

FOREWORD TO THE SECOND EDITION

Last May, when I received Mr. T.K. Viswanathan's kind invitation to write a foreword for this second edition of a book that was initially published in 1980, under the title *The Drafting of Laws*, I was pleasantly surprised, as I had not previously heard that Mr. Viswanathan was preparing a second edition of this book, which was initially written by Mr. G.R. Rajagopaul (the first person to occupy the position of Legislative Secretary of India, after Independence). Because of my great respect for the author of this second edition, entitled *Legislative Drafting - Shaping the Law For the New Millennium*, and also because of my keen interest for legislative drafting, I was happy and honoured to accept his invitation.

I have known Mr. Viswanathan for just over five years. We first met in Dhaka, Bangladesh, in June 2002, when he was Member-Secretary of the Law Commission of India. I was then heading a legal reform project in Bangladesh, and we had invited him, as well as several other law reform experts from various Commonwealth countries, to attend, as speakers, an international conference relating to law reform. Because legislative drafting is my background, when Mr. Viswanathan then told me that, prior to joining the Law Commission of India, he had been a drafter, a special relationship immediately started to develop between the two of us.

A little over two years later, my team and our Bangladeshi friends organized another conference in Dhaka, this time on legislative drafting. As this event was meant to be a regional conference attended by Bangladeshis as well as representatives from five neighbouring countries, including India of course, Mr. Viswanathan again joined us in Dhaka as one of the representatives of his country, but this time in a different capacity, as he had now become Secretary, Legislative Department, in the Ministry of Law and Justice of India. We met again in London, in September 2005, at the Commonwealth Law Conference, and in early 2006, I had the pleasure of travelling to Delhi on vacation, and I was then invited by Mr. Viswanathan to address his group of drafters at the Ministry of Law and Justice. I felt privileged to have the opportunity to address this fine group of people working under the able leadership of Mr. Viswanathan and to learn more about their

drafting processes.

Shortly afterwards, I heard that the author of this second edition had been promoted to the position of Law Secretary, Ministry of Law and Justice. I was not surprised, as I had then come to realize that Mr. Viswanathan is a very talented and capable person and a highly respected public servant. However, I must admit that I had mixed feelings. On the one hand, this promotion was a well-deserved one, which would undoubtedly benefit India's entire public service and the country as a whole. On the other hand, would this promotion not deprive the Commonwealth legislative drafting community of one of its excellent elements? Well, as is evidenced by his dedicated work on the second edition of this book, Mr. Viswanathan certainly has not lost his interest for legislative drafting, and this, needless to say, is great news for all legislative drafters.

In addition to updating the original edition of the book and bringing it in line with recent trends prevailing across the Commonwealth in both areas of legislative drafting and statutory interpretation, the author of this new publication has added four new chapters to the book: *History of Statute Law in England* (Chapter II), *Origins of Office of Parliamentary Counsel in England* (Chapter III), *Reasons for Complexity of Legislation* (Chapter VII), and *Plain Language Drafting* (Chapter VIII). The book now covers a much wider range of topics that are of particular interest for legislative drafters, including a detailed analysis of, and a very useful discussion on, the need to simplify legislation in order to facilitate public access to the laws, which are to be applied by the public.

I really enjoyed reading this book, and as I progressed through all fourteen chapters, I kept thinking that legislative drafters (and others of course) who will have the opportunity of referring to this book in their daily work will have access to a wealth of information and useful pieces of advice relating to the history of statute law and legislative drafting, the origins of centralized legislative drafting services, the legislative process, constitutional considerations, numerous drafting issues along with possible solutions, principles of statutory interpretation, and all of this to be found in one single volume!

The book offers a good balance between theoretical matters and practical issues, problems and possible solutions. It is of course important for drafters to have access to information relating to the history of statute law, the influence of Jeremy Bentham, considerations on the division of legislative powers in the Indian Federation, principles of statutory

interpretation or the importance of the role of the drafter, but it is even more important for a drafter to be offered practical information and advice on day-to-day drafting and statutory interpretation issues, and this book covers both of these aspects very well.

I would now like to comment more specifically on certain parts of the book and on some particular issues that are discussed by the author. Chapter III, for instance, contains an interesting discussion on the origins of centralized drafting offices and the advantages offered by such arrangements. Having myself been involved, both as a drafter and a manager, in legislative drafting for most of my thirty-year career in the public service here in Canada, I remain a strong supporter of centralized (i.e. drafting for the whole government) and specialized (i.e. drafting done by professional drafters) legislative drafting services. In my opinion, there is no better or more efficient way of achieving consistency and uniformity and meeting the highest quality standards in the drafting of legislation.

Another aspect of legislative drafting that, in my view, cannot be overemphasized is the need for independent scrutiny of legislative drafts, as discussed in Chapter VI of the book. Every legislative drafting office, it seems to me, ought to put in place various quality control mechanisms that allow, at various stages of the drafting process, for the review of the drafters' work either by other drafters or some review committee, or by legislative editors or linguists. There will always be a need for a "fresh eye" to go over the work prepared by colleagues, regardless of the level of experience acquired by the person whose work is being revised. As is discussed in this book, drafters work under tremendous pressure and have to deal with all kinds of competing demands and priority changes, and they have very little time at their disposal to do their drafting work and respect the government's legislative agenda. In those circumstances, they are bound to make mistakes and to lose track at times of certain key elements of their work. That is why the addition of a reviewing officer or some review process by other colleagues is so important, and I am happy to see that this book does insist on the need for independent scrutiny of Bills.

