Restructuring the Labour Code in Lieu of Quality in Legislation Principles: Will the Use of a Code Prove Beneficial?

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Abstract

Labour Laws in the Virgin Islands (UK) have stood for more than 50 years, scattered about in different pieces of legislation. This area of law is outdated and in need of reform, causing difficulty for lay persons to understand and locate it. The breadth of this area of law presents another issue. Can codification and quality in legislation principles prove to be a solution? The aim of this article is to consider whether putting the Labour Code of the Virgin Islands into a Code while considering quality legislation principles, render the legislation approachable and comprehensible by lay persons.

A. Introduction

I. Importance of Legislation

The use and development of legislation has changed dramatically in the British Virgin Islands ('BVI') after the realisation that legislation is an important ingredient to the functioning of the Community.

> ... The principle purposes of legislation are; to establish and delimit the law; and to communicate the law from the lawmaking authority to the society and in particular to the persons affected by it.[1]

In doing so statutes perform one of the following functions: conferring a right, privilege or power; abridging a right, privilege or power; obliging to act and obliging not to act.[2]

An elected Government has a duty to the community to ensure that what they have outlined in their manifesto comes to fruition.

> ... Legislation is of primary significance in the management of the country's economic, political, social, administrative and legal affairs: government is carried on largely by virtue of statutory powers granted to the Ministers and public

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1 G. C. Thornton, Legislative Drafting (1996).

2 *See* R. Dickerson, The Fundamentals of Legal Drafting 213-214 (1986).

European Journal of Law Reform, Vol. 11, no. 2, pp 259-280.

> authorities, and there are few aspects of the individual's life, or of the affairs of private organisations, which are not regulated by statute.[3]

Legislation is the foundation on which the relationship between Government and its community is built. It is where the community can find their rights and duties and it is under this same legislation that these rights and duties are enforced.

The audience of the legislation should be forefront when it is being drafted. According to the Law Commission[4] the audience of legislation consists of four main categories of readers: (a) members of parliament; (b) people affected by legislation (the community); (c) Officials; and (d) judges and lawyers. The expression, "ultimate user" was used by the Renton Committee to refer to the groups and individuals who routinely apply and interpret legislative provisions. It is of great concern, that despite the importance of statute law in our everyday lives, legislation by its nature is often found not to be as easily communicated to persons as other forms of writing.[5] The community will suffer when laws are being enacted to benefit them but they are not properly understood.[6] This simple analysis proves that legislation should be of a communicable medium that is easily and readily available to the public reader.

II. The Need for Quality in Legislation

> The language of law has for centuries been the subject of intermittent attack and most of the worthwhile adjectives of opprobrium have at some time or other been applied to it.[7]

The drafter and the Government must realise that

> people do not read legislation for pleasure. They read it only when they want to find out what the law is on a particular matter or when they want to solve a problem that has legal implications. When trying to understand a particular piece of legislation, readers need the information they are seeking to be presented clearly, precisely and in the first place they look. They judge the usability of legislation by how quick it helps them find the information they are looking for or to solve the legal problem that is confronting them.[8]

Berry realised that there are two important criteria a quality piece of legislation should fulfill: they should be (1) presented clearly and precisely; and (2) in the first place they look.

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[3] D. R. Miers & A. Page, Legislation 211 (1982).

[4] The Law Reform Commission, Plain English and the Law: Guidelines for Drafting in Plain English. A Manual for Legislative Drafters, para 70 (1990).

[5] Sir Christopher Jenkins, First Parliamentary Counsel, UK, in a submission to the Select Committee on the Modernization of the House of Commons on "The Legislative Process": Report of the House of Commons Select Committee on the Modernization of the House of Commons, First Report, Session 1997/98, July 23, 1997 (Cmnd. 190).

[6] Law Reform Commission of Victoria, Report No. 33, *Access to the Law – the Structure and Format of Legislation*, May 1990, at 4.

[7] G. C. Thornton, Legislative Drafting (1987) at extract to preface to the first Edition.

[8] D. Berry, Techniques for Evaluating Draft Legislation 1 (1996).

III. Methodology

> When the drafter attempts to determine what that result should be and to accomplish that result through the use of language, the first principle that should guide the drafter is to concentrate on the 'who' – the person on whom a legal burden is imposed or benefit is conferred.[9]

When the 'who' is identified as the community or a lay person then the drafter has to consider the two criteria pointed out above by Berry. This paper will explore whether the use of the Quality in Legislation principles and the use of a code, in reference to the Labour Code of the Virgin Islands, will satisfy Berry's criterion and produce a quality piece of legislation that is easily accessible and understandable by lay readers.

IV. Labour Laws in the Virgin Islands

Currently in the BVI, employment conditions and relations between employers and employees are governed primarily by the Labour Code Ordinance of the Virgin Islands (CAP 293). This Code, although it is consulted regularly oft falls short of the expectations of the community for many reasons.

Firstly, this Code is more than 50 years old and since its inception there have been no fundamental changes made to it. Although minor changes have been made, the entire legislation needs modernization. Secondly, in lieu of the New Constitution of the Virgin Islands, the legislation now lacks consistency with human rights and discriminatory issues. Thirdly, and most importantly is that this is not the only place to find the laws on labour. This area of law is scattered in several pieces of legislation[10], creating difficulty for lay users to fully exhaust the law and know or understands his rights, allowances and other benefits.

The Act begins by stating the following "It is hereby declared that the following expressions of national policy underlie and shall be used in the interpretation of the various provisions of this Code"[11] in essence declaring that it is a Code. The Code is divided into several divisions, ranging from basic employment divisions to work permits divisions. This is a very important piece of legislation because, as section A2(3) states, it concerns "[t]he employment condition of each worker should be those which, at the least, will enable him to provide himself and his family with the amenities of life to which all human beings are entitled." As such, this legislation should be presented as an approachable piece of legislation that the public reader can easily have access to. The user will then have to turn to Cap 292 to find further rules pertaining to labour. It is in this Act where the Labour Commission is introduced. Important for any disgruntled or wronged employee who needs his concerns addressed.

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[9] R. J. Martineau & M.B. Salerno, Legal, Legislative, and Rule Drafting in Plain English (2005).

[10] Labour Ordinance (Cap. 292), Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299), amongst other pieces of legislation.

[11] Preamble to the Labour Code Ordinance (Cap 293).

