which disgraces the legislature and the judicature alike, while it subjects all to the insecurity in life,

39 Id. at 34.
40 Id. at 35-36.
41 Id. at 37.
person, and property, which it is the professed object of all parties to avert. For though hitherto our researches have extended only to words, yet as these words are the signs of things, if the words be confused, the things which they represent will also be confused and until the legislature escapes from its present thralldom to ambiguity, it cannot be amended. The lawyers know no other language. They understand it more readily than their mother tongue; and though an unknown tongue to the representatives of the people, they obsequiously give way. They know as little of their laws, as the stranger, who must speak through a foreigner, knows of his own thoughts expressed by a faithless or inapt interpreter.\(^{42}\)

**COODE’s “LEGISLATIVE EXPRESSION”**

In 1843, published as part of a Parliamentary blue book on local taxation, Coode's *Legislative Expression* also anticipated Thring.\(^{43}\) Coode’s work was published in, the same year as Bentham’s Works, although Bentham had composed his Nomography between 1811 and his death in 1831. Coode’s theory was that it is only possible to confer a right, privilege or power on one set of persons by imposing corresponding liabilities or obligations on other persons. In his book Coode considers a law as securing some benefit to some person or persons. A benefit secured for the general public or for an individual is a right. It is confirmed to a class of persons, it is a privilege. A privilege conferred for the purpose of being used to benefit another is a power.\(^{44}\)

Coode failed to acknowledge the importance of what Bentham had described as adjective law. His work expressly concluded that what is in effect Bentham’s adjective law was a mere impertinence and of no relevance in law. This was probably the only real criticism that one can have about the otherwise fundamental work of George Coode. This is despite attacks made by later commentators. These writers failed to perceive the differences that Coode’s analysis had identified. They confused the functional elements Coode discovered with the grammatical function of similar (but not the same) elements. The criticisms seem to be saying that words could only have one system of functional analysis attributed to them.

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\(^{42}\) *Ibid.*  
\(^{43}\) *Supra* note 30 at 34.  
\(^{44}\) *Later* Hohfeld expounded his theory of Jural relations more or less building on this idea.
THE NATURE OF ANALYSIS

Most of the analysis work done since George Coode has been either a minor tinkering with his functional elements of legal subject, legal action, case and condition, or a linguistic analysis in the nature of identifying the grammatical elements of the legislative statement and trying to make sense in a grammatical or linguistic way. The two forms of functional and linguistic analysis often overlap. In describing the 'art of legal composition' Mackay notes that:

'a legal writing or document, the subject of this art....is composed of words, sentences, and generally the union of these sentences into a larger unit, whether called articles, clauses, paragraphs, sections, or by any like name'.

Mackay expresses the grammatical structure of the sentence in legal composition as being composed of 'a subject, a coupla, and a predicate'. This analysis seems clearly linguistic. These same elements are used by Driedger to express his analysis some 89 years later when he referred to the 'principal subject' and the 'principal predicate' of a legislative sentence. Driedger was attempting to answer in linguistic or grammar terms what he perceived as defects in Coode's analysis, which, in the terms of this article, was clearly functional. His treatise related the functions of the elements of the legislative sentence in a way that they had not been identified before. He gave functional rules for writing legislation. While the terms were similar to traditional grammatical terms and bore some similarities there were significant logical differences. For example, the legal subject of a section of a section was a functional element of the legislative statement that played a part in the section was a functional element of the legislative statement that played a part in the section and that functional role could not be equated to the function of a subject in a sentence.

COURTENAY ILBERT

According to Ilbert the arrangement of a Bill has to be considered both from the Parliamentary and from the administrative point of view. If the Bill is a fighting Bill the arrangement is of great political importance. The Bill should be so framed that the main issues which its proposals raise are disentangled from subordinate issues, are placed in the forefront of the measure, and are arranged in such manner as to facilitate discussion in

45 Supra note 2 at 244.
Committee. Where the decision of an issued raised by one clause depends on the decision of an issue raised by another clause, the latter clause must come first. Care should also be taken that one clause does not raise incidentally an issue which can be more conveniently discussed in connexion with a later clause. Subordinate matters should be dealt with in later parts of the Bill. Matters of detail should be relegated to schedules or left to be provided for by rules. So far as Parliamentary exigencies will admit, the subject matter of a Bill should be arranged with reference to administrative convenience; in other words, its arrangement should be orderly and logical.  

Normal and general provisions should be placed first. Special, exceptional and transitional provisions should be placed towards the end. Temporary and transitional provisions should be placed at the end of the Bill, because when they are spent they can be repealed without making gaps in the main body of the Act.  

As a general rule, it is convenient to lay down first the rules of law to be observed, and then to state the authorities by which they are to be administered and the procedure to be followed in administering them. The framework of a Bill may be made more intelligible by dividing it into parts and by grouping clauses under italic headings. But excessive subdivision should be avoided. As a rule a Bill should not be divided into parts unless the subjects of the parts are so different that they might appropriately be embodied in separate Acts. The division of an Act into parts may affect its construction by indicating the scheme of arrangement. In the case of a long and complicated Act it is useful to repeat the headings of parts and of groups of clauses at the head of each page. The printer will if so directed prefix to the Bill an ‘arrangement of clauses’ made up from the marginal notes. This table should be studied for the purpose of testing the convenience and logical sequence of the arrangement adopted. Attention should be paid to the framing of marginal notes. A marginal note should be short and distinctive. It should be general and usually in a substantial form, and should describe, but not attempt to summarize, the contents of the clause to which it relates. The marginal note often supplies a useful test of the question whether a subject should be dealt with in one or more clauses. If the marginal note cannot be made short without being vague, or distinctive

