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THE STATEMENT OF PURPOSE  
AS  
AN AID IN THE CONSTRUCTION OF STATUTES

by  
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A thesis submitted to the School of Graduate Studies and Research  
of the University of Ottawa  
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INDEX

INTRODUCTION	1
PREAMBLES	5
LONG TITLES	29
PURPOSE CLAUSES	33
TYPES OF LEGISLATION MORE APPROPRIATE FOR STATEMENTS OF PURPOSE	42
ARGUMENTS FOR AND AGAINST STATEMENTS OF PURPOSE	52
CONCLUSION	70
APPENDIX I	75
APPENDIX II	78
APPENDIX III	79
TABLE OF CASES	81
FOOTNOTES	85
BIBLIOGRAPHY	99

## INTRODUCTION

This thesis reviews the statement of purpose as an aid in the construction of statutes. The term "statement of purpose" refers to the various forms used by a legislative draftsman to express in a direct statement the object or purpose of the whole or a part of legislation. The forms of statements of purpose include long titles, general preambles to Acts and sections specifically stating the purpose of the Act.

An Act, in order to be construed, is read from the beginning to the end and all the provisions of the statute must be considered, including, the long title, short title, preamble and purpose statement, if any. These statements of purpose are read and considered in the process of the construction of a statute. This thesis examines each of the different forms of the statement of purpose and reviews the use of statements of purpose as well as various considerations to determine if such a drafting technique is worthwhile, and if it offers anything in the construction of a statute.

It is proposed in this thesis that there are three major audiences of statutes. Statutes, before their enactment by the provincial legislatures or federal Parliament, have been read and construed by the members of the respective assemblies. The members have passed both the principle and the individual sections of the Bill and in doing this,

have acted as the first audience of the statute. The second audience is made up of lawyers, of those whose conduct the statutes regulate, the public and of others who administer the legislative provisions. The vast majority of statute references are made by this audience. The third audience is the judiciary. Because statute law is an increasingly important aspect of the law and a large proportion of issues that come before the courts today involve statutory construction or interpretation, the judiciary is included as the third major audience of statutes.

This thesis proposes that each different audience of statutes gives a different value to the statement of purpose as an aid in the construction of statutes and, that different forms of the statement of purpose have different values for each audience.

A direct and concise statement of purpose in a statute is worth consideration because the guiding light in the construction of statutes is the intention of Parliament and the object and scheme of the Act.

A statute, as a whole is read in its entire context in order to ascertain the intention of Parliament and the object and scheme of the Act. The particular provisions in individual cases must then be read in their grammatical and ordinary sense, in the light of the intention of Parliament and the object and scheme of the Act. If the words of the provision are clear and unambiguous and in harmony with the intention,

object and scheme of the Act, the construction of the statute is completed. If the words are not clear or are ambiguous, they must be given a meaning to make them reflect the expressed intention, object and scheme, so long as that meaning is one that the words can reasonably support. If the words are clear and unambiguous but, when read in their ordinary sense, are not in harmony with the intention, object and scheme of the Act, then a less ordinary meaning that will result in harmony must be attributed to the words if they can reasonably bear it. Only if reference to the intention of Parliament and the object and scheme of the Act does not resolve the ambiguity or disharmony may a subjective reasonable meaning be given to the provision.<sup>1</sup>

The term "intention of Parliament" is a concept of considerable debate. It has been suggested to be fictional because of the impossibility of ascribing one intention to an elected assembly. According to some writers the heterogeneous collectivity of the Legislature or Parliament does not have such a single shared intent as is sought by the readers of legislation.<sup>2</sup> It is necessary however to assume a general legislative intent to give direction and significance to statutory interpretation, and there is no practical alternative to assuming that the manifest intent of legislation is the actual intent.<sup>3</sup> For the purposes of this thesis it is sufficient to accept that any reference to legislative intent is a reference to an agreement by the majority of Parliament that the words in the Bill express what is to be known as the intention of Parliament.<sup>4</sup>

Overlapping with the concept of "legislative intent" is that of "legislative purpose". There are several articles that discuss the differences between the two concepts but again it is sufficient for the purposes of this thesis to view the manifest intent of the legislative body to be the same as the actual object or purpose of an Act.<sup>5</sup> As Dr. J. A. Corry has written: "No enactment is ever passed for the sake of its details; it is passed in an attempt to realize a social purpose. Though the intention of the Legislature is fiction, the purpose or object of the legislation is very real."<sup>6</sup>

The first step in examining the statement of purpose as an aid in the construction of statutes is to review the specific forms of statement of purpose: preambles, long titles and purpose clauses.

## PREAMBLES

The preamble is one form of express declaration of parliamentary intent and purpose in the internal context of a statute. It is one of the internal aids used in the ascertainment of the purpose of a statute. Although its use has fallen out of fashion and public Acts do not normally have preambles,<sup>7</sup> the Interpretation Act (Canada) states the preamble in a statute "shall be read as part thereof intended to assist in explaining its purport and object".<sup>8</sup> Provincial Interpretation Acts have similar provisions.<sup>9</sup>

A preamble usually sets out the object or purpose of the Act or the circumstances that gave rise to the Act. At the Bill stage, the purpose of a preamble is to state the reasons for and intended effects of proposed legislation. The preamble is considered in the Committee of the House only after all the clauses of the Bill have been agreed to, and any amendments have been made or new clauses or schedules have been added. This is because the House has already affirmed the principle of the Bill on the second reading, and it is therefore the province of the Committee to settle the clauses first, and then to consider the preamble in reference to the clauses. Amendments may then be moved to the preamble if rendered necessary by amendments made to the Bill. The preamble is thus made subordinate to the clauses instead of governing them.<sup>10</sup> Lord Dilhorne has recently expressed this idea by stating "The preamble to a Bill can be amended during the Bill's passage through Parliament... so it is assumed to have the approval of Parliament".<sup>11</sup>

The general rule for the role of preambles in the interpretation of statutes is usually stated as follows: a preamble may not be used to control or qualify enactments which are themselves precise and unambiguous, but if any doubt exists as to the meaning of a particular enactment, recourse may be had then to the preamble.<sup>12</sup>

Preambles have not always been accepted by the courts as forming part of the statute. Through the thirteenth, fourteenth and fifteenth centuries, because of the supremacy of the King, there was no great distinction between the legislative, executive and judicial levels of government. Law making was a matter of administration and not of legislation. Statutes were seen as a secondary source of law to the King's command and were entitled to no extraordinary sanctity. The King consulted with the judges in the drafting of laws but at this stage in history the King's Parliament was either the King and his Councillors alone or the King and the King's Council with the barons. The only role the House of Commons had in the legislative process was that of a petitioner; and the petitions were made individually and not by the House of Commons as an organized body.<sup>13</sup>

Up to the middle of the fourteenth century the judges laid claim to inside information in their interpretation of statutes. They had drafted the statutes and felt they were not bound by the words alone. For example, when argument was made for an alternative interpretation to a

statute, a judge retorted "Do not gloss the statute. We know better than you for we made it."<sup>14</sup>

By the early sixteenth century preambles were recognized as a legitimate aid to construction. The royal conception of the scope and purposes of the statutes was still important, however, and statutes were given an equitable construction, with the spirit of the law the prevailing factor. This kind of construction was said to have been given to ancient statutes in consequence of the conciseness with which they were drawn. It has also been explained on the ground that language was used with no great precision in early times and that Acts were framed in harmony with the lax method of interpretation contemporaneously prevalent.<sup>15</sup> Heydon's Case ((1584), 3 Co. Rep. 7a; 76 E.R. 637) contains an expression of the equitable construction practiced at that time. The Barons of the Exchequer in that case stated the following resolution that is known today as the 'mischief rule':

And it was resolved by them that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

- 1st. What was the common law, before the making of the Act.
- 2nd What was the mischief and defect for which the common law did not provide.
- 3rd What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth.

And

4th The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.<sup>16</sup>

Another example of the sixteenth century view of preambles is given by Dyer C.J. in Stowel v. Lord Zouch (1 Plowd 353, 75 Eng. Rep. 536 (1509)): "For the better application of the purview the preamble of the Act is to be considered....a key to open the minds of the makers of the Act, and the mischief which they intended to redress".<sup>17</sup> Lord Diplock explains that in the sixteenth century, statutory exceptions to the common law were made with the feeling that it was necessary to incorporate in the statute the reasons which justified the changes. In addition therefore to enacting words, statutes then contained lengthy preambles reciting the particular mischief or defect in the common law that the enacting words were designed to remedy.<sup>18</sup>

By the end of the seventeenth century equitable construction had all but vanished. When the Tudor and Stuart reigns were over the House of Commons had become a major institution in the political process in England. Fundamental law as the supreme source of law was dethroned by the law of Parliament.<sup>19</sup> Legal thinking at the time was influenced by John Locke's theory of social contract and certain rights were seen as beyond the easy reach of Parliament.<sup>20</sup> The principles

and rights of the individual to life, liberty and property were felt to be sacred and inviolable. The presumption developed that Parliament had no intention to interfere with fundamental rights unless it was very clearly stated in the statute. Statutes were seen in two categories; as penal or remedial. The former, such as those incorporating new remedies, interfered with the rights and property of the individual and were construed strictly; the latter were for the public benefit and construed liberally. As Dr. Driedger has noted, the difference between the two classifications has not been clearly defined, and is probably "that in the case of a remedial statute the judges may bring in everything they can within the maximum scope of the language used; in the case of a penal statute they must not bring in anything unless they are compelled to do so by clear language".<sup>21</sup>

It developed in the late seventeenth and early eighteenth centuries that statutes were construed literally. Judges refused to go beyond what Parliament actually said expressly, or by necessary implication, because investigation beyond the words of the statute was felt to be a usurpation of the function of the Legislature.<sup>22</sup> Only if statutory words were obscure or ambiguous could or would the courts allow the rationale of the statute to be considered. There was no search for the sense and spirit of the enactment. A set scheme of values to which the legislation was deemed to adhere was applied to the interpretation of the statute without any inquiries as to fact. General principles were not

enacted because current legal theory opposed 'creating statutory prerogatives and as a result statutes became more and more detailed in their content. Wordiness of statutes was encouraged by the fact that draftsmen were paid by the word, and, more particularly, that judges using literal construction enforced specific enumeration.<sup>23</sup>

This development is evidenced in the Sussex Peerage Case ((1844), 11 Cl. & F. 85, (H.L.)) where the words of the statute were found to be free from ambiguity and the judges felt that no more was necessary than to read the words in their natural and ordinary sense. There was no recourse to the preamble or to the "ground and cause of making the statute" because no doubt arose. When the enacted words or sections were free from doubt, the court felt there was no scope within them for the operation of the preamble.<sup>24</sup> In fact, the courts warned against the temptation to bring in the preamble as a result of creating or imagining an ambiguity.<sup>25</sup>

However, judicial support of the literal approach was reduced when Parliamentary sovereignty became well established. Judges began to object to having to support absurd consequences that resulted from the literal rule.<sup>26</sup> The golden rule developed to deal with cases of absurdity or manifest injustice so that when there was a choice of meanings there was a presumption that the meaning that produced an absurd, unjust or inconvenient result was not intended.<sup>27</sup>

During this golden rule stage of interpretation, as may be found described by Lord Wensleydale in Grey v Pearson, ((1857), 6H.L. Cás 61), the preamble was often referred to as indicating the object of an Act. The foundation for Lord Wensleydale's rule is a case where judges rejected a restricted construction because it conflicted with the declared policy of the statute, as found in the preamble. That case was Warburton v Loveland d. Ivie, ((1828) 2 Dow & Cl 480; 5 E.R. 499) where section 5 of the Irish Registration Act (6th Anne, c.2) was examined to see if unregistered deeds should be deemed void against all registered deeds or only in the case of conflicting deeds from the same grantor. The court looked to the preamble to ascertain the object and general intent of the Legislature. Burten J. pointed out that the words of the statute were clear and unambiguous and not contrary to or inconsistent with any declared purpose of the statute.<sup>28</sup> This is in contrast to the earlier noted Sussex Peerage Case where, once it was decided that the words of the statute were clear, there was no reference to the preamble.

In 1881 Lord Selbourne referred to the preamble in an Act for guidance to a solution for an ambiguity in one of its sections.<sup>29</sup> The preamble to the North British Railway (D. and A. Joint Line) Act (42 & 43 Vict. c.155) stated that two companies should have equal rights and powers and be subject to equal liabilities with respect to the transferred line. A literal reading of the section was inconsistent with the Act as a whole, including in this case, the preamble, so the section was read so

as to do "less violence to the intention manifested by the Legislature". The preamble did not resolve anything but the court modified the words of the Act to be consistent with its object as stated in the preamble. Lord Selbourne concluded that "we have, in that preamble, a sufficient guide to the solution of any thing which may be ambiguously or imperfectly expressed..."<sup>30</sup>

Salmon v Duncombe ((1886), 11 A.C. 627) applied this principle when the construction of the Natal Ordinance No. 1 of 1856 was in issue. Lord Hobhouse said in that case, "The title may be looked at for aid in finding out the object. The preamble is of great importance in finding out the object. They have been quoted above, and nobody who reads to the end of the preamble and there stops, can doubt that the object is to provide a substantial measure substituting English law for Natal law in the cases mentioned."<sup>31</sup> The concluding words of a section in the Ordinance were ignored and the grammar of the words that remained was strained so as to achieve harmony with the objects of the statute as stated in the preamble. However, as has been mentioned, in today's construction one should not read merely to the end of a preamble and stop there to determine the object of a statute. The whole statute must be read from beginning to end to determine it.

Preambles still are considered in today's approach to construction and in 1942 the Saskatchewan Court of Appeal examined the leading

judicial decisions on preambles.<sup>32</sup> The Court was construing the Farmers' Creditors Arrangement Act, 1934 (S.C. 1934, c.53) and referred to the preamble of the statute that made it clear that the purpose of the Act is "to retain the farmers on the land as efficient producers". Martin C.J.S. stated that the preamble of the Farmers' Creditors Arrangement Act, 1934, had been referred to frequently in Canadian courts for the purpose of ascertaining the intention of Parliament in enacting the statute and he referred to several such cases. Mackenzie J.A. and MacDonald J.A. in the same case also referred to the intention of the Act as being clearly disclosed by the preamble.<sup>33</sup>

One case that has become noted for its expressions on the role of preambles in the construction of a statute is the case, Attorney-General v Prince Ernest Augustus of Hanover ((1957) A.C. 436). A statute of 1705 (4 Anne, c.4) entitled "An Act for the Naturalization of the Most Excellent Princess Sophia, Electress and Duchess Dowager of Hanover, and the Issue of Her Body" was the subject of construction. The question was whether a descendant of Princess Sophia born long after the life time of Queen Anne, was a British subject by virtue of the Act of 1705. The Attorney-General, basing his argument on an indication of the purpose of the Act as stated in the preamble argued that the descendants who were to be deemed natural born subjects must have been born in Queen Anne's lifetime. The respondent, on the other hand, argued that where the enacting part of a statute is clear and unam-

biguous, it could not be cut down by the preamble. Viscount Simonds expressed his dissent from the general proposition as suggested by the respondent if it meant that in ascertaining the meaning of the relevant enacting part of the statute, a judge could not obtain assistance from the preamble. He stated that words, and particularly general words, could not be read in isolation because their colour and content are derived from their context, and context includes other enacting provisions of the statute, its preamble, the existing state of the law, other statutes in pari materia and the mischief to be remedied.

Viscount Simonds rejected any restriction of the meaning of the enacting words so far as it was based on anything other than the words of the statute. He turned then to the preamble and stated that where the reason for the restriction is found in the preamble (as opposed to a principle existing outside an Act or to conflicting provisions within an Act) there is greater difficulty in finding a compelling reason for the restriction; the single fact that the enacting words of the Act are more general or go further than the preamble is not a compelling enough reason for the preamble to influence the meaning otherwise ascribed to the enacting words.<sup>34</sup> This is so especially since the preamble itself is ambiguous. At page 463 he said "Still less can the preamble affect the meaning of the enacting words when its own meaning is in doubt." and in the next paragraph explained the doubt.

Simonds accepted the proposition "that it is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms".<sup>35</sup> But he added "no one should profess to understand any part of a statute... before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous".

Lord Normand in the same case stated that it is only when the preamble conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail.<sup>36</sup>

It appears from reviewing judicial statements that one cannot conclude that a statute must be read without the preamble and that reference to it is proper only when difficulties with construction occur. However it appears equally incorrect to read the preamble, come to a conclusion and then read the Act with that conclusion in mind. Both the preamble and all sections of the Act should be read before any decision is reached or any doubt entertained. The enacted words do not constitute the only evidence of the intention of the Act. Evidence may be gleaned from such aids as the title, preamble and headings; for example, Viscount Simonds stated that assistance may be obtained from the preamble in ascertaining the meaning of the enacting part. If the enacted words indicate clearly the object of the Act then, even if there

is some conflict with the non-literary context, (ie: the parts of a statute that are contained within it but do not make up the verbal or grammatical text of the law, such as the title, marginal notes and headings) the search for the object is ended. In the Augustus case, there was overwhelming evidence in the statute to support the wide construction of the statute and the evidence obtained from the preamble was not enough to change it.