V. The Use of a Code: Adopting a Civil Law Principle in a Common Law Jurisdiction

Caslav Pejovic[12] argues that "the common law is increasingly hemmed in by legislation, including specific intervention as well as attempts to codify broad areas of law, while civil law jurisdictions increasingly rely on precedents set by the courts." Pejovic concludes that "while some significant differences remain ... there is remarkable convergence or rapprochement between the common law and civil law traditions."[13] Pejovic therefore aligns himself with probably a majority view among contemporary commentators on unification or harmonisation of private law globally and, especially, in Europe.[14]

> Mixed jurisdictions and mixed legal systems, their characteristics and definition, have become a subject of very considerable interest and debate in Europe, no doubt because of the EU ... In effect, the EU is a mixed jurisdiction or is becoming a mixed jurisdiction, there being a growing convergence within the Union between Europe's two major legal traditions, the civil law of the continental countries and the common law of England, Wales and Ireland.[15]

Our Labour Code Ordinance bears the name of a Code, but it is not a true code in the civil law sense of codes. In streamlining the entire set of Labour laws, the Code should be able to follow the civilian code and cover all aspects of Labour law in one document. It will prove beneficial then to consider a civilian code such as the Louisiana Civil Code and their Code of Practice, which is a good example of the fusion of common law and civil law.

B. The Drafting Process

The drafter is the key player in producing a quality piece of legislation. If quality is not achieved then there can be issues of interpretation. Interpretation of law has become a time consuming event in our courts. Lord Hailsham[16] said that nine out of ten cases heard on appeal before the Court of Appeal and the House of Lords either turn upon or involve the meaning of words contained in enactments of primary or secondary legislation.[17]

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[12] C. Pejovic, *Civil Law and Common Law: Two Different Paths Leading to the Same Goal*, 32 VUWLRev 42 (section 5) (2001).

[13] *Id.*, at 844.

[14] On the latter aspect, compare generally the survey by C. Schmid *The Emergence of a Transnational Legal Science in Europe*, 19 JLS 673 (2000).

[15] W. Tetely, Mixed Jurisdiction: Common law vs Civil Law (Codified and Uncodified) (1999), at para. 1. *See also* B. Markesinis (Ed.), The Gradual Convergence: Foreign Ideas, Foreign Influences and English Law on the Eve of the 21st Century (1993).

[16] Lord Hailsham of St. Marylebone, the then Lord Chancellor, in his 1983 Hamlyn Lectures.

[17] Quoted from a press release announcing the formation of the Statute Law Trust. The Trust was set up by Francis Bennion with the principal object to procure the establishment in Oxford University of a professorship in statute law studies linked to Balliol College. The secondary object is to further statute law studies.

The drafting process begins with receiving adequate instructions and ends with a quality piece of legislation. Drafting instructions must provide the drafter with necessary background information for the comprehension of all aspects of the political decision to proceed with legislation and the choice of the proposed legal means for the achievement of government policy. Dr. Elmer Driedger[18] commented that a drafter must "be brought to the point where he is qualified to deal with the subject matter from a legislative point of view." The absence of these instructions leaves the drafter with many questions, forcing a back and forth in communication with the policy maker to ensure a conformed piece of legislation.

The drafting process in itself is a time consuming process with essentially five stages.[19] The most important of these stages being the composition and development stage where the draft is revised and criticised. The process of composition includes much revisionary work, carried out both by the draftsman himself and those who instruct him.[20] For the purposes of this article it is best to consider these two stages and their assistance to the drafter in his pursuit of quality in legislation, when incorporating the proponents of quality in legislation. These proponents include clarity, simplicity, precision, accuracy, and plan language in the legislative text.[21]

C. Composition and Developing the Draft

In the composition and development stage the draft is purported to be effectively communicated as a thoroughly analysed piece of legislative work. This is the stage where the drafter has to focus his strength on producing a clear, simple and unambiguous text. This stage requires a considerable degree of mental discipline.[22] Mental disciple being focused on producing the opposite language which the Renton Committee criticized as being over-elaboration in the text, long sentences, and unhelpful structuring.[23] William Dale also labelled common law legislative drafting as a system in which the drive is always in the direction of greater detail, and tending to produce texts of greater technicality, complexity and length.[24]

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[18] E. A. Driedger, The Composition of Legislation, Supply and Services Canada, (1957), *See* preface, at xix.

[19] As outlined by Thornton *supra* note 1.

[20] *See* Thornton, *supra* note 1, at 132.

[21] H. Xanthaki, *The Problem of Quality in EU Legislation: What on Earth is Really Wrong?*, 38 Common Market Law Review 651-676, at 660 (2001).

[22] *See* Thornton, *supra* note 1, at 124.

[23] The Renton Committee on the Preparation of Legislation was to review the practices of legislative drafting and the process of preparation of legislation, with a view to achieving greater simplicity and clarity in statute law. Report of the Renton Committee, (1975) The Preparation of Legislation (1979).

[24] W. Dale, Legislative Drafting: A New Approach. A Comparative Study of Methods of France, Germany, Sweden and the United Kingdom 333 (1977).

The Joint Practical Guide of the European Parliament, the Council and the Commission ("the Guidelines") has outlined the requirements for a quality draft[25] as clarity, simplicity, precision, accuracy, and plain language in the legislative text.[26] These principles will now be analysed as to their importance in producing a draft in legislative form.

I. Quality in Legislation Principles

To understand these concepts one must understand the meaning of words, as words are the basis of communicating legislation. "There is a vast literature on the meaning of words and contemporary thinking has not reach, and is unlikely to reach, agreement on the answers to problems associated with this subject."[27]

> Drafters must [draft] in language which is immediately intelligible to their audience. They fail in their responsibilities as writers if they have not presented the facts and law clearly. Readers expect to make an effort to understand the subject matter in a document, but they should never be required to struggle with the language of the writers.[28]

II. Clarity

"Clear language is that which is unambiguous and is capable of only bearing the meaning intended by its author."[29] Barak explained that there are three kinds of vagueness.

