

NOTES ON INTERPRETATION BILL

Introduction.

There are 3 principal objects of Interpretation legislation:

- (1) to shorten and simplify laws by the avoidance of needless repetition;
- (2) to promote consistency of form and language;
- (3) to clarify the law by the enactment of rules of construction.

These objects are indisputably admirable, so much so that an understandable excess of enthusiasm for the objects may generate unrealizable expectations as to the extent to which those objects may be achieved by means of Interpretation legislation. There is much in favour of up to date Interpretation legislation that is designed to be helpful to the producers and consumers of legislation, however care and restraint are essential in considering the desirability of including novel provisions. The danger is that the prime purpose of communicating the law may be hindered rather than assisted.

Not all consumers of statutes are aware of or have access to Interpretation legislation and of the remainder, alas, many are likely to overlook relevant provisions. These are not overriding considerations in view of the immense value of good practical Interpretation legislation, but they are of sufficient strength to obligate the draftsman to keep before him the thought that unless a provision in an Interpretation law serves to advance the successful expression and communication of law it should not be there.

The attached draft contains very little that is original. It owes much to those who have drafted and otherwise contributed to the development of Interpretation laws throughout the Commonwealth over the last hundred years. My study of many existing Interpretation statutes has led me to make a subjective selection of provisions I consider useful and beneficial. These I have endeavoured to reconcile and combine into a tolerably harmonious whole which might prove useful as a core on which a new Interpretation law for a country might be modelled.

I use the word "core" deliberately because, as is obvious, an Interpretation Bill cannot be drafted in vacuo. It must relate appropriately to the circumstances of the country for which it is designed, and its shape must take into account a host of local matters of a constitutional or legal nature,

e.g. whether the legislature is unicameral or bicameral, whether the country is a monarchy or a republic, the nature of the court structure and indeed the state of the statute book in a host of respects.

At best, the draft will prove to be a useful starting point and a sound basis for adaptation and elaboration to meet local needs. It necessarily rests on constitutional and other assumptions that may or may not be appropriate and for purposes of illustration it refers in various provisions to statutory provisions that may or may not correspond to the relevant law.

Clause 2 - (Commencement)

The enactment of a new Interpretation Act in place of an existing statute will inevitably involve transitional problems.

No matter how these are dealt with, it is very probable that some of the provisions contained in a new Interpretation Act should apply only to legislation enacted after that Act comes into operation.

It is quite possible therefore that such date will remain significant in terms of its practical application for many years. For this reason "1 January" is a good date to choose for commencement simply because it is easy to remember. Some postponement of the operation of the statute after the date of enactment is in any event desirable to give adequate time for it to be widely available and taken into account.

Clause 3 - (Application)

As the Renton Report stated, "the problem of applying the provisions of a new Interpretation Act to existing enactments is complex but not insuperable." There are 2 extreme possibilities and what is likely to be a more acceptable position somewhere between the 2 extremes. One extreme possibility is that the new Act should only apply to legislation enacted after its commencement and the old Act should continue to apply to existing legislation. This possibility is unattractive in that it denies the advantages of the new Act to the construction and operation of most statute law for very many years. The other extreme possibility is to apply the new Act to all legislation past and prospective. This possibility is similarly unattractive because it would very probably have the effect of amending various laws in ways neither intended nor foreseen. Consider for example, the possible effect of a newly inserted definition of a word contained but not defined in an existing statute.

It is necessary, even if tedious, to consider separately the impact on existing law of every provision in the new Act which is either different in substance from a corresponding provision in the old Act or is new. If the circumstances require, the application of such a provision can be restricted to future enactments. This can be achieved by a general provision of the kind in clause 3(1) and specific provisions to the contrary as for example in clause 22, which should be read with clause 3(3).

A somewhat similar result was achieved by a different route in the Interpretation Act 1978 (U.K.) which is expressed to apply generally only to future enactments but the provisions listed in Part I of Schedule 2 are applied also to existing laws.

As to the term "written law" in clause 3(1), see the note under clause 5.

Part II - (General Interpretation Provisions)

An important issue for consideration when an interpretation statute is being drafted is whether a general statutory direction as to the purposive or remedial interpretation of statutes should be included. Interpretation legislation of some countries has included provisions of this kind for many years. For example, section 11 of the Canadian Interpretation Act states -

" Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. ".