This approach was followed in a relatively recent case, Eton College v Minister of Agriculture ((1964) Ch. 274) where Wilberforce J. held that because the words of a section in the Act were clear, the preamble could have no effect. This same approach was adopted in the construction of a statute where the preamble recited that "whereas lands had remained undeveloped for many years" they should be acquired by the Crown and restricted for agricultural and other purposes specified in the Act. Lands were expropriated and the owners argued they were not unimproved within the meaning of the Act, including the preamble, because they had not remained undeveloped for many years. The court said that the intent of the legislation was clear, that is to expropriate lands for the purposes set out in the Act. The enacted sections did not mention the term "undeveloped lands" and the court said the clear intent could not be confined or defeated by the preamble.<sup>37</sup>

In the 1957 Hanover Case there was overwhelming evidence in the enacting part of the statute that indicated a wider interpretation and,

though the preamble was considered, it was not a compelling enough reason to change that interpretation, especially as the preamble itself was ambiguous.

The 1976 Alberta Supreme Court case, Re Attorney General for Alberta and Gares, ((1976) 67 D.L.R. (3d) 635) had in issue the interpretation of section 5 of the Individual's Rights Protection Act, (S.A. 1972 c.2) and the judges referred to the preamble of the Act as clearly stating the object of the Act and referred to it in attempting "to resolve the assumed ambiguity".<sup>38</sup> There is an indication here however that the enacted words, in light of the non-literary context, did not clearly indicate the object of the Act or recourse to and reliance on the preamble would have been unnecessary.

It appears established that if there exists genuine doubt the non-literary context might tip the balance toward one interpretation rather than another. Although the Director of Public Prosecutions v Schildkamp ([1969] 3 All E.R. 1640) case dealt primarily with the effect of cross headings in the interpretation of statutes, it offers the comment by Lord Upjohn that one must look at all the admissible surrounding circumstances before one starts to construe the Act.<sup>39</sup> This case though, is not an indication of any new weight being given to preambles in the construction of statutes. Viscount Simonds in the Augustus case stated also that the words of a statute must be read in their whole context.

In Canada it appears that an area of legislation that does have a noticeable presence of preambles is the area of legislation that is connected with constitutional questions. In Reference re Alberta Statutes, ((1938) S.C.R. 100) Duff C.J. said "Various declarations throughout the enacting provisions of this statute (the Alberta Social Credit Act (S.A. 1937, c.10)) as well as in the preamble, leave no room for doubt as to its objects." Duff used the object of the Act as determined from declarations such as the preamble and the express statement of purpose in section 7 of the Act in deciding the constitutional validity of the legislation.<sup>40</sup> In Reference re Alberta Statutes and Switzman v Elbling and A.G. Que. ((1957) S.C.R. 286) the preamble of the British North America Act was referred to as plainly showing the constitution of Canada to be similar in principle to that of the United Kingdom.<sup>41</sup>

The preamble of the British North America Act was again referred to for the same purpose in Reference Re Agricultural Products Marketing Act and two other Acts ((1977), 78 DLR (3d) 477, 16 O.R. (2d) 451 (Ont C.A.) at 498, var'd. 84 DLR (3d) 257 (SCC) at 279). That preamble, Mackinnon J.A. said, resulted in the position of the courts in Canada being the same as the United Kingdom courts in relation to the role of the courts to determine if an Act of Parliament has been properly obtained. Laskin, C.J.C. however, on appeal to the Supreme Court of Canada, disagreed with the concept that the preamble referring to "a constitution similar in principle to that of the U.K." carried any force on the question of whether obedience to the prescriptions of enacted

sections is judicially reviewable.<sup>42</sup> Again, this difference in interpretation in light of the same preamble indicates that such a drafting technique might not always be an aid in reaching the same conclusion in the interpretation of a statute, but rather that the preamble may be seen to offer support for one construction as opposed to another.

The judges of the Supreme Court of Canada in the recent case, In Reference re Anti-Inflation Act, (9 N.R. 541, 68 D.L.R. (3d) 452; [1976] 2 S.C.R. 373) commented on the use of the preamble in their construction of the statute. The preamble to the Anti-Inflation Act (S.C. 1974-75-76 c.75) is as follows:

WHEREAS the Parliament of Canada recognizes that inflation in Canada at current levels is contrary to the interests of all Canadians and that the containment and reduction of inflation has become a matter of serious national concern;

AND WHEREAS to accomplish such containment and reduction of inflation it is necessary to restrain profit margins, prices, dividends and compensation;

The issue was whether the legislation rested on a valid constitutional base; whether it was valid federal legislation for the peace, order and good government of Canada; or whether such legislation invaded provincial jurisdiction. Reference was made to this preamble as an aid in determining the pith and substance of the Act.

Laskin C.J.C. in the case queried if the federal contention was assisted by the preamble to the statute. He said:

The preamble in the present case is sufficiently indicative that Parliament was introducing a far-reaching programme prompted by what in its view was a serious national condition. The validity of the Anti-Inflation Act does not, however, stand or fall on that preamble, but the preamble does provide a base for assessing the gravity<sup>43</sup> of the circumstances which called forth the legislation.

A dissenting judge in the case, Beetz J., also looked to the preamble but remained unimpressed with the emphasis given to the words "a matter of serious national concern" contained therein. He said he could not read the preamble of the Anti-Inflation Act as indicating that the Act was passed to deal with a national emergency in the constitutional sense. Beetz J. noted the Canada Water Act, (R.S.C. 1970, c.5 (1st Supp.)) and made reference to its preamble that states the pollution of the water resources of Canada has also become "a matter of urgent national concern". This case appears to be another example of where there was a difference in interpretation in light of the same preamble, and where the preamble did not offer to the dissenting judge the same support as it did for the majority interpretation.

There was no reference in the preamble of the Anti-Inflation Act to the existence of an emergency or a crisis although the case has been referred to as a recent application of the emergency doctrine. Hogg in his text, Constitutional Law of Canada, describes this decision as being made in the face of economic evidence that the inflationary situation was not particularly critical, and in spite of the fact that the preamble to the statute did not allege the existence of a crisis.<sup>44</sup>

At this point it is of interest to note that the courts in looking at preambles have taken a middle line between the opinion that the recitals in a preamble are not evidence of facts but only of the opinion of the legislature and the opinion that the recitals in a preamble are to be judicially accepted as conclusive evidence.<sup>45</sup> For example, in the Anti-Inflation Act Reference the court saw the preamble as a "base for assessing the gravity of the circumstances"; not as conclusive evidence that inflation was of such gravity to warrant the federal legislative power for peace, order and good government and not merely as the view of the federal legislature. It may be concluded that a court will accept a recital in an Act as evidence but that such evidence is not conclusive and may be rebutted.

Although the recent Anti-Inflation Act contained a preamble, the practice of including general statements of the objects of the Act in such form is no longer customary.<sup>46</sup> As mentioned, the traditional function of a preamble is to explain the object of an Act or the reasons why the enactment of it is considered desirable. Generally at present, such information is conveyed through explanatory notes annexed to the Bill on its introduction into the Legislature or, more rarely, on its publication. As a practical matter, this information in the form of explanatory notes is read only by the members of Parliament rather than by the public or the judiciary. The practice of replacing or omitting preambles is encouraged especially by those who feel political justification should be left to the Minister's speech when he introduces

the Bill, and not be incorporated as part of the statute. As will be discussed, it is often recommended that when a statement of purpose is used, it should be in a clause in the Bill and not in the preamble.

However, the general lessened use of preambles has also been a cause of regret or disappointment for some people.<sup>47</sup> Many interpreters, including Lord MacDermott, view the preamble as "a valuable way of declaring the essential aim of any important legislation".<sup>48</sup> In 1964 Lord MacDermott suggested that if the Finance Act of 1943 had declared in general terms the reason for retrospective operation of a particular section of the Act, the courts would have had a guiding principle to lead them to more equitable results.<sup>49</sup>

After reviewing the development of the judicial audience's considerations of preambles the present position is that the preamble must always be read as part of a statute but it is only if the language of the enactment is not clear that the preamble may be resorted to and then only relied on if it conveys a clear meaning in comparison with the enacting words. As is noted in Craies on Statute Law, it is "always a question of some nicety for the court to determine whether an Act is sufficiently explicit by itself or whether the preamble should be looked to for aid in explanation of it".<sup>50</sup>

It is interesting to note the views that the legislators, the first legislative audience referred to earlier, have on preambles. One Bill in

which the use of a preamble was extensively debated was the federal Parliament Bill C-183 in 1972.<sup>51</sup> The Bill amended the Canada Labour Code (R.S.C. 1970 c.L-1) by repealing and substituting a part of the Act dealing with industrial relations. The amending Bill included a preamble and it was moved that the preamble to the Bill be deleted. The member making the motion objected to the preamble because the sentences and words used in the preamble would, he claimed, lead to an improper conclusion with regard to the entire area of labour management relations.

Various viewpoints were expressed on the preamble, including the feeling that the people who would have to deliberate or come before the Canada Labour Board will "invariably look to the preamble for guidance". On the other side, it was felt that the Bill should speak for itself.

One member felt that although the preamble was like motherhood and there was nothing wrong with it, it did not add anything to the Bill nor would it carry much weight. It was suggested by that member that the preamble should be removed and the provision be written into the body of the legislation as a clause of the Bill.

Another member speaking on the same motion to delete the preamble, felt it was useful to include such a preamble in the Bill. He felt there were benefits in having in the preamble a reference to the past

history of labour legislation in Canada. A statement, he felt, setting forth "very clearly the basic premise and principle upon which the legislation is based was important in enacting such a piece of legislation". In his concluding comments, however, he appeared to favour the inclusion of such a statement as a clause in a Bill that set out the purpose of the legislation rather than the inclusion of a preamble.

In the same debate, a member who had served also as a member of the Standing Committee on Labour, Manpower and Immigration to which the Bill was referred, made the observation that Bill C-183 had contained a preamble but that an earlier Bill on the same subject, Bill C-253, did not have a preamble. The member concluded the only reason for its inclusion in the later Bill was "as a half-hearted response to the recommendations of the Woods task force that the government make some definite commitment on the side of the collective bargaining system." He felt that the preamble was not only unnecessary but the wording in certain parts of it could result in worsening relations between employer and employee. The member said the preamble was, in his view, misrepresentative of the substance of the Bill.

A similar view was expressed by another member who said the preamble was "pure window-dressing" and "little more than a pious, cosmetic dressing-up" of the Bill. Its only purpose, the member felt, was that it offered an opportunity for debate.

Several members, however, expressed the opinion that although there was some merit in the words of the preamble, the declarations would be more valuable if they were contained in the Bill itself.

The Minister sponsoring the Bill stated the preamble was included because it set out the faith of the government in the principles underlying the Bill. The Woods task force report on Canadian industrial relations, he said, included the recommendation that the legislation contain a preamble that would replace the neutral tone of the existing statute with a positive commitment to the collective bargaining system.

Along with the comments of the politicians it is worth including the views of those who came before or were interviewed by the Standing Committee to which the Bill was referred. It was reported in the debate earlier referred to that the Deputy Minister of the federal Department of Labour said it was probably true that the preamble did not have much effect in law but if it had no more effect than that, he could not see any particular harm in leaving it in the Bill. A large corporation that presented a brief to the Committee on the Bill included the following comments:

"I find the preamble excessively positive when it proclaims the universal acceptance of freedom of association and free collective bargaining as the basis of industrial relations for the determination of good working conditions and sound labour - management relations... I believe Canada's best interests would be better served if all concerned parties concentrated on improving an imperfect system rather than extending its scope."

The parliamentary audience does not appear to give unqualified support to the use of preambles as an aid in the construction of statutes. It is often seen to be of benefit in the expression of government policy and support for such a drafting technique appears to follow along the lines of political partisanship.<sup>51A</sup> The majority of the comments in relation to the preamble in the Canada Labour Code indicated a preference for a statement of purpose incorporated into the statute rather than for a preamble.

The preamble of the Canada Labour Code was referred to in a recent case as making it clear that Parliament had a number of objects in mind in enacting the legislation.<sup>52</sup> This would indicate that in the eyes of the judiciary the preamble was not of great assistance in any way other than as a general indication. In light of the preamble offering no specific help it must be questioned if the use of such a provision is appropriate.

As a side note to the review of preambles, there is a distinction between the use of preambles in public Bills and their use in private Bills. The latter in Canada and the United Kingdom always have a preamble justifying the privilege that is sought. In a semijudicial procedure arguments in favour of and against the Bill are heard and witnesses examined. The Committee on the Bill deliberates and decides whether the preamble is proved and if so, as to the fairness and public policy of the detailed provisions of the private Bill.<sup>53</sup> The reason for a

private bill having to have a preamble would appear to be connected with the historical development of legislation and the fact that the petitioners requesting the private Bill are required to prove the reasons for the exception sought to be made to the general law and therefor to justify Parliament in granting the exceptional powers sought for. The preamble in private Bills is needed to explain those reasons.

In the United States the function of the preamble is, as in Canada and the United Kingdom, to supply reasons and explanations and not to confer power.<sup>54</sup> In public Acts in the United States recitals in the preamble, although admissible, will not be conclusive of the facts nor even, in many jurisdictions, considered prima facie evidence of them.<sup>55</sup> It has been suggested that the types of facts appearing in preambles appear to condition the effect the American courts extend to them.<sup>56</sup> For example, where the fact is precise and objective and it appears that the Legislature is as well qualified as a court to determine its existence, the American court will likely accept the fact.<sup>57</sup> Where, however, the statement of fact would have involved judgement factors and where the fact is capable of and likely to change, then the court will not accept such a subjective view but review the original existence and continuation of the facts alleged in the recitals.<sup>58</sup>

In American constitutional litigation the preamble is used where it is alleged that the Act conflicts with specific constitutional prohibitions or where the Act is alleged to be unreasonable and arbitrary. In Smith

v City of Brookfield (S.C. Wisc. (1956) 272 Wis. 1; 74 N.W. 2d 770) the judge resorted to the preamble to save the constitutionality of the ordinance even though there was no ambiguity in the enacting clause. The preamble has been referred to not only as an indication of the purpose of an Act but an indication as to how the Legislature after a careful examination of the constitutional problem feels the constitutional provisions should be construed.<sup>59</sup> American courts have also given weight to preambles that indicate the Legislature has considered the proposed legislation and, cognizant of the issue, determined that the statute was valid.<sup>60</sup> The courts, while not bound by the clear expression of the facts determined by the Legislature, will commonly give great weight to the legislative determination in the preamble.<sup>61</sup>

As will be discussed later, it must be noted when comparing legislation of the United States with legislation of Canada that the courts in the United States admit to having or exercising more of a legislative function than do the courts in Canada.<sup>62</sup>

In the United States courts are often looked at as a form of delegate or co-worker of the Legislature and could be seen as responsible for applying the statute in an intelligent, reasoned and even creative manner to the case before it, so that within the leeways provided by the statute's words and policies, the courts may make sense of that case and statute as a part of the whole body of law.<sup>63</sup>

## LONG TITLES

As in the case of a preamble, the long title of an Act is supposed to give a brief statement of the general purpose of the Act. Generally long titles do not contain such involved background as preambles but details in titles do vary greatly in the amount of information given or their usefulness.<sup>64</sup> In some cases what is, strictly speaking, a long title is sometimes referred to as a preamble.<sup>65</sup> Appendix II to this paper consists of examples of legislation using detailed long titles that occur in federal and provincial jurisdictions. As in the case of preambles, this form of a statement of purpose is used also in other common law countries.<sup>66</sup>

Historically the long title was excluded from consideration of a statute because it was not considered a part of the statute.<sup>67</sup> Originally statutes had no title attached to them by Parliament. Instead, printers and editors divided the statutes into chapters for convenience of reference and gave them appropriate titles, or judges who drafted the statutes to give effect to petitions assented to by the Crown added the title.<sup>68</sup> Even after titles were included after legislation by bill developed, very little attention was paid to them.<sup>69</sup> The present practice, however, is to consider the long title as part of the statute and the parliamentary practice in Canada is to carry the long title in Committee stage after all the clauses of the Bill have been passed.<sup>70</sup> As with the

preamble, this procedure results in the long title being subject to the substance of the clauses.