> First, the word or sentence may not include the necessary and sufficient conditions for its application. ... Secondly, kind of vagueness occurs when it is unclear whether a particular condition is necessary for the provision to apply. Thirdly, of vagueness occurs when a word or clause applies to the kind of things that do not have a clearly defined scope of natural end point.[30]

Problems occur where the legislation is too vague or drafted in terms which are too wide, in the same way as if the draft is too precise or exhaustive. The challenge to the drafter is to find a balance between these two extremes. The Chief Parliamentary Council to the Republic of Ireland has said that:

> Precision in drafting is a worthy goal, but can be taken too far. It is frequently unnecessary to name every single thing you are forbidding or requiring. An

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[25] This document takes into consideration the extensive commentary made on maintaining quality in community legislation of the EU. Joint Practical Guide of the European Parliament, the Council and the Commission; for persons involved in the drafting of legislation within the Community institutions, http://europa.eu.int/eurolex/lex/en/techleg/17.htm.

[26] *See* Xanthaki, *supra* note 21, at 660.

[27] *See* Thornton, *supra* note 1, at 6.

[28] The Law Reform Commission of Victoria, Plain English and the Law: Guidelines for drafting in Plain English. A Manual for Legislative Drafters (1990).

[29] *See* B. Hunt, *Plain Language in Legislative Drafting: An Achievable Objective or Laudable Ideal?*, 24(2) Statute Law Review 112-124, at 116 (2003).

[30] A. Barak & S. Bashi, Purposive Interpretation in Law 100 (2005).

> overzealous attempt at precision may result in redundancy and verbosity. Drafting too precisely may create unintended loopholes.[31]

Traditional legal writing has been repeatedly accused of lending itself to obscurities, convoluted and circumlocutious language, and difficult sentence structure.[32] Thornton explains that in the legislative context clarity requires simplicity and precision. What is simple will often be precise and what is precise will often be simple but one does not follow from the other.[33]

Considering the above, language that is clear entails the use of words and sentence structures that are simple, concise, containing no unnecessary elements and ambiguity.[34] Kurzon[35] explains that clarity is given as the criterion for certain word order phenomena by many legal writers, as the following citations show, all taken from standard textbooks on legal drafting. Piesse and Gilchrist-Smith state that sentence is clearer if the adverbial occurs first. Thring maintains, without giving any reason, that the adverbial should be placed in initial position in the sentence, unless paragraphing, i.e. division of the legislative sentence into subsections, is necessary. Coode, however, does provide a reason for this prescription. "It is misleading the reader to commence an enactment as if it were universal and to wind it up by a parenthetical qualification or proviso which limits it to certain occasions only."[36] A way to remedy long adverbial phrases is by using tabulation. Martineau[37] suggested that the use of tabulation in the drafting process has another important benefit – to aid the drafter and the proponent in identifying all of the variables, including only those intended for inclusion and excluding the others. Additionally, Courts look at punctuation marks in legislation or a rule in the same way that they look at words – as guides in legislative intent.[38] As such, language that is clear entails the use of words and sentence structures that are simple, concise, containing no unnecessary elements, and ambiguity.[39]

III. Ambiguity

Ambiguity is an important concept in the theory of legal interpretation and equally important to constitutional theory and the theory of statutory interpretation. Ambiguity is of two kinds.

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[31] Legislative Drafting Manual (2001), at para. 4.4. The Drafting Manual has not been published and is not available externally.

[32] Renton Committeee (1975), The Preparation of Legislations 27-31 (1979).

[33] *See* Thornton, *supra* note 1, at 53.

[34] Joint Practical Guide for EU Drafters, *supra* note 25, at 10.

[35] D. Kurzon, *Clarity and Word Order in Legislation*, 5(2) Oxford Journal of Legal Studies 269-275, at 270 (1985).

[36] The textbooks on drafting referred to are: E. L. Piesse & J. Gilchrist-Smith, The Elements of Drafting (1950); H. Thring, Practical Legislation (1902); G. Coode, The Language of Written Law (1845), *reprinted in* E. A. Driedger, The Composition of Legislation (1957).

[37] Martineau & Salerno, *supra* note 9, at 64.

[38] *Id.*, at 68.

[39] Joint Practical Guide for EU Drafters, *supra* note 25, at 10.

> Firstly, grammatical or syntactical ambiguity which results from combining words which are unambiguous taken separately in such a way that the meaning of the words together is ambiguous [...] The second kind of ambiguity arises from the word itself and not from its use with other words. It arises when a word has more than one meaning, a circumstance which is known as polysemy."[40]

When ambiguity arises it is the drafter that is required to remedy this either by nullifying the meaning of the word by the context or by amplifying the word to the minimum extent necessary, if both are not possible then a definition may be desirable.[41] Michel Breal wrote:

> In every situation, in every trade or profession, there is a certain idea which is so much present to one's mind, so clearly implied that it seems unnecessary to state it when speaking.[42]

> Legislative drafters and other lawyers understandably take great comfort from using terms that have a well-established meaning and which have also been reinforced by judicial interpretation.[43]

When a provision is ambiguous, and is before the court, the court has to explore legislative intent. *Charles Savarin v John Willams*[44] Sir Vincent Floissac C.J. expressed the principle thus:

> ... the interpretation of every word or phrase of a statutory provision is derived from the legislative intention in regard to the meaning which the word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make concordant with the statutory context. In this regard, the statutory context comprises every other word or phrase used in the statute all implications therefrom, and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention.

Hunt[45] explained that "Legislative drafters and other lawyers understandably take great comfort from using terms that have a well established meaning and which have also been reinforced by judicial interpretation." However, Butt and Castle fail to recognise the importance of this fact and dismiss it as a mere "notion".[46] As so often recounted, Reed Dickerson[47] once described ambiguity as "the most serious disease of language," and nowhere is the absence of this disease more important than in legislation.

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[40] *See* Thornton, *supra* note 1, at 11, Chapter 1.

[41] *Id.*

[42] Quoted by Stephen Ullmann, Semantics: An Introduction to the Science of Meaning 161 (1979).

[43] *See* Hunt, *supra* note 29, at 114.

[44] [1995] 51 WIR 75.

[45] *See* Hunt, *supra* note 29, at 4.

[46] *See* P. Butt & R. Castle, Modern Legal Drafting 14 (2001).

[47] R. Dickerson. The Fundamentals of Legal Drafting 32 (1986).

