

CHAPTER VI

DEFINITIONS

The principal function of a definition section is to clarify the statute by assigning statutory meanings to words and expressions found therein. Another important function is to shorten and simplify the statute and its provisions. The following examples illustrate the various uses of definition provisions.

TO DELIMIT

Many definitions are intended to set the limits of meaning, without altering the normal meaning.

"subsidiary coin" means a coin other than a gold coin.

"property" means real or personal property.

"aircraft" means any machine used or designated for navigation of the air.

"invention" means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

"disabled" means incapable of pursuing regularly any substantially gainful occupation.

"salary" means the compensation received for the performance of the regular duties of a position or office.

"Canadian citizen" means a person who is a Canadian citizen within the meaning of the *Canadian Citizenship Act*.

"advertise" means to make known by the publication or distribution of any advertisement, circular or other notice.

"highway" means any public road, street, lane or other public way or communication.

TO NARROW

A definition may narrow the ordinary meaning of a word. Things ordinarily included are excluded, either by setting limits or by expressly excluding.

"dividend" does not include a stock dividend.

"rank" means substantive rank or appointment, but does not include acting rank.

"grain" means wheat, oats, barley and rye.

"oil" means any liquid hydrocarbon.

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TO PARTICULARIZE GENERAL DESCRIPTIONS

A definition may restrict a word to a particular thing without changing its ordinary meaning.

"contract" means a contract made before the 1st day of January, 1955.

"notes" means notes of the Bank of Canada payable to bearer on demand and intended for circulation.

"agreement" means an agreement made under section 3.

"widow" means a widow of a veteran.

TO ENLARGE

A definition may retain the ordinary meaning of a word and add a meaning it does not normally have.

"lease" includes an agreement for a lease.

"servant" includes agent.

"money" includes negotiable instrument.

"fish" includes shell fish, crustaceans and marine animals.

Occasionally the *included* meaning is virtually exhaustive.

"intoxicant" includes alcohol, alcoholic, spirituous, vinous, fermented malt or other intoxicating liquor or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise intoxicating and all drinks, drinkable liquids, preparations or mixtures capable of human consumption that are intoxicating.

The above definition seems to include everything that is included in the normal meaning. *Includes* rather than *means* is used to catch anything that didn't happen to come to the draftsman's mind; he has therefore protected himself against oversight. Similarly, in the following examples:

"rodent" includes all members of the order Rodentia.

"mark" includes mark, sign, device, imprint, stamp, brand, label, ticket, letter, word or figure.

TO SETTLE DOUBTS

There are cases where there may be doubt whether a word means a particular thing. *Includes* is used, but rather than add a meaning it serves to settle the doubt. For example —

"securities" includes bonds, debentures and obligations, secured or unsecured, whether issued within or outside Canada, and rights in respect of such bonds, debentures and obligations, but does not include shares of capital stock of corporations or rights in respect of such shares.

"highway" includes any public road, street, lane or other public way or communication.

"unmarried person" includes a widow, a widower and a divorced person.

"child" includes a natural child, stepchild or adopted child.

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"wares" includes printed publications.

"land" includes mines, minerals, easements, servitudes and all other interests in real property.

TO ABBREVIATE OR TO SHORTEN AND SIMPLIFY COMPOSITION

Definitions are commonly used to abbreviate, particularly names of corporations, officials, bodies, etc. Thus, *Commission* may be defined to mean *Unemployment Insurance Commission*; *Corporation* to mean the *Canadian Overseas Telecommunication Corporation*; *Minister* to mean the *Minister of Public Works*; *Board* to mean the *Board of Directors*. Definitions are also used to define verbs, things and expressions for the purpose of simplifying construction.

"Convention" means the International Convention for the Northwest Atlantic Fisheries set out in the Schedule.

"trafficking" means the importation, exportation, manufacture, sale, giving, administering, transportation, delivery or distribution by any person of a drug or any substance represented or held out by such person to be a drug, or the making of any offer in respect thereof, but does not include

- (i) the importation or exportation of any drug by or on behalf of any person who has a licence therefor under section 3, or
- (ii) the manufacture, sale, giving, administering, transportation, delivery or distribution of a drug, or the making of any offer in respect thereof, by or on behalf of any person who has a licence therefor under section 3, or by or on behalf of a physician, dentist, veterinary surgeon or retail druggist for a medicinal purpose.

"law of the province" means a law of a province or municipality not repugnant to or inconsistent with this Act.

"unsanitary conditions" means such conditions or circumstances as might contaminate a food, drug or cosmetic with dirt or filth or render the same injurious to health.

"apply" includes to apply or attach to, or to use on, in connection with, or in relation to, an article by any method or means, whether to, on, by, in, or with

- (i) the article itself,
- (ii) anything attached to the article,
- (iii) anything to which the article is attached,
- (iv) anything in or on which the article is, or
- (v) anything so used or placed as to lead to a reasonable belief that the mark on that thing is meant to be taken as a mark on the article itself.

"sell" includes to dispose of for valuable consideration, to offer to sell, to distribute or offer as premiums or prizes, to offer to dispose of for valuable consideration, to have in possession with intent to sell or intent to dispose of for valuable consideration and to display in such manner as to lead to a reasonable belief that the article is intended for sale.

"Member" means a member of the House of Commons.

"officer" means a commissioned officer.

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"recipient" means a person to whom payment of an allowance has been authorized under this Act.

"deal in" includes produce, import, export, possess, buy, sell, lease, hire, exchange, acquire, store, supply, operate, ship, manufacture, consume and use.

"sell" means sell, offer for sale, expose for sale, advertise for sale, manufacture for sale or have in possession for sale.

SUBSTANTIVE PROVISIONS

As a general rule it is best to avoid incorporating substantive provisions in definitions. For example—

"post letter" means any letter transmitted by the post or delivered through the post, or deposited in any post office, or in any letter box put up anywhere under the authority of the Postmaster General, whether such letter is addressed to a real or a fictitious person or not, and whether it is intended for transmission by the post or delivery through the post or not; and a letter shall be deemed a post letter from the time of its being so deposited to the time of its being delivered to the person to whom it is addressed, or so long as it remains in the post office or in any such letter box or is being carried through the post; and a delivery to any person authorized by the Postmaster General to receive letters for the post shall be deemed a delivery at the post office, and a delivery of any letter or other mailable matter at the house or office of the person to whom the letter is addressed, or to him, or to his servant or agent, or other person considered to be authorized to receive the letter or other mailable matter, according to the usual manner of delivering that person's letters, shall be a delivery to the person addressed;

Everything after the first semicolon should be taken out of the definition and placed elsewhere, preferably as three or four separate sections.

In the following examples the definitions could, perhaps, be construed to confer the necessary authority, but it would be better, in addition, to add a section expressly conferring power to approve, define or designate.

"approved lender" means a lender approved by the Minister for the purpose of making loans under this Act.

"cargo" means any goods, securities, currency, articles or things defined as cargo by the Minister.

"fisheries product" means any natural product of the commercial fisheries of Canada designated by the Minister and includes any product derived therefrom, if so designated.

"agricultural product" means any natural product of agriculture designated by the Minister.

USE OF WORD DEFINED

Normally a definition should not use the word defined. But use of the defined word in the definition causes no difficulty where the definition merely particularizes a general description as in "*contract*" means a contract

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made under this Act or in some including definitions, as in "*child*" includes *adopted child*, where the purpose is to settle doubts.

POSITION OF DEFINITION SECTION

In Canadian statutes the definition section is usually placed at the beginning, immediately after the short title; in some jurisdictions it is found at the end. Where a statute is divided into Parts, each Part may have a definition section, and there may also be a definition section at the beginning applicable to all Parts.

SPECIAL DEFINITIONS FOR SECTIONS

Sometimes a definition is required for one section alone and it may be more convenient to put the definition into that section rather than the general definition section. Its best position is a matter of judgment.

INCORPORATING A DEFINITION IN A SECTION

Sometimes a long description must be used two or more times in one section, and it may be convenient to insert a definition immediately after the description (hereinafter called A). This device should not normally be used if the definition is to apply to other sections as well.

CONJUNCTION

There is usually a choice between *and* and *or*. Thus, *A means B, C, and D* and *A means B, C, or D*. In the former instance, *A* is regarded as meaning all of the things mentioned, and in the latter *A* is regarded as meaning any of them. Either form may be used, but in some cases the disjunctive is clearer.

MEANS AND INCLUDES

A word should not be defined to *mean and include* something; *means* restricts and *includes* enlarges and the two words cannot be used in one breath.

"intoxicating liquor" *means and includes* all spirits, strong waters, spirituous liquors, wines, fermented or compounded liquors or intoxicating fluids.

"live stock" *means and includes* horses, mules, cattle, sheep, goats, swine, foxes, rabbits and poultry and such other animal or bird as the Minister may from time to time by regulation prescribe.

"package" *means and includes* sack, bag, barrel, bin or other container.

But it is in order in some cases to define a word as *meaning* one thing and *including* another.

"securities" *means* securities of Canada and *includes* bonds, notes, deposit certificates, non-interest bearing certificates, debentures, treasury bills, treasury notes and any other security representing part of the public debt of Canada.

This is in reality a double definition. First *securities* is particularized, and then doubts are removed.

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"agricultural equipment" *means* implements, apparatus, appliances and machinery, of any kind usually affixed to real or immovable property, for use on a farm, *but does not include* a farm electric system.

Here we have a restrictive definition followed by an exclusion.

"cattle" *means* neat cattle or an animal of the bovine species by whatever technical or familiar name it is known, and *includes* a horse, mule, ass, pig, sheep or goat.

This is again a double definition. There could be, for example, a definition of *animal* as meaning *cattle, horse, mule, etc.* followed by a definition of *cattle* to mean *neat cattle or an animal of the bovine species.*

"highway" *means* a road to which the public has the right of access, and *includes* bridges over which or tunnels through which a road passes.

Again, a double definition.

IN RELATION TO

Words in addition to *means* or *includes* may be used to introduce a definition. There are instances where a word is to have a special meaning in one case, and its ordinary meaning in other cases.

"title" in relation to a loan secured by a mortgage on a long-term lease means the entire interest of the lessee.

"distinctive" in relation to a trade mark means a trade mark that actually distinguishes the wares or services in association with which it is used by its owner from the wares or services of others or is adapted so to distinguish them.

Or a word may have two defined meanings for two situations.

"recorded address" means

- (i) in relation to a person as a shareholder, his last known post office address according to the share register of the bank, and
- (ii) in relation to a person in any other respect, his last known post office address according to the records of the branch concerned.

A common phrase for these situations is *in relation to*. Other expressions, like *in the case of*, are also used.

"resident of Canada" means, *in the case of* a natural person, a person who ordinarily resides in Canada and, *in the case of* a corporation, a corporation having its head office in Canada or operating a branch office in Canada.

Occasionally one finds *in its application to* or *when referring to*.

GENERAL

Definitions should be listed in strict alphabetical order.

In the final draft of a bill, the definitions should be carefully examined to see if any are unnecessary. Sometimes a definition is inserted for a section that is dropped in the drafting stages.

