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Punctuation in Legislation

By The Hon. Mr. Justice V.C.R.A.C. Crabbe*

In *Duke of Devonshire v. O'Connor* Lord Esher, M.R., stated that

"In an Act of Parliament there are no such things as brackets any more than there are such things as stops."¹

It has been contended by Lord Reid² that before 1850 at least there were no punctuation marks in the manuscript copy of an Act of Parliament. This has been challenged.³

To Thornton, punctuation

"... is a device of syntax—a means, supplementary to word order, of suggesting the grouping of words in a sentence and thus revealing its structural pattern. The purpose ... is to assist the reader to comprehend more quickly the intended meaning by providing sign posts to sentence structure."⁴

Driedger contended that

"Punctuation should not be used to convey meaning ... Punctuation, judiciously used, will guide the reader through the sentence, help him sort out its elements and subconsciously prevent him from going astray."⁵

In disagreeing with Lord Reid,⁶ Bennion states that

"Modern draftsmen of public general Acts take great care with punctuation, and it undoubtedly forms part of the Act as inscribed in the royal assent copy and thereafter published by authority."⁷

*Maxwell on Interpretation of Statutes*⁸ appears to support the contention of *Craies on Statute Law*⁹ that "punctuation forms no part of any Act." *Max-*

* I am grateful to Dr. Albert Fiadjoe of the Faculty of Law, University of the West Indies, Cave Hill, Barbados for some valuable suggestions. And I acknowledge the great debt I owe to Professor F. Reed Dickerson, Professor Emeritus of Law, Indiana University. As always his comments and criticisms make one the wiser—V.C.R.A.C.C.

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¹ (1890) 21 Q.B.D. 468 at p. 478.

² *I.R.C. v. Hinchy* [1960] A.C. 748 at p. 765.

³ Bennion, *Statute Law* (2nd ed.) p. 57.

⁴ Thornton, *Legislative Drafting* (2nd ed.) p. 33.

⁵ Driedger, *The Composition of Legislation* (2nd ed.) p. 83.

⁶ *Supra*, n. 2.

⁷ *Supra*, n. 3.

⁸ (12th ed.) p. 13.

⁹ (7th ed.), p. 198. But *Craies* had earlier stated that "The copies printed on vellum since 1850 were certainly in some cases punctuated and punctuation when it occurs in the vellum copies is, it is submitted, to be regarded, to some extent at least, as *contentanea expositio*."

well argues that "there was generally no punctuation in old statutes as engrossed on the Parliament Roll, and not all modern vellum prints of statutes are punctuated." But Bennion adds that Mellinkoff¹⁰ has shown that "English statutes have been punctuated from the earliest days."¹¹

Maxwell, however, further argues that "a provision in a statute may be read as though the punctuation which appears on the face of the Act were omitted" and that "where it is necessary to give a provision a particular construction which is at variance with the way in which the section is punctuated, it may be read as though there were in fact punctuation where none appears on the face of the Act."¹² Section 113(4) of the Housing Act 1957, is used to support the first contention. Section 10 of the Fugitive Offenders Act 1881, is used to support the second contention. Subsection (4) of section 113 of the Housing Act 1957 provides that

"The local authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require."

Harman L.J., stated that

"The obligation is not to make rebates, as grammatically it should be if the comma were there, but to make changes of rebates (if any)."¹³

In other words the provision was read as though there were no comma after the third "rents."

Could the subsection be read to mean that the local authority is compelled to review the rents? The expression "shall . . . review" is mandatory. And having reviewed the rents to make "such changes, either of rents generally or of particular rents" and to make rebates necessitated by the review—and the changes? Do not the words "if any" in brackets suggest that the changes in rents after a review may not necessarily lead to a rebate, but should that eventuality arise, then the local authority would be obliged to make a rebate? The rebate would depend upon the changes which arise out of the review of the rents. If there are no changes in the rents there would be no rebates. The expression "either of . . . or" would appear to suggest this view. Changes of what? Changes "of rents generally or of particular rents." Indeed the preceding subsection (3) grants a discretionary power to the local authority to make rebates from rent:

"The local authority may grant to any tenants such rebates from rent, subject to such terms and conditions, as they think fit."

