

Application of information communication technology (ICT) to legislative drafting: case studies of legislative drafting assistant softwares in Nigeria and Canada

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This paper examines the application of Information Communication Technology (ICT) tools by lawyers to simplify the task of legislative drafting of Bills and legislation. Using case studies in Nigeria and Canada some examples of the application of ICT to legislative drafting are examined. The idea of use and application of ICT tools for legislative drafting in Nigeria was first mooted in Nigeria in 1992 by the late Professor Keith Patchett during the Nigerian course in Legislative Drafting held in London. The lawyers that participated in the said course returned to Nigeria and trained other lawyers including Dr. Tonye Clinton Jaja, who led a team of computer experts to design a simple software for legislative drafting. Regarding Canada, Chantal Lamarre explains how the application of ICT for legislative drafting can improve the overall legislative process.

Information and Communication Technology (ICT) – Legislative Drafting

SUMMARY: 1. Introduction – 2. Statement of the Problem and Background to the Research – 3. The Contents of the Legislative Drafting software – 4. How to use the Manual – 5. Checklist 1 - Definitions and Principles of a good Bill – 6. Checklist 2 - Principles of a good Bill – 7. Checklist 3 - Benchmarks for Structure of a Bill – 8. Using legislative information management software to facilitate the drafting, consolidating and publishing processes: the examples of Canada and other federal, provincial and municipal jurisdictions

1. Introduction

“Every [legislative] drafting office needs a practice or style manual and a mechanism to keep it under review. This is worth the labour regardless of the size of the [drafting] office. Production of such a manual requires a careful and critical review of existing practices and this exercise is itself likely to result in improvements. . . . In addition to a style manual, every drafting office needs a system for noting useful precedents and other helpful materials. An established procedure for sharing experience and knowledge can contribute hugely to the effectiveness and to the contentedness of the office”¹. The above state-

ment underlines the importance of a Bill Drafting Manual. By implication, the above statement also provides justification for each drafting office to apply information communication technology (ICT) tools for performance of legislative drafting duties.

The history of emergence and development of legislative drafting as a sub-discipline of the legal profession would not be complete without a mention of the progressive application of ICT tools. Broadly speaking, the application of ICT to the legal profession is now well developed to a full-fledged discipline that is now referred to as “legal informatics” whereas the application of ICT to judicial is called “jurimetrics”.

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As far back as the year 1992, when the pioneer legislative drafters from Nigeria attended a Royal Institute of Public Administration (RIPA) course on legislative drafting, the course lecturer the late Professor Keith W. Patchett dedicated an entire chapter to “Computer-Based Drafting”². However, ever since the year 1992 there has not been any published significant break-through in the application of ICT to legislative drafting in Nigeria until the year 2020 when Dr. Tonye Clinton Jaja led a team of indigenous Nigerian lawyers and computer experts to design and develop a computer-assisted legislative drafting programme. Dr. Tonye Clinton Jaja is a Nigerian citizen with a Master of Laws (LLM) and PhD in legislative drafting degrees respectively.

This legislative drafting assistant software was inspired by the search to provide solution to the problem of legislative drafting in Nigeria which is presented in the sub-heading below.

2. Statement of the Problem and Background to the Research

In the year 2014, Dr. Jaja undertook an empirical research to determine whether there is a problem with legislative drafting or not in Nigeria.

In a nutshell, that empirical study revealed and provided evidence that there is a dearth of personnel, knowledge and application of ICT tools for legislative drafting in Nigeria.

The empirical evidence was collated during a national workshop on legislative drafting held at the National Institute for Legislative Studies in Abuja. The conference was attended by the staff of the thirty-six (36) State Houses of Assembly.

3. The Contents of the Legislative Drafting software

As mentioned at the outset, there is a need for each Drafting Office to produce its own in-house legislative drafting manual and by implication the ICT tools that it will apply to perform its Legislative drafting style.