Where a definition is used only in another definition, an effort should be made to combine them into one.

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Definitions should not be inserted unless they are needed. Frequently a word or expression cannot be exactly defined and the presence of a definition may cause more difficulties in construction than its absence. In many cases the dictionary meaning is adequate and the exact interpretation of the word or expression can safely be left to the courts.

The definition technique can usefully be employed to make a sentence more comprehensible by removing lengthy descriptive material from the case so as to expose more prominently the main subject and predicate. In one section of the *Official Secrets Act*, for example, there are fifteen lines of type describing the information to which the section applies. A defined expression, such as "official secret", could be substituted for this descriptive material, thus cutting the length of the section in half, and making it more presentable. In situations such as this, where an expression is devised for a specific purpose, the expression chosen should be one that, apart from the definition, will convey to the reader the general idea of the definition. Generally speaking, it is better to write the sentence in complete form first, than to start with an artificial definition and build a sentence around it. The draftsman might then see that a better way to make the provision more presentable would be to re-cast its grammatical form, or divide it into two or more sections or subsections.

CHAPTER VII

PARAGRAPHING

A legislative sentence can often be improved by breaking it up into indented paragraphs or subparagraphs, appropriately labelled by letter or number. There are two types of this technique. One type is a pure tabulation, where a series of separate things are listed under words like *as follows*, *express* or *implied*. The other is an indentation of some of the lines of an ordinary sentence. Both types are here designated as paragraphing.

Paragraphing provides a visual aid to comprehension by breaking up solid blocks of type; it delivers the sentence in packages, so to speak, making it easier for the mind to grasp the whole. It does visually what the reader would do mentally without it.

Paragraphing can also avoid ambiguity by confining modifiers to only those parts of the sentence they are intended to modify; and it can be used to avoid unnecessary or tiresome repetition.

Like any other technique, however, paragraphing can be abused and misused. It can make a sentence choppy and stilted, and if it is carried to more than two subdivisions, or if it includes too much material, it may defeat its purpose by making it more difficult to comprehend the sentence, rather than less. There is the danger too that by using this technique the draftsman will be tempted to try to put everything he wants to say into one sentence when he ought to write several sentences. Putting too much material in one grammatical sentence makes it too involved and complicated, and by trying to put everything into one mould the draftsman may lose his freedom to convert and re-arrange his modifiers.

A number of examples, taken from statutes, are set out below to illustrate the many ways in which the device of paragraphing can clarify a complex sentence. At the same time a few comments will be offered here and there pertaining to matters dealt with in other Chapters. And the examples will serve to illustrate the various types of subject and predicate modifiers and the way they are combined to form the sentence.

SENTENCES

A sentence modifier can, without repetition, be made to apply to two or more sentences.

Notwithstanding anything in section 8.

- (a) no association has the power to make a loan upon the security of a mortgage on real property owned by the borrower,

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- (b) no association shall make a loan to or undertake any guarantee on behalf of any co-operative credit society unless the society holds a valid and subsisting certificate issued under section 19 or 80; and
- (c) no association shall make a loan to, or accept a deposit from, any natural person.

In the above example each paragraph is an independent sentence and could be so written. Each sentence, however, if written separately, would have to include the phrase *Notwithstanding anything in section 8*, but by combining the sentences the phrase needs to be written only once.

Except where otherwise provided by law,

- (a) the defendant in proceedings under this Part may appeal to the appeal court
 - (i) from a conviction or order made against him, or
 - (ii) against a sentence passed upon him; and
- (b) the informant or the Attorney General in proceedings under this Part may appeal to the appeal court
 - (i) from an order dismissing an information, or
 - (ii) against a sentence passed upon a defendant,

and the Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that government as the Attorney General of a province has under this section.

In the above example there are three sentences; the first two have in common the expression *except where otherwise provided by law*; the third sentence *and the Attorney General...etc.* could be a separate section, but the subject-matter is so closely connected with the previous sentences it readily lends itself to amalgamation. Paragraphs (a) and (b) are broken up again; in each sentence the predicate is modified, in the alternative, by two phrases.

The following provisions apply in respect of appeals, namely,

- (a) where an appeal is based on an objection to an information or any process, judgment shall not be given in favour of the appellant
 - (i) for any alleged defect therein in substance or in form, or
 - (ii) for any variance between the information or process and the evidence adduced at the trial,unless it is shown
 - (iii) that the objection was taken at the trial, and
 - (iv) that an adjournment of the trial was refused notwithstanding that the variance referred to in subparagraph (ii) had deceived or misled the appellant; and
- (b) where an appeal is based on a defect in a conviction or order, judgment shall not be given in favour of the appellant, but the court shall make an order curing the defect.

In the above example there are two sentences (paragraph (a) and paragraph (b)) both governed by the opening words. In paragraph (a) there are two

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subject modifiers, and these are set out in subparagraphs (i) and (ii); there are also two predicate modifiers, (iii) and (iv), governed by the words *unless it is shown*, which must go out to the left-hand margin even with paragraphs (a) and (b). If not taken out, *unless* would apply only to (ii), and if taken out to the outer left-hand margin, would relate to *apply* in the opening words.

SUBJECTS

Two or more subjects, whether alternative or cumulative, may be set out in paragraphs.

The following properties, namely,

- (a) lands acquired before or after the coming into force of this Act with territorial funds,
- (b) public lands, the administration of which has before or after the coming into force of this Act been transferred by the Governor in Council to the Territories, and
- (c) all roads, streets, lanes and trails on public lands,

are vested in Her Majesty in right of Canada.

There should always be general words ahead of the enumeration; in this case *the following properties, namely*. A modifier, applicable to all the subjects may also be included in the opening words as in the following example:

The following inventions, and all rights with respect thereto in Canada or elsewhere, are vested in Her Majesty in right of Canada, namely,

- (a) an invention made by a public servant
 - (i) while acting within the scope of his duties or employment, or
 - (ii) with facilities, equipment or financial aid provided by or on behalf of Her Majesty, and
- (b) an invention made by a public servant that resulted from or is connected with his duties or employment.

In the above example the first lettered paragraph is further divided. The words *an invention made by a public servant* are common to both paragraphs, but it would be improper to divide as follows:

an invention made by a public servant

- (a) while acting within the scope of his duties or employment,
- (b) with facilities, equipment, financial aid provided by or on behalf of Her Majesty, or
- (c) that resulted from or is connected with his duties or employment.

In the foregoing illustration paragraphs (a) and (b) are adverbial phrases modifying the verb *made*, but paragraph (c) is an adjectival clause modifying *invention*; the phrases and the clause should not be joined by the coordinating conjunction *or* or *and* because they are not of equal grammatical value.

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SUBJECT MODIFIERS

Subject modifiers may also be set out in lettered paragraphs.

An order shall not be made under this section in respect of

- (a) property to which an innocent purchaser for value has acquired lawful title,
- (b) a valuable security that has been paid or discharged in good faith by a person who was liable to pay or discharge it, or
- (c) a negotiable instrument that has, in good faith, been taken or received by transfer or delivery for valuable consideration by a person who had no notice and no reasonable cause to suspect that an offence had been committed.

In the foregoing example, each lettered paragraph describes the nature of the order that may be made. In each there is a phrase, but the noun in the phrase is modified by a clause.

In addition to evidence of the passing of the by-law, and of the publication thereof in the manner provided in this section, statements showing

- (a) the number of shares issued,
- (b) the number of shares held by each shareholder represented at the meeting at which the by-law passed,
- (c) the number of shareholders who voted for the by-law,
- (d) the assets and liabilities of the bank, and
- (e) the reason and causes why the reduction is sought,

shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law.

In the above example, the subject and predicate are *statements shall be laid* and the various phrases (governed by *showing*) descriptive of the statement are set out in lettered paragraphs. There are also two groups of predicate modifiers — one at the beginning and one at the end of the sentence.

In the following example there is a double enumeration.

Every person, except

- (a) a person who has a licence therefor under section 3,
- (b) a physician, dentist, veterinary surgeon or retail druggist who is in possession of any drug for a medicinal purpose,
- (c) a person who obtains the drug for a medicinal purpose from, or pursuant to a prescription of, a physician, dentist or veterinary surgeon,
- (d) a person authorized by the Minister or the regulations to be in possession of the drug, or
- (e) a person who is acting for any person mentioned in paragraph (a), (b), (c), or (d),

who has in his possession any drug is guilty of an offence and is liable

- (f) upon summary conviction to imprisonment for a term of not less than six months and not more than eighteen months, or

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- (g) upon conviction on indictment, to imprisonment for a term of not less than six months and not more than seven years,

and notwithstanding anything in the *Criminal Code* or in any other statute or law, the Court has no power to impose less than the minimum penalty prescribed in this section.

The first group of paragraphs contains clauses modifying the subject; the subject is universal — *every person* — but an area is withdrawn by the exceptions listed. The last two paragraphs contain predicate modifiers. The concluding words beginning *and notwithstanding* form a distinct sentence and could have been added by a separate section or subsection. The lettering is continued with (f) and (g) so that there will not be two paragraphs lettered (a) in the same section.

The affairs of the bank shall be audited by two auditors appointed in accordance with this section each of whom at the time of his appointment is an accountant who

- (a) is a member in good standing of an institute or association of accountants incorporated by or under the authority of the legislature of the Province of Quebec,
- (b) is ordinarily resident in Canada, and
- (c) has practised his profession in Canada continuously during the six consecutive years immediately preceding his appointment.

Here we have a passive verb *shall be audited* and a converted subject *auditors*, modified by the clause *each of whom ... is an accountant*; the word *accountant* is in turn subject to modification by three clauses. The subject of each clause is *who* and is outside the enumeration.

Every bank that fails

- (a) to make a return required to be made by it under this Act, or
- (b) to furnish to the Minister any information required to be furnished by it under subsection 91(1),

in the form and manner, within the time and containing the information prescribed by or pursuant to this Act, is liable to a penalty of fifty dollars for each day after the expiry of the time so prescribed for making the return or furnishing the information during which the failure continues.

Here the subject is modified by two clauses that describe offences. The subject and predicate of the sentence are *Every bank... is liable*. The verb *fails* is outside the paragraphs; in the one case it has the infinitive *to make* as object and in the other *to furnish*. The phrase *in the form and manner* applies to both paragraphs; if the section were written without paragraphs there would be doubt whether this phrase applied to both verbs *fails to make* and *fails to furnish* or only to the latter.

In the following example we again have two clauses modifying the subject.

Any one who is

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- (a) the owner or a person in lawful possession of property, or
- (b) a person authorized by the owner or by a person in lawful possession of property,

may arrest without warrant a person whom he finds committing a criminal offence on or in relation to that property.

The subject and predicate of each clause are outside the paragraphs and are applicable to both.

In the following a converted subject is modified by two clauses.

A warrant may be executed by a person who is

- (a) the peace officer named in the warrant, or
- (b) one of the peace officers to whom it is directed, whether or not the place in which the warrant is to be executed is within the territory for which the person is a peace officer.