A recent example is found in the following section which was inserted in 1981 in the Australian Acts Interpretation Act.

" 15AA. (1) In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

(2) Nothing in subsection (1) shall be construed as authorizing, in the interpretation of a provision of an Act, the consideration of any matter or document not forming part of the Act for any purpose for which that matter or document could not be considered apart from that subsection. ".

Whether a provision modelled on one of the above examples is necessary or desirable is a question that is capable of being answered adequately only in the light of current judicial trends and attitudes in a particular country and for this reason the draft does not contain such a provision. The practical results of attempting to direct

courts in this manner can only be a matter of speculation.

Clause 5 (Definitions)

A definition should not be included in an Interpretation Bill unless it is expected to be of general application in a reasonably broad range of legislation. The definition must not stipulate a meaning that is significantly different from conventional usage because on a realistic view it will often be overlooked. The purpose of including definitions in Interpretation legislation is to avoid needless repetition but this must not be at the expense of successful communication. For example, a suitable definition of "Judge" might well save much needless reference to "a Judge of the Supreme Court of - " and is unlikely to confuse those who do not refer to the Interpretation Act. On the other hand a definition stipulating one of several possible meanings or a meaning either more restrictive or more extensive than the usual meaning could cause unnecessary difficulties.

Attention is drawn to the definitions of "Act", "written law" and "enactment" which classify legislation in a convenient manner. Written law is defined to include principal and subsidiary legislation and enactment is defined to include a portion of a written law.

Clause 9 - (Gender)

This provision is of note in that it extends the widely used provision so that words importing the feminine gender include the masculine. The form is taken from the Interpretation Act 1978 (U.K.).

Clause 11 - (References to Minister)

It is convenient to be able to adopt a practice of referring in legislation to "the Minister" rather than to particular designations such as "the Minister for Agriculture and Fisheries". The obvious difficulty with particular designations is that they tend, as a result of ministerial re-organizations, to become outdated, misleading and at worst ineffective. A provision such as clause 11 enables problems of this kind to be avoided.

Clause 14 - (Internal references to section etc.)

A provision similar to this clause is found in many Commonwealth jurisdictions and enables simpler references to become accepted standard practice. The necessity, however, for the clause is in my opinion doubtful and some countries rely instead on the common sense of their Courts to construe references in the manner set out at great length in the clause.

Clause 16 - (Disjunctive construction of "or")

This provision is significant in that it serves to disapply the eiusdem generis rule. The clause is taken from a definition in operation in a number of jurisdictions (e.g. Hong Kong).

Clause 17 - (Commencement)

This clause provides for Acts to come into force on the 28th day after assent unless contrary provision is made. It has been adapted from the Acts Interpretation Act of the Commonwealth of Australia. The provision is a useful provision of general application particularly in a large country where time is necessary for copies of a new law to be distributed and available. Apart from this factor, a 28 day period should avoid the complaints that quite properly arise if a statute is unavailable at the time it comes into force. Of course contrary provision can be made where the commencement circumstances make this necessary.

Clause 19 - (Commencement of commencement provision)

Where a commencement provision starts "This Act comes into operation on - "argument is possible as to the time when the commencement provision itself comes into operation. This clause, which is adapted from Manitoba, avoids the doubt. It also avoids the need (if one accepts that a doubt exists!) for the rather clumsy practice (cf. New South Wales) of providing a separate commencement provision for the commencement provision.

Clause 22 - (Exercise of powers before commencement)

This clause is a development of the useful but troublesome provision in section 37 of the Interpretation Act 1889. It takes into account the 1978 U.K. version which gave effect to Law Reform Commission recommendations. It also extends the effect of that provision so that it applies to amending legislation. A further refinement removes doubt as to the commencement of the term of office of a person appointed and acting under the power before the provision commences.

If this clause is in substitution for an existing provision, consideration should be given to the desirability of a savings provision in order to preserve the application of the previous provision to Acts passed but not in operation when the new provision commences

Clause 29 - (Headings, marginal notes etc.)

Clause 29(2) (adapted from the Commonwealth of Australia) includes reference to "heading to a section". This provision is the result of a change in presentation style in that jurisdiction whereby marginal or side notes have been

replaced by section headings.

