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A Manual of Instructions for Legislative and Legal Writing

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A
Manual of Instructions for Legislative and Legal Writing

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FOREWORD

This work is an attempt to put on paper the substance of the legislative drafting seminars I conducted at the University of Ottawa from 1970 to 1979, as part of a Master's programme in legislation. In addition to the drafting seminars (six hours per week during the academic year) I also lectured on the Construction of Statutes, the Legislative Process, and some of the problems in Canadian Federalism arising out of the distribution of legislative powers between the Parliament of Canada and the Legislatures of the Provinces that has a bearing on the drafting of federal and provincial legislation. The course I gave is more fully described in the Journal of the Commonwealth Parliamentary Association[1] and is also referred to in the Renton Report on the The Preparation of Legislation.[2]

This publication is intended to serve as a companion volume to previous publications of mine, namely, The Composition of Legislation; Legislative Forms and Precedents; and The Construction of Statutes.

Although this work is intended primarily as an instruction or exercise manual for legislative drafting (whether federal, provincial or municipal), it is hoped that it may be of some use or interest to lawyers generally, since legislative drafting is but a special area in the larger field of legal writing, and the principles applicable to the former are to a large extent applicable also to the latter.

This manual is intended to be used either for self-instruction or for instruction under supervision.

One of my initial problems was the selection of exercise material. I felt that I could not invent suitable instructions for draft legislation, and therefore discarded any attempt to do so, except in chapters XVII and XVIII. I did not want to give assignments that would involve legal or factual research, as that would take too much time away from actual drafting. Hence, I chose for revision statutes or ordinances from early settlement days that dealt with ordinary simple subjects; no legal research, or very little, would be needed, and if any factual explanations were needed I could give them. This method gives at the same time training in the other side of the coin, namely, the interpretation or construction of statutes, since students would have to gather their instructions from a close reading and understanding of the assigned material.

I am grateful to my secretary Mrs. Clare Noël for typing the initial manuscript, largely from my handwriting, and I am especially indebted to Miss Beatrice Brace, who gave me much valuable assistance and advice in editing successive prints of each chapter.

1. October 1973, vol. 54, No. 4, 228-230.

2. 47.

E.A.D.

Comp. Leg.	Driedger. Composition of Legislation (2nd ed.) Department of Justice. 1976
Leg. F. & P.	Driedger. Legislative Forms and Precedents. (2nd ed.) Department of Justice. 1976. Bound with Comp. Leg.
Cons. St.	Driedger. Construction of Statutes. Butterworths. Toronto. 1974.
Renton Report:	The Preparation of Legislation. Cmnd. 6053
Coode:	Legislative Expression. Appendix to the Report of the Poor Law Commissioners on Local Taxation. Reproduced as Appendix I to Comp. Leg.
Corry:	The Interpretation of Statutes. Appendix I to Cons. St.

BOOK ONE

CHAPTER I

THE LANGUAGE OF LEGISLATION

In one matter I have been consistent throughout the years, namely, my conviction that there is no special language - grammar, syntax or composition - for statutes.

Thus, in 1949 I wrote:[1]

"If he (the draftsman) entertains the notion that he must make the statute sound "legal", that is to say, that he must employ expressions such as *aforesaid*, *hereinafter*, *hereinbefore*, *heretofore* at every opportunity, that he must precede his nouns with *such*, *said* or *the said* whenever he can, that he must search for the longest word he can find and couple it with a synonym or two, that he must add a *provided that*, a *provided further* and a *provided always* to each section and that each sentence or paragraph must be stretched out as far as it will go, he will succeed only in confusing himself and everyone else. Statutes must be written in good English. The advice of Fowler and other authorities on language is valid for the draftsman too. There is no special language for statutes. Of course, every art and science has its own technical terms, designed to express certain meanings with the utmost precision. It is not suggested that the draftsman should avoid these when he is drafting a statute relating to a particular branch of knowledge. Good English includes these words. Law, too, has its own special terms and when occasion requires they must be used. For example, *fee simple*, *habeas corpus*, *consideration*, *domicile*, *executor*, *testator*, *remainderman* are technical legal terms, but they mean something, and when properly used, will avoid ambiguity and not create it. The best and safest rule for the draftsman to follow is that words and sentences should be as short and simple as circumstances permit."

In 1958 I wrote:[2]

"I do not divide language into the categories of 'lawyers' language' and 'laymen's language'. Many times I have heard it said 'Here it is in layman's language; please put it into legal language'. To me, there is only one language and it can be classified only according to quality—good, bad or mediocre. This applies to all composition, wherever it is found.

I am frequently asked what is the 'legal meaning' of something or other, to which I usually reply, 'What does it mean in English?' True, there are some words that have technical meanings in law, just as there are technical words in other fields. But for the most part a word means what it means, whether it is found in a statute or elsewhere. Most of the words in an ordinary statute can be found in any school dictionary, and they mean exactly what the dictionary

says. There are statutes that deal with pure law or legal procedure—lawyers' law, as they are sometimes called—and they obviously do contain technical legal terms not understood by the ordinary reader, but he need not be much concerned because he will have little occasion to read them. There are also statutes in other fields where technical words and expressions must be used.

There are no special rules of grammar or syntax for statutes. English is English. Many think that to make something 'legal' you must fill it with whereases, provided thats, hereinbefores and notwithstandings; that every verb must be in the future perfect; that every section must be a compound sentence in which many distinct sentences are combined, each with multiple adverbial and adjectival clauses, many of which must be exceptions and exceptions to exceptions. If you want to write a law, stick to plain words and grammar and a construction as simple as the subject-matter permits."

In 1971 at a Symposium[3] I said:

"I deny that any special rules of grammar or composition are needed for statutes or that any mysterious incantations are required to clothe a policy with legal validity. Competent legislative draftsmen do try to use plain, ordinary and correct English and to avoid archaic or obsolete forms and expressions. At least that is my concept of a competent draftsman."

There is, however, one significant difference between legislation and ordinary prose. Legislative sentences, for the most part, are restricted to two kinds. First, there are sentences that direct to some identifiable persons a command or prohibition, permission or power, or a denial of permission or power. Secondly, there are sentences that lay down a rule of law without reference to any person.

Many years ago Coode wrote a remarkable treatise on legislative expression. He had been engaged to examine into the Poor Laws, and in his Report to Parliament in 1843 he appended a paper on "Legislative Expression; or, the Language of the Written Law". He then set out[4] what he considered to be the elements of every legislative expression in the following words:

"The expression of every law essentially consists of,

–1st, the description of the Legal Subject

–2dly, the enunciation of the Legal Action.

To these, when the law is not of universal application, are to be added,

–3dly, the description of the Case to which the legal action is confined; and,

–4thly, the conditions on performance of which the legal action operates."

Coode's analysis was brilliant, and was a major breakthrough in the drafting of legislation. His work apparently received little attention in his own country, although Thring does refer to it.[5] However, it was literally accepted as Holy Scripture in North America.

When I and my colleagues, back in the forties, began drafting statutes and regulations, we tried to follow Coode. His recommendation was that his elements should appear in the following order: Case, Condition, Legal Subject, Legal Action. There is no doubt that this prescribed order of the elements fitted well the particular enactments examined by Coode.

In the course of time, however, I came to the conclusion that Coode's elements and his prescribed order could not be of universal application. My views are fully set out in Chapter I of my Composition of Legislation.

At the beginning of my drafting seminars I gave each student a couple of statutes and asked them to analyse a few sections according to Coode. Invariably they came back with the same answers: "We can't tell the difference between a Case and a Condition; and we couldn't find any sections where Coode's elements were set out in the order he prescribed".

Without in any way detracting from the value of Coode's contribution, I came to the conclusion that there is no grammatical difference between his Cases and Conditions. Both are adverbial modifiers, and one can be converted to the other, or even eliminated by converting them to adjectival modifiers.[6]

In many instances it makes little difference whether a fact-situation is in adjectival or adverbial form, although one form might give better emphasis than another. However, there is one type of enactment where there can be an important difference between the two.

An adverbial modifier in the predicate of the sentence does not colour the subject. Thus, in the opener

If the treasurer of a company absconds he is liable

a reference in the same or another section simply to the mentioned treasurer would mean only a treasurer of a company and would not carry with it the idea of absconding. If the provision were written

A treasurer who absconds is liable

then a reference elsewhere to *treasurer* as mentioned would mean the defined treasurer, namely, one who absconds.[7]

Also, I felt that if an enactment applies to two or more cases, it is often better composition to state the rule (Legal Action) first and the Cases last; and that from a purely literary point of view it is often better to state a condition (especially an *unless* clause) at the end of a sentence rather

than in the middle, particularly when the condition refers to persons, things or actions that are not mentioned until the "legal subject" or "legal action" are reached. Thring also recommended greater flexibility in arranging the elements of a sentence. He said:[8]

> "The draftsman should recollect that an enactment in its most complicated form, is made up of the following parts:
>
> (1) The case;
>
> (2) The statutory declaration;
>
> (3) The conditions;
>
> (4) The exceptions;
>
> (5) The provisoes.
>
> The arrangement of these parts must much depend on the judgment of the draftsman; the only general rule to be observed is that each part should in substance be clearly distinguishable, and should be comprised, as far as possible, in a short sentence or sentences. Where the circumstances under which an enactment is to take effect are complicated there is no practical difference, except in form, between the statement of the subordinate propositions of the case and conditions, and the draftsman must use his discretion in using one or the other form as he deems most advisable."

In the result I felt it was best to stick to grammatical terms and accepted rules and standards of English grammar, syntax and composition, rather than to create artificial elements and insist on an artificial or unnatural word order.

Nevertheless, there is much of value in Coode's treatise, and it should be read and digested by all who undertake legal writing, whether it be legislation or any other legal document.

There is another work, even earlier than Coode's, that has much good advice in it, namely, "A Practical Treatise on the Analogy between Legal and General Composition, intended as an introduction to the Drawing of Legal Instruments, Public and Private", written by Samuel Higgs Gael and published in 1840.

My philosophy is simply that a writer of laws must have the freedom of an artist, freedom to use to the fullest extent everything that language permits, and he 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.

Although I have tried to avoid tedious repetition there must in a work of this kind necessarily be repetition between chapters and within chapters. But it does not necessarily follow that if no comment is made in a particular case I regard it as acceptable, since the same thing elsewhere

might have a comment. In any case, as this is primarily an instruction book, repetition may not do any harm.

There is some repetition of relatively minor matters of grammar, so that students will not forget and will be conscious of the need for their writing to be grammatically correct.

The reader will note at once that there is much duplication as between chapters II and XX. This is deliberate. I feel that the content of chapter II is needed at the beginning of this work, but is also required as part of the context of chapter XX. Moreover, chapter XX does not deal with any details of legislative drafting as such; it is intended to be complete in itself.

There are some related themes that run throughout this work. In all my drafting experience I have tried to keep to a minimum cross-references to specific sections. Often they are not needed because of the principle of interpretation that a statute must be read as a whole. Also, it is very irritating to a reader to be chased all over an Act while reading one section. At the same time, I do not like to rely too much on inferences, and therefore so far as reasonably possible I avoid nouns and pronouns in one enactment that refer to something outside the enactment. It is not a cardinal sin to do that especially as between contiguous subsections, but it is, in my judgment, a poor practice to do it as between separately numbered sections. Instead of references of this kind, I prefer to have a language connection within a section and between sections, as the following chapters will show. I call this horizontal and vertical connection; warps and woofs are needed to weave a sturdy fabric. In the result, a reader can read a statute from beginning to the end smoothly and without interruption.

In accordance with current practice in federal legislation in Canada I have adopted the multiple citation system; subsection 3(2), instead of subsection (2) of section (3), and paragraph 4(3)(b) instead of paragraph (b) of subsection (3) of section 4.

In case this work should find its way South to readers across the border, I should add a word about the formula *No person shall*, about which there is some disagreement between me and some writers there.

It is said by some that this is an impossible command to a non-existing person; that the negative denies the existence of a person rather than the occurrence of conduct. Others feel that the meaning of *No person shall do* means that there is no person who has the duty to do.

The form *No person shall* has been used since time immemorial in Britain and the Commonwealth to express a universal prohibition, not only in legislation but in all writing. For example, Coode said in 1843[9] that *it shall not be lawful* is more clearly expressed by *no person shall.* The negative goes to the verb, rather than the person; it is a prohibition directed to everybody. I regard it as an eminently correct form. I have

always used it, and I use it extensively in this work. I make some comments on negative forms in my Composition of Legislation.[10]

One hears it said that laws are for everybody; therefore laws should be written so that everybody can understand them. Both assertions are false. Who is everybody? Obviously, laws cannot be written so that infants, the unintelligent or completely uneducated people can understand them. The Governor General's Act was written for the Governor General and the Treasury authorities; not for me. The Canada Grain Act was written for those engaged in the grain trade; not for the corner grocer, and it matters not a whit whether he can understand it or not. The Companies Creditors Arrangement Act was not written for a Doctor of Philosophy in ancient philology.

Laws are written for persons of average intelligence and education who have an interest in or knowledge of the subject-matter of the law. Certainly, laws that concern them should be written so that they can understand them.

There are three audiences a draftsman should have in mind, and the emphasis may vary according to the nature of the law. The audiences are: the public; the courts and lawyers; parliamentarians. And in many statutes some provisions are particularly directed to one audience and other provisions to another. A Highway Traffic Act, or the Criminal Code, are for the most part directed to the public at large, although there would be some enforcement or legal provisions intended primarily for law enforcement officers, lawyers and judges. The Precious Metals Marking Act is directed principally to those engaged in the jewellery trade. The Explosives Act is written for those who manufacture, store, transport or use explosives; I have no interest in it. The Senate and House of Commons Act is directed to members of Parliament. All that can be asked is that the persons to whom a statute or a portion of a statute is directed should be able to understand it; perhaps not to the finest nuance, but they should be able to grasp the gist of it.

Then there is the complaint that laws are too complicated. It may be granted that the expression of a law is too complicated, but we live in a complicated society, a society that cannot be regulated by simple little laws. The law is necessarily complicated. The challenge to draftsmen is not to simplify the law into short dos and donts; that cannot be done. The challenge is to make the law more presentable and comprehensible. That can to a large extent be done by language alone, but there are other aids as will be illustrated in this work and as set out in Composition of Legislation.

CHAPTER NOTES I

1. Legislative Drafting, (1949) 27 Canadian Bar Review 291 at 295.
2. Public Administrators and Legislation, vol. I Canadian Public Administration, 14 at 20.
3. Proceedings of the Ninth International Symposium on Comparative Law, Ottawa, September 1971, at 75.
4. Reproduced in Comp. Leg. 322.
5. 61.
6. Comp. Leg. xxiv - xxviii.
7. See the reference to the *Schildkamp* case in chapter XX.
8. Practical Legislation. 2nd ed. London. 1902. 80-81.
9. 328.

CHAPTER II

STYLE

Lately there is considerable discussion about common law style as opposed to civil law style.[1]

Although it may well be that there is a common legislative style in the western European continental countries that might be designated as civil law style, I do not believe that there is any legislative style that can properly be designated as common law style. At least four distinct styles are recognizable in British legislation. Early in British history, when judges wrote the statutes, more attention was paid to the "spirit" or the "intent" of the statute than to its terms; they knew what the King intended and they gave effect to that intention irrespective of the actual text of the law. Even after judges ceased to write the statutes, the same approach prevailed.[2] This method of construction was known as equitable construction. Statutes were short. They were, in effect, statements of policy, and judges applied the policy as they saw it to the facts before them. They put things into the statute that were not there, they took out things that were there, and they filled in gaps.[3]

To-day, judges refuse to re-model a statute so as to make it fit their concept of its policy. Thus, in the case of *The Mostyn*,[4] in reviewing a previous decision of the House of Lords, *River Wear v. Adamson*,[5] where the decision was obviously completely out of line with the statute there considered, Lord Shaw of Dunfermline[6] had this to say:

> "As to *Wear v. Adamson*, I would only add that if it were construed in the broad sense which with so much misgiving it appears to have been taken to mean, it would seem to me to form a curious intrusion of the judiciary into the province of the legislature: for I cannot doubt that it was the legislature, and the legislature alone (the plain and clear words of the statute being before us) upon whom lay the duty of cutting into these words by an exception equivalent to a pro tanto but a large repeal. The case recalls much older times when the judiciary attempted that. It is recorded that "when Counsel in a case in 1305 argued for a certain construction of the Statute of Westminster the Second of 1285, he was cut short by the Chief Justice with the remark: 'Do not gloss the Statute; we understand it better than you, for we made it.'"
>
> "In these times apparently the statute is to be eviscerated by conceptions *not* of the judges who made the law, but their conception of what was the true and correct line of policy which must be supposed to have been in the minds, and conditioned the words, of those who made the statute. I humbly think this to be both legally and constitutionally unsound, even though it be put forward under the guise of construction. Parliament can and does change its own mind, and it will not under the constitution allow that the judiciary should change its mind for it.

"My Lords, in my opinion, we best adhere to both legal and constitutional principle when we affirm the statute, and decline to accept—unless it be where there is the clearest judicial decision to that effect—a vital and fundamental alternative which should deeply cut in to the comprehensive words plainly employed by the legislature."

In a more recent case, *Seaford Court Estates Ld v. Asher*[7] Denning, L.J. said:

"We do not sit here to pull the language of Parliament and the Minister to pieces and make nonsense of it ..... we sit here to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis."

Denning, L.J. was slapped down hard by the House of Lords in *Magor and St. Mellons Rural District Council v. Newport Corporation.*[8] Lord Simonds had this to say:

"My Lords, the criticism which I venture to make of the judgment of the learned Lord Justice is not directed at the conclusion that he reached. It is after all a trite saying that on questions of construction different minds may come to different conclusions, and I am content to say that I agree with my noble and learned friend. But it is on the approach of the Lord Justice to what is a question of construction and nothing else that I think it desirable to make some comment; for at a time when so large a proportion of the cases that are brought before the courts depend on the construction of modern statutes it would not be right for this House to pass unnoticed the propositions which the learned Lord Justice lays down for the guidance of himself and, presumably, of others.

"We sit here," he says "to find out the intention of Parliament and of Ministers and carry it out, and we do this better by filling in the gaps and making sense of the enactment than by opening it up to destructive analysis." The first part of this passage appears to be an echo of what was said in *Heydon's Case* 300 years ago, and, so regarded, is not objectionable. But the way in which the learned Lord Justice summarizes the broad rules laid down by Sir Edward Coke in that case may well induce grave misconception of the function of the court. The part which is played in the judicial interpretation of a statute by reference to the circumstances of its passing is too well known to need restatement; it is sufficient to say that the general proposition that it is the duty of the court to find out the intention of Parliament—and not only of Parliament but of Ministers also—cannot by any means be supported. The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are

strictly limited: see, for instance, *Assam Railways & Trading Co. Ld v. Inland Revenue Commissioners*, and particularly the observations of Lord Wright.

The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition, which restates in a new form the view expressed by the Lord Justice in the earlier case of *Seaford Court Estates Ld. v. Asher* (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

Lord Reid, at a symposium on the Interpretation of Statutes held in Australia in 1955[9] made these comments:

"I am sure that to a large extent the real difficulty arises when you get a hold of some case which nobody ever anticipated. The unfortunate draftsman could not possibly provide for it, but he has put words on paper and you have to make something of them.

There are two ways of dealing with it, as has been said already. The first is that you ask "Now, what would Parliament have done if this unforeseen case had been put before it?" That sounds very nice, but think of what it means. I have been a member of our legislature for long enough to know that things which ought not to be political very often become so. I can see one of these unforeseen cases being brought up by somebody at a session of the House of Commons and one party saying, "Oh, it ought to be decided one way" and the other saying "Oh, it ought to be decided the other way". Am I to inquire whether say in the year 1906 when the Act was passed there was a Liberal or Conservative majority in the House and then consider whether they would have been likely to do a certain thing? Obviously that is just nonsense. Therefore, when people say that you ought to try to do as Parliament would have done, if they had foreseen this case, I do not think they mean what they say. I have never yet heard anybody stating "Now, go back to the Parliament of 1906, or 1853, or whatever it is, see which party was in the majority then, find out what their principles were, apply those principles and then you will get the answer to what Parliament would have done". It is just absurd. Therefore, what these people mean is that you let the judge fill in the gap by doing what he thinks is reasonable; not what he thinks Parliament would have done, but what he thinks is reasonable. That is pure legislation, neither more nor less, and it does not do."

After the supremacy of Parliament was firmly established following the revolutionary wars at the end of the 17th century, there was a significant change in the style of legislation,[10] a style that might be designated as the second style. Now, only Parliament could make law, and the law was only what Parliament had said - no more and no less. Statutes became particular rather than general, an enumeration of instances rather than a broad statement of principle. The result was that they became a mass of detail, prompting Bentham's description:[11]

> "As if from a rubbish cart, a continuously increasing and ever shapeless mass of law is from time to time shot down upon the heads of people, and out of this rubbish, and at his peril, is each man left to pick out what belongs to him."

It is beyond the scope of this work to give an account of the influence Bentham and others had on legislative style. But as a result of their work a third and improved style emerged, especially after the establishment of the office of Parliamentary Counsel to the Treasury, under the direction of Lord Thring. His publication, Practical Legislation, contains many useful suggestions and is well worth close study to-day.

Current British style differs somewhat from the mid-eighteenth century style, but more in cosmetics than substance. It might be called the fourth style. However, a new style for amending statutes has emerged, namely, what is called the gloss method. Instead of re-enacting a provision, or striking out words and substituting others, the amending statute says that a particular provision of an Act "shall be read and construed" as if for certain words other words were added or substituted. This form has come in for much criticism.[12] The justification is that members of Parliament can then quickly and easily see and understand the amendment; the prime audience is clearly members of Parliament.

Early Canadian legislation followed the then current British style, but in the early forties of this century changes began to be made, largely through the efforts of the Department of Justice and the Commissioners on Uniformity of Legislation. One of the objectives was to remove archaic "legalese" from the statutes; another was to write shorter sections and to make them more presentable and comprehensible. It can, I believe, now be said that in both federal and provincial legislation there is a distinct Canadian style, unlike any British style. I cannot resist quoting the comments of Sir Robert Megarry, made in an address to the Bars of Alberta and British Columbia[13] when he said, perhaps with some exaggeration, that he had a complaint to make:

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

Although there is undoubtedly room for much improvement in the quality of our statute law, Canadian style to-day is not the current or an earlier British style. Australia has a style of its own too; not unlike the Canadian style, but they do some things that in my opinion should be done here and vice versa.

The purpose of this chapter is to illustrate some differences between Canadian and British practices. Students will be expected to do their exercises in Canadian style and should therefore become familiar with our practices at an early stage.

I have selected as a basis for comparison the Visiting Forces Act of 1933, which was copied from the British Act, with only such changes as were necessary to convert it from a British Act to a Canadian one. There is nothing particularly wrong with the British Act. On the whole, it is a good Act, not difficult to read and understand and well arranged. However, there are now differences between Canadian statutes of to-day and those of 1933. Many of these differences are only minor or cosmetic, although some do have a substantive value and some are designed to show how the ready comprehension of statutes may be facilitated.

There is, however, even in Canada, what might be called a common law lawyers' style - ancient, verbose, complicated. The words of Jeremy Bentham[14] aptly describe the style of some lawyers (but not all) when in his Nomography he divided the imperfections of which statute law was susceptible into two classes, Imperfections of the First Order, and Imperfections of the Second Order. Imperfections of the First Order he described as Ambiguity, Obscurity and Overbulkiness. These Imperfections, he said, flowed from Imperfections of the Second Order, namely, Unsteadiness in respect of expression, Unsteadiness in respect of import, Redundancy, Longwindedness, Entanglement, Nakedness in respect of helps to intellection, and Disorderliness.

These are the imperfections that we must keep out of legislation.

THE VISITING FORCES ACT

An Act to make provision with respect to Forces of His Majesty from other parts of the British Commonwealth or from a colony when visiting the Dominion of Canada; and with respect to the exercise of command and discipline when Forces of His Majesty from different parts of the Commonwealth are serving together; and with respect to the attachment of members of one such force to another such force, and with respect to deserters from such forces. **1**

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— **2**

1. This Act may be cited as *The* **3** *Visiting Forces* (*British Commonwealth*) *Act, 1933.* **4**

2. (1) In this Act:—

(a) "The Commonwealth" means the British Commonwealth of Nations;

(b) "Colony" includes Aden and any territory which is under His Majesty's protection;

(c) "Court" includes a service Court of Inquiry, and any officer of a visiting force who is empowered by the law of that part of the Commonwealth to which the force belongs to review the proceedings of a service court, or to investigate charges, or himself to dispose of charges, and the expression "sentence" shall be construed accordingly;

(d) "Home forces" mean the naval, military and air forces of His Majesty raised in Canada;

(e) "home force" includes any body, contingent, or detachment of any of the home forces, wherever serving;

(f) "Internal administration" in relation to any visiting force includes the administration of the property of a deceased member of the force; and

(g) "Member" in relation to a visiting force includes any person who is by the law of that part of the Commonwealth to which the force belongs subject to the naval, military or air force law thereof, and who, being a member of another force, is attached to the visiting force, or, being a civilian employed in connection with the visiting force, entered into his engagement outside of Canada;

(h) "Visiting force" means any body, contingent or detachment of the naval, military and air forces of His Majesty raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, or Newfoundland, which is, with the consent of His Majesty's Government in Canada, lawfully present in Canada;

(i) "Forces" includes reserve and auxiliary forces.