It would be difficult to write the above example in the active without getting tangled up in the word *warrant*. As it is, the section begins with *a warrant* and the reference to *the warrant* in the rest of the sentence is clear.

PREDICATES

Two or more predicates may be conveniently set out in paragraphs as follows:

The Corporation may out of its capital, out of the reserve fund established under section 30 of the *Central Mortgage and Housing Corporation Act*, or out of moneys appropriated by section 22 for the purpose

- (a) purchase all right or interest of the holder of an insured loan and take an assignment of the mortgage and other security taken in respect thereof; and
- (b) make loans to an approved lender on such terms and conditions, including the rate of interest, as the Corporation may determine upon the security of an assignment of or an agreement to assign insured loans held by the approved lender.

Here, each predicate has its own modifiers and as written above is easier to grasp than if it were one piece.

Every public servant who invents an invention

- (a) shall inform the appropriate Minister of the invention and shall furnish to him such information and documents with respect thereto as he requires;
- (b) shall not file outside Canada an application for a patent in respect of the invention without the written consent of the appropriate Minister; and
- (c) shall, in any application in Canada for a patent in respect of the invention, disclose in his application that he is a public servant.

In the above example it is better to include *shall* in each paragraph than to insert it at the beginning.

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In the following example the empowering *may* is used rather than the commanding *shall*.

The bank may

- (a) deposit money with the Bank of Canada and with any chartered bank;
- (b) deposit money with banks outside Canada, if so authorized by the board of directors; and
- (c) borrow money from the Bank of Canada and from any chartered bank and give security for the payment thereof.

In the following example we have two predicates, but a more complicated case.

Where an accused corporation does not appear pursuant to a summons and service of the summons upon the corporation in accordance with subsection (4) of section 441 is proved, the magistrate

- (a) may, if the charge is one over which he has absolute jurisdiction, proceed with the trial of the charge in the absence of the accused corporation, and
- (b) shall, if the charge is not one over which he has absolute jurisdiction, hold a preliminary inquiry in accordance with Part XV.

There is one case applicable to both predicates, and a special case for each. *Where an accused corporation does not appear*, applies to both predicates; but there is an additional modifier in each paragraph. The paragraphing could be improved by taking *the magistrate* out of the opening words and beginning paragraphs (a) and (b) respectively with *the magistrate may* and *the magistrate shall*.

A justice who receives an information shall

- (a) hear and consider, *ex parte*,
 - (i) the allegations of the informant, and
 - (ii) the evidence of witnesses, where he considers it desirable or necessary to do so; and
- (b) issue, where he considers that a case for so doing is made out, a summons or warrant, as the case may be, to compel the accused to attend before him.

In the above example we again have two predicates, and one is further divided. The case is also complicated. The first case *where he considers it desirable or necessary to do so* applies to part of the first predicate, and the case *where he considers that a case for so doing is made out* applies only to the second predicate. It would be difficult to write this section putting the case first; it could not be done without doubling its length and perhaps writing two or three subsections.

In the following examples a predicate modifier is confined to one of the two predicates.

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A justice who hears the evidence of a witness pursuant to subsection (1) shall

- (a) take the evidence upon oath, and
- (b) cause the evidence to be taken in accordance with section 453 in so far as that section is capable of being applied.

No person shall

- (a) make a false or misleading statement tending to discredit the business, wares or services of a competitor;
- (b) direct public attention to his wares, services or business in such a way as to cause or be likely to cause confusion in Canada, at the time he commenced so to direct attention to them, between his wares, services or business and the wares, services or business of another.

Without the paragraphing in the first example the words beginning *in accordance with* could be taken to apply to both predicates; and in the second the words *in such a way* could be read as relating also to paragraph (a).

Where a person is alleged, by a verdict upon a coroner's inquisition, to have committed murder or manslaughter but he has not been charged with the offence, the coroner shall

- (a) direct, by warrant under his hand, that the person be taken into custody and be conveyed, as soon as possible, before a justice, or
- (b) direct the person to enter into a recognizance before him with or without sureties, to appear before a justice.

Here there are two alternative predicates. The word *direct* is better in the paragraphs than outside; if outside, the conjunction *or* would be connecting a clause to a phrase. The case here consists of two clauses connected by *but*.

Many predicates may be joined in one enactment; if written in one piece it is difficult to comprehend, but is more readily grasped if broken up.

On the hearing of an appeal against a conviction, the court of appeal

- (a) may allow the appeal where it is of the opinion that
 - (i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
 - (ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
 - (iii) on any ground there was a miscarriage of justice;
- (b) may dismiss the appeal where
 - (i) the court is of the opinion that the appellant, although he was not properly convicted on a count or part of the indictment, was properly convicted on another count or part of the indictment,
 - (ii) the appeal is not decided in favour of the appellant on any ground mentioned in paragraph (a), or
 - (iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (ii) of paragraph (a) the

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appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred;

- (c) may refuse to allow the appeal where it is of the opinion that the trial court arrived at a wrong conclusion as to the effect of a special verdict, and may order the conclusion to be recorded that appears to the court to be required by the verdict, and may pass a sentence that is warranted in law in substitution for the sentence passed by the trial court; or
- (d) may quash a sentence and order the appellant to be kept in safe custody to await the pleasure of the Lieutenant-Governor where it is of the opinion that, although the appellant committed the act or made the omission charged against him, he was insane at the time the act was committed or the omission was made, so that he was not criminally responsible for his conduct.

There are four separate enactments, and a special case for each. It would be impossible to state the four cases first and follow with four rules. Four separate subsections could be written, but the words *on the hearing of an appeal against a conviction* would have to be repeated in each. By combining the rules into one, repetition is avoided, and we have enumerated in one place the things that a court may do on an appeal. Paragraphs (a) and (b) are further subdivided; in each there are in reality three alternative cases.

In the following example we have again double paragraphing, this time in the predicate.

No person, being aboard a foreign fishing vessel or being a member of the crew of or attached to or employed on a foreign fishing vessel shall in Canada or in Canadian territorial waters

- (a) fish or prepare to fish,
- (b) unload, land or trans-ship any fish, outfit or supplies,
- (c) ship or discharge any crew member or other person,
- (d) purchase or obtain bait or supplies or outfits, or
- (e) take or prepare to take marine plants

unless he is authorised to do so by

- (f) this Act or the regulations,
- (g) any other law of Canada, or
- (h) a treaty.

The first five paragraphs are predicates, governed by a common subject; the last three paragraphs are predicate modifiers applicable to each predicate. There would be ambiguity if the paragraphing were omitted.

We have seen several examples of how paragraphing can confine a modifier to one paragraph; it can also be used to indicate clearly that one modifier relates to all paragraphs. For example

Notwithstanding subsection (1), the Minister of Finance, with the approval of the Governor in Council, may, from time to time,

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- (a) make loans to the Authority out of money in the Consolidated Revenue Fund, or
- (b) guarantee repayment of the principal of and interest on money borrowed by the Authority,

for the purpose of repaying money that has been borrowed under this Act.

Here, the phrases *from time to time* and *for the purpose of* clearly apply to both predicates. If the section were written as one piece the former phrase might be regarded as applying only to the predicate *make loans* and the latter phrase to the predicate *guarantee repayment*.

PREDICATE MODIFIERS

Two or more predicate modifiers may be set out in paragraphs.

The rate of interest prescribed under subsection (1) shall not exceed the interest rate on long term Government bonds

- (a) by more than two and one-quarter per cent in respect of loans made under Part I;
- (b) by more than two and one-quarter per cent in respect of loans made under section 15;
- (c) by more than one-half of one per cent in respect of loans made under section 16; and
- (d) by more than one and one-half per cent in respect of loans made under section 17.

In the foregoing example *or* could be used to connect the modifiers.

A special general meeting of the shareholders of the bank may be called at any time by

- (a) the directors of the bank or any four of them, or
- (b) any number not less than twenty-five of the shareholders, acting by themselves or their proxies, who are together owners of at least one-tenth of the paid-up capital stock of the bank;

the directors or shareholders shall give six weeks' previous public notice of the meeting, specifying therein the object of the meeting, and the meeting shall be held at the place where the head office of the bank is situate.

Here, the predicate has two modifying phrases in the alternative. The concluding words could be a separate subsection, or even two. The two clauses can conveniently be joined because the subject-matter of the second is closely related to that of the first. If written as separate sentences, the words *the meeting* would not suffice to identify the *special general meeting of the shareholders of the bank*.

The bank may purchase any real or immovable property offered for sale

- (a) under execution, or in insolvency, or under the order or decree of a court, or at a sale for taxes, as belonging to any debtor to the bank,
- (b) by a mortgagee or other encumbrancer, having priority over a mortgage or other encumbrance held by the bank, or

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- (c) by the bank under a power of sale given to it for that purpose, notice of such sale by auction to the highest bidder having been first given by advertisement for four weeks in a newspaper published in the county or electoral district in which such property is situate,

in cases in which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property that it may so purchase, and may acquire title thereto as any individual, purchasing at a sheriff's sale or sale for taxes or under a power of sale, in like circumstances could do, and may take, have, hold and dispose of the same.

Here the predicate is modified by many phrases, and it clarifies the section to set them out in paragraphs. The case is more conveniently put at the end than at the beginning. The concluding portion *and may acquire title thereto* could form a separate section, but then the word *thereto* would not do. As written the meaning of *thereto* is clear, but it would not be clear if placed in another section.

Subject to this Act, an allowance is payable to

- (a) any male veteran who has attained the age of sixty years,
- (b) any female veteran or widow who has attained the age of fifty-five years,
- (c) any veteran or widow who, in the opinion of the District Authority,
 - (i) is permanently unemployable because of physical or mental disability, or
 - (ii) is, because of physical or mental disability or insufficiency, combined with economic handicaps, incapable and unlikely to become capable of maintaining himself or herself, and
- (d) an orphan,

who is resident in Canada.

By dividing into paragraphs, the words *who is resident in Canada* can be stated once only instead of five times. The phrases are adverbial, but the noun in each phrase has its own modifying clause or clauses.

Adverbial clauses modifying the predicate may be set out in paragraphs.

A loan to a co-operative housing association is not insurable unless

- (a) the instrument of incorporation of the co-operative housing association and its by-laws are approved by the Corporation;
- (b) the Corporation is satisfied that
 - (i) in the case of a project that will continue to be owned and managed by the co-operative association after completion of construction, at least eighty per cent of the family housing units of the project will be occupied by members or shareholders of the co-operative association; or

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- (ii) in the case of a project consisting of houses that on completion of construction are to be conveyed to members or shareholders of the association, at least eighty per cent of the members or shareholders will each own a house; and
- (c) in the first instance, repayment of the loan is secured by a first mortgage on all the family housing units in the project.

In the foregoing example, all the clauses following *unless* form the case, and some of the clauses contain further clauses. Without paragraphs, the section would be hard to read, and certainly *unless* would have to be repeated; and if written as one piece with *unless* repeated, the last *and* might be read disjunctively. As written, it is clear that all of the conditions specified in (a), (b) and (c) must be complied with.

In the following example there are alternative conditions.