The law with regard to the use of the long title in the construction of statutes is similar to the law relating to preambles and the judicial decisions reflect, in the same historical framework as indicated in relations to preambles, the courts' view of legislation. As Dr. Driedger described the historic approach by judges to interpretation "first, it was the spirit and not the letter, then the letter and not the spirit and now the spirit and the letter".<sup>71</sup>

The title is now regarded as an important part of the Act and has been a factor in the construction of statutes. There are many cases that state the principle that the long title cannot be made use of to control the express provisions of an Act, for, if the meaning of the passage under consideration is clear, that meaning is not to be narrowed or restricted by reference to the long title. However, if in the provisions there is some doubt or ambiguity, the long title has been seen to supply the key to the meaning.<sup>72</sup>

Reference to the long title was made by Lord Parker in Ward v Holman. ((1964) 2 Q.B. 580; 2 All E.R. 729) In a lower court in Great Britain the long title of the Public Order Act, 1936 (1 Edw. 8&1 Geo. 6 c.6) was thought to confine the Act to public processions and meetings,

but Lord Parker re-instated a conviction for abusive conduct other than in a public proceeding or meeting. The long title was as follows: "An Act to prohibit the wearing of uniforms in connection with political objects and the maintenance by private persons of associations of military or similar character; and to make further provision for the preservation of public order on the occasion of public processions and meetings and in public places." Lord Parker said the long title could not control the operative words of the Act itself unless those words are ambiguous, and obviously Lord Parker did not find them to be so.

A more recent case decided by the House of Lords Black-Clawson v Papierwerke ([1976] 1 All E.R. 810) is authority for reference to the long title where the section under construction is ambiguous. This case is an example of where a more extensive statement of purpose could possibly have helped the judiciary in interpreting the statute. The court in that case referred to the report of the committee presented to Parliament on the Bill and, with the help of the report, ruled the provision had not been enacted by Parliament with the intention of altering the common law. Parliament, Viscount Dilhorne said, by enacting clause 8 without alternation must have intended to implement the intentions of the committee.<sup>73</sup>

An interesting feature of the long title in an amending statute is that the detail and precision it contains may have resulted from the

desire to have debate on the amendment to an Act kept, during its passage in the legislature, strictly in relation to that one specified purpose. For example, a Bill entitled "An Act to Amend the Bank Act for the purpose of..." limits the scope of amendments that may be made in that Bill to that purpose. After the principle of the Bill is approved in the second reading stage, the Speaker may, if the issue of relevancy is raised, refuse any changes in committee stage that do not come within the purpose described in the long title.<sup>74</sup> This style of amendment has obvious political advantages where a government Bill amends an Act to which the opposition is likely to want to propose broad amendments. However, parliamentary rules in Canada have become considerably more relaxed in comparison with those in the United Kingdom so the result is that titles have in Canada, become shorter and more general.<sup>75</sup>

## PURPOSE CLAUSES

Another statement of purpose used as an aid in the construction of statutes is the policy statement or express purpose clause. The purpose clause is an integral part of the context of the statute and is generally found at the beginning of a statute. Lord Normand said "The preamble is not of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act..."<sup>76</sup> The purpose clause is composed of enacted words found in the Act and therefore may have greater weight than a preamble, certainly for Lord Normand, in the construction of a statute. Unlike statements of purpose in the form of preambles or long titles, express purpose clauses are found more frequently in recent statutes as opposed to earlier statutes. In light of the historical development of legislation this is understandable because the contents of an express purpose clause would have in the earlier statutes likely been incorporated into the preamble.

As a statement of general policy embodied in a section of an Act, a purpose clause may range from specific directions for the construction of particular sections to given objects or general statements of ultimate purpose and findings of fact.

"The use of purpose sections is very common in relation to delegated legislation. They provide specific directions as to the purpose of

regulations. For example, regulations "for the proper management and regulation of seacoast and inland fisheries" or "for the purpose of restricting or prohibiting the export of agricultural products" constitute a wide authority. These authorizations for a stated purpose give the regulation making authority a free hand to establish not only the details but the main principles of law. They are in contrast to delegated legislation with limits of authority conferred by the purposes of the Act. For example "power to make such regulations as may be necessary for carrying out the purposes of this Act" has its limits gathered from the terms of the Act. These types of statements of express purpose are in wide use in regulation sections in most jurisdictions in Canada.<sup>77</sup>

It was indicated earlier in relation to the debate on an amendment to the Canada Labour Code, that legislators, appear to prefer the use of a purpose clause over a preamble.

Several draftsmen also seem to prefer purpose clauses over preambles because of the recognition, when drafting, that the clause is part of the enacted statute and great care must be taken in its composition. In comparison, the composition of the preamble has traditionally been more lengthy and possibly more easily manipulated by politicians into a political manifesto.

Recently in Great Britain a Committee on the Preparation of Legislation was appointed with the following terms of reference: "With a view

to achieving greater simplicity and clarity in statute law, to review the form in which public Bills are drafted, excluding consideration of matters relating to policy formulation and the legislative programme; to consider any consequential implications for parliamentary procedure; and to make recommendations". The Committee, known as the Renton Committee, made a report in 1975 and included in its recommendations

- (a) that statements of purpose should be used when they are the most convenient method of delimiting or otherwise clarifying the scope and effect of legislation; and
- (b) that when a statement of purpose is so used, it should be contained in a clause in the Bill and not in a preamble.<sup>78</sup>

Legislation in all jurisdictions in Canada contains examples of statements of purpose, many of them as general purpose sections. Professor Reed Dickerson says "in prefatory language in individual sentences such as 'For the purpose of this', or 'For the purpose of that', or 'In order to do this', you have an economic, focussed purpose statement that is of some use."<sup>79</sup> Examples of other forms of statements of purpose include those beginning with the words "The purpose of this Act...", for example, section 3 of The Statutes and Subordinate Legislation Act (S.N. 1977 c.108) or a statement of policy as found in section 3 of the National Transportation Act (R.S.C. 1970 c. N-17). A list of Canadian provincial and federal legislation in which general

purpose sections are found is included as Appendix III. A review of statute and case law in Canada indicates greater use of an express statement of purpose is found in more recent legislation and is found more frequently in some jurisdictions, such as Nova Scotia, the federal legislation and more recently Prince Edward Island and Newfoundland.

In the recent case Reference Re Agricultural Products Marketing Act and two other Acts ((1977), 78 D.L.R. (3d) 477, 16 O.R. (2d) 451 (Ont C.A.) at 508, var'd. 84 D.L.R. (3d) 257 (S.C.C.)) Mackinnon J.A. addressed the question of vires in relation to several sections of the Ontario Farm Products Marketing Act (R.S.O. 1970, c.162) and referred to and quoted section 2 that set out the purposes and intent of the Act. He said that that section must be read into each succeeding section of the Act and viewed in light of the principle that provincial legislatures are presumed not to exceed their legislative jurisdiction. He concluded the sections in issue, when read in the context of the Act and the governing principles, were intra vires the province. Later in the Supreme Court of Canada Laskin C.J.C. also referred to the purpose clause. He stated "It is commonplace that if a provincial marketing statute is limited in its thrust to intraprovincial trade, there being an express opening declaration to that effect, it ought not to be construed otherwise in any of its provisions unless they separately indicate a wider application.... Draftsmen of such statutes are careful to circumscribe their application in express terms."<sup>80</sup>

The Gasoline Licensing Act (R.S.N.S. 1967, c.117) of Nova Scotia has been considered by the County Court of Nova Scotia in R. v. Wildsmith ((1974) 8 N.S.R. (2d) 64) where the judge acknowledged that the first step in interpretation is to determine the purpose of the Act. In his determination he referred to section 13(1) that reads as follows:

"This Act shall be interpreted and construed liberally in order to accomplish the purpose of regulating the distribution and sale of gasoline within Nova Scotia for use within the province."

In the course of his decision, Judge O'Hearn noted that it was important that a citizen reading the text of an enactment in good faith, should be able to accept the ordinary grammatical meaning of the words as binding upon him without the need to enquire into what the Government or draftsman may have intended by the expressions used. The evidence, he said, indicated that the Gas Retailers Association promoted the legislation to shake off promotions forced on them by wholesalers but did not also show the additional purpose of eliminating competition between retailers of promotional give-aways. However, he found the purpose clause wide enough to apply to both classes of competition. In Aves v Board of Commissioners of Public Utilities ((1973) 5 N.S.R. (2d) 370) the same statute was under consideration and the judge found that regulations regulating the hours of sale were consistent with the purposes of the Act as stated in section 13(1).

The purpose clause in section 7 of the Alberta Social Credit Act (S.A. 1937, c.10) was referred to in the Reference re Alberta Statutes

case respecting the constitutional validity of several Acts.<sup>81</sup> There was a preamble also in that Act and these declarations enabled Duff C.J. to affirm with certainty the evils the legislature was dealing with and the principle behind the enactments in the statute. Duff C.J. also referred to the preamble and purpose clause as "sufficiently" stating the intent and purpose of the Act. Despite statements of purpose in each of the three statutes referred to the Supreme Court of Canada in that case the Court found the statutes ultra vires the provincial legislature.

The following statement of purpose or one of similar wording is sometimes found in legislation and is used to try to preserve the constitutionality of the Act:

The purpose and intent of this Act is to regulate matters within the competence of the legislature of the province, and nothing in this Act shall be construed to affect or regulate any matter which is not subject to the legislative authority of the said Legislature.<sup>82</sup>

In Canada, as Dr. Driedger indicates in his Construction of Statutes, there is a presumption that a legislative body does not exceed its powers under the constitution.<sup>83</sup> If, as Cartwright J. states in McKay v. The Queen ((1965), 53 D.L.R. (2d) 532 at pp. 536-537), "an enactment...is capable of receiving a meaning according to which its operation is restricted to matters within the power of the enacting body it shall be interpreted accordingly". Hence, it would appear that a statement of purpose would weigh heavily if a statute with its constitutional

validity in question is open to two constructions.

Speaking of a similar provision in Rex v Nat Bell Liquors, Ltd. ((1922) 2 A.C. 128) Lord Sumner said that the presence or absence of an express disclaimer of any such interference may greatly assist where the language of the provincial Legislature does not in itself determine the question and define its effect.<sup>84</sup> He went on to say that where it is clear from the language actually used that there is such an interference there is no sovereign efficacy with such a provision. Such was the case in Reference re Alberta Statutes where both the Alberta Social Credit Act and the Credit of Alberta Regulations Act (S.A. 1937, c.1) included without success, a similar provision in clauses 7 and 50, respectively. The Court found the sections to be of no significance in light of the substantive enactments of the statutes.

As indicated such declarations cannot insure the constitutionality of a piece of legislation. This is so particularly in light of the comments of the Chief Justice in the recent case of Central Canada Potash Co. v A.G. Saskatchewan ((1976) 57 D.L.R. (3d) 7)), where the issue was the validity of subordinate legislation made under the Mineral Resources Act (R.S.S. 1965, c.50). The statement of purpose in section 3 of the Act was referred to in the Saskatchewan Court of Appeal<sup>85</sup> and the judge concluded that the Potash Conservation Regulations, 1969 were not passed for any of the purposes authorized by sections 3, 9 and 10 of the Act and were ultra vires as going beyond the powers delegated by the Act. When however the case was heard in the Supreme Court of

Canada, the Chief Justice was not concerned on this declaration because an amending Act had since been passed to rectify that deficiency. In the course of his decision he made no reference to section 3 of the Act but said the case reduced itself to a consideration of the prorating and price stabilization schemes and found the schemes ultra vires.<sup>86</sup> It is suggested that the following statement of the Chief Justice in that case indicates that a statement of purpose may not have any bearing in the decision of a judge on a constitutional issue:

"It is nothing new for this Court, or indeed, for any Court in this country seized of a constitutional issue, to go behind the words of the Legislature and to see what it is that it is doing. It is especially important for Courts, called upon to interpret and apply a constitution which limits legislative power, to do so in a case where not only the authorizing legislation but regulations enacted pursuant thereto are themselves couched in generalities, and the bite of a scheme envisaged by the parent legislation and the delegated regulations is found in administrative directions."<sup>87</sup>

It appears then that the judicial view of purpose clauses is the same as for preambles and long titles; where the language of the statute is clear and unambiguous the statement of purpose, in any form, will not be reason enough to come to a different construction. Where however, the statute is open to two or more interpretations the statement of purpose may be an aid in the construction of statutes.

Legislators appear to favour purpose clauses over preambles but the general audience and judicial audience have not clearly indicated a preference. A purpose clause though, has the advantage of being a focussed statement of purpose in the form of an enacted provision in a

statute, but in cases such as ceremonial legislation or legislation ratifying a government agreement the form of a preamble lends itself more easily to providing three or four clauses explaining the background to the subject-matter of the legislation. As will be discussed, this type of legislation appears to be one type more appropriate than others for the use of a statement of purpose.

TYPES OF LEGISLATION MORE APPROPRIATE  
FOR STATEMENTS OF PURPOSE

Thornton, an American authority on legislative drafting, has suggested that the following are the four main areas in which the use of a preamble in public statutes may be justified:

1. Where the subject-matter of the legislation is of constitutional or international importance.
2. Where legislation is of a formal or ceremonial character intended to mark a noteworthy event such as the death of a statesman, a royal visit or the anniversary of an historic occasion.
3. Where legislation, although a public Act, has something of a nature of a private or local enactment, being intended to remedy an exceptional local problem of such complexity that an explanatory preamble is necessary to understand the Act.
4. Where purposes of the legislation are to ratify or otherwise approve an agreement entered into or intended to be entered into by the Government.<sup>88</sup>

In the Canadian jurisdictions legislation may also be divided into several types that lend themselves more appropriately to purpose statements. One type, also referred to by Thornton, is legislation in reference to constitutional issues. This area of constitutional legislation is one that is subject to a great amount of judicial review and the purpose

of the legislation or its pith and substance is of great importance in determining the constitutional validity of the legislative provisions. As indicated earlier, the purpose clause in a statute with questionable constitutional validity may state the purpose of the Act is to legislate only on matters within the constitutional jurisdiction. Or, it may state in a general principle, the purpose of the substantive provisions so that it clearly indicates the intention of the Legislature as to the pith and substance of the statute. In the United States particularly, such purpose clauses have been persuasive in establishing constitutional validity<sup>89</sup> but are no guarantee of such a finding.<sup>90</sup>

It is suggested that the higher incidence of the use of and the reference by Canadian courts to statements of purpose in constitutional issues is because in Canada there is a presumption that a legislative body does not exceed its powers under the constitution.<sup>91</sup> The courts in such questions must determine the pith and substance of the legislation and a statement of purpose in legislation of constitutional significance provides the government with an opportunity to formally record its intentions. As noted in the earlier discussion of purpose clauses, a statement of purpose does not in itself determine the effect of the legislation as the court will look behind a statute to see what the Legislature is doing, but if a statute is capable of receiving two constructions, one of which could render the statute ultra vires and the other of which would not, the courts will adopt the latter construction.

Another type of legislation for possible use of purpose clauses is legislation that is replacing an area of the common law. Such legislation might be better understood with a clause stating the specific purpose of the legislation. The detailed substantive provisions may then be read with this general background of purpose. An example of legislation in this area is The Provincial Offences Act (S.O. 1979 c.4) that, although does not only replace common law, states in section 2 the following:

"2(1) The purpose of this Act is to replace the summary convictions procedure for the prosecution of provincial offences, including the provisions adopted by reference to the Criminal Code (Canada), with a new procedure that reflects the distinction between provincial offences and criminal offences."

Also in this category is legislation described in Craies on Statute Law as declaratory legislation. Such legislation has as its purpose the removal of doubts existing as to the common law, or the meaning or effect of any statute. The usual reason for passing a declaratory Act is to set aside what the legislative body deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes and usually such an Act contains a preamble.<sup>92</sup>

Similar to this type of legislation is legislation that provides for a radical reform in an area in which there is established jurisprudence. An example of this might be found in legislation on matrimonial property that has as its purpose reform of the existing law. In the Family Law Reform Act of Prince Edward Island subsection (7) of section 5 reads:

- (7) The purpose of this section is to recognize that inherent in the marital relationship there is mutual contribution by the spouses, whether financial or otherwise, to the family welfare, entitling each spouse to an equal division of the family assets upon termination of the marriage, subject to the equitable considerations set out in subsections (3) and (4).<sup>93</sup>

There are purpose statements also in legislation of a similar nature in other Canadian jurisdictions, including, Newfoundland, Ontario and Nova Scotia, but the fact that all jurisdictions with such legislation have not included a statement of purpose, or indeed the same type of statement of purpose, indicates the different practices.<sup>94</sup>

A purpose clause in reform legislation provides the general principle or yardstick by which the discretion exercised in enforcing the detailed provisions may be shaped. The Law Reform Commission of Canada Report on Evidence included with its recommendations a draft Evidence Code and it is of interest to note that the first section of the Code is as follows:

- (1) The purpose of this Code is to establish rules of evidence to help secure the just determination of proceedings, and to that end to assist in the ascertainment of the facts in issue, in the elimination of unjustifiable expense and delay,<sup>93</sup> and in the protection of other important social interests.

