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**The influence of Drafting Instructions on the quality of legislation in
Grenada.**

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**The influence of Drafting Instructions on the quality of legislation in
Grenada**

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LEGISLATIVE STUDIES.**

DECLARATION

I do hereby declare that the work presented here is my own and that it has never been submitted to any other institute for any award whatsoever.

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CHAPTER I

INTRODUCTION / BACKGROUND

Legislation has played a significant role in conveying a government's policy measures into legally binding rules, which its' citizens must adhere to and abide by. Within the Caribbean region and in particular Grenada, legislation has been used as the driving tool for implementing the country's administrative and political agenda, geared specifically towards social and economic growth and development over the past few decades. Consequently, there has been an increased focus on the drafting of sound and quality legislation, more so as a result of challenges by various local and regional legal luminaries and other interest groups who constantly review the quality of legislation drafted in Grenada.

Though there is no one common or clear cut right or wrong way to draft legislation, since each jurisdiction has its own ideal style, policies and guidelines for drafting, it is generally expected that the final product should address the policy directives of the government in a concise, logical and effective manner. Essentially, what is expected from the legislative and drafting process is a quality piece of legislation which effectively conveys the aims of the policy makers as well as allow users of the law to implement as well as adhere to the law. A feature which has also become essential in that regard is the issue of receiving proper drafting instructions to enable the drafting of quality legislation.¹

Over the years the apparent ineffectiveness and weaknesses of legislation in Grenada can be attributed most times to poor, vague and inadequate drafting instructions, a crucial flaw in the initial stages of the drafting process. Though many legal luminaries such as Sandra Markman,² have maintained that the quality of a piece of legislation rests with the drafting skills of the drafter, many others such as Thornton and Crabbe VCRA have stated that it is just as

¹ Ntaba Zion, "Pre legislative scrutiny" found in *Drafting Legislation: A modern approach* edited by Constantin Stefanou and Helen Xanthaki at Ashgate 2008, page 121

² Sandra Markman C, "Legislative Drafting: Art, Science or Discipline?" *The Loophole CALC* November 2011(Issue No. 4) page 11

important that the skills of the instructing officials and the quality of drafting instructions play a significant part in the drafting process.³

In Grenada's context drafting instructions are usually poorly prepared, if any at all, and added to this challenge is the lack of adequate and appropriate procedures on how these instructions are to be presented to the drafters within the drafting department. Notwithstanding, annually a draft policy paper is presented from the Legislative Drafting department in the Ministry of Legal Affairs to Government Ministries and Departments, with a focus on the contents of drafting instructions, it would seem that this draft policy is hardly ever disseminated to the instructing officials within these Ministries and Departments.⁴ Accordingly, instructions could either be acquired in the form of a letter, an e-mail, through deliberations with a Minister or orally via telephone. On most occasions instructions are forwarded from the requesting Government Ministry or Department as a brief request, expressing the need for an amendment or for a new Bill. This practice is starkly different from the U.K's practice, where policy is developed by administrative civil servants and detailed instructions are prepared by legal advisers within government departments, usually familiar with the legal framework under which the department functions.⁵

For drafting instructions to fully realize their purpose successfully, there is need for adequate and proper communication with knowledgeable and experienced departmental officials together with the legislative drafters. This is so, since once drafting commences the official becomes the primary participant and acts as the channel of communication between the legislative drafter and the instructing department. Notwithstanding, in Grenada the person authorized to draft, issue and even liaise with the drafting department is usually an inexperienced official. There is also the issue of hardly any appointed well trained instructing officials within the Ministries, since most times the Permanent Secretary or his or her designate is responsible for drafting instructions for required legislation

To draft quality legislation it is essential for a drafter to also appreciate the policy and justification behind the law. The successful translation of policy into a legislative structure can only be accomplished if there are comprehensive

³ G.C Thornton " *Legislative Drafting*" 4th edition 1996: London Butterworths page 129

⁴ This conclusion is based on a questionnaire forwarded to officials within various government Ministries and departments. Many of the responses indicated that they have not had sight of this paper.

⁵ Sir George Engle, "*Drafting Instructions: The UK system found in Manual in Legislative Drafting*" edited by Dr . Constantin Stefanou and Dr. Helen Xanthaki page 42

and unambiguous drafting instructions from the policy makers.⁶ As Thornton maintains “*Good instructions are a pearl beyond price and not only improve but also reduces drafting time. Bad instructions are the bane of a drafter's life*”⁷ The drafters’ appreciation and understanding of instructions is therefore the first stage in achieving quality legislation. Accordingly, the quality of drafting instructions provided to drafters must be addressed by instructing officials who should appreciate the role of drafters and facilitate his role by providing adequate instructions.⁸

To stress the importance of quality instructions for the drafting of quality legislation it is significant to note what exactly is quality legislation. Quality legislation concerns legislation that is appropriate, adequate and precise in solving the problem it is intended to solve. Quality legislation means well developed and illustrated ideas as well as a well edited document. This must be achieved through language and structure that is readily understandable to those who are affected by it, and those who administer it.⁹ According to Muylle the main difficulty with contemporary legislation is that they do not meet quality objectives since they are often drafted hurriedly and they are worded in ambiguous expressions which are generally complex and technical, thus resulting in poor quality legislation. Consequently such Acts will either have to be amended or repealed, clearly the end result of poor quality drafted legislation.¹⁰

It is clear therefore that a relationship between the drafter and the instructing officials is a vital element in the law making process. When an instructing official issues poorly drafted instructions, this leads to the drafting of unclear legislation which leads to legal uncertainties and ambiguities which eventually attracts court proceedings. The lack of proper drafting instructions in Grenada has tremendously restricted the drafting process in Grenada. It is therefore important that both instructing officials and legislative drafters are cognizant of the fact that the quality of their work determines the overall outcome of legislation, and it is with this in mind that Grenada should strive to improve the quality of its legislation.

⁶ Mary Victoria Petelo Fa’asau “*Challenges Faced by Legislative Drafters in Samoa and other USP Member Countries*” *European Journal of Law Reform* 2012 (14) 2-3 at page 203

⁷ Dr Helen Xanthaki, “*Thornton’s Legislative Drafting*” Fifth edition (Bloomsbury Professional; 2012) at page 129

⁸ Bilika H. Simamba “*The legislative process: A handbook for public officials*” (Author House, Indiana, 2009, 13)

⁹ R. Martineau & M. Salerno, “*Legal, Legislative and Rule Drafting in Plain English*” 4 (2005)

¹⁰ Muylle K.J, “*Improving the effectiveness of Parliamentary Legislative Procedure*” (2003) *Statute Law Review* 24(3) 169-186 at page 175

Hypothesis

On the basis of the background information presented above, this dissertation intends to prove that the lack of proper and adequate drafting instructions leads to the drafting of poor quality legislation in Grenada. Perhaps the most important reason for the focus on drafting instructions in Grenada has been as a result of the various criticisms from the public as well as the Judiciary, directed at the quality of legislation drafted in Grenada. The dissertation assesses the existing practices in the drafting and legislative process in Grenada, associated with drafting instructions and the ways in which such practices impairs the quality of legislation drafted. This paper will therefore prove that drafting instructions influences and contributes to the quality of legislation drafted in Grenada.

In assessing the weight and effect of proper drafting instructions on the quality of legislation drafted, the writer intends to demonstrate that apart from other contributing factors, such as lack of adequate human resources, inadequate consultations and inadequate time and resources for drafting, the quality of drafting instructions significantly contributes to and influences the quality legislation drafted in Grenada. The writer also intends to focus on how these practices can be improved to enable the drafting of sound and quality legislation.

Methodology

To prove the hypothesis the writer will firstly define legislative quality by means of effectiveness, efficiency and efficacy. In Chapter two an analysis of these terms will illustrate how the quality of legislation drafted is affected by the drafting instructions. The writer will also in Chapter three analyze and examine G.C Thornton's well-known five stage drafting process, a generally accepted theory that is used as a guide for the making of good quality legislation, to prove that there is a connection between drafting instructions that are properly written and the quality of legislation emanating from such instructions. The criteria for or factors facilitating proper drafting instructions will also be reviewed in Chapter four and analyzed to determine whether or not they can be used as effective tools to assist in the drafting of quality legislation.

The dissertation will also review the Grenadian reality in Chapter five, by assessing two main pieces of legislation passed in Grenada's Houses of Parliament. This review of legislation will demonstrate how poor drafting instructions channels the way for poor quality legislation. Some of this information will be attained by the writer, through experience working as a

Legislative drafter in the Legislative Drafting Department, Attorneys General Chamber, Grenada.

The writer also intends to conduct a survey using two questionnaires focusing on responses from persons who are directly involved in the drafting of instructions from various Government Ministries and Departments. Questionnaires were also issued to the legislative drafters who receive these instructions within the Attorney Generals Chambers, to illustrate the practices related to drafting instructions, and prove also that these practices hinders the drafting of quality legislation. Chapter six will provide an analysis of the responses to the survey, to illustrate that the issuing of poor and inadequate instructions in Grenada influences the quality of legislation drafted.

In concluding the writer will briefly assess various best practices and successful ventures used in other nations in the drafting of instructions, so as to encourage an overall improved, effective and efficient drafting process in Grenada, culminating with the end result of quality and sound legislation.

CHAPTER II

EFFICIENCY EFFICACY AND EFFECTIVENESS

The quality of legislation must firstly be addressed in this paper in order to understand what it entails. As stated by Professor Helen Xanthaki good legislation is one that produces the type, extent and level of regulation required by Government. In other words legislation of good quality is synonymous to effective legislation, namely one that leads to efficacy of legislation.¹¹ To evaluate quality legislation one must therefore assess the following terms;

(i) efficiency

(ii) effectiveness

(iii) efficacy

Once legislation is efficient and effective it essentially means that it has successfully attained proportionality, it is fair and just and enhances economic development in all sectors of the society.¹²

Efficiency

Efficiency as defined by Luzus Mader “*is the relation between the cost and the benefits of the legislative action.*”¹³ As alluded to earlier, a well-structured piece of legislation will incur some cost and at the same time would have significant influence on economic growth and development. An evaluation of efficiency therefore involves quantifying the total costs associated with the drafting and implementing the legislation, and the extent to which the projected goals of the legislation are achieved. For the legislation to be efficient, there should be minimum or no wasted effort or expense in drafting the legislation. Quality legislation therefore creates law that is efficient, easier and less expensive to administer.

¹¹ Xanthaki, Helen "On transferability of the Legislative Solution: The functionality Test." in C. Stefanou & H. Xanthaki (Eds.) *Drafting Legislation: A modern Approach*, Ashgate Publishing Limited London, 2008 at page 4.