Subsection (3) deals then with rebates. Subsection (4) deals with review of rents and what would follow a review, that is changes in rent which could, but not necessarily, lead to a rebate.¹⁴

The next example by *Maxwell* to support the contention that a provision could be read as though there were in fact punctuation where none appears is section 10 of the Fugitive Offenders Act 1881. It states as follows:

¹⁰ Mellinkoff, *The Language of the Law* (1963).

¹¹ *Supra*, n. 3.

¹² *Interpretation of Statutes* (12th ed.) p. 14.

¹³ *Luby v. Newcastle-Under-Lyme Corporation* [1965] 1 Q.B. 214 at p. 229.

¹⁴ But see Bennion, *Statutory Interpretation* pp. 594-600.

"Where it is made to appear to a superior court that by reason of the trivial nature of the case, or by reason of the application for the return of a fugitive not being made in good faith in the interests of justice or otherwise, it would, having regard to the distance, to the facilities for communication, and to all the circumstances of the case, be unjust or oppressive or too severe a punishment to return the fugitive either at all or until the expiration of a certain period, such court may discharge the fugitive, either absolutely or on bail, or order that he shall not be returned until after the expiration of the period named in the order, or may make such other order in the premises as to the court seems just."

The court held that its discretion was not limited to cases of a trivial nature. Nor to cases in which the application was not made in good faith. Its discretion could be exercised in any case in which the court thought that it would be unjust, or oppressive, or too severe. The section was thus given a wide construction as if a comma were inserted before "or otherwise."

Section 10 could be redrafted thus:

"Where it is made to appear to a superior court that

(a) by reason of the trivial nature of the case, or¹⁵

(b) by reason of the application for the return of a fugitive not being made in good faith in the interests of justice, or

(c) otherwise¹⁶

it would, having regard to the distance, to the facilities for communication, and to all the circumstances, be unjust or oppressive or too severe a punishment to return the fugitive . . ."

In this form the court would primarily have three conditions to deal with. The third condition "otherwise" being circumstances which do not fall within the ambit of paragraph (a) or (b) but which is in the discretion of the court, having regard to all the circumstances of distance and facilities, it would be unjust to return the fugitive. Was it necessary, then, for the legislative draftsman to have inserted a comma after the expression "interests of justice"? It is submitted that it was not necessary since he was dealing with an enumeration, but were he using paragraphs no doubt he would have used the comma. In this instance he has left the comma to be supplied in the mind of the audience. Even in the absence of paragraphs it may be wise to use a penultimate comma. However, it may not be necessary in view of the widespread practice of *not* using penultimate commas in some jurisdictions.

Driedger, as stated earlier, has said that punctuation should not be used to convey meaning and that when punctuation is judiciously used, it guides the reader through the sentence, helping him sort out its elements and subconsciously preventing him from going astray.¹⁷ That may well

¹⁵ It may be argued that the "or" here is not needed as well as the penultimate comma after "justice" in paragraph (b).

¹⁶ As redrafted paragraph (c) does not fit in with the introductory clause. It highlights a defect in paragraphing.

¹⁷ Driedger, *The Composition of Legislation* p. 83.

And punctuation is part of the grammatical arrangement of words in order to give meaning to what is written.

An example will suffice. The expression "Walk in love" will be understood as a mere statement. Perhaps a mere collection of a few words. A comma placed after "walk"—"walk, in love"—obviously gives some meaning to those words. It is no longer a mere statement. It is perhaps a peroration by a minister of religion to his flock to "love thy neighbour as thyself." A change in meaning is indicated again when the comma is placed after "in"—"walk in, love." Here it may be the spider inviting the fly to walk in to its parlour! It may be a husband, addressing the dear wife to come in to the study as that would not be a disturbance.