For example, the House of Representatives is vested with the power and authority by virtue of Section 60, Constitution of Federal Republic of Nigeria (CFRN), 1999 (as amended) which states that: “Subject to the provisions of this Constitution the Senate or the House of Representatives shall have power to regulate its own procedure...”. Drawing from this power, a legislative Bill drafting manual was produced for the House of Representatives in the year

2019. The said Manual is by implication a demonstration of the House of Representatives’ application of its powers to regulate its procedure for drafting of Bills in exercise of the broad powers conferred upon it under section 60 of the CFRN, 1999.

As one of the legislative drafting consultants for the said Manual, Dr. Jaja conducted further research, modified and adapted some of the contents of the said Manual to produce this legislative drafting assistant software.

The design and development of the said legislative drafting manual was underpinned by the desire to simplify the art and science of legislative drafting to the extent that even a “layperson” without any knowledge of the law could draft a Bill using the said legislative drafting assistant software.

To achieve this cardinal objective, the legislative drafting assistant software provides samples and precedents, examples of the four principal parts of a Bill namely (1) Preliminary (2) Principal (3) Miscellaneous and (4) Final Provisions.

This makes it easier for the user to choose and adapt the text by copying and pasting to suit the current Bill that the user is drafting. At the beginning of the software the user is also prompted to choose whether it is a “Fresh” Bill or “Amendment” Bill. Depending on the choice, the software provides the user with a structure for each different kind of Bill.

The preparation and consideration of a Bill is a multi-stage process, which begins with preliminary preparation and ends with the entry into force of the Act, its implementation and follow-up³. This Manual therefore provides general guidance for drafting and analysis of Bills in order to ensure consistency and standardization in the language, structure and style of Bills. The imperative for consistency and standardization in the language and structure of Bills is based on the fact that section 58 (1) of the Constitution of the Federal Republic of Nigeria states that the power of the National Assembly to make laws shall be exercised by Bills passed by both the Senate and House of Representatives.

Hence, the objectives of the Manual are to:

1. eliminate as much as possible, inconsistency and deficiency in the form, language and structure of Bills,
2. ensure standardization in drafting and structuring of Bills,
3. facilitate the work of drafting Bills by serving as toolkit, and
4. ensure that Bills are drafted in the language and structure that make them clear, certain, concise, consistent, correlated, complete and comprehensible to the public.



4. How to use the Manual

The Manual is designed for use by legislators, legislative support staff and consultants, etc. It is to be used as a standard measure of checking whether any proposed Bill complies with the basic requirements of a Bill.

The Manual contains series of “checklists”⁴ and “templates” on drafting of Bills which should be complied with. Each checklist contains a list of “benchmark of minimum standards”.

The checklists in the Manual are numbered from 1 to 10 in 4 chapters. It is recommended that the user begins by reviewing the Bill clause-by-clause using Checklist 1 before proceeding to use Checklist 2 and so on. While undertaking the clause-by-clause review of the Bill using the Checklist as a parameter, the users can make marginal notes or comments to confirm whether or not the clause complies with each of the items in the basic benchmarks. At the end of this Manual there is an Appendix containing some samples and Templates of Bills and other items.

5. Checklist 1 - Definitions and Principles of a good Bill

A Bill is a legislative proposal. Bills must be drafted in such a way that when passed into law, can be «effective, clear, precise, intelligible and capable of only one interpretation, which is the true purpose and intent of the policy as envisaged by the policy initiators»⁵. It should also be noted that Bill drafting is an area of specialist legal practice⁶.

In order to undertake an overall view of the Bill, the drafter should be guided by the need for effectiveness. «Effectiveness means that the legislation manages to introduce mechanisms capable of producing the desired... results.»⁷ Elements of “effectiveness” are as follows:

- Clarity (easily perceived or understood)
- Precision (exactness of expression and detail)
- Unambiguity (certain or exact meaning)
- Plain language (non-legalese)
- Gender-Neutral language.

These elements of effectiveness in Bill drafting are in line with the seven C’s of a good Bill, which are (i) Clarity; (ii) Certainty; (iii) Conciseness; (iv) Consistency; (v) Correlation; (vi) Completeness; (vii) Comprehensibility.