46 Id. at 245.
47 Ibid.
48 Ibid.
49 Id. at 245 – 246.
50 Id. at 246.
without being long, the presumption is that more clauses than one are required. A long and complex clause should be cut up into subsections.\textsuperscript{51} When a Bill has passed into law it becomes an Act, and its clauses become sections. They should be referred to as sections in the Bill. Reference to another clause of the same Bill by its number should, if possible, be avoided. The numbering of the clauses is always liable to be altered at the last moment by the addition, omission, or shifting of clauses, and there is often time to make the consequential alterations of references. Each sentence should be as short and simple as possible. The rules to be laid down will be either general or special, and either absolute or qualified. Where a rule is to apply only to a particular case or set of circumstances, it is usually most convenient to state the case or set of circumstances first and let the rule follow. But where the rule is to apply to several cases or sets of circumstances, it is often convenient to state the rule first and enumerate the cases afterwards.\textsuperscript{52} Where the rule is to be subject to qualifications, exceptions, or restrictions, these should follow the statement of the rule. But it is often convenient to prefix to the rule words indicating that it is to be so qualified. Enumeration of particulars should be avoided. It is almost impossible to make the enumeration exhaustive, and accidental omission may be construed as implying deliberate exclusion, in accordance with the maxim \textit{expressio unius est exclusio alterius}. The language of a Bill should be precise, but not too technical. An Act of Parliament has to be interpreted, in cases of difficulty, by legal experts, but it must be passed by laymen, be administered by laymen, and operate on laymen. Therefore, it should be expressed in language intelligible by the lay folk.\textsuperscript{53} In some cases the compromise between popular and technical language may be affected by means of a definition. But definitions are dangerous and should be sparingly used. More words should not be used than are necessary to make the meaning clear. Every superfluous word may raise a debate in Parliament, and a discussion in court. Different words should not be used to express the same thing. The same words should not be used with different meanings. The words ‘herein’, ‘herein-before’, and ‘herein-after’, are ambiguous. They may mean in this Act, or in this section, or in this group of sections. It is also common to use the expression ‘the same’ when referring to an antecedent or to antecedents. But this form of expression would be considered clumsy or

\textsuperscript{51} \textit{Ibid.}
\textsuperscript{52} \textit{Id. at} 247.
\textsuperscript{53} \textit{Ibid.}
archaic in ordinary English, and, as used in Acts of Parliament, not infrequently slurs over a looseness of reference.\textsuperscript{54} An Act of Parliament should be treated as always speaking. The idea on which this rule is based is, according to Lord Bowen, that a code on some particular subject is being constructed, and so, when the present tense is used, it is used, not in relation to time, but as the present tense of logic. An Act of Parliament is intended to confer rights and impose duties. It should be made clear on whom the rights are conferred and the duties are imposed. For this purpose, as a rule, the active form (‘may do’ or ‘shall do’) should be used, and the passive form (‘may be done’ or ‘shall be done’) should be avoided. Lastly, the provisions of the Interpretation Act\textsuperscript{,} must be carefully borne in mind. Regard should be had to the general rules for the interpretation of statutes, as laid down in the ordinary textbooks.\textsuperscript{55}

According to Hiranandani "The draftsman of today is supposed to prepare the maximum of laws in the minimum of time, to express the intention of some anonymous, mythical person whose identity is not easily established and to express that intention in language so clear that not only a reasonable man understands but a malicious man cannot misunderstand it . . . Here is a task for a superman. Legislative drafting is a difficult art. It is the art of expressing in concise and clear language the ideas of other people. It is difficult enough to express one's own ideas. It is much more difficult to express other people's ideas."\textsuperscript{56}

Although the ability to draft improves with experience, an aptitude for the work is essential. What makes a good legislative draftsperson is a good basic legal knowledge, a feeling for the proper use of the English language or other language in which legislation is drafted, a critical ability, lots of imagination and plenty of practice. Experience has shown that general legal ability by itself is not sufficient and that a competent lawyer without practical experience in legislative draftsmanship cannot perform the craft satisfactorily. Pursuant to the foregoing, it is important to train lawyers in the skill of legislative drafting which is different from legal writing.\textsuperscript{57} Hirandanani prescribes the following steps which a draftsman should scrupulously follow while drafting.

\textsuperscript{54} Id. at 248.
\textsuperscript{55} Ibid.
(a) A draftsman must have a clear idea of what he is required to draft. If his ideas are confused his language cannot be clear. In order to clarify his ideas and sometimes of the policy makers a draftsman should discuss the legislative proposal with officers of the administrative Ministry and clear up any points which are obscure.  

(b) Having mastered the subject, a draftsman should search for a precedent. Sometimes a draftsman’s familiarity with the statute law at once will be able to locate a precedent.

(c) Before actually drafting a Bill it is always advisable to prepare a rough “scheme” of the Bill. If the Bill is to be divided into Chapters, the heading of each Chapter and the subject-matter of each of the clauses which is to go into each Chapter should be noted. At this stage it is not necessary to draft the clauses. What is necessary is to note down the subject-matter of each clause. Care should be taken that the clauses are in a logical sequence, and follow the usual pattern of a Bill. The work of a draftsman is akin to that of an architect.

(d) A draftsman should use simple language.

(e) Each clause of a Bill should contain one idea only. If an idea is complicated, it should be expressed in a series of sub-clauses. A sub-clause should not normally contain more than one sentence. Each clause of the Bill should be drafted on a separate sheet so that there is ample space for making corrections.

(f) A draftsman should bear in mind the maxim laid down by that great Parliamentary counsel Lord Thring that, “the same thing should invariably be said the same words.”

(g) A draftsman should provide for all contingencies which are likely to arise. He should have what is called “divine prescience”. Failure on the part of a draftsman to foresee certain contingencies has sometimes led the courts to adopt strange interpretations.

(h) Generally, several drafts are prepared. All those drafts should be preserved. They indicate the working of the mind of the draftsman and are useful when any question arises why a particular provision has been put in a particular form in the final draft.
(i) When a draft Bill is ready, it should not be given a second reading immediately. There should be an interval of a few days between the preparation of the first draft and its revision. If a draft Bill is revised immediately, the mind of the draftsman is likely to move in the same groove with the result that he may not notice any mistake. But if the draft Bill is revised after an interval of a few days, the draftsman will be able to bring a fresh mind to bear upon the draft and will thus be in a better position to detect any mistakes.

**Accuracy and Precision**

Accuracy and precision of language where they do not proceed from innate habit of mind or a specially fortunate education can be fostered in various ways. The draftsman must cultivate an attitude of rigid self-criticism, remembering that what seems perfectly clear to himself as the draftsman may not be equally clear to a reader.  

**Avoiding Doubts and Ambiguities**

The perfect statute has never been written and never will be. Like perfect justice, it is only an ideal. According to Allen, "To demand perfection of expression and sense is to expect infallibility not only of human foresight but also of human language; and the fact that it is unattainable is one of the most serious drawbacks of statute law."  

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65 Lord Halsbury, in *Hilder v. Dexter* (1902) AC 474, remarks-

"I have more than once had occasion to say that in construing a statute, I believe, the worst person to construe it is a person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the fact of the language which in fact has been employed. At the time he drafted the statute, at all events he may have been under the impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended though perhaps it was not done."


