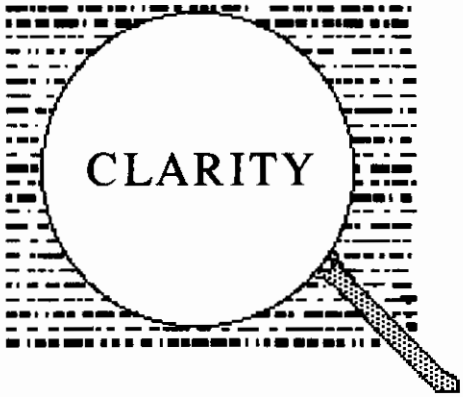

A MOVEMENT TO SIMPLIFY LEGAL ENGLISH

Patron: Lord Justice Staughton

No 21: August 1991

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ANNUAL SUPPER

The annual supper will be held
at 6pm for 6.30pm on
Monday, 28th October
at
The Law Society's Hall
113 Chancery Lane, London WC2

and will be followed at 7.30 by the annual meeting.

The guest of honour will be

Anthony Scrivener QC,
the chairman of the Bar,

who will be speaking on

What the Bar is doing to encourage the use of plain English,

and we are as usual inviting a second guest speaker.

We have changed the day this year to give an opportunity to those for whom Friday is always difficult, and hope that this will not inconvenience the regulars. Guests are welcome.

The charge for the meal is £20 but of course attendance at the meeting is free.

If you cannot come in time to eat, please join us for coffee afterwards.

We will not turn away anyone who has not booked, but we do need to have a rough idea of the numbers to be expected. So please return a copy of the enclosed form if you are or may be coming. If you do not have a form, please telephone Patricia Hassett.

If you cannot attend, but would like to submit suggestions for discussion, or stand for election to the committee, please write to the chairman.

NEWS

ENGLAND

The Law Society publishes plain commercial leases

At the end of June The Law Society published two versions of a commercial lease, which it hopes will be adopted as standard. One is designed for letting a whole building, the other for a part of a building.

Two CLARITY members are responsible for this. The idea came from David Ward during his presidency of The Law Society, and the drafts were produced by Trevor Aldridge.

The leases are reviewed on page 17.

CLARITY research into client understanding

We recently conducted an experiment to investigate lay understanding of a solicitor's letter.

The letter was a real one, chosen because it was not an especially bad example of legalese. It had been written by a husband's solicitor to the unrepresented estranged wife, setting out proposed terms of settlement which it invited her to agree.

A copy of this letter was sent to 150 lay clients, with a questionnaire. The results were dramatic.

Of the 77 who answered, only 29 were confident that they understood the letter completely. But the answers to the detailed questions designed to test comprehension showed that not one of the 29 - or of the other 58 - clearly understood the proposals.

Many thought that the phrase *without prejudice*, with which the letter was headed, meant that the solicitor was impartial. Many others thought it meant that an agreement would not be binding.

The proposals included the suggestion that the family's Spanish holiday home would be held jointly. Less than half of the confident 29 knew the rule about survivorship, and most of those overlooked the complications of foreign law.

The agreement proposed by the husband's solicitor included the dismissal of the wife's claims to ancillary relief. Yet none had a clear idea of what *ancillary relief* was. Not all appreciated that the wife would lose her rights; nor did everyone realise that the husband retained his.

The detailed results were published in the 26th July issue of the *New Law Journal* under the title *Bamboozling the Public*. The project was also mentioned in an item on CLARITY on Radio 4's *Law in Action* the same evening.

Bar Council supports clearer legislation

The Law Reform Committee of the Bar Council has adopted a report by James Goudie QC, District Judge Adams and William Blackburne QC, calling for statute law to be made more accessible.

We have a copy and hope to publish a slightly abridged version in the next issue.

CLARITY seminar

The advertisement in the last issue has produced bookings for our seminars by two more firms, and interest from others. The Trainee Solicitors Group has arranged a shortened version for its Skills Day, and another is to be given to Law Society staff who will be responsible for redrafting the practice rules in plain English. Meanwhile, Nabarro Nathanson have reserved two more sessions in September.

The sessions have now been accredited in The Law Society's Continuing Education scheme. Each carries 4 points.

The price has been increased to £500 from the introductory figure of £350, except for bookings already made at the lower rate.

StyleWriter
Nick Wright reports on sales of his PE editing software

Six months after the release of Version 2, we are starting to make inroads in large organisations. Civil Service departments and some of the country's largest corporations are considering site licences. They have found that using the program has shown how most documents, internal and external, do not use plain English - despite each organisation having a plain English policy.

The Department of Employment's communication unit have said that Stylewriter had helped edit documents to save £250,000 in paper alone. The marketing manager of a UK bank has estimated that the package and training would help them increase business by £750,000 from rewriting sales letters. And a customer relations manager reports that customers have begun to write him thank-you letters.

Now the legal department of the insurance group GA Life is starting to use StyleWriter. City solicitors S.J. Berwin and Freshfields have bought the package, as has the Lord Chancellor's Department. And the College of Law has taken it to help train students draft documents in plain English.

Yet we have had more interest from overseas lawyers. In Canada, Justice J.C. Bouck reviewed the package for *Computer News for Judges*. As well, we have had interest from the Continuing Legal Education Group in the Legal Society of British Columbia; they have set up a plain language project to reform Canadian legal English. In Australia there has been similar interest from Professor Eagleson on behalf of the Centre for Plain Legal Language.

We are still developing StyleWriter. At present we are working on a plain English spelling checker, a word frequency count, and a comprehensive readability measure.

Any CLARITY member can claim a £25 discount from the standard price of £198 + VAT (which includes postage and packing).

We reviewed Version 1 in CLARITY 13 *(June 1989). We hope to carry in our next issue a review Version 2.*

Southwark supports plain language?

