

Book Review: Title of Book: Paul Salembier, *Legal and Legislative Drafting*, (Ontario, LexisNexis Canada, 2009), 549 pp, hardcover]. ISBN: 9780433453611, Price: \$170.00

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Abstract

In his book, "Legal and Legislative Drafting", Paul Salembier takes on the daunting task of explaining the "principles and practices behind the drafting of legal documents that confer powers and establish rights and impose liabilities, where precision and clarity is of the utmost importance". The purpose of this book review to assess for potential readers whether Salembier has met his lofty goal. The book is laid out in a logical fashion allowing the reader to build on concepts as the reader works through the book. In addition, the concepts in the book are well identified in such a manner that it can serve as an excellent resource tool. In particular this review examines the drafting issues and drafting techniques that are covered in the 13 chapters of the book in a logical and complete fashion. Topics covered include the essence of drafting, the legislative sentence, reducing complexity, paragraphing and plain language drafting, to name a few. With respect to each topic covered, Salembier embarks on a detailed examination of the drafting problems and provides solid guidance on how to improve the clarity of the text. Salembier also provides critical insight into the role of the drafter as well how to establish an efficient drafting office. In the end of the analysis, the review concludes that Salembier has met his goal with this text. This book draws from examples around the world and will be of great assistance not just for legislative drafters, but also for anyone who is called upon to draft complex legal documents.

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Introduction

Paul Salembier articulates that the aim of his book, *Legal and Legislative Drafting*, “is to explain the principles and practices behind the drafting of complex documents that confer powers and establish rights and impose liabilities, where precision and clarity is of the utmost importance.” Salembier has set for himself a very ambitious goal. This goal seems all the more daunting because his target audience, if I have correctly identified it, consists mainly of legal professionals who I am sure, consider themselves to be competent users of the English language and perhaps even good drafters! Despite this challenge, Salembier delivers a book that:

- Identifies why clear drafting is important;
- Examines key drafting problems; and
- Provides viable solutions to address these problems.
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Salembier also examines various techniques to generally improve the quality of drafting including, the development of drafting processes.

While this book represents an excellent tool to assist legal professionals who draft legislation or complex legal documents, it would also be useful for any legal professional who is called upon to write legal documents.

This book is a fairly lengthy work that covers subject matter that most would consider to be technical and dry. However, Salembier manages to inject levity into this work that helps in keeping the reader’s attention. When combined with the important information he imparts, the book is a relatively easy read.

The book is divided into 13 Chapters and covers topics ranging from composing a legislative sentence to computer-assisted drafting and best practices. It is arranged in a logical manner that allows the reader to build on the information as they proceed through the text. The topics are also discretely identified in a manner that allows the reader to use the book as reference tool to review a specific topic or address a single issue.

The starting point of the book is an examination of the “essence of drafting”. In this chapter, Salembier reasserts, “next to sacred texts, statutes are the most authoritative and

most serious writings of a society”. This cannot be understated. In a free and democratic society, the written law is fundamental to establishing the rights of individuals and the limits of governmental powers. A lack of clarity or precision in these legal instruments can have a profound effect. In discussing the need for precision, Salembier summarizes that the ultimate goal may be more than just producing a text that a person, reading in good faith will understand, but rather, to produce a text that a person reading it with an ulterior motive cannot conveniently misunderstand. I am sure, however, that this would never happen! Certainly, this will impact on the rigour that must be applied to drafting. Also, it will impact on the writing style that sets legal drafting apart from other forms of writing.

Salembier considers the costs of errors. This factor may be one of the most important in making the case for clear and precise drafting. In essence, he identifies two potential costs. The first cost being the social cost and the second being the private cost. Failing to consider these costs could lead to disastrous results. Although perfection is a laudable drafting goal, as Salembier notes, it is a goal that can never be attained. Taking into consideration the potential pressures that a drafter faces, the social and economic costs of a drafting error are critical factors that must be taken into consideration in dedicating drafting resources to a project.