67 "Is not the true reason why our statutes are so badly written found in the defective education of our Bar in legal and legislative expression? There can be no doubt that our statutes are, in the main, "framed by lawyers, are, in the long run, the fruit of whatever capacity for orderly disposition and whatever power of comprehensive expression are to be found among the Bar." Until recently, the genius of English and American lawyers has been almost wholly directed to the development of case-law. In this field they are unrivalled. But they have done little in the cultivation of an accurate and comprehensive terminology for legal and legislative use. Indeed, in some instances, those who have attempted to codify our laws have increased their uncertainty by insisting upon using words in their popular sense. If law is a science,
Although this is inevitable, the draftsman must try his utmost to reduce
doubts, ambiguities, foreseeable difficulties and the like to a workable
minimum and his success depends upon the extent to which he achieves this
end.

**Difficulties in Achieving Aim**

Again, what has been said by the Julius Cohen\(^68\) with regard to the lawyer's
representational role in Parliament, namely, the pressure for quick decision,
the low level of competence of many legislators, the elements of bias and
prejudgment, the factor of manipulation, the unwillingness of many to
recognize the relationship between immediate and long range goals, the
impatience with the tedium of rigorous analysis, the high pitched, volatile
emotionalism that often pervades the legislative scene, all combine to
discourage anyone inspired to stride forth in the role of the idealist, can with
equal force be applied to the role of the legal draftsman.

\(^{68}\) Julius Cohen, “The ‘Good Man’ and the Role of Reason in Legislative Law” 41
NEED FOR INDEPENDENT SCRUTINY

Wherever possible, the draftsman should have his draft examined by at least one independent critic; the more meticulous the scrutiny and the more exacting the criticism, the better. It would comfort the draftsman to know there can be no piece of work that cannot materially be improved by knowledgeable criticism. It is not always that a Judge is sympathetic to the draftsman as Denning L.J. was when he made the following observations in *Seaford Court Estates Ltd. v. Asher.*

“it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision... This is where the draftsman and Acts of Parliament have often been unfairly criticized... It would certainly save the Judges’ trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. ‘People who draw Acts of Parliament’ said Bramwell J. in *Queen v. Monck,* ‘are very commonly found fault with by those who never draw an Act themselves. I suppose it is impossible to foresee all the difficulties that will arise, and to use exactly precise words—to say nothing of the difficulties under which Acts are drawn up.”

THE ROLE OF THE LEGISLATIVE DRAFTER

One of the most difficult aspects of the role is the need of the drafter to wear different hats. This requires numerous skills that are not normally part of law school training. It is a role that evolves over time and demands speed, accuracy, clarity and operational knowledge of the substantive subject area.

69 According to Sir James Stephen,

“With regard to any work that I have done, I have always found it full of mistakes, and when they have been pointed out to me by some other person I have considered I was under the same weight of obligation to him as one is to a dentist: It is not very pleasant when you are about it.”

70 (1949) 2 KB 481 at 499.
71 I.R2 QBD 544, at 552
72 “Nothing is so easy as to pull them (Acts of Parliament) to pieces, nothing is so difficult as to construct them properly” Lord St. Leonards in *O’Flaherty v. McDowell,* (1857) 6 HLC 142 at 179.
of the law. Legislative drafting has been described as both an art and a profession. There are several factors that serve to distinguish the practice of the legislative drafter from other legal practitioners.

The drafter is the wordsmith who puts pen to paper and reduces ideas to a written text. While some may argue that this is a technical skill it falls in between traditional editing and taking dictation.

A legislative drafter needs an appreciation of language, including grammar, as well as knowledge of the technical requirements of legislative form.

The legislative drafter has a duty to be non-partisan. While the drafter may be putting forward legislation for the Parliament or government of the day they must still stay out of the political fray and remain impartial.

The legislative drafter does not control the final product. Before a statute or regulation become law, there will be many, including members of the legislature, consultants and members of the public, who will provide their input.

Legislative drafters have an unenviable task. They must draw from the context around them, and reduce to written form, what is understood to be a law, them in time. They must also understand the concept behind the proposed change. The reader of the text must be able to grasp from the written text all the legal rights, duties and obligations that are created or imposed. The audience or the reader of the text cannot always be easily identified when the text is prepared. A legislative drafter writes literally for everyone. Scrutiny may occur at a much later stage, before the courts, by administrators, by legislators during an amending process, or never at all. It is a skill that is difficult to evaluate. However, failure to meet acceptable standards may result in the necessity to amend a statute or litigation. According to David Elliott we can all improve our communication if we adopt the late Dr. Elmer Driedger's philosophy which is valid for all legal writing, which is as follows, namely-

"a writer of laws must have the freedom of an artist, freedom to use to the fullest extent everything that language permits, and (the writer) must not be shackled by artificial rules or forms; and further, laws should be written in modern language and not in ancient, archaic or obsolete terms or forms."

Apart from what has been stated earlier, the Indian draftsman's equipment should include—

(i) a full and intimate knowledge of the Indian statute book;
(ii) familiarity with legal principles as expounded by the Indian Courts;
(iii) a full and intimate knowledge of the Constitution, particularly the fundamental rights, and the distribution of legislative powers between the Centre and the States; and
(iv) experience of Parliament, its procedure, administration, courts at work and the life of the community.

**Familiarity with the General Clauses Act, 1897**

Having obtained an idea of the general equipment required of a draftsman, almost the first preparation for his task that the draftsman should make is to acquire familiarity with the Interpretation Act applicable which in India is called the General Clauses Act. This Act, passed in 1897, has the object of shortening the language of Acts by stating the meaning of certain words and the effect of certain provisions, so that the draftsman of a new Act may be assured that, if he uses such words or makes such provisions, the meaning and effect will be clear without the addition of explanatory words which are declared by the General Clauses Act to be implied.

The draftsman should also bear in mind these words and provisions will have the meanings and effect declared by the General Clauses Act and if he is not satisfied therewith he must define the words expressly in the Bill or make express provisions that will exclude the meanings and effect implied by the General Clauses Act.