IV. Simplicity

> Legislation by its very nature, and because of the demands it has to meet, does not lend itself to simplicity. But that is not to say it cannot be made simpler in some degree, or that we should not try.[48]

Legislation is often criticised because it is traditionally filled with "long, convoluted sentences, archaic legal expressions, Latin words, and pompous language."[49] The task of understanding legislation of this kind is insurmountable, not only to public readers but for judges as well. Harman LJ[50] said:

> To reach a conclusion on this matter involved the court in wading through a monstrous legislative morass, staggering from stone to stone and ignoring the marsh gas exhaling from the forest of schedules lining the way on each side. I regarded it at one time, I must confess, as a Slough of Despond through which the court would never drag its feet but I have, by leaping from tussock to tussock as best I might, eventually, pale and exhausted, reached the other side ...

Simplifying legislation is a difficult task, Ian Turnbull[51] sees the drafter as having a constant duty to consider alternative forms of expression and choose the simplest by balancing different degrees of precision against different degrees of simplicity.

Thornton[52] proposes four principle qualities which contribute to simplicity: (1) Economy implores the drafter to procure brevity, however as Horace identified the danger in striving for brevity when he said "I labour to be brief and become obscure"[53]; (2) Directness implores that when a power or duty conferred or imposed, the identity of the person on whom it is conferred or imposed should be immediately apparent;[54] (3) Familiarity of language encourages that what is familiar will be more easily communicated and understood;[55] (4) Orderliness concerns the structure of sentences, parts, schedules and acts.[56] Stunk and White say "[t]he first principle of composition is to foresee or determine the shape of what is to come and pursue that shape."[57]

V. Implications of Vagueness and Ambiguity

Although the quality in legislation concepts are necessary, there are some who believe that implicating vague terms is a skill which sends signals to the judiciary

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[48] Hon. Mr. Justice Nazareth, *Legislative Drafting: Could Our Statutes be Simpler?,* 8 Stat. LR 81, at 92 (1987).

[49] I. Turnbull, *Legislative Drafting in Plain Language and Statements of General Principle*, 18 Stat. L.R. 21 at 22 (1997).

[50] *Davy v Leeds Corporation,* [1964] 1 WLR 1218, 1224.

[51] *See* Turnbull, *supra* note 49, at 132.

[52] *See* Thornton, *supra* note 1, at 49.

[53] *See* Thornton, *supra* note 1, at 50. For a criticism of brevity at the expense of clarity, *See* Lord Reid in *W & JB Eastwood Ltd. v Herron,* [1970] 1 All ER 774 at 781.

[54] *See* Thornton, *supra* note 1, at 52.

[55] *See* Thornton, *supra* note 1, at 53.

[56] In Thornton *supra* note 1, at 19-33 as to sentence structure; 120-124 as to the design of Acts;

[57] W. Strunk Jr & E. B. White, The Elements of Style (1959), at 15.

in helping in resolving certain problems, however, implicating ambiguous terms gives rise to judicial interpretation. Graham said that when ambiguity is present in the creation of legislation "the result is often an ambiguous statute that will give rise to the need for judicial interpretation."[58] However, the use of vague, ambiguous or unclear words produces legislation that is difficult to digest. The aim of Government and drafters should not be to produce legislation that is difficult to digest by those who have not had exposure to the study of law, for it is only those persons who can really appreciate the validity in using vague or legalistic language. It is the public reader that is affected by this legislation that expects legislation to be easily digested, as Hunt explained "[s]tatues impose rights and obligations and the public is entitled to expect those rights and obligations to be stated precisely."[59]

D. The Use of a Code

I. The Concept of Codification

Codification can be described as a process of collecting and restating the law of a jurisdiction in certain areas, usually by subject, forming a legal code. Codification has been done in many common law jurisdictions, including the Law of General Obligations of New York State, the English law relating to Marine insurance, and the California Civil Code. Much of the original US common law has been codified into a single Federal statute, the Uniform Commercial Code. When laws are codified they are done so in an attempt to compile that area of the law in an effort to answer the public demand for compiled laws. When codification occurs it rearranges and displaces prior statutes and case decisions. Hahlo[60] mentioned in his article that the "suppose advantages of codification" include "certainty, clarity and accessibility to the layman."

II. The Louisiana Code of Practice

The Louisiana Code of Practice has incorporated common law institutions into the Code of Practice: particularly, the study examines jury trials and prerogative writs, such as habeas corpus, quo warranto, prohibition, mandamus and certiorari.[61]

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[58] *See* R. Graham, *A Unified Theory of Statutory Interpretation,* 23(1) Statute Law Review 91-134, at 131 (2002).

[59] *See* Hunt, *supra* note 29, at 44.

[60] H. R. Hahlo, *Codifying the Common Law: Protracted Gestation*, 38(1) The Modern Law Review 23, at 25 (1975).

[61] S. Herman, *The Louisiana Code of Practice (1825): A Civilian Essai Among Anglo-American Sources*, 12(1) Electronic Journal of Comparative Law 10 (2008), available at http://www.ejcl.org.

> The Code of Practice (1882) contained 1161 provisions. Like the companion Civil Code, it was published on opposing leaves in French and English. ... On Examination, the Code of Practice turns out to be an eclectic synthesis of civilian and common law influences.[62]

The Louisiana Code of Practice proves that common law principles can be codified and works in the form of a code. Part 1 of the Code of Practice contains scattered references to American Law, for example, CP Article 82 provides: "[t] here are judges with concurrent jurisdiction, that is to say having cognizance in matters of the same nature, though they hold their courts in the same place or district."[63] The Louisiana Code of Practice displays traits of an emerging mixed system. "Institutions characteristic of common law and civil law appeared side by side in the provisions of the Code of Practice."[64] However, there are still issues that arise when a former civil states, is being fashioned into a common law state.

The drafters of the Louisiana Civil Code needed to understand that they were preparing a code faithful to the civilian tradition, yet consistent with a newly applicable American law. This was an insurmountable task, integrating civilian laws and principles into the legal fabric of a new union, astride the many influences that surrounded this task.

> Astride both the Romanist and Anglo-American traditions, the Louisiana drafters of the Civil Code of 1825 performed their legislative assignment by appealing to both tradition and innovation ... Perhaps nowhere else in the fledging republic could one find Spanish and French speaking civilians practicing law alongside common lawyers formed in an English mold.[65]

III. Can a Code Be Implemented into BVI Laws?

In order to answer this question one has to consider what has been happening in other Common Law jurisdictions. The general rule in common law jurisdictions is that statutes, case law and common law are where the laws are found. These laws are usually strict and literal and do not leave much room for questions. This lends to the problem faced in the BVI with their Labour Laws as they are scattered. On the contrary, in a civil law jurisdiction, the rules are contained in the codes which are usually 'general and abstract' as they state, the general principles governing a given subject. More importantly they are gathered and placed in one position.