The *Guardian* newspaper recently carried an advertisement for a salaried lawyer, placed by the Legal Services Department of the London Borough of Southwark. Applicants "should be able to write and speak plainly".

Unfortunately, when we asked if the borough had a plain English policy, we were met by blank incomprehension.

Gruff Article in Law Society's *Gazette*

An article in the *Gruff* series, which has appeared until now in *Clarity*, is due for publication in The Law Society's *Gazette* in September.

Travel brochures

The government has announced legislation which will require travel companies to explain drawbacks in their brochures. The warning will have to be written in plain English.

Award for Lord Chancellors Dept

The Lord Chancellors Department has beaten competition from several hundred entires to win the Plain English Campaign's Inside Write Award. This follows their Crystal Award last year for a county court leaflet.

John Ward of the National Consumer Council presented the award, saying that the winning entry, the *Court Business Authors' Sheet*, was "laid out well, understandable, simple to see and to follow, and provides sufficient space for answers".

The *Authors' Sheet* is intended to help contributors write and design documents clearly. It was issued to Divisional Heads and Circuit Administrators in March.

Law Society conference 1991

Ruth Lawrence, head of The Law Society's Publications Department, has kindly volunteered to represent CLARITY at the Brussels conference.

She has said that there should be no objection to a display of plain English materials on The Law Society stand.

UNITED STATES

Texas Bar attacks legaldegook

From our Texan correspondent

> *Parens patriae* cannot be *ad fundandam jurisdictionem*. The zoning question is *res inter alios acta*.

This passage, from a 1981 court case between Mississipi Bluff Motel and the County of Rock Island, was awarded the 1991 Rise-of-the-Roman-Language Award at the annual meeting of the State Bar of Texas in Houston.

Of 20 examples of poor legal writing submitted, 8 won specially fashioned Legaldegook Awards.

"This is part of a new initiative to persuade lawyers, judges, and law-makers to use ordinary English instead of that gummy language called legaldegook," said Bryan Garner, who presented the awards at the June 21 breakfast of bar leaders. Garner, who chairs the Bar's Plain Language Committee, said the committee's goal was to bring attention to the need for clarity.

"We decided to bestow awards for conspicuously bad examples, to draw attention to some of the horrific writing that modern lawyers perpetrate," said Garner.

This passage from the Code of Federal Regulations won the What-Language-Is-This? Award:

> No savings and loan holding company, directly or indirectly, or through one or more transactions, shall ... Acquire control of an uninsured institution or retain, for more than one year after other than an insured institution or holding company thereof, the date any insured institution subsiduary becomes uninsured, control of such institution.

"It's all in fun," said Garner. "We don't want to hold anyone up to ridicule. But we do want to ridicule certain types of writing — whatever is needlessly obscure, absurdly verbose, or just downright nonsensical."

The Serpentine Sentence Award singled out a 174-word behemoth found in an unnamed brief to the Supreme Court of Texas; and the Not Unnegative Disaward was given for the most negatives confusingly placed — a record five within five lines.

The Unreviewable Award, for the worst passage in a law-review article, went to this entry:

> Do the frequent instances today of the lawyer and director bespeak brazenness? Toward clarification and exactitude, a precise review is in order.

Garner said the formation of his committee was not the first effort to address confusing and wordy legal language. He cited Thomas Jefferson, who railed against using language that perplexes the lawyers themselves, as well as common readers.

"The board of the State Bar decided to attack the problem seriously, by forming this committee," Garner

continued. "The Legaldegook Awards are a way to use humor in pointing out the problem. But we've also drafted a 10-point charter for plain legal writing, which the board has approved."

In 1989, Garner said, a study by the California Bar Association revealed that the public frets more over impenetrable legal documents than over escalating legal costs. "That's worth pondering," said Garner. "When lawyers get bad press, we usually respond with something that amounts to ambiguous twaddle. Unfortunately, too few of us say simply, "I'll tell you why you're wrong."

Garner's good-natured poke at pompous prose doesn't limit itself to lawyers and legal documents. He'd like to see more clarity from lawmakers and politicians as well. He quoted the 1991 winner of the prestigious POLI award (for a Politician's Obfuscation of a Legal Issue) — the vague and rambling answer to a question on abortion by a Dallas politician running for Congress.

And Garner defied the average reader to determine the meaning of this passage from section 509 (a) of the Internal Revenue Code:

> For purposes of paragraph (3) an organization described in paragraph (2) shall be deemed to include an organization described in section 510(c)(4), (5), or (6) which would be described in paragraph (2) if it were an organization described in section 510(c)(3).

That one got the Woolliness Award, for special effects in fuzzy wording.

This year's nominees represented more than a decade of legal writing from all over the United States. Future prizes will be shaped by response and demand, according to Garner. "This is a very fluid competition," he said. "We don't want to limit ourselves; virtually any worthy candidate can be considered. But the awards themselves may change from year to year. The fact that there was a Typo Graphic Award this year doesn't mean that there will be one next year."

And what was the Typo Graphic winner? In an appellate brief to the US Court of Appeals for the Fifth Circuit:

> In the index to this brief, the Court will find an extensive copulation of authorities on this subject.

Texas plans world congress

Professor Garner's committee is seeking finance for a world congress on plain language in the law, to be held in 1993.

If anyone is aware of pre-existing arrangements for that year which might clash (other than the Sydney plans reported below), would they please write to Professor Garner on fax 010 1 214 528 7778, or contact CLARITY.

CLARITY has accepted in principle an invitation to attend.

AUSTRALIA

Secondary Legislation

The Commonwealth Government has for the first time made statutory regulations (governing student grants) in plain English. Robert Eagleson, who was involved in the project, writes: "On the whole I am pleased with the language side of it. I received excellent support from both Attorneys-General and the Department of Employment, Education and Training for plain language, including the introduction of examples. Frustratingly, there was not quite the same success with the layout. The Document Design and Research Group produced an excellent design but only part of it was taken up. Consistency with other Regulations was felt equally important."