In his concluding remarks on his first chapter, Salembier asserts, “though the distinct literary style used in legal and legislative drafting is highly structured, highly technical and devoid of stylistic variation, it does not need to be turgid and stuffy”. He suggests that the “very best drafters do manage to produce texts that vie for status as works of literature”. He sets this as a drafting ideal. His parting shot in the chapter is to state that if his book can bring drafters closer to this ideal, it will have served its purpose. Has Salembier met the test?

The first substantive chapter of the book deals with the subject of composing a legislative sentence. Picking up on a notion introduced in the first chapter, Salembier reminds us that the goal of legislative and legal drafting “is not to entertain, to impress or even to explain.” This idea is fundamental to achieving precise drafting and reinforces the requirement to avoid stylistic variation.

The Legislative Sentence

Perhaps the most technical and complex issue tackled by Salembier in this book is the legislative sentence. In essence, it is the most important building block in legislative drafting. If the underlying sentence structure is deficient, there is little hope that the text will

precisely convey the intended message. As Donald M. Berwick stated in dealing with systems design, “every system is perfectly designed to achieve the results it achieves.”²⁹¹ This concept can be readily adapted to deal with a legislative sentence. In essence, every legislative sentence is perfectly drafted to convey the message that it conveys. The focus of this chapter is on ensuring that every legislative sentence conveys the intended message in a clear and concise manner.

The starting point is to recognize that the aim of most legislation is provide a set of commands. Generally speaking, commands are “issued” in the imperative mood in the second person. As Salembier correctly concludes, neither is feasible in legislation. However, the commands still must be issued. To accomplish this, it is suggested that the third person and the indicative mood are most appropriate, with modal auxiliaries like “shall” and “must” to convey obligations.

Salembier also examines the issue of tense. Given the basic principle that the law is always speaking, Salembier highlights that legislation is generally drafted in the present tense. This holds true whether or not a modal auxiliary is present. Salembier does identify that the use of either the past or future tense may be appropriate in subordinate conditional clauses depending on the temporal relationship between the condition and the legal rule. For example, if the condition applies to a past set of facts, the past tense is appropriate.

Given that legislation is normally of general application, Salembier highlights that the use of an indefinite article is most appropriate to describe the legislative subject. However, after the legislative subject has been introduced, a subsequent reference to the subject would be introduced with the definite article. This rule would also hold true where legislative provisions are tightly linked to the same legislative subject. For example, if a legislative subject were introduced in the first provision the indefinite article would be used. If, in the next provision, there were a reference to the same subject, it would be appropriate to use the definite article ‘the’. If, however, the provisions are not close in proximity, the use of this technique may not be appropriate, as the reader may have lost track of the referent. As a result, the reader would need to backtrack in the legislation. This would be inefficient.

Arguably, the most important aspect of the legislative sentence is the basic structure. As Salembier points out, the ordinary rules of grammar apply, “[a] legislative provision should therefore be capable of being read from start to finish without having to willfully disregard the ordinary rules of grammar.” This also holds true for paragraphed legislative provisions. Clearly to be grammatical, each paragraph must be capable of being read with the opening

²⁹¹ Donald M. Berwick, “A Primer on Leading the Improvement of Systems”, BMJ 1996 312 at page 619

words of the provision. As Salembier discusses later in the book, while this seems intuitive, the rule is sometimes missed. As a result, drafters should pay particular attention when paragraphing provisions.

Salembier extensively surveys the components of a legislative sentence starting with Coode's treatise entitled, "*On Legislative Expression: or, The Language of the Written Law*", in which Coode identifies the following four components:

- The legal subject;
- The legal action;
- The case; and
- The condition.

In dealing with the legislative subject, Salembier points out that if a provision confers a power or imposes an obligation, it is crucial that the legislative subject be clearly identified. For example, in the provision - every door of a room used for sleeping accommodation in a nursing home shall be of solid wood core construction - who would be held liable in the case of non-compliance? In this case, the court concluded the provision did not impose a duty on a particular person and therefore, did not create an offence. While the provision does clearly convey a policy goal, undoubtedly, it falls short of implementing the goals of the legislature. As an effective strategy to avoid this situation, Salembier suggests not using the passive voice. There may be, as pointed out, situations where identification of the legislative subject is less important, and therefore, the use of the passive voice is more appropriate.

