House of Commons

Minutes of Evidence taken before the Select Committee on Procedure

THE STOW HILL REPORT ON LEGISLATIVE TECHNIQUE

Mr. F.A.R.Bennion, Statute Law Society, called in and examined.

Chairman: Sir Robin Turton.

1124. Mr. Bennion, we are very grateful to you for coming to put the views forward of the Statute Law Society on the First Report of the Stow Hill Committee. I gather you would like to make an introductory statement on the matter?

I think it might help the Committee if I made a short introductory statement. Although it is true that I am a member of the council of the Statute Law Society and also both of the Heap and Stow Hill committees, I am here really in an individual capacity. I can only claim experience as a draftsman of legislation over a period of about 15 years. For most of that time - until 1965 - I was in the Parliamentary Counsel Office here, but I have also drafted legislation in Pakistan, Ghana and currently in Jamaica. I feel my position is a little delicate because some of the views I hold on the subject under discussion tonight differ from the views of Sir John Fiennes who was a senior and very much respected colleague of mine in former days. But such is my zeal for the statute law that I feel such things should not prevent me making my views known. Could I say very shortly what the essence of the approach I make to this subject is. The Statute Law Society was formed to represent the interests of users of the Statute Book itself. In other words, the main emphasis of the Society is on the finished product. The Society is mainly concerned with what it feels to be the unsatisfactory state of the Statute Book from the point of view of the user, and its main remedy for that, I think it is true to say, is a great deal more consolidation of the statute law than we are getting. It believes that when the statute law is consolidated it should be kept in consolidated form by the use of the system of amendment which is generally known as textual amendment, whereby any amendments to existing law are slotted in to the main Act rather than being piled one on top of the other, as often happens under the present system. We feel that if you could reduce the statute law into a consolidated form and then keep it that way by this system of textual amendment, a great many of our problems would be solved. That, Sir, is my preliminary observation.

1125. Sir John Fiennes in his memorandum told us "there is nothing so destructive of any logical and coherent arrangement as a continued process of textual amendment", saying that it resulted in the compression of new matter, and a vicious degree of compression, and lengthening unduly the clause or subsection into which the amendment has to be fitted. What would you say to those criticisms of Sir John Fiennes?
I think those remarks of Sir John's were made in relation to Bills in their passage through Parliament. He is talking there about the effect on a Bill of its amendment in both Houses of Parliament. While he might feel that something of this criticism also applied to the system of amending Acts which I have referred to, I am not sure he would be as emphatic as that. The difference is that once a Bill has left the draftsman's hands and been introduced into Parliament he is up against the Parliamentary timetable and has very little time to work in, and it is not possible to take the Bill back if it is heavily amended and re-draw and re-structure it. That does not apply where the draftsman is given the task of amending a consolidated Act and drawing up the amendments before his Bill is introduced into Parliament.

1126. The Stow Hill Report's advocacy of textual amendment is really directed at Consolidation Bills?

Yes, or, rather, at the amendment of Consolidation Acts.

1127. Whereas Sir John Fiennes was talking about other Bills. Is that the position?
Sir John Fiennes, as I understand his memorandum, is talking about any Bill that is being amended in Parliament, whereas we are talking about a different matter. We are talking about taking a consolidated Act and amending it by the textual method - that is by slotting the amendments in so that the whole of the law on that subject remains in one place.

1128. You would therefore have no objection to referential amendments to the ordinary Bills being introduced?
No, Sir, we have no objection to that and we see no advantage in textual amendment except where the law is already consolidated or one is amending a brand new Act on a special subject.