No payment shall be made under subsection (1) unless

- (a) at the time of the conveyance of the property to the Corporation the property is unoccupied, or
- (b) the property is occupied by such person and under such terms and conditions as may be determined by regulation.

Without the paragraphs the phrase *at the time of conveyance* might be construed to relate to the second clause.

It is not necessary to have a separate paragraph for each clause. For example:

No contract shall be entered into pursuant to subsection (1) unless

- (a) the project is completed and is built in an area satisfactory to the Corporation and in accordance with standards of construction approved by the Corporation, and
- (b) the project consists of eight or more family housing units and is designed to provide housing accommodation of a size and type prescribed by the Corporation.

Here there are actually four clauses, but only two paragraphs.

In the following example there are three alternative cases, and many words are saved by paragraphing.

Where it appears from the original or a copy of a bill of lading, customs form, commercial invoice or other document (hereinafter called a "shipping document") that

- (a) goods were shipped or sent from Canada or came into Canada,
- (b) a person, as shipper, consignor or consignee, shipped or sent goods from Canada or brought goods into Canada, or
- (c) goods were sent to a destination or person other than as authorized in any export or import permit relating to the goods,

the shipping document is admissible in evidence in any prosecution under this Act in respect of those goods and is *prima facie* proof of any of the facts set out in paragraph (a), (b) or (c) appearing therefrom.

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The words *where it appears that* are read into each paragraph. The opening words contain a definition; the words *shipping document* are inserted so as to make it unnecessary to repeat the whole range of documents in the concluding words.

In the following example paragraphing of phrases within the case and of the objects of the verb in the case does much to make it easier to read a rather complex provision.

The rights and powers of the bank do not have priority over an interest or right acquired in, on or in respect of the property covered by security given under this section unless, prior to

- (a) the registration of such interest or right, or
- (b) the registration or filing of the deed or other instrument evidencing such interest or right, or of a caution, caveat or memorial in respect thereof,

there has been registered or filed in the proper land registry or land titles office or office in which are recorded the rights, licences or permits referred to in this section,

- (c) an original of the instrument giving the security,
- (d) a copy of the instrument giving the security, certified by an officer or employee of the bank to be a true copy, or
- (e) a caution, caveat or memorial in respect of the rights of the bank;

and every registrar or officer in charge of such proper land registry or land titles or other office to whom a document mentioned in paragraph (c), (d) or (e) is tendered, shall register or file the same according to the ordinary procedure for registering or filing within such office documents that evidence liens or charges against, or cautions, caveats or memorials in respect of claims to interests in or rights in respect of any such property and subject to payment of the like fees; but this subsection does not apply if the provincial law does not permit such registration or filing of the tendered document.

The concluding words could be a separate sentence.

In the following example the modifiers of the noun in an adverbial phrase are set out in paragraphs.

Subject to the provisions of this Act and the regulations, from and after the first day of January, nineteen hundred and fifty-two, a monthly pension of forty dollars may be paid in respect of every person who

- (a) has attained the age of seventy years, and
- (b) has resided in Canada for the twenty years immediately preceding the day on which his application is approved, or, if he has not so resided,
 - (i) has been present in Canada prior to those twenty years for an aggregate period at least equal to twice the aggregate periods of absence from Canada during those twenty years, and
 - (ii) has resided in Canada for at least one year immediately preceding the day on which his application is approved.

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The object of the predicate may be set out in paragraphs.

The Governor in Council may, by regulation and on such terms and conditions as he may prescribe, exempt from the operation of this section,

- (a) a person who
 - (i) is employed as a radio operator on a radio station in Canada,
 - (ii) holds a valid Canadian certificate of proficiency, or other authority to operate a radio station issued by the Minister, or an equivalent certificate or authority issued by the country of which he is a citizen, and
 - (iii) is a citizen of a country that grants reciprocal permission to Canadian citizens to be employed as radio operators in that country or is a landed immigrant within the meaning of the *Immigration Act*; and
- (b) a person who is employed as a radio operator on a radio station in Canada by the government of another country or any agency thereof in consequence of a joint defence arrangement with the Government of Canada.

Any warehouse receipt or bill of lading acquired under subsection (1) vests in the bank, from the date of the acquisition thereof,

- (a) all the right and title to the warehouse receipt or bill of lading and to the goods, wares and merchandise covered thereby of the previous holder or owner thereof, and
- (b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom the goods, wares and merchandise were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of the goods, wares and merchandise.

In each of the above examples, an involved object is necessary to complete the action of the verb.

The bank shall mail to each person

- (a) to whom a debt referred to in section 109 is payable,
- (b) to whom or at whose request an instrument referred to in section 110 was issued, certified or accepted, and
- (c) to whom a dividend referred to in section 111 is payable,

at his recorded address, a notice in writing stating that the debt, instrument or dividend, as the case may be, remains unpaid.

In the above example paragraphing saves repetition of *at his recorded address* and clearly sets out the persons to whom the notice is to be sent. The enumerated persons are indirect objects of the predicate.

In the following example the object of the verb has five alternative modifying clauses.

No person shall sell an article of food that

- (a) has in or upon it any poisonous or harmful substance;

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- (b) is unfit for human consumption;
- (c) consists in whole or in part of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance;
- (d) is adulterated; or
- (e) was manufactured, prepared, preserved, packaged or stored under unsanitary conditions.

And in the following a preposition in an adverbial phrase takes three alternative objects.

The seizure and detention may be effected upon the order of,

- (a) a judge of any court;
- (b) a magistrate or justice of the peace having the power of two justices of the peace; or
- (c) the collector of customs at the city of Belleville.

THE CASE

The device of paragraphing is frequently resorted to in setting out the case. In the following example there are six alternative cases.

Where the interest in any share of the capital stock is transmitted by or in consequence of

- (a) the death, lunacy, bankruptcy, or insolvency of any shareholder,
- (b) the marriage of a female shareholder, or
- (c) any lawful means, other than a transfer according to this Act,

the transmission shall be authenticated by a declaration in writing as provided in this section or in such other manner as the directors of the bank require.

In the following example the case contains two principal verbs and a verb modifier is placed outside the two paragraphs so as to be applicable to both.

Where, under section 36,

- (a) shares are offered but not subscribed for or rights in respect of shares are provided but not exercised, or
- (b) shares or fractions of shares are not offered and rights in respect thereof are not provided,

such shares may be disposed of in such manner and on such terms as the directors determine, except that no share shall be sold at less than par.

In the following example there are two principal clauses, and a number of alternative cases for the second clause are set out in paragraphs at the end.

Any one who, upon reasonable and probable grounds, believes that a person has committed an indictable offence may lay an information in writing and under oath before a justice, and the justice shall receive the information where it is alleged that

- (a) the person has committed, anywhere, an indictable offence that may be tried in the province in which the justice resides, and that the person

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- (i) is or is believed to be, or
- (ii) resides or is believed to reside, within the territorial jurisdiction of the justice;
- (b) the person, wherever he may be, has committed an indictable offence within the territorial jurisdiction of the justice;
- (c) the person has anywhere unlawfully received property that was unlawfully obtained within the territorial jurisdiction of the justice; or
- (d) the person has in his possession stolen property within the territorial jurisdiction of the justice.

Sometimes the subordinating conjunction is the only word that two or more cases have in common, as in the following:

Where,

- (a) service of a summons is proved and the accused does not appear, or
- (b) it appears that a summons cannot be served because the accused is evading service,

a justice may issue a warrant in Form 8.

In the following example an involved case is set out partly at the beginning and partly at the end.

Where a person who is confined in a prison is required

- (a) to attend at a preliminary inquiry into a charge against him,
- (b) to stand his trial upon a charge that may be tried by indictment or on summary conviction, or
- (c) to attend to give evidence in a proceeding to which this Act applies,

a judge of a superior court of criminal jurisdiction or of a county or district court may order in writing that the prisoner be brought before the court, judge, justice, or magistrate before whom his attendance is required, from day to day as may be necessary, if

- (d) the applicant for the order sets out the facts of the case in an affidavit and produces the warrant, if any, and
- (e) the judge is satisfied that the ends of justice require that an order be made.

It is sometimes said that an *if* clause (condition) must follow immediately the *where* clause (case). In the foregoing example that could not be done; the preceding words are necessary to explain the meaning of paragraphs (d) and (e).

Paragraphs may be further divided into subparagraphs, as in the following example:

Where

- (a) a fine, penalty or forfeiture is imposed
 - (i) in respect of a violation of a revenue law of Canada,

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- (ii) in respect of a breach of duty or malfeasance in office by an officer or employee of the Government of Canada, or
- (iii) in respect of any proceedings instituted at the instance of the Government of Canada in which that government bears the costs of prosecution; or
- (b) a recognizance in connection with proceedings mentioned in paragraph (a) is forfeited,

the proceeds of the fine, penalty, forfeiture or recognizance belong to Her Majesty in right of Canada and shall be paid by the person who receives them to the Receiver General of Canada.

In the following example two cases are set out at the end in the alternative.

No conviction or order shall be removed by *certiorari*

- (a) where an appeal was taken, whether or not the appeal has been carried to a conclusion, or
- (b) where the defendant appeared and pleaded and the merits were tried, and an appeal might have been taken, but the defendant did not appeal.

In the following there are two cumulative clauses constituting one case; the conjunction *where* is not repeated as in the previous example.

No warrant of committal shall, or *certiorari* or *habeas corpus*, be held to be void by reason only of any defect therein, where

- (a) it is alleged in the warrant that the defendant was convicted, and
- (b) there is a valid conviction to sustain the warrant.

In the following similar examples, the cases are alternative, and the conjunction *where* could be placed within or outside the paragraphs.

The Corporation may seize and detain any vessel at any place within the limits of the province of Ontario, where

- (a) any sum is due in respect of the vessel for rates or for commutation of rates and is unpaid; or
- (b) the master, owner or person in charge of the vessel has violated a provision of this Act or a by-law in force under this Act.

The Corporation may seize and detain any goods, where

- (a) any sum is due for rates in respect of such goods and is unpaid; or
- (b) a provision of this Act or of a by-law in force under this Act has been violated in respect of such goods.

In the following examples alternative cases are set out at the beginning or end of the sentence.

The Board may suspend for such period as it thinks advisable or may cancel a commission or certificate where it finds that the holder thereof is guilty of

- (a) gross negligence or corrupt practice in carrying out his duties as a surveyor;
- (b) certifying to false returns of a survey;

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- (c) certifying as his survey a survey made by another surveyor; or
- (d) making a survey in which he has used a measure that is not regulated and verified in accordance with this Act.

The Comptroller shall reject a requisition if he is of the opinion that the payment

- (a) would not be a lawful charge against the appropriation,
- (b) would result in an expenditure in excess of the appropriation, or
- (c) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

Where the Comptroller

- (a) declines to make a payment,
- (b) disallows an item in an account, or
- (c) refuses to give a certificate required by this Act,

the appropriate Minister of the department concerned may report the circumstances to the Treasury Board for its decision, and the Board may confirm or overrule the action of the Comptroller and give such directions as are necessary to carry out its decision.