The clear message is that particular care must must be taken to determine whether it is critical to identify the legislative subject. If so, you must avoid the passive voice.

The legal action or command is generally aimed at one of four things:

- Imposing an obligation;
- Conferring enforceable rights;
- Conferring discretionary powers; or
- Giving permission to things that would otherwise be prohibited.

With respect to imposing obligations Salembier examines whether it is appropriate to use either "shall" or "must" as the modal auxiliary. Although at one point in time "must" was

thought incapable of creating an obligation, he concludes that it can be used to impose an obligation. In creating prohibitions, Salembier cautions against using the formulation, “no person must” as it could be interpreted to mean that a person is not required to do something as opposed to being a prohibition. If the drafter chooses to use “must” as the auxiliary, it is more appropriate to say, “A person must not”.

With respect both to conferring rights on members of the public as well as conferring rights on public officials, Salembier highlights that using the auxiliary “may” is most appropriate. Although a few courts have interpreted “may” as leaving no discretion in some conferral of authority provisions, these cases should not deter a drafter from using “may” as empowering.

One of the more interesting debates raised by Salembier in the context of the legislative sentence relates to distinction between the “case” and the “condition” and where they should be placed within a legislative sentence. Coode distinguished between a case and condition on the basis that the case is the description of the circumstances that limit the application of the rule while the condition identifies an act that a person must perform before the rule operates. In determining whether there is a distinction between the two, Salembier examines the situations from a syntactic point of view. He concludes that both are adverbial subordinate clauses and perform the same grammatical function. The collapsing of the distinction will make a drafter’s job easier. Trying to distinguish between a case and a condition has invariably led to confused drafting. Drafters may now concentrate simply on precisely framing the conditions.

Placement of the condition is another issue that has been vigorously debated over the years. The debate focuses on whether the condition should be placed at the beginning of the provision or at its end. In drafting terms, Salembier identifies these as left-branching or right-branching, respectively. Proponents of left-branching assert that a reader should not have to wait until the end of a provision to determine whether the rule is really of general application. Proponents of right-branching assert that readers, especially in the face of multiple leading conditions, will not be able to properly track the conditions as they wind through the legislative sentence. Does one method prove superior to the other? In the end analysis, Salembier does not conclude that one is superior to the other. Rather, he asserts that there should be no hard and fast rule. Left-branching may prove superior if there is only one condition or the condition is simple. Right-branching, on the other hand may be more efficient if there are multiple conditions or the condition is complex.

Next, in looking at the legislative sentence, Salembier reminds us that a legislative provision should only contain one idea. To load multiple ideas into one sentence, for example, leads to confusion in the mind of the reader. However, he recognizes that in some instances, a two-sentence provision is a possibility. As we will discover later, a properly paragraphed provision may avoid this issue.

Salembier identifies syntactic ambiguity as one “of the more serious, and unfortunately all-too-prevalent drafting errors”. He defines a syntactic ambiguity, in relation to a sentence, as one in which the “way its components are located or structured gives rise to more than one reasonable interpretation”. He contends that syntactic ambiguities are most often caused by drafter oversight. Looking at the examples he provides, there can be no doubt. Because this is such a serious drafting issue, drafters must pay close attention. To assist, Salembier discusses in great detail, number of strategies to avoid unwittingly creating syntactic ambiguities. Fortunately for us, he provides a complete summary of these strategies!

The last area that is examined in the context of the legislative sentence is the use of negatives, compound negatives and double negatives. Salembier provides as “wise counsel” that negative sentences are harder to understand and therefore should be avoided. Can this be done effectively, especially in light of the fact that one of the dominant purposes of legislation is to control human behaviour? Conceding that it is not possible, Salembier highlights that establishing the context beforehand will assist the reader considerably in understanding the provision.

In the summation to this chapter, Salembier, in a very tongue in cheek style, sets out a series of general rules for sentence structure. The examples, in a light-hearted manner, make a powerful point.