The comments in the Report on this section explain that this section along with the section on construction reflect the spirit in which the Code was drafted and set the tone for its interpretation. The section was deliberately phrased in very broad language, the purpose of it

being to steer the courts away from the technical and narrow common law approach to evidence.<sup>96</sup>

The Law Reform Commission of Canada's study paper "Towards a Codification of Canadian Criminal Law", recommends codification of criminal law and suggests it would enhance the predictability and certainty of the law. Essential to such a codification the study suggests are provisions that crystallize the key principles of a broad government policy on criminal law and indicate the necessary complementary rules of interpretation. Codified law should not be concerned with foreseeing all circumstances and covering all the details of every conceivable case but should lay down the basic principles of the law from which practical applications can be logically derived.<sup>97</sup>

Where concepts in legislation are new and expressed in terms of abstractions the purpose clause is a useful aid to construction as, for example, in the Canadian Human Rights Act (S.C. 1976-77, c.33). There the purpose clause states:

The purpose of this Act is to extend the present laws in Canada to give effect; within the purview of matters coming within the legislative authority<sup>98</sup> of the Parliament of Canada, to the following principles: ....

The long title to the Act states "An Act to extend the present laws in Canada that proscribe discrimination and that protect the privacy of individuals." Both these drafting techniques help specify the principle of the Act but it should be noted that reference to them by the courts has not been consistent.<sup>99</sup>

It is interesting to note here that Sir William Dale, in his comparative study of legislative drafting methods in several countries, comments that the Canadian Human Rights Act shows the influence of the French style of drafting.<sup>100</sup> Presumably this means the Act has the characteristics of French drafting that he describes as clarity of principle, of form and of word, a logical development, economy of expression and a resultant brevity. The Canadian Human Rights Act was drafted in consideration of the Interpretation Act (Canada) and the Canadian Legislative Drafting Conventions.<sup>101</sup>

In cases where legislation establishes a board, commission or other agency to carry out some governmental function, a statement of purpose may be helpful in setting out a policy guideline for that agency. In these cases the policy statement may serve as a policy guideline for the established agency. The Canada Development Corporation Act (S.C. 1970-71-72 c. 49), the Foreign Investment Review Act (S.C. 1973-74 c. 46) and the National Transportation Act (R.S.C. 1970 c. N-17) are examples of where policy statements are incorporated as sections of the Acts to set out a framework.

However, even in these cases there can be problems. For example, in the Broadcasting Act, (S.C. 1958 c. 22) there was an object statement in section 10 and the Act created two agencies, namely the Board of Broadcast Governors and the Canadian Broadcasting Corporation. Despite the inclusion of the object statement, the two agencies

did not always agree as to its interpretation. In the present Broadcasting Act (R.S.C. 1970 c. B-11) the object statement has been replaced with a lengthy policy statement but despite this policy statement, interpretation of the statute is not always without conflict. In the recent Supreme Court decision in CKOY Ltd. v. The Queen ([1979] 1 S.C.R. 2) there were two views as to the validity of a regulation made by the C.R.T.C. under the power of section 16 of the Broadcasting Act. Both Martland J. (dissenting) and Spence J. agreed that the objects are to implement the broadcasting policy enunciated in the policy statement in section 3, but Martland J. said there was a duty under paragraph 3(d) to insure programs broadcast are of a high standard but that it was not within the power of the Commission to control program content. Spence J. however said in light of paragraph 3(d) the regulation was valid because it prevented development of programming which was the opposite of high standard. The obvious conclusion in this case is that despite a clearly enumerated policy statement, there was not a similar interpretation.

A study prepared for the Law Reform Commission of Canada entitled The Regulatory Process of the Canadian Transport Commission also indicates that such statements of policy do not answer problems of interpretation.<sup>102</sup> The National Transportation Act (R.S.C. 1970 c. N-17) under which the Commission is established contains a section that sets out the national transportation policy. The study suggests however, that the framers of the policy, as set out in section 3 of the Act,

overlooked the fundamental aspect of the existing regulatory framework within which the Commission functions. There is, the study points out, a continual involvement by the responsible Minister and the Government with the overall policies applied by the Commission. Section 3 of the Act setting out the policy in the style it does, indicates that there would be no need to modify or supplement the policy from time to time. In the present legal framework of the National Transportation Act there is no method through which the Government may transmit to the Commission its policy on transportation, although it is acknowledged, even by the Minister, that the policy may be revised from time to time.<sup>103</sup>

As well as the types of legislation referred to above, legislation of a formal or ceremonial character often includes a preamble explaining the background or reason for the legislation. Such legislation includes for example, the Olympic (1976) Act (S.C. 1973-74 c.31) and the King George V Cancer Fund Winding-Up Act (S.C. 1974-75-76 c.78).

Legislation of a private or local nature, such as the Cape Breton Development Corporation Act, (R.S.C. 1970 c. C-13), the Alberta-British Columbia Boundary Act, 1974, (S.C. 1974-75-76 c.11) and the Hudson's Bay Company Act (S.C. 1969-70 c. 71), also lends itself to a statement of purpose. As mentioned previously, private Acts require preambles to indicate the reasons why the legislative body should grant the private Bill.

There have been several recent pieces of federal legislation in relation to the resumption or continuation of certain activities. These include the Maintenance of Railway Operations Act, 1973, (S.C. 1973-74, c.32), the Postal Services Operations Act, 1978, (S.C. 1977-78, c.23), the Postal Services Continuation Act, (S.C. 1978-79, c.1) the Shipping Continuation Act, (S.C. 1978-79, c.2), the St. Lawrence Ports Operations Act (S.C. 1972 c.22, 1974-75-76, c.39). A curious point is that although these Acts have substantially the same enacted provisions there is not a consistent practice as to the inclusion of a preamble. For example, the Maintenance of Railway Operations Act, 1973 does have a preamble but the majority of those others noted do not. An examination of the Commons debates in relation to the Acts indicates that on several occasions the Bills, because of the circumstances giving rise to them, were prepared, introduced and debated in relation to situations with some urgency and this may be the reason a preamble was not included in those.<sup>104</sup>

The fourth area Thornton refers to, legislation ratifying or authorizing an agreement to which the Government is a party, is also an area of legislation in Canada where statements of purpose are used. For example the Bretton Woods Agreement Act (R.S.C. 1970 c. B-9) and the Carriage by Air Act (R.S.C. 1970 c. C-14) contain preambles. This type of legislation would often involve international issues or issues that have resulted from government negotiation and that lend

themselves to several clauses that explain the background of the agreement.<sup>104A</sup>

Of course, sponsors of legislation are often very enthusiastic to have a broad statement outlining the purposes and objectives of their legislation. Use of purpose clauses in such circumstances however must be considered with the possibility that resort to that clause may be made in the construction of the legislation, and unless the clause has a valid use in the legislative scheme it should not be added.

As statutes increase in number and scope, there will be a greater incidence of conflicts to be resolved by adjusting one statute in light of another, of related statutes needing to be harmonized, and of opportunities to make creative use of a statute's policy as a premise for judicial reasoning in cases outside the statute.<sup>105</sup>

ARGUMENTS FOR AND AGAINST  
STATEMENTS OF PURPOSE

The Heap Report, published in 1970, is a study on the United Kingdom's statute law deficiencies and it indicates that the comprehensibility of statute law is adversely affected by the failure to outline the purpose of Acts and parts of Acts at the initial stages.<sup>106</sup> The Renton Report referred to earlier recommends that if a statement of purpose is used it should be contained in a clause of the Bill and states that "among the advocates of statements of purpose are those whose task it is to pronounce or advise on the effects of legislation: members of the judiciary, practicing lawyers and teachers of law".<sup>107</sup> In Canada the draft of the Canadian Legislative Drafting Conventions of November 14, 1974 states "The objects or purposes of an Act should be capable of being ascertained from the Act as a whole and a separate statement enunciated the objects or purposes of the Act should be used rarely and then only with great caution."<sup>108</sup> It is interesting to note that development of this statement from the draft of June 17, 1974 that states that "The objects or purposes of an Act should be capable of being ascertained from the Act itself and should not be enunciated in a separate provision". Reed Dickerson, an American authority, sums up his opinion when he says "...why say it twice? I think that most purpose clauses are pious generalities and at best useless. Once in a while, if they get drafted right, they can be helpful".<sup>109</sup>

It is obvious in light of these and earlier comments under the headings of preambles and purpose clauses that the use of statements of purpose is not unanimously endorsed. A closer look at the audiences of legislation indicates why members of one audience consider some form of a statement of purpose as an aid in the construction of statutes and why others consider it a disadvantage.

As mentioned in the introduction, legislation is viewed by three distinct audiences. The first in point of time is the parliamentary audience. This audience is made up mainly of laymen whose primary need, according to Sir Noel Hutton, is to discover with a minimum of labour and preferably with no reference to any other materials, the general purpose and effect of each clause they are asked to pass.<sup>110</sup> This comment is perhaps a little harsh in respect of a few members but it does indicate what appears to be the position of the majority of members in relation to the majority of Bills. The problem of large amounts of explanatory and referential matter being included in a Bill to satisfy the needs of the parliamentary audience is not as great in Canada as it is in Great Britain because of our textual amendment system, and periodic statute revisions.<sup>111</sup> It has been noted that the practice of prefixing explanatory and financial memoranda to public bills on introduction has made preambles unnecessary for parliamentary purpose.<sup>112</sup>

The second audience is made up of a group that includes the lawyers and other professionals who seek a specific answer in the legislation to each specific question they are asked to advise on, and especially the administrators and non-professionals whose work it is to carry out the provisions of an Act.

The third audience is the judiciary whose attention in the courts is often directed towards the interpretation of legislation. Dr. Driedger has written that all statutes must be construed, but it is only those that contain some "ambiguity, obscurity or inconsistency" that require interpretation.<sup>113</sup> In Canada and Great Britain there are restrictions on the use by courts of such extrinsic materials as reports of committees and Parliamentary debates.<sup>114</sup> The courts, in trying to fully appreciate the object of legislation, have generally been limited to the external context of the legislation such as the relevant facts, social context and matters of common knowledge, the legal context and the language context of the legislation.<sup>115</sup> Lord Simon of Glaisdale mentions as one of the five principal avenues of approach in ascertaining legislative purpose that of paying particular attention "... to the long title of the statute to be interpreted (and, where available, the preamble), in which the general legislative objectives will be stated."<sup>116</sup>

In 1977 Messrs. Ryan and Walker, both senior Canadian legislative counsel<sup>117</sup> reported to the Uniform Law Conference of Canada on a

recommendation that courts be permitted to consult explanatory memoranda and notes on specific clauses that are attached to proposed legislation in Bill form. Their report includes the following comments:

Explanatory material created to inform a Legislature is prepared with knowledge of the reactions, likes, dislikes and needs of the legislative body for which it is prepared. If the audience were to be extended to the judiciary the character of the material would change and it would be prepared, as is the legislation, to be<sup>118</sup> as precise and accurate as possible in that other forum.

Although this quote refers to explanatory material the purpose of including it here is to indicate there is an acknowledged difference in approach for different legislative audiences.

When a Bill is first presented to Cabinet it is accompanied and explained by background material and the words of the sponsoring Minister. The members of the Legislature receive the Bill accompanied by explanatory notes that usually provide the necessary background information and again, the sponsoring Minister attempts in the Legislature to meet requirements for information. Because of the supplementary information available to parliamentary members, the expression of purpose as an integral part of the Bill may not be considered as pressing a concern to the draftsman. This is particularly so when the latter's attention is focussed on the Government's concern to avoid, if possible, some sensitive issue of policy.

A great discouragement for a draftsman in using a purpose clause is the attempt by politicians to turn the statement into a political manifesto or as Reed Dickerson has described "some innocuous generality designed to offend the least number of people".<sup>119</sup> As was mentioned earlier, either result would destroy most of the usefulness of a statement of purpose in resolving specific uncertainties of meaning. As pointed out in relation to the amendment to the Canada Labour Code, the Minister sponsoring the Bill stated in the House of Commons that the preamble was included because it set out the faith of the Government in the principles underlying the Bill. The opposition members in the debate however suggested that it was included for the political reason of satisfying the task force that had made recommendations on the Bill.

If the general audience for legislation is the one most considered in drafting, a statement of purpose would probably be considered by that audience as a valuable technique because a reader from that audience generally would not have access to such explanatory notes as the legislator, and would be dependent on the contents of the Act. An express statement of purpose such as a purpose clause might help either in indicating a general background for the legislation or as a reference to corroborate one of two or more different constructions that a statute may be capable of bearing. Such a statement is evidence of the purpose of the statute that was agreed to when it was passed. The

reader in construing the statute is looking for the ordinary meaning of the words of the statute in their full context harmoniously with the object of the Act, the intention of Parliament and the theme of the Act.

The use of a purpose clause is often defended on the basis that an opening section stating the purpose of the Act helps a first-time reader understand the Act. This is particularly true if the lay reader is seeking only the principle of the statute and is not interested in all the details that are often spread over numerous sections. This reason however may be questioned unless it is for a first-time reader or a reader seeking only the principle of the statute that drafting techniques are tailored. There is also the problem in composing a purpose clause for an Act that is so broad or that is full of detailed provisions to result in a purpose clause that offers something more than a vague generality, as for example would be the problem in the Canada Shipping Act (R.S.C. 1970 c. S-9) or the Bank Act (R.S.C. 1970 c. B-1)

When the primary audience is seen to be the judiciary, even greater hesitancy may be felt in incorporating a statement of purpose in a statute. Although following the same procedure as the general audience in construing a statute, the judiciary in Canada or the United Kingdom does not admit to a legislative function. In the United States, use of the purpose clause appears to be more accepted because of the greater degree of freedom exercised by the judges in the interpretation of

statutes. Also, the comments of the Chief Justice referred to earlier in the Canada Potash case indicate that despite the contents of a purpose clause or preamble the court will look behind a statement of purpose, particularly in cases where the "bite" of the legislative measure is not found within the four corners of the statute.

It has been stated that "No judge ever begins the process of judging until he knows the facts upon which he is to decide. Then he begins at once to think of the statute in relation to those facts and they inevitably colour his interpretation".<sup>120</sup> Dickerson suggests there is a difficulty for the judge trying to formulate a legislative purpose while keeping one eye on the situation to which the legislation is to be applied. He suggests the result may be of doubtful validity in such cases when it is supposed to be controlled by the independent purposes of the Legislature.<sup>121</sup> Following from his comments it could be argued that the value of an express statement of purpose may be that it reduces judicial speculation. An express statement of purpose could, by providing a specific and objective statement as to the purpose of the legislation offer the judge a background against which he could avoid an unintended interpretation.

One consideration in the use of statements of purpose is the fact that only a small percentage of statutory language is ever subjected to court scrutiny and as Sir Erskine May describes them, those statutes

are the difficult ones that involve points of obscurity and uncertainty.<sup>122</sup>

All legislation must be viewed by the parliamentary audience, and legislation is referred to by the general audience on a more regular and extensive basis than it is by the judiciary. The relatively high degree of reference to the purpose statements by the general audience combined with their frequent use of statutes, particularly by the administrators and the professional members of the group, would on behalf of the general audience be encouragement for the respect of the views of that legislative audience. There are no statistics to prove the high degree of reference mentioned but the general feeling among the public and members of the Bar seems to be that such a drafting technique is helpful.

Contrary to that view is a survey of draftsmen in jurisdictions across Canada that indicates that a majority of them tries to avoid the use of preambles or general purpose statements in drafting legislation.<sup>123</sup> The Renton Report also indicates that draftsmen are less enthusiastic about the use of statements of purpose than those whose task it is to pronounce or advise on the effects of legislation.<sup>124</sup>

Some draftsmen feel that an Act should not include language stating the purpose of an Act or a recital of facts upon which the Act is predicated because they think a well drafted Act requires no statement within itself of what the statute seeks to accomplish nor the reasons

prompting its enactment. Their view is that explanatory comments and annotations may be supplied in detail to aid the passage of the Bill but should not be incorporated into the Bill. They suggest the object of an Act should be evident after reading the Act as a whole without the aid of a purpose clause. This view is reinforced by the extreme difficulty of saying the same thing twice in different words.<sup>125</sup> In the case of a preamble, for example, it results in having two instruments to interpret; the preamble and the text of the Act.