A compound case, where the clauses or other modifiers are cumulative, can be simplified by paragraphing. For example:

No certificate shall be granted under this section until the Treasury Board is satisfied that

- (a) the organization complies with the requirements of subsection 79(1), and
- (b) the financial status and condition of the organization are such that
 - (i) it is able to meet all of its obligations, and
 - (ii) upon the grant of the certificate the organization will be able to satisfy all the requirements devolving on it under this Act;

and any certificate granted by the Treasury Board may contain, or may be amended to include, any limitations or conditions that the Treasury Board may deem necessary or advisable.

This involved account of the case would be difficult to read without the paragraphs and subparagraphs.

Further examples of cumulative clauses are:

Subject to subsection (2), in a prosecution for the sale of any article in contravention of this Act or the regulations, if the accused proves to the satisfaction of the court or judge that

- (a) he purchased the article from another person in packaged form and sold it in the same package and in the same condition the article was in at the time he purchased it, and
- (b) that he could not with reasonable diligence have ascertained that the sale of the article would be in contravention of this Act or the regulations,

the accused shall be acquitted.

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Where a person is prosecuted under this Act for having manufactured an adulterated food or drug for sale, and it is established that

- (a) the food or drug has by regulation been declared to be adulterated if any prescribed substance has been added thereto, and
- (b) such person had in his possession or on his premises any such prescribed substance,

the onus of proving that the food or drug was not adulterated by the addition of such substance lies on the accused.

Where, prior to the coming into force of this Act,

- (a) a special commissioner was appointed under section 7 of the *Combines Investigation Act* to conduct an inquiry or investigation, and
- (b) no report had been made under subsection 27(3) of that Act,

the inquiry or investigation may be continued and completed and report thereon may be made as though this Act had not been passed.

Frequently a sentence contains a number of cases with a special enactment for each; paragraphing assists in setting them out, and saves much repetition.

The bank may hold real or immovable property for a period of seven years

- (a) in the case of property acquired or held for its own use, from the day on which it ceases to be required for its own use, as determined by the directors, and
- (b) in the case of other property, from the day on which it acquired the property,

and forthwith after the expiry of that period the bank shall sell or otherwise dispose of the property absolutely so that the bank no longer has, directly or indirectly, any interest or control in respect thereof except by way of security.

In the foregoing example the subject and predicate come first, followed by two paragraphs, each containing a special case and its own predicate modifier.

In the following we have different predicates for different cases.

When all the evidence has been taken by the justice he shall,

- (a) if in his opinion the evidence is sufficient to put the accused on trial,
 - (i) commit the accused for trial by warrant in Form 17, or
 - (ii) order the accused, where it is a corporation, to stand trial in the court having criminal jurisdiction; or
- (b) discharge the accused, if in his opinion upon the whole of the evidence no sufficient case is made out to put the accused on trial.

Where a justice is satisfied that anything that has been seized under section 431 or under a warrant issued pursuant to section 429 will not be required for any purpose mentioned in subsection (1) or (2), he may

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- (a) if possession of it by the person from whom it was seized is lawful, order it to be returned to that person, or
- (b) if possession of it by the person from whom it was seized is unlawful,
 - (i) order it to be returned to the lawful owner or to the person who is entitled to possession of it, or
 - (ii) order it to be forfeited or otherwise dealt with in accordance with law, where the lawful owner or the person who is entitled to possession of it is not known.

A judge of, or a judge presiding in a superior court of criminal jurisdiction may, upon application,

- (a) before an accused is committed for trial,
 - (i) admit the accused to bail if a justice has no power to grant bail or if bail has been refused by a justice, or
 - (ii) vary the amount of bail fixed by a justice, or
- (b) where an accused is committed for trial, vary an order for bail fixed under subsection 463(3) by a judge of a county or district court or a magistrate.

Mathematical sections are easier to understand if they are divided into paragraphs.

An association shall not lend any money to, nor invest in the securities of, any member if

- (a) the aggregate of
 - (i) the total amount of loans made by the association to the member, less the market value of government securities, municipal securities and school securities, if any, pledged as security for any such loans, and
 - (ii) the total amount invested by the association in the securities of the memberexceeds ten per cent of the aggregate of the paid-up capital of the association and the total amount of money on deposit with the association, or
- (b) the making thereof would increase the first mentioned aggregate to more than ten per cent of the second mentioned aggregate.

The aggregate of

- (a) the total amount borrowed by an association and outstanding,
- (b) the total amount of money on deposit with the association, and
- (c) all moneys of which the repayment of the principal or payment of interest is guaranteed by the association,

shall not at any time exceed ten times the aggregate of

- (d) its paid-up capital,
- (e) the amount of its guarantee fund, and
- (f) the amount of its surplus.

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Every individual liable to pay tax under Part I of the *Income Tax Act* for a taxation year shall pay an Old Age Security tax for the year equal to the lesser of

- (a) two per centum of the taxpayer's taxable income for the year, or
- (b) sixty dollars.

IMPROPER PARAGRAPHING

It is sometimes erroneously thought that a sentence is correctly paragraphed if the opening words, plus any one of the paragraphs, plus the concluding words, if any, make a sentence. All the words when read from beginning to end without regard to the paragraph designations must be a complete and correct sentence, whether simple, compound or complex. This must be, because all the paragraphs are connected grammatically to each other by the conjunction *and* or *or*. Each paragraph must be grammatically connected to the one before it and the one after it.

The following rules must therefore be observed:

1. The paragraphs must all have the same grammatical value and function.
2. The paragraphs must be connected grammatically to each other and to the same word or group of words in the general opening lines — the umbrella words.
3. Every modifier in the paragraph must be a modifier of something in that paragraph, or of the umbrella words.

In the following example, the paragraphs are not of equal grammatical value:

No licence shall be revoked or suspended

- (a) except with the consent of the holder, or
- (b) unless notice of intention to suspend or revoke has been given to the holder and he has been given an opportunity to be heard.

Paragraph (a) is a phrase; paragraph (b) is a clause. These two grammatical elements cannot be joined by the co-ordinating conjunction *or*. Written without paragraphing the *or* would not be there, and the phrase would normally come first.

Except with the consent of the holder, no licence shall be revoked or suspended unless notice of intention, etc.

In the following example modifiers in the paragraphs violate rules 2 and

3.

No person shall keep on any premises a quantity of explosive exceeding

- (a) twenty-five pounds, within 100 feet of any building, or
- (b) one hundred pounds, within a fire limit.

The paragraphs follow the participle *exceeding*; therefore everything within (a) and (b) must be within the object of *exceeding*. The prepositional phrase *within 100 feet* etc. in (a) has no function in the object of the participle; it belongs exclusively to the verb *keep* in the main clause and it does not connect with (b). Hence, this phrase closes the main clause. Paragraph (b)

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cannot be read as a continuation of the main clause without re-inserting the main clause, but this cannot be done. The door is closed, as appears clearly if the sentence is written without paragraph designations. The structure could be corrected by striking out *exceeding* and writing:

- (a) if it exceeds 25 pounds, within 100 feet etc., or
- (b) if it exceeds 100 pounds, within a fire limit

Now we have in each of (a) and (b) a clause and phrase modifying *keep*; (a) and (b) are equal parts of the main clause.

Another example

- No person shall keep on any premises a quantity of explosive that
- (a) is more than 25 pounds in weight unless it is stored etc., or
 - (b) is more than 100 pounds in weight within a fire district.

Here the word *that* introduces a definition of *quantity*. Hence everything in (a) and (b) must belong within the definition. The concluding clause in (a) and the concluding phrase in (b) do not; they are modifiers of the main verb *keep*.

We can correct this by giving the main verb two alternative modifiers.

- Unless
- (a) it is stored ..., if more than 25 pounds, or
 - (b) it is outside a fire district, if more than 100 pounds.

Another example

- Every person who
- (a) in an application makes a false statement is guilty of an offence, and
 - (b) is ineligible for a further grant.

In paragraph (a) the first seven words modify the word *who*, but the next five words constitute the predicate of *person*; and in paragraph (b) we have another predicate of *person*. This could be written

- Every person who makes a false statement in an application
- (a) is guilty of an offence, and
 - (b) is ineligible for a further grant.

Another example

- Every barrister who was admitted to the bar
- (a) prior to the 1st day of January, 1950 shall pay a fee of \$100, and
 - (b) on or after that day shall pay a fee of \$200.

Paragraphs (a) and (b) are in part a modifier of *admitted* and in part the predicate for *barrister*. The following re-write would also not be correct:

- Every person who
- (a) was admitted to the bar prior to the 1st day of January, 1950, shall pay a fee of \$100, and
 - (b) was admitted to the bar on or after that day shall pay a fee of \$200.

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This provision could be written as two separate and complete sentences connected by *and*, or could be tabulated as follows:

- Barristers shall pay the following fees:
- (a) if admitted \$100, and
 - (b) if admitted \$200.

Or as follows:

- A barrister shall pay
- (a) a fee of \$100 if he was admitted, etc., or
 - (b) a fee of \$200 if he was admitted, etc.

Insertion of a new co-ordinate clause in a paragraph destroys the enumeration.

- A student using the library
- (a) shall not damage any book and if he does so he is liable for the cost of repair,
 - (b) shall not make any unnecessary noise in the library so as to disturb others who may be using the library, and
 - (c) shall promptly return books borrowed by him.

Paragraph (a) is defective because it includes a complete new sentence; it does not now connect with (b). This clearly appears if written

A student using the library shall not damage any book and if he does so he is liable for the cost of repair and shall not make any unnecessary noise.

The clause in (b) *who may be using the library*, is correct, because it is a subordinate clause modifying *others* in that clause.

In the following example taken from the former *Citizenship Act* we have three separate sentences, connected not by thought but only by having some words in common.

- Where in any Act of the Parliament of Canada any provision is made applicable in respect of
- (a) a "natural-born British subject" it shall apply in respect of a "natural-born Canadian citizen";
 - (b) a "naturalized British subject" it shall apply in respect of a "Canadian citizen other than a natural-born Canadian citizen", or
 - (c) a "Canadian national" it shall apply in respect of a "Canadian citizen"

under this Act.

The opening and concluding words make a correct sentence when read with any one of the paragraphs, so that we have three independent sentences. They cannot, however, all be put together in this fashion to make one compound sentence.

In each of the paragraphs there is an object of the prepositional phrase *in respect of* and a predicate for *provision*, represented by *it*; and at the end

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there is a phrase *under this Act* modifying something in each of the paragraphs. Where there are concluding words after the paragraphs they should be an addition to the general opening words, or like umbrella words, they should cover the whole of every paragraph and not merely some element in them.

It is difficult to write three enactments like this as one enactment. It would be better to write three separate sentences notwithstanding the repetition of words. If repetition is to be avoided it could be done as follows:

Where in any Act of the Parliament of Canada any provision is made applicable in respect of a "natural-born British subject", a "naturalized British subject" or a "Canadian national" it shall apply in respect of a "natural-born Canadian citizen", a "Canadian citizen other than a natural-born Canadian citizen" or a "Canadian citizen" under this Act respectively.

