

Speaking Notes

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Introductory remarks

My topic is how technology has changed how drafters draft drafting – obviously too large a topic for the time I have.

I've chosen five kinds of changes to talk about, drawing both on experiences in Ontario's OLC and on my own personal experiences, as drafter and as Director of Ontario's e-Laws project.

The five kinds of impacts, or changes:

1. the way drafters use new writing tools;
2. the way drafters interact with IT experts, including:
 - bridging the gap between techies and ourselves;
 - choosing certain changes and not others at any given time;
 - managing the changes we choose;
3. the way technology changes relationships among work groups in a legislative drafting office;
4. how does reader access to electronic law affect our writing?
5. changes in how we publish law.

These changes are all inter-connected, but I'll try to organize my comments roughly according to these five headings.

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Drafters and their new writing tools

IT drafting tools keep changing, proliferating, becoming:

- more enabling;
- more expensive;
- more burdensome;
- more irresistible.

In other words, just plain more, welcome or not, implement-able or not, time-consuming or time-saving or both.

Take a moment to think back 15 years or so:

- 15 years ago I thought my brain was wired through my fingers and my pencil, directly to my writing paper; that was how I thought and wrote legislation;
- have since learnt more about biology: I now know my brain is also wired through my fingers to my keyboard.

I have maintained the wiring through my pencil for some occasions—mostly those moments when the link-up between brain and pc refuses to yield a clear sentence and it occurs to me that the reason may have to do with lack of a clear thought—that sometimes has me reaching for my pencil, which sometimes feels like a better sketching tool.

This business of moving from paper and pencil to pc is old news to all of us now, but I want to start with this now entrenched but profound shift.

In my office, the pc as tool was introduced gently—the box arrived in your office, it sat unopened gathering dust, a silent reminder of a possibility:

- we had secretaries; they would still type;
- our clients did not set timelines that assumed we could work without secretaries;

I have the gauzy impression that, in those days, drafting timelines were not set without our input—we had deadlines to be sure, but we still were thought to have something to add to how long it would take to produce a draft law.

Then came what our office refers to as the “magic wand theory of drafting”: the client has a legislative goal; the drafter surely has a magic wand to transform the goal into a law. Ask for a bill, count to ten, hold out your hand and receive.

Mysteriously, within less than two years of the arrival of those boxes holding pc’s:

- every drafter in our office was using computers for almost all authoring;
- few secretaries did much “copy typing”;
- and the old feminist joke poster picturing Golda Me’ir with the caption “But can she type?” was an anachronism.

Ontario’s legislative counsel now must type—though at first we preferred to call it keyboarding. And not just type—much more is needed and expected:

- we regularly initiate projects: to improve document creation processes; to clean up “legacy data” and much more;
- we introduce change after change. Some small, some large.

And though each change feels like a cold shower—you never quite get used to it—everyone has come, with varying degrees of grace, to accept ongoing change as a fact of life.

So the first impact on how drafters draft is that we have to learn and keep learning to use new tools. But that quickly moved from passive learning to a much more active role vis à vis our writing tools: This takes us to:

The way drafters interact with IT experts

As soon as we begin to learn to use a new tool, we’re full of suggestions and demands for:

- customization or configuration of our tools to get rid of problems (e.g., auto-numbering, grammar check and other Bill Gates-ian impositions)

- more features: perhaps a simplified set of styles; mnemonic keystroke shortcuts; updated templates; new ways to reduce our reliance on secretaries; new ways to make sure we don't do secretarial work ... no end to suggestions and demands

Once drafters got started on asking for things, the balance shifted from complaints about new tools to more, and more informed, requests for better tools and better data.

Bottom line, based on Ontario's experience: the discourse between the hands-on techies and the drafters began in Tower of Babel mode:

- Techies did not know the first thing about the law and underestimated the importance of understanding: the complex structure of our data; the nature of amendments to our data; the mysteries of commencements and so on;
- In turn, the lawyers were happily innocent of knowledge about IT. We did not want to have to think about data storage, data transfer and data conversion.

But the wonderful truth is that techies and drafters in Ontario have traded glossaries and worked together on utilities and programs; we've configured, we've customized; we actually communicate and produce minor changes (like automated hyperlinked Tables of Contents) and major achievements (consolidated up-to-date searchable law online).

And we've rejected or postponed other changes. We looked at Tasmania's EnAct system, and were hugely impressed. But in Ontario, for a mix of reasons, we have at least for now opted for simpler solutions.

Dialogue between techies and lawyers. We drafters began to learn to "keyboard" about 15 years ago. I think we began to talk somewhat intelligibly with techies about three years ago and with them we keep making decisions about tools, work processes, what the next important goals are.

And to produce good decision, the dialogue must include the other work groups in the drafting office.

The way technology changes relationships among work groups in a legislative drafting office

When we moved from pencil to early WordPerfect, then to Word, then to flirting with XML, we were forced to come to terms with the impact of what we drafters do on what others in our office—translators, secretaries, managers, editors—do, and with the impact of what they do on us.