In terms of conciseness the drafter should not use unnecessary or repetitious words or phrases. The Bill should cover all reasonably foreseeable circumstances likely to arise. The drafter should use the same style throughout to achieve consistency while

the legislative intention being communicated should be certain so that those to be affected are not left in doubt as to the extent of their duties, obligations, powers, discretions or rights. The drafter should ensure that the legislation is drafted in the language and structure that the reader does not only understand, but must be seen to understand.

6. Checklist 2 - Principles of a good Bill

- Use short sentences
- Every paragraph should start with the topic sentence
- Use the active voices
- Avoid legal jargons (hereof, thereof, hereunder, null and void)
- Refer to all people and companies by name
- Avoid abbreviations
- Use punctuation marks properly
- Avoid the use of archaic words
- Avoid the use of passive language
- Avoid verboseness.

7. Checklist 3 - Benchmarks for Structure of a Bill

Legislative drafting requires a systematic application of a range of analytical and writing skills⁸. Broadly, a Bill is composed of four major parts namely: Preliminary provisions; Principal provisions; Miscellaneous provisions and Final provisions.

- Preliminary provisions
 - Long title
 - Preamble (in Nigeria, preambles are only used in Bills that are domestication of Treaties)
 - Enacting clause
 - Purpose Clause (for civil law jurisdictions)
 - Commencement
 - Duration/Expiry
 - Application
- Principal provisions
 - Substantive provisions
 - Administrative provisions
- Miscellaneous
 - Offences and provisions ancillary to offences such as time limit for prosecution, continuing offences, offences by corporations, and vicarious responsibility Miscellaneous and supplementary provisions such as evidentiary provisions, a power to make subordinate legislation, service of notices, powers of entry and search, seizure and arrest.
- Final Provisions



- Savings and transitional (these may also be placed in a schedule if they are long)
- Repeals
- Consequential amendments (these may be placed in an annex especially if the repeals and consequential amendments are numerous and can conveniently be presented in a tabular form)
- Definitions
- Interpretation
- Short title
- Explanatory Memorandum
- Schedules

Long Title. Every Bill has a long title. The purpose of the long title is to provide a concise but comprehensive statement of the subject matter of the Bill, by describing the nature of the proposed Bill or legislation. As a general Rule of interpretation of Statutes, the long title does not form part of the Bill or legislation but it is useful for discerning the intention of the legislature. The title, generally referred to as the long title, is prefixed to the Bill and retained in the Act, and is different from the short title. Care must be taken to ensure that the title is sufficiently wide to cover all the provisions of the Bill, and that it is not vague, otherwise it may invite amendments. For instance, the long title is usually expressed as follows: “A Bill for an Act to Provide for the establishment of the National Transport Commission as an independent Multi-Model Economic Regulator for the Transport Industry and for Other Related Matters”.

Enacting Formula. The enacting formula states the authority by which legislation is made. For instance, an enacting formula for a federal legislation is usually stated as follows: “The National Assembly of the Federal Republic of Nigeria enacts:”. The enacting formula for a legislation by a State House of Assembly would be: “The Kaduna State House of Assembly enacts:”. The enacting formula for a Local Government would be as follows: “I, Dr. Nasiru Tijani, Chairman of Bwari Local Government Area of Niger State, by virtue of the powers conferred upon me by the Local Government Law of Nigeria State, 2009, do make the following:”.

Purpose Clause. In civil law jurisdictions and in some common law jurisdictions such as New Zealand, there is usually a “Purpose Clause” that provides a statement of the object, goal and purpose of the Bill or legislation. In Nigeria, in recent times, certain legislation are copying this trend by commencing with a statement of the goals and objectives of the Bill or legislation. For example, section 1 of the Environmental Impact Assessment Act, Chapter E12, Laws of the Federation of Nigeria, 2004 reads: “Goals and

objectives of Environmental Impact Assessment”. In Nigeria, the Explanatory Memorandum serves as the equivalent of the Purpose Clause.

