

Theory and Practice of Legislative Drafting

Brown, George MACKay (1921 – 1996)

- *“We who deal in words must strive to keep language pure and wholesome; and it is hard work, as hard almost as digging a stony field with a blunt spade”*
- *[Time in a Red Coat (1984)]*

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Philosophical Role of the Drafter

- Catalyst for Social Development and Change.
- Word Mechanic
- Scientist
- Artist
- Contribute to achieving justice and welfare for society.

The Drafting Process in Your Jurisdiction

- What is the unique jurisdictional process.
 - Time
 - Cabinet/ Responsible Ministry
 - Policy
 - Green Paper
 - White Paper
 - Parliament
 - Debate
 - Readings
 - Public Consultations
 - Select Committee

Who are the drafters?

- Technical Persons
- Persons within existing Ministries
- Attorney General's Chambers
- Consultants

Law Revision in Your Jurisdiction

- When last were laws revised and updated?
- Guyana – 1978 and presently being undertaken

Sources of National Laws

- Constitution as supreme Law – Guyana Article 149J
- Framework Legislation –
- Sector Specific Laws
- Incidental Laws



Bismark, Otto von (1815 – 1898)

“Laws are like sausages. It’s better not to see them being made”

Drafting Stages and Steps

- Suggested 5 Stages
 - Understanding Stage
 - The Analysis Stage
 - The design and planning Stage
 - The Composition Stage
 - The Scrutiny Stage

Understanding Stage

- Instructions and Intent of the intended draft.
 - Written instructions – background information, (MEA national strategies, policies and action plans
 - Thorough understanding of the purpose of the draft instructed.
 - **Clearly stated** objectives in simple language
 - Clear lines of communication
 - Mechanisms for clarification and feedback

The Analysis Stage

- Understanding the Current Law.
- The Constitution as the Supreme Law.
- Interpretation and General Clauses Act.
- What are the provision in various interlinking-pre-existing laws.
- MEA – Examination of the contents of the MEA
- Other Legal research.
- Practicality of the measure.
- Financial implications.

The design and planning Stage

- Choosing the approach – A New Act or Amendment to Existing Laws, Regulations under and Existing Act.
- Establishing a broad and outlined framework
- MEA Implementation mechanisms – enactment by **Re-enactment or by reference.**

The Composition Stage

- Determining the text of the Bill
- Flexibility – No standard form, national style.
- Establishing a framework of sections and table of contents.
- Determining the structure of various provisions. –
- Remember rules of Statutory Interpretation.

The Composition Stage (cont)

- Sources
- Comparative examples
- Comparative Approaches – Laws have been implemented in other jurisdictions. Common history and systems among most Caricom Member States
- Electronic Research Tools
- Model Laws

Suggested Arrangement

- PART I- PRELIMINARY PROVISIONS
 - (a) Long title
 - (b) Enacting formula/ Enacting clause
 - (c) Short title
 - (e) Purpose provisions/ Objectives
 - (f) Definitions/ Interpretation

Suggested Arrangement (Cont)

PART II- PRINCIPAL PROVISIONS

- This part includes the substantive and administrative provisions. These are the heart of the Act. They create rights and duties and lay down the machinery of implementing the law, etc.

PART III-MISCELLANEOUS

- provisions creating offences
- supplementary provisions i.e service of notices, powers of search and entry, power to make regulations, etc

PART IV- FINAL PROVISIONS

- savings and transitional
- repeals
- schedules

The Scrutiny Stage

- Revision work, carried out both by the draftsmen themselves and those who instruct them. There is consultation with sponsors, and various amendments to the draft from time to time, such that by the time the draft is in final shape.
- Finally, a draftsman colleague, who comes fresh to the exercise, should be asked to scrutinize the draft.

Important for MEA Implementation

- **Incorporation by Re-enactment or**
- **Incorporation by reference.**

Checklist for Developing National Legislation to Implement Environmental Conventions

- Set out Convention requirements for national action (legal or others);
- Closely examine each of the requirements;
- Consult relevant secretariat documents and precedents, including model legislation where available;
- Allocate time for each element of the legislation needed at national level;
- Legislative elements:
 - Definitions
 - Objectives
 - Principles
 - Operational provisions
 - Enforcement
 - Liability (where appropriate)

Important References

- **REPORT OF THE TRAINING COURSE IN LEGISLATIVE DRAFTING OF ENVIRONMENTAL LAW IN UGANDA USING THE TRAINING MANUAL BY PROF. V.C.R.A.C CRABBE AND PROF. FRANCIS SITUMA @**
http://www.nemaug.org/padelia_meas_Project/Legislative%20Drafting-Workshop%20Report%202005.pdf
- *Manual on Compliance with and Enforcement of MEAs (2004)*



Questions and Comments?



Thank you.