Australian Taxation Office

Professor Eagleson is now working on another major project, for the Australian Taxation Office. They are making revolutionary changes to the organisation and language of its Taxation Rulings, this time incorporating the recommended new design.

There is to be a launch of 12 Rulings in the new style in August.

Eagleson says: "What has been so encouraging has been the response of the 36 members of staff I have been training and helping on the project. They are enthusiastic about the new approach - and greatly relieved to be released from the shackles of the old."

Centre for Plain Legal Language, Sydney

Judith Bennett, principal researcher, writes

The Centre is a joint project of the Law Foundation of New South Wales and the University of Sydney. Its aim is to promote the use of plain language in public and private legal writing.

Our current activities include:

- Providing a consultancy service in redrafting and designing legal documents;
- Providing training programmes;
- Researching the use of plain legal language.

In particular, we are:

- Redrafting the residential mortgage of a large building society, and testing the result;
- Running an undergraduate course with guest lecturers from many fields;
- Developing training programmes for legal drafters;
- Researching expressions traditionally used in legal writing, to see if they can be recast in plain language without

losing their effectiveness;

- Planning a survey of judges' attitudes to both plain and traditional legal language.

Associate Professor Peter Butt remains as the sole director after the resignation of Robert Eagleson (see page 20).

Plain legal language conference: Sydney, 1993

The Centre for Plain Legal Language is planning a conference, *Plain Language and the Law*, to be held in Sydney in early 1993.

Anyone interested in attending, and perhaps presenting a paper, should contact the Centre at:

173 Phillip St, Sydney, NSW 2000
Telephone: (Australia) (0)2 232 5944
Fax: 221 5635.

A book from Michelle Asprey

Ms Asprey formerly of Mallesons Stephen Jacques and a long-time CLARITY member, has written a book on plain English drafting, due out in August.

We have no further details but hope to receive a copy for review.

CANADA

Plain English Local Government Bill for Alberta

The Municipal Statutes Review Committee of Alberta has produced a 220-page draft Municipal Government Act. Amongst the acknowledgements, the committee's chairman says that "The creative insight of (CLARITY's) Mr David Elliott ... who served as legislative planner for the committee, enabled the preparation of a draft Act in plain language and the introduction of significant policy innovations."

A copy of the Bill can be borrowed from the editor at 35 Bridge Road.

NEW ZEALAND

Banking research

Stuart Walker, a partner in a medium-sized New Zealand law firm, and a lecturer in banking law at Otago University, recently spent a month in the UK researching the use of plain English in the British banking industry.

COMMENT

Plain English movement gathers momentum in Britain

Calls for the use of plain English - and reports that those calls are being heeded - are becoming commonplace in the UK.

As I was pasting up (electronically speaking) a religious speaker on Radio 4's *Thought for the Day* devoted his 5-minute slot to a plea for the use of plain English by the professions generally. He complained in particular about the development of *Educationspeak*. "Call a child a child," he said. "Not an age-related unit". He condemned jargon as elitist, saying that it was used (often dishonestly) to put the professional's subject beyond the grasp of the public, instilling an unjustified belief that the professional was superior and preventing fair criticism.

Proceedings of the Commonwealth Law Ministers Conference1990

We are grateful to the Commonwealth Secretariat for a copy of the volume containing the papers on plain English presented to the conference in April last year.

We have asked for permission to publish extracts from the other contributions, and if this is given they will appear in the December issue.

The two volumes of the proceedings are obtainable from *Commonwealth Secretariat Publications*, Marlborough House, London SW1Y 5HX, price £30.

***Plain English Legal Drafting*, written by CLARITY** at the request of The Law Society, made the following proposals:

1. The principles of good drafting should be taught to all law students and the use of legalese should be strongly discouraged. Seminars should be available for those already qualified.

2. The editing facilities of word processors should be emphasised alongside the use of standard clauses, and text-editing computer programs should be better developed.

3. Parliament and the courts should encourage simpler expression; in particular, if forms are prescribed a special effort should be made to write them in plain English.

4. The language and layout of legislation should be improved. The latter could usefully be investigated as a Commonwealth project.

5. The professional bodies should encourage the use of plain English. In particular, they might make rules of conduct imposing a duty on lawyers to express themselves intelligibly.

6. Specialists in each field should work with plain English drafters to recast standard forms and precedents.

Many of these proposals have been adopted, although some perhaps by coincidence rather than through the direct influence of CLARITY. We do not have anything like comprehensive knowledge of developments worldwide, but some progress has been made under each head.

1. CLARITY has provided seminars on request for the firms large enough to host and fill them. We intend to use the income from this, when the market improves, to stage seminars at our own venues so that small firms will have access.

2. The computer program *Stylewriter* has since been upgraded.

3. Court forms in England and Wales are improving, at least in the lower courts.

4. Plain English legislation is appearing in Canada and Australia.

5. The English Law Society has been encouraging the use of plain English, and the Bar Council is now joining in. Some professional bodies in the other jurisdictions also recommend plain language.

6. This has been happening in Australia, with linguist Robert Eagleson acting as consultant to legal specialists.

Swedish conference 1992

The Association Suedoise de Linguistique Appliquee is holding an international conference *Discourse and the Professions*. It will run from 26th to 29th August 1992 at Uppsala University.

According to the official programme, it will focus on the production and comprehension of written and spoken discourse in professional settings. Text analysis, discourse analysis, pragmatics, and studies of the writing process will be covered, together with studies of the interrelationship of speech and writing in modern society. Both theoretical and applied studies of spoken and written discourse among professionals and between experts and lay people will be discussed.

The proceedings will be in English, with the possible exception of some presentations.

Professors Robert Eagleson and Brenda Danet (of the Hebrew University, Jerusalem) will be presiding over a workshop on *The Reform of Official Language*..

The numbers for enquiries are:

46 18 181197 (phone) & 181293 (fax).