Application Clause. A law passed by Parliament is applicable throughout the country except where it is otherwise expressly provided for in the Statute itself. It is, however, usual and convenient and at times necessary to specify the extent explicitly. It gives an indication of an area of application of an Act. For instance the application clause is usually expressed thus: “This Act shall apply to the provision or use of transport and related services in marine, rail and road transport in Nigeria”. An extent or application clause may, however, be rendered unnecessary by the nature of the Act when it indicates the areas to which it will apply, or denotes the persons who will be subject to it, or signifies things which will come under its purview. In Nigeria, all laws made by the National Assembly in respect of matters contained in the Exclusive Legislative List apply throughout the federation. However, some laws made by the National Assembly, have limited application to the Federal Capital Territory (FCT) alone because the National Assembly is the legislature of the FCT.

Commencement Clause. The commencement clause forms an important provision of a Bill. The general rule regarding the coming into operation of enactments is that in the absence of any express provision to the contrary an Act comes into operation on the day on which it receives the assent of the President. In view of the above general provision, Acts which are intended to take effect at once need not, and do not usually, have a commencement clause. In some cases, it is necessary to give retrospective effect to an enactment but note that there is a constitutional prohibition on giving retrospective effect to criminal legislation in Nigeria⁹.

Interpretation or Definition Clause. Where the expressions defined occur only in a single section, the definitions are given in that section and where the definitions are necessary only for a particular part or chapter, they are given in that part of chapter. Definitions are required to avoid tedious paraphrases, explain terms which are of ambiguous or uncertain meaning, give to a term which has been judicially interpreted or a sense other than that given by such interpretation or include or exclude, for the purposes of the Act, something in regard to the inclusion or exclusion of which there might otherwise be doubt. The definitions are arranged in alphabetical order. In Nigeria, as a general rule, the Interpretation Clause or section is usually placed towards the end of the Bill or legislation. However, whenever a legislation deals with a technical subject-matter, the



Interpretation section usually occurs at the beginning of the Bill¹⁰.

Duration Clause. Certain laws are of limited duration and are enacted for a short stipulated period. Such enactments cease to be effective after the expiry of the period stipulated. The duration clause is embodied as one of the sub-clauses in the clause of a Bill. The form used may be different in different Bills, as the situation demands¹¹.

Marginal notes. A marginal note, also called “statutory footnote”, is a brief summation of a provision of a statute. They are useful as editorial flags and for ease of the readers of the Bill or legislation. Marginal notes are important in statutory construction as they provide insights into the nitty-gritty of the provision.

Rule-making Clause. Some legislation includes provisions delegating the power to the officials of the Executive to make subsidiary legislation such as rules, and regulations for administering the principal Act (legislation). This provision is contained in the rule-making clause of a Bill.

Repeals, Consequential Amendments and Savings Clause. The provisions regarding both repeal and savings are embodied in the same clause. The clause is placed at the end of a Bill. When an enactment is repealed, the repeal, unless a different intention appears from the context, does not (i) revive anything not in force or existing at the time at which the repeal takes effect; (ii) affect the previous operation of any enactment so repealed or anything duly done or suffered; (iii) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; (iv) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed.

With the repeal of an enactment, all rules made under it are repealed, unless provision is made to the contrary in the repealing Act. The savings clause reserves something which would be otherwise included in the words of the enacting part. The clause only preserves things which were in force at the time of its enactment and therefore cannot affect transactions which were complete on the date of the repealing Statute. It is inserted in the Statute in order to protect or save a person as regards rights which he or she might have acquired under the repealed law.

Explanatory Memorandum. The function of the explanatory memorandum is to explain certain facts

in the Bill. It is normally expressed thus: “This Act seeks to establish the National Transport Commission as an effective, impartial, independent regulatory authority in the Transport sector, promote the implementation of the national transport policy and provide for an efficient economic regulation of the transport sector and for matters”.

Short Title. It identifies, describes and gives a name to the Bill. It is often called the statutory nickname of the Bill. For example, “National Transport Commission Bill 2015”. Every Bill has a short title. It has to be short for it is merely a label or index-heading to the enactment in question and has also to be apposite. It is cited in the first clause of the Bill. An enactment is cited by reference to the short title or by reference to the number and year. Where in any enactment it is necessary to cite or refer to another Act, its short title is cited in the body and reference to the number and year made in the margin.