The common law has been codified in many jurisdictions and in many areas. The United States is a common law system that has codified many of its laws as outline above. This proves that it is possible to use a Code in a common law jurisdiction. Haylo said that "it would be naïve to think that the common law could be codified without undergoing a seachange."[66] One such change would

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[62] *See* Herman, *supra* note 61, at10.

[63] *See* C.P. Art. 82, at 14; *See* also Herman, *supra* note 61, at 10.

[64] *See* Herman, *supra* note 61, at 3.

[65] *Id.*, at 25.

[66] H. R. Hahlo & L.C.B. Gower, *Here Lies the Common Law: Rest in Peace*, 30(3) The Modern Law Review 241, at 241-242 (1967).

present itself when it comes to the interpretation of the Code. It is argued that the difference between a statute and a Code is one of degree only, i.e. "statutes as well as codes pose problems in interpretation; the only distinction between the statute and the code is the extent of the area of uncertainty involved."[67]

A code which, by definition, is designed to regulate the law or a branch of the law exhaustively, "requires a different technique of interpretation from a statute which is superimposed upon the common law without replacing it."[68] The BVI can follow the UK which endeavours to systematically develop and reform English law, "including in particular the codification of such law ... High on the list of its projects stands the codification of the general part of the law of contract."[69] Suffice to say the restructuring of the labour code will not be a task bearing the same magnitude as that the Law Commission in the UK.

IV. Structure of a Code

> Just as there are certain guidelines to which an architect must adhere when drawing his master plans, so too, the structural organization of a code is not left to hazard. It was necessary at the outset to limit its scope so that it would not infringe upon legal questions that do not belong to its essence [...].[70]

Levasseur[71] has pointed out that in order to draft a code the drafter must consider the purpose of the code, gathering the substance of what is to become the code and organising the Code following a plan.

Organisation is key as the Code presents one place where all the law concerning one subject can be found. Unlike other common law legislation "a code is not the arbitrary and spontaneous product of a legislative thought in the process of enacting. A Code sums up in its provisions the results achieved by the labour of reason in the past centuries."[72] Hahlo pointed out that a code is an end and a beginning.

> Unlike a statute, which is superimposed upon the common law like a ship floating on the water, a code supersedes the common law, excluding all reference ... to any source of law other than itself. It is because it writes *finis* to the old and permits a new start being made that a code is the given solution when extensive changes in a legal system are required.[73]

V. Codification in Lieu of the Need for Quality in Legislation

As outlined above, Barry's criterion lends to the attractiveness of codification. When the law, to use Goudy's words, becomes

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[67] M. R. Topping & J. P. M. Vanderlinden, *Ibi Renascit Ius Commune*, 33 M.L.R. 175 (1970)

[68] *See* Hahlo, *supra* note 60, at 24.

[69] *Id.*, at 241-242.

[70] A. Lavesseur, *On the Structure of a Civil Code*, 44. Tul. L. Rev. 693 (1969-1970).

[71] *Id.*, at 696.

[72] T. Huc, Commentaire Theorique et Pratique due Code Civil 37 (1892); *See* also Levasseur, *supra* note 70, at 697.

[73] *See* Hahlo, *supra* note 60, at 243.

> overweighted by its superabundance of materials ... inconsistencies, obscurities and contradictions make themselves felt to such a degree that it becomes almost a necessity to reduce the mass to order, precision and uniformity.[74]

Modern codifiers believe that

> in the present condition of the law in England ... is that the common law is destitute of system ... that it cannot be found set down in any book in orderly and scientific form, but must be gathered piecemeal from a vast mass of judicial decisions upon particular cases; and this defect they think codification would tend to cure.[75]

It is very difficult for the lay person to find law and find their way through the law books and case law.

Codifying law can make the law more accessible, comprehensible, consistent and certain. The Code team formed to assess the virtues and advantages of a Code (for the criminal law) put together some constitutional arguments for codification.[76] They concluded that a Code is a mechanism that will best synthesise the conflicting aims of the law with concerns of legality and due process. Professor Wechsler, principal draftsman of the Model Penal Code said "when so much is at stake for the community and the individual, care has been taken to make law as rational and just as law can be."

Finally, codification can provide much needed and long-overdue reforms in the law. This is very important for the BVI Labour laws as this field of law has been forgotten and the law seems to lag behind the new institutions and expectations of contemporary society.

E. Codifying the BYI Labour Laws

Upon inspection of the various legislation on labour it is has been revealed that there are serious shortcomings which need to be comprehensively addressed. For example, the employment conditions in relation to employees do not conform with international standards; and there are minimal provisions that relate to resolving industrial disputes and more importantly prevention of discrimination in the workplace.

During codification the law maker will have the opportunity to perform overdue reform taking into consideration the new and emerging developments in the BVI laws, such as international conventions, the new human rights section of the Constitution and other Conventions.

The aim of this codification should be to create standards that ensure fair and reasonable working conditions for employees, as well as streamlining the law with quality in legislation principles which will make the Code more attractive to the lay person who has to use it regularly. The use of a code prevents the

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[74] Law Reform 1919, at 12; *See* also, Hahlo, *supra* note 60, at 244.

[75] Hahlo, *supra* note 60, at 246.

[76] Hungerford Welch Staff, M.T. Molan, Sourcebook on Criminal Law 26-32 (2001).

duplication of provisions.[77] Lack of a code invokes dangers, including repetition and differing provisions in different laws.

As Topping[78] outlined

> codification can be and is, clearly intended by the Scottish and English Law Commissions to be a vehicle of law reform. No one ... would deny that the law needs to be reformed. For many years both England and Scotland have had their respective Law Reform Committees; it was precisely because of the necessarily piecemeal approach of these bodies that the present Administration felt it necessary to establish the Law Commission.