1129. The next point I wonder if you would help us over is that Sir John Fiennes said in his memorandum that the obligation to start a new paragraph with a new number each time one reaches a full stop contributes to making clauses longer, but when he came before us he said the practice was quite unavoidable and that it was a common rule in all Commonwealth countries. You have been helping in a number of Commonwealth countries, Mr. Bennion, and I am wondering whether you can tell us whether this is a fact. There are three points here - (i) whether this is a drawback and something which lengthens legislation; (ii) whether it is unavoidable; and (iii) whether it is the rule in Commonwealth countries?
Yes, I think it does lengthen the sentences because under the practice in this country, as Sir John has said, one has to start a new paragraph, new section or new subsection every time one reaches a full stop. That leads to very long sentences. As to whether it is unavoidable, I am not aware of any statutory requirement which prevents a subsection being divided into several sentences. The language-shortening Act of 1850 to which Sir John referred had a provision in section 2 which required all Acts to be divided into sections "if there be more Enactments than one, which Sections shall be deemed to be substantive Enactments, without any introductory words". That was a requirement to divide Acts into sections. However, that was dropped in the Interpretation Act 1889 which is the current Act. Section 8 of that Act only refers to "Every section of an Act shall have effect as a substantive enactment without introductory words". It does not therefore seem that there is any statutory requirement to have only one sentence in a subsection or a section. As for the practice overseas, I have made a rather hasty search of some of my overseas statute books. I found, for example, an ordinance of the Gold Coast which had a section with three different sentences in it and which was not divided up into subsections or paragraphs. Then I found one in Jamaica. Both of these are rather old; they go back to the 1890s. As far as present practice is concerned, I found a New Zealand Act of 1967 called the Animal Remedies Act. In section 44 of that Act both subsection (1) and subsection (2) each contain two sentences, so it is clear that the inclusion of several sentences within one paragraph or section is or has been the practice in Commonwealth countries. I do not think it is very common, but I do feel it probably would aid comprehension. If one reads these sections, they flow on in a more readily understandable way. I still do draft in the way usual in this country; somehow it becomes ingrained and you feel you have go to say everything that needs saying on one particular point in a single sentence. This can, however, spin out the length of it and make it difficult to understand.
1130. You have instanced Commonwealth countries. Do you know about European countries?
No, Sir, I am not competent to answer on that.

1131. You mentioned that you regard the people who are concerned with the Stow Hill Report as the users of legislation. Sir John divided those into present users and future users and suggested that usually their interests conflicted - in other words that the interests of Parliament coincided with those of the present users and conflicted with the interests of future users. Would you accept that view?
Yes, I would accept it. I think it is the difference between the person who wants to know what changes in the law either a Bill proposes or a new Act makes and the person who wants to know the state of the law at a given moment. The interests both of Members of Parliament and of those who want to see what changes a new Act makes are much the same in this respect, but we feel that primarily one has to look at the permanent state of the Statute Book. This is,afterall, a procedure for legislating and the ultimate product is the permanent

Statute Book, whereas it does seem that at the present time there is rather more emphasis on the processes of producing legislation than on the final product.

1132. Going on from that, Sir John says that conglomerate Bills are an outstanding cause of difficulty in producing intelligible legislation. Do you agree with this, and what is the remedy for it?
I do not think I do, with respect, agree with that because it seems to me to illustrate a basic problem. That is that draftsmen in this country have come to regard every Bill they draft as a separate work of art, one might almost say - as a separate thing in itself which should in itself be well arranged and self-exlanatory without recourse to the existing law. Then a conglomerate Bill is a monstrosity. You cannot arrange it properly, its various provisions are not connected with each other and it is inartistic. But if you take the other view - that you should look at the Statute Book as a permanent thing and theStatuteBook as in a consolidated form - then it does not matter, if you are going to use textual amendments, what shape the Bill itself takes, provided, of course, there are sufficient explanations of its provisions for Members of Parliament to understand.

Dame Irene Ward.
1133. You would choose the second method, would you?
Yes, we feel we ought. In the case of an amending Bill it does not really matter whether it is a work of art in itself, provided it achieves the result of amending the law and leaving the permanent law in a proper state. However, it is essential to make clear to Members of Parliament and to present users, as they are described,what the effect of the Bill is,but that does not, we feel, have to be done in the text of the Bill itself.