Extracts from the Government of Ontario's

Legislative Drafting Conventions

The Office of Legislative Counsel for Ontario has produced a convention for statutory drafting which, according to the preamble

> ... reflects current trends in Canadian legislative drafting. The most significant of these is undoubtedly the growing awareness of plain language issues.

1. The organisation of an Act should be logical.

> A logically organized text usually proceeds from the general to the particular and follows the chronological sequence of events. If it deals with matters that occur in a particular order, such as court proceedings or administrative applications, that order should normally be followed.

2. An Act should be written simply and concisely, with the required degree of precision, and as much as possible in ordinary language.

3. Gender-neutral language should be used.

> In the English version of an Act, pronouns such as he, his and him should not be used if the message is intended to refer to persons of either sex. Instead, the drafter can use *he or she*, repeat the noun referred to or use a combination of these methods. (Bear in mind that he or she is not appropriate if the message is intended to refer to corporations.) Typographical devices such as brackets, oblique strokes and hyphens are unseemly and distracting and should not be used. It is usually possible to restructure sentences so as to avoid the problem altogether.
>
> Nouns that have the appearance of referring to one sex only should be replaced by terms that can refer to both sexes unless the law can apply only to one sex.
>
> Because French nouns have grammatical rather than natural gender, and because in that language adjectives and past participles must agree with the nouns to which they relate, French solutions to the problems of sex-specific references are necessarily different from those used in the English version.
>
> *The French commentary reads:*
>
> Se rappeler que le texte s'adresse aux femmes autant qu'aux hommes.
>
> Les artifices typographiques (parenthèses ou tirets par exemple) déparent le texte et entravent sa lecture; leur emploi est donc déconseillé.
>
> Il convient d'éviter les termes qui semblent ne viser que les hommes, et de privilégier l'emploi de termes «neutres» comme «quiconque» ou «la personne qui». Pour éviter l'alourdissement du discours, on peut toutefois utiliser le masculin générique («le président», «l'auteur de la demande») et le masculin pluriel («les employés», «les fonctionnaires»).
>
> Les solutions aux problèmes de la caractérisation sexuelle se présentent en d'une toute autre façon en anglais.

22.—(1) Definitions should be used sparingly and only for the following purposes:

(a) to establish that a term is not being used in a usual meaning, or is being used in only one of several usual meanings;

(b) to avoid excessive repetition;

(c) to allow the use of an abbreviation;

(d) to signal the use of an unusual or novel term.

> The drafter should not prepare the definitions until the main substantive provisions of the Act have been settled.

(2) A definition should not have any substantive content.

> Statements of the application of the Act should be made in substantive provisions rather than in definitions.

(3) A definition should not give an artificial or unnatural sense to the term defined.

(4) *Means* and *includes* have different uses.

> ... (T)he contradictory means and includes should never be used.

(5) A defined term should never be used in the same Act in a different sense.

23. (1) A section should deal with a single idea or with a group of closely related ideas.

(2) A section (or, if it is divided into subsections, each subsection) should normally consist of a single sentence.

(3) Sentences should be as short as clarity and precision will allow.

> *... (T)he French version of subsection 23(2) is different.*
>
> The tradition of one-sentence sections and subsections is not generally followed in French drafting, where a series of short sentences are often preferred to a single long one. (Even in English drafting it may on rare occasions be desirable to make an exception to the one-sentence rule if the result is clearer and shorter than two or more subsections would be.)
>
> In both languages, it is desirable to keep sentences terse and simple. (In traditional English drafting, the one-sentence rule has often led to excessively long sentences.) If a sentence becomes long and convoluted, the drafter should first consider whether it contains redundant material and can be simplified or (if there is no redundancy) whether it would be more appropriate to break it into two or more subsections. The French drafter (and occasionally the English drafter) may also resort to the technique of creating two or more

»» **page 18**

APPLYING THE FLESCH TEST

Following publication of the Flesch Readability Chart in the last issue, Alexandra Marks and Professor Patricia Hassett revised a standard rent review clause, and compared the Flesch Test results of the two versions.

Original

In the event that by the Relevant Date of Review the amount of the Revised Rent has not been agreed between the parties hereto [1] or determined as aforesaid then in respect of the period of time (hereinafter called "the Interval") beginning with the Relevant Date of Review and ending on the Quarter Day immediately following the date upon which the amount of the Revised Rent is agreed or determined as aforesaid (which date is hereinafter called "the Late Payment Date") the Tenant shall continue to pay to the Landlord in manner hereinbefore provided the FIRST rent at the yearly rate thereof payable immediately before the Relevant Date of Review Provided that on the Late Payment Date there shall be due as a debt payable by the Tenant to the Landlord as arrears of rent an amount (hereinafter called "the Balancing Payment") equal to the difference between what should have been paid on each Quarter Day had the Revised Rent been determined by the Relevant Date of Review and the amount actually paid during the Interval and apportioned on a daily basis in respect of the Interval together with by way of additional rent interest at the Prescribed Rate on such amount such interest being payable for the period on [2] and from the Quarter Day upon which each instalment would have been due had the Revised Rent been determined up to the date of payment of the Balancing Payment

[1] Does this exclude their successors in title?

[2] How can a period be *on* a day?

Revision

1. **Until the Market Rate * has been fixed, the Tenant must continue to pay the Old Rent *.**

2. **On the quarter day immediately after the Market Rent has been fixed, the Tenant must pay to the Landlord:**

   2.1. **any extra amount which would have been payable in the meantime had the Market Rent been fixed before the Review Date * ; and**

   2.2. **interest at the Prescribed Rate * on each part of the extra payment from the date it would have become due until payment.**

*** Defined term.**

Version	Words per sentence	Syllables per word	Flesch score
Original	238.0	1.59	-169
Revision (1 sent)	41.5	1.30	55
Revision (2 sents)	27.67	1.30	69
Revision (3 sents)	20.75	1.30	76

Comment

The instructions for counting sentences are not clear - ironically, for a readability test.