Topping continued to say

> to employ codification as a vehicle of law reform does not, however, entail an adoption of the concepts and institutions of Continental Codes: it would be perfectly possible for an English codification to represent a reforming and creative restatement of indigenous institutions without importing all the juristic concepts of continental Europe which have operated in the past centuries.[79]

As outlined in this work, the most unattractive part of the BVI Labour laws is their piecemeal and scattered characteristic. Topping continued to say that "codification can be the vehicle of the unification of the laws of the UK – a sporadic aim of law reformers ever since the Union of the Crowns in 1603." He also outlined a third point as being "a more complex one: simplicity... A code may indirectly assist the navvy and the bus conductor by rendering simpler the task of the lawyer and therefore more efficient the service he renders his clients."

F. Other Considerations

Before going into the relevant sections that are needed to make up the new Code, there are some considerations that need to be made. Our current labour laws do not have consideration for the Human Rights Section of our Constitution, International Law and other Conventions.

I. Human Rights on Labour Laws

The Government should ensure that employers respect the human rights of employees and not leave this increasingly important issue for businesses to handle. The new Human Rights Section of the constitution places an obligation on business to respect human rights; however the government should reiterate these human rights in the labour laws to set a higher standard for businesses to adhere to.

The human rights obligations should be the basis for the new labour code. The following issues arise from the Human Rights section of the Constitution in

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[77] V. Thuronyi, Tax Law Design and Drafting. Vol.1: International Monetary Fund (1996), at 10.

[78] Topping & Vandenlinden, *supra* note 67 , at 171.

[79] *Id.*

relation to Labour: freely chosen employment; no child labour; minimum wages; working hours; no discrimination; no harsh or inhumane treatment and freedoms of association.

II. International Laws and Other Conventions

The Convention on the Elimination of Discrimination against Women ("CEDAW")[80] has been extended to the BVI. Some changes have been made to the laws of the Virgin Islands to comply with CEDAW, what is still missing is the compliance with Article 11 – Equality in Employment. This gives women the right to work enjoying the benefits of equal remuneration, Social Security and other benefits (such as pension, sick pay, incapacity benefit etc.) and maternity rights and benefits. There is currently no legislation in the Virgin Islands that protects women from sexual harassment. There are many other pieces of legislation that address certain issues, such as the Social Security Ordinance (maternity benefits) and the Pensions Act 1994. This proves that where there are provisions, they are scattered and most times there is a void in the legislations. As such the new Labour Code should consolidate and create provisions to fill the voids.

The European Convention on Human Rights ("ECHR")[81] and its Protocol 1 together with the International Covenant on Civil and Political Rights ("ICCPR")[82] have been extended to the BVI. The relevant sections of these are Article 14 of the ECHR and Article 2 of the ICCP which deals with prohibition on discrimination. There are to be provisions in reference to labour that does not make a distinction of any kind such as sex, race, color, language etc. As such, the labour laws should prohibit discrimination in the work place on the basis of race, color, sex, age and political belief.

Another relevant section that is not currently covered in our labour laws is Article 3 of the ECHR and Section 26 of ICCPR concerning gender equality and equal status before the law. This section deals with ones right to enjoy freedom and fundamental right without distinction of any kind such as sex. The Labour laws should have provisions in relation to sexual harassment and equal pay for all sexes. The new Labour Laws should encompass these provisions and bring the BVI into conformity with these provisions.

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[80] On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Asembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

[81] Rome, 4 November 1950. The Convention for the Protection of Human Rights and Fundamental Freedoms was adopted under the auspices of the Council of Europe in 1950 to protect human rights and fundamental freedoms.

[82] This is a United Nations treaty based on the Universal Declaration of Human Rights, created in 1966 and entered into force on 23 March 1976.

G. Scrutiny and Analysis

This is the final stage of the legislative process and it is at this stage where the draft is scrutinized by the sponsors, and perhaps other interested parties.[83] This is the stage where the drafter *must* discipline himself to take a critical look at his finished product.[84] Most importantly, the drafter and his team will objectively scrutinize the first draft to ensure that:

1. the draft achieves the object of the exercise;
2. it is a coherent whole and that the material flows in a logical sequence; and
3. it is clear, simple and overall comprehensible for its audience.[85]

This is perhaps the most important necessity of the drafter; the scrutiny of his draft will allow it to become a better piece of legislation. Thornton feels that this is a deliberate and crucial stage in achieving quality in the final legislative draft.[86] William Dale has said that scrutiny is a definitive contributing factor towards the attainment of quality in legislation in many civil law countries.[87]

In the UK a draft bill goes through what is called Parliamentary scrutiny. The UK has organised a European Scrutiny Committee, particularly for EU legislation. In order for Britain's membership of the European Union to be beneficial for the people of this country, she must be a powerful presence at the European table and key figure in guiding and influencing the policy making process.[88] This committee receives all documents produced by the EU accompanied by the relevant government department's explanatory memorandum.[89] This scrutiny stage is important to the UK because they have a chance to scrutinize and give their input on regulations and directives that affect them because of their membership to the European Union. The House of Lords performs a vital role scrutinising EU legislation and the sub committees regularly produce high quality reports.[90]

In the BVI the draft legislation is referred to the sponsoring Ministry for review to ensure that the draft bill encapsulates the policy objectives. Unlike the UK there are not special committees to perform the task of legislative scrutiny[91];

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[83] *See* Thornton, *supra* note 1, at 173.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *See* Dale, *supra* note 24, at 87.

[88] Sir Digby Jones, UK Parliamentary Scrutiny of EU Legislation 1 (2005).

[89] According to *A Short Guide for Members of Parliament* by the Staff of the European Scrutiny Committee this includes: [by the Council or the Council acting jointly with the European Parliament] drafts of Regulations, ... of Directives, ... of Decisions of the Council and budgetary documents ... [and usually from the Commission] ... Green Papers and White Papers ... Communications to the Council ... Commission reports ... and draft Council Recommendations, Resolutions, and Conclusions. A full list of documents can be found on: http://www.parliament.uk/documents/upload/ESC%20GreeGuide.pdf.

[90] *See* Digby, *supra* note 88, at 5.