¹² Joseph G. Kobba, "Criticism of the Legislative Drafting process and suggested reform in Sierra Leone" (2008) Vol 10 in *European Journal of Law reform*, at page 219.

¹³ Luzud Mader "Evaluating the effects; A contribution to the Quality of Legislation" (2010 *Statute Law Review* 22 (2) 119- 131 at page 129

An analysis of the total cost of the legislation should incorporate all financial implications, time and human resources, adherence to legal norms and other social effects associated with the proposed legislation. Efficiency therefore in the policymaking process and preparation of drafting instructions plays an essential role in the outcome of legislation. If there is defective policy and drafting instruction, the quality of the legislation drafted will be adversely affected.

In developed countries such as the U.K, the use of Regulation Impact Assessments (RIA's) identifies the direct costs and benefits of any legislative action. This evaluation has assisted tremendously in allowing policy makers to lessen the possibility of implementing legislation which may either produce little or no effects for the value of elevated levels of economic, social and financial burdens. The experience of the European Union and the USA illustrates that RIA's assist significantly in recognizing the results of the projected action and provides adequate direction for the best quality and efficiency of the law. RIA's provides for an impartial comparison of various solutions from the standpoint of their economic efficiency.¹⁴

Albeit the notable benefits of RIA's, Grenada has not adopted this procedure. Within Cabinet Submissions there is normally a section which provides for financial implications where a brief note is made of whether or not the projected legislation has any financial implications. There is hardly ever any extensive assessment and analysis of cost and benefits of a proposed piece of legislation. This intrinsic failing has therefore in many instances contributed to the drafting of poor quality legislation in Grenada.

Additionally, the inability of instructing officials in Grenada to present any or if at all, proper drafting instructions also illustrates a deficiency in the efficiency of the legislative and drafting process. As a result of this deficiency the drafter is placed in a precarious position where he or she has to now assess the draft instructions, draft, re-draft and overly review the drafting instructions to ensure that an effective draft is attained from an inefficient drafting scheme. As such it is important that drafting instructions are well drafted as well as the encouragement of collaboration between the drafters and instructing officials so as to allow for efficiency and in turn aid in the drafting of quality and effective legislation. As noted by Helen Xanthaki, in the drafting process

¹⁴ [///c: Users/hp./downloads/Poland_Guideline_Regulation_Impact_Assessment - Guidelines for the Regulation Impact Assessment page 5](#) accessed on the 8th July, 2014

efficiency can be used to attain effectiveness, since as she has rightly stated “*relatively cheap results are better than just results*”.¹⁵

Effectiveness

The term ‘efficiency’ and ‘effectiveness’ are said to be closely related.¹⁶ It can even be argued that these two terms complement each other. Most times it is normally stated that a drafter’s aim is to be effective when drafting a piece of legislation. Effective legislation means legislation which implements the goals and intentions of the policy makers effectively and encourages compliance and creates enforceable laws that achieve the policy objective.

Though in Grenada there are a number of limitations faced by the legislative drafter such as limited time to draft and inadequate instructions, for legislation to be effective it is necessary that the drafter ensures that the instructions have been clearly discussed and fully understood by both the drafters and the Ministries or Departments requesting the draft. Once this is done, there is a greater probability of the legislation being effective since it would have addressed the aims and objectives intended by the policy makers, making it easier for the persons who will be expected to implement. Additionally, the general populace or the citizens will have a greater understanding, awareness and appreciation of the new legislation thus ensuring that the legislation satisfies the intended goals or objectives of the policy makers. This step of allowing teamwork between Ministries and Departments only allows for effectively transforming drafting instructions into quality legislation.

Efficacy

According to Constantin Stefanou and Helen Xanthaki, efficacy pertains to the aptitude to attain a preferred or intended result.¹⁷ The link between efficacy and quality legislation means therefore, a draft piece of legislation with little or no litigation. Essentially, efficacy is said to be achieved when the legislation does not conflict with other rules of similar or hierarchal levels. Stefanou and Xanthaki continues by stating that in order for this to be achieved there must

¹⁵ Stefanou and Xanthaki "Manual in Legislative Drafting" (IALS London 2005) at page 3

¹⁵ Ibid page 5

¹⁶ Muyelle K.J 'Improving the effectiveness of Parliamentary Legislative Procedure (2003) Statute Law Review 24(3) 169-186 at page

¹⁷ See Stefanou and Xantahki (n15) at page 3

be different levels of determination by instructing officials, legislative drafters, persons applying the law as well those who enforce the law.¹⁸

Evaluation of efficiency, effectiveness and efficacy

In assessing the terms efficiency, effectiveness and efficacy it is important to note that in order to attain legislation of good quality there must be a collated and efficient drafting process in place. From the initial stages policy makers must ensure that policy is well thought out and communicated. It is only then that drafting instructors can pen drafting instructions in a clear and comprehensive manner for the drafter who is expected to understand as well as communicate the policy into law for the general public. Without a proper communication system between drafters and instructing officials, the expectation that the quality of legislation would be exceptional is a futile expectation. The intended result should be cost effective, with little or no ambiguities, and no court proceedings.

Good quality legislation as adopted by the New Zealand Legislation Advisory Committee;

- *endures;*
- *does not need numerous amendments;*
- *gives effect to the Government's policies;*
- *lessens fiscal risks to the Government;*
- *avoids the courts deciding what it means;*
- *reduces compliance costs; and*
- *limits scope for avoidance.* ¹⁹

Quality legislation in Grenada therefore enhances greater respect for the law from the citizens, it improves the chances of compliance and it gives integrity to the rule of law. Quality legislation also values the country's Constitution, human rights obligations, treaty law and other international legislation.

¹⁸ See Stefanou and Xantahki (n15) page 5

¹⁹ *Legislation advisory Committee guidelines: Guidelines on process and content of Legislation 2001* edition and amendments. By the Legislation Advisory Committee, May 2001 accessed at <http://www.pco.parliament.govt.nz/ac-guidelines-> accessed on the 17th August, 2014

CHAPTER III

THORNTON'S FIVE STAGE DRAFTING PROCESS (DRAFTING QUALITY LEGISLATION)

In further assessing the importance of quality legislation the writer will use Thornton's well-known five stage drafting process, a commonly accepted guide for the drafting of quality legislation, to prove that there is a relationship between instructions that are appropriately written and the quality of legislation emanating from such instructions. In order to present a quality piece of legislation it is essential that Thornton's five stages of the drafting process are usually adopted since it confers a realistic and rational structured guide for the instructing officer as well as the legislative drafter.

According to Thornton there are five stages in the drafting process; understanding the proposal, analyzing the proposal; designing the law, composing and developing the draft, scrutinizing and testing the draft.²⁰ The process illustrates both the journey of the Bill from the start to the final stages as well as the significance of each individual involved in the drafting process. The passage of legislation commences with the drafting of guidelines and policies, and culminates with the enactment and adoption of the legislation by the legislature. Thornton's five stage drafting process has been chosen since it has been used as an extensively acknowledged template which serves as a guide for the design of good quality legislation. It helps to identify and provide proper assessment of the problems in the drafting process, their causes as well as the solutions to those problems.

Principally, there are critical steps or stages in the process which must be adhered to in order for legislation in Grenada to be of a good quality. A skilled drafter must monitor all five stages of the drafting process to be able to produce a good quality piece of legislation. The quality of legislation is determined by several factors of which the extent of the involvement of the policy maker, instructing officials and the drafters involved in the process is a main factor. This chapter therefore illustrates how Thornton's five drafting stages can assist in drafting quality legislation.

²⁰ Thornton (n3) page 132

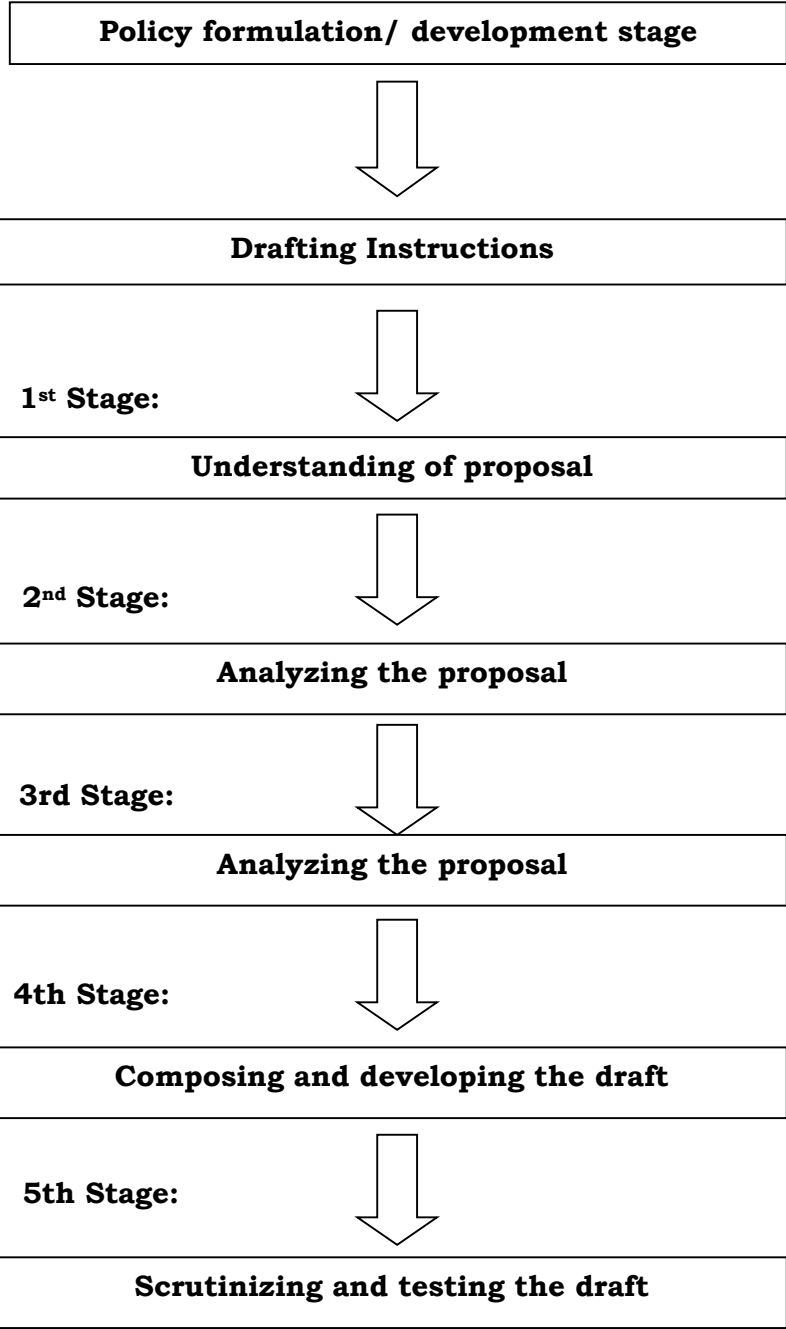


Chart illustrating Thornton's five stage drafting process; Relationship between drafting instructions and quality legislation.