(2) An Order in Council under this Act may be revoked or varied by a subsequent Order in Council.

3. (1) When a visiting force is present in Canada it shall be lawful for the naval, military and air force courts and authorities (in this Act referred to as the "service courts" and "service authorities") of that part of the Commonwealth to which the Force belongs, to exercise within Canada in relation to members of such Force in matters concerning discipline and in matters concerning the internal administration of such Force all such powers as are conferred upon them by the law of that part of the Commonwealth.

(2) The members of any such service court as aforesaid **14** exercising jurisdiction by virtue of this Act, and witnesses appearing before any such court, shall enjoy **15** the like immunities and privileges as are enjoyed **16** by a service court exercising jurisdiction by virtue of the laws of Canada and by witnesses appearing before such a court.

(3) Where any sentence has, whether within or without Canada, been passed upon a member of a visiting force by a service court of that part of the Commonwealth to which the force belongs, then for the purposes of any legal proceedings within Canada the court shall be deemed to have been properly constituted, and its proceedings shall be deemed to have been regularly conducted, and the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of that part of the Commonwealth, and if executed according to the tenor thereof shall be deemed to have been lawfully executed **17** and any member of a visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by such a service court as aforesaid **18** of a charge brought against him, shall for the purposes of any such proceedings as aforesaid be deemed to be in lawful custody.

For the purposes of any such proceedings as aforesaid a certificate under the hand of the officer commanding a visiting force that a member of that force is being detained for either of the causes aforesaid shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of that part of the Commonwealth to which the force belongs shall be **19** conclusive evidence of that fact. **20**

(4) No proceedings in respect of the pay, terms of service or discharge of a member of a visiting force shall be entertained by any court of Canada.

(5) For the purpose of enabling such service courts and such service authorities as aforesaid **21** to exercise more effectively the powers conferred upon them by this section, the Minister of National Defence, if so requested by the officer commanding a visiting force or by the Government of that part of the Commonwealth to which the force belongs, may from time to time by general or special orders to any home force direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of that part of the Commonwealth and to hand over any person so arrested to the appropriate authorities of the visiting force.

4. (1) The Governor in Council may authorize any Government Department, Minister of the Crown, or other person in Canada, to perform, at the request of such authority or officer as may be

specified in the order, but subject to such limitations as may be so specified, any function in relation to a visiting force and members thereof which that **22** Department, Minister or person performs or could perform in relation to a home force of like nature to the visiting force, or in relation to members of such a force and, for the purpose of the exercise of any such function, any power exercisable by virtue of any enactment by the Minister, Department or person in relation to a home force or members thereof shall be exercisable **23** by him or them in relation to the visiting forces and members thereof:

Provided that nothing in this subsection shall authorize any interference in matters relating to discipline or to the internal administration of the force. **24**

(2) If **25** the Governor in Council so provides, members of a visiting force if sentenced by a service court of that part of the Commonwealth to which the force belongs to penal servitude, imprisonment or detention may, under the authority of the Minister of National Defence, given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention barracks in Canada, and if so sentenced to imprisonment may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in Canada, and **26** the Governor in Council may by the same or a subsequent order **27** make provision with respect to any of the following matters, that is to say, **28** the reception of such persons from, and their return to, the service authorities concerned, their treatment while in such custody, or while so imprisoned, the circumstances under which they are to be released, and the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.

Any costs incurred in the maintenance and return of, or otherwise in connection with, any person dealt with in accordance with the provisions of this subsection shall be defrayed in such manner as may, with the consent of the Minister of Finance, be agreed between the Minister of National Defence and the Government of that part of the Commonwealth which **29** is concerned.

(3) Subject as hereinafter provided, any enactment (whether contained in the *Militia Act*, the *Naval Service Act*, or any other statute) which— **30**

(a) exempts, or provides for the exemption of, any vessel, vehicle, aircraft, machine or apparatus of, or employed for the purposes of the home forces or any of them from the operation of any enactment; or **31**

(b) in virtue of a connection with the home forces or any of them, confers a privilege or immunity on any persons; or

(c) in virtue of such a connection, excepts any property, trade or business, in whole or in part, from the operation of any enactment, or from any tax, rate, imposition, toll or charge; or

(d) imposes upon any person or undertaking obligations in relation to the home forces, or any of them, or any member or service court thereof; or

(e) penalises misconduct by any person in relation to the home forces or any of them, or any member or service court thereof,

shall, **32** with any necessary modifications apply in relation to a visiting force as it would apply in relation to a home force of a like nature to the visiting force;

Provided that the Governor in Council may direct that any such enactment either shall not apply, or shall apply with such exceptions and subject to such adaptations or modifications as may be specified. **33**

(4) An order in council under this section may apply either generally, or in relation to visiting forces from any particular part of the Commonwealth, or in relation to any particular visiting force, or in relation to any particular place.

5. (1) The forces to which this section applies are such of the naval, military and air forces of His Majesty raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, or Newfoundland, as the Governor in Council may direct. **34**

(2) Subject to the provisions of this section, paragraphs (1) to (4) of section one hundred and fifty-four of the *Army Act* (which relates to the apprehension of deserters and absentees without leave) shall, to the extent to which by the *Militia Act* it is given force and effect as if it had been enacted by the Parliament of Canada for the government of the Militia within Canada, apply in relation to a deserter or absentee without leave from any force to which this section applies (including any member of a reserve or auxiliary force who, having failed to obey a notice calling upon him to appear at any place for service, is by the law of that part of the Commonwealth to which the force belongs liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), as they apply in relation to a deserter, or absentee without leave, from a home military force. **35**

Provided that any reference in the said paragraphs to military custody shall be construed as including a reference to naval or air force custody. **36**

(3) No person who is alleged to be a deserter from any such force as aforesaid **37** shall be apprehended or dealt with under this

section except in compliance with a specific request from the Government of that part of the Commonwealth to which the force belongs, and a person so dealt with shall be handed over to the authorities of that part of the Commonwealth at such place on the coast or frontier of Canada as may be agreed:

Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may also be apprehended and dealt with under this section in compliance with a request, whether specific or general, from the officer commanding that force, and shall, if that force is still present in Canada, be handed over to the officer commanding that force at the place where the force is stationed. **38**

(4) For the purposes of any proceedings under this section:—

(i) **39** a document purporting to be a certificate under the hand of the Secretary of State for External Affairs or the Minister of National Defence, that a request has been made under subsection (3) of this section, shall be **40** admissible without proof as evidence of such a request;

(ii) a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of any force to which this section applies that a named and described person was at the date of the certificate a deserter, or absentee without leave, from that force shall be admissible without proof as evidence of the facts so certified.

6. (1) The forces, other than home forces, to which this section applies are the naval, military and air forces of His Majesty raised in the United Kingdom, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, or Newfoundland.

(2) The Governor in Council,

(i) **41** may attach temporarily to a home force any member of another force to which this section applies who is placed at his disposal for the purpose by the service authorities of that part of the Commonwealth to which the other force belongs;

(ii) subject to anything to the contrary in the conditions applicable to his service, may place any member of a home force at the disposal of the service authorities of another part of the Commonwealth for the purpose of being attached temporarily by those authorities to a force to which this section applies belonging to that part of the Commonwealth.

(3) Whilst **42** a member of another force is by virtue of this section attached temporarily to a home force, he shall be **43** subject to the law relating to the Naval Service, the Militia, or the Air

Force 44, as the case may be, in like manner as if he were a member of the home force, and shall be treated and have the like powers of command and punishment over members of the home force to which he is attached as if he were a member of that force of relative rank:

Provided that the Governor in Council may direct that in relation to members of a force of any part of the Commonwealth specified the statutes relating to the home forces shall apply with such exceptions and subject to such adaptations and modifications as may be so specified. 45

(4) When a home force and another force to which this section applies are serving together, whether alone or not:— 46

(a) any member of the other force shall be treated and shall have over members of the home force the like powers of command as if he were a member of the home force of relative rank; and

(b) if the forces are acting in combination, any officer of the other force appointed by His Majesty, or in accordance with regulations made by or by authority of His Majesty, to command the combined force, or any part thereof, shall be treated and shall have 47 over members of the home force the like powers of command and punishment, and may be invested with the like authority to convene, and confirm the findings and sentences of courts martial as if he were an officer of the home force of relative rank and holding the same command.

(5) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if 48 they are declared to be so serving or so acting by order of the Governor in Council, and the relative rank of members of the home forces and of other forces shall be such as may be prescribed by regulations made by His Majesty. 49

7. This Act shall, subject to such exceptions, adaptations and modifications as the Governor in Council may direct, apply 50

(a) in relation to any forces and to the officers and members of such forces raised in any territory in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom;

(b) in relation to any forces and to the officers and members of such forces raised in any territory in respect to which such a mandate is being exercised by His Majesty's Government in a Dominion;

(c) in relation to any forces and to the officers and members of such forces raised in a colony;

(d) in relation to any forces and to the officers and members of such forces raised in any territory which **51** is being administered by His Majesty's Government in the United Kingdom or by His Majesty's Government in a Dominion. **52**

8. So far as regards **53** any naval force and the members of any such force, the provisions of this Act shall be deemed to be in addition to and not in derogation of such of the provisions of any Act of the Parliament of the United Kingdom or of the Parliament of any other part of the Commonwealth as are for the time being applicable to that force and the members thereof.

COMMENTS

1. Long titles tend to be longer in Britain than in Canada. The reason is the Parliamentary rule that the long title must embrace every provision of a Bill. The rule is more strictly enforced in Britain than in Canada. This Act was replaced in 1967 by a new Act applicable to any force designated as a visiting force for the purposes of the Act.[15] The long title is "An Act respecting the armed forces of countries visiting Canada".[16] The word *respecting* gives wide scope.

In some of the provinces the double title system - long and short - has been abolished; there, both are now the same.[17]

2. The enacting formula is prescribed by the Interpretation Act.[18] It is in the passive form in Britain - *Be it enacted* - but in the active form in Canada.[19]

The semi-colon here is followed by a dash, as it is elsewhere in the Act. That is common in British and some Commonwealth countries; in Canada there is now only a semi-colon.

3. The definite article is not regarded as part of the title and is not now italicized.

4. It is not usual to include the date of enactment. It is sometimes done where an Act is re-enacted with the same title, so as to distinguish the old Act from the new, but the date is then dropped on the next consolidation.

5. Here we have the semi-colon and dash. Now there is no punctuation.

6. A defined word now begins with a capital or a lower case letter according as it is used in the body of the Act. In this paragraph the definite article is not needed. The definitions are not now set out in lettered paragraphs. The reason for the change is that in each version, the French and English, the definitions are arranged in the alphabetical order of the particular language, and a marginal note shows the word in the other language. The expression *Commonwealth* is now defined in the Interpretation Act.[20]

7. This definition is now obsolete, especially in view of the new Visiting Forces Act.[21] If it were retained, the *which* would be changed to *that*.[22]

8. It is difficult to see how a *sentence* can be construed accordingly with *court*. What was intended seems to follow automatically. If *court* is defined, then a *sentence* of the court says it all.

9. After this Act was enacted a new Canadian Forces Act was enacted.[23] The terminology was changed and was reflected in the new Visiting Forces Act.

10. This was changed in the new Act to mean the forces of any country designated by the Governor in Council.

11. This provision is unnecessary. The Interpretation Act provides[24] that where a power is conferred to make regulations (which is there widely defined) there is included the power to repeal, amend or vary the regulations and make others.

12. The form *it shall be lawful ..... to exercise* is no longer used; the simple *may* suffices.[25]

13. Here we have a definition within a section. That is sometimes done where the word or expression defined appears only in that one section. But here, the definition is for the purposes of the whole Act; it should be moved into the definition section, and a definition of *service court* could include both courts and authorities.

14. If *service court* is defined, we do not need the *such* or the *as aforesaid*. In any case, references like this to something outside the section or subsection should be avoided.

15. The *shall* here is not a command to enjoy. The non-obligatory *shall* is now avoided so far as possible. Now it would be said that the members, etc., *have* the immunities and privileges *possessed by*, or *have* the immunities and privileges that a service court *has*.[26]

16. Although the meaning of *enjoy* extends to the sense in which it is used here, it has a different primary meaning. Hence *have* is to be preferred.

17. This section would be more presentable if what precedes this note number were divided into lettered paragraphs, and if what follows were a subsection, also divided into paragraphs. In this section there is a second literary paragraph, but unlettered. This is common practice in civil law countries, but it is the universal practice in Canada to assign a section or subsection number to everything that is punctuated as one sentence. In civil law statutes there are usually only articles and no sub-articles, and one article may consist of two or more separate sentences, or even two or more literary paragraphs, each with two or more separate sentences. So far as law is concerned, there is nothing wrong with that system, but it is not done this way in common law jurisdictions. There, each sentence is a separate numbered section or subsection, and, to facilitate comprehension or readability a section or subsection may be set out with lettered indentations. Of course, both methods can be carried to extremes. If an article contains two or three paragraphs each with two or more sentences, it may be difficult to see what is in it, and it is difficult to make a reference to any part of it. And, in the common law systems, if the lettered divisions and sub-divisions are unduly long or frequent it also becomes difficult to comprehend. In teaching drafting I have found that the common law lawyers try to put too much into one grammatical sentence, chopped up with lettered and numbered paragraphs (as they are called) subparagraphs, clauses, subclauses. Better to write separate sections or subsections.[27] In the new Visiting Forces Act this provision was re-written as follows:

9. (1) Where any sentence has been passed by a service court within or without Canada upon a member of the armed forces of a designated state, or a dependant thereof, for the purposes of any legal proceedings within Canada

(a) the service court shall be deemed to have been properly constituted;

(b) its proceedings shall be deemed to have been regularly conducted;

(c) the sentence shall be deemed to have been within the jurisdiction of the service court and in accordance with the law of the designated state; and

(d) if the sentence has been executed according to the tenor thereof, it shall be deemed to have been lawfully executed.

(2) Any member of a visiting force or any dependant who is detained in custody

(a) in pursuance of a sentence mentioned in subsection (1), or

(b) pending the determination by a service court of a charge brought against him,

shall, for the purposes of any legal proceedings within Canada, be deemed to be in lawful custody.

(3) For the purposes of any legal proceedings within Canada, a certificate under the hand of the officer in command of a visiting force stating that the persons specified in the certificate sat as a service court, is receivable in evidence and is conclusive proof of that fact, and a certificate under the hand of such an officer stating that a member of that force or a dependant is being detained in either of the circumstances described in subsection (2), is receivable in evidence and is conclusive proof of the cause of his detention, but not of his being a member of the visiting force or a dependant.

10. For the purpose of enabling the service authorities and service courts of a visiting force to exercise more effectively the powers conferred upon them by this Act, the Minister of National Defence, if so requested by the officer in command of the visiting force or by the designated state, may from time to time by general or special orders to the Canadian Forces, or any part thereof, direct the officers and men thereof to arrest members of the visiting force or dependants alleged to have been guilty of offences against the law of the designated state and to hand over any person so arrested to the appropriate authorities of the visiting force.

18. Here we have again the unnecessary *such as aforesaid.*

19. The *shall be* here would now be changed to *is.*[28]

20. As indicated in comment **17** this last portion of this subsection should be written as a separate subsection. In doing so, however, the cross references would have to be corrected. The *such proceedings as aforesaid* should be changed to *of a service court*, and the next *aforesaid* should be changed to *mentioned in subsection (3)*.

21. Again, *such as aforesaid*.

22. The *which that* would now be changed to the *that the*. The definite article would have the necessary demonstrative effect and would make for a smoother reading sentence. This article is now frequently used to replace *such* or *the said*.

23. In *shall be exercisable* the *shall* is not an auxiliary of obligation; the *shall be* should be changed to *is*.

24. The words *provided that* add nothing, neither in grammar nor substance. It should be deleted and the rest of the proviso should be written as a separate subsection.[29] The *shall authorize* should be changed to the simple present *authorizes*.

25. The conjunction *if* can certainly be used to introduce a fact-situation, or a Coode's case. However, my practice was to use *where* in a case such as this and so far as possible to reserve *if* for what Coode regards as a condition.[30]

26. This rather long sentence should be broken at this point and what follows made another subsection.

The back-reference would then need to be watched - *such* persons, *so* imprisoned, *such* custody - because they would then refer to matters outside the subsection, which is generally speaking undesirable.

Even as it stands *such persons* is not good, because the word *person* does not occur up to this point. It should be *persons imprisoned pursuant to subsection (3)*, and now the next *so imprisoned* is a correct reference. The words *such* and *so* in the last line could well be deleted.

27. It is not necessary to say *by the same or subsequent order*. The Interpretation Act provides that where a power is conferred it may be exercised from time to time as occasion requires.[31]

28. The introductory words *that is to say* are quite correct but the modern tendency is to say *namely*.

29. This provision respecting costs should be a separate subsection, but then *subsection* should be changed to *section*. At the end, *the part* ..... *that* would be a literary improvement over *that part which*.

30. There should be no dash after the opening words. The form of the opening words is distinctly British. It is done this way (whether contained in ..... or any other statute) because there has never been an official consolidation of British statutes. The main Acts are specifically men-

tioned, and then *any other statute* is added to pick up any other statutes there might be.

In Canadian jurisdictions, where statutes are periodically consolidated and indexed, it is not difficult to find the relevant statutes dealing with this subject-matter. There is now a National Defence Act, which replaced the former Militia Act and Naval Service Act.

The *Subject as hereinafter provided* is not necessary. The section must be read as a whole, and there are no conflicting provisions.

31. The general practice is to have the conjunction (*and* or *or*) only once, between the last and penultimate paragraphs.

32. To avoid the non-obligatory *shall* and to use *that* for defining clauses, instead of saying *any enactment which ..... shall ..... apply*, it would now be said *Any enactment that applies.*

33. The *Provided that* should be deleted and the rest written as a separate subsection.

The words *such enactment either shall not apply, or shall apply* would now be written *any enactment referred to in subsection ..... applies or does not apply.*

34. This would now be written so as to incorporate the definition of *Commonwealth* in the Interpretation Act.

35. This would now be changed to accord with the new National Defence Act.

36. It would be better to substitute a comma for the semi-colon, to strike out *provided that* and continue with *but.* If specific provisions are mentioned (paragraphs etc. in the first two lines) then it would be better language to say *those paragraphs* in what is now the proviso.

37. The *such force as aforesaid* presumably refers to the forces mentioned in subsection (1). That is too far away for this kind of a reference, and it is possible that such a reference could be construed to reach back even further. It would be better to say *any force mentioned in subsection (1).*

38. The words *Provided that* should be deleted and the provision written as another subsection.

39. The designations used here are not in accordance with the system of designations in federal statutes. There, the first indented division (called a paragraph) is designated by a lower case letter in brackets, and the next indented division (called a subparagraph) is designated by a small roman numeral in brackets. In this Act, compare this subsection with subsection (3) of section 4. The designations (a), (b) should be substituted for (i), (ii). The colon-dash before the indentations should be deleted. The

nomenclature in the provinces differs. There, the first indentation is called a clause, the second a subclause and the third a paragraph.[32]

40. The *shall be admissible* would now be written *is admissible.*

41. Again, the wrong designations. The (i) and (ii) should be (a) and (b).

42. In Comp. Leg., I said at p. 141 that *whilst* is archaic. The Shorter Oxford Dictionary says so, and it is rarely or ever seen or heard in Canada. However, on my many visits to England I found that *whilst* is used with great frequency in speech and in writing.

43. The *he shall be subject* is now written *he is subject.*

44. As indicated, there is now a later National Defence Act.

45. Another meaningless *Provided that* to be deleted.

46. The colon-dash is not now used this way. No punctuation mark is needed.

47. This last part is rather clumsy. The *as if he were* at the end is too far away from *shall be treated,* and in *shall have ..... the like powers ..... as if he were* there is nothing to which *like* can refer. It should be re-cast to say in effect that the officer of the other forces shall be treated as if he were an officer of the home force ..... and he has ..... powers like the powers of such an officer. The same may be said of paragraph (a).

48. It is questionable whether *and only if* is necessary.

49. It is astonishing that when this British statute was transformed into a Canadian statute the architect said *regulations made by His Majesty.* In Canada power to make regulations is normally conferred on the Governor in Council, or sometimes a Minister.

50. Instead of *This Act shall apply* it would now be said *This Act applies.*

51. The practice now is to use *that* for defining clauses and to reserve *which* for non-defining clauses, (with a comma before, and a comma at the end of the clause if it does not end the sentence).

52. This term is now obsolete. What would be said would depend on policy instructions; possibly *Commonwealth,* but, in view of the definition in the Interpretation Act, that might be too wide, although the opening words of the definition would authorize the making of exceptions. The new Visiting Forces Act applies to the forces of countries designated by the Governor in Council.

53. The intended significance of the words *so far* is not apparent; they could be dropped; *with respect to* might be better than *as regards.*

CHAPTER NOTES II

1. E.g. Sir William Dale: Legislative Drafting: A New Approach. Butterworths, London 1977; The Renton Report, ch IX. And see chapter XX.
2. See Sedgwick on Statutory Construction. Baker, Voorhis & Co. New York, 1874, ch. VII; Corry, Cons. St. 208. Maxwell on the Interpretation of Statutes. 12th ed. 236-238.
3. *Eyston v. Studd* (1574) 2 Plowd. 459 at 464 et seq. *Stradling v. Morgan* (1560) 1 Plowd. 201 at 205.
4. *The Mostyn* [1928] AC 57.
5. *River Wear v. Adamson* [1877] 2 AC 743.
6. 87-88.
7. *Seaford Court Estates Ld v. Asher* [1949] 2 K.B. 481 at 498-9.
8. *Magor and St. Mellons Rural District Council v. Newport Corporation* [1952] AC 189 at 190-191.
9. 29 Australian Law Journal 204 at 221.
10. Corry 214.
11. Cited by Sir Cecil Carr in The Mechanics of Law-Making. Current Legal Problems, 1951.
12. Statute Law Society: Statute Law Deficiencies. Sweet & Maxwell, 1970. That publication is also critical of some aspects of current British style. See also the Renton Report, ch XIII.
13. Reported in 5 Commonwealth Law Bulletin 963.
14. Quoted in Driedger: Legislative Drafting (1949) 27 Canadian Bar Review, 292.
15. S.C. 1967-68, c. 23.
16. For a fuller discussion of titles see Leg. F. & P. 153-7.
17. Uniform Law Conference of Canada; Proceedings of the Sixtieth Annual Meeting, 70.
18. R.S.C. 1970, c. I-23, secs. 4, 5.
19. For a fuller discussion see Leg. F. & P. 157-9.
20. s. 28.
21. Now R.S.C. 1970, c. V-6.
22. See Comp. Leg. 32.

23. First enacted S.C. 1950, c. 43; now R.S.C. 1970, c. N-4.

24. s. 26(3).

25. See Coode, 328.

26. Comp. Leg. 9-15.

27. Comp. Leg. 77.

28. Comp. Leg. 13.

29. For a discussion on provisos, see Comp. Leg. ch. IX.

30. See ch. I.

31. s. 26(3).

32. On designations of provisions see Leg. F. & P. 162 et seq.

CHAPTER III

SIMPLE PROHIBITIONS

One purpose of the exercise in this chapter is to show that it is not easy to write a simple little effective law to reach a simple objective.

The deeper purpose, however, is to make students think. The whole purpose of my drafting seminars was not merely to teach students how to push words around on a piece of paper, but to inculcate a mental attitude. Students must be taught to be their own severest critics. Whatever they write, they must question, question, question; they must pose as many situations as they can think of, and then test what they have written to see whether it does everything they intend it to do, and does not do anything they do not intend. Also, they must be taught how to conceive a clear objective and how to attain it, for without a clear objective in mind nothing clear can be written.

EXERCISE NO. 1.

1. Snow cleared from driveways, yards, etc. must not be left on roadway or street.

COMMENTS

This is a colloquial statement that expresses the idea of what is intended, but it is not good enough for a law. It is not directed to an identifiable person. The word *snow* is not enough, for there may also be ice; there is also slush, but since that is melting snow it would no doubt be included in snow. Snow is usually cleared from driveways or yards, but also from roofs, sidewalks or boulevards; it does not need to be identified. It may be taken that elsewhere there will be a definition of roadway or street, and a penalty provision; hence, those matters need not be dealt with here.