**Familiarity with the Rules of Construction Adopted by Courts**

The draftsman has to bear in mind that his Act (although the language may not always be completely his own), will be subject to criticism in the courts and will be construed according to uncodified rules which the courts have made for the purpose. The maxims which the courts have evolved for the purpose of guiding their minds upon sound lines when deciding upon the true interpretation of an enactment are but an adaptation of the rules for the construction of documents, in general, coupled with special rules arising from the customary form in which enactments are expressed. Viewed at

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74 Chapter XII deals with the General Clauses Act 1897 in detail.
large, the rules of construction are safeguards against importing into the
enactment any matter foreign to the intention of the Legislature."
These rules of construction will be found reproduced in many books like
Maxwell on the Interpretation of Statutes; Craies on Statute Law; Halsbury's
Laws of England; Eggars Laws of India and Burma Part I, Construction of
Enactments; C.K. Allen's Law in the Making, 1951, Chapter on Legislation;
Barry Chgedlow's the Interpretation of Deeds and Statutes in a Nutshell, 1954,
Sutherland's Statutory Construction in 3 Volumes (an American publication).
These books with such works as Stroud's Judicial Dictionary, Wharton's Law

75 Chapter XI deals with Principles of Interpretation of statutes. "The rules of
interpretation are for the sick, although often prescribed for the healthy. The
draftsman knows of medicines these rules provide, but he cannot be certain as to
what medicine will be administered in any case, whether just penicillin or shock
treatment. So, he becomes an optimist; he assumes his work will never be sick and
on that assumption he uses his tools of trade.
Now, what are these tools? They are learning in the law, drafting experience,
knowledge of canons of interpretation, experience of Parliament, administration,
courts at work, the life of the community, the ability to understand, think, classify,
arrange, patch or build and, above all to fancy a paper scheme as in actual operation,
and finally skill to express—words. Words are important but dangerous tools. The
draftsman cannot indulge in psychosemantics any more than a city traffic controller
can indulge in inter-planetary flight. But he must understand words, their meaning,
use, limitations and dangers. He must know those with a hard core and nebulous
penumbra, those (if any) that are certain, those that are vague. He must be able to
build houses out of sentences and Chapters out of words. He use words with an
intended meaning, knowing that the comprehended meaning may differ. Words
are man's greatest invention, but the tyranny of words can make slaves of men.
Before he dictates his first word on any measure, the draftsman studies the law, as
it is, the amendment proposed, the reasons for the amendment and the method
of affecting it. The draftsman then sketches the outlines, arranges and balances the
material and, as circumstances and time require or permit, fills in details. Here he
may allow a discretion and there provide for regulations. Some parts he will leave in
outline and others completely blank. He recognizes large discretion of creative
choice and application of law to facts which must rest with the courts; within the
framework of a statute he delegates to others an authority to interpret. He hopes
his work will be read in the sense and spirit and against the background for which
it was written, without unnecessary obfuscation, that the canons of interpretation,
when applied, will be applied in a disciplined way without undue influence from
relentless logic, casuistry or technically, and that those canons will be applied only
when doubt or ambiguity has really arisen and will not be used to create it." Mr.
Andrew Garran, Chief Parliamentary Draftsman, Victoria. (See Australian Law Journal,
Vol. 29, p. 204 at p.215).
Knowledge of legislative drafting can improve the interpretation of statutes. A question that can be put in this regard is to what extent the rules of statutory interpretation should be applied in the process of legislative drafting. Suffice to say that indeed there is a close relationship between statutory interpretation and legislative drafting and that the legislative drafter must know and be able to apply the rules of statutory interpretation in the drafting process. A draftsman has to discipline himself to apply the rules throughout the drafting process. In this regard it should be taken into account that statutory interpretation always entails an investigation or analysis from one side only, viz the analysis of an existing law, or set of legal rules, which in most cases is already in force.

On the interpretation of statutes there are several well-known textbooks. The object of the writers of these books has been to collect such judicial decisions and other authorities, and to formulate such rules and principles, as may assist the courts and legal practitioners in determining the meanings which ought to be attached to obscure or ill-expressed enactments. Books of this kind are very useful to the draftsman of an Act of Parliament as showing the meaning which the courts may be expected to attach to particular expressions and the canons of construction which the courts will observe. They are also useful to him as illustrating the pitfalls which he should avoid, and the consequences which the use of loose or inaccurate language may entail. But they are written primarily, not for the draftsman, but for the practitioner who has to advise on or argue cases on statute law, or for the courts which have to decide such cases. They are concerned rather with the pathology or nosology of statutory drafting than with its laws of health. They illustrate bad drafting; they do not, except indirectly, lay down rules for good drafting.

By approaching the matter from the other side and paying attention to the rules that apply to the drafting of a law, as well as to the process according to

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76 Christopher Hughes in his book, The British Statute Book (1957) seeks to analyse the effect of one upon the other of the following. The procedure of Parliament, the rules of interpretation applied by the Courts, the routine of the draftsman's office and the problems of drafting.

77 Ilbert, Mechanics of Law Making, 91 (1914).
which that happens, the meaning of the content of laws can be understood better. This view is in line with a healthy contextual approach to statutory interpretation in terms of which information regarding the origins of a law is a useful extra textual aid to interpretation. Legislative drafters should make sure that they know the basic rules. They should also keep abreast of case law in which these rules have been applied.

**Familiarity with the Indian Constitution**

India has a written Constitution which provides, among other matters, for the distribution of legislative powers between the Centre and the States. A part of the Constitution (Part III) deals with fundamental rights guaranteed to the citizen of India and the restrictions which may reasonably be imposed on the enjoyment of such rights in the interest of public order, morality, public health and the like. There are provisions dealing with emergencies and the suspension of fundamental rights as a consequence thereof. Parliament may acquire the right to legislate in the State field in certain circumstances. Without going into an exhaustive examination of the Constitution in this regard, suffice it to say that the draftsman must be intimately acquainted with the Constitution in order to ensure that the Bill he is drafting does not in any way conflict with any of the provisions of the Constitution and is within the powers of the legislature passing it.

**Legislative Competence**

Thus the draftsman has constantly to be on the watch when proposals for legislation come to him to ensure that they do not offend any of the provisions of the Constitution and, in particular, the matters to be dealt with are properly matters for the legislative authority for which the Bill is being prepared. The court will examine the pith and substance of the legislation to see whether it is within its competence.78 Lack of legislative competence will be fatal to the law. The form or outward appearance of the law will not save it from condemnation if the substance of the Act is beyond the power of the Legislature. The draftsman must therefore, as stated earlier, possess an extensive knowledge of the Constitution, particularly those provisions which

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78 Unconstitutionality might arise either because the law is in respect of a matter not within the competence of the Legislature or because the matter itself being within its competence, its provisions offend some constitutional restrictions *P.V. Sundaranmal v. State of A.P*, AIR 1958 SC 468, see also *B.K. Pesika v. State of Bombay*, AIR 1955 SC 123. See Chapter XI for certain rules applied by courts in interpreting a Constitution.
define the powers of the various legislative authorities, and he must be able to apply to the examination of every project an accurate knowledge of the contents of the three Lists in the Seventh Schedule. The task of determining whether a legislative proposal falls within one or the other of the Lists is often not easy. Parliament has made it a rule that questions relating to the constitutionality of an enactment will not be decided by the presiding officer or voted upon in the House, but this does not absolve the draftsman from having to consider problems of this kind and offer comments or advice. For example, in drafting the University Grants Commission Act, 1956, a question arose as to whether a power to co-ordinate and determine standards in institutions for higher education (Entry 66 of List I) includes for its proper implementation a power to prohibit institutions other than Universities from granting degrees in view of the fact that education including Universities happened to be an entry in the State List. The Cinematograph Act, 1952, which sought to replace and Act of 1918 of the same name could not repeal the earlier Act in its entirety because List I only covered the sanctioning of cinematograph films for exhibition. The Criminal Law Amendment Act, 1938 (XX of 1938) raised the question whether its subject matter fell within item 1 of List I or item 1 of List III in the Seventh Schedule to the Government of India Act, 1935.