Understanding

The first and most essential stage in the drafting process, is for a drafter to have a detailed understanding of the legislative proposal received from the instructing official. It is important that drafters in Grenada recognize this fact for several reasons. Before drafting a Bill the drafter must have a clear picture as well as be convinced of the mischief and the anticipated defect to be remedied by the legislation, the methods chosen to realize those aims and the probable consequences if implemented.²¹ Clearly it is critical for the drafter to get a detailed and comprehensive understanding of the rationale of the required legislation, since *'the quality of the output is directly related to the quality of the input at this stage.'*²²

A proper understanding of the instructions is essential and necessary for the development of the policy into legislative structure as well as its quality. For a draft to be of good quality, the quality of the instructions must be set, maintained and consistent.²³ To draft comprehensive, precise and clear legislation there must be an understanding of legislative proposals and instructions. Without a clear understanding it would be a challenge for the drafter to effectively convert policy instructions into legislative form. Additionally, it cannot therefore be expected that the quality of the Bill prepared by the drafter will be of a good quality. Therefore, the better the introductory work the easier will be the work of the drafter since he or she is more aware of the policy needs.

It is therefore important for the instructing official to be knowledgeable of what he or she has to do in order to make the drafters work easier and more productive.²⁴ As has been stated in a policy document regarding the role of the legislative drafting department in the Cayman Islands, *'the lawyers in the Legislative Drafting department will only issue the most excellent drafting and related services if they are sufficiently informed regarding the details of the legislative proposals.'*²⁵ Instructing officials must present the drafter with proper instructions which accurately communicates the essence of the legislative policy and its proposed effects. Accordingly, the instructor must present, in addition to the drafting instructions, reports, international

²¹ Helen Xanthaki " *Thornton's Legislative Drafting*" Fifth edition page 146

²² Varen Vanterpool " A critical Look at achieving quality in Legislation (2007) 9 European Journal of Law reform 167- 204 at page 173

²³ Clearer Commonwealth Law 36 (1993)

²⁴ Simamba, Bilika H. " *How to make effective Legislative Proposals, Cayman Islands Legislative process*" page 10

²⁵<https://www.judicial.ky/wpcontent/uploads/Role%20of%20the%20Legislative%20Drafting%20Department.pdf> -Accessed on the 6th July, 2014

agreements or any material which shapes the relevant history of the proposals. Drafting instructions must also contain sufficient background information and be drafted in plain language, without excessive jargon. The instruction must also be given in prose form and no draft bill should be attempted by the instructing department.²⁶

Regrettably, in Grenada the absence of drafting manuals to provide guidance for instructing officials and drafters poses a significant problem, since instructing officials are never aware of what sort of information should be provided in the instructions. It is therefore essential that there is some sort of assistance provided to the instructing officials for the drafting of instructions, since most times this can be a very onerous task. In that regard it is imperative that drafting offices provide information in the forms of guidelines and manuals on preparation of drafting instructions to instructing officials.

As maintained by Thornton, "*Bad drafting instructions creates setbacks for the drafter especially with the regular practice of using extracts from the laws of several jurisdictions or even several laws of the same jurisdiction.*"²⁷ Thornton goes on further to state that;

*"The drafting of law is an essay in communication, an essay that is wholly successful only if the law is communicated in clear English in a form that is readily comprehensible. The preparation of drafting instruction is also an essay in communication and it is not difficult to see that unless that communication is successful the draft is unlikely to achieve its purpose."*²⁸

Accordingly, the drafter during this phase must make certain that he has an understanding of the background information, the rationale behind the recommended legislation, the channel or manner by which those purposes are anticipated to be realized as well as the impact of the proposition on existing state of affairs and law. According to Helen Xanthaki,²⁹ it is therefore essential that the drafter starts to work after verifying the following checklist;

- *What problem is to be solved by the proposed legislation?*
- *Is the problem correctly defined?*

²⁶ Thornton (n3) page 128

²⁷ G.C Thornton "*Legislative Drafting*" (4th edn, Butterworths 1996) 130

²⁸ Thornton (n7) page 146

²⁹ Helen Xanthaki, *Legislative Techniques in Rwanda; Present and Future* European Journal of Law Reform 29 2013 (15) 3 page 102

- *Is government action justified?*
- *Is regulation the best form of government action?*
- *Is there a legal basis for regulation?*
- *What is the appropriate level of government for this action?*
- *Have all interested parties had the opportunity to present their views?*
- *How will compliance be achieved? etc*

In Grenada the lack of instructions or none at all poses a difficulty for the drafter to understand the rationale behind the drafting of legislation. The lack of proper instructions usually leads to a misinterpretation of the policy on the part of the drafter and an expectation on his part to add more to the policy development and drafting of instructions stages. Often a drafter would have to labour on a massive amount of details by making investigations, researching and at times making certain decision himself. In some instances a drafter may also have to refer to similar legislation of other islands in the Caribbean region and other developed nations as precedent for drafting a Bill. Although this may not be a bad idea for the drafter in that the drafter is exposed to additional legislative issues of a similar nature from these jurisdictions, this may also be an indication that true policy intent may not be reflected in the legislation. Further, there is the likelihood of conflicts in law, that is to say, with the proposed legislation to be drafted and other local pieces of legislation already on the books, or even Grenada's Constitution, when these "foreign" pieces of legislation are used as precedents for drafting a Bill. Indeed this is a recipe for disaster, since problems from the initial stages more than usual, ultimately results in the drafting of poor quality legislation.

A typical example where the lack of instructions posed a difficulty for the drafters to understand the rationale behind the drafting of legislation and led to misinterpretation of the policy on the part of the drafter was a request was from the Ministry of Health requesting that legislation be prepared for the new hospital services and fees, to which no instructions were provided on the new services provided or the proposed fees. The drafter had to therefore pen a letter to the requisite Ministry requesting directions on the new services provided as well as the fees, clearly a waste of time since if in the first place proper instructions were drafted by that Ministry's drafting instructor, the drafting department would not have had to respond in such manner and further delay significantly in the drafting of the amendments. They would have simply begun

drafting the required legislation with a comprehensive understanding of the requirements and proposal at the very onset.

The regular demands exerted by policy makers and instructing officials on the drafter at the Attorney Generals Chambers for the quick and hasty preparation of Bills, with insufficient drafting instructions as alluded to above, have also contributed to the drafters' inability to properly understand the reasoning behind drafting legislation. To prepare a good piece of legislation the drafters need time to fully process the instructions, compare with other pieces of legislation and to ensure there are no contradictions.

Without a proper understanding of what is expected from the initial stages of the process as well as little time to do so, the drafter would essentially continue along a dreadful pathway, eventually culminating with the drafting of a poor quality piece of legislation.

Analysis of the legislative proposal

The second stage of the process involves the evaluation of the drafting instructions. Once the policy is understood this paves the way for the drafter to fully analyse the policy. As stated by Thornton, at this stage the drafter is expected to study and analyze how the proposal affects existing laws and the practicality of enacting the law.³⁰ This stage allows the drafter to test the effectiveness of the legislation in attaining its goals. He must therefore be cognizant of existing laws, the common law, case law as well as constitutional rights issues.

The process involves a meticulous analysis and assessment of the legislative proposal and how it affects existing laws. This scrutiny is essential to ensure that there is no repetition, overlap or contradiction with existing laws. At this stage the drafter must ensure that uncertainties about policy that may impinge on the actual drafting are determined. In most European countries such as the UK, it is mandatory that administrators analyze the legislative proposal sufficiently before drafting begins. Hence the reason for an evaluation by an RIA. According to Professor Patchett³¹;

³⁰ Thornton (n7) page 128

³¹ Patchett Keith "Setting and maintaining Law drafting standards: A background paper on legislative drafting;" in Manual in Legislative Drafting edited by Dr. Constantin Stefanou and Dr. Helen Xanthaki page 53

Drafters must analyze themselves a number of issues, which includes the following;

- *the connection of the proposed legislation with the existing law;*
- *which provisions of existing law should be revoked or modified;*
- *whether any provision should be drafted in a particular way in order to make them in sync with the Constitution, more so the provisions regarding constitutional rights and applicable treaties;*
- *matters for which secondary legislation is likely to be needed to implement the draft law.*

By analyzing the drafting instructions in the early stages, it allows the drafter to assess the constitutionality of the proposed law as well as the consistency with other existing laws and international law, more so human rights legislation. As Thornton rightly points out, although it is not the affairs of the drafter to look over policy issues the drafter is nonetheless accountable for ensuring that the instructions conforms with fundamental rules of the legal system. The drafters' familiarity with the legal system as well as the constitution allows for a less tedious drafting process;

"Drafters have the responsibility to ensure that their Bills conform to the Constitution."³²

Without proper analysis there have been many circumstances in Grenada where the Bills presented to Parliament are deemed to be inconsistent with the Constitution. For example, the *Pension Disqualification Act 1983* which removed pension and other retiring benefits to public officers was deemed to be inconsistent with the Constitution since the Constitution stated expressly as follows;

*92(1) The law to be applied with respect to any pension benefits that were granted to any person before this section comes into force shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that **is no less favourable to that person.***

³² Ann Seidman, Robert Seidman and Nalim Abeysekere, "*Legislative Drafting For Democratic Social Change, A manual for drafters*" (Kluwer Law International, London 2001)page 22

Though many have argued that this 1983 piece of legislation was constitutional during the Revolutionary period from 1979 to 1983, since the People's Revolutionary Government had suspended the Constitution at that time, the fact remains after it was re-institutionalized nothing was done to rectify the issue. This being the case a Constitutional motion was brought before the courts and judges held that the act was unconstitutional and pension benefits and gratuity should be paid to persons affected accordingly.³³

In analyzing and assessing the accuracy and implication of the instructions the drafter can notify the instructing officer and enable the revision and enhancement of the policy. The drafter if he or she thinks that the drafting instructions are erroneous or should be amended then this should be indicated to the policy makers in writing so that concerns can be recorded.

