

Draft: Proposed programme for workshop on legislative drafting

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Draft
**PROPOSED PROGRAMME FOR WORKSHOP ON
LEGISLATIVE DRAFTING**

Times:09:00 - 12:00
Venue:Edu/Law Building 4-66

This Programme Outline aims to cover the main issues which the workshop participants may wish to consider for designing learning processes that, their own particular institutions, will likely help to strengthen the capacity of persons engaged in drafting legislation or (eg as legislators) in assessing proposed bills' utility. The draft Programme remains flexible. If you think of additional issues for consideration, or case studies likely to prove useful, please suggest them for inclusion in the workshop discussions. As a principal text, we will use "Legislative Drafting for Democratic Social change: A Manual for Drafters" by Ann Seidman, Robert B. Seidman and Nalin Abeysekera.¹ (Ultimately, of course, Southern African teachers of legislative drafting will want to develop their own Manual, using Southern African examples and resting on Southern African practice.)

Monday 18/9: General introduction; overview

Recommended readings: Manual, chs. 1,2

- * the problems, issues and challenges of offering a course in legislative drafting in a developing country;
- * diverse groups of potential drafters: different levels of drafting expertise at different levels of drafting (e.g., national legislation; subordinate legislation; regional legislation; local authority regulations);
- * two perceptions of the drafter's task: (i) As scrivener (ii) as designing architect.

¹ Mr. Abeysekera is the Legal Draftsman of Sri Lanka. He also serves as Counsel to the President of Sri Lanka, and as a member of its Law Commission. A founding member of the Commonwealth Association of Legislative Counsel, he is a member of its Council.

Tuesday 19/9: Drafting and justifying legislation as an essential part of the law making process:

Recommended reading: Ann Seidman and Robert B. Seidman, "Beyond Contested elections: The Processes of Bill Creation and the Fulfilment of Democracy's Promise to the Third World" 34 **Harvard Journal of Legislation** 1 (1997).

*Existing drafting Southern African drafting practices

- >perceptions of the drafter's role
- > policy decisions;
- > drafting instructions;
- > comments;
- > drafting programmes;
- > preparation & submission to the legislature;
- > checklists.

*Three entropic methods of drafting legislation:

- >Copying law,
- >criminalizing behaviors,
- >drafting compromises between conflicting interest groups.

*Teaching drafters an appropriate decision-making methodology; the research report as a teaching tool.

Wednesday 20/9: Teaching students how to write a research report

Recommended readings: Manual, chs 4,5;

*Two steps in specifying the social problem that a bill will address.

*Generating hypotheses to explain problematic behaviors of primary role occupants and implementing agency officials; use of ROCCIPI checklist.

*Sources of available information to falsify hypotheses:

- >official documents: eg submissions, policy documents, papers & explanatory memoranda;
- >research institutions' and NGOs' reports;
- >articles on comparative law and experiences
- >community hearings

*Qualitative vs. quantitative data as warrant for explanatory hypotheses..

Thursday 21/9: The function of the research report: II. Teaching students how to design a bill's detailed provisions.

Recommended readings: Manual, chs. 4,5; research report and bill designed to improve care of elderly (submitted to the Gauteng Legislature by the Gauteng Department of Welfare, 1997).

*Possible sources from which to draw ideas for a bill's detailed provisions:

- >other countries' laws and experience;
- >articles, books, internet;
- >drafters' (including ministry personnel's) own ideas.

* Making conforming behavior by primary role occupants' and implementation agency officials more likely.

- >Use of ROCCIPI checklist.

*Weighing alternative detailed provisions' social costs and benefits to determine which to include in the bill.

*Designing measures for monitoring and evaluation of the new law.

Friday 22/9: Teaching issues of form: Decisions concerning a bill's structure.

Recommended readings: Manual, ch. 8

* The unity of form and substance in drafting.

* When to start writing a research report; when to start writing a bill; holding a dialogue with your draft.

* The formal structure of legislation (numbering, Parts, chapters, sections; footnotes, etc.); layout and typography.

* To what extent should we teach that present South African practice *determines* issues of form? For example, with respect of structure –

- >The use of long titles and preambles;
- >The use of General Principles clauses and their content;
- > The form and location of interpretation sections;
- > The order of sections creating and organizing an agency and those detailing its powers and duties.

* Designing a bill's structure: General principles; steps in developing a

bill's architecture.

*A default outline to facilitate structuring a user-friendly bill.

Monday 25/9 - Public holiday

Tuesday 26/9: Teaching rules with respect of a bill's syntax I:

How

Recommended readings: Manual, ch. 9

*How, just as substance drives form, form drives substance.

*Techniques for teaching syntax .

* For whom do we draft?

> Old vs new style;

> 'Plain language' vs legalese.

*Importance of emphasizing *who* does *what*.

*Drafting techniques to clarify the Who.

*Drafting techniques to specify the What.

*The paradox between controlling discretion and fostering creativity: How much detail?

Wednesday 27/9: Teaching rules with respect of a bill's syntax II; keeping the corpus of the law in order.

Recommended readings: Manual, ch. 10; skim chs. 11-13..

* A bill's precision and predictability

* Precision and the rule of law

* The meaning of meaning

* Problems posed by translating bills into different languages

* Internal aids to interpretation.

* Drafting within constraints.

* Placing the bill within the corpus of the law: Amendments, repeals, codifications, consolidations, etc.

Thursday 28/9: The critique session as a teaching tool I.

How

Recommended reading: The Gauteng bill on care for the elderly (see above);

and Sri Lanka draft Intellectual Property Development Bill;

Assignments:

A. The research report:

- > Introduction.
- > Statement of the social problem addressed.
- > Explanations.
- > Solutions.
- > Form and structure.

B. The bill

- > Architecture.
- > Syntax (i.e., sentence structure).
- > Internal aids to interpretation.
- > Conformity to constitution, judicial rules of interpretation and other constraints.
- > Placing the bill within the corpus of the law.

Friday 29/9: Evaluation and on-going cooperation:

Recommended reading: draft syllabus for distance course (to take place Feb-May, 2000)

*Critique distance syllabus course as possible channel for continuing South-South cooperation in developing legislative theory, methodology and techniques

*Evaluate workshop and consider possible future meeting to share experiences to improve learning processes, and develop materials to strengthen regional legislative drafting programs.