STUDENTS' RETURNS.

No. 1.

1. No person shall leave snow cleared from driveways and yards on a roadway or street.

In a prosecution it might be impossible to prove where the snow came from. Ice is not mentioned. The word *leave* is not satisfactory. It could mean to allow to remain, to depart from or to put down. Thus, I saw a wallet on the street but I left it there; I left my office at five; I left my pen on the desk. If we say *leave* does that mean that if I see snow on a roadway put there by someone else, I have the duty to remove it?

No. 2.

1. No owner or occupier of premises shall deposit or cause to be deposited on any road snow that has been removed from such premises.

Students frequently insert *cause to be*. This is usually unnecessary, for if I engage someone to do it, or order my son or servant to do it, then I have done it. This provision extends only to an owner or occupier. The snow shoveller, who does not own or occupy the premises, would not be caught. Also, my neighbour and I exchange; I do his property and he does mine; neither of us, as owners of premises, removed snow from *such* premises.

No. 3.

1. Snow cleared from driveways, yards, or any other place shall not be left in the street.

There is no prohibition against an identifiable person. Let the city do it!

No. 4.

1. No person shall deposit snow or ice from private property onto any road or street.

Here, ice is mentioned. But the property must be private property. It would therefore not include the sidewalks or boulevards in front of an owner's lot (they belong to the city), or school yards or parks.

No. 5.

1. No person shall dump or deposit snow on a highway.

This illustrates the verb problem, which we shall encounter from time to time. Do we say throw, dump, deposit, all three or two or one? If possible one word should be preferred, but if no word can be found to encompass all desired situations, it might be necessary to add one or two more, but, please, not any more. Here, deposit would probably suffice. I have suggested *put*, but some students felt that was too simple.

In testing this form against extreme situations, would it be an offence to shake or brush snow off my hat and coat, or to clear my car windows? Those actions do fall within the words, but it would be hopeless to try to make an exception. In any case, no policeman would arrest and no city solicitor would prosecute. If they did, the magistrate would no doubt acquit - *de minimus non curat lex*. It is well to test a provision with extreme cases, for serious gaps or flaws might be discovered, but there comes a time when a trifling situation should not be dealt with and should be left to the good sense of the enforcing authorities.

No. 6.

1. No one shall remove snow from any driveway or yard onto any roadway.

I put the snow on the boulevard and from there onto the roadway. Since I did not move it from a driveway or yard onto a roadway I committed no offence. There is an ambiguity here that we will encounter again. The prepositional phrase *from any driveway* could be adjectival or adverbial. It could mean snow that came from a driveway or yard, or the movement of snow from a driveway or yard to a roadway.[1]

No. 7.

1. No person, other than an employee of the municipality engaged in the performance of work for or on behalf of the municipality, shall put on any roadway or street any snow cleared from any place other than the roadway or street.

This is more elaborate and represents considerable thought by the author. He no doubt had city snow clearing in mind. The snow plows go down a street and clear a path for vehicles by shoving the snow to the side of, but still on, the roadway. Also, he uses the simple *put* and does not mention driveways, yards, etc. However, there is a flaw. The bank of snow on the roadway, caused by the snow plowing, is so high that I have difficulty in backing my car out; so I lower the bank by throwing some of the snow back onto the roadway. I am not a municipal employee and I have not cleared snow from a place other than a roadway or street.

It is hardly necessary to provide for all the detail we have here. If there is a prohibition against depositing snow on a roadway, the city would surely not prosecute its own employees for clearing streets, and, in any case, a magistrate would in all likelihood say that the purpose of the law was to prevent the obstruction of traffic and not the clearing of roadways from obstruction.

However, if an exception is to be made, it would be better to have a separate provision to the effect that the rule does not apply to the clearing of roadways by civic employees (or contractors).

No. 8.

1. (1) No person shall leave on any roadway, sidewalk or street, any snow that has been cleared from driveways, yards, sidewalks, streets, roadways or embankments.

(2) Any person who contravenes this section is guilty of an offence and is liable to a fine of twenty dollars.

There are two kinds of penal provisions. One is regulatory; it directly commands or prohibits a course of conduct, and the penalty is there to

enforce the command or prohibition. The other is the criminal law form; it does not directly command or prohibit a course of conduct, but states that a person who does or fails to do a prescribed act commits an offence; it is a law unto itself and is not there to enforce some other law.[2]

Constitutional problems may arise with provincial or municipal penal provisions if they are in the criminal law form, and may arise also with federal penal provisions if they are in regulatory form. This matter will be more fully discussed in chapter VIII on the Driving Off of Animals.

The form here is the criminal law form. It would be better to have a regulatory form, because of possible constitutional difficulties and also because it is in reality a regulatory provision.

No. 9.

1. Unless otherwise authorized by law, no person shall move snow, or cause snow to be moved, in such a way that the snow so moved, or caused to be moved, remains upon any paved surface that is used by motor vehicles.

The main criticism here is that the draft is much too verbose. If it is otherwise authorized by law, then that does not need to be said here. The words *move snow* ..... *in such a way that the snow so moved* ..... *remains upon* is just a round-about way of saying *deposit snow upon.*

There is also a flaw. If the path cleared by a snow plow is not quite wide enough so that I can turn comfortably into my driveway, it would be an offence if I widened the path by moving snow from the centre part of the roadway to the side of the roadway. Also, the roadway might not be paved.

No. 10.

1. No person who is involved in clearing snow from his property or any other area privately owned shall leave or cause the leaving of any snow he cleared in any area reasonably used by vehicles or pedestrians, except in an area to which the person has title, or an area to which the title owner has consented to having snow left in.

This is much too involved, verbose and vague, and raises a multitude of problems. What is meant by *involved in clearing snow*; why *his* property; why *privately owned* and the new word *area*; there is *leave* and also *cause the leaving of*; and snow *he* cleared *in* any area *reasonably* used by vehicles or pedestrians - if I clear it from my property onto a roadway the *area in which* I am doing the clearing is my own property and not the *area* used by vehicles or pedestrians. Why *reasonably* used - does this mean that driving on a roadway on a poor day is not a reasonable use? Then we have a reference to title - that could raise involved real property disputes and difficulties of proof, and would not extend to owners or occupants.

General Comments

There is here a verb problem. Should it be throw, dump, deposit, etc? Probably deposit is sufficient.

The identity of the snow or ice on their source is immaterial.

Only a simple sentence is required:

No person shall deposit snow or ice onto any street (or highway, roadway, thoroughfare or whatever word is indicated by the general by-laws or a definition).

Exercise No. 2.

No dumping of garbage, refuse, etc. into the Rideau Canal.

The assignment is not aimed at any identifiable person. It should be converted to a direct prohibition. There is also a verb problem. Should it be dump, deposit, throw, discharge?

Students' Returns

No. 1.

2. No person shall dump any polluting substance into the Rideau Canal.

The word *dump* implies an act of some violence, and is hardly appropriate for leading waste liquids into the canal by means of a pipe or trough.

No. 2.

It is prohibited to dump garbage or refuse into the Rideau Canal. Dumping garbage into the rideau Canal is prohibited.

In both of these examples there is no identifiable person.

No. 3.

2. No person shall throw into that body of water known as the Rideau Canal any substance whatever.

The words *that body of water known as* are redundant. There would be many situations not embraced in the word *throw*. Any *substance* would include a pail of water taken out of and returned to the canal; hardly what would be intended. The word *whatever* is unnecessary.[3]

No. 4.

2. No person shall dump or cause to be dumped any rubbish such as garbage and refuse into the Rideau Canal.

Here, garbage and refuse are given as examples only. That is not done in common law juridictions. If these are examples only, how can one determine what else is included? All we have here is *rubbish*. There is also the *cause to be*.

No. 5.

2. No person shall deposit or permit the deposit of any garbage, refuse or pollutant matter into the Rideau Canal.

Do the words *permit the deposit* require that I, an innocent bystander, must take active steps to prevent someone else from putting something into the canal?

No. 6.

2. No person shall dump any refuse, garbage or other foreign matter into the Rideau Canal.

Can one speak of *foreign* matter except in relation to something else? The word *other* makes refuse and garbage *foreign*. Foreign to what? Presumably the canal. It would be better to say *or other waste material.*

No. 7.

2. No person shall dump or deposit any garbage or refuse in the Rideau Canal.

Since English is an uninflected language we are all somewhat careless with our prepositions. In Latin and in German the dative noun makes *in* mean *within,* and the accusative *into*. In legislation it is best to use the strictly correct prepositions - into, onto, etc. And care should be taken to see that one word *in* is not intended to mean *within* for one phrase and *into* for another phrase in the same sentence.

No. 8.

2. No person shall dump, dispose of, deposit or discharge, or permit the dumping, depositing or discharging of any garbage, refuse, chemical, domestic or industrial waste into the Rideau Canal, or on the shores or banks thereof.

This author seems to have thought of everything; but not quite.

The four words - *dump, dispose, deposit, discharge* - are too many. Deposit alone might do.

The preposition *into* is correct, but it does not fit *dispose of* too well. The reference to shores and banks goes beyond the instructions; in any case the preposition should be *onto* rather than *on*.

The *permit* phrase is unnecessary.

Despite the detailed description of materials, there could well be unwanted material that is neither garbage nor waste, nor domestic or industrial waste, as, for example, an animal carcass.

No. 9.

2. No person shall dump garbage or refuse, or the employer of a person shall not dump garbage or refuse into the Rideau Canal or upon such parts of the banks of it.

This is so garbled it hardly makes sense. An employer of a person is a person, and is included in the first two words.

The words *such parts of the banks of it* were probably intended to mean simply *upon the banks.*

What the author presumably tried to say was that *no person shall himself or by an employee*; but a reference to an employee is unnecessary.

No. 10.

2. No person shall dump into the Rideau Canal any garbage, refuse, waste, rubbish, debris, litter or spoilage.

There is far too much detail here. A more general description should be sought.

GENERAL COMMENTS

This provision cannot be satisfactorily written as an isolated provision; it must be part of a larger context.

The evil in relation to a particular situation must be considered in deciding what words to use. Is the law to be aimed at a sawmill, paper plant, factory, sewage? Different situations might call for different words.

Also the purpose should be considered in selecting appropriate words. Is the purpose to protect fisheries, water for consumption, navigation, the atmosphere, the landscape?

Some of the words to be considered, having in mind the object and purpose, are:

Verbs	Materials
throw	filth
drop	dead animal or fish

dump	dirt
deposit	ashes
discharge	putrid substances
put	stone
	ballast
	timber
	brush
	papers
	garbage
	refuse
	waste

But as few words as possible so as to give effect to the object and purpose should be used.

EXERCISE NO. 3.

3. In public parks

(a) no damage to trees, flowers, shrubs, etc.

(b) no playing ball, hockey or similar games

(c) no bicycles or dogs

This exercise raises a number of problems.

The phrase *in public parks* could refer to a person who is in a public park, or to the thing or activity in a public park. In many of the returns it is not clear what it is intended to be.

The preposition *in* may also be troublesome, because when dealing with bicycles or dogs *into* may be required, and one *in* cannot mean both *in* and *into* at the same time.

The description of the games is difficult. What is *similar* to ball or hockey? If a team game is intended, golf would be excluded. A ball game could be a game played with a table tennis paddle to which a rubber ball is attached by an elastic band; such an activity would not be intended to be prohibited.

Care should be taken with vegetation. It should not be an offence to stand inside a park and damage vegetation outside. But it should be an offence to stand outside and damage vegetation inside.

Only a bicycle is mentioned. What about mopeds and motorcycles?

No. 1.

3. No person shall

(1) damage trees, flowers or shrubs;

(2) play ball, hockey or similar games; or

(3) bring into or lead bicycles or dogs in public parks.

It is perhaps clear enough that *in public parks* refers to the vegetation in (1) and the activity in (2). But it does not fit (3). That reads *No person shall bring into ..... dogs in public parks.* Just playing ball is too wide. Are horseshoes, golf, archery *similar* to ball or hockey? The plural is used in the assignment and in many of the returns. The singular would be better. The (1), (2) or (3) should be (a), (b) or (c).

No. 2.

3. No one shall, in any public park,

(a) injure any tree, flower or shrub;

(b) engage in any team game; or

(c) drive a bicycle;

and no one shall permit any dog in his care or possession to enter any public park.

It is not entirely clear whether *in any public park* relates to the person or the vegetation. A *team game* would exclude golf and archery, but would include a game of bridge. A little matter, perhaps, but bicycles are usually ridden and not driven. Would the concluding words cover the case where I carried my dog into the park against its will? I did not permit it; I forced it.

No. 3.

3. (1) No person shall damage trees, flowers or other plants in a public park.

(2) No person shall play ball, hockey or any other active game in a public park.

(3) No person shall ride a bicycle in a public park.

(4) No person shall bring a dog into a public park.

The four successive *No person shall* in such short prohibitions is somewhat tedious, although not too bad. We do not want too many. Some

effort at combination might be made. It could easily be done here by opening with *No person shall*, and indenting (1) to (4) as (a) to (d).

In (1) the phrase *in a public park* refers to the vegetation clearly enough, but doubt could be removed by introducing a participle like *growing.*

Games like chess, tiddly winks, parchesi, snakes and ladders, skipping rope, some card games, could be considered to be very *active.*

Would it be an offence under (4) to bring a dog up to but not into a park and then let it run into the park?

At some point in this exercise I used an extreme test. Suppose I buy a potted plant at a market near the park; I walk with it through the park, but, it being a warm day, I sit on a park bench for a rest. I then notice a few weeds in the pot and also a few poor branches or flowers on my plant. I pull out the weeds and pluck the plant. I have now damaged vegetation growing in the park. No attempt to deal with such an extreme case should be made. No one would prosecute, but if someone were so foolish the magistrate would undoubtedly throw out the case on the ground that in the context of such a law, and in the light of its object or purpose the trees, flowers, etc. referred to mean trees, flowers, etc. that are rooted in the park.

No. 4.

3. In a public park

(a) no person shall do any damage to trees, flowers, shrubs or similar plants;

(b) no person shall play ball, hockey or other similar game;

(c) no person shall be allowed to enter with a bicycle or dog.

Here, for (a) the opening phrase seems to relate more to the person than to the vegetation. Does this prohibit a person who is in the park from reaching over the boundary of the park and plucking flowers from an adjoining garden? Is a fern a similar plant?

In (b) we have the game descriptions, discussed above.

In (c) the passive is used; who does the allowing? It is the allowing that must take place in the park, but then there is nothing to say what must not be entered. Persons can be prohibited from *entering* a park, but not from *entering in* a park, unless the entering into a building or area in the park is intended.

Entry with a bicycle is perhaps too wide. What is usually intended is riding a bicycle, and not merely leading a bicycle through the park. Similarly with dogs; the *evil* is letting dogs run at large and not just carrying a puppy.

No. 5.

3. In public parks, no person shall:

(a) damage trees, flowers and shrubs;

(b) play ball, hockey and similar games;

(c) bicycle;

(d) bring in dogs or other animals.

The phrase *in public parks* modifies the verb in (b), (c) and (d); if it is also intended to modify the verb in (a), then the vegetation is unidentified and it could be outside the park.

In both (a) and (b) the conjunction *or* would be better than *and.*

Paragraph (d) is poor. It says *In public parks, no person shall bring in dogs.* This is a clumsy and grammatically incorrect way of expressing the idea that no person shall bring a dog *into* a public park.

The word *bicycle* is used as a verb. That can perhaps be done, but since the more common expression is *ride a bicycle* it might be better to say it that way.

No. 6.

3. In public parks no person shall

(a) damage trees, flowers, shrubs or other foliage;

(b) engage in the playing of hockey or other ball games;

(c) bring or cause to be brought bicycles or dogs.

The singular throughout would be better than the plural.

Here we have again the phrase problem. Is it the person who is in the public park or the thing or activity?

The word *other* is an important one in an enumeration. If we say *other* ball games, the implication is that hockey is a ball game, which it is not. (Hockey in Canada means ice hockey and that is played with a rubber disc, and not a ball as in field hockey). If we say *hockey or ball games* then each game stands on its own feet.

Paragraph (c) is as in the preceding return. It says *In public parks no person shall bring or cause to be brought bicycles or dogs.* What is missing is *bring into*; further, the *cause to be* is not needed.

No. 7.

3. No person while in a public park shall

(a) damage the trees, flowers, shrubs and other plants,

(b) play ball, hockey and similar games,

(c) ride a bicycle or walk a dog.

Here the troublesome phrase clearly relates to the person. That leaves the vegetation in (a) unidentified. The definite article here should be dropped, since it implies that the vegetation is elsewhere mentioned.

The game descriptions in (b) have been discussed above.

The *evil* is not just walking a dog, on a leash for example. What should be prohibited is permitting a dog to run at large.

No. 8.

3. No person shall

(a) damage any tree, flower, shrub or other such plant that is in a public park,

(b) play ball, hockey or any other such game while in a public park,

(c) ride a bicycle while in a public park, or

(d) bring a dog into a public park.

Here the author has made it very clear that *in a public park* in (a) refers to the vegetation, but in (b) and (c) to the activity. Also *into* has been used in (d).

The *such* in (a) should be deleted. In (b) the *such* is intended to mean *similar*, but that raises the difficulties discussed above.

Paragraphs (c) and (d) are good.

No. 9.

3. Any person who

(a) wilfully or maliciously damages any tree, flower, shrub or any other plant;

(b) plays cricket, hockey or any other ball game; or

(c) takes or keeps any bicycle or dog

in a public park is guilty of an offence.

This is in the criminal law rather than in the regulatory form. That would suit the jurisdiction whence the author came, but, as indicated, might create constitutional problems in Canada.

It is not usual to say *wilfully* or *maliciously*. Absence of such words does not remove mens rea.[4] However, it might be useful here. A person walking through or within a park might well know that his footsteps are destroying tiny flowers or shoots of grass, but it is not intended that he thereby commits an offence.

The preposition *in* at the end does not fit *takes* or *keeps*.

No. 10.

3. The following provisions apply to the use of public parks, namely,

(a) no one shall damage any trees, flowers or shrubs, nor play ball, hockey or any similar game, and

(b) no bicycles or dogs are permitted into such parks.

The expression *the use of* is vague. If I walk through a park, am I *using* it?

In (a) the word *nor* is used. My practice was to reserve this word for *neither* ..... *nor*. As it stands there is an ellipsis; the words *shall be* must be read in after *nor*. If simply *or* is used, then *no one shall* governs.

In (b) there is also an ellipsis. Some verb, such as *to enter* must be imagined after the word *permitted*. It is better to write in the needed verb.

Paragraph (b) is in the passive. Who is prohibited from *permitting*?

It accomplishes nothing to say *such parks* instead of *public parks*.

GENERAL COMMENTS

This exercise will form part of the exercise in chapter XVII, where the example and the comments will be fuller. Because of the problems with *in a public park* it would be best to write three separate provisions, rather than three paragraphs governed at the beginning or end by this phrase.

(1) No person shall (wilfully) injure (remove, cut down, destroy) any tree, shrub, flower or grass (vegetation-growing) in a public park (except with the permission of X).

As indicated earlier, this might be a case for insertion of the word *wilfully*. Attention should be given to verb selection; that might depend on the nature of the park or parks. The best general word would appear to be *injure*. Instead of enumerating different kinds of plants *vegetation* might be substituted; but it should be identified as being or growing in the park.

If it were intended to exempt specifically civic caretakers, it would be better to exempt them from the operation of the provision. It would not

sound good to say that someone can give permission to damage or destroy.

> (2) No person shall play ball, hockey or other similar game in a public park.

This is the assignment as it stands, but it will not do. We have seen some of the problems with *similar*. If there is an enumeration there may be problems with the *ejusdem generis* rule[5] (the "just and generous" rule, as it is sometimes called).

Thus, if it were *baseball, basketball, football or other game* the class might be said to be ball games and would then exclude hockey, horseshoes and archery, but might include harmless children's games, such as jacks and bouncing a rubber ball attached to a small paddle by an elastic band. On the other hand, if the class is team games, then golf would be excluded.

If it were *baseball, football, golf, archery, hockey or other game* then both the team class and the ball class would be destroyed, thus precluding application of the *ejusdem generis* rule; but then *other game* would have to be given an unrestricted meaning and would include bridge, checkers and chess. The word *similar* does not help; what is *similar* to the enumeration?

The solution, as will appear in chapter XVII, is to describe characteristics rather than games, as for example, games that are likely to injure persons or interfere with their enjoyment of the park.

> (3) No person shall bring a dog into, or have charge or custody of a dog within, a public park (unless the dog is held by him on a leash being not more than five feet in length.)

As indicated earlier, the *evil* is letting dogs run at large in a park, and the exercise in chapter XVII will be so worded. As it stands it is perhaps too harsh as it would prevent one from carrying a dog through the park, or even leading a dog through a park by a leash. If a leash is to be authorized then the length should be specified so as to prevent authorization of a leash twenty-five or fifty feet long.

By writing this as a separate provision the prepositions can be properly handled - bring *into*, have custody *within*.

Exercise No. 4.

Dogs not allowed in food stores or public eating places.

This exercise is deliberately worded in the passive; some person or persons must be identified. The stores must be identified with greater precision; does it include a pet store, or a store where animal feeds are sold?

No. 1.

4. No person shall allow dogs in food stores or public eating places.

Allow dogs to do what? Enter, eat, sleep, bark or scratch? A person is mentioned; does this include the proprietor of the premises, or a person not having control or custody of a dog who sees one entering a store?

No. 2.

4. No person shall bring, allow to be brought or let enter a dog in any food stores or public eating places.

Does *allow to be brought* or *let enter* mean that a stranger must take active steps to prevent the owner or custodian of a dog from taking the dog into the store?

Suppose the owner leaves the dog outside, but it slips in when another customer enters. Nothing in this draft would prevent the owner from keeping it there.

The preposition *in* does not fit the verbs; it should be *into*.

No. 3.

4. No person who owns, operates, manages or controls a food store or a public eating place shall allow dogs to enter therein.

This puts the onus on the proprietor; the dog owner or custodian has no duties. Is the proprietor required to stop a large dog, like a german shepherd, from coming in? Suppose the owner lets the dog come in; there is no obligation on him to take the dog out. The *enter therein* is vague. If a dog that is in a restaurant goes into the kitchen, he is *entering* in the restaurant.

No. 4.

4. No owner or other person in charge of a dog shall allow such dog to enter any place where food is stored, sold or distributed for human consumption.

If the owner of a dog has a larder in his home, this draft would prohibit him from bringing or letting his dog to come into his home. The word *such* is not needed.

No. 5.

4. No person being in a store that sells food or eating in a public place shall be escorted by a dog.

It is hardly correct to say that *eating* is sold; and it is not the store that sells. If a dog accompanies or trails his master, the dog is not escorting the master; it is the other way around. This draft at best would only prohibit a blind person from coming with a seeing-eye dog. The solution to the seeing-eye dog problem hit upon by a London Society is not recommended. It is reported[6] that a new rule provided that "any member introducing a dog into the Society's premises shall be liable to a fine of one pound. Any animal leading a blind person shall be deemed to be a cat."

No. 6.

4. Dogs shall not be allowed to enter nor be brought into food stores or public eating places.

This is in the passive. Who has the duty? What about remaining in? The *nor* should be *or*.

No. 7.

4. No one shall bring a dog into any place where food is sold or served to the public.

I did not bring the dog in. It came in by itself. Does *place* include a hay barn or a feed mill?

No. 8.

4. No licensee of a foodstore or public eating place shall allow any dog on his premises.

Why a licensee? Allow a dog to do what on the premises?

No. 9.

4. No food store or public eating place owners shall tolerate dogs within their premises.

This owner loves dogs within his premises, namely, his residence. Only owners are mentioned; what about lessees?

No. 10.

4. (1) No person owning or having the custody, care or control of any animal of the canine species shall suffer, permit or allow it to be in any premises where food is sold or where food is consumed by members of the public.

(2) The owner or operator of premises where food is sold or where food is consumed by members of the public shall not suffer, permit or allow an animal of the canine species to be in the premises.

This is much too elaborate. Why not say *dog* instead of an *animal of the canine species*? I believe in simple language. Thus, to say that a member of the canine species is oscillating its caudal appendage, means only that a dog is wagging its tail.

The second provision puts the onus on the proprietor. It might be a very risky business for him to try to put out a strange dog. The onus should be on the owner or custodian; if he is not there, the most that the proprietor could be expected to do would be to try to lure the dog out, perahps by throwing a bone out the door.