In order to attain quality legislation it is therefore essential that this stage is painstakingly executed. Accurate analysis and evaluation of the instructions allows for both an assessment of the practicality and enforceability of the legislation as well as the eradication of probable dangers. This scrutiny and evaluation would reveal whether or not the goal behind the proposal can be achieved through the proposed legislation or by amending an old law or even by administrative action. The drafter will also determine whether or not provisions found in existing legislation has to be saved, amended or repealed to fit in with the proposed legislative proposal.³⁴

It is quite unfortunate in Grenada that most times as a result of lack of staff, a few trained drafters who provide drafting services for all Government Ministries and departments as well as expectation to draft legislation speedily there is the inability to always analyze all the areas pointed out by Thornton. This lack of time and resources significantly stunts the drafting process, thus creating problems in later stages of the process or at times there is usually the need for amendments or repeal of legislation, on the basis of breach of constitutionality or conflict with existing laws.

The fact also that most times foreign consultants are engaged for the drafting of Bills, further complicates the process. The engagement of an individual who

³³ *Hermilyn Armstrong v A.G of Grenada and Minister of Finance* Claim No: GDA HCV 2010/0423

³⁴ T. Perera " *The wavering line between Policy Development and Legislative Drafting*" *The Loophole- CALC* Issue No. 3 (2011) page 66

has no knowledge of the Grenadian legal system, specifically the Constitutional provisions or case law, thus makes it impossible for him to be expected to draft a Bill which conforms to the Laws of Grenada. A prime example of this was the drafting of several electronic transaction related legislation which were drafted by foreign consultants.³⁵ In drafting the Bills consultations were held on a regional level but no analysis was made specifically for Grenada. It proved thereafter that several provisions not relevant to the Grenadian context had to be removed or amended to conform to the Grenadian legal system.

Designing the law

The next stage of the process is the designing and planning stage. Once there is sufficient understanding and analysis of the proposal, the drafter must design and arrange the proposed legislation in a hierarchical structure to realize the purpose of the drafting instructions. Such a plan categorizes the legislative scheme and its normative provisions in a coherent way, a roadmap that will make the law as simple as possible. A breakdown into chapters makes it less complicated for readers to trace the provisions and sections. According to Keith Patchett "*A piece of legislation should be carefully planned before composition of its content is commenced.*"³⁶

At this juncture the drafter shapes the structure of the proposed legislation, by deciphering what clauses, chapters, parts and schedules should be provided in the proposed legislation. In effect it outlines the marginal notes and headings under which the provisions would fall. This according to Professor Keith Patchett involves giving eminence to key features of the law, separating long instruments into distinctive parts and making certain that there is a logical link between the parts and the whole and most importantly ordering normative provisions in a rational sequence.³⁷ It basically presents an outlook of how the proposed piece of legislation should look like in quality, substance and form, allowing the drafter to successfully and efficiently correspond the contents of the drafting instructions thereby achieving its goals and objectives.³⁸ Consequently, this stage enables the drafter to envision the entire concept of the proposed legislation and to use it as a listing for compiling a draft law, more so in times where there may have been poorly drafted instructions. This

³⁵ The Electronic Crimes Bill and The Electronic Transactions Bill were a suite of e-legislation Bills drafted by foreign consultants.

³⁶ Patchett Keith "*Preparation, Drafting and Management of legislative projects*" Workshop on the development of Legislative Drafting for Arab Parliament 3-6 February 2007 page 17

³⁷ Patchett Keith (n 30) page 53

³⁸ Crabbe V.C.R.A.C (n35) page 16

further reduces the probability of continuous restructuring and amendments during the composition stage which may essentially delay the drafting process. According to Crabbe,

*“the important step in the drafting process is the preparation of the legislative scheme. Upon that scheme hangs the quality of the bill. The legislative scheme represents Counsel’s mental picture of how well the Act of Parliament would look in structure and quality, in substance and in form. Without the legislative scheme the resultant Act will look like a patchy, sketchy work. It will give the appearance of an ill conceived, ill prepared piece of work.”*³⁹ It is at this stage that the drafter would determine if the Act is a workable piece of legislation and drafters must therefore be very careful that the form of their laws leads to quality drafts.⁴⁰

Professor Ann Seidman and other writers such as Nick Horn recommended eight categories for influencing policy into good law as follows;

- *Framing provisions (title, commencement, definitions)*
- *Primary rules*
- *Implementation rules (implementing agency)*
- *Compliance rules (inspections, reporting and monitoring)*
- *Enforcement rules*
- *Dispute settlement rules*
- *Finance rules*
- *Miscellaneous provisions*⁴¹

At this point, further dialogue with the instructing officer about any concern or issue that may be suitable or unsuitable for the proposed legislation, would be helpful as the drafter could set down the design effectively.⁴² This assists in achieving consistency and prevents unwarranted and pointless amendments in the future.

³⁹ Crabbe V.C.R.A.C.(n35) 16.

⁴⁰ Esther Majambere, *Clarity, precision and unambiguity: aspects for effective legislative drafting*, Commonwealth Law Bulletin, (Vol. 37, No. 3, September 2011) 418.

⁴¹ Horn, Nick "Shaping policy into law; A strategy for developing common standards, the Loopholes CALC (Special issue; 9 February 2011)40

⁴² Kobba Joseph, "Criticisms of the Legislative drafting Process and suggested reforms in Sierra Leone" (2008) 10 European Journal of Law reform 219-249 at 219

There have been occasions in Grenada when lengthy pieces of legislation were drafted without being divided into parts thus making it excessively difficult for users of the law to understand the various sections of the law. Recently however, most of Grenada's legislation has been drafted following precedents from developed countries, divided into parts with titles illustrating the contents headings, and the issues to be addressed together with explanatory notes.

The Customs Bill, 2014 is a notable example. This Bill contains 266 provisions and five schedules and, was drafted following precedents from developed countries such as the UK and Australia, wherein parts and titles were provided for. This method has assisted extensively in ensuring efficiency and consistency in the drafting of legislation in Grenada.

Composition and development of legislation

The fourth stage emanates from the first three stages and is critical for the drafting of quality legislation. After designing and planning the arrangement of the proposed piece of legislation, the drafter must then compose and develop the actual provisions to achieve the policies required. At this point, the expertise, skillfulness and capability of a drafter is tested and challenged. While the drafter must follow established drafting practices and adhere to local language and grammar, to draft quality legislation the drafter must also compile the draft plainly, accurately and precisely. According to Professor Keith Patchett *“the drafter must apply standard grammar and syntax, address the issues directly and avoid overloaded sentences and complicated sentence structures.”*⁴³ To achieve this, the drafter must ensure that he fully understands the instructions, since proper drafting instructions and adequate understanding encourages the drafting of quality legislation.

Communication and deliberation with the instructing officer over draft legislation at this point is essential as the drafter is able to point out any imprecision, gap or shortcoming in the policy as well. As stated by Thornton during this phase the drafter may propose revisions to the policy in order to complement with the draft. Thornton also supports the view that the drafter should work closely with the instructing official during this phase, so that he or she is able to raise questions and make recommendations to which the

⁴³ Patchett (n 34) page 55

instructing official must respond, ensuring that a quality piece of legislation is drafted.⁴⁴

In Grenada it is therefore important for drafting instructors and drafters to be cognisant of the importance of issuing proper drafting instructions. Only when the drafter receives all the required guidelines can he effectively compose and develop the law for implementation.

Scrutiny and testing

The fifth stage is the scrutinizing and testing of the draft. Though verification would have been made throughout the previous drafting stages, at this stage, the final draft legislation is subject to verification and checks for quality, to ensure that it replicates and displays the policies and objectives to be achieved as intended by the policy makers. The drafter if he or she has proper instructions can therefore use the instructions as a checklist to make certain that all pertinent details have been included in the draft piece of legislation.

The drafter therefore has to prove that he has complied with the drafting instructions. It is key to note however, that in composing legislation there may be some errors or some critical points may have been overlooked. In that regard the draft is then subject to revision and amendment with instructing officers, experts and other stakeholders. This form of scrutiny allows for an enhancement of constitutional rules, thus improving the quality of the legislation drafted, avoiding large numbers of litigation before the courts as well as saving legal costs.⁴⁵

The importance of this stage was noted in the U.K Greenpeace case where the government's failure to conduct "*adequate consultations*" was held to be seriously flawed.⁴⁶ The U.K has since endorsed that there must be adequate consultations on all Bills before they are submitted before Parliament.

To achieve quality legislation in Grenada it is therefore imperative that the draft should be forwarded to the various Ministries and Departments to obtain the input and observations from relevant stakeholders. Additionally, it should be

⁴⁴ Mader (n13) page 108

⁴⁵ Hugh Corder, "*Final report on methods for scrutiny of legislation by Parliament*, <http://studyonline.sas.ac.uk/course/view-> accessed on the 9th August, 2014

⁴⁶ *R Greenpeace Ltd V Secretary of State for Trade and Industry* (2007) EWHC admin 311

perused by the Grenada Bar Association and be made available for public scrutiny before the draft is finalized. Overall this thorough verification by relevant parties and stakeholders enables the drafting of a quality piece of legislation, since according to Simamba "*a draft is likely to achieve quality when all parties have reacted to its contents.*"⁴⁷

Sadly however, the scrutiny stage is hardly ever adhered to in Grenada. Most times scrutiny of a piece of legislation is only at the Cabinet level where only a few Ministers would raise questions on the bill seeking to clarify either its intention or other technical issues. It cannot therefore be said that the scrutiny process is adequate in Grenada.

Evaluation of Thornton's five stages drafting process

Having evaluated the five stages of the drafting process laid out by Thornton, it is clear that for legislation to achieve its projected objective the drafter as well as the instructing official both have a responsibility to follow the five stages of the legislative drafting process. Grenada's inability to adhere to and follow the five stages is one of the main reasons attributed for the drafting of poor legislation. The failure to adhere to these stages is simply based on the fact that they are not provided for anywhere as guidance. In that regard the Attorney Generals Chambers should seek to provide guidelines for both drafters and instructing officials.

The channel of communication between the instructing officers and the legislative drafters throughout the drafting process is therefore critical since they are both dependent on each other. The instructing officer relies on the drafter to help in converting policy into legislative text and the drafter needs the instructing officer to provide him with adequate, precise and accurate instructions. Accordingly, the essential issue existing in their relationship is "drafting instructions". At all stages the issue of the importance of drafting instructions arises. The channel of communication and deliberation between the drafter and the instructing official exists for the purpose of elucidation and further clarification of such instructions. Drafting instructions plays a key part in drafting process and must be of good quality in order to achieve quality legislation.

⁴⁷ B.H Simamba " *Managing Increasing Government expectations with respect to Legislation while maintaining quality: An assessment of Developing Jurisdictions.* The Loophole- CALC No. 1 January 2009 page 7

CHAPTER IV

WHAT IS PROPER DRAFTING INSTRUCTIONS?