Another example. "Can he talk!". "Can he talk?". The same words. The use of the exclamation mark in the first set of words gives the meaning of an observation that the person being "spoken" of is very talkative or talks very well. The use of the question mark in the second set of words conveys the meaning that a question is being asked. There is an uncertainty here. And the enquirer seeks to know or to be given an assurance that the person "spoken" of can talk. Punctuation marks in any language are symbols that give meaning to what is written. Carey has pointed out that the purpose of punctuation

"is that the meaning of what is written should be conveyed to the reader's mind, through his eye, with the least possible delay and without any ambiguity. I would say, therefore, that the main function of punctuation is *to make perfectly clear the construction* of the written words. If this function is properly fulfilled, then automatically all risk of ambiguity will be avoided and the appropriate pauses will be indicated to the reader, when they are not so optional as to be left to him to supply."²²

The problem with punctuation in legislation then would appear to be that the legislative draftsman may be at sea in his use of punctuation marks. He may omit them when he should insert them. In cases where the legislative draftsman omits punctuation marks when he should not omit them the judges, working from context, will do their best to interpret the legislation in question and read that piece as if there were punctuation marks. In cases where the draftsman misuses punctuation marks the judges, again, in constructing the legislation will ignore the punctuation marks if by so doing the meaning will be made clear. Hence Dickerson advises that

"punctuation is a tool that the draftsman can ill afford to neglect. He should master it and use it as a finishing device together with other typographical aids in carrying meaning. But he should not rely solely on it to do what an arrangement of words can do. It is here that punctuation marks are the most abused."²³

Drugs are abused. So are the uses of other things abused. Nobody has yet suggested that drugs are of no use—or should be ignored—in medicine. In 1960 Lord Reid did not think much about punctuation in legis-

²² Carey, *Mind the Stop* (Penguin ed., 1983) p. 15.

²³ Reed Dickerson, *The Fundamentals of Legal Drafting* (1965) p. 117.

lation.²⁴ Eleven years later in *Director of Public Prosecutions v. Schildkamp* he said:

"But it may be more realistic to accept the Act as printed as being the product of the whole legislative process, and to give due weight to everything found in the printed Act . . . it is not very meaningful to say that the words of the Act represent the intention of Parliament but that punctuation, cross headings and side notes do not."²⁵

Punctuation forms part of legislation. The language of the law is a part of language as a whole. And language comprises also the writings whose value lies in beauty of form or emotional effect. Legislation is part of that literature. The law is part of the literature of a people. Punctuation plays its part—a useful role—in legislation as it does in language as a whole.

Sir Ernest Gowers dealing with punctuation quotes Aldus Manutius as saying that,

"That learned men are well known to disagree on this subject of punctuation is in itself a proof, that the knowledge of it, in theory and practice, is of some importance. I myself have learned by experience, that, if ideas that are difficult to understand are properly separated, they become clearer; and that, on the other hand, through defective punctuation, many passages are confused and distorted to such a degree, that sometimes they can with difficulty be understood, or even cannot be understood at all."²⁶

In legislation, the correct use of punctuation cannot be over-emphasised. The legislative draftsman who uses a punctuation mark must, necessarily, select the correct one. Not only that. He must use it in its right place. The punctuation marks normally found in legislation are the brackets, the colon, the comma, the dash, the full stop, the inverted commas, the semi-colon, and the creature "—". It has no name as a punctuation mark. Legislation draftsmen who use it refer to that creature, that symbol, as the "colon-dash"!

The Colon-dash and the Dash

It does appear that, that creature, that symbol, is not a punctuation mark. The legislative draftsman should avoid its use. Consider the sentence

"This Act shall be construed as being additional to and not as derogating from any other law which restricts the right of persons to attend proceedings of any court or adjudicating authority or regulates restricts or prohibits the publication of the proceedings of courts or adjudicating authorities or any matter relating to such proceedings or relates to State privilege."

Would it be appropriate to rewrite this sentence thus, using punctuation marks,

"This Act shall be construed as being additional to, and not as derogating from, any other law which:—restricts the right of persons to attend the proceedings of any court or adjudicating authority; or

²⁴ In *I.R.C. v. Hinchy* [1960] A.C. 748.

²⁵ [1971] A.C. 1.

²⁶ *The Complete Plain Words* (Pelican ed.) p. 238.

regulates, restricts or prohibits the publication of the proceedings of courts or adjudicating authorities or any matter relating to such proceedings; or relates to State privilege”?

Would the colon do on its own? Would the dash do on its own? Clearly yes. Why both? The use of both the colon and the dash is redundant. Yet this is what the legislative draftsman does when in paragraphing the sentence he writes that

“This Act shall be construed as being additional to, and not as derogating from, any other law which:—

(a) restricts the right of persons to attend the proceedings of any court or adjudicating authority, or . . .”