General Comments

To cover all the situations attempted to be dealt with in the foregoing returns, and to use prepositions correctly, something like the following would have to be said:

No person having custody or control of a dog shall

(a) permit the dog to enter,

(b) bring the dog into, or

(c) keep or allow the dog to remain in

a restaurant or other public eating place or any store where food for human consumption is sold.

The phrase *having custody or control* could be changed to a clause *who has custody or control.* The onus is put on the owner or custodian alone, and not on the proprietor of the restaurant or store, or an innocent patron or bystander. By saying *human consumption* we exclude pet shops and places where animal feeding stuffs are sold.

Exercise No. 5.

Dogs not allowed to run at large

This might be posted at a park entrance, or it could be a description of a general by-law. The problem here is that a person - an owner or custodian - must be identified. Also, care should be taken in describing the dog - it is not necessarily a dog belonging to the person in charge.

Students' Returns

No. 1.

5. No person shall allow dogs to run at large.

Although the plural includes the singular and vice versa, it is usually better to use the singular in a general situation.

Does this provision force everybody to be a dog-catcher? If I must not allow a dog to run at large, must I try to catch every dog I see running at large?

No. 2.

5. Dog owners shall not allow their dogs to run at large.

Under this, a boarding kennel operator could with impunity let all the dogs in his custody of which he is not the owner run at large.

No. 3.

5. No person who is the owner or who has the control of a dog, shall allow such a dog to run at large.

This provision might be smoother if the clauses were converted to phrases - *no person being the owner or having the control of a dog.*

The word *such* should not be used unless there has been a specific description, as, for example, a St. Bernard dog. Even then, the definite article would be better.

No. 4.

5. No person shall allow a dog under his care to run at large in a public place or on a private property without the proper authorization.

If public places and private property are mentioned, does that not include all places? It does not look good to give permission to do an unwanted thing. What is proper authorization?

No. 5.

5. Any person having the custody of a dog shall keep it on a lead.

This is an attempt to state the reverse of running at large, but it goes too far. As it stands a dog owner would be required to keep the dog on a lead in his own home or in an enclosure on his own property or even if the dog is in a cage.

No. 6.

5. No person shall allow his dog to run at large.

My neighbour and I take our dogs for a walk, but we exchange dogs. Now we are both free to let them run at large.

No. 7.

5. (1) In this by-law

"run at large" means being elsewhere than on the premises of the owner of the animal or on the premises of the person having the custody, care or control of the animal and not being under the direct and continuous control of a person capable of controlling the animal.

(2) No person owning or having the custody, care or control of an animal of the canine species shall suffer, permit or allow it to run at large.

This is an attempt to define run at large. That is a well known and well understood expression, and it would be better to leave it to a court to decide whether a dog is running at large - unless it is intended to restrict or enlarge the ordinary meaning, as in *McNair v. Collins*[7] where the by-law provided that a dog should be deemed to be running at large when found in a street or other public place and not under the control of any person.

Definitions of common terms might create more difficulties than they solve. Under this draft I could be said to be allowing my dog to run at large if I left it tethered to a telephone pole on a street.

No. 8.

5. Every dog when outside an apartment or house must be kept on a leash.

There is no identifiable person on whom an obligation is imposed. Again, this is an attempt to state the opposite of run at large. If I have a dog in a tent, must I keep it on a leash? Is a tent a house?

No. 9.

5. No person shall permit any dog to be outside of a fenced-in area unless the dog is connected by leash or chain to that person.

Does the word *permit* impose a duty on everybody? My back yard is completely surrounded by a thick hedge through which no dog could go; must I stay outside and hold him by a chain or leash? Suppose the fence is only one foot high, and my dog is a wolf hound; unknown to me he jumps over the fence, but I did not permit him to do it. Or, I have it in a park on a chain fifty feet long.

No. 10.

5. Every owner of a dog shall ensure that his dog, when on property other than that of the owner, is kept on a lead that is controlled by a responsible individual.

This, of course, could not apply to the custodian of another person's dog. The word *ensure* often appears in students' returns. Not only is this

an indirect way of prohibiting a course of conduct, but what must one do to ensure?

Under this draft it would be an offence to carry a dog to an animal hospital in a cage.

No. 11.

5. Every dog owner shall himself, or through another person, supervise the activity of his dog whenever the dog leaves the owner's private premises.

Again, this would not apply to a mere custodian of a dog. I am taking my dog for a walk; he is an obedient dog and I do not need to keep him on a leash. He trots behind me, and from time to time he stakes out his territory by marking the curb or stones in canine fashion. I did not supervise his activities; have I violated the by-law? Supervise means to watch; so I watch it run at large.

There is a fine point of language here. Do the words *whenever the dog leaves* apply only during the act of leaving? In this kind of a situation it would be better to refer to the fact of not being on the premises rather than the act of leaving.

No. 12.

5. Every owner or person in charge of a dog shall keep such dog attached to a lead or leash.

Even in the house? This would permit me to send the dog running at large with a short lead or leash attached to its collar and trailing behind it.

GENERAL COMMENTS

This prohibition can be very simply stated. We can leave the owner out. Any of the following would do:

No person having custody or control of a dog shall permit the dog to run at large.

No person who has custody or control

No person (who is) (being) in charge of

We have seen the difficulties involved in trying to say what a person must do in order to prevent a dog from running at large. This is impossible, because the requirements would be endless. There are, however, stuations where it is best to prescribe or prohibit a course of conduct in order to prevent something else. Thus, instead of prescribing all the precautions that must be taken in order to prevent a fire from gasoline in a home, it would be easier and better to prohibit the keeping of a

prescribed quantity of gasoline in a home. This is illustrated in Chapter XII.

EXERCISE NO. 6.

No unnecessary noise near hospitals

Only one test of noise is indicated in the assignment, but there must be two. Lack of necessity is not enough, since any number of unnecessary noises could be made that would not disturb anyone - snapping fingers, humming a tune or running a hand along a picket fence. The noise must be related to the hospital; it must be such as is likely to disturb the staff and patients. Students were expected to spot this, but over the years less than ten per cent did.

STUDENTS' RETURNS

No. 1.

6. No person shall, without any absolute necessity, make noises or cause noises to be made, in any area located within five hundred feet of a hospital.

There is here no noise test. An uncontrollable cough or sneeze would be permitted, but talking, walking or driving within five hundred feet of a hospital would be prohibited. Many students prescribed a distance; that might work where the noise is made obviously beyond or within the distance prescribed, but in near cases it would be necessary to call in a land surveyor.

What is the difference between necessity and absolute necessity? The ingredient of necessity has here been switched from adjective to adverb; to prove the lack of necessity to make a noise is not the same as to make unnecessary noise. Thus, in the case of a wedding parade of cars, just being on the street is not necessary, but blowing horns is unnecessary noise.

No. 2.

6. No person shall emit or cause to be emitted any noise in the vicinity of a hospital where such noise could reasonably be expected to disturb the patients or staff of that hospital.

Why not say *make* instead of *emit*? The word *where* can mean place or circumstance. In legislation the word is much used to indicate circumstances. It should not be used to describe a place if that would create confusion or cause the reader to stumble. The difference lies in the function of the clause it introduces. If it is circumstance the clause is adverbial; if it is place the clause is adjectival. Here the word *if* would be better.

The demonstrative *that* at the end would be more appropriate in a French version. In English the simple definite article has the necessary demonstrative force, a force that the French definite article does not have.

No. 3.

6. No person shall make or cause to be made any unnecessary noise within one kilometre of a hospital.

Students show a great fondness for *cause to be*. Only in rare circumstances need this be said.

This student was more generous than the earlier one. One kilometre instead of five hundred feet.

No. 4.

6. No person shall make a loud noise within a distance of fifty yards of a hospital.

This student was much stricter. It would be very difficult to obtain a conviction without the evidence of a surveyor. Also, is the distance to be measured to the nearest building in the hospital compound even though there are no patients in it? Or is it to be measured to the boundary line of the hospital property?

What is a loud noise?

No. 5.

6. When in a hospital zone, no person shall make any unnecessary noise or permit unnecessary noise to be made by a person, animal or thing that she has under her control.

Her husband, perhaps? What is a hospital zone?

No. 6.

6. No person shall wilfully disquiet a hospital by making a noise either within the hospital or so near it as to disturb the persons using it.

The word *disquiet* is not in common use; a more familiar word should be chosen. In any case, it is not the hospital that is deprived of quietness, but the people in it.

Would this draft make it illegal to fly a jet plane over the hospital, or to repair the street by using a pneumatic drill? The test of disturbance is there, but not a test of necessity, as for example an ambulance arriving at the hospital with sirens wailing.

No. 7.

6. No one shall sound any bell, horn or signalling device so as to make unreasonable noise near any hospital except an ambulance, a fire or police department vehicle while proceeding to a fire or answering a fire alarm call.

The thinking here was much too restricted. It is impossible to enumerate all the sources of unnecessary and undesirable noises. There should be stated a principle and not an enumeration of specifics.

Unreasonable is not the same as unnecessary.

Despite the detailed exception, the author seems to have forgotten that although police department vehicles might proceed to a fire, they would not be likely to answer a fire alarm call.

No. 8.

6. No person shall make noise in the vicinity of a hospital.

The net is much too wide. There is no test of noise. Only dead silence would be tolerated.

No. 9.

6. No person may sound his horn excessively or make other excessive noise within fifty yards of any hospitals.

Automobiles may be said to have horns, but hardly persons. What is excessive? Is one blast permitted, as a dog is permitted one bite, but two blasts prohibited? Distances have now ranged from fifty yards to one kilometre.

No. 10.

6. (1) No person shall

(a) within 75 yards of the premises of a hospital cause to be made a noise of such intensity that it is capable of being heard on the premises of such hospital, or

(b) on the premises of a hospital cause to be made a noise that is capable of being heard within the hospital.

(2) Subsection (1) does not apply to police vehicles, fire trucks, ambulances or any person acting in a case of emergency.

This is so elaborate that it sweeps in the ridiculous. Paragraph (a) would prohibit me from speaking to the parking lot attendant; I would then be making a noise on the premises of the hospital capable of being heard on the premises.

Paragraph (b) would virtually demand total silence. Garbage collectors, delivery trucks, nurses, staff and doctors, make noises on the premises that are capable of being heard within the hospital, as, for example, driving a car to the admittance door or parking lot, or even speaking.

Subsection (2) is not an adequate exception. With the vehicles specified unnecessary and disturbing noises could be made; and what is an emergency?

General Comments

What is wanted here is a very simple prohibition.

> No person shall in the vicinity of a hospital make any unnecessary noise that is likely to disturb patients in the hospital.

We do not need to define vicinity; that can be left to the judge. To sound a horn on the street in front of the hospital would be in the vicinity; to fly overhead or to blast on a construction project in the next block would hardly be held to be in the vicinity. The distance cannot be defined; it must be left to the good sense of the court.

The first test is necessity. It is not necessary to sound horns in a wedding procession, but it may be necessary to sound a horn to warn a child. And in proper circumstances it is necessary for ambulances, fire trucks and police vehicles to sound sirens; these or other vehicles need not be mentioned any more than firecrackers. Necessity or lack of necessity cannot be defined. The court will decide whether in the particular circumstances before it there was necessity or the lack of it.

The second test is the effect of the noise. Obviously, the only realistic test is the comfort or welfare of the patients. This again is something that the court must decide on the evidence before it.

Exercise No. 7.

> 7. No mowing of lawns on Sundays or public holidays before 10 a.m.; electric and hand mowers excepted.

One of the purposes of this exercise is to introduce students to what I call the A = B + C formula. A represents the whole; if B and C are both separately defined, then the two together might not make up the whole. But if one is defined, then the other is the whole minus the defined. Thus

A = B + (A-B) = A, or

A = C + (A-C) = A

The one element that is easiest to define should be chosen. Here, for example, we could prohibit mowing *except with a hand or electric mower*, or prohibit mowing with a mower operated by a combustion

engine. There can be a difference. In the first of these examples cutting a patch of grass with lawn shears would be prohibited, but in the second it would not.

STUDENTS' RETURNS

No. 1.

7. Before the hour of ten o'clock in the forenoon on a holiday no person shall operate a device for mowing a lawn unless the device is powered solely by human or electric power.

This student stated that *holiday* was elsewhere (e.g. Interpretation Act) suitably defined.

My general tendency is to put the phrase between the auxiliary and the verb - No person shall before the hour ..... operate.

Why not call a device for mowing a lawn a lawn mower? The exception here is the source of power; a simpler exception would be the mower - *except with a hand or electric mower.*

No. 2.

7. No person shall, except with the use of an electric or hand mower, mow a lawn before 10 a.m. on Sundays or public holidays.

To me the sentence would read more smoothly if the exception were at the end; and, then no commas would be needed.

The words *the use of* are redundant.

The hour of a day is usually expressed as in the first return, but that was a detail I did not bother with.

No. 3.

7. No person shall operate before the hour of ten o'clock in the forenoon

(a) on any Sunday, or

(b) on any public holiday,

any lawn mower other than one powered by electricity or by hand.

Here again the phrase *before the hour* interrupts the flow of the sentence; no paragraphing is needed. Taking the words as they are the following would be a better arrangement.

No person shall before the hour of ten o'clock in the forenoon on any Sunday or on any public holiday operate any lawn mower other than one powered by electricity or by hand.

The word *any*, which occurs three times could be replaced by the indefinite article. *Any* is not wrong but it is in my opinion used too much.[8]

It is not necessary to describe mowers by the method of power. A hand or electric mower says it all.

No. 4.

7. No person shall mow any lawn on Sundays or public holidays before the hour of ten o'clock in the morning, unless he uses an electric or hand mower.

The exception here is the use, rather than the device. It is simpler to say *except with*. There can also be an ambiguity. I am one who often uses an electric mower. I therefore fit the description, but this time I use a power mower. Does the prohibition apply to me? It would be better to say *unless he does so with*.

The singular Sunday or public holiday would be better.

No. 5.

7. No person shall cut any lawn on any Sunday or on any public holiday before the hour of ten o'clock in the morning with any cutting machine powered by internal combustion.

Here we have the reverse description of the machine. The draft is now a straight prohibition rather than a prohibition with an exception. Either technique may be used, depending on the subject-matter and the nature of the sentence.

Why not lawn mower instead of cutting machine?

No. 6.

7. (1) No person shall mow lawns before 10 a.m. on Sundays or public holidays.

(2) Notwithstanding subsection (1), any person operating an electric or hand mower may mow lawns before 10 a.m. on Sundays or public holidays.

Here again the plural is used throughout.

This draft raises the *subject to* and *notwithstanding* situations. If two provisions are in conflict, the dominant provision could begin with *notwithstanding* or the subordinate provision could begin with *subject to*.[9]

However, since a statute must be read as a whole it is often not necessary to state that one provision overrides or is subject to another.

In any case, I hesitate to use either of these expressions where the provisions are short and contiguous. Here, the substance of subsection (2) could be added to (1) after the words *except with.*

Here again the exception is the person rather than the mower, and there could be an ambiguity. A professional gardener might in the course of his trade operate all kinds of mowers, but this time he uses a power mower. He could be said to come within the description *person operating,* although admittedly a court would not give it that meaning; however, it is not as accurate as it might be.

No. 7.

7. No person shall cause any lawn to be mown, other than by electric or hand mowers, between the hours of 6:00 and 10:00 on Sundays and public holidays.

If I mow a lawn myself, did I cause it to be mown? Would not *with a mower* be better than *by a mower*? The time stated is not clear; forenoon or afternoon should be stated. Presumably forenoon is intended, but mowing a lawn with a power mower at 5 a.m. is worse than doing it just after 6 a.m.

No. 8.

7. Except in a case where an electric or hand mower is used, no person shall mow a lawn on Sundays or public holidays before 10 a.m.

There is here no connection between the *case* and the action. Does it mean that if my neighbour is mowing his lawn with an electric mower then that is a case that puts me into the exception? To make the case fit it would need to be said - *except where a person uses an electric or hand mower he shall not mow* - although that form would be rather awkward and not as straightforward as a prohibition followed by an exception.

No. 9.

7. No person shall, on Sundays or public holidays, mow any lawn before 10 o'clock in the morning, unless she uses an electric or hand mower.

The sex of this student is obvious. I am sure she wrote *she* in order to get a rise out of me or to inject a little levity into a dull seminar.

There are women who, perhaps not without justification, resent the use of masculine pronouns to include both men and women. Unfortunately the English language does not offer much in the way of an alternative. It would hardly make for good reading to say *he, she or it.* The expression *every person who* is neutral but it would hardly to do scuttle our pronouns and constantly say *that person.* Besides, that would not do in French,

because *personne* is feminine and the modifying pronouns and adjectives must take the feminine form, even though the word includes or refers exclusively to men.

My own view is that the objection is misconceived; sex and gender are wrongly equated. Masculine is not necessarily male, and feminine is not necessarily female. In legislation the word *he* is masculine gender, but as a matter of language and grammar it includes both men and women, notwithstanding that this is for some hard to swallow. The diffulty arises from the circumstance that apart from pronouns English is an uninflected language. There is no problem in inflected languages.

As stated, in French *personne* is feminine but includes men and women. In German an all male garrison is *Besatzung*, feminine; and an all male football team is *Mannschaft*, also feminine.

If this draft were in a federal law, it would not include men. The Interpretation Act of 1886[10] said "words importing..... the masculine gender only, include..... females as well as males and the converse." This was a two-way street. But in the 1906 Revision[11] it was changed to "words importing the masculine gender include females". This was changed in 1947[12] to "words importing male persons include female persons and corporations."

The result is that there is now no law to say that the feminine gender includes male persons.

Incidentally, the 1886 version correctly distinguished between gender and sex, as did the 1906 version, although it ran only one way. The 1947 version is faulty in that it mentions only sex when gender was obviously intended.

The problem could easily be avoided here by saying *except with* instead of *unless she uses*.

No. 10.

7. No person shall mow lawns on Sundays and on public holidays before 10 a.m. unless an electric or hand mower is used.

Here, as in other illustrations, the singular and the conjunction *or* would be better - a Sunday or public holiday.[13] Again, the exception is use rather than mower.

GENERAL COMMENTS

This prohibition could be expressed in one of two ways:

No person shall before ten o'clock in the forenoon on a Sunday or public holiday mow a lawn except (or, other than) with a hand or electric lawn mower.

No person shall.....mow a lawn with a mower operated by a combustion engine.

There may be a slight difference between the two, as indicated earlier, but that hardly matters. The second draft above might be the better one because it aims directly at what is the evil to be remedied - disturbing the neighbours who want to get up on these days a little later than usual.

EXERCISE NO. 8.

No shooting off firecrackers, except on Victoria Day, Dominion Day or New Year's eve - except by a licensed pyrotechnician having a permit to do so issued by the city clerk.

This exercise is deliberately worded so as to cause some confusion. New Year's eve is December 31; what is obviously intended is the welcoming in of the new year with fireworks - that takes place in the early minutes of January 1.

Is the second exception an exception to the first exception or is it an addition to the first? Does it mean that only pyrotechnicians may shoot off firecrackers on the named days, or does it mean that anyone may do so on those days but only pyrotechnicians may do so on other days? A close reading should convince the reader that the latter is intended.

There is a verb problem here. Does one shoot off, ignite, discharge or explode firecrackers?

STUDENTS' RETURNS

No. 1.

8. No person shall shoot off any firecrackers

(a) except on Victoria Day, Dominion Day or New Year's Eve, and

(b) unless he is a licensed pyrotechnician having a permit, issued by the city clerk, to shoot off firecrackers.

The New Year's Eve trap has sprung, as it has in most returns.

There is a grammatical fault here. A co-ordinating conjunction can be used only to connect grammatical equals; here (a) is a phrase and (b) is a clause. It could be repaired by putting *except* into the opening words, and substituting *by a* for *unless he is* in (b).

The verb *shoot off* is perhaps the best; it carries with it the idea of noise.

No. 2.

8. No person shall set off any manner of firecracker unless that person is a licensed pyrotechnician that has been issued a permit by the office of the city clerk; or, unless it is on Victoria Day, Dominion Day or New Year's Eve.

Manner does not mean kind. In any case firecracker alone is enough. The pronoun *he* could be substituted for *that person.*

Use of the perfect tense could mean that one who was issued a permit last year but does not have one now comes within the description. In permit provisions there is usually a prohibition followed by the words *unless he has a permit to do so.*

Permits are issued by people, not offices.

Unless it is on Victoria Day - what is? Something like *it is done* is needed.

No. 3.

8. (1) Subject to subsection (2), no person shall shoot off firecrackers except on Victoria Day, Dominion Day or New Year's Eve.

(2) A licensed pyrotechnician, with a permit issued by the city clerk to shoot off firecrackers, may do so under the conditions of the permit.

As indicated in an earlier exercise these provisions can easily be combined so that the *subject to* is not needed.

Fireworks are discharged with a flame, and not a permit, unless the permit is ignited.

No. 4.

8. (1) Subject to subsection (2) no person shall light a firecracker, or cause to be lit except on Victoria Day, Dominion Day or New Year's Eve.

(2) A pyrotechnician, licensed by the appropriate authority may light firecrackers if he possesses a valid permit to do so and if the permit is issued by the city clerk.

The verb here is *light*. Technically, that would include lighting a fuse that goes out before it reaches the powder; but that is too insignificant a point to be bothered with.

The *cause to be lit* is unnecessary; in any case it is incomplete in that it is not said what it is that is caused to be lit.

Subsection (2) contemplates the licensing of a pyrotechnician under some other law and the issue of a permit. As will be indicated in my comments below this exception requires a larger context than is given here.

It would make for a better composition if the adverbial clause - *if the permit is issued by the city clerk* - were converted into an adjectival phrase - *permit issued by the city clerk.*

The word *so* is very useful, as it can be used to refer to an event.

There is also an ambiguity here. It is not clear whether the *except* clause modifies *light a firecracker.*

No. 5.

8. (1) No person shall, except on Victoria Day, Dominion Day or New Year's eve, discharge any firecracker.

(2) Subsection (1) does not apply to a licensed pyrotechnician who has been granted permission in writing by the city clerk to do so.

Here the word *so* is also used to refer to some action, but the action is in another subsection. Occasionally I might do this, but as a general rule I have avoided reference words - *so, such* and pronouns - if they refer to something outside the section or subsection in which the reference is made; the danger is that an ambiguity or obscurity will be created.

In short provisions like this there is an easy remedy. They could be written as one punctuated sentence by putting a semi-colon at the end of (1) and continuing with *but this section does not apply.*

No. 6.

8. No person shall shoot off firecrackers unless he is a pyrotechnician licensed by the city clerk to do so on Victoria Day, Dominion Day or New Year's eve.

This student was misled by the instructions. Under this draft only licensed pyrotechnicians would be permitted to set off firecrackers on the named days. Further, since only three specific days are mentioned any non-pyrotechnician would be free to shoot off firecrackers on any other day.

No. 7.

8. No person shall shoot off firecrackers

(a) unless he is a licensed pyrotechnician having a permit to do so issued by the city clerk.

(b) except on Victoria Day, Dominion Day and New Year's Eve.

The paragraphing here is faulty.[14] As it stands, a pyrotechnician would need to have a licence to shoot off on the named days. The error is that a co-ordinating conjunction between (a) and (b) is missing. Either *and* or *or* must be implied, but then it would join unequals - a clause to a phrase.[15]

Using the same words, except to change the *and* in (b) to *or*, but re-arranging them, the grammatical error could be corrected by writing:

> Except on Victoria Day, Dominion Day or New Year's Eve, no person shall shoot off firecrackers unless he is a licensed pyrotechnician having a permit to do so issued by the city clerk.

No. 8.

> 8. Within the city limits, shooting off firecrackers is permitted only on Victoria Day, Dominion Day and New Years eve and under the following conditions:
>
> (a) the shooting must be done by a licensed pyrotechnician, and
>
> (b) the pyrotechnician must have a special permit issued by the city clerk authorizing him to proceed with the shooting.

This is written in the passive. That form is quite acceptable, indeed almost normal, in civil law jurisdictions, but in common law jurisdictions the person on whom obligations or prohibitions are imposed must be clearly identified.

This student was also confused by the instructions. As it stands only licensed pyrotechnicians are authorized to shoot off firecrackers on the named days, and only on the named days.

No. 9.

> 8. No person shall set off any firecracker or other pyrotechnical device at any other time than Victoria Day, Canada Day or New Year's eve; but a person may set off or discharge firecrackers or other pyrotechnical devices at a time other than Victoria Day, Canada Day or New Year's eve if he is a licensed technician and if he holds a permit issued by the city clerk.

This draft has been carefully thought out, but it can be much improved by a little pruning and re-arrangement and changing a few little words.

The expression *day other than* would be better than *other time than.* July 1 is still by statute Dominion Day although the popular name is now Canada Day.