Though it has been said that the foundation of quality legislation is varied, many argue that one of the essential foundations is the drafting of sound policy information by instructing officials. In that regard the writer will therefore explore and evaluate what is the significance of proper drafting instructions; what constitutes proper drafting instructions as well as the rules which must be followed in order to achieve proper drafting instructions. The manner in which drafting instructions are prepared does not only have an impact on legislation but also a direct effect on the overall drafting process. Consequently if drafting instructions are not clear the drafting process would never be effective and efficient. Therefore good drafting instructions are significant and valuable in the drafting process.

Grenada like most jurisdictions must therefore be cognizant of the fact that without properly drafted instructions the drafter would be hindered in drafting a sound and quality piece of legislation. The fact that there is no formal statutory requirement or guidelines in Grenada establishing how drafting instructions must be prepared or presented obstructs an effective drafting process as well as prevents the drafting of sound and quality legislation. For instance in Queensland Australia, *Chapter 7 of the Cabinet Handbook* addresses how instructions are to be prepared, the formulation of the program, guidelines for programming proposed Bills, controlling the volume of legislation and monitoring the program.⁴⁸ These guidelines assist instructing officials in Australia in preparing sufficiently researched, thorough instructions for the benefit of the drafters.

It must be firstly understood that drafting Instructions are a set of data made available from policy makers to enable the effective drafting of a piece of legislation, within the limits and parameters developed by the policy makers.⁴⁹ Drafting instructions provide an opportunity to allow other departments to state how the proposed legislation will affect them. It also helps the sponsoring Ministry to see its proposals through. Furthermore, they provide information about the purpose of the proposed legislation, means of achieving its purposes

⁴⁸ www.pco.nsw.gov.au/corporate/mpl.pdf Manual for the preparation of Legislation August 2000

⁴⁹ Pius Perry Biribonwha "The role of legislative drafting in the law reform process (2006) 32 CLB 601,

and the effect and ramification of the scheme on existing state of affairs and law.

Proper drafting instructions are instructions which must be comprehensive, defined, accurate and must take into account all necessary points and issues relevant to the legislative scheme. Instructions should be written in narrative form in clear, simple and uncomplicated language that is as free from slang and technical language as the substance allows. Drafting instructions should be presented in a coherent manner stating the law and then presenting amendments and repeals of existing legislation in a clear way. Good drafting instructions mean clear policy papers, setting out clear objectives, goals and aims which are formulated on the basis of a consultative process involving all stakeholders.⁵⁰

In this regard the issuing of drafting instructions in the form of a draft Bill has been discouraged. Thornton maintains that the receipt of a draft Bill as instructions does not allow the drafter to be aware of the relevant issue or problem to be addressed. Thornton feels, and quite correctly so in the writers view, that such “*cut and paste*” work from other jurisdictions only presents confounded and incoherent language.⁵¹ Writers such as EA Dreidger maintains also that such instructions must be discouraged since it encourages wastage of time and the precedent may not necessarily conform to the needs of the jurisdiction.⁵² Dreidger highlights that a draftsman should not accept instructions in the form of a draft Bill, but instead in the form of a clear statement of what is intended complemented by oral discussion.⁵³ As a rule Australian drafting departments also refuse draft Bills as instructions on the basis that ‘*someone else’s draft is not an adequate substitute for “proper instructions”*’.⁵⁴

⁵⁰ Perera T. “*The wavering line between policy development and legislative drafting*” The Loophole CDLC No. 3 August 2011 page 65

⁵¹ Thornton (n3) page 130

⁵² Mc. Leod quoting EA Dreiger, “*The composition of Legislation and precedent The department of Justice Otatwa*” (2nd edition Ottawa Department Justice 1957) page 19

⁵³ Mc. Leod (n50)page 28

⁵⁴ D.C Elliott “*Getting Better Drafting Instructions for legislative drafting*” Just language Conference <http://www.davidelliott.ca/legislative> drafting accessed on the 25/8/2014

CONTENTS OF DRAFTING INSTRUCTIONS

According to Thornton good drafting instructions illuminate the essence of the problem with sufficient background information as well as the purpose of the legislation and means of achieving the purposes.⁵⁵ Thornton therefore views drafting instructions as information which must not be rushed since ultimately it wastes everyone's time as well as delays the drafting process. Based on this analysis Thornton presented several elements which would assist in preparing proper drafting instructions. These factors were also fully supported by Crabbe. For drafting instructions to qualify as "proper drafting instructions" the instructing official must ensure that the following objectives are met;⁵⁶

- *The general rationale, aim or purpose behind the legislative proposal must be expressly indicated;*
- *The anticipated implications of the legislation must be clearly stated;*
- *All relevant background information touching upon the proposal and legislation must be stated;*
- *Provide appropriate references to decided cases which have a bearing upon the legislation;*
- *Present any unresolved issues which have a bearing upon the matters that are to be included in the legislation, accompanied by any opinion, legal or otherwise, and the views of the sponsoring Ministry on those opinions;*
- *Provide suggestions as to the penalties to be imposed for infringement of the legislation;*

⁵⁵ Thornton (n3) page 126

⁵⁶ V C.R.A.C Crabbe, Legislative Drafting, Cavendish, London 1993 page 15

- *Indicate whether an existing legislation might need amendment or whether consideration should be given to that existing legislation; In addition, effective drafting instructions for a Bill would identify whether any of the rules or objectives should be implemented in subordinate legislation.*
- *Reports of commissions of Inquiry or committees, the recommendations of which form the basis for the legislation or have a bearing on the legislation;*
- *Provide information on any existing consequential amendments or repeals and if there is need for transitional or temporary provisions or for saving provisions”.*
- *Indicate whether or not the proposed legislation will encroach on the activities of another department and state whether not that department would have been consulted, and the extent of the consultation.* ⁵⁷

In addition to these factors Thornton states that the instructions must contain the known financial, administrative, legal or other implications or difficulties of such proposal.⁵⁸ With such detailed and quality drafting instructions this makes the drafters’ job straightforward and less rigorous.

Further, Sir George Engle maintains that anyone sending drafting instructions should;

- a. make sure all photocopies sent are legible;*
- b. preface long instructions with a table of contents, for ease of reference, and make sure all pages are correctly numbered in order.*

⁵⁷ Engle George Sir "Drafting Instructions in the U.K System page 43

⁵⁸ Thornton (n3) page 130

c. Mention any recent amendments of relevant enactments.⁵⁹

Unfortunately in Grenada in issuing drafting instructions such factors are rarely ever taken into account or presented to the drafter by instructing officials, thus hampering the effectiveness of the drafting process. The absence of a manual or guidelines further perpetuates this problem. According to Joseph Kobba, where the drafter does not understand these fundamental principles, it is difficult to draft a quality piece of legislation. In order to attain sufficient understanding a skilled drafter will therefore have to ask the instructing official all possible questions until he is satisfied that responses facilitate sufficient drafting instructions.

The writer views the drafting of proper drafting instructions as good practice in the drafting process. Proper drafting instructions enable the drafter to be aware of the policy issues, and with constant communication between the drafter and the instructing official overtime a good quality piece of legislation will be produced.

FACTORS FACILITATING/ PROMOTING THE DRAFTING OF QUALITY INSTRUCTIONS

In attaining quality drafting instructions one must assess the factors which must be taken into consideration by instructing officials and drafters in order to achieve quality drafting instructions. To effectively draft quality legislation in Grenada these steps can therefore be adopted to enable the effective drafting of quality legislation.

Proper policy instructions

Preferably before drafting instructions are prepared by the instructing Ministry or Department, a fully developed policy must be prepared. The policy formulation stage affects the overall drafting process by either facilitating or delaying the process. Unless policy instructions are clear the drafting instructions would not be clear and logical. Essentially, it is a complete misuse of time to embark upon drafting a piece of legislation without proper policy instructions. To begin the drafting process, the drafter should appreciate the idea behind the proposed legislation or otherwise, the drafter would produce utter nonsense. As a consequence, the policy development stage and drafting of

⁵⁹ Sir George Engle "Drafting Instructions: The U.K System' Manual in Legislative drafting edited by Dr. Constantin Stefanou and Helen Xanthaki at page 43

instructions contributes significantly to the outcome of the legislation, determining whether or not it is eventually of quality or not. The providing of instructions on draft legislation must be coordinated by the appropriate Ministry or Department. To enable a smooth progression of the drafting process the Ministry must ensure that all relevant bodies are conferred with and are allowed to respond to each other's remarks and observations up to the finalization of the legislation.

In Grenada rarely are policy instructions properly developed and properly informed by the relevant Ministries and Departments. There are even instances where policies are not given the requisite sanctions by Cabinet which ultimately defeats the purpose of the policy, since the policy makers should at least endorse the policies.

Ann and Robert Seidman re-emphasised the importance of quality instructions as follows;

"Unless the legislative drafting instructions and the theory and methodology that underpins them guides the drafters in making an adequate empirical study of their countries relevant social realities their bills impact in changing problematic behaviours will depend on plain luck. ⁶⁰

Involvement of drafters in the early stages of the process. Should the drafter be involved?

In order to facilitate effective and proper drafting instructions, it is also important that drafters must form a relationship with instructing officials. Surprisingly in Grenada this is hardly ever the case. As a result of the small size of the jurisdiction the drafter becomes the policy maker, instructing official as well as the drafter, thus making his task at hand very difficult and cumbersome.

The lack of early consultations between drafters and policy instructors in the policy making stage encourages the problems associated with attaining proper drafting instructions. Though disapproved of, since it is seen as usurping the role of the policy maker, early dialogue with the instructing officers allows the drafter to attain further details on vague and imprecise instructions, as well as an explanation on the potential consequences of the proposals and further

⁶⁰ Seidman, Seidman & Abeyeskere,(n31) at page 39.

ensuring that policy issues are addressed in record time, thus reducing drafting time, especially in instances where policies are complicated. In New Zealand the Chief Parliamentary Counsel supports early consultation between drafters and policy instructors. In a guide to working with the New Zealand PCO the following was stated;

*"At the policy and development stage, or for the annual legislative agenda, we can help estimate the size, complexities and drafting time of the proposed legislation, and suggest a suitable vehicle."*⁶¹

The early involvement of drafters in the policy making process in New Zealand and other jurisdictions, therefore allows drafters to have a better understanding of the proposals and the expected outcome, thus contributing to the achievement of quality legislation.

Though many academics as Henry Thring,⁶² has stated that the drafter has no place in resolving policy nor drafting instructions issues there are many advantages to creating such a relationship. The drafters involvement in such a stage allows the drafter to react to instructions express their views and provide advice where necessary. It further allows the drafter to understand his instructions, the aims and objectives of the proposed legislation, which therefore makes it easier for him to generate an effective draft which he is sufficiently informed off and understands. It is significant also that the drafter maintains a relationship with the drafting official so as to ensure throughout the process that the drafting instructions are being adhered to and incorporated within the legislation.