There is the same faulty construction in the following:

Except as otherwise provided in this Part, the provisions of this Act applicable

(a) to bills of exchange apply to consumer bills,

(b) to promissory notes apply to consumer notes.

If the words *the provisions of this Act applicable* were put at the beginning of each of the paragraphs (a) and (b) we would then have a complete sentence in each paragraph with a common modifier in the opening words.

One fairly reliable test of proper paragraphing is to read the provision aloud without reference to paragraphs or subparagraphs; if it does not make sense without speaking words that are not there, or if the provision cannot be read without stumbling and hesitating or without going back and re-reading portions of it, there is something wrong with it. It should read smoothly from beginning to end without reference to paragraphing or punctuation.

CHAPTER VIII

GENERAL

SECTIONS AND SUBSECTIONS

It is the practice to write each section and subsection in what is called one sentence. As a drafting guide, an instruction that a section or subsection should contain only one sentence means little, because a compound sentence is in reality two or more sentences connected by a co-ordinating conjunction or separated only by a semi-colon. The most that can be said is that each section or subsection should be punctuated as one sentence.

There is no reason in law why a section should not contain two or more enactments, each punctuated as a sentence. This practice, however, will tempt the draftsman to write text-book paragraphs and make the section difficult to read. There is also the danger that each sentence will move further and further away from the opening sentence so that by the time the draftsman reaches the end he is on an entirely new subject. The following, for example, was enacted as one section:

When a candidate has withdrawn after nomination day, and after the ballots are printed, the returning officer shall advise, by letter or telegraph, each deputy returning officer of his electoral district of such withdrawal. When time permits, a notice of the withdrawal shall be printed by the returning officer and distributed to each deputy returning officer. On polling day, each deputy returning officer shall post up a copy of the printed notice of withdrawal in a conspicuous place in his polling station. If time does not permit of the printing and the distribution of such notice, the deputy returning officer, upon being advised by letter or telegram, by the returning officer of the withdrawal of any candidate, shall himself prepare by hand a notice to that effect and post it up in a conspicuous place in his polling station. In any case the deputy returning officer shall, when delivering a ballot to each elector, inform such elector of the withdrawal of any candidate.

A provision such as the foregoing is difficult to read, and it would be difficult to refer to some ingredient of it in a cross-reference or an amending statute, because the sentences have no labels.

If two independent sentences are joined by a conjunction there should be a direct connection between the thought and subject-matters of the two.⁴ In some cases, where there is a connection in subject-matter but somewhat remotely in thought, a semi-colon may be used.

Each sentence is a separate enactment and should, so far as possible, be self-contained.

4. See the examples *infra* pp. 78-79

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26. Where a witness to be examined under this Act objects to the taking of an oath, he may make a solemn declaration.

27. Any solemn affirmation and declaration *so* made shall be of the same force and effect and shall entail the same consequences as an oath taken in the usual form.

28. Every *such* oath or affirmation shall be in the Forms A and B respectively in the Schedule to this Act.

29. Any person examined *as aforesaid* who wilfully gives false evidence shall be liable to the penalties of perjury.

In the foregoing example, taken from an actual statute, sections 27, 28 and 29 are not self-contained; there is in each an indefinite reference to something outside the section. This practice is not good, because it is inexact and because an amendment to one of the sections or the insertion of another section by amendment could spoil subsequent sections or make it necessary to amend them too.

Even if the foregoing provisions were written as four subsections of one section, it would still be better to make clearer references. Other vague referential words of the same character and to be avoided are *aforesaid*, *thereupon*, *in such case*, *hereinafter*, *hereinbefore*, *following*.

It is a matter of judgment whether two or more sentences should be combined into a compound-complex sentence or written as separate sentences. There are occasions when it is better to combine sentences, if the result is not unduly long or complicated. It is done to avoid repetition or the use of words referring to something outside the section.

Thus, the example given above might be re-written as follows:

26. Where a witness to be examined under this Act objects to the taking of an oath, he may make a solemn declaration.

27. A solemn affirmation or declaration made pursuant to this Act

(a) shall be in Form A or B respectively in the Schedule to this Act, and

(b) is of the same force and effect and entails the same consequences as an oath taken in the usual form.

28. A witness examined pursuant to this Act who wilfully gives false evidence is liable to the penalties of perjury.

In the following examples two or more sentences have been advantageously combined.

Each province constitutes one bankruptcy district *but* the Governor in Council may divide a district into two or more divisions.

A person desiring to obtain a licence to act as a trustee shall file with the Superintendent an application for a licence in such form as may be prescribed, *and*, when requested by the Superintendent, shall provide such security for the due and faithful performance of his duties in such form and amount as the Superintendent requires.

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The Superintendent shall make an investigation into the character and qualifications of any applicant for licence as the Superintendent deems advisable or expedient *and* shall report to the Minister the result of the investigation, together with his recommendation for or against the granting of the application and his reasons therefor.

A trustee may apply to the court for directions in relation to any matter affecting the administration of the estate of a bankrupt *and* the court shall give in writing such directions, if any, as to it appear proper in the circumstances.

Where property of a bankrupt is held as a pledge, pawn, or other security, the trustee may give notice in writing of his intention to inspect the property, *and* the person so notified is not thereafter entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the property and exercising his right of redemption.

Where a member of a partnership becomes bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, *and* any release by the partner of the debt or demand to which the action relates is void.

For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, *and* he is entitled to vote only in respect of the balance, if any, due to him, after deducting the value of his security.

HEADINGS AND PARTS

It is frequently desirable to insert headings and sub-headings as a guide to the subject-matter of the Act. These are regarded as part of the Act, and may influence the interpretation of the sections under the heading. Headings should therefore be selected with care.

A heading should not form part of the text and should not be referred to in the text. The statute should remain a grammatical whole if all headings are deleted. Examples of improper use of headings are:

APPLICATIONS

15. A fee of five dollars shall be paid for *each*.

PROVISIONS APPLICABLE TO RAILWAY COMPANIES

16. Every application for the incorporation of *a company* shall be signed by at least twenty-five persons.

An Act may also be divided into Parts, either with or without an appropriate heading. It may be done to break up the Act by subject, as in the case of a book, for the purpose of assisting the reader in finding his way through it. Or it may be done for more technical reasons. For example, sometimes special definitions are necessary for a particular subject-matter and it is more convenient to set them out with the sections to which they apply than at the beginning or end of the statute. Again, division of an Act into Parts may facilitate cross-references; for example, an Act may impose two kinds of taxes

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and it may be convenient in the general sections to distinguish between taxes under Part I and those under Part II. An Act may be divided into different Parts applying to different classes of persons; thus, an Act relating to companies might have one Part applying only to railway companies, another applying only to telegraph companies, and so on; in each Part the word *company* can be used without having to specify each time the kind of company; alternatively, each Part could have its own definition of *company*.

There is no general rule for determining when an Act should or should not be divided into Parts. It has been said that an Act should be divided into Parts only where each Part might properly form the subject of another Act. That might be one instance where the division might usefully be made, but there are other instances where an Act can, and should, be so divided.

CROSS-REFERENCES

References to other sections should, where possible, be specific rather than general. A reference to another section by its number cannot be misconstrued, but a reference to another section by its subject-matter can. And, if figures are used for section numbers, the references are easier to find.

References to sections *following* or *preceding* should be avoided; Parliament may spoil the reference by inserting another section.

References to things *hereinbefore*, *hereinafter* should also be avoided. If specific sections are intended to be referred to, their numbers should be given; if the reference is generally to the whole Act or a Part, the reference should be to *this* Act or a specified Part.

Specific references are helpful not only to the reader but also to the draftsman. A bill may go through many drafts and each draft usually requires a re-numbering of sections; the chances of overlooking a reference are reduced if numbers are used. Also, if the bill is amended in Parliament either by adding or deleting a section, it must be re-numbered and cross-references must be changed. Section references are easier to find if figures are used.

Where there is a reference to a minor division of a section or subsection, care should be taken to see that the reference is correct. For example, if a section began

6. Every person who
 - (a) has applied for a pension, or
 - (b) has been paid a pension

a reference in another section to a *person referred to in paragraph 6(a)* would not strictly be correct because no person is referred to in that paragraph.

CHOICE OF WORDS

No rules govern the choice of words. The draftsman must, of course, find the right word or the best word, but what is right or what is best? If there is a choice between a long word and a short word, or between an uncommon

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word and a common word, the short or common should usually be preferred. An abstract noun often has more shades of meaning than the concrete.

Good dictionaries and other word books should always be at a draftsman's elbow and he should be satisfied that the sense in which he intends to use a word is current and is recognized by authoritative dictionaries. Words do change in meaning, but the draftsman should not innovate the changes; and he should not revive the obsolete or rejuvenate the archaic.

Foreign words should be avoided. Legal latin phrases can usually be replaced by English, although some have virtually become English like *per cent* and *habeas corpus*.

Technical terms may be used in technical statutes. For example, the *Weights and Measures Act* speaks of *amperes*, *ohms*, *coulombs*, *farads*. And a statute dealing with courts and legal procedure may refer to *quo warranto* and writs of *feri facias*. Statutes dealing with bills of exchange, companies, banks, insurance, etc., must use technical terms accordingly. And words like *domicile*, *tenant*, *real property*, are also used in technical senses. It would be impossible to substitute words so that readers who are unfamiliar with the subject-matter will be able fully to understand the statute; and a draftsman must not be expected to do so. But even if a draftsman must use technical words and expressions, he should try to express himself as simply and clearly as possible.

The temptation to replace a verb by a noun derived from that verb plus another verb should be resisted. Thus, it would generally be better to say *assist*, rather than *come to the assistance of*. The action to be described is *assisting* rather than *coming*. If, however, there are other provisions aimed at the *coming*, then it might be desirable to use the longer form.

ARRANGEMENT

The arrangement of an Act is important. Again, no exact rules can be laid down — each Act is a special case — but the following general suggestions may be helpful.

1. The first section should be the short title.
2. The second section in Canadian Acts is normally the interpretation or definition section, although in some jurisdictions the definitions are put at the end of the Act.
3. Application sections, if any, usually follow the interpretation section. If the operation of the Act is substantially restricted as to area, persons, time or otherwise, an early indication is usually desirable, although minor restrictions might more suitably be placed at the end.
4. The first group of sections should express the leading theme of the statute. For example, the charging sections in a taxation statute, the incorporating sections in a corporation statute, the granting sections in a pension statute, the prohibitions in a penal statute, and so on. In other words, the first

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group of sections should, if possible, tell the reader what the statute is about, what its subject-matter is.

5. Administration provisions, or provisions to make the main theme effective, should follow. If the statute is one requiring licences to export, for example, the sections prohibiting export without a licence should be followed by the sections dealing with the application for and grant of licences.

6. Provision for making regulations should follow the administration provisions because they usually refer to matters mentioned in the leading provisions or the administration provisions.