The word technician has a much wider meaning than pyrotechnician. The content of the adverbial clause - *if he is* ..... *and if he holds* –

could be better expressed adjectively - *a licensed pyrotechnician.* The last *if he* should be deleted. As it stands it is not clear whether the *and* is joint or several.[16]

Mention of other pyrotechnical devices need not be made, since then flares and roman candles, which do not make noises, would be included.

The kind of a permit is not indicated.

Keeping the substance of this draft it could be much improved by writing it somewhat as follows:

> No person shall set off a firecracker on a day other than Victoria Day, Dominion Day or New Year's Day; but a licensed pyrotechnician may if he holds a permit to do so issued by the city clerk;
>
> or, may do so if (as) authorized by a permit issued by the city clerk;
>
> or, may do so if authorized by (if he has) a permit therefor issued by the city clerk.

No. 10.

> 8. (1) No person shall shoot off firecrackers.
>
> (2) The prohibition contained in the preceding paragraph does not apply on Victoria Day, Dominion Day, or New Year's eve, to a licensed pyrotechnician having a permit to do so issued by the city clerk.

The exceptions in (2) are somewhat confusing. Is there but one exception - a licensed pyrotechnician shooting off on the named days under a permit? Or two exceptions - anybody on the named days and only a pyrotechnician on other days?

Probably what was intended was:

> ..... does not apply to the shooting off of firecrackers on Victoria Day, Dominion Day or New Year's eve, or to the shooting off of firecrackers on any other day by a licensed pyrotechnician having a permit to do so issued by the city clerk.

This is a situation where if there are two separate subsections I would prefer to start the first with *except as provided in subsection (2)*, in order to avoid the shock of a bald universal prohibition. In any case, I would prefer to begin the second subsection with *subsection (1)*, (or this section) *does not apply*.

To say *does not apply on* a day would probably do the job intended, but what it really means is that the section is not in force on those days. My preference would be to say, in effect, that the prohibition does not apply to the particular activity.

Leaving aside the pyrotechnician for the time being, the desired prohibition could be simply expressed as:

No person shall set off firecrackers on any day other than Victoria Day, Dominion Day or New Year's Day.

If the authorized (or non-prohibited) times are to be more elaborately described, it could be said:

No person shall set off firecrackers except

(a) between the hours of twelve o'clock in the afternoon on Victoria Day or Dominion Day, or

(b) between the hours of eleven o'clock in the afternoon on the 31st of December and one o'clock in the forenoon on the first of January next following.

The words *next following* are important. Without them it could be the first of January in any following year.

The exception for pyrotechnicians cannot be written in the absence of a much larger context. However, it was included here in order to bring out some drafting points.

In the redraft above there could be added at the end, beginning at the far left-hand margin, the words

unless he holds a permit issued by the city clerk authorizing him to do so.

This would enable him to issue a permit to anybody. If he is not to have such wide authority, the city council could lay down a rule that the permittee must be a qualified pyrotechnician; if the clerk disobeyed he could be discharged.

The authority of the clerk could be narrowed somewhat by saying

unless he is a qualified pyrotechnician who holds a permit, etc.

This would work well if there is a Trades Act providing for the qualification of pyrotechnicians; otherwise the clerk would have to use his judgment, but again would be subject to any directions given by the city council.

A separate subsection could be written:

This section does not apply to the setting off of firecrackers by a person under the authority of and in accordance with a permit issued by the city clerk.

The expression *under the authority of and in accordance with* is one that I frequently used. It requires a permit and compliance with its terms and conditions.

The word *person* could be qualified by *who in the opinion of the city clerk is a qualified pyrotechnician*, or one of the alternatives discussed above could be worked in.

EXERCISE NO. 9.

Cigarette packages must bear a warning that cigarettes are injurious to health.

This states the desired result, but the problem is to select the person or persons on whom the duty to produce that result is imposed; and to define the nature of that duty. The real objective is to prevent unmarked packages from getting into the hands of the public, or to ensure that packages that do will have the printed warning.

STUDENTS' RETURNS

No. 1.

9. Every manufacturer of cigarettes shall legibly print or cause to be printed on each of his cigarettte packages a warning.

Here the required act is the printing rather than the selling. If the manufacturer fails to print, then the wholesaler and retailer are free to sell unmarked packages.

No. 2.

9. No person shall manufacture, offer for sale or sell any cigarette package unless it bears a warning that cigarettes are injurious to health.

Here the manufacturer, wholesaler and retailer would be covered; but is there a difference between a cigarette package and a package of cigarettes? Would a paper manufacturer who sells empty packages to a cigarette manufacturer be caught?

No. 3.

9. (1) Every cigarette package must bear a warning that is clearly visible, that cigarettes are injurious to health.

(2) Every manufacturer who does not comply with the provisions of this section is guilty of an offence.

There is nothing here for the manufacturer to comply with; it is the package that must comply, and a package cannot be prosecuted.

In the first subsection there need not be two clauses. The first could be written *a clearly visible warning.*

No. 4.

9. No cigarette manufacturer shall allow his cigarettes to be packaged in a container used for selling purposes unless it contains a warning clearly indicating that cigarette smoking is injurious to human health.

The offence here is *allowing.* Suppose the manufacturer forbids it, but contrary to his instructions it is done. Since he did not *allow* it, could he be prosecuted if the unmarked packages are sold?

Containers are used for containing cigarettes; not for selling purposes.

The unless clause modifies *allow.* Taking the draft as it stands I would prefer to shift this element to the container - *a container that does not bear a warning.* Also, it is somewhat inelegant to say that a container (which has something inside it) contains (on the outside) a warning.

No. 5.

9. No person shall manufacture any cigarette package which does not bear the warning that cigarettes are injurious to health.

Would this catch only the paper manufacturer? Here is a case where I would use *that* instead of *which* to introduce a defining clause.

A cigarette package might be empty.

No. 6.

9. (1) Every person who manufactures cigarettes shall have printed on each package in which the cigarettes are contained a sign to the effect that cigarettes are injurious to health.

(2) A manufacturer who contravenes subsection (1) and every person who sells, offers for sale or otherwise distributes cigarettes that are manufactured in contravention of that subsection is guilty of an offence.

Does the first subsection mean that the cigarettes must be manufactured and packaged before the warning is to be printed?

An inscription on a package can hardly be called a sign.

Subsection (2) is aimed at unlawful manufacture. The target should be selling cigarettes in packages that are not properly marked.

No. 7.

9. No person shall sell cigarettes

(a) by wholesale, unless the words "injurious to health" are legibly and conspicuously displayed on the outer surface of the package in which the cigarettes are contained, or

(b) by retail, unless the words "injurious to health" are legibly and conspicuously displayed on the outer surface of the package in which the cigarettes are contained.

This draft indicates careful and clear thinking and is aimed at the real target. But there is much repetition. The whole of paragraph (b) could be eliminated by inserting the words *or retail* after the word *wholesale* in paragraph (a), and that paragraph designation could then be removed.

No. 8.

9. All cigarette manufacturers shall sell their cigarettes in packages bearing a warning that cigarettes are injurious to health.

Is the manufacturer compelled to sell? Could he not give away small packages for advertising, as is sometimes done? There should be a prohibition against selling - *shall not sell*, or *no manufacturer shall sell* - rather than a command to sell.

No. 9.

9. No person shall manufacture cigarettes without inscribing or printing on each package thereof a visibly and plainly marked warning that cigarettes are injurious to health.

Here the inscribing or printing on the package is made part of the process of manufacturing the cigarettes. The manufacturer cannot manufacture unless he inscribes or prints, but he cannot inscribe or print until he has manufactured.

If it is plain it must be visible.

No. 10.

9. No person shall sell or offer for sale cigarettes unless the package in which the cigarettes are sold or offered for sale has printed on the front of it a statement

(a) in both the English and French languages,

(b) in letters of a distinctive colour from the background of the package, and

(c) in letters each of which is not less than two millimeters in height

containing the words "Warning - smoking of cigarettes is injurious to health."

This one also indicates clear and careful thinking and is aimed at the right target. It also recognizes current labelling laws, and has even gone metric.

The draft, however, could be improved by a few little changes here and there. What is the front or the back of the package, and if there is a difference, why not the back? Would not *on the package* be enough?

The expression *a statement containing the words* is somewhat elaborate. Just *the words* would be enough. Also, the precise words are prescribed, so that if the exact words do not appear there would be an offence; it might be better to allow a little leeway by saying, without quotation marks, - a warning (or statement) to the effect that smoking cigarettes is injurious to health. That would leave it open for someone to print - *The Department of National Health and Welfare warns (cautions, advises) that the smoking of cigarettes is detrimental to health.*

The letters would necessarily have to be a distinctive colour from the background, for otherwise they would not be visible. And the *background* might have a number of colours. The *distinctiveness* should go to the warning rather than the colour.

Two millimeters is very small - .0786 inches. Is that conspicuous enough? It might be better in a case such as this to say simply *conspicuous* and leave it to the court to decide. What might be conspicuous on a small package might not be regarded as conspicuous on a large package.

Also, prominent letters of proper size but interwoven in the design of the package might not be conspicuous.

General Comments

The most effective law would be one aimed at those who sell cigarettes to the public. It is the public that is to be reached. That would, in most cases, be the smoke-shop proprietor. This would not be an unfair or onerous duty. If he gets a consignment of packages from a manufacturer or wholesaler without the warning he can send them back, and let the local enforcement officers deal with the matter. A retailer could be prosecuted at the place where the package is sold to a consumer. If this were a federal law there would be great difficulty in prosecuting a manufacturer in Montreal if an unmarked package turned up in Vancouver.

The following should be adequate:

> No person shall sell or distribute a package of cigarettes unless the package bears a conspicuous warning to the effect that smoking cigarettes is injurious to health.

This would catch manufacturers, jobbers, wholesalers and retailers and would include free distribution for advertising as well as sales. The whole

object of such a law would be to prevent unmarked packages from getting into the hands of the public.

EXERCISE NO. 10.

Gasoline prices exhibited outside filling stations etc must have all figures the same size and prominence.

We are all familiar with the huge signs outside filling (or service) stations showing the cents (now dollars) in large figures, with a tiny decimal nine in the right-hand corner above. Why this is done is a mystery for it fools or attracts no one.

The purpose of this exercise is to see whether students can write a satisfactory law to prohibit this practice.

There is one little trap here. The assignment mentions only figures. Words are not figures, so a sign in words would not be a sign in figures. Most students missed this point.

STUDENTS' RETURNS

No. 1.

10. All filling station owners shall exhibit their gasoline prices in figures having the same size and prominence outside their filling stations.

This would compel a person to exhibit a sign. Why should he be forced to do so?

Generally speaking I prefer to state facts as facts, and not introduce verbs of possession or action with respect to a thing. Here, the prices are stated as *belonging* to the station owners; hardly a correct concept. Also, the figures must *have* the same size, rather than *be* the same size.

No. 2.

10. No person shall advertise the price of gasoline in figures of unequal size or prominence.

This is much too wide; the location of the advertisement is not stated. Prices could be advertised on a card inside the station, on the pumps or in the newspapers. The gasoline is not identified with sale.

No. 3.

10. Gasoline retailers shall, when exhibiting gasoline prices outside their filling stations or place of business, use figures of the same size and prominence.

Here it is use and not fact that is stated. Taking the draft as it stands it would be better to say *when exhibiting ..... shall do so in figures.* It would be better to convert the *when* clause to an adjectival modifier, since *when* is a time indication, rather than a fact. It would be better to be more direct and say - *no person who exhibits shall unless* - or - *a person who exhibits.*

No. 4.

10. Every owner or lessee of a gasoline station shall insure himself that all gasoline prices exhibited outside his filling station have all figures of the same size and have the same prominence.

If the owner or lessee *shall insure himself*, then presumbly if he is satisfied there can be no violation. The charge in a prosecution would have to be failure to insure. Possession is here attributed to prices; prices can *be*, but can hardly *possess.*

No. 5.

10. (1) Every person offering for sale or selling gasoline shall display, in a conspicuous and convenient place on the premises or place of business, or gasoline pump, a sign, notice or advertising device tending to show gasoline prices.

(2) The figures marked on such sign, notice, or advertising device shall be conspicuous and of the same size.

This draft also would compel the display of prices. The premises or place of business are unidentified. Would they include the premises or place of business of the oil companies that deliver gasoline to filling stations? What is an advertising device? Why *tending to show* rather than *showing*? It is unrealistic to expect that the price shown on the pumps could be the same size as the price on a notice board.

No. 6.

10. Where a person, being in charge of a filling station, sells or offers for sale any gasoline the price of which is exhibited outside a filling station, the figures of that price shall correspond with each other in size and prominence.

There is here no direct prohibition. It would be very difficult to frame a proper charge in a prosecution. It would have to be something like this:

That A.B., being in charge of a filling station, did on the ..... day of ..... sell gasoline the figures of the price of which exhibited outside the filling station did not correspond with each other in size and prominence.

In drafting a prohibition thought should always be given to the form of the charge in a prosecution. The error here is that the offence is selling, rather than displaying, and the fact-situation is set out in an adverbial clause. This should be converted into an adjectival modifier and the offence should be displaying- *no person who sells shall display unless*.

No. 7.

10. No person shall place outside a filling station or elsewhere a gasoline price exhibition that does not give equal size and equal prominence to all the figures therein.

The offence here is placing. In a prosecution evidence of the act of placing would have to be given, but that might be impossible.

The *or elsewhere* goes too far; there could be prices in the station or on the pumps.

The expression *gasoline price exhibition* may be understandable but hardly elegant. Instead of stating a fact, the act of giving is attributed to the exhibition.

No. 8.

10. Every gasoline dealer who exhibits the prices of his products outside of a filling station shall in the display of such prices use figures of the same size and prominence.

Gasoline dealers sell many products - batteries, tires, oil, anti-freeze, etc. It would be impossible to display all such prices in figures of the same size. Using is attributed to the dealer - the charge would have to be failure to use.

No. 9.

10. No person who owns or operates any service station shall display or allow to be displayed anything that has any numerical figure that varies in size or emphasis from any numerical figure used therein.

We do not need the *allow to be displayed*. The *anything* goes much too far. The operator might have a used car on his lot for sale, with the figure $1000 larger or smaller than *less 10% for cash*.

The place of display is not identified. What about a calendar in the office?

No. 10.

10. No person offering gasoline for sale shall display the price thereof unless all figures have the same size and prominence.

Display where? All figures of what? Although not incorrect, as indicated, I try to avoid attributing possession to things, and to state the fact - *all figures are.*

No. 11.

10. A person who sells gasoline or other petroleum products shall have displayed in a conspicuous position outside his place of business a sign indicating the price of each product he sells and the sign shall be of such size and type as the Minister responsible for petroleum determines.

The target is gasoline signs and not the prices of any petroleum product. The *shall have displayed* rather implies that the seller must get someone else to do the displaying. Here again the displaying is compulsory. Leaving the size and type of sign to the determination of the Minister is evading the problem.

No. 12.

10. No person shall exhibit gasoline prices outside filling stations with figures of different sizes and unprominently.

A grammatical error here. The phrase *with figures of different sizes* is joined by a co-ordinating conjunction to an adverb, *unprominently.*

GENERAL COMMENTS

The main fault that beginners show is that they do not have a clear or accurate concept of the objective of a proposed law. Secondly, they do not adequately test their drafts by asking themselves questions to find out whether their draft does exactly what is needed to carry out the objective and does not do anything that is not wanted.

A good way of starting is to formulate the essence of the objective in the simplest form[17] and then build on that foundation. If the foundation is faulty, so will be the building on it.

Here, the objective is to prohibit the display of certain kinds of signs. The essence is simply that no person shall display a sign *unless*; on this foundation can be built a description of the person, the place of the sign, the nature of the sign and finally the condition.

This arrangement can be illustrated visually by indentations thus:

No person

who sells gasoline at retail

shall

on or near the premises where the gasoline is sold

display

a sign purporting to show the price for which the gasoline is sold

unless

all words or letters comprising the price so shown are of equal size and prominence.

The essence of the law is now clearly visible in the left-hand margin, and the sentence flows smoothly from beginning to end without hesitation on re-reading. Now, written without indentations, the words *No person shall display unless* spring out, thus making the section easy to read and to understand.

The word *purporting* has been inserted. This can be an important word. Thus in the Canada Evidence Act[18] there is a provision to the effect that evidence of a regulation may be given by the production of a copy of the gazette purporting to contain a copy; or by the production of a copy purporting to be printed by the Queen's Printer.[19] In the absence of the word *purporting* it would be necessary to prove that the document produced is a copy, and that could be done only by producing the original.

It would not matter much here whether *purporting* is in or not, but if it is there it would prevent the rather unlikely attempted evasion by an operator if he posted a sign saying 39.9 cents per litre, but actually sold for 40 cents per litre. He could say that the sign does not show the price; he has just raised the price and has not yet changed the sign.

CHAPTER NOTES III

1. Comp. Leg. 24-27; 36-37.
2. Leg. F. & P. 225.
3. Comp. Leg. 89-90.
4. Cons. St. 154-55; *Watts & Gaunt v. The Queen*, (1953) 1 S.C.R. 505).
5. Cons. St. 85-95.
6. Readers' Digest, Canadian Edition. May 1974, 51.
7. (1912) 27 O.L.R. 44.
8. Comp. Leg. 131.
9. Comp. Leg. 42, 139.
10. R.S.C. 1886, c. 1, s. 7(21).
11. R.S.C., c. 1, s. 31(i).
12. S.C. 1947, c. 64, s. 6.
13. As to use of *and* and *or*, see Comp. Leg. 20, 35, 87.
14. Comp. Leg. 73-76.
15. Comp. Leg. 86.
16. See Dickerson: The Fundamentals of Legal Drafting. Little, Brown and Company. Boston, Toronto. 1965. 77.
17. Comp. Leg. 4.
18. R.S.C. 1970, c. E-10, s. 22.
19. See also the Statutory Instruments Act S.C. 1970-71-72, c. 38, s. 23.

CHAPTER IV

ANALYSIS

Before beginning with the drafting of a complete Act or Ordinance, students were given exercises in analysis of existing provisions. The purpose was two-fold. First, since drafting and interpreting are but opposite sides of the same coin, some exercises in finding out what is in a statute are necessary, not only if an opinion is to be given or a charge in a prosecution is to be framed, but also if an amendment is to be prepared. Secondly, the exercises in the following chapters are actual enactments that serve as instructions; students must therefore be able to extract the exact substance of the enactment. Moreover, this process will enable students to grasp the fundamental objective of the law.

The device used is indentation, so that the elements of the enactment can be put in their proper places. The instructions I gave were that nothing must be changed; not a word must be dropped or added and there must be no re-arrangement. Long ago Samuel Higgs Gael[1] said:

> "The signification of subdivisions may be greatly increased by indenting, or the use of different margins on the page.
>
> This expedient is also susceptible of more extensive use. In order to show which are propositions, which, terms or members of a sentence, which, adjuncts of terms, they may be placed in such positions, and with such margins on the page, as to make all of the same nature appear co-ordinate."

ANALYSIS 1.

QUARANTINE REGULATION

The following regulation was a common one for different harbours during the latter part of the nineteenth century:

> All boats, ships and vessels **1** coming into the Port of Hawkesbury, in the Province of Nova Scotia, or into the Harbour of Miramichi, in the Province of New Brunswick, which shall **2** have at the time of their said arrival or shall have had **3** during their passage from the places where they respectively cleared, any person on board labouring under Asiatic cholera, fever, smallpox, scarlatina or measles or other infectious and dangerous disease, or **4** on board of which any person shall **5** have died during such passage, or **6** which being of less tonnage than seven hundred tons measurement, shall have **7** on board thirteen or more steerage passengers, or **8** which, being of greater tonnage than seven hundred tons measurement, shall have **9** on board fifty or more steerage passengers, or which **10** shall have come from some infected port, **11** shall make their quarantine in the said harbours respectively on board such vessels or at such place on shore **12** and in such manner as

directed by the Inspecting Physicians of the said harbours respectively, and **13** there remain and continue until such ship or vessels shall be **14** discharged from such quarantine, by such licence or passport, and discharge **15** given without fee or emolument of any kind, as shall be **16** directed or permitted by such order or orders as shall be **17** made by the Governor, with the advice of the Privy Council; **18** and **19** until the said ships and vessels shall respectively have performed **20** such quarantine and shall be **21** discharged therefrom by such licence or passport and discharge **22** as aforesaid, **23** persons, goods or merchandise, which shall be **24** on board such boats, ships or vessels, shall not come or be brought on shore, **25** or go or be put on board of any other ship or vessel in Canada, except at such place indicated as aforesaid **26** when duly required by competent authority.

Reading it carefully the following rather simple enactments appear

All boats shall make quarantine

Boats shall remain until discharged

Until discharged no goods or persons are to come on or go off.

It is difficult to see these basic ingredients in the original in the form in which they are written. Before beginning the process of indentation, the provision should be studied and questionable matters should be noted.

COMMENTS

1. Here we have boats, ships and vessels, but in **19** the boats have disappeared, only to re-appear in **23**.

2. The *shall* here is meaningless.[2]

3. The future perfect should not be used. There are six *which* clauses and it is difficult to see what belongs where.

4. The second *which* clause.

5. The future perfect.

6. The third *which*.

7. An unnecessary *shall*.

8. The fourth *which*.

9. An unnecessary *shall*.

10. The fifth *which*.

11. Finally the verb. Now we see the basic sentence *All boats, etc. shall make their quarantine.*

12. The word quarantine is used in two senses. Its dictionary meaning as regards ships is that the ship is held in harbour and persons and goods on the ship must remain there. Here it is used once to refer to the ship and once to refer to the people. A ship cannot *make quarantine* on shore.

13. Who is to remain where? The ship or the people?

14. Here is an ambiguity - *discharged by licence or passport, and discharge* - must there be either a licence or a passport and in addition a discharge; or either a licence alone or a passport plus a discharge? There is a comma after passport here but not in **22.** This ambiguity can be resolved only by seeing the actual documents and having the harbour authorities explain exactly what happens.

15. The matter of a fee is a parenthetical insertion. Presumably it means *to be given*, or *which shall be given.*

16. The future *shall.*

17. The future *shall.*

18. The usual expression now is Governor in Council.

19. This is a new requirement.

20. The future tense.

21. Again the future.

22. The A or B + C problem. Is this A or (B + C), or (A or B) + C?

23. The *as aforesaid* means in the manner described before. Since the manner is described in **22** there need be no *aforesaid.*

24. Misuse of *shall.*

25. The obligatory *shall.*

26. The place indicated *as aforesaid* is thirteen lines ahead, and fifteen lines must be read to find it.

We now try our indentation as follows:

All boats, ships and vessels coming into the Port of Hawkesbury, in the Province of Nova Scotia, or into the Harbour of Miramichi, in the Province of New Brunswick

which

shall have at the time of their said arrival or

shall have had during their passage from the places where they respectively cleared any person on board labouring under Asiatic cholera, fever, small-pox, scarlatina or measles or other infectious and dangerous disease, or

on board of which any person shall have died during such passage, or

which being of less tonnage than seven hundred tons measurement, shall have on board thirteen or more steerage passengers, or

which, being of greater tonnage than seven hundred tons measurement, shall have on board fifty or more steerage passengers, or

which shall have come from some infected port

shall

make their quarantine in the said harbours respectively on board such vessels or at such place on shore and in such manner as directed by the Inspecting Physicians of the said harbours respectively, and

there remain and continue until such ships or vessels shall be discharged from such quarantine, by such

licence or passport, and

discharge given without fee or emolument of any kind

as shall be directed or permitted by such order or orders as shall be made by the Governor, with the advice of the Privy Council;

and until the said ships and vessels shall respectively have performed such quarantine as shall be discharged therefrom by such licence or passport as aforesaid, persons, goods or merchandise, which shall be on board such boats, ships or vessels

shall not come or be brought on shore, or

go or be put on board of any other ship or vessel in Canada,

except at such place indicated as aforesaid when duly required by competent authority.

The enactment now stands out more clearly.

All boats, etc

shall

make their quarantine and there remain until discharged.

Until discharged

no persons or goods shall leave or go on board.

This was as far as I took the students. However, I continued by showing how the provision, taking the substance as it is, could be

improved. On any revision there would of course have to be conferences with the shipping and quarantine authorities.

First of all, I would take all the descriptive material of boats, etc. out and put it into a definition of vessel; but a special term would need to be invented.[3] To say only *vessel* might be misleading; some adjective should be used. The best I could come up with was *suspected vessel*, but shipping people might suggest a better one.

The two tonnage provisions I would combine into one. The part beginning at **19** I would write as a separate subsection. And I would try to clarify the meaning of quarantine as used here.