[91] Section 72, of the Legislative Council Standing Orders, 1979, Other Standing Select Committees include: The Public Accounts Committee, the Standing Orders Committee, the Services committee, the Committee of Privileges, and the Regulations Committee. Provision is made under s. 78 for the

however, the great debate on bills occurs in plenary and later by the House of Assembly after the Second reading.[92] To ensure that legislative scrutiny is used to its best advantage the BVI should make room for the two stages of legislative scrutiny. This can be done by ensuring that there is room for early consultation and pre-legislative scrutiny.[93] This will ensure that, in the consultation stage there is expert input helping to improve the quality and at pre-legislative stage the Parliamentarians also input to the quality of the legislation. The Hansard Committee explained that it is crucial for parliamentarians to fully utilise this opportunity to contribute to the quality of the legislative outcome.[94]

The Modernisation Committee felt that pre-legislative scrutiny is right in principle and if taken advantage of should lead to better legislation and less likelihood of subsequent amending legislation.[95] The Modernisation Committee published its report on 7 September 2006 and the report calls for greater use of pre-legislative scrutiny stating that:

"Parliamentary scrutiny at the pre-legislative stage can play an important role in improving the law, even where there has already been lengthy and extensive external consultation by Government"

A bill cannot stand on the merits of one, it needs to be a collaborative effort; until then it is just a draft produced by the drafter, in order for it to be optimized it must be scrutinized so that the drafter can use this as constructive criticism and better the draft.

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appointment by Council of Special Select Committees when the need arises. However, there have been no Special Select Committees formed in the Virgin islands.

92 Sections 56 and 57, Legislative Council Standing Orders, 1979 (Virgin Islands).

93 Dale, *supra* note 24, at 334.

94 Report of the Hansard Society Commission on Parliamentary Scrutiny: *The Challenge for Parliament: Making Government Accountable* (2001), at 28.

95 Select Committee on Modernization of the House of Commons, the Legislative Process, 23 July 1997, HC 190 1997-98, para 20. Their actual quote was:

> There is almost universal agreement that pre-legislative scrutiny is right in principle, subject to the circumstances and nature of the legislation. It provides an opportunity for the House as a whole, for individual backbenchers, and for the Opposition to have a real input into the form of the actual legislation which subsequently emerges, not least because Ministers are likely to be far more receptive to suggestions for change before the Bill is actually published. It opens Parliament up to those outside affected by legislation. At the same such pre-legislative scrutiny can be of real benefit to the Government. If could, and indeed should, lead to less time being needed at later stages of the legislative process; the use of the Chair's powers of selection would naturally reflect the extent and nature of previous scrutiny and debate. Above all, it should lead to better legislation and less likelihood of subsequent amending legislation.

I. The New Structure of the Code

Hart and Sacks[96] said a Parliamentary Counsel is "an architect of social structures, an expert in the design of frameworks of collaboration for all kinds of purposes, a specialist in the high art of speaking to the future, knowing when and how to try and bind it and when not to try at all." The biggest issue with codifying the BVI labour Laws, is the fear that something will be forgotten or not provided for in the Code.

The first task of the drafter is to ensure that the new code is consistent and coherent with the whole body of legislation. Kreveld[97] outline that the drafter must ensure that "new legislation does not imply obligations for individual persons, firms or public authorities that are *contrary* to obligations originating from other regulations ... regulators have to aim at *harmonisation* of the law." As outlined above a Code is divided into parts or articles. The draft Code should be divided into parts that address different though related subjects and consider everything covered in all the other labour legislation.

It is important that this draft Code fits into the Legislation of the BVI. This can be done by providing a definition section dealing with preliminary matters, matters relating the policy underlying the Bill, the scope of its application, the extent to which it may be enforced against the Government as an employer and the employer's right to establish working conditions that are advantageous to employees than those minimum standards set out in the Bill.

Also, it should address matters in reference to the enforcement of the Bill. A Labour Commissions should be provided for and the particulars of such should be provided. The Commonwealth of Massachusetts[98] has a Labour Relations Commission, which is a quasi-judicial agency whose mission is to ensure the prompt, peaceful, and fair resolution of labour disputes by enforcing the Commonwealth's labour laws.

Exemplary notes, which are not regularly used in the BVI, could be utilized. The Inland Revenue[99] team has undertaken a project to show how legislation can made easier to read. One way is provide notes and signposts directing the reader to other provisions. Another technique is to include material as a way of easing the reader into the provisions; it might be called an introduction or an overview. But sometimes this apparently explanatory material consists of a mixture of inoperative explanation and vital operative provisions. For example:
However, when this is being done one must be wary of the fact that under *Pepper v Hart*, purposive or explanatory material in the Bill itself creates problems and the use of material outside the statute also creates problems.

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[96] H. M. Hart & A. M. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 200 (1958).

[97] J. H. Van Kreveld, *The Main Elements of a General Policy on Legislative Quality: Dutch Experiences*, A.E. Kellermann et al. (Eds.), Improving the Quality of Legislation in Europe 85-100, at 88 (1998).

[98] Labour Relations Commission, available at http://www.mass.gov/lrc.

[99] A Talk by John Gilhooly CB, Chief Executive, Office of the Parliamentary Counsel, *Why is there So Much Legislation? And Does it Matter?*, 10 March 2006.

> There is a need to recognize that the principle function of a legislative drafter is to enshrine policy in an accurate and precise manner. In doing so we must also recognize that communication of law is an entirely different task. Neither the drafter, nor the legislation itself should be regarded as a vehicle of communication to the public – rather it should form the basis from which the explanatory materials should take root.[100]

This new piece of legislation should consider the new Human Rights Conventions, the implications of women's rights and sexual discrimination. There should be provisions outlining matters pertaining to the settlement of. The Minister is usually given powers of this nature and these powers should be outlined. However, the drafter must be sure to keep his Interpretations Act handy, in case he is about to assign a power where it has already been assigned.

> Before complying with an instruction to draft a provision conferring power, the drafter must consider whether further provision for the power is really necessary. Duplication of powers which already exist is undesirable in most cases, whether the power exists under the common law or by statute.[101]

There should also be an establishment of an Arbitration Tribunal and a Board of Inquiry to aid the dispute settlement process. The Tribunal and Board (when established) should also be wield quasi-judicial powers and regulate their own proceedings. In addition to the above an advisory committee should be established. The establishment of these types of boards and commissions is imperative to the functioning of the new labour laws.

Most importantly the basic conditions of employment have to be outlined. There should be probationary periods in employment, rest periods and standard working hours, meal intervals, wages and payments in respect of public holidays, leave rights including sick leave, maternity leave and other matters which are germane to a healthy working environment as between employers and employees.