And when the dash is used instead of the “colon-dash” the sentence reads,

“This Act shall be construed as being additional to, and not as derogating from, any other law which—restricts the right of persons to attend the proceedings of any court or adjudicating authority; or . . .”

Paragraphing would reduce the sentence thus

“This Act shall be construed as being additional to, and not as derogating from, any other law which—

(a) restricts the right of persons to attend the proceedings of any court or adjudicating authority; or . . .”

The sentence, without the use of the “colon-dash” or the dash would read

“This Act shall be construed as being additional to, and not as derogating from, any other law which²⁷ (a) restricts the right of persons to attend the proceedings of any court or adjudicating authority; or (b) regulates, restricts or prohibits the publication of the proceedings of courts or adjudicating authorities or any matter relating to such proceedings; or (c) relates to State proceedings.”

Does the sentence lose its “elegance” if the “colon-dash” is not used, if the dash is not used, and if paragraphs are used thus

“This Act shall be construed as being additional to, and not as derogating from, any other law which

(a) restricts the right of persons to attend the proceedings of any court or adjudicating authority; or

(b) regulates, restricts or prohibits the publication of the proceedings of courts or adjudicating authorities or any matter relating to such proceedings; or

(c) relates to State proceedings.”?

It is submitted that the sentence does not lose any “elegance” without the use of the “colon-dash” or the dash. The dash is perhaps used to introduce a particularisation. Or used in pairs to enclose a parenthetical matter.²⁸ Or simply to indicate a sharp break. But it is submitted that the use of paragraphs takes care of that and that there is no need to use the dash in legislation. Its use does not explain what immediately precedes it.

²⁷ Fowler's conventions would prefer the word “that” to the word “which.”

²⁸ In the United States of America the colon would be used for the dash and the brackets to enclose parenthetical matter.

Nor does its use amplify or paraphrase what immediately precedes it. The absence of the dash does not detract from the meaning. Its use does not make the meaning of the sentence any clearer. Its continued use is considered as being established—often seen but not explained. It is simply an abomination! Indeed it would be hard to find the use of the “colon-dash”, or the dash in modern Canadian legislative drafting.

The Full Stop

The full stop does not present any problem to the legislative draftsman. When you come to the end of the sentence you do not go any further. You stop. Period.

The Inverted Commas

The inverted commas are used in legislation in defining a word or a set of words and in textual amendments. A few examples will be sufficient.

(a) Definitions

“notice” means a notice issued in terms of subsection (2) of section 4;

“record of proceedings” includes the judgment or decision of a court or adjudicating authority and any evidence or other matter or thing that forms part of, or relates to, the record of proceedings before a court or adjudicating authority.

(b) Textual amendments

- (1) In section 4, substitute the word “four” for the word “seven.”
- (2) In section 14, delete the words “where he is charged with obtaining access to any records.”
- (3) The Principal Act is hereby amended in section 34 by deleting the words
 - (a) “when he is charged with an offence under section 10;”;
 - (b) “unless otherwise provided;”;
 - (c) “as provided by the Minister.”

The Brackets²⁹

In legislation the brackets are used in order to insert a paraphrase, an information or an explanation into a sentence. Their use is only appropriate where the sentence is complete without the insertion. That is to say, they indicate material that is not part of the text.

In the sentence

“The provisions of section 24 of the Forestry Act (which provides for applications to be made to the Minister) shall apply to an application made under section 6 of this Act.”

the words in the brackets when removed from the sentence will not affect the logical and grammatical structure of the sentence. But in the sentence

²⁹ These would be called parenthesis in the United States of America. What we call square brackets they call brackets.

"The Minister may (by legislative instrument) make Regulations . . ."

the use of the brackets is wrong. The words in the brackets are not incidental to the main thought. The words "by legislative instrument" are material, that is, essential to the sentence. They indicate the *type* of instrument that the Minister should use in making the Regulations. He is not required to use an executive instrument. Nor a *Gazette* notice.

The Colon

The colon is used to make a formal introduction. It is used to indicate a series or a particularisation or a list. An example.

"The member States of the Organisation are:

- (a) the Azores and their dependencies;
- (b) the Caribbean States; and
- (c) the Dominican Republics."