The result would be as follows:

(1) "suspected vessel" means a vessel as defined in the Canada Shipping Act coming into the Port of Hawkesbury, in the Province of Nova Scotia, or into the Harbour of Miramichi, in the Province of New Brunswick, that

(a) has at the time of its arrival or has had during its passage from the places where it was cleared, any person on board labouring under Asiatic cholera, fever, small-pox, scarlatina or measles or other infectious and dangerous disease,

(b) being of less tonnage than seven hundred tons measurement, has on board thirteen or more steerage passengers, or, being of greater tonnage than seven hundred tons measurement, has on board fifty or more steerage passengers, or

(c) has come from some infected port, or on board of which any person has died during such passage.

(2) Every suspected vessel shall make quarantine in the harbour at which it arrives, and every person on board the vessel shall remain in quarantine, on board the vessel or at such place on shore and in such manner as the inspecting physician at the harbour where the vessel arrives may direct, until the vessel is discharged from quarantine by a licence or passport issued by the inspecting physician in such form as the Governor in Council directs.

(3) Until a vessel has performed its quarantine and is discharged therefrom, persons, goods or merchandise that are on board the vessel shall not

(a) come or be brought onto shore, or

(b) go or be put on board of any other vessel in Canada,

except at the place indicated by the Inspecting Physician when required by him.

ANALYSIS 2.

OFFICIAL SECRETS ACT

This is one of the poorest pieces of drafting I have ever seen. It was copied from the British Act, which probably was done originally by a committee of lance corporals and government messengers. As an officer of the Department of Justice I had many occasions to consider whether an offence had been committed, and the only way I could come to any conclusion was to re-write it in indented form.

First, the questions on first reading.

4. (1) If **1** any person having in his possession or control any secret official code word, or pass word, **2** or any sketch, plan, model, article, note, document or **3** information **4** which relates to or is used in a prohibited place or anything in such a place, or **5** which has been made or obtained in contravention of this Act, or **6** which has been entrusted in confidence to him by any person holding office under His Majesty or **7** which he has obtained or to **8** which he has had access owing to his position as a person who holds **9** or has held **10** office under His Majesty, or as a person who holds **11** or has held **12** a contract **13** made on behalf of His Majesty, or a contract **14** the performance of which in whole or in part is carried out in a prohibited place, or **15** as a person who is or has been employed under a person who holds or has held such an office or contract,—

(a) communicates **16** the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate with, or a person to whom it is in the interest of the State his duty to communicate it; or

(b) uses **17** the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State; or

(c) retains **18** the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails **19** to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code word or pass word or information;

that person shall be guilty **20** of an offence under this Act.

COMMENTS

1. There are two ways of setting out a criminal offence:[4]

If any person.....communicates.....such person shall be guilty

A person who.....communicates is guilty

Both forms are grammatically correct, but I prefer the second. The first ends with *such person*; there may be mention of persons in between, thus creating doubt who *such person* is. The second form avoids this possibility. This is a situation where I feel it is better to set out the fact-situation in an adjectival clause rather than an adverbial one.

2. There is ambiguity here. Do the words *secret official* apply to *pass word*? The comma before the phrase suggests that they do not, but the absence of the comma in **21** suggests they do. It is reasonable to conclude that *pass word* is intended to be qualified, for surely the Act is not meant to apply to a pass word to enter a private poker club.

3. Is not a document information? Why not *other* information?

4. This is the first of five *which* clauses. Do these clauses apply to secret official code word or pass word?

5. The second *which*; these clauses confuse and clutter.

6. The third *which*.

7. The fourth *which*.

8. The fifth *which*. What follows now seems to have no relation to prohibited places, but there is still the question whether it applies to *code words* and *pass words*.

9. How far back does *person who holds* go?

10. The same here.

11. This is confusing because the sentence now switches from holding office to holding a contract.

12. The same.

13. The same.

14. A new contract and back to prohibited places.

15. A new person.

16. This deals only with communicating, but applies to all of the material described.

17. This is only use, and it applies only to information; is using a document for the benefit of a foreign power not an offence?

18. This deals only with retaining and does not apply to code words or pass words. Why not?

19. This deals only with failure to take reasonable care, and it applies to all the material mentioned earlier.

20. We would now say *is guilty*.

Our first effort at indentation might be:

If any person having in his possession or control

any secret official code word, or pass word, or

any sketch, plan, model, article, note, document or information

which relates to or is used in a prohibited place or anything in such a place, or

which has been made or obtained in contravention of this Act, or

which has been entrusted in confidence to him by any person holding office under His Majesty or

which he has obtained or to which he has had access owing to his position

as a person who holds or has held office under His Majesty, or

as a person who holds or has held

a contract made on behalf of His Majesty, or

a contract the performance of which in whole or in part is carried out in a prohibited place, or

as a person who is or has been employed under a person who holds or has held such an office or contract

communicates etc.

uses the information etc.

retains the sketch etc.

fails to take etc.

that person shall be guilty of an offence.

There seems to be something wrong here. The expression *prohibited place* is defined in the Act. There might well be official secret code words and pass words that do not relate to prohibited places. Moreover, in another section of the Act code words and pass words are mentioned after prohibited places. It would seem therefore that the references to prohibited places do not apply to code words or pass words. The *which* clauses should be indented further to the right as follows:

If any person having in his possession or control

any secret official code word, or pass word, or

any sketch, plan, model, article, note, document or information

which relates to or is used in a prohibited place or anything in such a place, or

which has been made or obtained in contravention of this Act, or

which has been entrusted in confidence to him by any person holding office under His Majesty or

which he has obtained or to which he has had access owing to his position

as a person who holds or has held office under His Majesty, or

as a person who holds or has held

a contract made on behalf of His Majesty, or

a contract the performance of which in whole or in part is carried out in a prohibited place, or

as a person who is or has been employed under a person who holds or has held such an office or contract

communicates etc.

uses the information etc.

retains the sketch etc.

fails to take etc.

that person shall be guilty of an offence.

The *person* clauses *holding contracts or offices* evidently should be indented to the right of *which he has obtained.*

This is as far as students needed to go. However, we explored the probable reasons why the lettered paragraphs in the original referred to different things. The only rational explanation would seem to be that *information* means intangible information - information that exists only in a person's mind and not in any document. Hence, communication would apply to everything, but *information* could be used without communicating it. Retention could not apply to information that exists only in a person's mind; it could never be proven whether the information was remembered or forgotten. Failure to take reasonable care could apply to information; the person having the information might blurt it out when drunk.

I then illustrated how this provision, taking it as it is and has here been interpreted, could be made more presentable. Of course, if it were to be revised there would have to be conferences with all those who are involved in security matters.

The first thing to do, in my opinion, is to take all this descriptive material out of the section and put it into definitions. To do that, we must set up dichotomies and invent terms that by themselves and without reading the definitions will carry a meaning closely approximating the definitions. The ordinary public servant or member of the forces will then readily understand the provision; the technical definitions are there for the prosecutor, defence counsel and judge.

Let us start with *official secret* as meaning everthing. Everybody will understand that. This we now divide into *classified information* and *code word and pass word*; the two together include everything, and everybody to whom the statute is directed will understand what classified information is, and also of course code word and pass word. *Classified information* we divide into tangible and intangible. This raises the A = B + C situation. *Intangible* information cannot be defined, but we can define *tangible* information as *official document. Intangible* information is then information other than an official document.

If we now turn to the original text the description of things at the beginning may be called *official secret*, as can the things referred to in the original lettered paragraphs (a) and (d). The material mentioned in original paragraph (c) can now be called *official document*, and in the redraft the information in (b) becomes *classified information other than (or not being) an official document.*

Using the words of the section we can now set up the following definitions, arranged in alphabetical order:

"classified information" means a sketch, plan, model, article, note, document or other information that

(a) relates to or is used in a prohibited place or anything in such a place,

(b) has been made or obtained in contravention of this Act,

(c) has been entrusted in confidence to him by any person holding office under His Majesty,

(d) a person has obtained or to which he has had access owing to his position

(i) as a person who holds or has held office under His Majesty,

(ii) as a person who holds or has held

(A) a contract made on behalf ot His Majesty, or

(B) a contract the performance of which in whole or in part is carried out in a prohibited place, or

(iii) as a person who is or has been employed under a person who holds or has held such an office or contract;

"official secret" means any secret official code word, any secret official pass word or any classified information;

"official document" means any sketch, plan, model, article, note or document that is classified information.

Information in the first definition has now become *other information*, because what precedes is information. The definition of *official secret* includes everything, but the ambiguity in *code word* and *pass word* has been removed by repetition. From the definition of official document *intangible* information is removed.

I do not like to use paragraph designations beyond lower case roman numerals unless absolutely necessary. That could easily be avoided here in (d)(ii) by writing (ii) as one piece without a further breakdown into an (A) and (B); that would cause no ambiguity or reading difficulty.

We can now write the penal provisions as follows:

(1) Every person having in his possession or control any official secret who

(a) communicates the official secret to any person, other than a person to whom he is authorized to communicate with or a person to whom it is in the interest of the State his duty to communicate it, or

(b) fails to take reasonable care of or so conducts himself as to endanger the safety of the official secret

is guilty of an offence.

(2) Every person having in his possession or control any official document who retains the document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof, is guilty of an offence.

(3) Every person having in his possession or control any classified information other than an official document who uses the information for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State is guilty of an offence.

Now we have provisions that are easy to read, and easy to understand by those to whom the provisions are directed without having to plough

through lengthy descriptive material.[5] Also, it would under such a redraft, be easier to frame a charge in a prosecution.

Paragraphs (a) and (b) of (1) in this draft cover everything and include what is in paragraphs (a) and (d) of the original; subsection (2) is paragraph (c) of the original; and subsection (3) is paragraph (b) of the original.

ANALYSIS 3.

CANADIAN NATIONAL-CANADIAN PACIFIC ACT

The principal purpose of this exercise is to illustrate the difference between law office drafting and legislative drafting. Unfortunately there are still many lawyers who write their documents in ancient and archaic words and style, often grammatically defective, and too often in long complicated sentences. There is at least one lawyer in Canada who is trying hard to improve the quality of writing in lawyers' offices, namely, Robert C. Dick, Q.C. of Toronto. Not only has he written an excellent text,[6] but has been very busy giving lectures and demonstrations to law society meetings throughout Canada. On the other hand, whatever may be said of modern legislative style, there has in Canada been a sincere desire and conscientious effort to write statutes in plain modern English, and to make them as readable and presentable as possible. There has been in my opinion an enormous improvement in the quality of Canadian federal and provincial statutes during the past thirty-five years at least. There may still be a long way to go, but at least we are moving.

The provision here (as I was informed by a contemporary official of the author) was written by a famous lawyer in private practice, one of whose specialties was railway law.

Some explanation is needed. When assigning this exercise I reviewed the whole Act[7] but that is hardly possible here.

At one time there were many distinct railway companies, usually incorporated by special Act. Some were private railways, some were government railways and some were partly private and partly government. Many of these companies were bankrupt or nearly so. A new government railway company, The Canadian National Railway Company, was then incorporated by Act of Parliament. It had power to build and run its own railways, and in addition the operation of government railways was entrusted to it. This new company took over the shares or undertakings of many of these ailing private or quasi-private companies. In the statute under consideration here, the term National Company means the Canadian National Railway Company, and National Railways means all the elements of which the National Company was composed.

The purpose of the provision to be considered here was to appoint a Board of Trustees that would act as the Board of Directors of the National Company and all its elements.

9. (1) When the Governor in Council shall proclaim **1** in the *Canada Gazette* that he has vacated all nominations to the Board of Directors of the National Company and has appointed Trustees as by section four of this Act provided **2** the said **3** Board shall cease **4** to exist and, by force of this Act and without more, **5** the direction and control of the National Company and its undertaking shall be vested, **6** subject to the provisions of this Act, **7** in the trustees.

(2) The Trustees shall and may **8** thereafter, subject to the provisions of this Act, **9** have and exercise **10** all the powers, rights, privileges and immunities, **11** and perform and be subject to **12** all the duties, responsibilities and restrictions, **13** which **14** now appertain to the Board of Directors of the National Company.

(3) At the same time, by the same force and without more, **15** the Trustees shall become and be **16** Trustees in the place and stead of and in succession to every Board of Directors of every other company in Canada which **17** is comprised in National Railways and they may and shall, **18** thereafter, subject to the provisions of this Act, **19** have and exercise with relation to such other companies, respectively, **20** the like powers, rights, privileges and immunities, **21** and perform and be subject to **22** the like duties, responsibilities, and restrictions **23** as those already **24** in this section provided for **25** with relation to the National Company: Provided that **26** in any case where the ownership, interest or right to operate or control **27** of the National Company or of any element of which National Railways as defined by this Act is composed is, as respects any of such companies **28** in Canada, partial only, because whereof **29** after the passing **30** of this Act part of the Board of Directors of such company will be or continue to be appointable otherwise than by the Trustees, they shall at the same time, by the same force and without more **31** become and be **32** directors in the place and stead of that part **33** of such Board of Directors of such company which **34** before the passing of this Act was appointable by or for the National Company or by or for any element of which National Railways is composed; and if the number of directors appointable by them be **35** more than three the Trustees may appoint such additional directors of such company **36** in Canada as may be authorized and necessary and may remove and replace them at any time without notice and without assigning cause.

COMMENTS

1. An unnecessary use of *shall*. This should be either the simple present *proclaims* or the present perfect *has proclaimed.*

2. In old English, which was closer to germanic languages than modern English, the verb was put at the end as it now is in those languages. This form is to-day continued by lawyers, notwithstanding that in modern English the verb comes earlier - *as provided by*. Even to-day the information and complaint in a summary convictions offence ends with the ancient words - *contrary to the statutes in that behalf made and provided*.

3. The definite article is enough; the word *said* adds nothing.

4. The simple present tense or present perfect should be used here.

5. 6. I feel that here a doubt crept into the author's mind. I can picture him thinking: "Does *shall be vested* mean vest by operation of law the moment the statute is enacted; or does it mean that somebody must do something to effect the vesting? I'll fix that, by adding *by force of this Act and without more*." All that is needed to remove any doubt is to use the simple present tense - *ceases to exist*. This expression *by force of this Act and without more* appears three times. See notes **5**, **15**, **31**.

7. The expression *subject to the provisions of this Act* occurs three times. See **7**, **9** and **19**. The remedy here, as will be shown later, is to write it once only at the beginning and then set out the remaining enactments as lettered paragraphs.

8. 10. 11. Here is a favourite expression. The two auxiliaries - *shall and may* - are coupled, and then followed by two verbs - *have and exercise* - which in turn are followed by four objects.[8] This is nonsense. It does not make any sense to say that the trustees *may* exercise, and at the same time *shall* exercise. There is no point in saying they *shall have* powers; there is no compulsion here, nor any futurity, because of *by force of this Act*. And how can the trustees *exercise* immunities? Perhaps the author intended *shall and may* to apply respectively - *shall have* and *may exercise*. But in **18** it is the reverse!

12. 13. Here we have two verbs, rather than two auxiliaries - *perform and be subject to*. There cannot be any respective operation here, since they are followed by three objects **13** - *duties, responsibilities and restrictions*. How does one *perform* restrictions?

14. I would say *that* instead of *which*.

15. Apart from the comments in **5** and **6** I consider this style objectionable. Here the word *same* in subsection (3) refers to something in subsection (1). That is too far away.

16. If they become they are; and if they are they became.

17. Again, *that* for *which*.

18. Another *may and shall*, followed by two verbs and this time four objects.

19. It is questionable whether this expression is needed at all. The Act must be read as a whole, and this section would naturally be subject to any other qualifying provisions. In any case, as indicated in **7** it need be said only once.

20. The word *respectively* here is meaningless.

21. The four nouns are all objects of two verbs.

22. Two verbs followed by three objects.

23. Again, how does one perform restrictions?

24. I avoid the word *already*. Does it mean in this Act, or at the time this Act is enacted? Here, it means *in this Act*, in which case it is unnecessary.

25. The verb is at the end, but that is not so bad here because it is thus brought closer to the phrase at the end.

26. The lawyer's proviso. This has no meaning or function here; there should be a separate provision starting with *In any case.*[9] But then, no document is *legal* unless there is at least one *provided that*!

27. Here is an ambiguity. Does *control* of the National Company mean that the National Company controls other companies, or that it is under the control of some other company.

28. To find out what *such companies* are the reader must go back ten lines, and to find that point the reader must again read from the beginning.

29. The *whereof* is an alien intrusion. Apparently it means *Directors of such company*, but that is said.

30. Technically not correct, but here harmless. There may be a difference in time between the passing of an Act and its commencement.[10]

31. Here the *same force* and the *same time* reach back to the first subsection.

32. See comment **16**.

33. 34. Instead of saying *that part which*, I prefer to say *the part that.*

35. The subjunctive verb form. In modern English the indicative would be used.[11]

36. What is *such* company?

In this case I tabulated or indented with a few of the changes indicated by the foregoing criticisms. The result, taking all the rest of the language as it is, is as follows:

9. (1) When the Governor in Council proclaims in the *Canada Gazette* that he has vacated all nominations to the Board of Directors of the National Company and has appointed Trustees as provided by section four, the following provisions thereupon take effect, subject to this Act:

(a) the Board ceases to exist and the direction and control of the National Company and its undertaking are vested in the Trustees;

(b) the Trustees

(i) may exercise all the powers, rights, privileges and immunities, and

(ii) are subject to all the duties, responsibilities and restrictions,

that appertain to the Board of Directors of the National Company;

(c) the Trustees become Trustees in the place of every Board of Directors of every other company in Canada that is comprised in National Railways, and they

(i) may exercise in relation to such other companies, the like powers, rights, privileges and immunities, and

(ii) are subject to the like duties, responsibilities, and restrictions

as those provided for in this section in relation to the National Company; and

(d) in any case where the ownership, interest or right to operate or control of the National Company or of any element of which National Railways is composed is, as respects any of such companies in Canada, partial only, by reason that after the passing of this Act part of the Board of Directors of such company will be or continue to be appointable otherwise than by the Trustees,

(i) they become directors in the place of the part of such Board of Directors of such company that before the commencement of this Act was appointable by or for the National Company or by or for any element of which National Railways is composed, and

(ii) if the number of directors appointable by them is more than three the Trustees may appoint such additional directors of such company in Canada as may be authorized and necessary and may remove and replace them at any time without notice and without assigning cause.

What was the proviso in the original, and paragraph (d) in the redraft above has not yet been touched. This takes some working over, and a good way of handling such a situation is to do all necessary repairing elsewhere, and leave the problem provision until the end.

To avoid constant references to *such companies* I would add a new definition of *constituent company* and define it to mean any element of which National Railways is composed. That would fit nicely into the definitions in the Act. Then I would rewrite paragraph (d) as follows:

> where the National Company has only partial ownership of or a partial interest in a constituent company or has only in part the right to operate or control a constituent company for the reason that, after the commencement of this Act, part of the board of directors of the constituent company is appointable otherwise than by the Trustees, then[12]
>
> (i) the Trustees become directors in the place of that part of the board of directors of the constituent company that before the commencement of this Act was appointable by or for the National Company or the constituent company, and
>
> (ii) if the number of directors appointable by them is more than three the Trustees may appoint such additional directors of such company in Canada as may be authorized and necessary and may remove and replace them at any time without notice and without assigning cause.

ANALYSIS 4.

CRIMINAL CODE (RACE MEETINGS)

The provision here, taken from the Revised Statutes of Canada, 1927 (but enacted earlier) is surely one of the worst provisions in the statutes of that time. It has since been re-enacted in tabulated form[13] and thus made easier to read, but it is still complicated and difficult.

Some explanation is needed.

When the gaming provisions of the criminal law were consolidated and re-written, race-track betting was prohibited, but an exception was made in favour of agricultural societies. There were many of these societies throughout the country, and many of them had annual fairs. The women would display their cooking, baking and preserved wares, both men and women would display vegetables, and the men brought in their livestock. Prizes and ribbons were awarded. Included in the activities for the day were horse races, ostensibly for the improvement of breeds, but largely for entertainment. Betting on races was the order of the day. However, there were some restrictions. Two kinds of races were conducted. One kind was a running race, where a rider sits astride the horse. The other kind was known as a trotting or pacing race, where the horse pulled a cart

with the driver as passenger. Betting however, (except private bets), had to be done through a pari-mutuel system under the supervision of an official of the Department of Agriculture.

The provisions respecting running races were more stringent than those respecting trotting or pacing races; only on a fewer number of days could running races be held, and only a fewer number of heats per race were permitted. Milder restrictions applied to race meetings where only trotting or pacing races were conducted.

New associations could come in, but only if incorporated by special Act. This would prevent the secret incorporation of associations under a general Act. If incorporated by Special Act, there would then be public notice and discussion.

Subsection (1) of section 235 prohibited betting, pool selling and book making.

Subsections (2) and (3) were as follows:

2. The provisions of this section and of section two hundred and twenty-seven and of subsections one and two of section two hundred and twenty nine, **1** shall not extend to **2** any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked or to be **3** paid to **4** the winner of any lawful race, sport, game or exercise, or **5** to be paid to the owner of any horse engaged in any lawful race, or **6** to be paid to the winner of any bets between not more than ten individuals or **7** to a private bet between individuals not engaged in any way in a business of betting, or **8** to bets made or records of bets made through the agency of a pari-mutuel system only as hereinafter provided, upon the race-course of any association **9** incorporated in any manner before the twentieth day of March, one thousand nine hundred and twelve, or incorporated after that date by special Act **10** of the Parliament of Canada or of the Legislature of any province of Canada, **11** during the actual progress of a race-meeting conducted by such association upon races being run thereon: Provided that **12** as to race-meetings at which there are running races **13** no such race-meeting continues for more than seven days of continuous racing on days on which such racing may be lawfully carried on, and that **14** there be not more than seven races on any such day; and provided that **15** no such association holds, and that on any one race-track there not be held, in any one calendar year more than two race-meetings at which there are running races and that there is an interval of at least twenty days between meetings; and provided that **16** as regards race-meetings held upon the race-course of any association incorporated after the fourth day of May, one thousand nine hundred and ten, the said race-course be located in or within three miles of a Canadian town or city having a population of not less than fifteen thousand people:

Provided also, **17** that **18** where any person or association becomes a custodian or depository of any money, bet or stakes during the actual progress of a race-meeting conducted by and on the race-course of such an association upon races being run thereon, that **19** the percentage deducted and retained by the association in respect of each race from the total amount of money so deposited, or of which the said person or association becomes the custodian, *under the pari-mutuel system*, shall not exceed the following: –

.....(amounts omitted for the exercise).....

In addition to the percentages above set forth, the person or association shall also be entitled to retain the odd cents over any multiple of five cents, and the odd cents may be eliminated from the amount to be paid to any bettor: Provided also, **20** that for the purpose of recording the amounts deposited by the bettors a type of pari-mutuel machine be used which has been approved by an officer appointed by the Minister of Agriculture and that the operations of the said machines and the carrying out of the provisions of this section be under the supervision of an officer appointed by the Minister of Agriculture whose duty it shall be to ascertain that the said machines are stopped before each race and no further amounts are deposited when the horses have passed the judges' stand on their way to the post, and that the machines are then locked. The expense incident to such supervision for each meeting to be borne by the association: **21** Provided further, **22** that the Minister of Agriculture if he is not satisfied that **23** a proper proportion of gate receipts and percentages taken from the pari-mutuel pools is being given in purses to horses taking part in the race meeting, or **24** that the provisions of this section are not being carried out in good faith by the person or association conducting the race meeting, may **25** at any time order the pari-mutuel machines to be locked and their operation stopped for such time as he may think fit.

3. The provisions of said sections **26** shall not apply to race-meetings at which there are trotting or pacing races exclusively, where pool-selling, betting or wagering is permitted by an association incorporated as provided by subsection two of this section on such race-course during the actual progress of the race-meeting conducted by the association: Provided also that **27** as to the race-meetings at which there are trotting or pacing races exclusively, no such race-meeting continues for more than three days on which racing may be carried on, in any one calendar week, and that **28** no race-meetings at which there are trotting or pacing races are held on the same grounds for more than fourteen days in all in any one calendar year.

Before attempting indentation, the provision should be carefully examined and marked so as to indicate a tentative conclusion where the margins of the indentations should be, and to note any matters to be looked at in the event of a revision as to form.

COMMENTS

1. These section numbers are now written in figures.

2. The words *extend to* appear to govern any person or association, a private bet **7** and to bets **8**.

3. The word *or* appears to be a mistake. It obviously is intended to be *staked to be paid to*, or *staked and to be paid to*.

4. The words *paid to* govern the winner of any lawful race, and also **5** and **6**.

7. The words *to a private bet* go back to *extend to* **2**.

8. The words *to bets made* also go back to **2**.

9. *Association* governs *incorporated in any manner* and also **10**.