The opponents of the purpose sections feel that the section would not shed any new light on other provisions of the Act if they are properly drafted; that an attempt to effectively and succinctly express in a few lines the intent or purpose of, for example, an approximately fifty section Bill will result only in distortion of the drafter's intent. To try to say the same thing twice the opponents argue will usually mislead rather than aid the reader. There is also the impossibility mentioned previously in having to draft a meaningful purpose statement for an Act where the subject-matter is so broad. There is also the argument that any reliance on a general statement of purpose is contrary to the rule of construction that the specific overrides the general.<sup>126</sup>

Opponents of the purpose clause are often fearful that it could be abused and offer the politician an opportunity to expand on the merits and advantages of their Bill. Misuse of the section as a political manifesto is a valid concern as proposed legislation should be justified by

the Minister when he speaks to it in the Legislature. Some draftsmen have indicated that one of the few reasons why they ever used a statement of purpose is actually as a result of the insistence of the Minister sponsoring the legislation.

These opponents also express the concern that as a Bill goes through the Legislature, including when it is in Committee, the body of the Bill may be amended but the statement of purpose may not be changed. The result may be that the statement of purpose as expressed was written for a Bill reading differently from the one that was actually passed. This is a practical concern but must be considered in light of the high degree of knowledge of the affairs of the Legislature attributed to the Legislature.

Also changes in Committee cannot be against the principle of the Bill as passed in second reading. When the Foreign Investment Review Bill was considered in the House of Commons after it had been referred to a Committee, a motion to amend clause 2, a purpose clause, by adding an additional purpose was ruled out of order by the Chair because the proposed purpose appeared "to be quite beyond the other purposes and the general purport of the bill" and "outside the scope of the bill".<sup>127</sup>

From a political viewpoint, an amendment to a statement of purpose that is required because of amendments in the enacted sections as a

result of a change in government policy may be embarrassing to a government because such an amendment may accentuate the policy change.<sup>128</sup>

There is also the concern voiced by draftsmen that statements of purpose hide rather than disclose either the main or subsidiary purpose of an Act. This may occur by an inappropriate or inaccurate statement in the initial enactment of the Act or by reason of the fact that the thrust of the Act is changed from time to time by amendments. If the initial purpose is stated at the time of the original enactment and is not varied at the time of the later amendment, even though the amendment may be years after the original enactment, the courts might possibly use the original statement of purpose to forestall or restrict the effect of the later amendment, when that was never the desired result.

Another danger that exists when a statement of purpose is used is the possibility that a superficial reference to a concept or subject in a statement of purpose may do injustice to the whole purpose. Dickerson makes reference to this problem when he states "if a draftsman includes such a clause, he must be careful not to create, by the omission of other legislative purposes, the misleading impression that they were not also relevant."<sup>129</sup> The first-time reader or reader seeking only the principle of an Act may grasp onto the purpose statement without considering the other provisions of the Act and conclude an inaccurate construction of the Act.

There are examples of preambles that are so broad as to be almost meaningless and others that seem to be included only because the predecessor Acts on the same subject have had them included.<sup>130</sup> In some cases it is impossible to provide a statement of purpose of an Act that is not meaningless. For example, the interpretation of the Unemployment Insurance Act would not be aided by a purpose clause stating "The purpose of this Act is to provide for the payment of benefits to unemployed persons".

It has been suggested that the inclusion of broad generalities in legislation has some dangers. A statement of purpose may be used to colour the interpretation of an Act in a way the legislative draftsman never intended. Draftsmen in several jurisdictions, having a background to situations respecting legislation that is impossible to derive from reading statutes and judicial decisions, have indicated there have been cases where judges used the purpose section to interpret Acts in a way that was never intended by the people in the government department who had promoted the Bill originally. As one senior draftsman said "The fact that the 'aid to construction' is used to achieve a result does not necessarily mean it was an 'aid to preserve the true intent' which is the draftman's concern."

Draftsmen who do not favour the use of statements of purpose do not necessarily agree on the effect of the inclusion of one. Some say

that its presence may actually be of a negative effect, in that it may encourage laziness or carelessness in the draftsman insofar as he feels he has a safety valve in such a broad statement. It has been expressed that purpose clauses or preambles serve best as antidotes to inadequate drafting and because the deficiencies of draftsmanship that infect the working provisions of the bill will likely infect the statement of purpose, such statements are better avoided.<sup>131</sup>

Others with more confidence in the draftsmen, feel that a draftsman should be able to draw purpose clauses without interfering with the true intent; but that it will result in saying the same thing twice so that, if successful, a purpose clause carefully drawn will in all likelihood, not shed any new light on other provisions that are properly drawn.

A concern sometimes expressed is that ambiguities may be created rather than resolved by statements of purpose.<sup>132</sup> For example, if there had been no preamble in the statute considered in the Hanover case the court's decision could have been reached with considerably less deliberation, if in fact the case would ever have arisen. The Act interpreted in the Hanover case was plain and unambiguous in the absence of the preamble and the content of the preamble created the argument. In the case the judges felt the preamble itself was in need of construction. Lord Morton of Henryton described it as being an

ambiguous document but he agreed that the preamble and enacting words should be read before deciding whether the latter are reasonably capable of a proposed meaning. He commented that preambles differ in their scope and in the weight they may have on one side or the other of a dispute. He did however note that there may well be cases in which a section, read with the preamble, may have a meaning different from that which it would have if there were no preamble. Also, in the Reference Re the Anti-Inflation Act there is an example of where, in order to interpret the Act, the preamble was referred to, but in order to interpret the phrase "of serious national concern" in the preamble, extrinsic evidence, such as the Minister of Finance's White Paper on inflation, was referred to.<sup>133</sup>

A difficulty sometimes encountered in drafting a statement of purpose is the problem that often there are primary and ulterior purposes for the legislation. Radin, an American writer on statutory interpretation, provides the example of a statute declaring gambling contracts void. He says the obvious and more remote purpose is to discourage gambling but the more immediate purpose is to make it impossible to sue on gambling contracts.<sup>134</sup>

There is also the danger, mentioned in relation to the amendment to the Canada Labour Code, of statements of purpose being used as a political expedient to justify the enactment. Purpose statements that

are not bona fide attempts to make the purpose of the Act clear are not valid. Reed Dickerson refers to an American example of a preamble that when put to the test only exclaimed "Hurray for Nature!"<sup>135</sup> This "manifesto" type of statement is a major cause of the wariness with which interpreters usually approach statements of purpose.

Proponents of express statements of purpose are not without recognition of the difficulties involved in drafting purpose sections. They feel however that such sections can help in guiding courts in the interpretation of an Act in a particular way. As mentioned previously it may reduce judicial speculation and offer a statement from which the perimeters of the statute may be gathered. Notwithstanding Dickerson's earlier comments, he admits that the purpose clause "may help the reader in interpreting the enactment if there is a pervasive uncertainty that cannot be removed in the specific directions, authorizations and prohibitions of the Bill", and that it may also serve "as a general yardstick in cases where the Legislature wishes to give the administrator wide discretion in applying the law to concrete cases."<sup>136</sup>

A positive aspect of an accurate purpose clause is that it may expressly state a manifest intention or purpose of the Act and to bring that intent to the immediate attention of the members of the Legislature when the Bill is introduced as well as to the public and other consumers of the legislation.

However, if the purpose clause is intended to compensate for the draftsman's own mistakes or inadequacies in drafting the better alternative is for him to concentrate more intensively on the working provisions of the Bill.

Llewellyn, an American writer, commented that "sound recitals of situation and purpose constitute one of the great drafting devices and one of the vital drafting arts".<sup>137</sup> He is a noted enthusiast on the use of purpose clause but in the United States a policy section has become a common aid, particularly in federal legislation, to state the general objectives of the Act so that administrators and courts may know its purposes.<sup>138</sup> They are often said to have assisted not only in the interpretation of the Act but also being persuasive in establishing its constitutionality.<sup>139</sup> As drafting practices are generally a reflection on the function and attitude of the courts to legislation the more expansive use and reference in the United States to statements of purpose must be assessed against the greater degree of a legislative function taken by courts there as compared with Canadian or British jurisdictions.

Sir Rupert Cross in his recent book, Statutory Interpretation, makes the following comment: "At times a state of war appears to exist between the courts and the parliamentary draftsman. The courts decline to come to the rescue when a casus omissus is revealed, so words appropriate to cover the casus omissus are added to the statute."<sup>140</sup> It

has also been expressed that the courts in this country have been driven to a narrow interpretation because of the efforts of the legislators and draftsmen to provide in detail for all possible contingencies.<sup>141</sup> Or, in other words, the result of the courts having regarded legislation as an "innovation upon the common law which it must therefore clearly be expressed so as to alter" is the "meticulous and sometimes over-meticulous wording designed to cover all situations so as to ensure that the courts or tribunals apply the law as Parliament intended. The penalty for this exactitude is an undesirable tendency to obtruseness and lack of readability."<sup>142</sup>

Francis Bennion, a former Parliamentary Counsel in Great Britain, suggests that the complexity of contemporary statute law in Great Britain (and arguably in Canada also) is not really the fault of legislators or draftsmen but "of the system itself" that is based on the principles of stare decisis.<sup>143</sup> Lord Denning M.R. says of the situation: "it is because the judges have not felt it right to fill in the gaps and have been giving a literal interpretation for many years that the draftsman has felt he has to try and think of every conceivable thing and put it in as far as he can so that even the person unwilling to understand will follow it..... but if the draftsman could make Acts simpler, the judges would alter their approach to them".<sup>144</sup>

These comments would appear to support the use of statements of purpose insofar as such a drafting technique may reduce the need for

numerous detailed provisions. However reliance on a statement of purpose for that function would, as discussed, be dangerous and so long as the courts refuse to be legislators, no change in drafting style is going to change their attitude.

## CONCLUSION

One ultimate aim of a draftsman is to help the reader better understand the true purpose and object of the Act resulting in a more accurate construction or interpretation of the Act. The main consideration in the use of a statement of purpose then, is the reader of the statutes. The determination of who the reader is, or from which of the three legislative audiences he comes, is likely to have an effect on the decision as to whether the statement of purpose will be an aid in the construction of the statute. There is also the consideration that the legislative audience may shift in relation to different provisions within the same statute.

The legislative audience has, it appears, sufficient supplementary material, including explanatory notes, to be able to ascertain the purpose of proposed legislation without the aid of a statement of purpose. However one senior draftsman thought that in addition to those aids there was a benefit in including a purpose clause because it was a concise statement, well located to be clearly noted, that would focus the attention of the legislators on the subject. Also, legislators themselves appear to find favour with express statements of purpose, preferably purpose clauses, because they offer a conclusive expression of the intent of the legislation.

The audience composed of administrators, professionals and those affected by the provisions appear to most greatly refer to and appreciate

the statement of purpose. They generally do not have the explanatory material available to the legislators and access to and research of parliamentary debate is generally impractical or unavailable. Administrators, in particular, look to the yardstick or guideline expressed in a statement of purpose to aid them in their exercise of discretion. Readers of lengthy complex legislation look to and rely on the concise statement of purpose usually found at the beginning of a statute. The disadvantages for this audience could be over-reliance on such statements and an ignorance of specific provisions that may include exceptions or qualifications. Also legislation may be of such a nature that any accurate purpose statement is too general to be of any help. Any statement of purpose that is too broadly drafted may reinforce two incompatible views or may be the source of an interpretation never intended by the draftsman or legislators.

The audience of the judiciary is the final authority on the construction of statutes. It is this audience for which the assessing of the value of statements of purpose is most difficult. Members of the judiciary interpret and construe many statutes that have no statement of purpose;<sup>145</sup> they construe statutes that have statements of purpose without any reference to such statements<sup>146</sup>; and they construe statutes that have statements of purpose with considerable reference and weight being given to such statements even though consideration of the same statement may result in different constructions by different judges.<sup>147</sup> Perhaps this is the only audience that appears to have this flexibility

or variability because it is the only audience whose view is determined from written records ranging over a wide area of subjects and time. However the only conclusion reached is that sometimes statements of purpose are an aid to this audience and sometimes they are not. Undoubtedly the principles of interpretation in relation to statements of purpose are generally consistently stated but the necessity of their application varies with the situation.

It appears that for the majority of the total audience of legislation the statement of purpose is welcomed in the construction of statutes. However the qualification that must accompany such a conclusion is that it is not possible always to tell if the construction given to the statute with the aid of the statement of purpose is the construction intended. In light of this, the source that knows the intended result of the construction of legislation as well as the final actual construction must be examined. Because draftsmen are the pivot around which the policies and purposes behind the legislation are translated into legislative provisions, the views and experiences of draftsmen are important in determining the real value of statements of purpose as an aid in the accurate construction of legislation.

The body of the thesis includes the detailed concerns and views of the draftsman in relation to the use of statements of purpose. Concisely expressed the main concern is that because a statement of purpose should not add anything new to the interpretation of a statute, the

dangers or pitfalls that must be avoided when drafting statements of purpose appear to make the exercise of questionable value. However, there is no unanimous opinion from draftsmen as to the value of a statement of purpose as an aid in the construction of statutes. There is agreement though as to the difficulty in drafting an accurate statement of purpose that will not create or add to an ambiguity in the construction of the statute. The majority of draftsmen prefer to avoid the use of a statement of purpose but acknowledge that in certain cases a carefully drafted statement is acceptable.

A clear conclusion is that a statement of purpose should not be a standard part of a statute. Where it is used, a purpose clause is generally preferable to a preamble unless the statement of purpose is used in statutes of a formal nature or legislation ratifying an agreement, the background of which is factual and should be explained and included in the statute. It is generally used in principle Acts as opposed to amending Acts, unless the amendment is substantial. The types of legislation that appear most appropriate for the use of statements of purpose were outlined and discussed in the body of the thesis. They include legislation where the vires of the Act is questionable and constitutional questions may arise, legislation replacing areas of common law and legislation expressing new concepts that are in contrast to existing jurisprudence. Also included is legislation, the provisions of which are not highly likely to be the subject of great construction by the courts, such as legislation of a formal or ceremonial character, of a private nature or legislation ratifying an agreement entered into by Government.

The proposition of including a statement of purpose as an aid in the construction of statutes does not imply that the statute should not be able to be interpreted and stand on its own. What it does imply is that the same construction as would result without the presence of a statement of purpose would result more easily and quickly with a statement of purpose. The difficulties involved and past practices indicate that a well drafted statement of purpose is not an easy clause to create. In light of the attention and care required to compose an accurate and concise statement of purpose that does, in fact, aid the construction of a statute, such a drafting technique could not be wholeheartedly endorsed after the foregoing review.

An initial reaction may be to support a statement of purpose as a useful shorthand method of identifying the purpose or object of a statute but in conclusion there may be only a guarded admission that a well drafted statement of purpose will be welcomed by the legislators, but only in addition to the other explanatory material they have; it will be welcomed by the general audience of lawyers, administrators and those whose conduct the statute regulates but there is no way of determining if their construction with the purpose statement is the construction intended; and it may or may not be referred to by the judiciary in cases where the statute admits to more than one interpretation. In no case will a purpose statement that is not well drafted or that is not accurate be an aid in the construction of a statute.

## APPENDIX I

### Federal Legislation with preambles:

Agricultural Products Marketing Board (R.S.C. 1970 c. A-7)  
Agricultural Stabilization Act (R.S.C. 1970 c. A-9)  
Alberta-British Columbia Boundary Act, 1974 (S.C. 1974-75-76 c. 11)  
Anti-Inflation Act (S.C. 1974-75-76 c. 75)  
Appropriation Act No.1, 1973 (S.C. 1973-74 c. 3)  
Appropriation Act No. 1, 1974 (S.C. 1974 c.1)  
Atomic Energy Control Act (R.S.C. 1970 c. A-19)  
Bank of Canada Act (R.S.C. 1970 c. B-2)  
Bretton Woods Agreement Act (R.S.C. 1970 c. B-9)  
Canada Assistance Plan (R.S.C. 1970 c. C-1)  
Act to Amend the Canada Labour Code (S.C. 1972 c. 18)  
Canadian and British Insurance Company Act (R.S.C. 1970 c. I-15)  
Cape Breton Development Corporation Act (R.S.C. 1970 c. C-13)  
Carriage by Air Act (R.S.C. 1970 c. C-14)  
Farmers' Creditors Arrangement Act (R.S.C. 1970 c. F-5)  
Food and Agricultural Organization of the U.N. (R.S.C. 1970 c. F-26)  
Foreign Insurance Companies Act (R.S.C. 1970 c. I-16)  
Great Lakes Fisheries Convention Act (R.S.C. 1970 c. F-15)  
The Hudson's Bay Company Act (S.C. 1969-70 c. 71)  
Industrial Development Bank (R.S.C. 1970 c. I-9)

The James Bay and Northern Quebec Native Claims Settlement Act  
(S.C. 1975-76 Bill C-9)

King George V Cancer Fund Winding-up Act (S.C. 1974-75-76 c. 78)

Maintenance of Railway Operations Act, 1973 (S.C. 1973-74 c. 32)

Northern Pacific Halibut Fisheries Convention Act (R.S.C. 1970 c. F-17)

North Pacific Fisheries Convention Act (R.S.C. 1970 c. F-16)

Olympic (1976) Act (S.C. 1973-74 c. 31)

Public Order (Temporary Measures) Act, 1970 (S.C. 1970-71-72 c.2)

Queen Elizabeth II Canadian Research Fund Act (R.S.C. 1970 c. Q-1)

Act re Royal Style and Titles (R.S.C. 1970 c. R-12)

Small Loans Act (R.S.C. 1970 c. S-11)

Provincial legislation with preambles:

Alberta Heritage Savings Trust Fund Act (S.A. 1976 c.2)

Appropriation Interim Supply Act, 1976 (S.A. 1976 c. 5)

British Columbia Assoc. of Colleges Incorporation Act (S.B.C. 1976 c.57)

Business Practices Act (S.P.E.I. 1977 c.31)

Essex County French Language Secondary School Act, 1977 (S.O. 1977  
c.5)

Family Law Reform Act, 1978 (S.O. 1978 c. 2)

Fisheries Loans Act (R.S.O. 1970 c. 175)

Freedom of Information Act, (S.N.S. 1977 c. 10).