Citation. It states how the Act should be cited. For example: “The Act may be cited as the Forest Act 1995”.

Schedules. Schedules are used in drafting of Bills to supply supplementary details. Therefore, details of information, statistics, figures, tables, codes, maps and other technical matters highlighted or referred to in the body of the Bill or legislation are contained in the Schedule. Some Bills have Schedules appended to them. As a rule, matters of detail are relegated to Schedules, e.g., illustrations of forms, agreements and plans. When the constitution of an organization is declared in the Bill itself, the mode of appointment and rules governing meetings of that organization are placed in a Schedule. It is sometimes convenient to indicate in a Schedule where several Acts or parts of several Acts are being repealed or where a considerable number of minor amendments are made.

Table of contents. A table of contents is required for longer Bills. The table of contents is based on the headings used in the Bill. The detailed reasons are included in the table of contents at the level of chapters. The table of contents are required in long Bills and may be presented at the level of individual sections. Table of contents follows the executive summary.

Test of Practicability of Legislation. The true test of the practicability of legislation is when the legislation is implemented. How, for example the public responds to it, and whether it will secure a satisfactory level of compliance can only be assessed when the law is in operation. Being a medium of communication, the language of a legislative instrument must be simple, concise and comprehensible. Legislative drafters must at all times follow the sequence



of presentation of legislative instruments in term of structure and organization.

8. Using legislative information management software to facilitate the drafting, consolidating and publishing processes: the examples of Canada and other federal, provincial and municipal jurisdictions

The application of Information Communication Technology (ICT) for Legislative Drafting can improve the overall legislative process by introducing tasks automation, by relying on conventions and standards, by eliminating multiple streaming, by saving time and by making content available to all.

Facilitating Drafting

Drafting can be facilitated by implementing conventions and standards. Conventions pertain to style, template layout and structure. To facilitate drafting, it is essential to introduce standardized applications, expressions and terminology as well as ensure the standardization of methods used to effect amendments or draft new legislation. Part of the conventions includes the integration of any particular classification embedded at the document level or the “fragment”¹² level.

Once the office has implemented conventions and standards, it is very important to review the type of tasks a drafter performs on a daily basis. It soon becomes apparent that drafters using a word processor to write legislation will spend a lot of time manually formatting documents and managing document versions. Modern software technology can help by removing non-drafting tasks and by structuring as well as standardising content. The drafter will thus concentrate on analysing the requirements pertaining to the writing of a particular legislation instead of trying to make sections look good!

By accessing a unique content source repository coupled with automated versions management, the drafter will also save time and worry less about making errors, duplications or inconsistencies.

Technology will help by introducing international norms to help structure the content (e.g., XML). Then, with appropriate software tools, this structured content can be applied thereby properly formatting to the content (e.g., XSLT, XSL-FO etc.). The rendering of the content is thus removed from the drafter’s main activities.

Furthermore, when the content’s single source is well defined, it can automatically be published on-

line to provide legislative content research capabilities. Legislative content will thus be at the drafters’ fingertips.

Finally, implementing a unique, structured content source will also provide advantages for the consolidating and publishing processes.

Facilitating Consolidating

Once a bill is passed, the new Act is available for consolidation¹³. When it comes to updating legislation with a new Act that modifies an existing Act, often, another department independent from the drafting office — oftentimes called the Law Revision Office — will perform the tasks related to the consolidating process.

Generally, without a modern ICT solution, the Law Revision Office will take the new Act and manually update the legislation with legislative commands found in the new Act. This office will either copy/paste these, using word processor or a specialised publishing tool, or the process will be entirely manual. This means photocopying the pages of the Act (copy), cutting the appropriate words included in the legislative command (cut), and then literally gluing the paper (paste) in order to create a paper blue print.

If the Drafting Office uses structured content and applies all the appropriate conventions, including the standardisation of methods used to effect amendments to legislation, then modern ICT technology can help by introducing a tool that will recognise which part of the legislative commands need to be applied, thus saving hours of copying and pasting.