10. See preliminary explanations.

11. Here we must go back to the left, but how far? Since it mentions associations, presumably it is parallel to **9**.

12. This proviso simply means *if*, a subordinating conjunction. It governs **13** and **14**.

13. Where there are running races.

14. Not more than seven races.

15. This is also an *if* and appears to be merely a repetition of **12**. It is a third condition to **12**.

16. This proviso is also an *if*, and a fourth condition to **12**.

17. This proviso is the lawyers' monstrosity. It is here used as a co-ordinating conjunction. It is here meaningless and should be dropped, and a new subsection should start with *Where any person*.

18. This is the fact-situation for the enactment **19**.

20. This proviso is another enactment; the words *Provided also, that* should be deleted and another subsection started.

21. This is part of enactment **20** and should not start a new sentence.

22. This proviso is a separate enactment.

23. The words *if he is not satisfied* govern **23** and **24** and should be indented to the right.

24. A second ground for dissatisfaction.

25. This is the enactment for the fact-situations set out in **23** and **24** and should go to the left margin in line with *he is not satisfied.*

26. The *said sections* is too far away from the opening lines of subsection (2). The section numbers should be repeated.

27. This proviso is meaningless. There are two separate enactments, **27** and **28.**

28. The second prohibition.

We are now ready to indent as follows:

(2) The provisions of this section and of section two hundred and twenty-seven and of subsections one and two of section two hundred and twenty-nine, shall not extend to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked or to be paid to

(i) the winner of any lawful race, sport, game or exercise, or

(ii) to be paid to the owner of any horse engaged in any lawful race, or

(iii) to be paid to the winner of any bets between not more than ten individuals or

(b) to a private bet between individuals not engaged in any way in a business of betting, or

(c) to bets made or records of bets made through the agency of a pari-mutuel system only as hereinafter provided, upon the race-course of any association

(i) incorporated in any manner before the twentieth day of March, one thousand nine hundred and twelve, or

(ii) incorporated after that date by special Act of the Parliament of Canada or of the Legislature of any province of Canada,

during the actual progress of a race meeting conducted by such association upon races being run thereon: Provided that as to race-meetings at which there are running races

(iii) no such race-meeting continues for more than seven days of continuous racing on days on which such racing may be lawfully carried on, and that there be not more than seven races on any such day; and

(iv) provided that no such association holds, and that on any one race-track there be not held, in any one calendar year more than two race-meetings at which there are running races and that there is an interval of at least twenty days between meetings; and

(v) provided that as regards race-meetings held upon the race-course of any association incorporated after the fourth day of May, one thousand nine hundred and ten, the said race-course be located in or within three miles of a Canadian town or city having a population of not less than fifteen thousand people.

(3) Provided also, that where any person or association becomes a custodian or depository of any money, bet or stakes during the actual progress of a race-meeting conducted by and on the race-course of such an association, upon races being run thereon, that the percentage deducted and retained by the association in respect of each race from the total amount of money so deposited, or of which the said person or association becomes the custodian, under the pari-mutuel system, shall not exceed the following:—

— amounts omitted —

In addition to the percentages above set forth, the person or association shall also be entitled to retain the odd cents over any multiple of five cents, and the odd cents may be eliminated from the amount to be paid to any bettor:

(4) Provided also, that for the purpose of recording the amounts deposited by the bettors a type of pari-mutuel machine be used which has been approved by an officer appointed by the Minister of Agriculture and that the operations of the said machines and the carrying out of the provisions of this section be under the supervision of an officer appointed by the Minister of Agriculture whose duty it shall be to ascertain that the said machines are stopped before each race and no further amounts are deposited when the horses have passed the judges' stand on their way to the post, and that the machines are then locked. The expense incident to such supervision for each meeting to be borne by the association.

(5) Provided further, that the Minister of Agriculture if he is not satisfied that a proper proportion of gate receipts and percentages taken from the pari-mutuel pools is being given in purses to horses taking part in the race meeting, or that the provisions of this section are not being carried out in good faith by the person or association conducting the race meeting, may at any time order the pari-mutuel machines to be locked and their operation stopped for such time as he may think fit.

(6) The provisions of said sections shall not apply to race-meetings at which there are trotting or pacing races exclusively, where pool-selling, betting or wagering is permitted by an association incorporated as provided by subsection two of this section on such race-course during the actual progress of the race-meeting conducted by the association: Provided also that as to the race-meetings at which there are trotting or pacing races exclusively, no such race-meeting continues for more than three days on which racing may be carried on, in any one calendar week, and that no race-meetings at which there are trotting or pacing races are held on the same grounds for more than fourteen days in all in any one calendar year.

If this were now given a "lick, spit and polish" the following would be the result:

(2) The provisions of subsection (1) of this section, section 227 and subsections (1) and (2) of section 229 do not apply to

(a) any person or association by reason of his or their becoming the custodian or depository of any money, property or valuable thing staked and to be paid to

(i) the winner of any lawful race, sport, game or exercise,

(ii) the owner of any horse engaged in any lawful race, or

(iii) the winner of any bets between not more than ten individuals,

(b) a private bet between individuals not engaged in any way in the business of betting, or

(c) bets made or records of bets made through the agency of a pari-mutuel system only as hereinafter provided, upon the race-course of any association

(i) incorporated in any manner before the twentieth day of March, 1912, or

(ii) incorporated after that day by special Act of the Parliament of Canada or of the Legislature of any province of Canada,

during the actual progress of a race meeting conducted by such association upon races being run thereon and if, as to race-meetings at which there are running races,

(iii) no such race-meeting continues for more than seven days of continuous racing on days on which such racing may be lawfully carried on, and there are not more than seven races on any such day,

(iv) no association holds, and on any one race-track there is not held, in any one calendar year more than two race-meetings at which there are running races and there is an interval of at least twenty days between meetings, and

(v) as regards race-meetings held upon the race-course of any association incorporated after the fourth day of May, 1910, the race-course is located in or within three miles of a Canadian town or city having a population of not less than fifteen thousand people.

(3) Where any person or association becomes a custodian or depository of any money, bet or stakes during the actual progress of a race-meeting conducted by and on the race-course of an association, upon races being run thereon, the percentage deducted and retained by the association in respect of each race from the total amount of money so deposited, or of which the person or association becomes the custodian, under a pari-mutuel system, shall not exceed the following:—

— amounts omitted —

in addition to the foregoing percentages the person or association is also entitled to retain the odd cents over any multiple of five cents, and the odd cents may be eliminated from the amount to be paid to any bettor.

(4) For the purpose of recording the amounts deposited by the bettors a type of pari-mutuel machine that has been approved by an officer appointed by the Minister of Agriculture shall be used, and the operations of such machines and the carrying out of the provisions of this section shall be under the supervision of an officer appointed by the Minister of Agriculture, whose duty it is to ascertain that the machines are stopped before each race, that no further amounts are deposited when the horses have passed the judges' stand on their way to the post and that the machines are then locked; the expense incident to such supervision for each meeting shall be borne by the association.

(5) The Minister of Agriculture, if he is not satisfied that a proper proportion of gate receipts and percentages taken from the pari-mutuel pools is being given in purses to horses taking part in the race meeting, or that the provisions of this section are not being carried out in good faith by the person or association conducting the race meeting, may at any time order the pari-mutuel machines to be locked and their operation stopped for such time as he may think fit.

(6) The provisions of subsection (1) of this section, section 227 and subsections (1) and (2) of section 229 do not apply to race-meetings at which there are trotting or pacing races exclu-

sively, where pool-selling, betting or wagering is permitted by an association incorporated as provided by subsection (2) of this section on a race-course during the actual progress of the race-meeting conducted by the association, if no such race-meeting continues for more than three days on which racing may be carried on, in any one calendar week, and no race-meetings at which there are trotting or pacing races are held on the same grounds for more than fourteen days in all in any one calendar year.

This is still a long, complicated enactment, but at least it is easier to comprehend than is the original. On any real revision no doubt improvements in substance could be made. The foregoing redraft merely sets out what is there.

There were later amendments to this section, and on a revision of the Criminal Code this provision with its further amendments was written in tabular form along the lines of the redraft above.[14]

CHAPTER NOTES IV

1. On the Drawing of Legal Instruments; Butterworths. London. 1840, 124.
2. For a discussion of the various uses and meanings of *shall*, see Comp. Leg. 9-15, 92, 139; Leg. F. & P., 300, 308, 312.
3. Comp. Leg. 51.
4. Leg. F. & P., 225.
5. See The Renton Report on the Preparation of Legislation, Cmnd 6053, 66, para. 11, 15; Comp. Leg. 51.
6. Legal Drafting. Carswells. 1972.
7. 1932-33, c. 33.
8. Comp. Leg. 92.
9. Comp. Leg. ch. IX.
10. Comp. Leg. 110.
11. See Fowler's Modern English Usage, under "subjunctive".
12. This is what Piesse in his Elements of Drafting, Sydney, 1968, 120 calls a resuming word. If there is in a section a long introduction it might be well to insert the word *then*, in order to compel a pause and put the reader back on the track.
13. S.C. 1953-54 c. 51, s. 178.
14. S.C. 1953-54, c. 51, s. 178.

CHAPTER V

ADMISSION OF ATTORNEYS

This is an early New Brunswick statute. That province was heavily settled by what were known as United Empire Loyalists - people who were loyal to the British Crown and fled to Canada from the "thirteen colonies" after the American revolution. The language of lawyers was then largely British, but some American expressions were adopted. The term *barrister* as used in England was retained, although now frequently called a *counsellor* in the United States. However, the term *solicitor* gave way to the American *attorney*.

The main purpose of this statute was to prescribe a term of study under a barrister for qualification as an attorney. The professions were then still separated, and an attorney who had practised as such for a year was eligible to be admitted to the bar. There were then no university law schools in Canada and the usual road to the law was service under articles of clerkship, and the "clerk" was known as a student-at-law, a term still in use in many provinces of Canada today.

It must be understood that this statute did not stand alone. In addition there was a Barristers' Society and statutes and rules governing the legal profession.

In some cases students aspiring to be lawyers attended a university in the United States or some place in what was then known as the British Empire.

1. Subject to the exception in favor of Graduates **1** as hereinafter mentioned, the term of study for all Students at Law shall be four years. **2**

2. The term of study for all Students at Law who shall previous **3** to their being entered as such Students, have taken the Degree of Bachelor of Arts at any legally authorized **4** University or College, shall be three years.

3. The term of study for all Students at Law who shall at any time previous to their application for admission **5** as Attorneys, have taken the Degree of Bachelor of Laws at Trinity College, Dublin, or at Harvard University in the State of Massachusetts, or at any other lawfully authorized **6** College or University in Great Britain or Ireland, the United States, Canada, or any British Colony, shall be three years.

4. No Student at Law shall be refused admission as an Attorney for or by reason of his having received any salary or remuneration during the term of his study, or for or by reason of his having practised or tried causes in any Court, or for or by reason of his having engaged in any other business or employment **7** provided always, **8** however, that no such Student shall, during the term of his study, engage in any other business or employment, or receive any salary or remuneration from any person whatever, or practice or try causes in any Court, without the knowledge or consent of the Barrister with whom he may be studying at the time.

5. If any such Student do or shall engage in any other business or employment, or receive any salary or remuneration, or practice or try causes in any Court, without the knowledge or consent of the Barrister as aforesaid, he may be refused admission as an Atorney. **9**

6. No greater fee than five dollars in the whole **10** shall be required by the Barristers' Society from any Student at Law, either on his admission as a Student at Law or as an Attorney. **11**

7. Any Attorney may be called to the Bar and admitted to a Barrister in **12** one year after his admission as an Attorney, provided **13** he has in all other respects conformed **14** to the rules and regulations of the Barristers' Society relating to the admission of Attorneys to the Bar.

COMMENTS

1. There is no need for the word *graduates*. The expression "student at law" says enough; in some jurisdictions it is written *student-at-law*.

2. Section 1 and sections 2 and 3 are suitable for amalgamation into one provision. This can be done in various ways.

No. 1.

The term of study for students at law is as follows:

(a) three years for those, etc

(b) three years for those, etc

(c) four years for all others

No. 2.

The term of study for students at law is

(a) three years for those, etc and for those, etc, and

(b) four years for all others

No. 3.

The term of study for students at law is four years, except that it may be three years for

(a) students who ..... B.A.

(b) students who ..... LL.B.

Or, the *notwithstanding* or *subject to* formula may be used.

No. 4.

1. Except as provided in (or, subject to) section 2 the term of study is four years .....

2. The term of study is (may be) three years .....

No. 5.

1. The term of study is four years

2. Notwithstnding section 1 the term of study is three years

3. The word *previous* is usually an adjective, although it can be used as a quasi-adverb. It would be better modern English to say *prior to* or simply *before.*

There is a difference between **3** and **5** that often goes unnoticed. In section 2 the B.A. degree must be taken before being entered as a student, but under section 3 the LL.B. may be taken at any time before application for admission as an Attorney.

4. 5. 6. There is an ambiguity here, as well as in **6**. In **4** it is *legally authorized* and in **6** it is *lawfully authorized*. Does this mean authorized under the law of the place where the university is located, or the law of New Brunswick? The usual way of writing a provision such as this is to say *recognized by the Barristers' Society*.

7. 8. 9. Sections 4 and 5 are confusing. We can only guess at what the original author had in mind. Section 4 begins with a direction to the Barristers' Society; that is then followed by a proviso directed to the students. Section 5 is a contradiction of section 4. Under section 4 a student cannot be refused admission in the circumstances there described, but under section 5 he may be refused in cases that fall within the circumstances described in section 4.

Section 4 is therefore not an absolute rule. What seems to be missing is *with the consent of his employer*. The idea behind the first part of section 4 and section 5 seems to be this: if the student moonlights with the consent of his employer he must not on that account be refused admission; but if he moonlights without consent, then there is a discretion to refuse.

But what can we make of the proviso? This is a direction to the student, but there is no penalty, except the possibility of ultimately being refused admission, but that is in section 5. My only guess is that the articles of clerkship contained a covenant by the student to comply with all relevant laws, so that if he violated the proviso the barrister could dismiss him at once and would not have to wait to see what the Barristers' Society will do two or three years hence.

10. 11. There is an ambiguity here. Is the maximum fee a total of five dollars for the two admissions or five dollars for each? It is to be noted that this section does not authorize a fee; it imposes a limitation on a fee authorized elsewhere - probably in the Barristers Act or rules.

12. What is intended is obviously that an attorney must be one for a whole year before he is eligible for a call to the Bar. However, as written, one day after his admission as an Attorney is *in one year*, namely, the first year.

13. This *provided* means *if*.

14. It is not clear what this means. In my day it meant signing the roll, paying the fee and then being presented to the court in session. This was *admission upon compliance with*. A difficulty with the perfect tense, although not likely here, is that the words include those who at times did comply but at other times did not. To say that he has conformed does not necessarily mean that he has always conformed. If a solicitor committed some indiscretion, for which he was forgiven, could it be said that *he has conformed*? My own view is that the reference here is to the final steps to be taken after the one year.

STUDENTS' RETURNS

PART I

Rather than deal with a complete statute returned by a student, I think it would be better to deal separately with each of the main ingredients. There are three essential elements: (1) prescribing a term of study; (2) prescribing rules of conduct; (3) providing for admission to the bar.

In dealing with the term of study, I did not bother with the designation of universities or colleges, for what is there is out of date. In modern legislation it would probably be said *university or college approved by the Barristers' Society*; or, there could be a definition of *approved college* as meaning a university or college approved by the Barristers' Society.

RETURN NO. 1.

1. (1) The term of study of **1** a student at law shall be **2**

(a) three years, where **3** the student at law has taken, **4** prior to his enrolment, **5** as a student at law

(i) the degree of Bachelor of Arts at a university or college that is **6** recognized by the Barristers' Society, or

(ii) the degree of Bachelor of Laws at

A. Trinity College situate in Dublin,

B. Harvard University situate in the state of Massachusetts, or

C. A university or college that is **7** recognized by the Barristers' Society and that **8** is situate in Great Britain, Ireland, the United States of America, Canada or any British colony, and

(b) four years, where the student at law does not comply **9** with paragraph (a).

COMMENTS

There is excessive paragraphing here. The requirements of this provision can be set out in simple sentences without this extreme chopping up:[1]

1. The word *for* would perhaps be better than *of*.

2. The *shall* should be *is*.

3. The fact-situation is here set out in adverbial form modifying *taken*. If the word *taken* is used I would prefer to convert to an adjectival modifier and say that the term of study is three years for a student who has *taken* a degree.

4. Does one *take* or *receive* a degree?

5. This student failed to notice that the B.A. degree must be obtained prior to enrolment as a student, but the LL.B. degree may be obtained at any time before application for admission.

6. Either a phrase - *college recognized* - or a clause - *college that is recognized*. I would prefer the former.

7. 8. There is repetition of *that is*. The second *that* is not necessary.[2]

9. There is nothing in paragraph (a) to comply with, since it contains no direction or requirement. It would be enough to say *four years in all other cases* since it is cases that are described in paragraph (a). If the change were made as suggested in comment3, then *for all others* could be said.

RETURN NO. 2.

2. (1) The term of study is three years for all students at law who

(a) before their admission as students at law, have **1** obtained the degree of bachelor of arts from any legally authorized university or college, or

(b) at any time before their application for admission as attorneys, have **2** obtained the degree of bachelor of laws from any legally authorized university or college in Great Britain, Ireland, the United States of America, Canada or any British colony.

(2) The term of study is four years for all other students at law. **3**

COMMENTS

This return is quite good. It could be improved by adopting one of the forms suggested at the beginning of this chapter, for in that way subsection (2) could be included in subsection (1) without repeating *The term of study*.

Thus

The term of study for students at law is

(a) three years for those who

(b) three years for those who ..... and

(c) four years for all others.

1. 2. The simple past rather than the present perfect would be better English.[3] The event described - *obtained* - expresses characteristic only and is not an event connected to the present.

3. As indicated, subsection (2) could easily be combined with (1).

RETURN NO. 3.

1. In this Act

"barrister-instructor" **1** means a barrister whom a student at law studies with; **2**

"graduate" **3** means a student at law

(a) who, before being entered as such **4** a student, has taken **5** the degree of Bachelor of Arts at any legally authorized university or college, or

(b) who, before applying for admission as an attorney, has taken **6** the degree of Bachelor of Laws at Trinity College, Dublin, or at Harvard University in the State of Massachusetts, or in any other lawfully authorized college or university in Great Britain or Ireland, the United States, Canada, or any British Colony;

"undergraduate" **7** means any student at law other than a graduate.

2. In order to be admitted as attorneys, **8** all students at law shall complete **9** a term of study of

(a) three years, if they are graduates, or

(b) four years, if they are undergraduates.

COMMENTS

1. This definition saves little, if anything. It is used but twice in the whole draft.

2. We need not enter into a discussion whether a sentence may end or should not end with a preposition. All authorities I have examined say there is no rule that a sentence must not be ended with a word that can be used as a preposition. My own view, right or wrong, is that what is normally a preposition is often used as part of the verb - an adverb or quasi-adverb. If there is a knock at my door I would say *come in*, and not *in come*. Similarly planes do not *off take* and events do not *up come*. However, it is usually best to avoid criticism in the legislature, and in this case it would be advisable to say *barrister with whom a student at law is studying*. In any case the *with whom* construction here is better English.

3. There is no need for the word *graduate*. The definition saves nothing, for in its absence the same words would have to be included in section 2.

4. It would be enough to say either *student* or *as such*.

5. 6. *Taken at* or *received from*?

7. This is a misuse of the word *undergraduate*. An undergraduate is understood to be a university student, which the four-year students at law would not be. What is evidently meant here is a *non-graduate*.

8. The first seven words are unnecessary.

9. This is compulsion. All this law is intended to do is to prescribe the length of the term of study. The requirement will be elsewhere, in some other statute, perhaps the Barristers Act.

RETURN NO. 4.

1. (1) In this Act, "approved university", in respect of any degree received by any particular person, means a university or college which has been approved by the Barristers' Society pursuant **1** to this section before the admission **2** of that person as a Student-at-Law, and includes Trinity College, Dublin, and Harvard University, Massachusetts.

(2) For the purposes of this Act, the Barristers' Society may approve any college or university situate in Great Britain, Ireland, the United States, Canada or a British Colony. **3**

(3) Prior to December 31 in each year, the Barristers' Society shall publish **4** a list of the universities and colleges that have, at the date of the publication, the approval of the Barristers' Society under subsection (2).

2. (1) On his admission as a Student-at-Law, a person shall pay to the Barristers' Society a fee **5** equal to the lesser of

(a) an amount fixed by the Barristers' Society, and

(b) five dollars.

(2) After his admission as a Student-at-Law, a person shall **6** study with one or more Barristers for a term equal to **7**

(a) three consecutive years, if he has **8**

(i) received a degree of Bachelor of Arts at an approved university prior to his admission as a Student-at-Law, or

(ii) received a degree of Bachelor of Laws at an approved university prior to his application for admission as an Attorney, and

(b) four consecutive years, in all other cases. **9**

COMMENTS

The main fault here is that the leading provision, prescribing the term of study, is the fifth enactment. A reader would not know what this law is

all about until he arrives at the end of the first page. Section 2, (which will be dealt with later) is a relatively minor provision and should not come ahead of the term - of - study provision.

1. Subsection (1) does not provide for approval; that comes in subsection (2); it ought to come first. In any case, the approval sections are much too elaborate.

2. There is an ambiguity here. Do the words *before the admission* refer to *approved* or *received*?

3. As indicated, this subsection precedes subsection (1) in time.

4. This is new. There is no need to publish such a list.

5. As indicated, subsection (1) is a minor provision that should come later.

6. This is a requirement to study. The object of the law is simply to prescribe the length of the term of study.

7. Why *a term equal to* instead of simply *for a term of*, or even more simply *for*.

8. The simple past tense would be better than the present perfect.

9. Paragraph (a) does not describe cases; they are more in the nature of conditions. If, instead of conditions to studying, there were descriptions of the persons, then the sentence could end *for all other persons*.

RETURN NO. 5.

2. (1) A person is academically eligible **1** for admission to the Law Society as an attorney **2** who

(a) successfully **3** completes an aggregate **4** of four years of law studies, **5**

(b) being the holder of a Bachelor of Arts degree obtained from a university or college recognized by the Law Society, successfully completes an aggregate of three years of law studies, or

(c) being the holder of a Bachelor of Laws degree obtained from Trinity College, Dublin or Harvard University, Massachusetts, or from a university or college recognized by the Law Society and situated in Great Britain, Ireland, the United States of America or a Commonwealth country, successfully completes an aggregate of three years of law studies.

(2) An applicant for admission under paragraph 1(b) or (c) is required to have obtained the degree prior to his admission. **6**

COMMENTS

1. to **5.** The author here has lost sight of the prime object of the statute, namely, to prescribe a term of study. Whether a student is *academically* eligible, or has *successfully completed* an *aggregate* of *law studies* - as was explained to the students - is provided for under other laws. Much too verbose.

6. There is an ambiguity here. Admission as a student at law or as an attorney? Although there is no mention of a barrister in this section, or any articles, later sections speak of the barrister with whom the student is articled.

RETURN NO. 6.

1. (1) An applicant who has fulfilled the requirements of subsection (2) may be admitted to the Law Society as a student-at-law.

(2) Every person who applies for admission to the Law Society as a student-at-law shall file with the Law Society,

(a) if he proposes to proceed **1** under subsection 2(1),

(i) a correctly completed **2** application,

(ii) a certificate of graduation **3** from the **4** university or college conferring the **5** degree, and

(iii) articles of clerkship **6** with a Barrister who is a member in good standing of the Law Society; or

(b) if he proposes to proceed **7** under subsection 2(2),

(i) a correctly completed application,

(ii) a certified copy of his academic record, and

(iii) articles of clerkship with a Barrister who is a member in good standing of the Law Society.

2. (1) The term of articles of clerkship **8** for a student-at-law who has taken

(a) a Bachelor of Arts degree from a university or college recognized by the Law Society, or

(b) a Bachelor of Laws degree from a university or college recognized by the Law Society and situated in the United Kingdom, Ireland, the United States, Canada or a British colony

is three consecutive years commencing on the date of the admission of that student-at-law to the Law Society.

(2) The term of articles of clerkship for a student-at-law who has not taken a degree described in paragraph 1(a) or (b) is four

consecutive years commencing on the date of the admission of that student-at-law to the Law Society.

COMMENTS

There is no telling what this law is all about until the reader gets to page two. Subsection (1) of section 1 throws the reader into subsection (2) of section 1, and that subsection throws the reader into section 2. This enactment should start with the idea that *the term of study is*. The two sections are much too long-winded, and to a large extent contain unnecessary material.

1. Subsection 2(1) does not prescribe procedure.

2. If not correctly completed it is not an application.

3. This would have to be done in any event.

4. What university?

5. What degree?

6. A person must be under articles of clerkship to be a student-at-law.

7. The comments in **6** above apply to paragraph (b).

8. We are concerned with the term of study, and not the term of the articles of clerkship.

RETURN NO. 7.