Georgetown Common Land Act (S.P.E.I. 1977 c.12)

Hospital Services Collective Agreement Act. (S.B.C. 1976 c.21)

An Act to Incorporate The Bishop of the Ukrainian Catholic Eparchy  
of New Westminster and His Successors in Office a Corporation Sole  
(S.B.C. 1976 c.58)

Labour Relations Act (S.M. 1972 c.75)

Metropolitan Toronto Boards of Education and Teachers Disputes  
Act, 1976, (S.O. (1st Session) c.1)

Supply Act, (S.O. 1977 c. 71)

Toronto Transit Commission Labour Disputes Settlement Act, 1978  
1978 (S.O. 1978 c. 56)

## APPENDIX II

### Federal legislation with detailed long titles:

- Canada Dairy Products Act (R.S.C. 1970 c. D-1)
- Canada Temperance Act (R.S.C. 1970 c. T-5)
- Canadian National Railway Financing and Guarantee Act, 1978 (S.C. 1970-71-72 c. 17)
- Energy Supplies Emergency Act (S.C. 1973-74 c. 52)
- Family Allowances Act, 1973 (S.C. 1973-74 c. 44)
- Farm Improvement Loans Act (R.S.C. 1970 c. F-3)
- Food and Agricultural Organization of the U.N. (R.S.C. 1970 c. F-26)
- Medical Care Act (R.S.C. 1970 c. M-8)
- Miscellaneous Statutes Law Amendment Act, 1978 (S.C. 1977-78 c. 22)
- National Housing Act (R.S.C. 1970 c. N-10) Foreign Investment Review Act (S.C. 1973-74 c. 46)
- Northern Pipeline Act (S.C. 1977-78 c. 20)
- Pesticide Residue Compensation (R.S.C. 1970 c. P-11)
- Small Business Loans Act (R.S.C. 1970 c. S-10)

### Provincial legislation with detailed long titles:

- The Credit Unions and Caisses Populaires Statute Law Amendment Act, 1980 (S.O. 1980, c. 6)
- The Labour Standards Act (S.N. 1977 c. 52)
- The Mortgage Brokers Act, 1976 (S.N. 1975-76 No. 49)
- The Ontario Mineral Exploration Program Act, 1980 (S.O. 1980 c. 20)
- The Petty Trespass Act (S.N. 1975-76 No. 59)
- The Provincial Offences Act, 1979 (S.O. 1979 c. 4)
- The Radiation Health and Safety Act (S.N. 1977 c. 90)

APPENDIX III

Federal legislation with purpose clause:

- s.3 Broadcasting Act (R.S.C. 1970 c. B-11)
- s.4 Canada Business Corporations Act (S.C. 1974-75-76 c.33)
- s.2 Canada Development Corporation Act (S.C. 1970-71-72 c.49)
- s.2 Canadian Centre for Occupational Health and Safety Act (S.C. 1977-78 c.29)
- s.2 Canadian Human Rights Act (S.C. 1976-77 c.33)
- s.3 Employment Support Act (S.C. 1970-71-72 c.56)
- s.3 Fitness and Amateur Sports Act (R.S.C. 1977 c.F-23)
- s.2 Foreign Investment Review Act (S.C. 1973-74 c.46)
- s.38 Juvenile Delinquents Act (R.S.C. 1970 c. J-3)
- s.2 Maritime Code Act (S.C. 1976-77 Bill c.41)
- s.7 Maritime Freight Rates (R.S.C. 1970 c. M-3)
- s.3 National Transportation Act (R.S.C. 1970 c. N-17)
- s.3 Northern Pipeline Act (S.C. 1977-78 c.20)
- s.65.1 Petroleum Administration Act (S.C. 1974-75 c.47)
- s.3 Petro-Canada Act (S.C. 1974-75-76 c.61)
- s.3 Residential Mortgage Financing Act (S.C. 1973-74 c.49)

Provincial legislation with purpose clause:

- s.3 Alberta Municipal Financing Corporation Act (R.S.A. 1970 c.14)
- s.2 Amusement Services Safety Act, (S.N.S. 1975 c.2)
- s.2 Anti-Inflation Measures Act (S.B.C. 1976 c.1)
- s.4 Coal Conservation Act (S.A. 1973 c.65)
- s.1(1) Conveyancing Act (R.S.N.S. 1967 c.56)
- s.3 Credit and Loan Agreements Act (R.S.A. 1970 c.73)
- s.3 An Act Respecting the Designation of Historic Property (S.N.S. 1976 c.11)
- s.3 The Electrical Power Control Act (S.N. 1977 c.91)
- s.2 Energy Resources Conservation Board Act (S.A. 1971 c.30)
- s.2 Expropriation Act, 1973 (S.N.S. 1973 c.7)
- s.5(5) Family Law Reform Act (P.E.I. 1978 c. 6)
- s.2B The Forest Land (Management and Taxation) Act, 1974 (S.N. 1974 No.59)
- s.2 Hydro and Electric Energy Act, (S.A. 1971 c.49)
- s.1 Land Titles Act (S.N.B. 1981 c. L1.1)
- s.4 The Liquor Control Act (S.N. 1973 No.103)
- s.5 Oil and Gas Conservation Act (R.S.A. 1970 c. 267)
- s.2 The Ontario Youth Employment Act (S.O. 1977 c.12)
- s.3 Planning Act (R.S.A. 1970 c.276)
- s.2 Rent Review Act (S.N.S. 1975 c.56)
- s.3 The Shops Closing Act (S.N. 1977 c.107)
- s.3 The Statutes and Subordinate Legislation Act (S.N. 1977 c.108)
- s.3 The Unified Family Court Act (S.N. 1977 c.88)
- s.5 The Wine Content Act 1976 (S.O. 1976 (2nd Session) c.78)
- s.2 Workplace Safety and Health Act (S.M. 1976 c.63)

## TABLE OF CASES

- Aarons v Rees (1898), 15 W.N. (N.S.W.) 88
- A.G. for Alberta and Gares, Re (1976) 67 D.L.R (3d) 635 (Alta. S.C.)
- A.G. v Ernest Augustus (Prince) of Hanover [1957] A.C. 436 (H.L.)
- A.G. v Foundling Hospital (1914) 2 Ch. 154
- A.G. v Lord Weymouth (1743), Amb. 20
- A.L.A. Schéchter Poultry Corp. v United States, 295 US 495, 79 L Ed. 1570, 55 S. Ct. 837, 97 ALR 947 (1935)
- Agricultural Products Marketing Act and two other Acts, Reference re (1977), 78 D.L.R. (3d) 477, 16 O.R. (2d) 451 (Ont. C.A.) var'd. 84 D.L.R. (3d) 257 (S.C.C.)
- Alberta Statutes, Reference re (1938) S.C.R. 100
- Anti-Inflation Act, Reference re (1976) 9 N.R. 541, 68 D.L.R. (3d) 452 (S.C.C.)
- Aves v Board of Commissioners of Public Utilities (1973) 5 N.S.R. (2d) 370 (N.S.S.C. App. Div.)
- Black-Clawson v Papierwerke [1975] 1 All E.R. 810 (H.L.)
- Bourne v Norwich Crematorium, Ltd. [1967] 2 All E.R. 576 (Ch. Div.)
- Brett v Brett (1826), 3 Add. 210
- CKOY Ltd. v The Queen [1979] 1 S.C.R. 2
- Caledonian Ry. Co. v North British Ry. (1881), 6 A.C. 114 (H.L.)
- Carter v Bradbeer (1975) 3 All E.R. 158 (H.L.)
- Central Canada Potash Co. Limited and the Attorney General of Canada v The Government of Saskatchewan [1979] 1 S.C.R. 42
- Chambers Lumber Co. v Martin, 112 Ga. App. 826-146 S E 2d 529 (1965)
- Chance v Adams (1696), 1 Ld. Raym 77

City of Medicine Hat et al v Rosemount Rental Developments Ltd. (1964)  
46 W.W.R. 449 (Alta. S.C.) affirm'd. (1964) 49 W.W.R. 306 (S.C.C.)

Dayton-Goose Creek Ry. Co. v U.S. 263 U.S. 456; 68 L. Ed. 388; 44  
S. Ct. 169; 33 A.L.R. 472 (1924)

Director of Public Prosecutions v Schildkamp [1969] 3 All E.R. 1640;  
(1971) A.C. 1 (H.L.)

Ealing London Borough Council v Race Relations Board [1972] 2 W.L.R.  
71

Eton College v Minister of Agriculture (1964) Ch. 274

Farmers' Creditors Arrangement Act, 1934, In re, Huron & Erie v.  
Propp. [1942] 3 W.W.R. 705 (Sask. C.A.)

Fisher v Bell [1961] 1 Q.B. 394; [1960] 3 All E.R. 731;

General Increase in Freight Rates, Re (1948) 62 C.R.T.C. 1 (Bd.  
Trans. Commrs.) vard, 64 C.R.T.C. 1 (Bd. Trans. Commrs.)

General Teamsters Local 362 of International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America v. Midland Superior  
Empress Limited [1974] 2 W.W.R. 490 (Alta. S.C.)

Grey v Pearson, (1857), 6 H.L. Cas 61

Heydon's Case (1584), 3 Co. Rep. 7a; 76 E.R. 637

I.R.C. v Ayrshire Employers' Mutual Insurance Association, Ltd. (1946)  
1 All E.R. 637 (H.L.)

I.R.C. v Holt [1948] 1 All E.R. 616; [1946] S.C. 134; [1947] 1 All  
E.R. 148

Jones v Smart (1784), 1 Term Rep. 44

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(Q.B.)

Lodge et al and Minister of Employment and Immigration, Federal Court  
of Appeal, Re (1979), 94 D.L.R. (3d) 327, [1979] 1 F.C. 775, 25 N.R.  
437 (C.A.)

London County Council v Bermondsey Bioscope Co. Ltd. [1911] 1 K.B.  
455 D.C.

Luke v I.R.C. [1963] A.C. 557 (H.L.)

Magor and St. Mellons Rural District Council v Newport Borough Council [1952] A.C. 189 (H.L.)

Matuszek v Meckling et al (1963), 42 D.L.R. (2d) 682 [1964] 2 C.C.C. 193 (Man CA)

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Montana Mustard Seed Co. Inc. v Continental Grain Co. (Canada) Ltd. et al (1973) 41 D.L.R. (3d) 582, [1974] 2 WWR 49 (Sask. Q.B.)

Nfld. Colonization and Mining v Province of Nfld. 15 Nfld. & P.E.I. R. 338 (1977) (Nfld. S.C.)

Powell v Kempton Park Racecourse Co. (1897) 2 Q.B. 242; (1899) A.C. 143

Powlter's Case (1610), 11 Co. Rep. 29a

Pronto Uranium Mines Ltd. v Ontario Labour Relations Board et al (1956) 5 D.L.R. (2d) p. 342 at 345 (Ont. H. Court.)

Regina v Steinbergs Ltd. [1977] 80 D.L.R. (3d) 741 (Ont. Prov. Ct.)

Rex v Nat Bell Liquors, Ltd. (1922) 2 A.C. 128 (P.C.)

River Wear Commrs. v Adamson (1876) 1 Q.B.D. 546; (18-77), 2 App. Cas. 743

R. v Bates [1952] 2 All E.R. 842 (C.C.C.)

R. v Harris (1836) 7C. & P. 416

R. v Sutton (1816) M. & S. 532

R. v Wildsmith (1974) 8 N.S.R. (2d) 64

Salmon v Duncombe (1886), 11 A.C. 627 (P.C.)

Smith v City of Brookfield S.C. Wisc. (1956) 272 Wis. 1; 74 N.W. 2d 770

Special War Revenue Act, Reference re Section 16 [1942] S.C.R. 429, [1942] 4 D.L.R. 145

Stadnick v Shell's City, Inc., 140 So. 2d. 871 (Fla. 1962);

Stegman Re (1966) 58 D.L.R. (2d) 415, 50 C.R. 24 (B.C.S.C.) affd.  
61 D.L.R. (2d) 340, [1967] 2 C.C.C. 97 (C.A.)

Stephen Investments Ltd. v LeBlanc (1963), 37 D.L.R. (2d) 346, 41  
W.W.R. 422 (Alta S.C.)

Stowel v Lord Zouch (1509), 1 Plowd 353, 75 E. R. 536

Stradling v Morgan (1560), 1 Plowd 201

Sussex Peerage Case (1844), 11 Cl. & F. 85, (H.L.)

Switzman v Elbling and A.G. Que. (1957) S.C.R. 286

U.S. v Whitridge (1935), 197 U.S. 135

Warburton v Loveland d. Ivie, (1828) 2 Dow & Cl 480; 5 E.R. 499

Ward v Holman (1964) 2 Q.B. 580; 2 All E.R. 729

Whiteley v Chappell (1868) 4 Q.B. 147;

Yazoo & M.V.R. Co. v Thomas, 132 US 174; 33 L.Ed. 302; 10 S. Ct. 68  
(1889)

## FOOTNOTES

1. Driedger, Elmer A., The Construction of Statutes, Butterworths, Toronto, 1974 at p. 81; Cross, Sir Rupert, Statutory Interpretation, Butterworths, Toronto, 1976 at p. 43
2. For discussion on the concept of the intention of Parliament see Radin, "Statutory Interpretation", 43 Harv. L. Rev. 863 (1930); Dickerson, Reed, "Statutory Interpretation: A Peek into the Mind and Will of a Legislature", 50 Indiana Law J 206 (1974-75); MacCallum, Gerald, "Legislative Intent", 75 Yale Law J. 754 (1965-66); Nunez, Richard "The Nature of Legislative Intent and the Use of Legislative Documents as Extrinsic Aids to Statutory Interpretation: A Re-examination", 9 California Western Law Rev. 128 (1972-73)
3. Dickerson, Reed, Ibid. at p.219 and 223
4. Driedger, Elmer A., Supra 1 at p. 82
5. These articles include Lenhoff, A. Comments, Cases and other Materials on Legislation 1949, at p. 630; Cross, Sir Rupert, Supra 1 at pp. 34-36; Dickerson, Reed, Supra 2, p. 224
6. Corry, J.A., "Administrative Law and the Interpretation of Statutes", 1 Toronto Law Journal 286 (1936). Reprinted in part as "The Interpretation of Statutes in Appendix I of The Construction of Statutes, Supra 1, p.203 at 208
7. Driedger, Elmer, Supra 1 at p. 119; The Composition of Legislation Department of Justice, Ottawa, 1976 at p. 160; Cross, Sir Rupert, Supra 1 at p. 109; Jones, Chester, Statute Law Making, Boston Book co., Boston, 1912 at p. 76. Also many Acts that originally contained preambles have had them dropped in a revision of the Statutes. For example: Bills of Lading Act, R.S.C. 1970 c. B-6 originally had a preamble in S.C. 1889 c. 30 but it was dropped in R.S.C. 1906 c. 118; Bridges Act R.S.C. 1970 c. B-10 had a preamble in S.C. 1872 c. 25 but it was dropped in R.S.C. 1886 c. 93; The Canada Dairy Products Act R.S.C. 1970 c. D-1 had a preamble in 1886 c. 42 but it was dropped in R.S.C. 1886 c. 100; Dominion Day Act 1879 c. 47 contained a preamble that was dropped in R.S.C. 1886 c. 111. The Act was eventually consolidated into the Holidays Act R.S.C. 1970 H-7 that has no preamble; The Extradition Act R.S.C. 1970 c. E-21 had a preamble in 1877 c. 25 but it was dropped in the 1952 revision and there was no reference to it in Re Stegman (1966) 58 D.L.R. (2d) 415, 50 C.R. 24 (B.C.S.C.) affd. 61 D.L.R. (2d) 340, [1967] 2 C.C.C. 97(C.A.); The Maritime Freight Rates Act, R.S.C. 1970 c. M-3 had a preamble in the original Act of 1927, c. 44 but it was omitted in a later consolidation. However even after its omission a dissenting member of the Board of Transport Commissioners referred to it in Re General

Increase in Freight Rates (1948) 62 C.R.T.C. 1 (Bd. Trans. Commrs.) vard, 64 C.R.T.C. 1 (Bd. Trans. Commrs.)