7. Penal provisions (except in purely criminal statutes) should be placed towards the end of the Act.

8. Special legal provisions relating to evidence, trials, etc., should follow the penal provisions.

9. Temporary and transitional provisions should be at the end.

10. The final section should be the coming into force provision, if any.

11. Matters should be set out in the Act and in the individual sections in proper time sequence.

COPYING

It is dangerous to take a section out of one statute and insert it in another. A section taken out of its context may lose its meaning or may acquire a new meaning in another context. The draftsman should satisfy himself that the section to be copied will have the intended effect in the new statute and, if not, he should re-write it.

There is a tendency to copy statutes from other jurisdictions without making any alterations in the text. Faulty provisions are repeated as they stand; archaic or clumsy words or forms are retained. This habit merely perpetuates bad law. The draftsman should make whatever improvements he can, and certainly he should not copy anything that he himself would not write.

The justification given for copying statutes verbatim is that past and future judicial decisions can be applied to the new statute. This is not always a sound excuse. Draftsmen do not always go to the trouble of looking for the decided cases. There may be no cases, but, if there are, they may be of no value, or may even reveal defects in the statute. In any event the application or the relevancy of a judicial decision does not always depend upon an exact reproduction. It is the substance of the statute that is important and if the substance of the two statutes is the same, that may be enough. For example, if a draftsman were to convert a number of disconnected provisos into separate subsections, the relevancy of the judicial decisions would not be affected in the least.

It is not being suggested that a draftsman should never look at the legislation of other jurisdictions. On the contrary, it may be a great help to him to

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study the statute of another jurisdiction on the same subject, and the judicial decisions as well.

PUNCTUATION

No two people can agree on punctuation; hence little will be said about it here.

Two general rules may be helpful —

1. A section should not be over-punctuated so that the person reading it aloud must pause and hesitate unnecessarily or to the point of monotony.

2. Punctuation should not be used to convey meaning. If the force or scope of a modifier is determined by punctuation alone, the danger is great that a reader will misconstrue the section or that the printers will ruin it. Punctuation, judiciously used, will guide the reader through the sentence, help him sort out its elements and subconsciously prevent him from going astray; but the sentence should be so constructed that by omitting the punctuation the sentence is capable of being read correctly from beginning to end.

STYLE

A draftsman should, above all, strive to make his statute as readable as possible. His words are to be read by other people and he should help them and not place obstacles in their way.

There is nothing so discouraging as a long block of solid type. A page of unbroken type is enough to weary and challenge even the most astute minds. Ten to fifteen lines of solid type are usually quite enough; anything from fifteen to twenty-five lines should be re-examined; and anything over twenty-five lines should be broken up.

A statute should be divided into sections and subsections of modest length. If a section or subsection consists of a collection of sentences, it tends to become an essay or a treatise and is difficult to read and to understand. As previously indicated, there are occasions when two or more grammatical sentences can be conveniently combined by an appropriate conjunction, but care should be taken that the sentences so combined are short or that there are not too many of them, and unrelated sentences should not be combined.

A sentence that is long because it is grammatically involved should be re-examined and simplified; and often a compound-complex sentence can be broken up into two or more sentences that can themselves form separate sections or subsections.

Finally, the type can be broken up by the mechanical method of paragraphing, discussed in Chapter VII.

Instead of presenting the reader with a page of solid type, a draftsman can give him a page consisting of half a dozen or more distinctly numbered sections or subsections, some of which are broken up into indented paragraphs and subparagraphs. A glance at the page will reveal to an intelligent reader its subject-matter, and he can more easily follow the grammatical structure and grasp the meaning of the individual sections and subsections.

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As a further mechanical aid to the reader, appropriate headings and sub-headings can be inserted in the statute, and each section and subsection can be given a short marginal note.

LIMITATIONS

A draftsman does not always have a free hand. Included in the circumstances that affect language used by him are the following:

1. In preparing an amendment to a statute, a draftsman is always faced with the choice of retaining the language of the original enactment (except those portions that are to be changed) or writing the whole provision the way he would like to see it. The difficulty is that corresponding language may be found in other provisions that are not up for amendment, and the draftsman can hardly make changes in one section if corresponding changes are not going to be made in other sections.

2. Those whose business it is to determine the policy of the legislation or to pilot it through Parliament may have strong views on the language to be used in the statute. They may, for political or other reasons, disapprove of the way in which the policy of the legislation has been expressed, and the draftsman may have to find some other mode of expression, even though he does not consider it to be the best. Ministers also are naturally anxious to have amendments held to an absolute minimum, and it may not be possible for the draftsman to make what he considers to be improvements in the language of a statute.

3. Officials of the department that is to administer the statute may also have views on its language or form. Here again, the draftsman may have to make some compromise.

4. A bill must be passed by Parliament before it becomes law and it is for Parliament to say what the form and substance of the law is to be. A draftsman can only put his best recommendation forward, but the bill may be amended in Parliament in a way that, so far as form and expression are concerned, does not please him. The most that the draftsman can hope for is that before changes are made he will be consulted.

EMPHASIS

A compound or complex sentence expresses many ideas. In assembling them care should be taken to give them the correct emphasis. Some ideas are of first importance, while others are subordinate. The sentence must be so constructed that a subordinate idea does not detract from the main idea, and that a main idea is not placed in a subordinate position.

A person arrested shall be taken before a justice and charged with an offence not later than seven days after his arrest, unless the Attorney General has issued an order that the accused be further detained until the expiry of a period not exceeding twenty-one *days after his arrest, at the end of which period* the person arrested shall be taken before a justice and charged with an offence or released.

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The words *at the end of which period* lead one to think that something descriptive of the period or its end is to follow. These words have the force of a subordinating conjunction. But the clause that follows is not subordinate to the first; it ranks equally, and should be joined by a co-ordinating conjunction.

... period after his arrest, *and* at the end of *that* period, the person arrested shall be taken ...

An Ordinance respecting prairie fires provided that

Nothing in this Ordinance prevents any railway company or its employees from burning over the land held by it under its right of way ...

Written as follows it would be incorrect:

The provisions of this Ordinance do not apply to a railway company the employees of which may burn over lands held by the company ...

The words granting the permission have been subordinated. They are now in a relative clause describing the railway company, instead of in a main clause. It can be read as meaning that the Ordinance does not apply to a class of railway companies that has employees who under some law other than this Ordinance have permission to burn over the land.

A section of an Ordinance respecting fire prevention read as follows:

The Commissioner may by proclamation, establish fire limits within the boundaries of which no person shall erect or maintain any building or structure constructed of any material other than wood, brick, stone or metal.

There are two main ideas here. First, that the Commissioner may establish fire limits, and secondly that no person shall erect or maintain a building in a fire limit. If any of these ideas has a higher rating than the other, it would be the second. Yet that idea is subordinated to the first; it is set out as a description of the kind of a fire limit that may be established. Nowhere is there a prohibition against constructing or maintaining.

There should be a direct provision that

No person shall within a fire limit erect or maintain a building, etc.

The second idea could be subordinated to the first

No person shall within the boundaries of a fire limit established by the Commissioner by proclamation erect or maintain any building or structure, etc.

but there would then be doubt whether these words confer power on the Commissioner to establish fire limits, or whether they merely refer to fire limits that the Commissioner under some other provision has authority to establish.

What is in reality an independent clause should not be reduced in rank to a modifier within another clause. Thus, the following is defective

Every person who kindles a fire that runs at large is guilty of an offence.

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No such fire can be kindled. At the moment it is kindled it has not yet run at large.

There should be an independent rather than a dependent clause

Every person who kindles a fire *and permits it to run at large* is guilty of an offence.

The past tense would correct the defect in logic.

Every person who kindled a fire that ran at large is guilty of an offence.

But this form would be more stringent as there would then be an offence if the fire escaped through no one's fault; and the emphasis is on the *kindling* rather than on the true mischief *running at large*.

CONJUNCTIONS

Co-ordinating conjunctions may be used only where the sentence elements to be joined are of equal grammatical value. The following provision is therefore defective.

(2) No licence or operating certificate shall be revoked or suspended under this section

(a) except with the consent of the holder thereof; or

(b) in any other case, unless notice of intention to suspend or revoke the licence or certificate has been given to the holder and he has been given a reasonable opportunity to be heard.

The error here is that the co-ordinating conjunction *or* has been used to join grammatical unequals. Paragraph (a) is a phrase and paragraph (b) is a clause; the two paragraphs are not parallel. Paragraph (a) could be construed as an elliptical clause with an elliptical conjunction — *except that it may be revoked* with the consent of the holder thereof, but then we would have a co-ordinate clause joined to a subordinate clause; again, unequals.

It is also questionable whether *except with* is correct. There is no previous *doing with* from which an exception is being made. What is required is a preposition of manner, such as *otherwise than with* or simply *without*. Paragraph (a) does not describe a *case*, so that (b) cannot be a provision for any *other case*. A better, and grammatically more correct form, would be

No licence or technical construction and operating certificate shall be revoked or suspended under this section without the consent of the holder thereof unless notice of intention ... has been given ...

If a tabular form is preferred, both paragraphs should be converted to clauses

(a) unless the holder thereof has consented thereto, or

(b) unless notice of intention ... has been given ...

In the following example the same error is made with *and*:

A consumer bill is a bill of exchange

(a) issued in respect of a consumer purchase, and

(b) on which the purchaser or any one signing to accommodate him is liable as a party.

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Paragraph (a) is a phrase and paragraph (b) is a clause. They should not be joined by *and*. The *and* should be omitted, but in that case there is no reason for paragraphing.

A consumer bill is a bill of exchange issued in respect of a consumer purchase on which the purchaser or any one signing to accommodate him is liable as a party.

Alternatively they could both be made clauses:

(a) that is issued in respect of a consumer purchase, and

(b) on which the purchaser, etc.

The use of the co-ordinating conjunctions *and* or *or* in compound predicates may give rise to problems because there is an inherent ambiguity in both. The conjunction *and* may be used in a joint or several sense, or in a joint but not several sense. Thus, *A and B* might mean one or both, or it might mean both but not one. The preposition *or* may be inclusive or exclusive. Thus, *A or B* might mean *A* with or without *B*, or it might mean *A* without *B* or *B* without *A*.⁵

Questions often arise with these conjunctions in compound predicates with *may* and *shall*

He shall (a), (b) and (c)

This requires that all be done. If one is omitted the obligation is not discharged.

He may (a), (b) and (c)

This grants power or permission to do all. The normal meaning here is that the conjunction is joint and several. The holder of the power or permission may do all or any. If, for example, power were conferred to make regulations respecting (a), (b) and (c), no one would suggest that the regulation-making authority could make regulations only on all subjects or none.

He shall (a), (b) or (c)

Here, to do any one exhausts the obligation. The conjunction is therefore exclusive.

He may (a), (b) or (c)

If the alternatives are mutually exclusive then the conjunction is exclusive. Only one can be done. Thus, in

He may transmit the money to the person entitled thereto, deposit it to his account or pay it into court

if one alternative is selected the others are no longer available.

But if the alternatives are not mutually exclusive, then the normal meaning is that any one may be selected and the others are not exhausted; they are

5. For an excellent and illuminating discussion of the *and-or* problems, see Dickerson: *The Fundamentals of Legal Drafting*. Little, Brown and Company. Boston (1965) pp. 76-85.