But would the absence of the colon do any damage to the meaning or otherwise of the sentence? It is submitted not. And like the "colon-dash" the dash can be dispensed with.

The Comma

The comma is used mainly in ordinary writing to cause a break. In legislation form and clarity should dictate its use,

(A) *Where words or phrases are interpolated in a sentence*

- (1) "No member of the board, with the exception of the chairman, shall be paid . . ."
- (2) "The Board, with the approval of the Minister, may determine . . ."
- (3) "Each member, other than the chairman, shall be paid . . ."

(B) *For the purpose of facilitating the reading and construction of the sentence*

- (1) "Where a fine is imposed under this section, a term of imprisonment may be imposed in default of payment of the fine, but no such term shall exceed
 - (a) two years, where the term of imprisonment that may be imposed for the offence is less than five years, or . . ."
- (2) "The Board may dispose of an appeal by
 - (a) dismissing it, or
 - (b) vacating the assessment."
- (3)(i) "There is hereby established a council to be called the Football Council.
 - (ii) The Council consists of
 - (a) a chairman, to be appointed by the Minister,
 - (b) the president of the Football League, and
 - (c) one representative for each of the football clubs affiliated to the Football Association."

(C) *Where the information conveyed is necessary to the main thought*

- (1) "The Minister may, by legislative instrument, make Regulations . . ."³⁰
- (2) "A person who
 - (a) being required to attend in the manner in this Part provided, fails, without valid excuse, to attend accordingly,
 - (b) being commanded to produce a document, book or paper, in his possession or under his control, fails to produce the same,
 - (c) refuses to be sworn or to affirm, commits an offence and is liable, on summary conviction before a magistrate or a judge of a superior court, having jurisdiction in the district in which that person resides, to a penalty not exceeding four shillings."
- (3) "A person is not eligible to be a director unless he holds shares in the company as the absolute and sole owner of the shares in his individual right and not as trustee or in the right of any other person, on which not less than
 - (a) three thousand shillings, or such greater amount as the by-laws require, have been paid up, when the paid-up capital shares of the company amount to not more than one million shillings;
 - (b) four thousand shillings, or such greater amount as the by-laws require, have been paid up, when the paid-up capital shares of the company amount to more than one million shillings but do not exceed three million shillings; or
 - (c) five thousand shillings, or such greater amount as the by-laws require, have been paid up, when the paid-up capital shares of the company exceed three million shillings;
 except that in the case of not more than one-quarter of the number of directors the minimum requirements of subscriptions to shares in paragraphs (a), (b) and (c) shall be reduced to fifteen hundred shillings, two thousand shillings and twenty-five hundred shillings respectively."

(D) *Where the information conveyed is parenthetical*

- (1) "The Minister may, for the purposes of this Act, authorise the payment out of the Fund of a subsidy of . . ."
- (2) "There shall be paid out of funds provided by Parliament the expenses incurred by the Commission, including allowances paid to witnesses appearing before the Commission, which the Minister considers appropriate."
- (3) "Part IV of the Forestry Act 1984, containing supplementary provisions, shall have effect for the purposes of this Part."

The Semi-colon

This is used in legislation as a link between ideas, especially in the enumeration of paragraphs or sub-paragraphs of a tabular nature.

³⁰ This is not much different from an interpolation. And see the examples of the use of brackets at pp. 94-95 above. Also in some jurisdictions "Regulations" would not be capitalised.

"The President may, by legislative instrument, make Regulations

- (a) prescribing standards of grade, class . . . ;
- (b) providing for inspection, grading . . . ; and
- (c) generally for carrying into effect the provisions of this Act."

A problem however does arise as to when to use the comma instead of the semi-colon or the semi-colon instead of the comma.

"Words authorising the appointment of a public officer to hold office during pleasure include the power of terminating his appointment or removing or suspending him re-appointing or re-instating him and appointing another in his stead or to act in his stead in the discretion of the authority in whom the power of appointment is vested."

In re-writing the above sentence using paragraphs should the semi-colon or the comma be used to mark off the paragraphs? When the semi-colon is used the sentence would read thus

"Words authorising the appointment of a public officer to hold office during pleasure include the power of

- (a) terminating his appointment or removing or suspending him;
- (b) re-appointing or re-instating him; and
- (c) appointing another in his stead or to act in his stead;

in the discretion of the authority in whom the power of appointment is vested."

