

legislation when it has been enacted or made. In some instances, this work may be undertaken by other officials but the role and responsibilities are nevertheless the same.

### Comment

The departmental lawyer's job is to translate particular and administrative policy into drafting instructions. To do this, the lawyer needs to have a thorough understanding of the overall policy as well as the administrative mechanisms that will be needed in the legislation to carry it into effect...

The process of preparing drafting instructions involves:

- Identifying the overall purpose, objective, or philosophy behind the legislative proposal.
- Identifying the main or basic concepts.
- Identifying the main rules or objective.
- Identifying the ancillary rules or objectives.
- Working out how the main and ancillary rules or objectives work together (are they consistent and compatible with each other?).
- Reviewing the structure of rules or objectives to

see whether it is complete.

■ Considering whether any of the rules or objectives should be implemented in subordinate legislation. In addition to preparing drafting instructions, the departmental lawyer must:

- Explain any aspects of the instructions.
- Respond to issues raised by the drafter.
- Read the draft prepared by the drafter carefully.
- Check them for consistency.
- Test the draft against scenarios to make sure it is robust and will achieve its objective.

■ Consider, from the standpoint of the user, whether the draft is clear and understandable.

■ Provide comments on drafts promptly.

In the drafting of large or complex legislation, it is common for many drafts to be produced.

Progress towards completing the drafting of legislation can be incremental as each revision seeks to improve on or refine the previous draft. The process of checking and providing comments should be repeated with each new draft.

Drafting legislation is a collaborative undertaking. Good legislation is the product of a team effort. Each draft of legislation should be read critically by the departmental lawyer to ensure it:

- Is technically sound.
  - Will give effect to the desired policy.
  - Is internally consistent.
  - Is compatible with the general body of statute and case law.
  - Will be clear and understandable to users.
- HAS THE DRAFTER FULFILLED HIS OR HER ROLE?

### Outline of issue

Legislative drafting is not just a technical exercise. A drafter is counsel to the government in its legislative capacity. He or she must work in close collaboration with the instructing department and ensure that, so far as possible, legislation is based on sound legal principles, gives effect to the intended policy, and is as clear and understandable as practicable.

### Comment

Legislative drafters provide a specialist form of legal service. The relationship