Having completed what I term the “heavy lifting”, Salembier turns his attention to other issues that plague drafting. In his next chapter, he tackles the issue of reducing complexity. As Salembier notes, in earlier times, long sentences were “considered a hallmark of accomplished legal writing.” This, he asserts, is no longer the case. In fact, long and complicated sentences can impede comprehension. The main reason why long sentences are difficult to comprehend is that they push the limits of a person’s short-term memory. How then, can we deal with this issue? Is simply shortening sentence length the solution? While in many cases it may work, caution must be exercised. As Salembier discusses, it may be more difficult for a reader to follow a string of short sentences where related ideas are separated by two or three sentences. What Salembier suggests is that the drafter focus on

avoiding multiple leading conditions and properly paragraphing. This of course will be accomplished through what Salembier terms “good re-writing”. In that process, Salembier summarizes a number of useful techniques. First, determine whether there is a multiplicity of ideas included in the provision. Parsing the sentence may serve to clearly identify this situation. It will soon become evident if there are too many ideas tucked into the provision. If so, an opportunity to paragraph the ideas separately may present itself.

The use of definitions is also identified as a strategy to simplify provisions. In the appropriate circumstances, this will allow the reader to focus on the substantive rule.

Eliminating unnecessary words is also identified as a strategy. It is not uncommon in legal writing to see redundancies. Examples include “alter or change”, “each and every”, and “cease and desist”, to name a few. Aside from the fact that doublets and triplets fill extra space, Salembier suggests another good reason to avoid doublets and triplets. He explains that one of the basic principles of statutory interpretation is the rule against tautology - “the legislature does not include unnecessary or meaningless language in its statutes”. While a drafter may blindly use a doublet or triplet from a precedent, this may provide an invitation to a court to determine that the words in the doublet or triplet have different meanings. Salembier does, however, caution that there are cases, especially when dealing with the common law where doublets or triplets have established meanings and must be retained. An example, in the real estate context, would be the expression “metes and bounds” description.

Along with examining the need for doublets and triplets, Salembier invites the drafter to look for and eliminate “filler” expressions. These are expressions that would be tautologous. If the words can be removed from the provision without changing the meaning, they should be removed. Special “fillers” may be hidden in the form of subjective qualifiers. Far from not performing a function in the provision, they may convey an unintended meaning. For example, using qualifiers such as “exceptional” or “special” may add a unintended limiting condition to a power conferral provision.

As discussed above, paragraphing is another effective strategy that that Salembier identifies to reduce complexity. He devotes a fair bit of attention to this issue as it, like the basic legislative sentence, is a critical building block of good drafting. Salembier offers three solid reasons to paragraph:

- It helps the reader understand lengthy or complex sentences;

- It more clearly identifies how different parts of a sentence relate to each other; and
- It can be used to shorten a text by avoiding repetition.

Salembier identifies that care must be used when paragraphing. Common problems to consider include paragraphing what in reality amounts to a simple sentence, creating clause sandwiches and including unparallel structures within a paragraph. While, in each of these cases, the text may, at first blush, seem simpler, the meaning is likely to be obscured. In the remainder of this section, Salembier discusses a host of other common drafting issues that arise in the paragraphing context. The discussion is thorough and provides useful advice on how to avoid these problems.

In the next chapter, Salembier addresses the issue of word choice with the aim of identifying problematic words and expressions. The discussion starts with a reminder that consistency of expression is of utmost importance. Statutes will normally be interpreted according to the accepted rules of statutory interpretation, which includes the “same word same meaning, different word different meaning” rule. A drafter who uses elegant variation risks losing the true meaning of the provision.

Avoiding ambiguity and vagueness is also a concern. As Salembier points out, a word can often have multiple meanings or an imprecise meaning. While context can often resolve this issue, the costs of error can be exceedingly high and therefore, he urges drafters to consider that the drafted rules may be applied in the widest variety of circumstances and therefore, loose language is to be avoided.

Gender neutral language has been the subject of debate over the years. Many drafting jurisdictions have embraced the use of gender-neutral language. Salembier discusses a number of techniques to implement gender-neutral drafting. These include using gender-neutral nouns such as worker, chairperson or server. Using a neutral pronoun or “re-writing” to eliminate gender-specific pronouns, repeating the noun or using plural nouns may also be effective. There are a number of techniques that are not recommended by Salembier. These include alternating “he” and “she”, or using the singular “they”. As identified, the former is an affront to the accepted rules of statutory interpretation and the latter is simply grammatically incorrect. Salembier also discusses a number of problematic words and phrases including, “shall”, “may”, “and” and “or”, and “and/or” to name a few. In each case, he offers clear guidance on how to handle these cases.