Clause 1 of the revised version is one sentence, but is clause 2 to be taken as one, two, or three sentences? Some credit should be given for breaking it down into sections, since that helps the reader. We suspect that Mr Flesch intended the answer to be "two", but have calculated the score using each alternative.

Flesch classifies the scores on a scale of 0 (very difficult) to 100 (very easy), with scores over 60 labelled Plain English. The

original's score of -169 castigates it as turgid beyond human expectation. If clause 2 of the revision is read as two or three sentences it is classified as "plain", otherwise it falls, by 5 points, into the "fairly difficult" category.

The sentence-counting problem arises typically in documents requiring lists, but the analysis of most text would be straightforward. Compare, for example, this extract (which scores a creditable 74) from the beginning of *The Complete Plain Words* (3rd ed, HMSO, 1986:

The main purpose of this book is to help officials in their use of written English as a tool of their trade. It is possible that this project will be received by many of them without any marked enthusiasm or gratitude. "Even now," they may say, "it is all we can do to keep our heads above water by turning out at top speed letters in which we say what we mean after our own fashion. Not one in a thousand of the people we write to knows the difference between good English and bad. What is the use of all this highbrow stuff? It will only prevent us from getting on with the job."

Obviously the test is a blunt instrument. No allowance is made for style or the familiarity of words, and little credit, if any, is given for good layout. However, applied from time to time to your prose, Flesch will be a reasonable guide to the intelligibility of your style.

GIBBERISH

by Mark Adler

Plain English drafting is usually promoted as a convenience, mainly for the reader. Its supporters have argued that the more cumbersome traditional style is a nuisance, and may safely be abandoned in favour of clearer expression.

But too often conventional legalese is not just difficult to unravel; it is gibberish. The example below came to me recently, not because of my connection with CLARITY but in the ordinary course of my suburban practice. It was signed by an educated layman who thought he had read it, but had seen nothing wrong. He and his girlfriend were buying a house together, and their solicitors had produced a declaration of trust. He had not been consulted about its contents, and no care had been taken to ensure that he understood it.

With hindsight, it appears that little care was taken to ensure that the drafter understood it either. When the relationship broke down, the couple realised that there was no provision for the sharing of expenses, no allowance for the unequal further investment they had made, no machinery for a buy-out, and no timetable for sale.

This declaration of trust is made the <*date not filled in*> BETWEEN ELIZABETH MARY SLOUGH of 13 Palace Gardens London W2 1AB and DENNIS ARTHUR ALBERT MEMORIAL of 1 Regret Road Hindhead Surrey (hereinafter called "the Trustees")

W H E R E A S :

1. This Deed is supplemental to a Transfer dated 15th March 1987 made between ANDREW BRIAN COOPER and DENISE EILEEN COOPER both of 76 Trombone Street Hindhead Surrey of the one part and ELIZABETH MARY SLOUGH and DENNIS ARTHUR ALBERT MEMORIAL of the other part whereby the property described in the Schedule hereto ("the property") was transferred to the said ELIZABETH MARY SLOUGH and DENNIS ARTHUR ALBERT MEMORIAL

NOW THIS DEED WITNESSETH as follows:

1. That the said ELIZABETH MARY SLOUGH having on or before the date hereof having paid the sum of TWENTY FIVE THOUSAND POUNDS (£25,000) in or towards payment of the purchase price of the property, the purchase price being £88,542 that as from the date hereof ELIZABETH MARY SLOUGH and DENNIS ARTHUR ALBERT MEMORIAL will hold the said property in fee simple UPON TRUST when called upon so to do <*by whom?*> immediately to convey the same to the Trustees <*who already hold it*> and the Trustees DECLARE that they shall then hold the said property UPON TRUST to sell the same and to hold the net proceeds of sale of such sale and the net income until such sale UPON TRUST as to the first £25,000 of the net proceeds of sale for the said ELIZABETH MARY SLOUGH and together with 28.2% of the increase in value of the property, such increase being calculated by deduction of the purchase price of £88,542 from the price obtained upon such sale and as to the sum of ONE THOUSAND FIVE HUNDRED AND FORTY TWO POUNDS (£1,542) of the net proceeds of sale for the said DENNIS ARTHUR ALBERT MEMORIAL together with 1.7% of the increase in value of the property such increase being calculated by deduction of the purchase price of £88,542.00 from the price obtained upon such sale and as to the remaining proceeds of sale to the said ELIZABETH MARY SLOUGH and DENNIS ARTHUR ALBERT MEMORIAL in equal shares absolutely

IN WITNESS whereof the parties have hereunto set their hands and seals the day and year first before written

FIRST SCHEDULE

ALL THAT Freehold land in the County of Surrey known as 76 Trombone Street Hindhead Surrey as the same is registered at H.M. Land Registry with Title Absolute under title number SY 123456

CUMULATIVE INDEX

Issue

The issues are dated:

This index is by no means perfect, but we hope it will be of some use.

It will be up-dated every few issues.

Suggestions for improvement would be welcome.

INDEX OF MATERIALS

The next issue will contain a list of books, and of articles not published in Clarity, which have been sent in over the years.
These will be available on loan.

Further and better particulars of drafting

England and Wales

The need for more detailed pleadings has produced some very clumsy drafting.

This almost always begins with the title, so we have such idiocies as *REPLY TO REQUEST FOR FURTHER AND BETTER PARTICULARS OF THE PARTICULARS OF CLAIM.* But:

REPLY TO REQUEST FOR ... can be omitted, although I add *requested 17th April 1991* on the line below.

BETTER is no better than *FURTHER*; and *FURTHER* takes us no further than *BETTER*. So *REQUEST FOR FURTHER AND BETTER PARTICULARS* could become *REQUEST FOR FURTHER* (or *BETTER*) *PARTICULARS.*

FURTHER AND BETTER PARTICULARS OF THE PARTICULARS OF CLAIM may be poetic, but *BETTER PARTICULARS OF CLAIM* says it all.