2. In this Act

"Graduate" means a person

(a) who before entering as a Student at Law has been awarded the Degree of Bachelor of Arts at a legally authorized University or College; or

(b) who before making his application for admission as an Attorney has been awarded the Degree of Bachelor of Laws at Trinity College, Dublin, or at Harvard University in the State of Massachusetts, or at any other lawfully authorized College or University in Great Britain or Ireland, the United States, Canada or any British Colony.

3. A Student at Law, shall undertake a term of study for four years, but if he is a Graduate then the term of study is three years.

COMMENTS

As indicated, the term *graduate* does not need to be defined, especially since in this return it is used only once.

In section 3 there is a lack of consistency. The four-year rule is compulsory - *shall undertake* - but the three-year rule is (as it should be) just a statement of fact.

In the sentence as written, for *but if he is* I would prefer *except that he is*, and the *then* is unnecessary.

Assuming that the word *graduate* is defined, I would prefer to write the sentence as follows:

The term of study is three years for a graduate, and four years for a student other than a graduate.

RETURN NO. 8.

2. In this Act,

"Bar" means the Bar of the Province of New Brunswick;

"Barrister" means an Attorney who has been admitted to the Bar and who complies with all the rules and regulations of the Barristers' Society;

"Barristers' Society" means the Society established by the Barrister Society Act (Revised Statutes of New Brunswick .....);

"salary" includes the remuneration received from any person;

"student at law" means every student seeking admission as an Attorney under this Act and subject to the rules and regulations of the Barristers' Society;

"University" means any lawfully authorized University or College located in Great Britain or Ireland, the United States, Canada, or any British Colony and, for the purposes of paragraph 3(2)(b) also means the Trinity College in Dublin or Harvard University in the State of Massachusetts.

3. (1) Subject to subsection (2), every student at law shall study under the direction of a Barrister for a period of four years to be admissible as an Attorney.

(2) Every student at law who

(a) has obtained a degree of Bachelor of Arts at any University, or

(b) has obtained a degree of Bachelor of Laws at any University

shall study under the direction of a Barrister for a period of three years to be admissible as an Attorney.

COMMENTS

The first four definitions are all self-evident and need not be included here at all. The term *University* is used only once, so there is no need for a definition.

Section 3 again expresses compulsion rather than the fact.

The words *to be admissible as an Attorney* are unnecessary.

This student missed the distinction between persons holding a B.A. degree and those holding an LL.B. degree.

RETURN NO. 9.

In this Act -

"Authorized University or College" **1** means a University or College authorized by the Board of Studies of the Barristers' Society; and

"Graduate student" means a person immediately prior to his enrollment as a student-at-law is the holder of:

(a) the Degree of Bachelor of Laws of Trinity College, Dublin, Ireland or of Harvard University, Massachusetts, United States of America, or

(b) the Degree of Bachelor of Arts, of any authorized University or College in Great Britain, Ireland, United States of America, Canada or any British Colony.

The period of study, after enrollment as a student-at-law, for the purpose of being admitted as an Attorney **2** shall be, **3**

(a) four years for a non-graduate **4** student, or

(b) three years for a graduate student.

COMMENTS

1. The definition of authorized University or College would be permissible, although *recognized* would be a better word than *authorized*. But this definition makes paragraphs (a) and (b) of the next definition unnecessary.

2. The whole phrase *after enrollment etc..... as an Attorney* is unnecessary. In Britain, Canada and other Commonwealth countries, the spelling is *enrolment* rather than the American *enrollment*.

3. The *shall be* should be *is*.

4. Although the prefix *non-* is frequently used to express negation, I prefer to say *who is not*; sometimes the *non-* has a slightly different shade

of meaning. Thus, a *non-performance* could mean no performance, or a poor one.

RETURN NO. 10.

1. Subject to section 2, all Students at Law shall follow **1** a four year term of study.

2. A Student at Law shall follow **2** a three year term of study if **3**

(a) previous **4** to his entry as a Student, he has taken a Degree of Bachelor of Arts at a legally authorized University or College or

(b) previous to his application for admission as an Attorney, he has taken a Degree of Bachelor of Laws at a legally authorized University or College in Great Britain, Ireland, the United States, Canada or a British Colony.

COMMENTS

The foregoing and remaining returns in this chapter are second efforts. After reviewing students' returns on the exercises done before Christmas, they are required to do them over again. The second drafts come closer to what I want.

1. Again, this and **2** state compulsion rather than fact.

3. An *if* clause could be used, but I prefer to use an adjectival clause defining the student, since that is what we are doing.

4. *Prior to* or *before* might be better than *previous*.

RETURN NO. 11.

1. Subject to section 2, the term of study for a student-at-law is four years.

2. The term of study is three years for a student-at-law if

(a) prior to his enrollment as a student-at-law, he has taken a Bachelor or Arts Degree at an approved university or college, or

(b) prior to his application for admission as an Attorney, he has taken a Bachelor of Laws Degree at an approved university or college in Great Britain, Ireland, the United States, Canada or a British colony.

COMMENTS

This draft, so far, comes closest to what I was seeking. It adopts one of the forms suggested at the beginning of this chapter. The term is stated as a fact, instead of an obligation; *prior to* is used instead of *previous*. But I would substitute *who has taken (received?)* for *if he has taken.*

RETURN NO. 12.

2. The term of study for a student at law shall be

(a) three years for a student who, prior to being entered as a student at law, has taken the degree of Bachelor of Arts from a lawfully authorized college or university,

(b) three years for a student who, at any time prior to his application for admission as an attorney, has taken a degree of Bachelor of Laws from any lawfully authorized college or university, and

(c) four years for all other students.

COMMENTS

This also is in one of the forms suggested at the beginning, except that I would say in the opening words *is* or *is as follows*:

There is a question whether the four-year rule should come first or last. If last, then it is easy to say *for all other students*. But if the facts were (which we do not know) that most students went for four years, and only the rare ones for three years, it might be desirable to state it first. In that case the sentence could be re-cast to say, in effect, that the term of study is four years, except that it is three years for the two classes of graduates described.

STUDENTS' RETURNS

PART II

Very few students correctly analysed sections 4 and 5 of the original. It is, as indicated, confusing because the first half of section 4 and section 5 are addressed to the Barristers' Society, but in between is a proviso addressed to the students.

The only sense I could make of these provisions was that a student should not be refused admission by reason only that he did the prohibited things *with the consent of* his Barrister, but if he did any of them *without* such consent the Barristers' Society then had a *discretion* to refuse.

RETURN NO. 1.

(2) Every student at law who, during the term of his study and without the knowledge or the consent of the Barrister with whom he may have been studying at that time

(a) receives a salary, or

(b) practices or tries causes in any Court or engages in any other business or employment

may be refused admission as an Attorney.

COMMENTS

This draft does not deal with the case where the student has the consent of his Barrister. It is questionable whether both knowledge and consent need be mentioned. If there is consent there is knowledge; if there is knowledge there will be either consent or dissent. Is not consent enough?

RETURN NO. 2.

(2) The Barristers' Society shall not refuse to admit a Student-at-Law as an Attorney by reason only that he has, during the term of his study with a Barrister

(a) engaged in any business or employment,

(b) received any salary or remuneration, or

(c) practised or tried a cause in a court,

unless he has done so without the knowledge and consent of that Barrister.

COMMENTS

This form is the reverse of the previous one. The first example gave discretion to refuse, but this one prohibits refusal.

We had many discussions on inferences. Many students felt that only one situation needed to be dealt with - either with consent or without consent - and the opposite would follow by inference. One must be careful with *unless* clauses. It is generally true that if a condition is satisfied then the rule is reversed. Thus, if the law provides that no one shall operate a motor vehicle on a highway unless he has a licence, it follows by inference that he may do so if he has a licence.

Here, if the student does not have consent, the opposite is that the Barristers' Society shall refuse. But we do not want the opposite. If there is no consent, the Society has a discretion to refuse but need not do so. Therefore, both situations must be provided for.

Instead of saying *he has* ..... *engaged* it would be smoother to say simply *he engaged.*

RETURN NO. 3.

3. No student-at-law shall, during his term of articles of clerkship, engage in any business or employment, receive any salary or

remuneration or practice or try causes in any court without the knowledge or consent of the Barrister with whom he is articled at the time.

COMMENTS

In this draft there is only the prohibition against the student, with no penalty or indication of the consequences. The directions to the Barristers' Society are missing.

RETURN NO. 4.

3. No Student at Law shall be refused admission as an Attorney by reason of any of the following:

(a) his receiving any salary or remuneration

(b) his practising or trying causes in a Court

(c) his engaging in any other business or employment

unless done during his term of study, without the knowledge or consent of the Barrister with whom he is studying.

COMMENTS

This draft omits the discretion to refuse. If the condition is satisfied, the Society must refuse. There is also an ellipsis - *unless done*. Unless what is done? It would be better to say *unless he did so*. However, the whole sentence could be improved by saying *by reason only that he received*, omitting the *unless done* and changing the *without* to *with*.

RETURN NO. 5.

3. A student at law shall not be refused admission as an attorney on the ground only that, during his term of study, he

(a) received salary or remuneration,

(b) practised law or tried causes in a court, or

(c) engaged in business or employment,

if he did so with the consent of the Barrister to whom he is assigned.

COMMENTS

This draft does not deal with the case where there was no consent. In this draft there is *with consent* rather than *without consent* as in the previous draft. The *if he did so* could then be omitted.

RETURN NO. 6.

4. (1) A student is not to be refused admission as an Attorney for the reason that, during his period of training, he

(a) received a salary or other remuneration;

(b) practised law or tried causes in a court; or

(c) engaged in gainful business or employment.

(2) Notwithstanding subsection (1) a student who, without the consent of the Barrister to whom he is assigned,

(a) receives a salary or other remuneration;

(b) practises law or tries causes in a court; or

(c) engages in gainful business or occupation,

may be refused admission as an Attorney.

COMMENTS

It would perhaps be better to say *shall not be refused* rather than *is not to be refused*. The apparent contradiction in the two provisions is overcome by *Notwithstanding subsection (1)*, but that leads to repetition. It would be smoother to add *with the consent, etc.* at the end of (1), and then simply continue with *but he may be refused if he did so without such consent*.

RETURN NO. 7.

2. (1) A student at law shall not be refused admission as an Attorney by the Barristers' Society if during the period of his study he

(a) received any salary or remuneration, or

(b) practices or tried any causes in any court or

(c) engaged in any other business or employment and

did so with the knowledge or consent of the Barrister with whom he was studying at the time.

(2) The Barristers' Society may refuse to admit as an attorney a student at law who

(a) received any salary or remuneration

(b) practices or tried any causes in any court, or

(c) engaged in any other business or employment

without the knowledge or consent of the Barrister with whom he was studying at the time.

COMMENTS

Here again there is much repetition, but the two concepts of with consent and without consent are there. The *and* at the end of (c) and the *did so* at the conclusion of (1) could be dropped, and the subsection could continue with *but he may be refused, etc*, as in the previous draft.

In paragraph (b) in both subsections (1) and (2) the *practices* should be *practised.*

However, an essential ingredient is missing. A student who is disqualified for some other reason (e.g. citizenship) could argue that if he comes within the description in the section he cannot be refused. The words *by reason only* or some equivalent expression must be included.

RETURN NO. 8.

2. A student at law shall not be refused admission as an Attorney by the Barristers' Society if during the period of his study he

(a) received any salary or remuneration,

(b) practices or tried any cause in any court, or

(c) engaged in any other business or employment,

with the knowledge and consent of the Barrister with whom he was studying at the time, but he may be refused admission if he did so without such knowledge and consent.

COMMENTS

This is the second effort by the same student who did No. 7. It is much improved, but the *by reason only* is still missing and *practices* in (b) should be *practised.*

RETURN NO. 9.

2. No student shall be refused admission for having received any salary or remuneration, practised or tried any causes in any court or engaged in any other business or employment, if he did so with the knowledge and consent of the Barrister with whom he may be studying at the time.

COMMENTS

The *by reason only* is missing, as is the discretion where there was no consent. I prefer *with whom he was studying* to *may be studying.* Also, the *if he did so* could be deleted.

This draft could be completed by continuing with *but he may be refused if he did so, etc.*

RETURN NO. 10.

3. Any student at Law who

(a) engages in any other business or employment;

(b) receives any salary or remuneration; or

(c) practices or tries causes in any Court;

during the term of his study and without the consent of the Barrister with whom he is studying, may be refused admission as an Attorney.

COMMENTS

This draft omits the situation where there was consent. The *and* after paragraph (c) is a slight grammataical error, for it joins a clause to a phrase. The present tense in the paragraphs should be changed to the simple past.

There is, so far as I have observed, no agreement among draftsmen whether these paragraphs should end with commas or semi-colons. My own view is that if the paragraphs constitute a tabulation, there should be semi-colons; but if a sentence is indented so as to facilitate reading, then commas are better. But experience has shown that such a "rule" is too complicated for printers, and they prefer a rigid rule, whether it correctly fits or not. Practices vary in different jurisdictions.

RETURN NO. 11.

3. No Student at Law shall be refused admission as an Attorney for having, during the period of his study,

(1) received any salary or remuneration,

(2) practised or tried causes in any Court, or

(3) engaged in any other business or employment

unless he did so without the knowledge or consent of the Barrister under whom he was studying at the time, in which case the Student at Law may be refused admission as an Attorney.

COMMENTS

The incorrect implication for *with consent* is avoided by adding *in which case*; but it would be better if the word *with* were substituted for *unless he did so without*, and then continue with *but he may be refused if he did so without, etc*; then we have a rule with a qualification.

The *by reason only* is missing.

RETURN NO. 12.

4. (1) A student who during his term

(a) received a salary or remuneration,

(b) practised or tried cases in a court, or

(c) engaged in a business or employment other than that of the barrister under whom he was studying at the time

may be admitted as an attorney.

(2) A student who during his term

(a) receives a salary or remuneration,

(b) practices or tries cases in a court, or

(c) is engaged in a business or employment other than that of the barrister under whom he is studying at the time

without the knowledge and consent of that barrister may be refused admission as an attorney.

COMMENTS

The first subsection would make a student eligible for admission if he does any of the things described; that is far from saying that he shall not be refused if he does so with consent.

The second subsection is a contradiction of the first, for the case there described falls within the case described in subsection 4(1).

There are some minor inconsistencies. In subsection 4(1) there is the past tense, but in the parallel provisions in subsection 4(2) the present tense is used. The indefinite article before *salary, court* and *business* could be deleted.

RETURN NO. 13.

(3) If a Law Student

(a) receives a remuneration, or

(b) practises in a Court, or

(c) engages in employment other than that of a Law Student

during the term of his study

(d) with the knowledge or consent of the Barrister with whom he is studying at the time, he shall not be refused, or

(e) without the knowledge or consent of the Barrister with whom he is studying at the time, he may be refused

for his actions under paragraph (a), (b) or (c) admission as an Attorney.

COMMENTS

This is the kind of paragraphing I do not like to see. First of all, there is so much of it that readability is made more difficult rather than easier. Secondly, only rarely and when absolutely necessary would I go out to the margin after an (a), (b) and (c), and then back in again with a (d) and (e). The fact-situation is set out as a condition rather than as a description of the person. There is also considerable repetition, directly and by cross-reference. What I would prefer to see is something along the lines of the next example, a second effort.

RETURN NO. 14.

2. A student-at-law shall not be refused admission as an Attorney by reason only that he

(a) received any salary or remuneration,

(b) tried a cause in a court, or

(c) engaged in any business or employment

during his term of study with the consent of the barrister with whom he was studying at the time, but if he did so without the consent of the barrister, he may be refused admission as an Attorney.

COMMENTS

This shorter provision expresses all the ideas. It might, however, be an improvement to say at the end - *but he may be refused if he did so without such consent.*

STUDENTS' RETURNS

PART III

The remaining two provisions are relatively minor. Section 6, as indicated at the beginning of this chapter, was interpreted by students in different ways. Some read it as a total fee not exceeding five dollars for the two admissions, and some as a maximum of five dollars for each admission. The original section was poorly written. The words *in the whole* suggest the one interpretation, but the words *either on* suggest the other. We can only guess at what the original author had in mind, but my suspicion is that a maximum of five dollars for each admission was

intended, since the two admissions are separated by at least three years, and there seems to be no reason why they should be lumped together.

One error commonly made was to authorize a fee. This section does not authorize the imposition of a fee; we must assume that this authority exists elsewhere. The purpose of this section is to impose a limit.

The problem in section 7 is the word *in*. The formula I usually used was to say *after the expiration of one year from etc.* If we say *in one year* that could mean any year or only the first; if we say, as some did, *one year after*, that could be construed as meaning exactly one year, and not one year plus even one day.

General Comments

In re-writing this exercise, I would adopt one of the "term" provisions suggested at the beginning of this chapter. The proviso in section 4 I would write as a separate section, and would include it even though there is no specific penalty, on the assumption that in the event of violation the Barrister could at once terminate the articles of clerkship. The first part of section 4 and section 5 I would set up as a dichotomy in one section. And, of course, the ambiguities in sections 6 and 7 would be removed. My instructions to the students were that if they saw, or thought they saw, an ambiguity they should resolve it one way or another as they saw fit, for we cannot find out now what the original author tried to say.

There is the question whether the four-year rule should come first or last. Assuming that most students would have been the four-year students, the Act so revised would read as follows:

1. This Act may be cited as the Admission of Attorneys Act.

2. In this Act "recognized university" means a university or college recognized by the Barristers' Society for the purposes of this Act.

3. (1) Subject to subsection (2), the term of study for a student-at-law is four years.

(2) The term of study is three years for a student-at-law

(a) who before his admission as a student-at-law received the degree of Bachelor of Arts from a recognized university, or

(b) who before his application for admission as an attorney received the degree of Bachelor of Laws from a recognized university.

4. (1) No student-at-law shall, without the consent of the Barrister under whom he is studying, during the term of his study engage in any business or employment other than for the Barrister, receive any salary or remuneration from any other person or practice or try causes in any court.

(2) A student-at-law may be refused admission as an attorney for doing any of the things mentioned in subsection (1) without the consent of the Barrister under whom he is studying, but he shall not be refused admission by reason only that he did so with such consent.

5. The fee that the Barristers' Society may require either for admission as a student-at-law or for admission as an attorney shall not exceed five dollars.

6. An attorney is eligible to be called to the Bar after the expiration of one year from his admission as an attorney, upon compliance with the rules and regulations of the Barristers' Society relating to the admission of attorneys to the Bar.

EXERCISES

Set out below and in subsequent chapters are further students' returns, but without comments. Readers are invited to make their own comments.

EXERCISE NO. 1

ADMISSION OF ATTORNEYS

1. This Act may be cited as the Qualification of Attorneys Act.

2. In this Act

"student-at-law" means a person who has been enrolled in the Barristers' Society as a student-at-law.

3. A student-at-law who at the time of his enrolment holds

(a) the degree of bachelor of arts from a university or college recognised by the Barristers' Society, or

(b) the degree of bachelor of laws from

(i) Trinity College, Dublin, Ireland

(ii) Harvard University, Boston, Massachusetts, or

(iii) any other university or college in Great Britain, Ireland, the United States of America, a British Colony or Canada, that has been recognised by the Barristers' Society

shall study under the supervision of a barrister for not less than three years before he may apply to the Barristers' Society for enrolment as an attorney.

4. A student-at-law who at the time of his enrolment does not hold a degree specified in section 3, shall study under the supervision of a barrister for not less than four years before he may apply to the Barristers' Society for enrolment as an attorney.

5. A student-at-law may be refused enrolment as an attorney, if during the term of his study under a barrister, and without the knowledge and consent of that barrister,

(a) he receives any salary or remuneration from a person other than the barrister,

(b) he practises or tries causes in a capacity other than as a student of the barrister,

(c) he engages in a business other than that of the barrister, or

(d) he is employed by any person other than as a student-at-law.

6. A fee not exceeding five dollars shall be payable to the Barristers' Society by the student-at-law

(a) on his enrolment as a student of law, and

(b) on his enrolment as an attorney

7. An attorney may be enrolled as a barrister if

(a) he has been enrolled as an attorney for at least one year, and

(b) he has otherwise complied with the rules of the Barristers' Society relating to the enrolment of attorneys as barristers.

EXERCISE NO. 2

1. In this Act

"admission" means admission as an Attorney;

"graduate" means

(I) a registered Student at Law who has the Degree of Bachelor of Arts from a legally authorized University or College;

(II) a registered Student at Law who has the Degree of Bachelor of Laws from,

(a) Trinity College, Dublin,

(b) Harvard University in the State of Massechusets or any other lawfully authorized College or University in,

(c) Great Britain or Ireland,

(d) The United States,

(e) Canada, or

(f) a British colony

"student" means a Student at Law serving articles in the Chambers of a Barrister.

2. Every student shall before his admission complete a prescribed course of study of four years' duration except that in respect of a graduate, the course of study shall be three years.

3. (1) No Student shall

(a) engage in any other business or employment.

(b) receive any salary or remuneration from any person, or

(c) practise or try causes in any Court

unless such student obtains the consent of the Barrister under whom he is studying or to whom he is assigned.

(2) Where a student obtained the consent of the Barrister referred to in subsection (1) of this section, the Barristers' Society shall not refuse his admission for

(a) engaging in any other business or employment,

(b) receiving any salary or remuneration, or

(c) practising or trying causes in any Court.

(3) Where a student neglects, refuses or fails to comply with the provisions of subsection (1) of this Section, the Barristers' Society may refuse his admission.

4. Every student shall either on his admission as a Student or an Attorney pay to the Barristers' Society a fee of five dollars.

5. The Barristers' Society may call and admit to the Bar any Attorney who has practised for one year since admission as an Attorney and has conformed in all other respects to the rules and regulations thereof.

EXERCISE NO. 3

1. This Act may be cited as the Admission of Attorneys Act.

2. In this Act

"Law Student" means a person undergoing a course of study under a Barrister-at-law leading to his admission as an attorney.

"Gainful employment" means any trade, business, profession or employment from which a person gains a salary, fee or other remuneration.

"Recognised University or College" means any institution so recognised by the Barristers' Society.

3. Subject to section 4 every Law Student is required to undergo a four year term of study.

4. The term of study for a person who prior to his admission as a Law Student has obtained

(a) a Bachelor of Arts degree from any recognised university or college, or

(b) a Bachelor of Laws degree from any recognised university or college in the United Kingdom, Ireland, United States of America, British Colony or the British Commonwealth, or Canada

is three years.

5. A Law Student may be refused admission as an attorney if he engages in any gainful employment without prior knowledge or consent of the barrister to whom he is articled.

6. One year after admission as an attorney a person may be admitted as a barrister if he has satisfied all necessary requirements of the Barristers' Society.

7. The Barristers' Society may require a person who is to be admitted as a Law Student or as an Attorney to pay a fee not exceeding five dollars.

EXERCISE NO. 4

1. In this Act

"Attorney" means a person who successfully completes his programme as a student at law.

"institution" means a university, a college or a school.

"rules and regulations" means rules and regulations made by the Barristers' Society.

"Student at Law" means any person admitted to study law under sections 3 and 5 of this Act.

2. Except as otherwise provided under this Act the term of study for the Student at Law Programme shall be four years.

3. There shall be two types of admission to the Programme, namely, graduate and non-graduate students.

4. Any graduate who holds

(a) a Bachelor of Arts degree from any recognized institution; or

(b) a Bachelor of Laws degree from

(i) Trinity College, Dublin, or

(ii) Harvard University in the State of Massachusetts, or

(iii) any recognized institution in Great Britain or Ireland, the United States, Canada or any British Colony

shall be admitted to study for a term lasting three years.

5. Any non-graduate student admitted to the Programme shall be required to study for a term lasting four years.

6. (1) No student shall be refused admission as an Attorney by reason only that during the course of his Programme

(a) he received a salary or remuneration; or

(b) he practices or tried causes in any court; or

(c) he engaged in any other business or employment.

(2) Any student who intends to do all or any of the acts referred to in subsection (1) of this section shall obtain the consent of the Barrister with whom he is studying at the time.

(3) Notwithstanding the provisions in subsection (1) of this section any student who fails to comply with subsection (2) of this section may be refused admission as an Attorney.

7. (1) The Barristers' Society shall charge fees for admitting any person as Student at Law or as Attorney.

(2) Any fee charged in respect of the admission of any person as Student at Law or as Attorney shall not exceed $5.00.

8. Any Attorney may be called to the Bar and admitted as a Barrister within one year of his admission as Attorney if he satisfies the rules and regulations relating to the Admission of Attorneys.

CHAPTER NOTES V

1. Comp. Leg. ch. VII.
2. Comp. Leg. 28-31.
3. Comp. Leg. 8, 9.