The next chapter looks at the use of definitions and other interpretive provisions. One of the key issues identified is when does a term need definition. Salembier offers that there are a number of reasons why a definition can be useful. They are:

- To resolve potential semantic ambiguity;
- To assign wholly artificial meanings to words; or
- To permit concision in drafting.

Salembier next lays out for us the different types of definitions and how they apply. The list includes both exhaustive and non-exhaustive definitions. Next, the concept a relational definition is introduced. This technique is best used to limit the scope of a term when it is used in a particular context. The text examines a number of other particular issues relating to the use of definitions and Salembier offers sage counsel in dealing with these particular issues. Chief among these is that definitions should not contain rules of conduct. The result would be that important information is split between interpretation sections and substantive sections.

Before leaving the topic of definitions, Salembier deals with two related but important issues. He looks at the distinction between definitions and interpretation sections. He explains the situations in which interpretation sections are better suited than definitions. He also examines the issue of definitions in interpretation acts. He reminds us that if a term is defined in an *Interpretation Act* and the definition works contextually, it should not be re-drafted or added to the new statute.

Next, Salembier turns his attention to particularly problematic provisions. These include issues such as the use of deeming provisions, Henry VIII clauses, subject to/notwithstanding, formulae and incorporation by reference.

Deeming provisions, he urges, should only be used in circumstances where it is necessary to create a fiction either factual or legal. What Salembier points out is that “deem” is often unfortunately used in a different sense in legislation. It is used as a substitute for “to determine” or “consider”. As he points out, there is a danger in using “deem” in these cases. Courts may assume that the legislature uses words and expressions in a consistent manner. If the purpose of the provision, therefore, is to confer discretion, more appropriate words should be chosen.

Henry VIII clauses confer on the executive the authority to amend a statute through other means such as regulations. Salembier identifies that there may be appropriate situations for this type of clause. A number of these situations are discussed. While he does not take a strong position on their continued use, he provides some essential guidance for those who may be called upon to draft Henry VIII clauses. Key is that the clause should not be so broad as to allow the clause itself to be amended by regulation or to allow the additional grant of regulation-making powers to the Executive. Otherwise, Parliamentarians may object to their continued use.

Many provisions require calculations to be performed. The calculations can be complex and taxing on the mind of the reader. Salembier offers the following three methods for simplifying formulae:

- The alphabetic variable model;
- The mnemonic model; and
- The full text variable model.

While Salembier concludes that the choice of model is really a matter of personal preference, he does suggest that the number of variables and the complexity of the calculation should be considered.

Many legislative provisions are subordinated to other provisions. In these cases, a drafter will either use “subject to” or “notwithstanding” to denote the relationship. The debate raised by Salembier is whether one technique is superior to the other. In essence, using “subject to” signals to the reader early on that the provision is subordinated to another. While notwithstanding may accomplish the same effect, the reader is not immediately alerted to the relationship between the provisions and may be surprised. For these reasons, Salembier suggests that as a general rule, the “subject to” formulation is superior to the “notwithstanding” provision. He does however identify that if a dominant provision overrides a number of subordinate provisions, “notwithstanding” may be more appropriate.

The last major problematic area addressed by Salembier is the technique of incorporation by reference. Under this technique, he explains, a provision “incorporates text external to it and makes that text applicable for its own purposes.” He goes on to explain that the primary purpose is to avoid text repetition. Another advantage is that there is no need to monitor the incorporated document to ensure that it is up-to-date. Salembier discusses extensively the disadvantages of this technique. The major disadvantage is that it disperses the substantive provisions, requiring the reader to flip between references. Also, if the

incorporated provision is not readily available, it could raise rule of law issues. Lastly, with dynamic incorporations, there is a risk under regulatory law that the incorporation may be determined by a court to amount to an unauthorized sub-delegation. Given that this technique presents both tremendous advantages and disadvantages, Salembier urges the drafter to carefully balance the competing factors.