And would not *DETAILS* do instead of *PARTICULARS*, giving, perhaps, *FURTHER DETAILS OF CLAIM*?

The invariable procedure for a request for in England and Wales is:

To recite the paragraph number of the text whose clarification is sought;

Then to quote the inadequate passage with the introductory word *Of*; and

Finally to specify the details required, often beginning, ungrammatically, *Stating*.

However, the Rules of the Supreme Court do not require the second step. The relevant passage (at 18/12/40) reads:

The request ... should identify the paragraph and where necessary the sub-paragraph by its number or letter ... and should specify, clearly and precisely, the further and better particulars which are being requested....

So the accepted version could be reduced from

Under paragraph 1

Of "The defendant released the air from some of the tyres of the plaintiff's motor car..."

Stating:

Which tyres it is alleged were thereby deflated.

to

Paragraph 1

Which tyres does the plaintiff say the defendant deflated?

However it is worded, the rules say that each individual request must be repeated before the answer to it. The note at 18/12/40 continues:

The request ... and the particulars supplied ... must therefore not remain in two separate documents but must be married together and embodied in a single document, which will set out (1) the number and letter of the paragraph and sub-paragraph... (2) what particulars have been requested under each such paragraph and sub-paragraph, and (3) the further and better particulars supplied ....

So the *Request*, once answered, does not form part of the pleadings, and can presumably be shredded.

The rules do not prescribe a format, and the documents are often badly laid out. The same typeface and margins are used for quotation, request and answer, and the individual requests are not numbered. This makes it difficult to see where one section ends and the next begins.

It is therefore encouraging to see that counsel and solicitors are beginning to use their word processors to meet these criticisms. The best I have seen so far had the paragraph numbers emboldened, the quotation italicised, and the enquiry in plain Roman type. But it left the requests un-numbered, and not distinguished from the replies. This last point could be resolved by indentation, or (where equipment allowed) the use of a different typeface.

M.A.

Australia

Tedd Kerr of Mallinson Stephen Jacques writes that there are no formal rules governing better particulars in Australia, and the problem does not arise.

DRAFTING SNIPPETS

CHANGING STYLES AT THE LAND REGISTRY

1963

The Chief Land Registrar begs to inform you that the registration of the above application has now been completed.

As no acknowledgement of this notification is necessary it is requested that none should be sent.

1991

The documents listed below are issued on the completion of the registration. If they include a land or charge certificate, you are kindly requested to check that the registration has been effected in accordance with your application.

If all is in order, no acknowledgement is necessary. If, however, you think that any mistake has been made, or if any of the enclosed documents have been wrongly issued to you, please write to the above address accordingly, returning the certificate or other document referred to in your letter.

2001?

We have registered your transaction, and enclose the documents listed below.

No acknowledgement is needed.

But you should check the documents. If you find a mistake, please write with details, enclosing the document in question.

AT ARMS' LENGTH

In *Clarity* 16 (March 1990) Chris Elgey asked how to paraphrase the expression "at arms' length". No-one answered. Nor is there an entry in my (4th) edition of Stroud's *Judicial Dictionnary*.

I cannot think of a better way than to use the expression, and explain it to the client. I suggest (tentatively):

> Two people agree a deal "at arms' length" if they are strangers, or if the agreement is one which strangers might have reached.

CHARITY COMMISSIONERS' RECITALS

Also in *Clarity* 16, Robert Venables quoted this standard preamble to orders made under s.29 of the Charities Act 1960:

> The Trustees of the above-mentioned charity propose to sell (hereinafter called "the transaction") the land specified in the Schedule hereto and belonging to the charity.

He asked where the words in parentheses could be moved for a better fit.

But do we need them at all? The order could refer subsequently to "the sale" without a "hereinafter called".

The material part of s. 29 is:

> ... (N)o property forming part of the permanent endowment of a charity shall, without an order of the court or of the Commissioners, ... be sold....

The recital might read:

> The Trustees *(previously defined)* propose to sell the Land *(previously defined)*.

The assertion of ownership seems unnecessary. If the land did not belong to the Trustees, no order would be needed.

And what is gained by reciting the proposed sale? Perhaps the order could just read:

> 1. The Trustees may sell their land at *(address)* to *(purchaser)* for *(price)* .
>
> 2. *(Conditions)*.

COLUMNS AID CLARITY

I recently received a mortgage discharge form which read:

> We ____ whose principal office is at _____ hereby admit that the charges dated the 21st day of May 1973 the 31st day of January 1980 the 4th day of March 1982 the 12th day of April 1985 and respectively registered the 4th day of June 1973 the 24th day of July 1975 the 14th day of February 1980 the 5th day of March 1982 and the 19th day of April 1985 of which we are proprietors have been discharged.

If this had been laid out sensibly, the writer might have noticed that one of the dates had been omitted from the first list, and the reader would have found the document easier to check. For example:

> The following charges have been redeemed:

Date of charge	Date of registration
21.5.73	4.6.73
?	24.7.75
31.1.80	14.2.80
4.3.82	5.3.82
12.4.85	19.4.85

THE SAME

The use of the expression "the same" may give the impression that text is

precise, but this can be an illusion. "The same" means "it" or "them", and works identically.

This ambiguous extract comes from an order of the Divorce Registry:

> **AND IT IS FURTHER DIRECTED THAT ... the Respondent do deliver the said child to the access centre in question 5 minutes before the commencement of each access period, then leave the same...**

Is she to leave the same child or the same access centre? "Him" or "it" would have avoided the problem, whilst sounding more natural.

And might we not call "the said child" by his name? That is what names are for.