The important issues of discrimination in the employment field have to be outlined. Particularly, equality of treatment irrespective of an employee's race, colour, sex, religious belief, ethnic origin, nationality, political opinion or affiliation, disability, family responsibility, pregnancy, marital status or age.

The Bill must be constructed in a way that lends to flexibility. In order for the code to stay up to date there must be room for consolidation. One issue in the common law is renumbering if there are any amendments. The U.S. Internal Revenue Code ('USIRC') has non-sequential numbering. This involves leaving a gap in section numbering between each division of the statute. If new sections are added, they can be named by using the unused section numbers. However, the BVI now employs renumbering of sections, by adding A, B, or C to the amendment and an amended section is 15A or 15B.

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[100] *See* Hunt, *supra* note 29, at 123.

[101] *See* Thornton, *supra* note 1, at 219, Chapter 11.

H. Conclusion

In this paper the draft laws of the BVI were identified as a body of law found in different pieces of legislation. The aim was to consider this law in terms of quality in legislation principles and consider how this law could be best presented to the lay person who would have to consult it regularly. In order to do this the process of codification was considered in order to present the legislation in one conclusive document, where a lay person can easily consult without having to use other resources. It is understood that the labour laws in the BVI are outdated and in dire need of reform and codification can be used as the vehicle to obtain this.

The benefits of a Code are many; mainly it provides one uniformed piece of legislation that can be consulted by both lawyers and lay persons. Codification is however an expensive process and should be initialised only where necessary. This articles does not require the whole legislative framework of the BVI to be codified, however, it suggests that its Labour laws will benefit greatly from codification. There are some who believe that codes do not resolve all doubts, that they do not enable lawyers to produce instant justice, that [102] "it is of the nature of law that the bulk of it should be certain, but that there will always be a fuzzy zone of uncertainty around the edges."[103] However, Topping believes that "no writer can deny that a code does provide a logically articulated skeleton for the law, granted, of course, the skeleton will require flesh to cover it... [It also provides a] juridically authoritative point of departure."

As such, the arguments for codifying the BVI labour laws, remain that it can be a vehicle for reform and rationalisation: it can serve to unify: it can assist the legal professional and provide one document the lay person can easily consult.[104]

If codification is accepted, the drafter must then turn to the issue of quality in legislation. The combination of these two will present a more approachable, accessible and understandable law to the lay person. Utilization of the vast works on quality in legislation will assist the drafter in producing a clear, precise and simple draft. "In the past, the drafter's role was sold on the basis that the writing was law and law by its nature required specialised language."[105] As such no particular emphasis was placed on readability and intelligibility. Butt & Castle[106] believe that "their concept of 'sense bites' points a way to an approach to drafting that might avoid the need for a detailed knowledge of traditional grammar."

Conclusively, the combination of quality in legislation principles and codification can be advantageous. On their own they work well, but together they can make the Labour laws of the Virgin Islands an accessible, comprehensive piece of legislation useable by the Community.

The drafter must familiarise himself with the drafting process, in order for his draft to be a good one for he plays a vital role from beginning to end. His most

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[102] *See* Topping, *supra* note 67, at 173; *See* also Hahlo, *supra* note 60, at 252.

[103] *See* Hahlo, *supra* note 60, at 252.

[104] *See* Topping, *supra* note 67, at 174.

[105] J. M. Keyes, The Democratic Challenge to Drafting Readable Laws 4 (1992).

[106] E. Tanner, *Clear, Simple and Precise Legislative Drafting: Australian Guidelines Explicated Using an EC Directive*, 25(3) Statute Law Review 223 (2004).

important role, in terms of producing quality in legislation, is at the final two stages of the process. In a test of his ability the drafter has to balance simplicity against brevity and intelligibility against precision.

> Unfortunately, some legislative drafters have either ignored the goal of intelligibility or have treated it as much less important than the goal of precision. The result is that a great deal of the legislation that is now in force is barely comprehensible. Even expert lawyers find it extremely difficult to understand.[107]

The final stage allows the drafter to get input of policy makers and other persons with interest in the law to produce a quality draft. Pre-legislative scrutiny is vastly important, it allows "the reviewer to convey to the drafter what the draft means to the reviewer and whether the drafter's intent is clear to the reviewer."[108] The BVI should consider Sir William Dale's proposals for improving quality of legislation.[109] He suggested that there be a change in drafting technique, by reducing the verbal impedimenta; The establishment of a Law Council to advise the Government on draft bills; A greater hand in the drafting process to be given to experts in the subject-matter rather than experts in drafting; and an improved system for parliamentary examination of legislation.

Quality in legislation is a joint effort and should not be left to the drafter alone, Dr. Peter North, former Law Commissioner, suggested in a lecture in 1984 that bills should be available to expert scrutiny and comment in draft – as was the case in West Germany and Switzerland.[110]

> In some cases the same policy objective may be approached in a variety of ways; ... a key issue is whether the approach chosen is appropriate to realising the statue's purposes.[111]

Codifying will allow the legislature of the Virgin Islands to revisit the labour laws and see where it is lacking and supplement such lack. This Civil law method, used in connection with Common law norms can prove very beneficial. Although we will not do away with case law, the draft Code can present fundamental case law principles avoiding a layperson reading and labouring through legalistic case law. After making the considerations above the new Labour Code could be a streamlined piece of legislation that can last for years to come.

The drafter must realise that his task goes beyond writing legislation, one piece of legislation can govern a jurisdiction for centuries, for that reason legislation that is produced should be one of quality. Harper & Rowe[112] said:

> Intellectually, the draftsman's skills are the highest in the practice of law. Judges at the bottom need merely reach decisions ... negotiators and advocates need understand only as much of a situation as will gain a victory for their clients; counsellors can be bags of wind. But the documents [of legislative drafting] survive,

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[107] Law Reform Commission of Victoria, *supra* note 28, at 1.

[108] *See* Martineau & Salerno, *supra* note 9, at 23.

[109] *See* Dale, *supra* note 25, at 335.

[110] P. North, *Is Law Reform Too Important to be Left to Lawyers?*, 5 Oxford Legal Studies 119, at 125 (1985).

[111] *See* Miers & Page, *supra* note 3, at 221.

[112] M. Mayer, The Lawyer 50 (1966).

and to draw them up well requires an extraordinary understanding of everything they are suppose to accomplish ... probably the greatest compliment a lawyer can receive from his profession ... is an assignment to draft a major law.