The next chapter looks at structural issues. Salembier covers the fundamental issues such as grouping like subjects, using headings, ordering provisions, numbering and using other sign-posts like titles, purpose clauses preambles, etc. The essence of the chapter is to help the drafter, once the substance has been developed, to organize the material in an intuitive fashion that allows the reader to efficiently use the document.

Next, the book tackles the subject of amendments. Two types of amendments are identified; textual and non-textual. The focus of the chapter is on the latter. Two interesting topics that Salembier broaches are the status of an amending Act and amending regulation-making powers. In the former case, Salembier notes that once an amending Act has received assent, it is spent. The amending Act can no longer be amended so as to undo the amendment. However, while it is still at the Bill stage, it can be amended.

With respect to amending regulation-making powers, there are some tricky issues and as Salembier cautions, these amendments require special attention. If the power is amended, what is the effect on existing regulations? Using the example of the Canadian *Interpretation Act*, Salembier comments that existing regulations that are no longer consistent with the amended regulation-making power are unenforceable. As a result, Salembier sagely advises that if a drafter is going to affect a regulation-making power, the drafter must ensure that the impact on existing regulations is assessed and appropriately covered.

In the next chapter, Salembier underscores the importance of the logical challenge function of the drafter. There is always debate on the role of the drafter. As is highlighted, the goal of the drafter is to “*translate* policy into effective law”. As a result, it is not simply a matter of taking dictation. A drafter must truly understand the legislative scheme and therefore, must carefully review materials and ask probing questions. As Salembier notes, it is through this process that omissions, inconsistencies and gaps are revealed. He provides a number of situations and examples that clearly demonstrate the valuable role that drafters play through the challenge function.

Salembier next examines using an Interpretation Act. Again, the focus is on simple and concise drafting, a theme that runs throughout this text. Salembier identifies a number of advantages of an Interpretation Act. They include:

- Providing short forms for commonly used expressions;
- Providing standard definitions;
- Setting out standard provisions that apply to all statutes so as to avoid repetition; and
- Setting out rules of interpretation that apply to all statutes.

In discussing the advantages, Salembier focuses the reader on how Interpretation Acts can simplify drafting. By relying on the interpretative rules in the *Interpretation Act*, a drafter can concentrate on the substantive provisions and hopefully produce a less cluttered text.

Looking at the drafting efficiencies that can accrue from properly using an Interpretation Act, Salembier makes a convincing case that a drafter must have more than a passing familiarity with this instrument.

Salembier takes on the interesting topic of plain language drafting. As Salembier notes, the very principles he has chosen to discuss in this book are in effect also principles of plain language drafting. To understand what he is saying, it is first necessary to come to a common understanding of what the expression means. Salembier identifies four common characteristics espoused by most plain language proponents:

- Avoiding long and complicated sentences with excessive embedding;
- Using shorter, well-constructed sentences;
- Keeping essential sentence components together; and
- Organizing legislative and legal documents in a logical manner, set off by appropriately descriptive headings.

Clearly he has addressed each of these facets in earlier chapters of this book. One facet that he has not yet introduced is the target audience. For many plain language proponents, Salembier notes that focus on the reader is crucial. The key question he raises is for whom is the drafter writing? Clearly, as he identifies, for private legal documents, the audience can be very limited. It may include the parties and their counsel as well as courts and other arbiters who may be called upon to interpret the document. For legislation, he properly notes that the audience is much more encompassing. For any particular statute it may include:

- Legislators;
- Public administrators who will implement the legislation;
- Members of the affected public;
- Those who must enforce the legislation; and
- Those who must interpret the legislation.

Can the needs of all of these groups be accommodated in a single piece of legislation?

As noted, many plain language advocates maintain that statutes should be understandable by the ordinary citizen. Others suggest that statutes should be written for those most vulnerable to be affected by the legislation. Salembier surveys the views on target audience drawing on international expertise. He proposes that legislation is generally aimed at one of the four following groups:

- Lawyers and the courts;
- A defined group of technical experts like scientists, bankers, etc;
- A defined non-technical group like farmers; and
- The undefined public.