Here is another, from yet another developer's standard "unamendable" contract:

> IN addition to the Purchase Price the Purchaser shall at the time of ordering the same or at such other time as the Company may direct pay for any extra work or variation in materials which he may agree in writing with the Company is to be carried out to the Property.

When the reader reaches "the same" it seems to refer to "the Purchase Price". Is the seller referring to the time the buyer orders the purchase price? When the solicitor asks the bank to telegraph it? Clearly not, when you have read on, but did you not pause and scratch your head?

SUCCESSORS IN TITLE

The same contract provided:

> The developer for itself and its successors in title hereby covenants with the Council
>
> (a) that it is seised of the Site for an estate in fee simple in possession
>
> (b) the position of the Works constructed in pursuance of this Agreement shall be as shown on the Plan ...
>
> (c) that it will construct the Works to the reasonable satisfaction of the Council's Engineer ....

What did all this have to do with the successors in title?

AFFIDAVITS

In *Clarity* 17 (June 1990, 9) I commented on the statutory requirements for the introductory line of an affirmation. The authority was the Oaths Act 1978, which, ironically, does not apply to oaths proper. These are governed by the common law.

Make oath and say as follows

In *Phillips v. Prentice* (1843 2 Hare 542):

> An affidavit, commencing in this form, — "A.B. of etc., saith that," etc, not adding "maketh oath", or any words of like signification — was held, on the authority of *Oliver v. Price* (3 Dowl Rep KB Pract 261) to be inadmissable, notwithstanding the jurat expressed that it was "sworn by the said A.B. at" etc.

So it is essential to say that the affidavit begins with a statement to the effect that the deponent *makes oath*. No particular form of words is required, and the archaic lisp was abandoned before my time. Presumably *swears* would do, since that it is a word *of like signification*, so long as it was included in the body of the affidavit and not just in the jurat.

But *and say as follows* need not be added.

I am duly authorised to make this affidavit on (the plaintiff's) behalf

Is this common phrase necessary? Order 41 sets out the formal requirements for High Court affidavits, but has no such rule.

Chirgwin v. Russell (1910 27 TLR 21 [CA]) is the authority quoted by the White Book for the proposition that this wording must be included in an affidavit asking for summary judgment under Order 14 unless it is made by the plaintiff personally. In *Chirgwin*, Vaughan Williams LJ

> ... hoped it would not be supposed that, when an affidavit was made in support of a summons under Order XIV by a person other than the plaintiff, it was not necessary to show that the person making the affidavit was duly authorised to make it.

But:

1. That applies only to Order 14 affidavits made on behalf of the plaintiff. The formula does not appear, for example, in the prescribed form of affidavit under Order 50 rule 11, or in the practice forms of affidavits of service of a writ.

2. *Chirgwin* says that it must be *shown*, not necessarily *stated*, that the deponent is authorised. I have not been challenged omitting the formula where the authority can reasonably be assumed, as when the affidavit has been made by the plaintiff's solicitor, or by a director of the plaintiff company.

3. The courts do not insist on the otiose *duly*, apparently recognising that if the deponent is *authorised*, he is *duly authorised*.

THE PASSIVE VOICE

A firm of solicitors wrote in a letter to A:

> I am now instructed to draft a detailed Agreement regulating the individual responsibilities, benefits and liabilities of A, B and C.

A dispute has arisen, and one of the issues is whether the solicitors were instructed by B and C as well as by A. The letter has not made it clear, and the solicitors are at risk as a result.

BOOK REVIEW

The Elements of Legal Style

by Bryan A. Garner
Oxford University Press 1991
236-page hardback; US $19.95

After an introductory chapter about the competing merits of different literary styles, Garner takes his jacket off and gets down to business:

> **Chapter 2: Fundamental Rules of Usage**
>
> PUNCTUATION
>
> 2.1. Always use the serial comma.
>
> The serial comma separates items, including the last from the next to last, in a list of more than two. It makes the phrasing parallel:
>
> **the defendants, the third-party defendants, and the counter-defendants.**
>
> The question whether to include the final comma in an enumerated series has sparked many arguments in law offices and judges' chambers. The reason for preferring the final comma is that omitting it may cause ambiguities, whereas including it never will. For example, confusion arises when one of the final members contains two elements:
>
> **The investor asked for separate reports on the performance of her investments in real estate, commodities, coins and stocks and bonds.**

The chapter continues with more commonsense advice about the use of punctuation in other tricky circumstances, before moving on to sections on Word Choice and Grammar and Syntax, (which, without the style change, would have needed a comma after *choice.*

Many of the rules will inevitably be familiar to plain language enthusiasts - though not to the profession in general: Use the active voice; Challenge vague words; Strike out and replace fancy words. Other sections seem to be addressed to a less specialist audience: Do not be afrain to begin the occasional sentence with *and* or *but* ; Be stingy with hyphens; End sentences with prepositions when you need to.

Whilst chapter 2 dealt with rules of usage, chapter 3 sets out what Garner considers the **Fundamental Principles of Legal Writing**: Concision and clarity, and Simplicity of structure. It is a pity that the order of these chapters was not reversed, so that the book followed its own advice:

> Order your ideas sensibly. The best way is to begin your journey with an itinary, however sketchy.... (A)t an early point in the process, you must turn a critical eye to the structure.

Chapter 4 deals with **Some Matters of Form**, including sections on Titles; Numbers; Defined terms; and First Person.

Chapter 5, **Words and Expressions Confused and Misused**, fills almost a quarter of the book, and is an abridged version of Garner's *Dictionary of Modern Legal Usage*, reviewed in *Clarity* 20 (April 1991).

Chapter 6 is a summary, with examples, of 24 figures of speech. I had heard of few of them, and, being disinclined to memorise them, am little wiser at the end. This part made difficult reading, perhaps because it gives little guidance as to whether the use of the figures in the examples was good, bad or neutral. For example:

> **Anaphora:** "bringing back". The marked repetition of a word or words at the beginning of two or more successive clauses.
>
> **The melancholy and surprising feature of it all is not merely that such things exist. The melancholy and surprising feature is that they do not raise a ripple on the placid surface of contentment.**

Nevertheless, it is a useful point of reference for those interested in the more pedantic reaches of style.