Knowledge of Allocation of Executive Functions

The allocation of executive functions must be carefully watched with reference to such articles of the Constitution as articles 73, 258 and 353. The view is held that the issue of notifications appointing a date for the commencement of an Act and the making of statutory rules is an executive act. The view that the making of statutory rules is an executive act is that on which the Government of India (Adaptation of Indian Laws) Order, 1937, proceeded. While the appointment of a date for the coming into force of an Act may rightly escape being considered to be an exclusively legislative character, it is more nearly true to say that the making of statutory rules is the exercise of a legislative function by an executive authority to whom it has been delegated by the Legislature, but no criterion is attempted here by which to determine when the exercise of a statutory power by a rule making authority is or is not of a legislative, as distinguished from an executive, character.

Knowledge of Administrative Machinery

The draftsman must possess knowledge of the existing administrative
machinery and the powers and functions of the various public authorities and the relations of these authorities to one another. He will often have to scrutinize the propriety of allocating a particular power to a particular authority or to consider how some proposal will affect the relations of the existing authorities or be affected by them; whether in fact the proposal is as suitable or as practicable as the instructions given to him assume that it is. The creation of new authorities in addition to or in supersession of the existing authorities may raise problems of this kind, besides the more immediate ones of the transfer or continuance of the functions of an authority which is being modified or superseded or the exercise of such functions during a transitional period. In addition to knowledge of the administrative system therefore, he must in the words of Ilbert, “have constructive imagination, the power to visualize things in the concrete and to foresee whether and how a paper scheme will work out in practice.”

**Familiarity with Precedents**

Lastly, the draftsman must be familiar with the language and methods, the technique employed in the body of legislation of which his own work is destined to form a part. Each country develops in the legislation an individual and characteristic technique. It is possible almost at a glance to recognize those Indian Acts which have been copied from the English statutes instead of having been evolved locally; it is not uncommon to find in them expressions or features of arrangement not normally found in Indian Acts. (See for instance the Estate Duty Act 1953). Even in India itself there have grown up certain differences between the forms used in State Legislatures and those used in the Central Legislature. But it should be the draftsman’s aim to conform as far as possible to the practice he finds in his own sphere. In must of that he has been called upon to express, he will find himself constrained or well advised to guide himself strictly by the precedents which he can discover scattered through enactments already on the statute book where similar matter has had to be expressed. A departure from precedent, besides introducing a lack of homogeneity, may have unforeseen consequences where judicial interpretations have already been at work on the included precedents; and if judicial interpretation has not been at work, there is the comforting assurance that the language adopted on the earlier occasion has at least stood the test of time. Diversity of expression has few or no merits and has many demerits in statutory drafting. Such

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81 Supra, note 2 at 240.
collections of forms and precedents as are to be found in Sir Alison Russell’s *Legislative Drafting and Forms*, though valuable for their suggestiveness, are therefore for the draftsman’s purposes less useful than the collection he can and should himself make in the course of his work from the body of legislative work in which his own Bills are to be subsequently included.  

The following qualifications are suggested for prospective trainees in the discipline of legislative drafting. The candidate for any such training (a) should be above average in his professional qualifications in the legal field; (b) must have experience in legal practice, preferably in the legal service of the Government; (c) must have felicity in the use of the language of legislative enactments; (d) must be interested in drafting and possessed of a systematic mind, an orderliness in the formulation of thoughts, ability to pay meticulous attention to detail and to work with accuracy under pressure; (e) must have an inquiring, critical and imaginative mind; (f) must be able to work with colleagues and those skilled in other disciplines and disposed to give and take constructive criticism and advice; and (g) must be endowed with common sense and social awareness.

**Court’s Criticisms of Ill-drafted Legislation and Legislative Draftsman**

Harsh words have fallen from the judges about the defective drafting of many enactments. It has been said that the draftsman is generally responsible for half the litigation. Numerous instances will also be found in text books dealing with the interpretation of statutes where laxity of expression has increased the difficulties of interpretation.

Giving a few illustrations—Justice Krishna Iyer of the Supreme Court while commenting on section 18 of the Immoral Traffic Act, 1956, observed.

> "Had the drafting been more careful and lucid, the argument would have been obviated. This Court has, more than once, pointed out that lack of legislative simplicity has led to interpretative complexity. The home truth that legislation is for the people and must, therefore, be plain enough has hardly been realized by our law makers. Judges, looking at statutes are forced to play a linguistic game guessing at the general legislative purpose and straining of semantics... There are

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82 See Chapter XIII where many forms and precedents, mainly from Indian Statutes, have been collected.

83 A seminar on the scheme for the training of legislative draftsmen under the Commonwealth Fund for Technical Co-operation (1972).
many canons of statutory construction, but the golden rule is that there are no golden rules—if we may borrow a Shavian epigram."84

In a case arising out of the Prevention of Food Adulteration Act, 1954 the Supreme Court observed

"We cannot but deplore the clumsy draftsmanship displayed in a statute which affects the common man in his daily bread. It is unfortunate that easy comprehensibility and simplicity for the laity are discarded sometimes through over-sophisticated scholarship in the art of drawing up legislative Bills. It cannot be overstressed that a new orientation for drafting methodology adopting directness of language and avoiding involved reference and obscurity is overdue. 85

The court will not, except in very rare cases, help the draftsman by adopting a favourable construction of the statute that he has drafted. 86 If the interpretation of an Act by the courts does not carry out the intention of the framers of the Act by reason of unhappy or ambiguous phrasing, it is for the legislature to intervene. 87

Scrutton L.J. had this to say in connection with a statute which appeared to him to bristle with obscurities:

84 C.J. Vaswani v. State of West Bengal, AIR 1975 SC 2473 at 2476.
87 Ramanandan Prasad v. Mahant Kaplder, (1951) SCR 138 at 144. An obvious lacuna in the Act will be for the Legislature to rectify and not for the Court to fill by a strained interpretation of the Act, Vidyavati v. State of Punjab, AIR 1958 SC 519.