Where the comma is used the section will read

"Words authorising the appointment of a public officer to hold office during pleasure include the power of

- (a) terminating his appointment or removing or suspending him,
- (b) re-appointing or re-instating him, and
- (c) appointing another in his stead or to act in his stead,

in the discretion of the authority in whom the power of appointment is vested."

Which is the better of the two? It is submitted that use of the comma in the second example is more appropriate. The sentence does not call for that break for which a semi-colon is more appropriate. The division of the sentence is made to facilitate the reading and the construction of the sentence.

The paragraphs are not of a tabular character.

The same sentence could have been drafted as follows:

"Words authorising the appointment of a public officer to hold office during pleasure include the power, exercisable in the discretion of the authority in whom the power of appointment is vested, of

- (a) terminating his appointment or removing or suspending him;
- (b) re-appointing or re-instating him; and
- (c) appointing another in his stead or to act in his stead."

Perhaps the brackets could be used after the word "power" and after the word "vested" instead of the comma. As already indicated the words interpolated, that is to say, "exercisable in the discretion . . . is vested" are essential to the sentence and the comma is the more appropriate punctuation mark. So is the use of the semi-colon appropriate. Because the sentence has now been paragraphed, it is now of a tabular character.

In the example

"The President may, by legislative instrument, make Regulations

- (a) regulating the purchase of, and the sale of, oranges and the keeping of records relating to purchases and sales;
- (b) governing the keeping of books of account, the preparation and filing of financial statements and the audit requirement with respect to the keeping of books of accounts;
- (c) prescribing the documents, reports, statements, agreements and other information that are required to be given or delivered in accordance with this Act;
- (d) prohibiting or otherwise regulating the distribution of written material by a person in respect of the sale of oranges whether in the course of selling or otherwise; and
- (e) exempting or providing future exemption of, any person or class of persons from the operation of the Act."

it is submitted that the paragraphs being tabular in character, the appropriate punctuation mark is the semi-colon. Each of the paragraphs, with the introductory words, could be written as a separate subsection.

Driedger advises that where the division into paragraphs is made for the purposes of facilitating the reading and construction, a comma not a semi-colon is better used at the end of each paragraph or subparagraph.³¹

- (A) "Where the interest in a share of the capital stock is transmitted by or in consequence of
 - (a) the death, lunacy, bankruptcy, or insolvency of a 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 may require."
- (B) "No person shall sell an article of food that
 - (a) has in it or upon it a poisonous or harmful substance;
 - (b) is unfit for human consumption;
 - (c) consists in whole or in part of a filthy, disgusting, rotten, decomposed or diseased animal or vegetable substance;
 - (d) is adulterated; or
 - (e) was manufactured, prepared, preserved, packaged or stored under insanitary conditions."
- (C) "The President may, by legislative instrument, make Regulations for giving effect to this Act, and without prejudice to the generality of that power he may make Regulations
 - (a) for the conservation and protection of flora and fauna;
 - (b) prohibiting, limiting or otherwise regulating
 - (i) the exploitation by any person of any flora or fauna;
 - (ii) the loading, processing, transporting or possession of any flora or fauna in any part of Ruritania; and
 - (iii) the landing, importation, sale or other disposal of any flora or fauna;
 - (c) providing for the issue of licences for the purposes of this Act,

³¹ Driedger, *The Composition of Legislation* p. 136.

and prescribing their terms, conditions and forms and determining the fee for the issue of licences.”

- (D) “Where the enactment establishes a board
- (a) the quorum at a meeting of the board shall be a number of members equal to
 - (i) at least one-half of the number of members provided for by the enactment, where that number is a fixed number, and
 - (ii) where the number of members provided for by the enactment is not a fixed number but is within a range having a minimum or a maximum, at least one half of the number of members in office if that number is within the range;
 - (b) an act or thing done by a majority of the members present and voting at a meeting shall be deemed to have been done by the board, but only if the number of members so present is not less than the quorum for that meeting; and
 - (c) a vacancy in the membership of the board shall not invalidate the constitution of the board or impair the right of the members in office to act where the number of the members in office is not less than a quorum.”