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available for future use. In this connection there must be borne in mind the provision of the *Interpretation Act* that if a power is conferred it may be exercised from time to time as occasion requires.

He shall not (a), (b) and (c)

Here the prohibition is against all three in the aggregate. So long as one is not done there is no infraction.

He shall not (a), (b) or (c)

Here the conjunction would normally be inclusive. All are prohibited.

In general, therefore, the position is as follows: if the provision is empowering or permissive then *and* and *or* mean the same thing — all or any may be done — except where alternatives are mutually exclusive; if the provision is mandatory, then *and* requires all to be done to discharge the obligation, and if *or* is used then any one discharges the obligation; if the provision is prohibitory, then *and* requires all to be done to violate the prohibition, and *or* prohibits them all individually and severally.

The *A or B and C* construction leads to an ambiguity.

An inspector may seize any explosive that appears to him to be abandoned *or* to have deteriorated *and* to be a danger to persons or property.

There is doubt whether an abandoned explosive that is not a danger may be seized.

If the alternatives are to be
to be abandoned
or

to have deteriorated and to be a danger

the intent could be clarified thus:

appears to him to be abandoned *or appears to him* to have deteriorated and to be a danger.

If the alternatives are

to be abandoned and a danger
or

to have deteriorated and be a danger

the intent could be expressed as follows:

that appears to him

(a) to be abandoned, or

(b) to have deteriorated,

and to be a danger.

PRESCRIBED

The use of the adjective *prescribed* can often be used to good advantage.

There are situations where it is necessary to refer to many things that are to be specifically defined or ear-marked by regulations. This can be done by saying in each place *prescribed by regulation* and then conferring power to prescribe the regulation. But this involves repetition and detail.

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We can, instead, refer to *prescribed* things, define *prescribed* as meaning *prescribed by regulation*. It would be necessary, however, to add power to make regulations. This could be done by a specific provision:

prescribing any matter or thing that by this Act may be prescribed

prescribing any matter that under this Act (by this Act) is to be prescribed.

Or, by an omnibus provision:

... may make regulations for carrying out the purposes and provisions of this Act.

WORDS OF EXCLUSION

Various expressions can be used to subtract a specific item or class from a larger or more general one. Some of the more common ones are *except*, *other than*, *not being*, *not including*. At times there may be a multiple exclusion, the effect of which is to exclude an exclusion, as in

A except B other than C

But the piling up of exceptions can lead to confusion, as in

A except B other than C but not including D unless E.

Sometimes the exclusion relates only to something within the definition; at other times the exclusion is from the word defined.

In the definition

"creditor" includes an unsecured creditor except a bank

an unsecured bank creditor is excluded from the inclusive definition only, so that a secured bank creditor would be included in the ordinary meaning of the word *creditor*. In

"creditor" includes an unsecured creditor but does not include a bank a bank, whether secured or unsecured, is excluded from the definition.

Apples cannot be subtracted from oranges. A provision like

This section applies to threshing engines except railway locomotives is impossible. If all threshing engines can move on their own power, the provision could be

This section applies to locomotive engines except railway locomotives.

This section applies to locomotive engines but does not apply to railway locomotives

UNNECESSARY WORDS OF EMPHASIS

There is often a temptation to put in words that merely emphasize what has been said, but have no real function.

An inspector may open any package *of whatsoever nature*.

An inspector may require the owner to give him samples of any substance, *whether in the state of raw material, material in the course of manufacture, or manufactured material*.

Every person who *enters without permission or lawful authority or otherwise* trespasses.

THE COMPOSITION OF LEGISLATION

Occasionally a *whether or not* provision may be desirable to remove doubt, but as a general rule unnecessary words of emphasis should be eschewed.

INTERNAL CONSISTENCY

A draftsman should strive for internal consistency. In its simplest form it means that the same word should be used to say the same thing. For example, a *vehicle* should not be called a *motor vehicle* in one place and an *automobile* in another place in the same statute if the same thing is intended. Conversely there is a presumption or at least an implication that if a different term is used something else is intended.

The principle, however, goes much deeper, and it should be applied also to different grammatical forms of the same word.

Thus in an Ordinance authorizing a hotel-keeper to seize and sell property of a guest in payment of his bill there is a provision that any surplus of the proceeds of sale remaining after payment of the debt is to be paid to the person who *applies* for it, and then there is the further provision that if no *application* is made within a certain period of time the surplus must be paid to the Territorial Treasurer.

This describes two situations, one of which is the complete opposite of the other. If the reference is to the making of an *application*, then the opposite situation should be described as *no application made*. It would not be sufficiently accurate to use some other expression such as *no claim* or *unclaimed*.

Some of the possibilities are as follows:

| | |
|--------------------------|---|
| claim <i>is made</i> | no claim <i>is made</i> |
| | claim <i>is not made</i> |
| money <i>is claimed</i> | money <i>is not claimed (unclaimed)</i> |
| application <i>made</i> | application <i>not made</i> |
| | <i>no application made</i> |
| money <i>applied for</i> | <i>not applied for</i> |

If any of the expressions in the left-hand column are used to describe the circumstances in which the money may be paid out to the owner then the circumstances in which the money must be paid to the Territorial Treasurer should be described in the language in the right-hand column immediately opposite. The lines should not be crossed.

In the same Ordinance new expressions such as *lien*, *surplus*, *amount owed* should not be introduced when these things have not been spoken of earlier. In some statutes, of course, there may be no difficulty, but there can easily be situations where doubt or confusion is caused when a new term is introduced, not occurring elsewhere.

LINK WORDS

It is generally desirable to make each sentence complete and self-contained. A sentence should not, as a general rule, mention persons, things or events mentioned outside the section unless there is some kind of a link

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between the two. This may be done in various ways, as for example, by a direct cross-reference, a definition, or a general reference to the Act as a whole. Sometimes, in a short statute, a definite article or a pronoun may suffice, as too many cross-references or cross-descriptions may make the statute awkward or stilted. Link words are also needed *within* a sentence to link a person, thing or event to one mentioned or to be mentioned in the sentence. This can often be done with a single word such as *so*, *thereupon*, *therewith*, *therefrom*, *thereafter*.

The demonstrative *that* can often be used, and frequently a pronoun, *he*, *it*, *they*, or the definitive article *the* is sufficient. These single words can often be used to avoid repetition. Thus, if there has been a reference to

...minutes of the proceedings at the first meeting of the creditors...

then later in the sentence a reference to *the* minutes or to *those* proceedings is adequate and avoids repetition of the description.⁶

But sometimes more elaborate descriptive words must be inserted.

Where a motor vehicle accident has occurred, the driver shall notify a constable.

There should be inserted something to link the driver to the accident — the driver *of every vehicle involved in the accident*.

REFERENCES TO PARAGRAPHS

Cross references to paragraphs are sometimes incomplete. The paragraph may be only a fragment of what is intended to be referred to.

4. (1) Every person who kindles a fire as described in section 2 or section 3 shall cause the fire to be guarded

(a) by three men in the case of a fire described in section 2, or

(b) by four men in the case of a fire described in section 3.

(2) Every person who fails to comply with paragraph (a) of subsection (1) is guilty of an offence...etc.

Here, subsection (2) is defective. Paragraph (a) does not contain the requirement — only a fragment of it. The reference should be to the total requirement, somewhat as follows:

(2) Every person who fails to comply with *subsection (1) with respect to a fire described in section 2* etc.

SHIFT IN VOICE

A section of an Ordinance respecting fire prevention switches from active to passive.

No person shall keep on any premises a larger quantity of gunpowder or other explosive than twenty-five pounds unless the same is stored at least one hundred feet from any building, nor shall any greater quantity than one hundred pounds be kept within any fire limits nor within one mile from the centre thereof.

6. See the examples, *supra* pp. 78-79, where two sentences have been combined and there are link words in the second.

THE COMPOSITION OF LEGISLATION

Good writing in general forbids such a shift in point of view. In legislation a shift from active to passive in this kind of a provision is objectionable also on the ground that there is no identifiable subject in the second coordinate clause.

MULTIPLE SUBJECTS AND PREDICATES

It is not uncommon to see two or more nouns attached to two or more verbs. Often they are not suitably matched and often grammatical misconstructions result. For example, in a former statute providing for the amalgamation of railway companies the following expressions are found.

Shall and may have and exercise powers, rights, privileges and immunities.

Shall and may perform and be subject to duties, responsibilities and restrictions.

In the first example we have first two auxiliary verbs, *shall* and *may*, followed by two principal verbs, *have* and *exercise*. *Shall* and *may* do not fit *have*, and *shall* is too strong for *exercise*. The *shall* should be omitted and the *may* linked to *exercise* — *have and may exercise* — but if they *have* it they may *exercise*, so *have* is enough. Secondly, the verbs are followed by four objects — *powers, rights, privileges and immunities*. The verb *exercise* does not fit *privileges* or *immunities*.

In the second example we also have *shall* and *may* followed by two verbs, *perform* and *be subject*, but one is active and one is passive. An auxiliary should not be made to perform this double function. Again, the verbs do not fit the objects. One does not *perform restrictions*.

CHAPTER IX

THE PROVISO

The legislative proviso deserves a chapter of its own. The use of the proviso may be illustrated by the following example:

The bank may issue and re-issue notes payable to bearer or intended for circulation: *Provided* that the bank shall not, during suspension of payment of its liabilities, issue or re-issue any

What is the grammatical function of the word *provided* — in speech is it? Obviously, the word is derived from the verb *to provide*, is its passive participle. Now, a participle may be used with an adjective to provide a verb tense, and participles may be used as adjectives. In the foregoing example, *provided* is clearly not an adjective; there is no verb it could modify. It must, therefore, be part of a verb form, but what auxiliary? The only possible auxiliary is the verb *to be*, so that the verb is *is provided* or *is being provided*. The verb form being grammatical subject must be *it*; and the true subject is Parliament. *Provided*, therefore, is an enacting word, and it means *it is provided*.

In the earliest statutes the enacting formula was the complete *provided*. Prior to 4 Henry VII the statutes were recorded first in Latin and then in Norman French. The first two words of the "Provisions of Oxford" are *Provisum est*, and this formula was also used throughout the reign of Marlborough. In the reign of Edward I, Norman French began to give place to English, and we find the expression *purveu est*. By the time we reach the reign of Edward III other enacting verbs appear. Thus, in the Statute of Westminster we have *est acorde ordine & establi* and also *acorde est & establi*. In the reign of Henry III the word *provided* was used, it always appeared as a participle coupled to a verb *est*.

The participle without the auxiliary appeared in 1353 in the Statute of 27 Edward III; the translation reads as follows:

Provided always, that at what time they come before they be taken, they will yield them to the King's prison to be justified by the law, that which the court shall award in this behalf, that they shall receive; the forfeiture of the lands, goods, and chattels above the said force, if they do not yield them within the said two months, as a

Two more appeared in 1389 in the statutes of 13 Richard II, *nevertheless* and *provided always*. The participle without the auxiliary was not rare until the reign of Henry IV, and it occurred frequently in the reigns of Henry VIII and Elizabeth I. In those days the participle invariably