A distinctive example where this relation was ignored was with the drafting of the Possessory Titles Bill, 2014 which was drafted without any formal instructions, only following a St. Vincent draft Act. After the Bill was drafted members of the Grenada Bar Association and other stakeholders complained bitterly that the Bill was not drafted with sufficient directives and guidelines based on Grenada's Legislative needs and requirements. This is starkly different from the UK where the policy and initial drafts of the legislation will be subject to internal government department and agency scrutiny. Often external consultation will also take place as part of the policy analysis and development stage.

⁶¹ *Guide to working with the PCO New Zealand* <http://www.pco.parliament.govt.nz/working-with-the-pco#guide2.2> (accessed 28/4/2014)

⁶² Henry Thring is the First British Parliamentary Counsel when the office was established in 1869.

Sufficient training of instructing officials and drafters

For legislation to be drafted effectively instructing officials must be sufficiently trained in the area of providing drafting instructions as well as presenting them to the drafter. All legislative proposals should have a considered plan and resource person who is designated permanently to the assignment. Without committed resource personnel the assignment will be adversely affected. Instructing officials should have powers to make pronouncements on matters or be able to get decisions speedily. The instructing officer communicating with the legislative drafter needs exceptional qualities, not only to organize drafting instructions and answer questions, but to examine and analyze drafts with a critical eye to ensure that they have captured what is required. Equally important is the fact that drafters must possess sufficient knowledge to enable the drafting of proper legislation upon receipt of the drafting instructions from the instructing officials.

Quality legislation usually results from good alliance involving a skilled drafter and knowledgeable instructing officials. The instructing official must have good judgment or innate aptitude for reading drafts and assessing what is correct and incorrect with them. The appointment of an instructing officer with sufficient seniority, skillfulness, authority, knowledge and reasonable understanding about the subject matter contributes to the quality of the bill. If this authority is trained, qualified and understands the constitutional and legal framework within which he operates he will give better instructions. He can respond to technical question and inquiries convincingly to clarify issues originating from the policy. On the other hand, if, this officer is not experienced in the operational aspects of the policy he will not be able to give good instructions. This will seriously affect the quality of the bill. Thus, the instructing officer appointed is very instrumental in determining the quality of the Bill drafted.

Although skilled in their field, some instructing officials are unwilling to make vital observations on drafts in the misguided belief that the legal text should be left to the legislative drafter and not of principal concern to them. Other instructing officials have an actual trouble considering the effects of drafts, since they may notice the terms and expressions but are unable to decipher the deficiencies or implications of the words used. Vital observations on the legislative drafter's draft, is a critical component in creating the best legislation achievable.

Use of drafting Manuals/ Guidelines

In order to enable an instructing official to present proper drafting instructions a Drafting Instructions Manual or guidelines must be prepared to assist him in doing so. This manual would assist in providing assistance in effective communication and reliability of structure and substance of drafting instructions, guiding the instructing official how to write drafting instructions in a way that is clear and readable. When use is made of a Drafting Instructions Manual, the instructing officer will also meet the demands for consistency and hence the achievement of quality in a bill. Understanding of the proposal will be effectively completed if the drafting instructions are well established. Following precedents from countries such as Australia a handbook can be prepared for the information of the drafting officials.

Sufficient time for drafting

A critical factor in drafting a quality piece of legislation is time. The lack of time given for the understanding of the instructions, since most times drafts are expected to be prepared in short time periods to be submitted before Parliament creates problems. A prominent example of this pitfall was recognized in the drafting of the Grenada Citizenship by Investment Act, 2013 which provided for the granting of Economic Citizenship to foreigners. This Bill was drafted from hardly any written instructions, using a St. Kitt's and Nevis draft Act as precedent, and expected to be tabled before Parliament in a short time period. This essentially led to various challenges which included continuous redrafting and several meetings with policy instructors who were unsure as to what was required, ultimately creating a poorly drafted Bill which required several amendments thereafter. This Act will be discussed in details in Chapter six.

Hence, if drafting instructions are well settled, then the time for drafting a bill will be short. Time needs to be appropriately used, as there are always time marks laid down for the completion of legislation. A drafter must therefore use his or her time efficiently to ensure that no time is wasted. A way to ensure this is by having all issues and problems settled before hand by ensuring that the drafting instructions are proper, and if not constant consultations with the

instructing officials would solve this issue. As Thornton stated "*good instructions can only reduce drafting time.*"⁶³

Collectively if all these factors are taken into account and adhered to during the drafting process this would enable the drafting of quality legislation in Grenada.

⁶³ Thornton G.C (1996) page 129

CHAPTER V

ANALYSING THE GRENADIAN REALITY

CASE LAW

In analyzing the influence of drafting instructions on the quality of legislation drafted in Grenada the writer has sought to examine two pieces of legislation in Grenada to illustrate how poor drafting instructions can lead to poor quality legislation. The Income Tax Act Cap 149 of the 2010 Revised Laws of Grenada (Act No. 36 of 1996) and the Citizenship by Investment Act No. 15 of 2013 both illustrate the effects of inadequate drafting instructions on the quality of legislation drafted in Grenada, and how significant it is to have proper drafting instructions to enable an efficient drafting process.

INCOME TAX ACT CAP. 149

The Grenada Income Tax Act provides for the imposition of income tax and the regulation of collecting such taxes. In drafting this law in the early nineties sufficient drafting instructions were clearly not given to encourage the drafting of this piece of legislation.

Given that it was a financial piece of legislation with tax related implications the onus laid with the policy makers to assess the costs and benefits of the proposed legislation through a Regulatory Impact Assessment. Unfortunately this was not done at all. In the U.K such tax related pieces of legislation must be thoroughly researched and assessed before being submitted for drafting. The policy officials normally arrange policy instructions for their requisite departmental lawyers, who are tasked with reviewing same and submitting it for the information of the Office of the Parliamentary Counsel to draft the Bill. The instructions must set out the background, relevant current law explaining the various changes to be made in the law by the proposed Bill.⁶⁴ According to Dr. Stefanou, “*when selecting a legislative choice, an evaluation must be taken*

⁶⁴ Legislative process: taking a Bill through Parliament <http://www.gov.uk/legislative-process-taking-a-bill-through-parliament> accessed on the 14th August, 2014.

*on the financial as well as the non-monetary costs of the choice to interest groups as well as the state.*⁶⁵

Given the fact that there was inadequate policy directives and drafting instructions as well as the fact that the Act was drafted with the assistance of foreign consultants were all factors which affected the effective implementation of the Income Tax Act, resulting overtime in several amendments between the period 1995- 2014, at least a total of thirteen amendments. This deficiency illustrated that the quality of the drafting instructions in many ways facilitates the implementation of the law significantly.

Without adequate consultations between the drafters, policy makers and instructing officials the drafter would not be able to adequately understand the aims and goals of the proposed legislation. The fact that the initial drafting of the Bill was facilitated by foreign consultants and not drafters who were aware of Grenada's legal system also perpetuated many of the problems associated with the Bill. Without a doubt if there is adequate communication between the drafter and the instructing officials, in circumstances where there were gaps and loopholes in the drafting instructions the drafter may have been able to fill in the blanks and eventually draft a quality piece of legislation. The Income Act and its deficiency also illustrates why it is important to conduct RIA's which assesses the implications of legislation more so for legislation which has significant financial implications for the State.

The case of *Appeal Commissioners (Appellant) v The Bank of Nova Scotia (Respondent)*⁶⁶ came before the Courts as a result of the poorly drafted provisions of the Income Tax Act. It would seem that the intention of the policy makers in drafting the Income Tax Act was to collect withholding tax on reimbursements of expenses and not only income. Nevertheless, the law did not reflect this intention since clearly it was not reflected in the drafting instructions.

The appeal arose as a result of payments made by the *Grenadian Branch (Nova Scotia)*, a Canadian Bank to its head office by way of reimbursement of expenses, which included computer expenses, data centre costs and head office charges. It was agreed that these amounts were reimbursements of a share of expenses and did not include any element of profit to the Head office.

⁶⁵ Stefanou and Xanthaki (n15) at page 8

⁶⁶ [2013] UKPC 19 Privy Council Appeal No. 0065 of 2013

Accordingly when the Inland Revenue assessed the Bank to pay withholding tax on all these payments under section 50(1) it was challenged by the Bank. Section 50(1) reads as follows;

50(1) Where a person whether or not engaged in a business in Grenada makes payments to a non-resident person of interest... discounts, commissions, fees, management charge, rent, lease premium, license charge, royalties or other payment whether or not the payer is entitled to deduct such payment in computing chargeable income of a business, the payer shall deduct tax at the rate specified in the third schedule and pay the amount of tax so deducted to the Comptroller within seven days after the date of payment or credit to the payee.”

It was therefore noted in this case that in Antigua’s statute the same issue arose and to solve this problem an amendment was subsequently made to bring such payments expressly within the scope of withholding tax. By amending the Antigua Income Tax Act by an (Amendment) Act 2003, section 39 was amended by substituting a direct reference to “*expenses allocated to a resident branch or agency by a non-resident company*” and inserting a new subsection (5): “*for the purposes of this section a resident branch of a foreign company and its headquarters and other non-resident branches shall be regarded as separate persons carrying on separate businesses.*”

Clearly if there were proper drafting instructions with information on existing legislation addressing the matter as well as an analysis of this issue, the problem could have been avoided in Grenada. If sufficient time was also allowed for comparisons with other Income tax legislation in other jurisdictions the clause could have been incorporated and this problem could have also been avoided. In Canada it is clear that the responsibilities of instructing officers’ require a substantive quantity and quality of work. The instructing officers must make sure that the approach implemented has been painstakingly scrutinized. Unambiguous and coherent drafting instructions can be prepared only with a detailed study of the issues that may arise.⁶⁷

The Privy Council in this matter therefore held that, if payments of this kind were to be brought within the scope of withholding tax, it should be done by specific legislation in order to avoid disputes of the kind in this case.

⁶⁷ <http://www.pco.gc.ca/index.asp?lang=eng&page=information&sub=publications&doc=legislation/chap2.2-eng.htm> accessed on the 12th August, 2014

Accordingly an amendment was made to the Act in November 2013 to address this issue. Though Government lost the case and would have to compensate the Bank with legal cost and other fees, the decision provided a chance for Government to endorse the required legal measures to make certain that the loop hole used by the Banking institution and other corporate bodies was removed.

