Legislative Drafting

Basic Principles

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- Legal drafting in general and legislative drafting in particular is an art and can be attained, like other arts, after practicing it with clear understanding the principles of legal drafting and the language that the drafter uses to convey the idea through the legal document.
- It enables lawyers to equip themselves with the skills and arts to use language and writing skills effectively.
- Laws should be simple, easy to understand and facilitate their compliance.
- A common man is always reminded that ignorance of the law is no excuse.
- But what is being done to create awareness of the law is a point that needs serious consideration.

Basic Principles

- However, most the legislative produce is technical and beyond normal populace.
- This results in non-compliance, confusion, friction, and litigation.
- In most cases, law making is carried out by politicians and civil servants often with no legal training or expertise in this process.
- legislation- a law that deliberately in a set of form by an authority which the courts have accepted as competent to exercise that function- Prof Dias
- Legislation is that source of law which consists in the declaration of legal rules by the competent authority/ the will of the legislature. Salmond
- Legislation if the formulation of rules for the future through legislative process. WilliamC. Burton

Indicators of good drafting

- Clarity
- Coherence
- Consistency
- Efficiency (provides maximum benefit at least necessary cost)
- Effective (enforceable or readily complied with)
- Political, social and economic objectives achieved

Effective Legislation

Effective legislation is legislation that:

- Achieves its legislative mandate
- Operates with the requisite accountability and control mechanisms in place
- Operates with the appropriate level of due process
- Is enforceable and enforced
- Operates with the right level of expertise (e.g., Laws on Radiation Protection are enforced by experts in radiation issues)

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Effective Legislation

- **The goal of the drafters are:**
  - To create legislation that gives legal effect to government policy
  - To communicate the law clearly and effectively.
  - The drafter must initially focus on all elements of a proposed legislative scheme.
- The drafting task also needs to consider legal principles of statutory interpretation, historical style, consistency of law

Making the Law more Readable

- **The use of plain language:**
  - Words- a drafter should prefer words that are ordinary and familiar. Use technical words only when it is necessary (precision, familiar to the public audience)
  - Sentence length- shorter sentences are preferred. (paragraphing)
  - Sentence structure-structure that assist the reader to understand the elements of legal statement.
  - Organization- provisions need to grouped together in a meaningful manner.
  - Indicators- assist the reader to in moving through the legislation(heading, table of content, cross reference, marginal notes, corrigenda)
  - Document design: determine readability. use of fonts, space