Consideration should also be given to provision concerning punctuation and also the short title. In my opinion punctuation should be regarded as part of the enactment, but whichever view is taken it is desirable that a provision be included removing doubt. Of interest is the following clause from the Interpretation of Legislation Bill 1980 introduced to the House of Lords by Lord Scarman to give effect to Law Reform Commission recommendations. The Bill was not enacted.

" (1) In ascertaining the meaning of any provision of an Act, the matters which may be considered shall, in addition to those which may be considered for that purpose apart from this section, include the following, that is to say -

- (a) all indications provided by the Act as printed by authority, including cross headings, punctuation and side-notes, and the short title of the Act;
- (b) any relevant report of a Royal Commission, Committee or other body which had been presented or made to or laid before Parliament or either House before the time when the Act was passed;
- (c) any relevant treaty or other international agreement which is referred to in the Act or of which copies had been presented to Parliament by command of Her Majesty before that time, whether or not the United Kingdom were bound by it at that time;
- (d) any other document bearing upon the subject-matter of the legislation which had been presented to Parliament by command of Her Majesty before that time;
- (e) any document (whether falling within the foregoing paragraphs or not) which is declared by the Act to be a relevant document for the purposes of this section.

(2) The weight to be given for the purposes of this section to any such matter as is mentioned in subsection (1) shall be no more than is appropriate in the circumstances.

(3) Nothing in this section shall be construed as authorising the consideration of reports of proceedings in Parliament for any purpose for which they could not be considered apart from this section. ".

Clause 38 - (Commencement of subsidiary legislation)

Subclause (1) should be compared with clause 17(2) and consideration given to a like provision e.g. commencement might be 28 days after publication in the Gazette unless otherwise provided.

It is important to include provision in some sufficient manner for the publication of subsidiary legislation.

Clause 40 - (Powers to make subsidiary legislation)

Subclause (2) is of practical value. Although presentation styles may differ, it is desirable that the source or authority for a particular piece of subsidiary legislation should somewhere appear on its face. In all but very straightforward cases, this practice is inhibited in the absence of subclause (2) by the fear of omitting reference to one or more source provisions and thereby possibly casting doubt on the vires of the legislation.

Subclause (3) does not derogate in any way from the necessity to comply with any condition precedent attached to the exercise of a power to make subsidiary legislation; it goes no further than to presume compliance.

Clause 52 - (Correction of erroneous exercise of power)

Twenty-five years' experience of various public services has provided me with proof beyond reasonable doubt of the universality of the occurrence of inexplicable human errors. This clause, adapted from a New Zealand model, offers some relief.

Clause 55 - (Delegation)

This clause is taken from an Australian model and removes the doubt which might otherwise arise in the case of the delegation of a statutory function expressed to be dependent upon a state of mind or opinion of the person on whom the power is conferred.

Clause 58 - (Computation of time)

So much unnecessary confusion (and expensive litigation) can arise from careless drafting in this area that a clause along these lines is very strongly recommended. A draftsman's prime responsibility in relation to provisions as to time is to achieve certainty, and clause 58 should enable this to be achieved.

Clause 59 - (Computation of months)

This excellent provision is of Ghanaian origin. The examples are not essential and could be omitted, but to me at least they do assist easier understanding.

Part IX - (Procedures and Penalties)

The contents of this Part may in some jurisdictions be more suitably dealt with in legislation specifically dealing with criminal procedure. In any event a check must be made to ensure desirability and compatibility.

Clause 68 - (Statement of penalty)

In days gone by, it was not unusual to find near the end of an Act an omnibus penalty provision which provided that contraventions of the Act amounted to offences and stipulated a penalty for such offences. Such provisions are objectionable because of the doubt that may arise as to which conduct constitutes an offence. For example, a provision of procedural type, intended to be directory rather than mandatory, might quite unintentionally be constituted penal in nature. It is essential that it be clear from a reading of a provision whether a breach of that provision amounts to an offence. One method of achieving this is the formula - "A person who commits an offence and is liable to a". An alternative which is widely used in Australia is authorized by a general provision along the lines of clause 68. The provision permits some shortening of penal provisions but does make it clear that a penal provision is created. Clause 68 does no more than offer an acceptable alternative to the more traditional formulations.