The omission of this critical provision in the Income Tax Act illustrates the importance of proper drafting instructions. The fact that the Inland Revenue was bent on collecting taxes on these expenses demonstrates that they were of the mind-set that it formed part of the legislation. Maybe on the part of the instructing officials they were not equipped with sufficient knowledge or skills on the proper procedures for communicating drafting instructions, thus culminating in the issuing of incomplete drafting instructions. A manual or guidelines for the preparation of drafting instructions may have been of some assistance in the circumstances. It is critical also that drafting instructions must include detailed terms and conditions which are negotiated and discussed by policy makers and other relevant stakeholders in order to facilitate proper drafting instructions which would ultimately assist the drafter in implementing quality and effective legislation.

Regarding the Income Tax Act the drafter could not be held responsible for the loophole within the law since no expressed instructions were given to address this matter. It must be understood that though the drafter is a skilled and experienced official he or she may not have the required technical skills to envision what must be incorporated in a draft Bill if there is no direct instructions indicating that it should be incorporated. If the drafters were presented with comprehensive drafting instructions outlining the various aims and goals of the legislation, this would have prevented the loop hole in the law, save the Government of Grenada millions of dollars as well as allow for the drafting of a comprehensive and quality piece of legislation.

CITIZENSHIP BY INVESTMENT ACT NO. 15 of 2013

Another significant piece of legislation which illustrates the need for proper drafting instructions is the Citizenship by Investment Act No. 15 of 2013. The fact that this piece of legislation was mentioned in the Government's 2013 Budgetary speech meant that it was of an urgent nature and was expected to be tabled immediately before Parliament in 2013.

In that regard it was difficult to effectively and sufficiently ascertain the implications of the proposed legislation as well as make use of Thornton's five stages process ensuring that the draft was sufficiently understood and a proper analysis of the proposal was made. Regrettably in this instance there was no formal drafting instructions presented but instead existing Acts from St. Kitts's and Nevis and Antigua were to be used as precedents for the drafting of the Bill.

The fact that there was a first Citizenship programme in Grenada in the period of the nineteen nineties, which failed as a result of several legal and administrative issues also exemplifies why the policy directives and drafting instructions should have been adequately discussed. Upon discussion adequate instructions should have been drafted in a manner to ensure that the issues and implications surrounding the proposed legislation could be understood as well as analyzed by the drafters in order to enable the drafting of a quality piece of legislation. Though the drafters were engaged in policy making process to an extent it was only with a view to deciphering which provisions from the various Acts should be incorporated in the proposed Act.

The hurried drafting of this piece of legislation as well as the lack of instructions was later noted when several amendments were made to the Act shortly after its enforcement. The first amendment provided for the removal of a section which provided for the name of all applicants for citizenship to be published in a Parliamentary bi- annual report. Many criticized this amendment on the basis that the Bill was an ill-advised piece of legislation and this amendment only provided for the removal of a transparent process, since citizens should be allowed to have some form of information on persons entering the country from the citizenship programme. The response to this concern was that it was simply an error on the part of the Government since in reviewing the legislation of other countries there is no provision providing such details, and therefore could be a hindrance to Grenada's programme.

This Act clearly demonstrates that the issuing of drafting instructions must be encouraged so as to allow the drafter to understand the issues surrounding the proposed legislation, the necessary provisions to be reviewed in other jurisdictions so as to decide whether or not it can be applied in Grenada's context.

CHAPTER VI

ANALYSIS OF SURVEY / QUESTIONNAIRE

In addition to analyzing various piece of legislation drafted and the effect of drafting instructions on the quality of legislation drafted, the writer will also illustrate by the use of a survey/ questionnaire and the responses given by instructing officials and drafters in Grenada, how drafting instructions play a critical role in the quality of legislation drafted.

A questionnaire on drafting instructions was presented to a total number of 12 instructing officials within the various ministries and departments to ascertain the procedures regarding drafting instructions. The questions covered various areas regarding drafting instructions. The results are illustrated in the form of graphs and charts. A questionnaire was also submitted to two of the drafters within the Legislative Drafting department, Ministry of Legal Affairs to ascertain the practices associated with drafting instructions and the challenges faced.

The questions for instructing officials were submitted to the various heads of Ministries and Departments seeking the assistance of persons who are considered instructing officials to voluntarily answer the questions. The interviewees were therefore selected by their Heads of Ministry or Department. In responding to the questionnaire most of the respondents opted to remain anonymous. In most instances persons chosen were Permanent Secretaries, Senior Administrative officers or administrative officers and in some instances technical officers. The responses to the questionnaires are available for viewing.

Based on the findings from the questionnaires returned which are attached as Annex 1 and 2 to this paper, it is clear that there is no formal set of guidelines or rules to assist the instructing officials within Government Ministries and departments in Grenada. Though a policy paper is usually circulated at the start of the year from the Ministry of Legal Affairs, to all Ministries and Departments, outlining the various steps during the drafting process it would seem that most of the respondents are not aware of the existence of this policy paper nor what is required of them when submitting drafting instructions to the drafting department. As indicated in the chart below only 2 persons (16.7%) indicated that they were aware of this policy paper submitted from the Ministry of Legal Affairs annually, whilst the other 10 (83.3%) indicated that they were

unaware of the existence of this policy paper. The respondents also indicated that there was no official manual at the Ministry or Department Level, which provides for the drafting of instructions. This deficiency has therefore made it difficult for instructing officials to draft proper instructions in a manner to be understood by the drafters, thus defeating the purpose of Thornton's five stage drafting process.

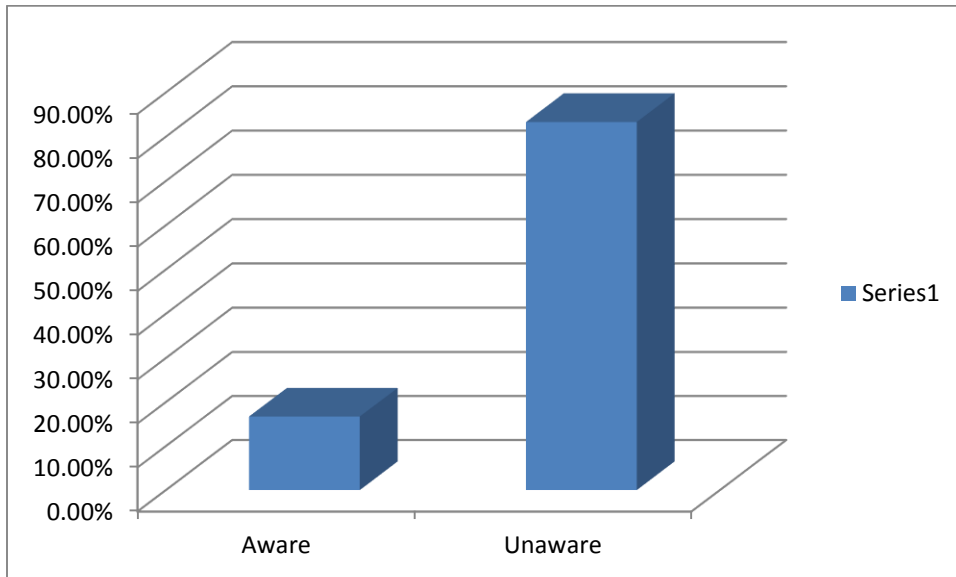
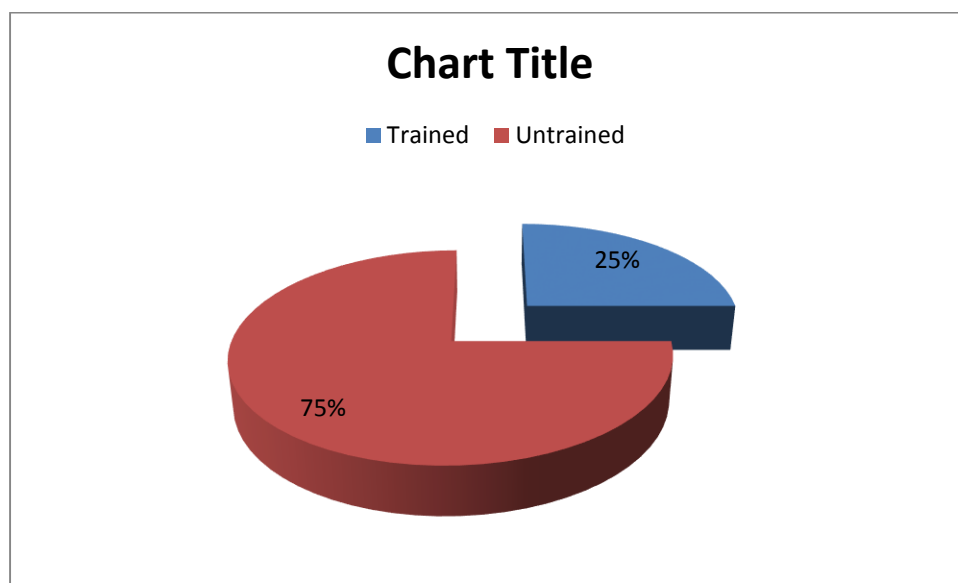


Chart illustrating that 83.3 % of the instructing officials within the various Ministries and Departments were unaware of the existence of a draft policy document providing guidelines for drafting instructions whilst only 16.7% claimed to be aware of its existence.

The questionnaire also revealed that most of the instructing officials were not trained or qualified officials, since in some instances they were either junior staff members appointed to draft instructions with no knowledge or awareness of the technicality as well as detailed research process that was involved in presenting such instructions to the drafting department. This may be attributed to the fact that within the Public Service officers have been constantly transferred from one Ministry or Department to another, thus creating the difficulty of retaining skilled and trained officials within the various Ministries and Departments for the purpose of providing drafting instructions to the drafters.

It is also apparent that in some instances the Permanent Secretary acts as the Instructing Official, writing in the capacity as Head of the Ministry or Department for legislative drafting assistance. Regrettably, most times the Permanent Secretary is unable to present the instructions in a comprehensive and detailed manner with the required information to the drafting department.

This is quite the contrary in New Zealand where there is an appointed principal instructor who is the drafters' primary point of contact and is able to respond to questions arising during the drafting process. He or she also has a clear understanding of the existing legal framework and how the proposed legislation would affect it.⁶⁸



Pie chart illustrating the level of training of instructing officials.. 9 (75%) of instructing officials within the various Ministries and departments were not trained whilst only 3 (25%) were considered trained and skilled.

In response to questions 6-17 of the instructing officials' questionnaire it would seem that most of the instructing officials responded in the affirmative, stating that they provided the drafting department with sufficient background information, in proper narrative form with all other relevant details. The drafters' responses however, proves differently and illustrates the fact that in some instances instructions were reasonably drafted and presented to the drafting department whereas in most instances the instructions were inadequate as well as poorly drafted.