Identification of the group may change as the drafting proceeds, but nonetheless, identification of the group will drive whether “supplemental” plain language features should be implemented. Who though, should determine the target audience? It is proposed that it is the instructing officials and not the drafter who identifies the audience. Salembier concludes that no matter who is the target audience, the drafter should use ordinary plain language features that constitute good drafting techniques.

Salembier examines various features of plain language drafting. The first of these is the use of simpler words. In this regard, he identifies different areas for improvement. The first is the use of “legalese”. Next, he provides a useful list of substitutions for more complex words that often appear in legislation. Salembier examines the use of terms of art, using a simpler structure and deleting unnecessary text. As is readily apparent, these techniques while termed “plain language drafting” are really nothing more than the application of good drafting practices as discussed earlier in the book.

One component of plain language drafting that is less intuitive and not covered under the auspices of good drafting practices is the use of orienting and explanatory materials. This could include the use of:

- Outlines and overviews;
- Tables;
- Footnotes;
- Examples; and
- Graphics.

Salembier discusses these techniques in detail. He highlights one of the key issues in dealing with this type of material. What is the relationship between the material and the statute's substantive provisions? Some jurisdictions provide for conflict resolution rules. Others do not. In those cases, ordinary rules of statutory interpretation would apply.

Having discussed the various plain language techniques Salembier turns his attention to the limitations on plain language. With respect to explanatory materials, the concern is that the materials may inadvertently expand or limit the scope of the substantive provision or in the worst case, contradict the provisions. Time pressures are ever present. Especially in cases where the drafters are pressed to complete the substantive provisions, there is rarely any time to develop the supplementary provisions.

The complexity of the idea is also a driver. Some complex concepts do not lend themselves to simple explanations. In the end, Salembier reminds us, in keeping with his consistent message, “complexity of the subject-matter should never be an excuse for poor drafting practices in general.”

Given these limits and the way in which people access the law, Salembier discusses whether statutes are really the best place for the explanatory material. Salembier suggests that “there may be some advantage to shifting the focus more onto administrative compilations of statute law.” The main advantage, he identifies, is a removal of the time pressures. With its removal, governments may be more inclined to produce plain language material.

In the end analysis, Salembier concludes that the spotlight on plain language drafting has caused a critical re-examination of traditional techniques and has contributed greatly to the improvement of legislative drafting.

In the penultimate chapter, Salembier exposes us to computer-assisted drafting models. While he recognizes that the level of computerization will be a limiting factor, he certainly makes the case that at all levels, computerization can effectively improve the drafting process. While it is clear that to the extent that it is affordable, computerization should be implemented, it is important to note that the system should always be designed to meet the needs of the drafting office and not the opposite.

In the last chapter and under the heading of “best practices”, Salembier nicely ties everything together. He starts with a focus on the drafter and reinforces that a drafter must have thick skin. Pride of authorship should not obscure the early identification of errors. The drafter as, we have been told, provides a critical challenge function. As a result, the drafter must understand the subject-matter. The drafter must ask questions and challenge the client’s logic.

With respect to the actual drafting, Salembier reminds us of the principles he has revealed earlier. He conveniently summarizes topics such as only drafting definitions when necessary, checking for double negatives, avoiding clause sandwiches, properly paragraphing, remembering the impact on existing regulations and addressing complexity. He also provides some advice in defining an effective drafter/client relationship as well as setting up an efficient drafting office.

After having read and considered the book, the key question is whether Salembier has met his lofty goal. In my view, he has. The work is not intended as a critical review of drafting techniques. It is meant more as an exposé of good drafting techniques. Salembier covers the waterfront, using appropriate examples, and sometimes popular cartoons to effectively make his point. With the right balance of levity and seriousness, he keeps the reader interested and entertained while imparting important information. The best way to sum up the book is to borrow the closing words from the preface, “my hope is that by explaining some of the principles and practices of legislative drafting I will make the prospect of creating complex legislative and legal documents less imposing and that, with a mastery of the skills involved, users of *Legal and Legislative Drafting* will come to even relish the challenge that such documents present.” Reinvigorated after reading this book, I eagerly await my next drafting challenge!