Turning now to Chapters VII (*Reasons for Complexity of Legislation*) and VIII (*Plain Language Drafting*), I would like to offer the following comments. These two chapters are valuable and interesting additions to the first edition of the book. They both deal with a fundamental principle, namely that, in any society governed by the Rule of Law, citizens ought to be able to understand the laws that are enacted by their Parliament and which they are

expected to respect and obey. Explanations are provided as to why the laws are sometimes so complex and how these complexities can be alleviated in various ways (e.g. simplification of the legislative language, drafting in clearer language, avoiding referential legislation whenever possible, drafting shorter sentences, greater use of purpose clauses). Chapter VIII offers a good discussion on the pros and cons of the so-called “traditional drafting style” (usually very precise), on the one hand, and the advantages and disadvantages of an opposite style that consists in drafting in general terms (concentration on general principles). Regardless of the style adopted by any given drafting office, there is no doubt in my mind that, in this day and age, every effort should be made in order to draft legislation that is as simple and clear as possible. As is so rightly pointed out in Chapter VIII, even when a drafter has to deal with concepts that are “inherently complex”, the fact that the subject matter dealt with is complex does not necessarily call for “complicated convoluted language”. There will always be a way to simplify a complex draft, but it takes time, and time, unfortunately, is generally a rare commodity in a legislative drafting environment.

In my view, from a drafter’s perspective, four of the fourteen chapters of this book really stand out as being of particular interest for drafters, and they are Chapters IX (*The Structure of an Act – The Form of a Law and its Constituent Parts*), XI (*Principles of Interpretation of Statutes*), XII (*The General Clauses Act, 1897*) and XIII (*Statutory Forms*). Singling out these four particular chapters that deal with various key aspects of legislative drafting, on the one hand, and statutory interpretation, on the other hand, should not come as a surprise, as legislative drafting and statutory interpretation are so intimately related to one another. Elmer A. Driedger, a well known Canadian legislative drafting expert, used to tell his students attending the legislative drafting program of the University of Ottawa (I had the privilege of being one of his students and I am quoting from my notes dating back to January 1974) that “the draftsman must be familiar with all so-called ‘rules of construction’ by which his work will be measured.”

Chapters IX and XIII, even if they do not follow sequentially, are closely linked to one another, as is noted by the author in Chapter XIII. The two chapters provide theoretical and very practical information to drafters with respect to the structuring of an Act of Parliament, its constituent parts, and the possible form or wording that ought to be given to a variety of recurring legislative provisions. In both chapters, but more particularly in Chapter XIII, useful tips and pieces of advice are provided to the drafter as

to how to structure a good piece of legislation and how to draft particular provisions that can subsequently be used as precedents. These two chapters will greatly benefit any drafter, whether junior or more senior.

As for chapters XI and XII, they deal with the interpretation of legislation in a very detailed and practical way. Chapter XI provides a most useful explanation of the numerous rules of statutory interpretation that have been developed by the courts over the years, while Chapter XII offers a very good analysis of the purposes and advantages of an *Interpretation Act* such as India's *General Clauses, 1897*, and explains, based on an abundant list of court decisions and a good bibliography, why it is that an *Interpretation Act* is often described and considered as the drafter's Act. The author even makes a number of useful suggestions for improvements to the current *General Clauses Act, 1897* (i.e. possibility of adding provisions to that Act relating to the effect that ought to be given to examples and illustrations that are sometimes resorted to by the drafter in order to facilitate the understanding and application of certain Acts; possibility of inserting new provisions dealing with the significance of marginal notes and punctuation marks, or the effect of the expiration of temporary Acts).

Finally, I would like to offer a general comment. This book, it should be noted, is particularly well researched and documented. Luminaries such as Ilbert, Bentham, Coode, Blackstone, Montesquieu, Lord Thring (who was the first person to head the Parliamentary Counsel Office, in London, after it was established in 1869) and others are often and extensively quoted. Modern legislative drafting experts such as Reed Dickerson, Francis Bennion and Elmer A. Driedger, as well as numerous court decisions, are also heavily relied upon in support of the explanations and ideas that are formulated in this volume. And most chapters contain a useful bibliography for anyone who would like to pursue even further their research on any of the issues that are discussed in the book.

I believe it can honestly be said that, in spite of the fact that this book is primarily intended for drafters, it will provide interesting and useful reading, not only to drafters, but also to any public servant who has a role to play in the legislative process, to judges who are called upon to interpret the laws of their country, to private sector lawyers who, on a daily basis, provide advice to their clients on the application of various Acts of Parliament, to law professors, law students, or anyone who wishes to learn more about the history of statute law or the origins of centralized legislative drafting services across the Commonwealth, or the challenges associated with the

drafting and interpretation of legislation, and the law-making process generally.

Legislative drafting is an art and a highly specialized discipline that requires publications such as this one in order to flourish. Unfortunately, one must recognize that the amount of literature that is available on the topic of legislative drafting is rather limited. Therefore whenever a new book or article is published on the subject matter of legislative drafting or statutory interpretation, or on both subject matters, as is the case here, it is an occasion to celebrate! In this particular instance, the event is even more special as it constitutes for all drafters, and other readers of this book as well, a unique opportunity to benefit from Mr. Viswanathan's years of experience as a drafter and as the leader of a large drafting office.

In my capacity as President of the Commonwealth Association of Legislative Counsel, I welcome this publication. I truly hope and trust that this tool will greatly benefit, not only the Indian legislative drafting community, but all drafters across the Commonwealth and beyond.

I wish to express my sincerest congratulations and my profound gratefulness to Mr. T.K. Viswanathan.

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