In Reference re Section 16 of the Special War Revenue Act, [1942] S.C.R. 429, [1942] 4 D.L.R. 145 the validity of the Canadian and British Insurance Companies Act (R.S.C. 1970 c. I-15) was undermined despite a careful statement of the constitutional position in the federal statute S.C. 1932 c. 46. The Foreign Insurance Companies Act R.S.C. 1970 c. I-16 that originally stated a preamble in 1932, c. 47 as amended in sections 1 and 2 of S.C. 1934 c. 36, suffered the same reverse as the Canadian and British Insurance Companies Act.

The Statute Law Revision Acts of 1890 to 1953 in Great Britain provided for the qualified repeal of preambles and authorized their omission from subsequent Revised Editions of the Statutes. See the Statute Law Revision Act 1890 (54 Vict. c.33, ss. 1, 3) that reflects the recommendations of a select committee of the House of Commons (Parl. Rep. (1890) c.110, p. iii) that felt the repeal of preambles that were not required for the purpose of explaining or interpreting the Act they occurred in and were of no historical interest could be repealed and would save printing costs. The omission of preambles has been commented on with varying degrees of support, depending on the value given to a preamble and noted in Craies on Statute Law. (Edgar, Craies on Statute Law, Sweet & Maxwell, London, 6th ed., (1963) at pp. 206 and 359)

Appendix I includes several Acts from provincial and federal jurisdictions in Canada that have preambles that are in force today.

8. R.S.C. 1970, c. I-23 s.12
9. R.S.N. 1970 c. 182; R.S.P.E.I. 1974, J-6; R.S.N.B. 1973 c. I-13; R.S.N.S. c. 151; R.S.O. 1970 c.225; R.S.M. 1970 c. I-80; R.S.S. 1965 c. 1; R.S.A. 1970 c. 189; S.B.C. 1974 c. 42.
10. May, Erskine, The Law, Privileges, Proceedings and Usage of Parliament, Butterworths, London, 18th ed. (1971) at pp 505, 526.
11. D.P.P. v Schildkamp (1971) A.C. 1 (H.L.) at p. 19

Also see Powell v Kempton Park Racecourse Co. (1897) 2Q.B. 242; (1899) AC 143 for the principle that a preamble that has been repealed is still relevant to the construction of the unrepealed operative parts of the Act. But cf. supra 7.

12. Halsbury's Laws of England (3d ed., London, 1954) Vol. 36 p. 370

13. Cross, Sir Rupert, *Supra* 1, Chapter I; Corry, J.A. *Supra* 6.

For a complete account of the historical background see Sir. Wm. Blackstone's Commentaries on the Laws of England; F.W. Maitland, The Constitutional History of England (Cambridge 1950); Halsbury, ibid., Vol. 7 at 450

14. Anon., Y.B. 33 & 34 Edw. 1, 82

15. Maxwell, Sir Peter Benson, The Interpretation of Statutes, Sweet & Maxwell, London, 12th ed., (1937) at pp. 236-238

16. See also Stradling v. Morgan (1560), 1 Plowd 201 at 205

17. 1 Plowd 353 at p. 369

18. Black-Clawson Int'l Ltd. v Papierwerke Waldhof-Aschaffenburg A.G. (1975) 2 WLR 513 at 541, (1975) 1 All ER 810 at p. 835-6  
Also see Re Attorney General for Alberta and Gares (1976) 67 D.L.R. (3d) 635 at p. 687

19. See Corry, *supra* 6

See also the following writings of Bentham:

A comment on the Commentaries (edited by C.W. Everett), Oxford 1928.

Of laws in General (edited by H.L.A. Hart), 1970

20. See for example Dr. Bonham's case (1610), 8 Co. Rep. 113 b

21. Driedger, *Supra* 1 at pp 148-9

22. Sussex Peerage (1844), 11 Cl. & F. 85, at p. 143; R v Harris (1836), 7C. & P. 416; Jones v Smart (1784), 1 Term Rep. 44

23. *Supra* 13, also see Edgar, *Supra* 7 at p. 23 and Corry, *supra* 6.

24. See also Powell v Kempton Park Racecourse Co., *supra* 11; see also Aarons v Rees (1898), 15 W.N. (N.S.W.) 88; Turquand v Board of Trade (1886) 11 A.C. 186 per Lord Selborne L.C.

25. Powell v Kempton Park Racecourse Co., *supra* 11 per Lord Davey at p. 185

26. Corry, *supra* 6.

27. River Wear Commrs. v Adamson (1876), 1 Q.B.D. 546; (1877), 2 App. Cas. 743; as opposed to Luke v I.R.C. [1963] AC 557 (H.L.); Brett v Brett (1826), 3 Add. 210 where the long title and preamble were considered in the interpretation of unambiguous enacted words.

28. (1828), 1 Hud. & B. 623 at p. 636 (on appeal 2 Dow & Cl. 480);
29. Caledonian Ry. Co. v North British Ry. (1881), 6 A.C. 114
30. Ibid. at p. 124
31. (1886), 11 A.C. 627 at p. 634
32. In re Farmers' Creditors Arrangement Act, 1934; Huron & Erie v Propp. [1942] 3 W.W.R. 705
33. Ibid., at p. 712-715
34. (1957) A.C. 436 at p. 461
35. Powell v Kempton Park Racecourse Co. supra 11 at p. 299  
Also Copeland v Davies (1872) L.R. 5 H.L. 358 held that the enactment was not to be controlled by the preamble.
36. Supra 34 at p. 467
37. The Unimproved Lands (Redistribution) Act RSN 1970 c. 384 in Nfld. Colonization and Mining v Province of Nfld. 15 Nfld. & P.E.I. R. 338 (1977) (Nfld. S.C.)
38. (1976) 67 D.L.R. (3d) at p. 674 & 687
39. [1969] 3 All E.R. 1640 at p. 1652
40. (1938) S.C.R. 100 at p. 108; See also Re A.G. for Alberta and Gares (1976) 67 D.L.R. (3d) at 686 and Limb & Co. v British Transport Docks Board [1971] 1 All E.R. 828 at 839 for recent use of preamble in construction of a statute.
41. (1938) SCR. 100 at p. 132-133
42. 84 D.L.R. (3d.) 257 at p. 279
43. 68 D.L.R. (3d) 452 at 495
44. Hogg, Peter, Constitutional Law of Canada, Carswell Company Limited, Toronto, (1977) at p.308
45. Edgar, Supra 7 at pp.42-45 and 515 and 519. Craies on Statute Law notes at p. 45 "The via media between taking a preamble as conclusive evidence upon a question of fact and either not taking judicial notice of the recitals or deciding the statute, being based on false recitals, was not binding is to regard the preamble as conclusive in so far as it elucidates the intention of Parliament

expressed in the enacting part, but as prima facie evidence only of the matters of fact". A.G. v Foundling Hospital (1914) 2 Ch. 154 is English authority for the principle that facts recited in a preamble are admissible in evidence as prima facie proof of their truth.

46. Supra 7
47. See for example Lord Alverstone, C.J. in L.C.C. v Bermondsey Bioscope Co., Ltd., (1911) 1 K.B. 445, at p. 451
48. Lord MacDermott, "Some Requirements of Justice", 1964 Juridical Review 103, 110; see also H. L. Laski in Annex to the Donoughmore Report, Committee on Ministers' Powers Report Commnd. 4060, p. 136
49. Ibid. with reference to I.R.C. v Bladnoch Distillery Co. Ltd. [1948] 1 All E.R. 616 (H.L.); and Holt v I.R.C. [1947] 1 All E.R. 148 (C.A.) Other examples of judicial regret at the lessened use of preambles are Lord Alverstone C.J. in London County Council v Bermondsey Bioscope Co. Ltd., [1911] 1 K.B. 455 D.C. at p. 451 and Lord MacNaughten in Vacher London Society of Compositors [1913] A.C. 107 at p.118
50. Edgar, Supra 7 at p. 205
51. An Act to Amend the Canada Labour Code, see particularly Commons Debates June 27, 1972 pp. 3561-66 and 3573-84
- 51A. An exception to this political support of preambles is the example, although in relation to a purpose clause, where the statement of purpose was added in committee in response to an opposition member's concern that there was no indication in the Bill itself as to the purpose for which revenues from the levy raised under the Bill would be used. The Bill, An Act to Amend the Petroleum Administration Act and the Energy Supplies Act, was amended by adding a purpose clause explaining the purpose of the levy. H.C. Deb. Feb. 23/78 & Mar. 14/78 p. 25
52. General Teamsters Local 362 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v Midland Superior Empress Limited [1974] 2 W.W.R. 490 (Alta. C.A.)
53. House of Commons S.O. 107; also Huges, Christopher, The British Statute Book at pp 38-39; The Theory and Practise of the Irish Senate #9 at p. 75-76; see also Halsbury's Laws of England (3d ed., London, 1954) Vol. 28 p. 420  
In relation to private Acts note Pickin v British Rys. Bd. (H.L.) [1974] A.C. 765 where the plaintiff who brought the action argued that the Board had misled Parliament by means of a false recital in the preamble of the British Railway Act 1968 and in obtaining the

passage of the Bill unopposed. The Court rejected the plaintiff's arguments and did not go behind the recitals of the 1968 Act that cancelled the effect of a private Act of 1836.

54. Yazoo & M.V.R. Co. v Thomas, 132 US 174; 33 L.Ed. 302; 10 S. Ct. 68 (1889); Chambers Lumber Co. v Martin, 112 Ga. App. 826-146 S E 2d 529 (1965)
55. Stadnick v Shell's City, Inc., 140 So. 2d. 871 (Fla. 1962); R v Sutton (1816) M. & S. 532. See Dougherty v. Bethune, 7 Ga. 90, 92 (1849) for the comment "So far as it recites facts it is not a law and the Courts are not bound to recognize it as such. The legislature has no power to legislate the truth of facts."
56. Statutes and Statutory Construction, Article 5, Vol. 1A 4th edition, Callaghan & Co., Chicago, 1972 at p. 54
57. Solvang Municipal Improvement Dist. v Jensen, 111 Ed. 2nd 237 (1952); Board of Sup'rs of Elizabeth City County v State Milk Commission 191 Va. 1, 60 S.E. 2d 35 (1950)
58. Leary v United States, 395 U.S. 6, 28 L.. Ed. 2d 57; 89 S.C. 1532 (1969)
59. Bridewell v Henderson, 99 Ore. 506, (1921)
60. O'Connell v Slavin, 452 p 2d. 943 (Wash. 1969)
61. Home Buildings and Loan Ass'n v Blaisdell, 290 U.S. 398 (1934); see also "Legal Effect of Preambles in Statutes" 41 Cornwall Law Quarterly, p. 134 at 137
62. Towards a Codification of Criminal Law, Law Reform Commission of Canada, Information Canada, Ottawa, 1976; Part I, pp. 5-24
63. (1976) 120 Sol. J. 390
64. The Official Residences Act (R.S.C. 1970 c. P-20) had its long title repealed and substituted so that the former title and Act that referred only to the residence of the Prime Minister could be broadened. See R.S.C. 1970 c. 20 (2nd Supp.) s. 1
65. Ward v Holman (1964) 2Q.B. 580; 2 All ER 729
66. See long titles in the Social Security Act 1973 (U.K.) and the Theft Act 1968 (U.K.) and Chan, T.Y., "Changes in Form of New Zealand Statutes"; 8 V.U.W.L. 318-42 (1976) at p. 326
67. Powlter's Case (1610), 11 Co. Rep. 29a at p. 336; Salkeld v Johnson (1848) 2 Ex. 256; R v Wolcock (1845) 7 Q.B.

68. Driedger, The Composition of Legislation, Supra 7; see Lord Hardwicke's L.C. comment in A.G. v Lord Weymouth (1743), Amb. 20, at pp. 22, 23 that the title was only a direction to find it out by amongst the Rolls of Parliament. Lord Hardwicke included the comment "The title is no part of the Act".
69. See Chance v Adams (1696), 1 Ld. Raym 77 at p. 78 per Treby C.J. and Halsbury's Laws of England (3d. ed., London, 1954) Vol. 36 pp. 368-9 and 375
70. R v Lane (1937) 1 D.L.R. 212; House of Commons; S.O. H.C. 75(1); See also Beauchesne, Supra 48 at p. 235'
71. Driedger, Supra 1 at pp. 63-64
72. Fisher v Raven [1964] A.C. 210; 1963 2 All E.R. 389; Supra 17 at p. 816; Also R v Bates [1952] 2 All E.R. 842; Schiell & Hunt v Morrison [1930] 2 W.W.R. 737; Fielding v Morley [1899] 1 Ch.1; Kenrick & Co. v Lawrence & Co. (1890) 25 Q.B.D. 99; East and West India Dock Co. v Shaw, Savill and Albion Co. (1888) 39 Ch. D. 524; Shaw v Ruddin (1859) 9 Ir. C.L.R. 214; Blake v Midland Ry. (1852) 18 Q.B. 93 Ex. p. Steavenson (1823) 2 B. & C. 34
73. [1975] 1 All E.R. 810 at p. 825
74. Supra 10 at pp. 381-2, 411-3, 721-5
75. Driedger, The Composition of Legislation, Supra 7 at p. 153
76. Supra 40 at p. 467. Lord Morris of Borth-y-Gest agreed with Lord Normand when he said in Picken v British Rys Bd (Supra 53 at p.789) "there's a clear distinction between recitals to an Act which are mere recitals and the enacted provisions of an Act".
77. For example see Farm Lands Protection Act S.M. 1977, c. 44, s.13; Labour Standards Act S.S. 1976-77 c. 36, s.84; Mineral Resource Tax Act S.B.C. 1976 c.31, s.44; Rent Decontrol Act S.A. 1977 c.41, s.32; Police Act S.P.E.I. 1977 c. 28, s.9. It should be noted that the Australian practice indicates a wide use of purpose clauses ie. s. 5 of the Wool Industry Act 1962 and s. 5 of the Homes Savings Grant Act 1964
78. The Preparation of Legislation, Chairman: The Rt. Hon. Sir David Renton, 1975, London, H.M.S.O. Comnd. 5053, p.60
79. Dickerson, Reed, supra 2 at p. 233. With this type of purpose clause specific purposes are respectively prefixed, as needed, to particular commands, authorizations or prohibitions.