A modern ICT solution will also recognise the origin of the modification and automatically create a historical repository of legislation.

Furthermore, quality assurance becomes a much faster process since computerised tools can provide a before-and-after comparison following the application of any legislative command.

Facilitating Publishing of legislation

Once the content is structured and centralised in a unique content source (repository), then the publishing process enables the legislation to be generated in a large selection of formats, depending on the purpose of the copy.

In order to make this large selection available, the prior legislative processes — drafting and consolidating — will include metadata related to the content. During the publishing process, the metadata can then provide links between documents (e.g., Act and its related statutory instruments), between a section and all its historical versions as well as between statutory books.

From the same content source, legislation can almost instantly be made available on paper, on the Internet or on mobile devices.

Notes

¹G. THORNTON, *Legislative Drafting*, 4th Ed., Butterworths, 1996, p. 128.

²See K.W. PATCHETT, *Nigerian Legislative Drafting Course*, Course Notes, RIPA, Regent's College, 1992, p. 337.

³FINLAND MINISTRY OF JUSTICE, *Bill Drafting Instructions*, 2006, p. 8.

⁴«A checklist is a list of items you need to verify, check or inspect... Using a checklist allows you to ensure you don't forget any important steps»; see J. BRUN, *What is a Checklist?*, in "Nimonik - Articles about quality, environmental and safety compliance issues", October 2011.

⁵CLERK, NATIONAL ASSEMBLY OF NIGERIA, *The Nation newspaper*, September 2, 2014.

⁶It now recognised that legislative drafting is a "new sub-discipline of law" or the legal profession, see generally H. XANTHAKI, *Legislative Drafting: A New Sub-Discipline of the Law is Born*, in "IALS Student Law Review", Vol. 1, 2013, n. 1, pp. 57-70.

⁷H. XANTHAKI, *Drafting Legislation. A Modern Approach*, Ashgate Publishing, 2008, pp. 1-18 at p. 6.

⁸S.S. SHIKYIL, *Practical Guide on Legislative Drafting*, 2006, p. 23.

⁹See section 36 of the 1999 *Constitution of the Federal Republic of Nigeria* (as amended).

¹⁰For example, see the *Petroleum Industry Bill*, 2009 version.

¹¹For example the *Offshore Production Sharing Contracts Act*, 2000 had a lifespan of fifteen (15) years which expired in the year 2015. The purpose of this legislation was to grant tax holiday or exemption to oil companies that were involved in exploitation of oil and gas resources in offshore oil fields; considering the huge financial expenses involved in undertaking such offshore oil exploitation activities, the Federal Government of Nigeria granted them an exemption from payment of taxes for the first fifteen years of production.

¹²The term fragment refers to any part of a bill, an Act or a statutory instrument.

¹³Consolidation is a term that can represent at least two concepts in Commonwealth Legislative Processes: the first concept refers to updating legislation with the content of a modifying Act; the second concept refers to classifying the new Act under a certain subject of law in order to create compendium of Acts related to the same subject.

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L'applicazione delle ICT al drafting legislativo: note dall'esperienza nigeriana e canadese

Riassunto: Questo contributo riguarda l'applicazione delle tecnologie dell'informazione e della comunicazione (ICT) all'attività di drafting degli atti normativi, facendo riferimento alle esperienze della Nigeria e del Canada. L'esperienza nigeriana ha inizio nel 1992, quando un gruppo di giuristi provenienti da quel paese prese parte al corso in materia di tecniche di redazione degli atti normativi tenuto a Londra da K. Patchett, riportando poi in patria le competenze acquisite e formando altri giuristi sugli stessi temi; T.C. Jaja presenta qui le idee che hanno guidato la progettazione di un software di aiuto alla redazione degli atti normativi nigeriani. Considerando l'esperienza canadese, C. Lamarre spiega come l'applicazione delle ICT al drafting possa migliorare l'intero processo legislativo.

Parole chiave: Tecnologie dell'informazione e della comunicazione – Drafting legislativo