A close look at example (3) under *Textual amendments* at page 94 above will reveal that almost all the punctuation marks used in legislation appear in that one sentence. The comma, the full stop, the inverted comma, the semi-colon all appear in that sentence. After the expression “section 10” in paragraph (a) there is a semi-colon followed by the closing inverted commas and then again a semi-colon. In paragraph (b) a comma precedes the closing inverted commas before the semi-colon is used. In paragraph (c) there is a full stop after the word “Minister,” then the closing inverted commas and then another full stop.

The reason is simple. In paragraph (a) the first semi-colon is part of the expression to be deleted. The second semi-colon is the normal semi-colon at the end of a paragraph in a series of paragraphs. In paragraph (b) the comma after the word “provided” is part of the expression to be deleted and the semi-colon affords the normal break between paragraphs (b) and (c). In paragraph (c) the first full stop is part of the expression to be deleted. The second full stop is the normal use of the full stop at the end of the sentence.

There was a practice in Federal Australian legislation of using a comma at the end of the last paragraph or sub-paragraph in a series of paragraphs or sub-paragraphs and before the concluding words. An example.

“Where a certificate is issued under section 74 of the Act, and

- (a) . . . ;
- (b) . . . ;
- (c) . . . ;
- (d) . . . ,

the Minister may . . .”

An issue was raised that the use of the comma at the end of the last paragraph created a problem. The problem lies in this that the words “the Minister may” where they appear after paragraph (d) may be mistakenly typed or printed as part of paragraph (d) and thus distort the meaning of

the whole provision. This error is not peculiar to Australia. In almost every jurisdiction this type of typographical error does occur. But in Australia the semi-colon is never used except at the end of a paragraph. The use of the semi-colon rather than the comma would be a signal that the words "the Minister may" do not form part of paragraph (d). Another solution may well be to draft the conferment of the discretionary power on the Minister as a subsection and the case—or condition—in Coode's sense, as a subsection also.³²

It may be argued that the legislative draftsman's final arbiter is the final court of competent jurisdiction. The courts, like Humpty Dumpty, are the masters. This places an obligation on the legislative draftsman to draft in conformity with the prevailing rules of interpretation. By those rules the rights of the individual are determined. By those rules the judges seek to divine the intention of the Legislature. Yet not every case that arises in the interpretation of a piece of legislation forms the basis of an action in court. The legislative draftsman's audience does not consist solely of the courts of law. There are the policy makers, the departmental officials. There are those to whom the statute is generally addressed. They all have to understand the statute. Indeed the judges are the audience of last resort. The reasonable man of the law is perhaps the legislative draftsman's target. That reasonable man may be an ordinary taxpayer. He may be a company director. He may be a policeman. He may be a gentleman's gentleman. How are his rights affected? What are his obligations and liabilities? Driedger has stated that statutes

"are serious documents. They are not, like the morning newspaper, to be read today and forgotten tomorrow. Like all other works of literature, they must be read and studied with care and concentration. Every word in a statute is intended to have a definite purpose, and no unnecessary words are intentionally used. All provisions in it are intended to constitute a unified whole."³³

It is submitted that punctuation forms part of that unified whole. And the legislative draftsman has the responsibility, in his use of punctuation marks, to enhance clarity and reduce ambiguity to a bare minimum. Human ingenuity is not limited. The ability to understand the written word differs from person to person. So it is with the ability to understand legislation.

And advocates would always argue as to where a comma or a semi-colon should be placed. This is done because a particular interpretation favours a particular presentation of a particular line of argument. It cannot be otherwise. Out of the anvil of argument justice, as far as humanly possible, is done. And the legislative draftsman, nonetheless will have to use punctuation marks in drafting the law. The less room he leaves for argument the better. And we cannot ignore the observation of Stephen J.,

³² The semi-colon can be used whenever a series of provisions appear in enumerated or lettered vertical list form, all of which it is convenient to classify as "tabulation" and for all of which the paragraphing and indentation are identical. Is Driedger's distinction necessary?

³³ Driedger, *The Composition of Legislation* p. xxiii.

that although Acts of Parliament "may be easy to understand, people continually try to misunderstand." The legislative draftsman must, therefore not only

"attain to a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it."³⁴

³⁴ *Re Castioni* [1891] 1 Q.B. 149, at p. 167.