



There are 50 lawyers in the Parliamentary Counsel Office, all of them barristers or solicitors and all of them civil servants. Geoffrey Bowman describes their role

FEES, FINES & FORFEITURES

About 15 years ago I drafted the poll tax legislation. I later heard of a case where somebody received a poll tax bill for a 14 year old dog that had been dead for a month. When challenged a puzzled council official said that the dog was not liable to the tax anyway because it was not yet eighteen. Incidents like that make my job seem really worthwhile.

Bills

Ministers decide policy on the advice of administrative civil servants. If legislation is needed the department's lawyers draw up written instructions for our Office, and a drafting team is assigned to the Bill by the First Parliamentary Counsel (the head of the Office). Each team (of two or three Counsel) will usually be working on several Bills at the same time.

It might take an hour or two to draft a small Bill. A big one might take several months involving considerable correspondence, many meetings and several succeeding versions of the Bill. When a Bill is ready it is introduced into Parliament. We liaise with officials of both Houses on procedural matters as a Bill passes through Parliament. We also draft any amendments the government wants to make.

Drafting – initial stages

The process of drafting is at the centre of our job. The drafter's first task is to master the subject and find out what the client wants. This can be very time consuming, because the subject may be difficult or the policy may not be settled or the person instructing may not express himself or herself clearly.

Then the drafter has to subject the ideas to a rigorous intellectual analysis. It is no good enacting

something that will not stand up. If the ideas collapse under the analysis the client will be asked to think again. Eventually something emerges that does stand up, or occasionally the client concludes that the project should be abandoned.

There is a story about an African country which proposed to change from driving on the left to driving on the right. The trouble was that the change was to be brought in "gradually". That concept would have benefited from some initial analysis.

On a more homely level there is the leaflet contained in a box of plants delivered to a purchaser: "If this leaflet is not in this box then rest assured it will follow in one of your other boxes. To begin growing your plants we have added below some initial care instructions..."

Expressing the policy

Often the most difficult part of the drafting process consists of finding out what the client wants and analysing the ideas. Once this is achieved, finding the words to express the policy can be relatively easy. Contrary to popular belief, it is not the actual writing that takes up most of the time. Even so, I do not want to play down the process of finding the words. It can be very difficult to produce a sentence that is clear and unambiguous. For instance, it is said that a provision of an American statute reads (or read): "No-one shall carry any dangerous weapon upon the public highway except for the purpose of killing a noxious animal or a policeman in the execution of his duty."

That shows how difficult it can be to express even simple concepts unambiguously. An additional problem for the legislative drafter is that the concepts he or she is dealing with are often inherently complex – and you cannot express complex ideas in simple language.

Another big problem is that the drafter is usually short of time. It would be a great mistake to think that the drafting process is a leisurely one where the drafter has the

Geoffrey Bowman:
creative clarity



opportunity to weigh every word and polish every phrase. There is normally a deadline dictated by the government's legislative programme. And instructions tend to arrive late or incomplete – perhaps because the decision to legislate came late or because unexpected problems have arisen.

As for the words the drafter uses, there are no particular rules. The drafter has all the English language at his or her disposal, and will use it in the way best suited to get across what has to be communicated. Legislative language has tended to become simpler in recent years. Colloquial rather than technical or old-fashioned language is used where possible. We avoid words like “aforementioned” and “hereinafter”, and we require people to “provide” information rather than “furnish” it.

Again, sentences tend to be short. If “Jesus wept” is the shortest sentence in the Bible, I think the short-

est sentence on the statute book is “Detinue is abolished”. It is one of my favourite provisions, and I only wish I had been responsible for it. Incidentally, I once gave this example in a talk and somebody asked, “What is detinue?” The answer is, “You don't need to know – it's been abolished.”

Each drafter has his or her own style, and this leaves room for some mild self-indulgence. When I was reading the fourteenth century poem “Piers Plowman” some years ago I failed to get into a Bill anything about a “fair field full of folk”, but I did get in something about “fees, fines and forfeitures”.

Rewards

One of the satisfying aspects of this job is that you are creating something. It may not be everybody's idea of a good read. But you are creating an ordered structure, often out of a fairly chaotic bunch of ideas. You are also pretty near the

centre of things, and there is a certain satisfaction in seeing policy being made. Then there is the variety. There can be few legal jobs that give the opportunity to range over so many areas of the law.

You also tend to notice ideas that are oddly or inadequately phrased, and this can give rise to some quiet amusement. If a supermarket car-parking space is reserved for “parents with children” am I allowed to use it provided I take my 30 year old son with me? If a door in the Houses of Parliament bears the word “press”, is the word a collective noun or an imperative verb? If a sign in New York says “fine for parking”, is this an invitation or a warning? If a sign in a railway carriage says “pull lever to alert driver” is “alert” a verb or an adjective, and what happens if he is not in fact alert? ❖

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