Mr. Albu.
1134. Are you suggesting that the great majority of Bills are, in a sense, amending Bills owing to the fact that they are amending the Statute Book?
They are amending statutory provisions on a particular subject, unless it is a brand new subject like the first Atomic Energy Bill.

1135. In other words, most Bills are, in a sense, amending Bills. These are not very easy matters for laymen to follow. I am not sure I understood what you said about Sir John Fiennes' evidence on the question of textual amendment or referential amendment. I did not read his evidence as meaning that he was referring to amendment during the passage of a Bill through the House. The fact is that during the passage of a Bill through the House it is amended by textual amendment?

My point was that the passage which the Chairman quoted from Sir John Fiennes' memorandum related to the amendment of a Bill as it went through the House. If I may refer the Committee to paragraph 4 of his memorandum* which leads into the passage quoted, that says, "Most Bills are subject to a continuous process of textual amendment from the second to the final (perhaps twentieth) draft, as well as in the two Houses; radical changes are naturally easier before introduction, but even then there is too little opportunity to reconsider the whole with a fresh eye after the substance is settled". Then Sir John goes on in paragraph 5 to say that "there is nothing so destructive of any logical and coherent arrangement as a continued process of textual amendment". I take that to relate to textual amendment of the Bill in the manner mentioned in the previous paragraph, because he says after that, "If the arrangement is not disturbed (as it usually cannot be after introduction)..." - that is, after introduction of a Bill.

Sir Robin Turton.
1136. I think that Sir John Fiennes was not appreciating that the Stow Hill Report was dealing with Consolidation Bills and not Bills in general?
Yes.

1137. That is a divergence between you which we perfectly understand. Finally, the Stow Hill Report is really advocating a programme of consolidating legislation and saying that at the present rate you would take 60 years to do your work of consolidation. Quite clearly from the evidence of Sir John Fiennes there is a great shortage of Parliamentary draftsmen, and I do not quite see how your programme can be fitted in with the

work of the Law Commission on the law reform Bills which have got to take priority. Is there any way of getting over these rather difficult hurdles?
We would suggest first of all the adoption in principle of the desirability of more or less total consolidation of the Statute Book as an aim to be approached. That has not been adopted and the Law Commission itself has declined to adopt it as a principle. If it were adopted, we feel it is of such importance to get the Statute Book into proper shape that it should be given priority over technical law reform Bills. Then, we would say, again if that principle were adopted, that there should be a programme of training draftsmen and a serious attempt made to enlist more people into this profession. There is a world shortage of legislative draftsmen. In this country we did begin, and still continue, I believe, a training programme for Commonwealth draftsmen at Marlborough House. In fact I was a lecturer at the first of those programmes. We are prepared to provide training for Commonwealth draftsmen here but we do not seem to have contemplated introducing a proper training system for our own draftsmen. If it were appreciated what an immense waste of time, money, effort and everything else is involved in the untidy state of our Statute Book, it would be seen to be a real priority to recruit and train more people for this work.

Dame Irene Ward.
1138. Has there ever been a training scheme for Parliamentary draftsmen?
Not for draftsmen in the United Kingdom.

1139. Never?
I am sure there never has been. It is done in the old way by joining the Parliamentary Counsel Office and working one's way up through it.

Sir Robin Turton.
1140. Are your views on this in line with the views of Sir Leslie Scarman [later Lord Scarman]of the Law Commission?
It is difficult for me to answer for Sir Leslie. I think he would like to see more or less total consolidation but he has, perhaps, a greater sense than I have myself of the difficulties of producing more draftsmen.

Chairman: Sir Robin Turton. Thank you very much, Mr. Bennion, for your very helpful evidence.

Second Report from the Select Committee on Procedure, Session 1970-71 HC 538, p 223 (oral evidence).