80. 84 D.L.R. (3d.) 257 at 312-313
81. (1938) S.C.R. 100
82. See Newfoundland Human Rights Code RSN 1970 c. 262 s. 4(1);  
Community Cablecasters Act, S.S. 1976-77 c. 12, s.41
83. Driedger, supra 1 at p. 167
84. (1922) 2 A.C. 128 at 136; see also Reference re Alberta Statutes,  
Supra 73 at p. 122. See also National Industrial Recovery Act  
(1933) 48 Stat. L. 195 and A.L.A. Schechter Poultry Corp. v  
United States, 295 US 495, 79 L Ed. 1570, 55 S. Ct. 837, 97 ALR  
947 (1935)
85. (1976) 57 D.L.R. (3d) 7 at 100
86. Central Canada Potash Co. Limited and the Attorney General of  
Canada v The Government of Saskatchewan [1979] 1 S.C.R. 42
87. Ibid., at p. 76
88. Thornton, G.C., Legislative Drafting, London, Butterworths,  
(1970) at pp. 139-141
89. Supra 59 and 61
90. Supra 84
91. Driedger, Supra 1 at p. 167
92. Edgar, Supra 7 at p. 59-60
93. S.P.E.I. 1978 c. 6 s.5(7)
94. Married Persons Property Act, S.N.S. 1978, preamble, s.2  
The Matrimonial Property Act S.N. 1979, c. 32 s. 3  
Family Law Reform Act, 1978, S.O. 1978, c. 2 preamble  
Marital Property Act, S.M. 1978 c. 24  
Matrimonial Property Act S.A. 1978, c. 22  
Family Relations Act S.B.C. 1979 c. 121
95. Law Reform Commission of Canada, Report on Evidence, Ottawa,  
1975 at p. 17
96. Ibid., at p. 51
97. Supra 62 at p. 19

98. S.C. 1976-77 c. 33 s. 2
99. In Re Lodge et al. and Minister of Employment and Immigration (1979), 94 D.L.R. (3d) 327, [1979] 1 F.C. 775, 25 N.R. 437 (C.A.), the Federal Court of Appeal did not refer to the statement of purpose found in section 2 of the Canadian Human Rights Act. In the Federal Court Trial Division, Mahoney J. however did refer to the purpose clause (1978), 86 D.L.R. (3d) 553 at p. 554; [1978] 2 F.C. 458 (T.D.)
100. Dale, Sir William, Legislative Drafting: A New Approach, Butterworths, London, 1977 at p. 324
101. The Conference of Commissioners on Uniformity of Legislation in Canada Rules of Drafting, see the Proceedings of the Sixtieth Annual Meeting of the Uniform Law Conference of Canada p. 64.
102. The Regulatory Process of the Canadian Transport Commission, a study prepared for the Law Reform Commission of Canada by H.N. Janisch, 1975, Information Canada, Ottawa.  
Also see H.N. Janisch's article "Policy Making in Regulation: Towards a New Definition of the Statuts of Independent Regulatory Agencies in Canada" 1979 Osgoode Hall Law Journal Vol. 17 No. 1, p.46 for the suggestion that such Acts can, in statements of purpose expressing policy, only indicate main policy guidelines with subsequent development of policy being developed through day to day regulatory experience.
103. *Ibid.*, at p. 18 the study quotes the then Minister of Transport in 1975 before the Commons Committee on Transportation and Communications as stating "The present NT Act sees as the objective of the national transportation policy an economic, efficient and adequate transportation system. My new policy revises this in favour of an accessible and equitable and efficient transportation system focusing on service to users of the system as well as efficiency".
104. For example see Commons Debates, July 5, 1972 p. 3782
- 104A. See the Renton report (Supra 78) at p. 147 for the recommendation that any United Kingdom legislation intended to implement a Treaty provision or a Community instrument should contain a clear statement that it is so intended. Also recommended is that it should be made clear that in such a case the courts may, in construing United Kingdom legislation, take into account the relevant provisions of the Treaty or other instrument to which that legislation is intended to give effect.

105. Kernochan, John M., "Statutory Interpretation: An Outline of Method", *Dalhousie Law Journal* 332 at p. 346
106. Statute Law Deficiencies (The Heap Report), Part IV, Para. 103 (m). The committee was appointed to examine the ways in which the official system of framing, enacting and publishing statute laws of the United Kingdom Parliament fail to meet the requirements of the user.
107. *Supra* 78 at pp. 62-63
108. 1974 Proceedings of the 56th Annual Meeting of the Uniform Law Conference of Canada, p. 73 at p. 78. Note also in the Rules of Drafting (1948) Designed Particularly for the Conference of Commissioners on Uniformity of Legislation in Canada it is stated that "the principle of leading motive of the Act shall be enunciated in concise form". (Rule 4.(1) Uniformity of Legislation in Canada An Outline and Rules of Drafting published by The Conference of Commissioners on Uniformity of Legislation in Canada 1949; Vol. 25 *Can. Bar Rev.*) To indicate further the disagreement that exists as to the use of statements of purpose see the Observations of the Rules of Drafting of The Conference of Commissioners on Uniformity of Legislation in Canada 1949 that suggests preambles should be avoided and that an Act ought to be self-explanatory.
109. Professionalizing Legislative Drafting - The Federal Experience, (ed. Reed Dickerson) American Bar Association (1973) at p. 154
110. Hutton, Sir Noel, *Modern Law Review*, Vol. 24 (January 1961), p. 21, Sir Hutton was also appointed a member of the committee on the Preparation of Legislation chaired by Sir David Renton.
111. See Statute Law Society, *Statute Law: A Radical Simplification*. 2d Report, Sweet & Maxwell Ltd., London, (1974) pp 8, 39-42
112. *Halsbury's Laws of England* *Supra* 69 at p. 370
113. *Driedger*, *Supra* 1 at p. ix
114. See Burglass, R.B., "The Use of Extrinsic Evidence and the Anti-Inflation Act Reference", 9 *Ottawa Law Rev.* 183 (1977); Also see *Black-Clawson v Papierwerke* [1975] 1 All E.R. 810 (H.L.) for decision that the court may have regard to the report of a committee presented to Parliament containing proposals for legislation which resulted in the enactment of the statute, in order to determine the mischief the statute was intended to remedy, but the direct statement in the report of what the proposed enactment means may not be referred to. See also Cooke; and The Hon. Sir Samuel, "The Scope of Judicial Development of the Law" *Law Reform: The Scope of Judicial Development of the Law*, p.6.
115. *Driedger* *Supra* 1 at pp. 123-135

116. Ealing London Borough Council v Race Relations Board [1972] 2 W.L.R. 71 at pp 82-83
117. James W. Ryan, Q.C., former Assistant Deputy Minister of Justice (Canada) and former Senior Legislative Counsel in Newfoundland is presently under contract with the Barbados Government and Graham D. Walker, Q.C. is Legislative Counsel in the Nova Scotia Office of the Legislative Counsel and presently is also Chairman of the Legislative Drafting Section of the Uniform Law Conference of Canada.
118. 1977 proceedings of the 59th Annual Meeting of the Uniform Law Conference of Canada, p. 325 at p. 328.
119. Dickerson, Supra 2 at p. 227
120. Supra 6 at p. 207
121. Supra 2 at p. 232
122. Sir Erskine May as quoted from Parl. Pap. 1875 (C.208), p.4 in Craies on Statute Law, Supra 7
123. Draftsmen in all provincial jurisdictions and the Yukon and Northwest Territories were kind enough to reply to the author indicating their views and policies of using statements of purpose but because of the request in several letters to respect the confidentiality of the comments no specific reference has been made to any of the individuals.
124. Supra 78 at p. 63.
125. Statute Law Society: Statute Law: the key to clarity, Sweet & Maxwell Ltd., London, (1972) pp. 48-49
126. For explanation of that rule of construction see Driedger, Supra 1 at p. 99
127. Commons Debates, November 5, 1973 pp. 7519-20
128. An example of a preamble being amended at the time an enacted provision was amended is when the preamble of the Agricultural Products Marketing Act was amended at the time a new subsection 2(2) was introduced. (S.C. 1957 c. 15) The words added to the preamble were: "Whereas it is desirable to co-operate with the provinces and to enact a measure respecting the marketing of agricultural products in interprovincial and export trade". In a constitutional case on the Act it was argued, though not accepted

- by the Supreme Court of Canada, that the amendment to the preamble reinforced the submission as to the intrusion by Parliament into local and intraprovincial trade by levy provisions of subsection 2(1) as a derogation from the federal statutes declared concern with interprovincial and export trade alone. Reference Re Agricultural Products Marketing Act and two other Acts (1977), 78 D.L.R. (3d) 477, 16 O.R. (2d) 451 (Ont. C.A.) vard. 84 D.L.R. (3d) 257 (S.C.C.) at p. 279
129. Dickerson, *Supra* 2 at p. 233
  130. National Environmental Policy Act, 83 Stat. 852, 42 U.S.C. 4331, Workplace Safety and Health Act S.M. 1976 c. 63, s.2(1), Labour Relations Act S.M. 1975 c. 75 preamble
  131. Dickerson, *Supra* 2 at p. 233
  132. Cases and Materials on Legislation. Read, MacDonald and Fordham pp. 143-156
  133. Not by all judges but by Laskin C.J. and Ritchie J. See 9 N.R. 541 at 590-91 and 601; 68 D.L.R. (3d) 452 (S.C.C. 1976) and also Buglass, *Supra* 114 at p. 189
  134. Radin *Supra* 5; See also Statutory Construction, Earl T. Crawford, Thomas Law Book Co., 1940, at pp 150-251
  135. *Supra* 78 at p. 63; The National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4331) to which Dickerson refers was also similarly described by Charles Nutting in his article "How the problem looks to the Educator" in Professionalizing Legislative Drafting, The Federal Experience (ed. Reed Dickerson) American Bar Association (1973) p. 48 at 51 .
  136. Dickerson, Reed, Legislative Drafting, Little, Brown and Company, 1954, pp. 107-108 see also Samuels, Alec, "Improving the Quality of Legislation" 3 Anglo-American Law Review (1974) at p. 542. A good example of a broad section indicating a general yardstick is section 38 of the Juvenile Delinquents Act (Canada) R.S.C. 1970 c.J-3 and see R v Dapic 1977 5 W.W.R. 447, 40 C.R.N.S. 156, 36 C.C.C. (2d) 461.
  137. Llewellyn "Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes are to be Construed"; 3 Vand. L. Rev. 395 (1950) and Legislation, Cases and Materials, Nutting, Elliott and Dickerson, American Casebook Series, 4th ed. 1969, St. Paul, Minn. West Publishing Co.
  138. Sands, Dallas, Statutes and Statutory Construction Vol. 1A, 4th edition, Callaghan & Co., Chicago, 1972 at p. 63

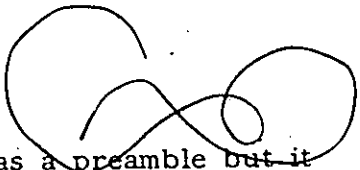
139. Dayton-Goose Creek Ry. Co. v U.S. 263 U.S. 456; 68 L. Ed. 388; 44 S. Ct. 169; 33 A.L.R. 472 (1924). Here the court sustained the validity of the Interstate Commerce Act and relied extensively upon the policy section, incorporating its language into the decision.
140. Cross, *Supra* 1 at p. 11
141. *Supra* 118, p. 113-116
142. W. A. Elliot, "The Scope for "General Principle" Legislation, Law Reform, Legislation: Principles and Methods, p.2; See also Magor and St. Mellons Rural District Council v Newport Borough Council [1952] A.C. 189 at 191.
143. Bennion "Statute Law Reform: the Renton report" (1975) 125 New Law Journal p. 662; also *Supra* 105 at pp. 336 and 345; (1958) A.C. 549 at p. 565
144. *Supra* 78 at p. 135
145. Johnson J. determined the intention of Parliament with the Canada Grain Act (1970-71-72 c. 7) in the Montana Mustard Seed Co. Inc. v Continental Grain Co. (Canada) Ltd. et al (1973) 41 D.L.R. (3d) 582, [1974] 2 WWR 49 at 55,56 (Sask. Q.B.), revd. on other grounds 49 D.L.R. (3d) 72, [1974] 4 WWR 695, 15 N.R. 461 (Sask C.A.), affd. [1976] 2 WWR 768, 15 N.R. 459 (S.C.C.) without the aid of an unusually detailed long title, a purpose clause or preamble.

Harris, Prov. Ct. J. in Regina v Steinberg's Ltd. ([1977] 80 D.L.R. (3d) 741 (Ont. Prov. Ct.) at p. 752) states the purpose of the Consumer Packaging and Labelling Act again without the aid of a statement of purpose.

The Fertilizers Act R.S.C. 1970 c. F-9 was the subject of R. v Bradford Fertilizer Co. Ltd. (1971) 22 DLR (3d) 617, [1972] 10R 229, 5 CCC (2d) 325 (Ont. C.A.) and the object decided without the aid of a statement of purpose.

The long title of the Energy Supplies Emergency Act (S.C. 1973-74 c.52) was referred to by Beetz J. in the Anti-Inflation Reference ((1976) 68 D.L.R. (3d.) 452) but not in Re Imperial Oil Ltd. v A.G.N.S. (1974) 50 D.L.R. (3d.) 739 where the statute was in issue.

146. In Re Lodge et al and Minister of Employment and Immigration the Federal Court of Appeal ((1979), 94 D.L.R. (3d) 327, [1979] 1 F.C. 775, 25 N.R. 437 (C.A.)) did not refer to the statement of purpose found in section 2 of the Canadian Human Rights Act (1976-77 chap.33). In the Federal Court Trial Division Mahoney, J however did refer to the purpose clause (1978, 86 D.L.R. (3d) 553 at p. 554; [1978] 2 F.C. 458 (T.D.))



The Small Loans Act RSC 1970 c S. 11 has a preamble but it was not referred to in either Stephen Investments Ltd. v LeBlanc where the issue was if the plaintiff was a money lender within the terms of the Act (1963), 37 DLR (2d) 346, 41 WWR 422 (Alta SC) or in Matuszek v Meckling et al (1963), 42 DLR (2d) 682 [1964] 2 CCC 193 (Man CA) where the Act was decided to be valid federal legislation in relation to interest.

147. The preamble of the Atomic Energy Control Act was quoted by McLennan J. in Pronto Uranium Mines Ltd. v Ontario Labour Relations Board et al ((1956) 5 D.L.R. (2d) p. 342 at 345 (Ont. H. Ct.)). In the next sentence he said "the real subject matter of the legislation is..." This preamble and McLennan's reference to the "real subject" were referred to in Re Westinghouse Electric Corporation and Duquesne Light Company et al by Robins J. who was deciding on the validity of regulations made for the purposes of the Atomic Energy Control Act.

In 1976 the Alberta Supreme Court referred to the preamble of the Individual's Rights Protection Act as resolving an ambiguity in Re Attorney General for Alberta and Gares (1976) 67 DLR (3d) 635 at 674 and 687.

In Reference Re Agricultural Products Marketing Act and two other Acts (1977) 78 DLR (3d) 477, 160 R. (2d) 451 (Ont C.A.) three judges referred to the preamble of the Agricultural Products Marketing Act. The dissenting judge referred to it as disclaiming that subsection 2(2) of the Act was a taxing statute. The levy contemplated by the preamble Dubin J.A. said is in support of marketing agricultural products in interprovincial and export trade. There was no need he said for Parliament to resort to its taxing powers for that purpose. The majority of the Ontario Court of Appeal held it was competent legislation under the taxing power of s. 91(3) of the British North America Act. Wilson J.A. in her decision referred to the preamble and said "if the Act is to be taken as its face value and particularly if the preamble to the Act is to be accepted as setting forth the bona fide object of the Legislation, interprovincial trade in the product is intended to be facilitated by the existence of a co-operative marketing scheme funded by levies which only Parliament has the authority to impose." (p. 514)

Reference to the purpose clause in The Town and Rural Planning Act was made by the Alberta Supreme Court in City of Medicine Hat et al v Rosemount Rental Developments Ltd. (1964) 40 W.W.R. 449

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## R E S U M E

The thesis examines the statement of purpose as an aid in the construction of statutes. The term "a statement of purpose" refers to various forms used in drafting legislation to express in a direct and comprehensive statement the object or purpose of a piece of legislation. The three most significant forms of statements of purpose are preambles, long titles and purpose clauses. Each form is reviewed and legislative examples and judicial decisions relating to each form are noted.

The legislative audience is separated into three main groups, namely, the parliamentarians, the judiciary and a general group consisting of lawyers, administrators of statutory provisions and those people who are affected by the legislation. The views of each group in relation to the value of a statement of purpose are examined and, noted as well are the views of legislative craftsmen on the use of statements of purpose.

Certain types of legislation are identified as legislation in which a statement of purpose may be appropriate or legislation where the use of a statement of purpose may aid in its construction. In some cases it is suggested that one form of a statement of purpose is preferable to another form. In all cases however it is noted there are dangers or disadvantages in using a statement of purpose, and these are compared to the possible advantages.

The conclusion is reached that a statement of purpose should not be a standard feature in a statute. The conclusion includes a guarded admission that a well drafted statement of purpose may be an aid in the construction of statutes but notes that it is difficult to draft a statement of purpose that accurately reflects the true intention of the legislation and is an aid in ascertaining that intention.

In concluding the views of the parliamentary audience it appears that a statement of purpose, preferably a purpose clause, will be welcomed by the legislators, but only in addition to the other explanatory material they have. Their views, not surprisingly, usually divide on political lines. The judiciary, in relation to all forms of a statement of purpose, does not allow a statement of purpose to affect the interpretation of a statute where the language of the statute is clear and unambiguous. Judges construe many statutes that have no statements of purpose; they construe statutes that have statements of purpose without any reference to them; and they construe statutes that have statements of purpose indicating consideration of those statements, but not necessarily resulting in the same conclusion as another judge who has also noted the same statement of purpose. The general audience appears to be the audience most in favour of the use of a statement of purpose but it is difficult to determine if the construction of the statute by this audience, with the aid of a statement of purpose, is the construction intended.

In contrast with the legislative audiences, legislative draftsmen appear generally to be opposed to the inclusion of a statement of purpose. The reason for this would appear to be the difficulties involved in drafting such statements. Although a well drafted statement of purpose may be an aid in the construction of statutes, more particularly in the types of legislation noted in the thesis, a poorly drafted or inaccurate statement is of no help and may introduce ambiguity or uncertainty that would not otherwise exist.