A person ... shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees occurring in section 167 of the Sea Customs Act, 1878, gave rise to considerable difficulty as to whether they were two separate penalties imposable at the option of the customs authorities or otherwise, Ranchodadas v. Union of India, (1961) SCR 718.
"I regret that I cannot order the costs to be paid by the draftsman of the Rent Restriction Acts, and the members of the Legislature who passed them, and are responsible for the obscurity of the Acts."\(^{88}\)

Talking of Income-tax Acts in the United Kingdom, Lord Buckmaster observed:

"It is not easy to penetrate the tangled confusion of these Acts of Parliament, and though we have entered the labyrinth together, we have unfortunately found exit by different paths."\(^{89}\)

Lord Hewart, L.C. J., after referring to the ambiguity in the scheme and contents of the Shops (Sunday Trading Restriction) Act, 1936—an Act intended to apply in a great number of cases to premises of small shop keepers and dealing with the scale of food—felt that the way in which section 1 was couched was sufficiently bewildering in form and as regards section 2 he observed "It might be possible, but I doubt if it would be easy, to compress in the same number of lines more fertile opportunities for doubt and error".\(^{90}\)

MacKinnon, J.J. had this to say about section 4 of the Trade Marks Act, 1938:

"In the course of three days’ hearing this case, I have, I suppose, heard section 4 of the Act of 1938 read, or have read it for myself, dozens, if not hundreds of times. Despite this iteration, I must confess that, reading it through once again, I have very little notion of what that section is intended to convey, and particularly the sentence of two hundred and fifty-three words, as I make them,  

\(^{88}\) Roe v. Russell, (1928) 2 KB 117.  
\(^{89}\) G.W. Ry. Co. v. Bater, (1922) 2 AC 1 at 11.  
\(^{90}\) London County Council v. Lees, (1939) 1 All ER 191.
which constitutes sub-section (1). I doubt if the entire statute book could be successfully searched for a sentence of equal length which is of more fuliginous obscurity."

"The ludicrous instances of confused expression" quoted by Thring in his 'Introduction to Practical Legislation' and numerous other instances which the draftsman will himself encounter or, find pilloried in the pronouncements of judicial critics of statutory drafting have great instructional value notwithstanding the harsh criticisms."

Glanville Williams cites the favorite charge against the draftsman

"I am the Parliamentary Draftsman
I compose the country's laws
And of half the litigation
I am undoubtedly the cause."(J.P.C. Poetic Justice 1947)

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91 Bismag Ltd. v. Amblins (Chemists) Ltd. (1940) 1 Ch.667, 687. Evershed M.R. was not so harsh when he said
"I do not wish to indulge in the unprofitable and often unfair exercise of criticizing Parliamentary draftsmen. The extreme complexity of this case leads me, however, to express the hope that the statutory provisions as to these very important matters relating to children, which affect large numbers of people in relatively humble circumstances, will be made (as occasion offers as simple and as readily understandable as possible. In re Dankbars (1954) 1 Ch.98, 107.

92 The Workmen's Compensation Act, 1897, consolidated with other Acts in the Workmen's compensation Act, 1925, was expressed in simple language, so simple that its promoter Mr. Joseph Chamberlain hoped that there will be no need of the intervention of lawyers in applying it. But, alas! few expressions have attracted more judicial interpretation than 'accidents arising out of or in the course of employment'.
A Committee under Sir Holman Gregory K.C. regarded redrafting as impracticable. A study of the following compilations may not disclose many pitfalls to be avoided but will supply the draftsman with ammunition to repel unjustified attacks.


And he goes on to add that others, than the draftsman are sometimes accountable for the trouble in interpreting statutes. According to him good rules of interpretation consistently applied could do much to reduce the area of doubt. It is the absence of such rules or the failure to apply the existing rules with sufficient regularity to preserve their character as rules that has brought about the situation in which it is almost impossible to predict when statutory standards of behaviour will be imported into the law of torts. Compare the above parody with the [other variants which are] response from the drafters! The one below is from the Bill Drafting Manual of the State of Oregon U.S.A

COUNSEL’S LAMENT

I’m the Legislative Counsel,  
I compose the sundry laws,  
And of half the litigation  
I’m supposedly the cause.  
If I employ the kind of English  
Which is hard to understand,  
The members do not like it,  
But the lawyers think it’s grand.  
I’m the Legislative Counsel,  
And they tell me it’s a fact  
That I often make a muddle  
Of a simple little Act.  
I’m a target for the critics,  
And they wish to see me fried—  
Oh, how nice to be a critic  
Of a job you’ve never tried.

A DRAFSTMAN’S RETORT

The draftsmen’s role has been the subject of ridicule by many judges and this quote or rather misquote has been frequently referred to by the Judges in their judgments. In this context we may refer to a statement attributed to

95 It is not uncommon to find enactments reminding one of the old British jingle: “I am the Parliamentary draftsman. I compose the country’s law. And of half of the litigation I am undoubtedly the cause”. Palace Administrative Board v. Rl B Thampuran, AIR 1980 SC 1187, at 1195, Institute of Chartered Accountants of India v. Price
the Duke of Wellington. It is said that The Duke of Wellington stated that he never could understand an Act of Parliament in its 'raw state' and, the Duke after a hit at Napoleon as a legislator, went on to add that:

"Everybody is a reformer, Every woman can say, and every man write, how a scheme could easily be framed by which one small volume, or at most a few small volumes, should comprise, in a form intelligible to all, the wrongs of man, the rights of woman, the mode in which those wrongs should be redressed, and those rights enforced. Opinions differ as to the reasons why the world is deprived of so great, so easily attained a boon. The House of Lords blames the House of Commons, the House of Commons makes an onslaught on the obstructiveness of the Lords; the Judges, with characteristic impartiality, denounce both Houses equally. On one point alone Lords, Commons and Judges are alike agreed, namely on the incompetence of the officials entrusted with the drawing of Acts of Parliament."^96

Another response from a draftsman to the favorite charge reads as follows:^97

"How nice to be a learned judge who never writes a law.
He sits all dressed up every day
and feels quite free to pour
The greatest scorn upon the work of those who draft the Bills.
He thinks it fun to say that their mistakes cause all the ills
That make the people go to law.
But he should never smirk -
The drafter's faults are just the things that keep the courts in work!"