Responses regarding the contents of the drafting instructions, illustrates that there is a deficiency in the contents of drafting instructions presented to drafters within the legislative drafting department. The drafters highlighted that drafting instructions should be issued to the legal department in writing presenting details on the policy together with all other relevant elements which would assist in the drafting of a quality Bill. Without a doubt this inadequacy

⁶⁸ www.pco.parliament.govt.nz/working_with_the_pco guide 2,2- *Guide to working with the PCO* -accessed on the 17th August, 2014

lends itself to poorly drafted legislation. Added to these challenges is also the fact that there is usually a hurried need for legislation. These challenges affects both the instructing officials and drafters since most times they are unable to adhere to the rules and guidelines expounded in Thornton's five stage drafting process.

Undesirable however, there is the problem of instructions being presented in the form of a draft Bill from other jurisdictions, which most times create the difficulty of misleading the drafter who because of this flaw are usually unaware of the critical issues to be addressed in the proposed legislation.

Most significantly the legislative drafters were asked how the challenges with drafting instructions affect the quality of legislation drafted. The responses clearly signify that there is a correlation with both. Many of the challenges outlined by the drafters include inadequate instructions, no formal procedures for forwarding instructions to the drafting department and the issuing of draft Bills as precedents. Accordingly 100% of the responses reflected that the issuing of proper drafting instructions is critical in the drafting process and strongly influences the quality of the Bill drafted.

CHAPTER VI

CONCLUSION

An overall examination of the quality of drafting instructions in Grenada has proven that it is severely deficient and lacking in many ways, and has impacted negatively on the drafting of quality legislation. The dissertation has therefore proven that the quality of drafting instructions significantly affects the quality of legislation drafted in Grenada. The fact that throughout the drafting process drafting instructions are so significant signifies its overall importance.

In evaluating this paper it is obvious based on work done by authors such as Thornton and Crabbe that proper drafting instructions contributes extensively to the quality of legislation drafted. Thornton's five stage drafting process summarizes the importance of drafting instructions throughout the drafting process. Proper instructions enable proper understanding and analysis on the part of the drafter with the end result of a properly drafted quality piece of legislation. It has been noted through an analysis of terms such as efficacy, efficiency and effectiveness, for legislation to be effective and efficient policy formulation and drafting instructions must be of such a quality that encourages cost effectiveness and overall an enforceable piece of legislation.

The analysis of two significant pieces of legislation and responses to a questionnaires answered by instructing officials and drafters has also demonstrated the importance of drafting instructions in the drafting of quality legislation. The procedure relating to drafting instructions in Grenada is undoubtedly inefficient and devalues the drafting of quality legislation, quite contrary to the procedures in the Parliamentary Counsel Office the United Kingdom or New Zealand where properly written instructions are received from the relevant departments, and legislation is drafted based on these instructions. In the UK instructions to Parliamentary counsel normally set out the background and relevant current law and explain the changes in the law to be brought about by the Bill.⁶⁹ Essentially this is an efficient and well thought out procedure provides for a clear and logical picture of the purpose of the proposed legislation and the mischief it intends to correct.

Though the drafting department in the A.G's Chambers has been working tirelessly over the past few years to achieve the drafting of quality legislation, the quality of drafting instructions issued by from various Government

⁶⁹ *Legislative process; Taking a Bill through Parliament*; www.gov.uk/legislative-process-taking-a-bill-through-parliament (accessed 27/5/2014)

Ministries and departments has significantly hindered this process. It is therefore imperative that drafters impress upon instructing officials the importance of drafting instructions and how it assists in the drafting of quality legislation. The issuing of guidelines and rules or a manual for drafting instructions will illustrate the contents of the drafting instructions as well as the form in which it must be presented to the drafter. In New Zealand and Australia handbooks and manuals have been drafted to address this matter sufficiently. Zambia has also sought to draft circulars which outline the basics to drafting proper instructions.⁷⁰ In Australia and the USA drafting manuals are also prepared for drafting offices and are revised from time to time.⁷¹

The inability of instructing officers to prepare proper drafting instructions using well laid out guidelines and rules to present to the drafter significantly undermines the legislative as well as drafting process. This deficiency creates problems for drafters in their understanding as well as analysis of the proposal and policy stage. This in turn leads to poorly designed and composed legislation which ultimately results in the drafting of poor quality legislation. The lack of skilled and experienced instructing officials presents a further challenge as well as further undermines the drafting process. This has led to their inability to effectively communicate drafting instructions.

Applying Thornton's five stages of the drafting process will assist tremendously in producing quality legislation in Grenada. The rules presents logical as well as a practical structure which guides a drafter through the drafting process. Adoption of practices from developed countries especially in the European region and other developed nations will also assist significantly in improving the quality of drafting instructions provided as well as the quality of legislation in Grenada.

The U.K process of engaging legal advisors within government departments to prepare instructions is very essential to the drafting process. The writer therefore considers this measure as significant enough to be adopted to an extent in Grenada. To an extent since it would be difficult to engage legal advisors in each department as a result of lack of resources and finances it may be prudent to engage one or two legal advisors for the various ministries and department to be tasked with the following;

⁷⁰ Bilika H. Simamba "Managing increasing Government expectations with respect to legislation while maintaining quality: page 8

⁷¹ Florence A "Efficiency and effectiveness of the law making process of Uganda" page 21.

(a) to analyse what insertions, amendments are necessary to give effect to policy;

(b) to discuss with the legislative drafter any complexity arising out of the instructions

(c) to provide all necessary information and proper instructions to the drafter to enable the drafting of the Bill;

(d) to ensure that the draft legislation developed by the drafter is examined by both the legal adviser and administrators to decipher whether or not it achieves the desired results;⁷²

In order to achieve quality legislation in Grenada it is important that proper drafting instructions should form an integral part of the drafting process in Grenada. In that regard instructing officials as well as drafters must be aware of its significance and it is only with this awareness can effective quality legislative be drafted for the benefit of all persons. It is only with both parties working along with each other, understanding the need for proper policy instructions can there be the drafting of quality legislation in Grenada.

Annex

⁷² Engle George ' Drafting Instructions: The U.K System. page 42

SURVEY/ QUESTIONNAIRE

ANNEX I

QUESTIONNAIRE FOR INSTRUCTING OFFICIALS

Dear Sir/ Madam, this questionnaire is intended to analyze and assess the effects of drafting instructions on the quality of legislation drafted in Grenada. Your responses to these questions will be treated as confidential, and will be used as information for academic purposes. It is intended that the questions are answered voluntarily and completed by persons who are considered instructing officials within the Ministry or Department.

Many thanks.

<i>QUESTIONS</i>	<i>YES</i>	<i>NO</i>
<i>1. Are you aware of any policy paper which is distributed annually from the Ministry of Legal Affairs which presents a guide on the contents of drafting instructions?</i>		
<i>2. Does your office have a manual/ guidelines for the drafting of instructions?</i>		
<i>3. Is the person appointed as the instructing officer in your department a qualified, trained or experienced person with adequate skills and seniority to communicate with the drafters during the drafting process?</i>		
<i>4. Is training provided for instructing officials?</i>		

<i>5. Are drafting instructions written?</i>		
<i>6. Are drafting instructions accurate and comprehensive?</i>		
<i>7. Are drafting instructions drafted in plain language, without legal jargon and other technicalities?</i>		
<i>8. Are drafting instructions drafted in narrative form?</i>		
<i>9. Are drafting instructions presented in the form of draft legislation/ Act?</i>		

10. Does the instructions contain a statement that the appropriate authority and Cabinet has given approval to the drafting of the legislation?		
11. Is there usually sufficient background information facilitating the drafters appreciation of all facts, issues and problems with which the proposed Bill is expected to address?		
12. Does the drafting instruction contain information on the principal aim and objectives of the Bill and other technical details?		
13. Does the drafting instructions contain details of consultations?		
14. Does the instructions contain details of the extent to which any existing laws may have to be amended or repealed, or whether there is need for savings or transitional provisions?		
15. Does the instructions contain information on unresolved issues which may have bearing on matters to be included in the legislation or any retroactive or retrospective		

provision?		
16. Does the instructions contain information on penalties?		
17. Does the instructions contain any information on Legal opinions or any known relevant court decisions?		

Name of officer (respondent can choose not to state his or her name).....

Position of Officer.....

Date.....

THANK YOU FOR YOUR PARTICPATION IN THIS ASSESSMENT

ANNEX II

QUESTIONNAIRE FOR DRAFTERS

Dear Sir/ Madam this questionnaire is intended to analyze and assess the effect of drafting instructions on the quality of legislation drafted in Grenada. Your responses to these questions will be treated as confidential, and will be used as information for academic purposes.

Many thanks.

1. Explain how drafting instructions are issued to your office?

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.....
.....
.....
.....

2. How is it expected that drafting instructions should be issued to your office/ department?

.....
.....
.....
.....

3. Have you ever receive drafting instructions in the form of a draft Bill?
YES _____ NO _____

4. If yes, how often do you receive these types of instructions outlined in question 3?
Sometimes _____ Usually _____ Always _____

5. What other documents are forwarded to you from Ministries and Departments , together with the drafting instructions?.....

.....
.....
.....

6. Do you think that instructions forwarded to you from Ministries and departments are adequate? YES _____ NO _____

7. Do you ever communicate with the line Ministries or Departments or instructing

officials during the drafting process?

YES _____ NO _____

8. Is there ever a need to communicate with the instructing officials to change instructions?

YES _____ NO _____

9. If yes are the instructing officials accommodating in allowing such amendments?

YES _____ NO _____

10. Does drafting Instructions significantly affect the quality of legislation drafted?

YES _____ NO _____

11. How does the challenge associated with drafting instructions affect the quality of Bills drafted?

.....
.....
.....
.....
.....

12. What changes would you suggest to improve the drafting of legislation in Grenada?.....

.....
.....
.....

Name of officer (respondent can choose not to state his or her name).....

Position of Officer.....

Date.....

THANK YOU FOR YOUR PARTICPATION IN THIS ASSESSMENT

ANNEX 3

RESPONSES FROM INSTRUCTING OFFICIALS

QUESTION	YES	NO	NO RESPONSE
1	2	10	—
2	0	12	—
3	3	9	—
4	0	12	—
5	10	2	—
6	11	1	—
7	12	0	—
8	10	2	—
9	9	3	—
10	8	3	1
11	10	2	—
12	8	3	1
13	7	5	—
14	5	5	2
15	4	8	—
16	5	7	—
17	2	7	3

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