In Ontario we draft in English. The French version, also official, is the product of a translation team. The authoring tools used by drafters have a major impact on the French team and vice versa. Some examples of the interplay:

- English authoring software choices are affected by the need for good compare software for use in translation;
- consistent English authoring version control processes (which used to be idiosyncratic) are essential to translation processes;
- search tools must meet not only drafting needs but also translation needs.

For tools to be chosen and modified, not only did non-techies have to learn to talk with techies, French and English authors had to learn more about how the other works. The result is understanding of when a small extra effort on the part of one work group can result in large benefits to another work group; or what small benefits one work group can forego, to allow limited resources to be dedicated to larger benefits.

I.T. has also fostered new understanding between editors and authors. In Ontario, editors do not only edit. They maintain reference tables; they prepare consolidations; they desktop publish and generally they save us from ourselves—it is to them we owe the accuracy and integrity of our data. Authors now know what editors do, and how. The result, again, is that we can change how authors and editors do things, to facilitate each other's work.

One concrete example: Ontario drafters used to put transition provisions in either the amending Act or the parent Act. The time would come for an editor to consolidate the Act and, if a transition provision was drafted as part of the amending Act, the editor would convert the provision into an editorial note to be inserted in the consolidation. Transition provisions are tricky, and here, without even thinking about the impact on editorial work, we would frequently draft in a way that required an editor to re-write the transition provision as a note. Then, because of how

slippery transition can be, the editor would ask the drafter to review the note. The drafter was usually busy. The editors waited.

Because I.T. decisions needed to be made for our office, authors and editors began to talk to each other more. We realized that our approach to transitions slowed down consolidation. The solution was simple: in Ontario today transitions are always drafted as part of the parent law. No editorial notes. No lawyer review. No delay. This is one small part of why Ontario has gone, in the course of the last two years, from consolidation currency averaging 12 months to consolidation currency averaging well under 14 days.

We have learned that the buzzword “end to end process” is a meaningful idea—we can evaluate and choose from the technology menu, bearing in mind the impact on each work group.

How does reader access to electronic law affect our writing?

There are small things, like:

- increased importance of spelling consistency to facilitate searches, including our own. For example, is website two words, one word, a hyphenated word?
- terminological consistency—often ignored by Anglo’s—has taken on greater importance: ‘fax’ or ‘facsimile’ or (please no) ‘facsimile transmission’? World Wide Web or Internet?

The consistency issue can impact negotiations between drafter and client: recently one drafter in our office was told by the client ministry to spell ‘post-secondary’ as one word with no hyphen, because all the related communications materials used this spelling. But across Ontario’s statutes and regulations, ‘post-secondary’ is hyphenated. The drafter refused to go with the client preference, largely because lack of consistency would result in misleading search results for people interested in education law—and in Ontario these years, that’s a lot of people.

Then there is the matter of precedents. When we draft a substantive provision meant to have the same effect as others but use different language, we may inadvertently give rise to a different legal result. Judgment is called for—not every variation in wording matters and clear language will usually yield clear meaning. But we are continuously

aware of the need to balance the potential value of electronic precedent searching against the time the search would take. We develop a sense of how to judge when adherence to—or divergence from—the language of a precedent matters.

We draft, in other words, knowing that electronic law is available to us and to our readers and that it may bite us if we don't weave that knowledge into the many factors—often below the level of articulation—that make us write a sentence one way instead of another.

Access to electronic law also impacts how we build our narrative – the legislative scheme. As in the days before electronic text, we still have to tell a story in a logical, sequential way. But with electronic text, both we and our readers can—at any point—bypass the narrative sequence with ease and speed. We go to the top of a document to search the whole document for something; compare that something against something else; pull something from some other law. In other words, it is easier to step outside our legislative schemes and check elements of it, move them, draft multiple variants on-screen, shift the storyline—whatever we think will help us communicate the message. And our readers do similar text manipulations to interpret the law.

The relationship among provisions of a law is still sequential, but it is not as sequential as it once was. And the relationship of one law to the larger body of laws has become easier to detect. The result: drafters draft in a larger and looser context. This larger context both results from and leads to....

Changes in how we publish law

The demand for more information, more quickly, and our success at meeting that demand, mandate a paradigm shift in how we publish law. This is a radical shift, a rupture in over a century of tradition in Canada: the periodic revision is giving way to:

- continual official consolidation (and soon, no doubt, official point in time consolidations); and
- continual changes to text to update the law without changing its effect: the kinds of changes we used to make in revisions once in a decade or so can now be made at any time. We can make one small change (for example, a court name) across the whole

body of law; we can make major changes to one law and consequential changes to many others. Revision-style changes are now possible outside a general revision and even outside the revision of one law.

Concluding remarks

I've mentioned a few of the changes we're implementing and a few of the changes we're thinking of developing. And we know there is much more to come.

This is a fact that we cannot alter. But we can engage with reliable people who understand technology and are willing to learn something about law, with our colleagues, and with our readers—to choose from the menu with knowledge and insight.

In 1215 Magna Carta was sent to every county town in England and read aloud by the sheriff. Obviously, that was a good publishing job, given the tools. In this information age, it is our responsibility to use our writing and publishing tools to do that same essential job, publish the law, for the same essential reasons.