Acts of legislature are drafted by draftsman but it runs through the legislative committees and public scrutiny. Nothing prevents the legislators who pass

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^96 Supra note 7.
^97 Contributed by John Wilson, Consultant Legislative Counsel, Law Drafting Division, Department of Justice, Hong Kong. Commonwealth Association of Legislative Counsel, (CALC) Newsletter 36.
the Bill from rectifying the defects if there are any. If the entire galaxy of legal luminaries pass legislation blindly or acquiesce in the state of affairs then where does the blame lie? More over the draft Bill undergoes many changes during the passage in the Parliament over which the draftsman has no control. The problem arises because the Courts want to practice censorial jurisprudence (what the law ought to be) rather than expositorial jurisprudence (expounding what the law is) a danger which a celebrated Jurist and other analytical positivists warned many centuries ago.  

There is a popular misconception that drafting offices are obstructive. Others are seen as elitist. According to David Elliott the UK Parliamentary Counsel Office is often referred to a “priesthood”. Sometimes these criticisms are justified, often they are not. But the result is that sometimes departments deliberately avoid dealing with legislative counsel for as long as they can. This then exacerbates timeliness problems. The responsibilities of legislative counsel often mean that they must say “no” or “what about . . . ?” in order to fulfill their obligations to the Government. Because the role of legislative counsel is not well understood, legislative counsel are sometimes seen as a hindrance rather than help in designing sound legislation.  

Despite widespread popular misconceptions, some amusing, some not, a statute-writing lawyer does try to draft statutory language so that it can be understood by laypersons as well as by administrators and other lawyers. A perfect law never has been written, and never will be; the passage of time ultimately renders every law obsolete in some respect. However, a drafter can do much to reduce inconsistency and ambiguity and to anticipate foreseeable problems. Success as a drafter depends on the extent to which the drafter achieves these ends.  

One may wind up this Chapter with two quotations:

“The quality of a bill depends of course upon the competence of the draftsman. But his task is, in a sense, impossible of fulfillment. The perfect bill has never been written, and never will be. The most a draftsman can do is to try to reduce doubt, ambiguity and foreseeable problems to a workable minimum, and his success will depend upon the extent to which he achieves this end. He must

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98 In particular when the courts try to reach a decision and they find that the wording of the statute does not lend itself to such a result the heat is turned on the draftsman. Ultimately Parliamentary will is supreme and the courts will have to admit it.

produce not only one, but many Bills in a few weeks or months; he must for each Bill create a sound, workable legislative scheme, anticipating and providing for all the problems and situations that are likely to arise; he must express the scheme in clear and unequivocal language; he must ensure that the Bill will carry into the law precisely what the sponsors intend. But once the measure becomes law, anyone can attack it at his leisure. In a lawsuit, counsel for the opposing parties may submit the statute, or the smallest portion of it, to microscopic examination for months or even years; they may argue about it for days before a judge; and the judge has the advantage of both sides of the argument in coming to his own conclusion. Whatever the result, in the long run the draftsman is bound to come out second-best”.

Thring’s warning which every youthful drafter should take to heart and which experience the older draftsman will often justify is as follows:

“It might be well to warn the draftsman that in his case, virtue will, for the most part, be its own reward, and that after the pains that have been bestowed on the preparation of a Bill, every Lycurgus and Solon sitting on the back benches will denounce it as a crude and undigested measure, a monument of ignorance and stupidity. Moreover, when the Bill has become law it will have to run the gauntlet of the judicial bench, whose determined dignitaries delight in pointing out the shortcomings of the legislature in approving such an imperfect performance.”

And it must be borne in mind that Lord Thring’s condemnation of judicial criticism is not unqualified. He admits frankly that some judges, and those not the least eminent, including the late Sir James Fitzjames Stephen, who had

101 Lord Thring, Practical Legislation, 8 (1877).

A former Parliamentary Counsel, Sir William M. Grahame-Harrison, may also be quoted in this context.

“There is a great deal of misconception as to the duties of a Government draftsman. Lord Sankey at one end of the scale in experience and Mr. John Willis at the other concur in thinking that his work consists in putting legislative proposals whether put before him in the shape of a draft Bill or otherwise - into legal form. If it were so, his life would certainly be an easier one, but in fact his duties are far more extensive.
enjoyed the advantages of having been a draftsman before he was a judge, both expressed a different and juster view of the draftsman's position and made greater allowance for the difficulties which he has to encounter and surmount.

According to Geoffrey Bowman the case of a Russian nobleman who was driven to suicide should be a lesson to anyone who seeks to become a drafter! The onerous responsibilities of the job is aptly described by him in his after dinner speech at the CALC 2005 Conference as follows:

“I have spent nearly 35 years as a legislative drafter, and the job certainly produces some strange effects. One effect is that I have become quite unable to understand even the simplest sentence. Everything seems to have several meanings or none at all. Insurance proposal forms and income tax returns are a nightmare. To interpret them for me I often have to rely on my family (especially

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His first duty is to produce a Bill which will do what the Government of the day as represented by the Minister concerned, want done. In order to do this he must find out — not always an easy task — what in fact the Minister and/or his department want. He knows that, without interfering with the administrators in questions of policy (though they will have very little scruple about interfering with his drafting), he must do what he can to prevent the Minister getting into difficulties. If the Minister or his department are obdurate in resisting him on a legal point he must do what is necessary to get, if he can, the support of Law Officers.

When the drafting of the Bill is approaching completion he will have to take his part in the preparation of notes and memoranda on it. But all this time he has got to bear in mind his second duty — to see that the Bill is not only right in substance, as well drafted, and as short as he can make it. If he is to do this, he must bear in mind the Horatian exhortation *nocturna versate manu, versate diruna and timae labour*. He must examine and criticize, and produce fresh drafts, all at very high speed; he should know his Bill backward and forward, and be able at a moment's notice to say where any particular provision is to be found in it and why it is there. And he must be able to do this not in respect of one Bill only, but of two or three concurrently.

He has many masters, all crying out simultaneously like the daughters of the horse-leech, “More, More!”. If he makes a social engagement for an evening in the session, he will probably find that some stage of one of his Bills is in the House that evening; if he proposes to take a week end away, he will be told on Friday evening that a Minister wants a new draft of something early on Monday. And at the end of it all, he will be told that he is idle, careless, makes nothing but mistakes, and is hopelessly incompetent.”

Carol, my wife). I am glad to say that she takes a very robust line, and generally has no problem!"\(^{103}\)

"According to Driedger it takes about ten years to train a competent Parliamentary Counsel. One can learn all the rules of swimming but that does not make one a swimmer, one has to get into the water. That is where the test is."

According to Reed Dickerson “a draftsman must be an intellectual eunuch. He must also be an emotional oyster. However deeply he may feel about the wisdom of the policy he is called upon to express, he must submerge his own feelings and act with scrupulous objectivity”.\(^{104}\)

As stated by Hiranandani legislative drafting is thankless task. A draftsman rarely gets credit for a good draft. He is often blamed for a bad one. The reason perhaps is that a good draft never comes up before a court. A draftsman should be thick-skinned. He should always be unruffled. He should never get excited. If his mind is disturbed he will never be able to do his work properly. When he is criticized by people who do not know the difficulties of his job, he can only laugh in his sleeve and derive comfort from...

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\(^{103}\) Commonwealth Association of Legislative Counsel Conference 2005, President’s after dinner speech on September 7, 2005 Lincolns Inn, London, CALC Newsletter, September 2006. On the lighter side Bowman refers to how everything seems ambiguous to a draftsman.

“For instance, I once saw an advert for a “massive carpet sale”. Does this mean a sale of massive carpets, or a massive sale of carpets of different sizes, or what? If a sign on an escalator says that “dogs must be carried” you can easily change its meaning by changing the emphasis to “dogs must be carried”; do you go in search of a dog in order to obey the sign?”

“I once saw a sign on a railway platform: “Passengers must cross the line by the subway”. Does this mean that, assuming you want to cross the line, you must do so by the subway? Or does it mean that, whether you want to or not, you must cross the line? And what happens if, once you get to the other side, there is a similar notice directing you back again? The literal-minded passenger could spend the rest of his life crossing back and forth!”

An American statute, provided that No-one shall carry any dangerous weapon upon the public highway except for the purpose of killing a noxious animal or a policeman in the execution of his duty. And there was an Indian statute passed after a serious railway accident at a junction. It provided that, when two trains approach at an intersection, each must wait until the other had passed.

the thought: If only these people were to do my job, what a mess they would make!\textsuperscript{105}

\textbf{DON'T SHOOT THE MESSANGER – BELLEROPHON SYNDROME}

Finally, if we are to abide by Hiranadani’s formula which prescribes that if a person has a choice to become a draftsman or to take up any other job, he should take up the other job\textsuperscript{106} there will be a dearth of draftsman and the drafter’s tribe will perish from the earth! As stated in the Oregon Drafting Manual the complexity of social problems to which the statute is addressed, the ambiguities of meaning and the enacting process combine, if not conspire, to make the drafting task difficult. The drafter is a lawyer functioning in the public arena, trying to put into statutory form what the requester (client) asked for in substance. A perfect law never has been written, and never will be; the passage of time ultimately renders every law obsolete in some respect. However, a drafter can do much to reduce inconsistency and ambiguity and to anticipate foreseeable problems.\textsuperscript{107} Success as a drafter depends on the extent to which the drafter achieves these ends though there is scope for simplifying them language of law yet the entire blame cannot be attributed to the draftsman alone. There are many factors which contribute to the unsatisfactory state of affairs. So the message is don’t shoot the messenger! (read draftsman!).

To briefly sum up legislative drafting is a discipline. It requires continuous training and experience. It demands hours and hours of concentrated intellectual labour. The process of drafting a law has much in common with the children’s game of snakes and ladders. The aim is the same of proceeding uninterruptedly from start to finish, preferably with bursts of acceleration. In both cases that aim is rarely realized. The player lands on a snake and slithers down to a position he hoped he had passed for good. The draftsman encounters problems – perhaps he gains a clearer understanding of his instructions or realizes his draft just will not work – and he too must slither back to an earlier stage, perhaps back to ladders snakes and ladders is a game of chance. Drafting legislation is a game of skill.\textsuperscript{108} Its audience varies from the learned in the law to the simple and the curious; from the specialist to the lay; from those who try in good faith to understand

\textsuperscript{105} \textit{Supra} note 56 at 7.
\textsuperscript{106} \textit{Id.} at 8.
\textsuperscript{107} http://www.lc.state.or.us/pdfs/BillDraftingManual/dmchpl.pdf
legislation to those who try in bad faith to misunderstand legislation. It is a superficial view to consider that the rules of good drafting are simply the rules of literary composition, as applied to cases where precision of language is required, and that accordingly any one who is competent to draw in apt and precise terms a conveyance, a commercial contract, or a pleading, is competent to drawn an Act of Parliament.\textsuperscript{109}

Its skills require facility in the use of language, a critical, enquiring, imaginative, and systematic mind, as well as an orderliness in the formulation of thoughts. These qualities for legislative drafting are not hard to come by. Yet there are few who are willing to undertake the arduous and highly skilled tasks that legislative drafting imposes. It demands the ability to work with colleagues and those skilled in other disciplines. It requires the ability graciously to accept criticism, whether in bad faith or in good faith. It commands a temperament of rigid self-criticism.

Common sense is a prerequisite. A sense of humour is desirable something more than jeering at the rivals draft!\textsuperscript{110} So is the awareness of the cultural, economic, political, and social factors that create the problems that will have to be dealt with—and it is hoped solved—by legislation. Accuracy and precision of language may proceed from an innate habit of mind. These faculties can be acquired. However, if, as Illbert said, 'a Parliamentary draftsman is to do his work well, he must be something more than a mere draftsman. He must have constructive imagination, the power to visualize things in the concrete, and to foresee whether and how a paper scheme will work out in practice'.\textsuperscript{111}

The Parliamentary Counsel must be:

\begin{quote}
An architect of social structures, an expert in the design of frameworks of collaboration for all kinds of purposes, a specialist in the high art of speaking to the future, knowing when and how to try and bind it and when not to try at all.\textsuperscript{112}
\end{quote}


\textsuperscript{110} “At a social function, one of my children once asked Edward Caldwell, "Does my dad laugh much at work?" Edward replied, "Only when he reads other people's Bills", Geoffrey Bowman President CAIC's after dinner speech Newsletter of CAIC August 2006.

\textsuperscript{111} Ibid.

Lastly every drafter can learn from the experiences of two eminent drafters from different parts of the world namely Shri R.V.S. Peri Sastry and Fredrick Reed Dickerson as revealed through their lectures on Common Errors in Drafting at Annexure I and Basic Steps of Drafting: Substance and Style at Annexure II.