The last chapter is headed **An Approach to Legal Style**, although much of it applies no more to lawyers than to other writers. But it is a useful summary, with 22 principles of style listed, and explained with examples.

CLARITY members should find this book useful, though it is probably better to dip into it occasionally than to plough determinedly through it. I chose the latter course because I always wanted to see what came next; perhaps I would have learnt more if I had taken it slower. Next time I will.

I have one last complaint, though it may be directed at the publishers rather than the author. The *contents* pages are laid out in a strange manner, with white space and typestyle used to give greater emphasis to the various sections of each chapter than to the chapter headings themselves. This made it difficult to see the structure of the book at a glance.

M.A.

The lease of a first floor flat included a tenant's covenant not to

> **permit or allow any motor car or motor cars or other vehicle article or refuse to stand in or upon the said flat**

Plain English Symposium
Barcelona, June 1991
Extracts from
Dr Mark Vale's speech

24% of Canadians are functionally illiterate.

40% of Canadians can't calculate a 10% tip on a lunch bill of $2.55.

Southam Report 1987

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

Canada now has 70 language groups, apart from English and French. There are 500,000 people in the 8 largest of these groups and about 30% of these people are illiterate.

Canadian Law Reform Commission

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

41% of Canadians have a hard time reading legal and official documents.

50% of government publications can only be read and understood by people who went to university.

90% of Canadians feel insecure about their knowledge of our system of justice.

Canadian Law Information Council

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

Human relationships depend on communication. Bad writing is a barrier to communication. When a large organisation such as the Government tries to communicate with the man and woman in the street the schope for misunderstanding is enormous. Too often clarity and simplicity are overwhelmed by pompous words, long sentences and endless paragraphs.

If we all wrote in plain English how much easier - and efficient - life would be.

Margaret Thatcher (1988)

Notice cannot be said to be reasonable, in my view, when the clause is neither legible nor capable of comprehension.

Judge Oliphant in *Aurora TV & Radio Ltd v. Gelco Express Ltd* (Manitoba Court of Queens Bench 10.5.90 [unreported]).

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

When a municipal council purports to legislate under the powers found in the *Municipal Act* and thereby creates obligations to be observed by its citizens, the failure to observe which attracts punishment, it is to be expected that the bylaw creating such obligations will itself be so explicit that a well-intentioned citizen seeking to observe the provisions of the bylaw may, from a reading of the by-law, without the enlargement of its requirements by the order of a municipal servant, be able to satisfy himself that he has complied with its requirements.

R. v. Sandler
(1971 21 DLR (3rd) 286 at p. 292)

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

Saskatchewan, Yukon and Ontario have plain language policies.

The Federal Government and British Columbia are developing them.

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

35 US states require insurance contracts to pass readability tests.

10 require consumer contracts to be written in plain English.

Requirements fall into two categories:

- Subjective tests — contracts must be *clear and readily understandable*;
- Objective standards, governing such things as sentence length, type size and style, and margin sizes.

The Capita Financial Corporation of Australia used to have 200 administrative forms, 14 of which were applications for individual insurance, investment and annuity products. Plain language experts studied these forms and found 1,560 errors in information. They consolidated, re-wrote and redesigned the forms. The project cost $100,000, and will save an estimated $400,000 every year.

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

In 1978 the US Citibank redrafted its form of promissory note in plain English. Critics objected on the ground that it would be litigated, but it never has been.

The old form included a clause securing the borrower's oil rigs. This was used even to govern a $500 loan to finance the borrower's holiday.

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

CLIC was redrafting the mortgage of a client company into plain language. In translating documents they ask 3 questions:

- What does it mean?
- What is it supposed to protect?
- What is the risk of eliminating it?

None of the lawyers involved could understand clause 22, so CLIC suggested they omit it from the new version. But onee of the client's lawyers said that it did serve a purpose:

> A lawyer acting for one of our customers claimed that his client had some right or other. I told him he was wrong, and referred him to clause 22. I never heard from him again.

∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞∞

Educated clients expect to be able to understand.

One senior North American banker estimated he was losing 2% of the market share by bad drafting.

The Law Society's

NEW STANDARD BUSINESS LEASES

There are two versions of the standard terms. The shorter, for lettings of a whole building, has a front page devoted to the Particulars and 2½ pages of clear, punctuated text arranged in refreshingly short sections with useful headings. The longer version is for lettings of part of a building; it is broadly the same, but the provisions for services add an extra page, and responsibility for the structure and insurance shifts to the landlord.

It is interesting that the drafts do not refer to a plan. The landlord lets "the property known as ... (which includes ...)", and only one blank line is allowed on the printed form for the inclusions. No doubt plans can be brought in by reference here, but often they are unnecessary: many properties are adequately defined by their postal address and clear physical boundaries.

It is common for traditional leasesto be riddled with errors, even though the justification for their verbiage is that it has, supposedly, been honed over the centuries. So it is hardly serious criticism to say that there is some room for improvement of the new forms.

However, my only serious complaints are:

- The format at the end of clause 1 misleadingly suggests that two points — the bar against setting off other payments, and the provision for adding VAT — apply only to payments of interest under sub-clause 1.6, rather than to all clause 1 liabilities. This could easily be corrected by allocating clause number 1.7 to the errant words.

- The "state-of-the-shopfront" clause calls for the consent of the landlord for advertisements visible to a potential customer looking in. The wording is not as wide as that common in precinct leases, which can be interpreted as forbidding the display of goods on shelves if the labels are visible from outside. However, the power reserved is still inconveniently wide, and more than many small landlords want. The problem could be resolved by excepting "displays normal in a high-class shop".

My other complaints relate to the presentation, and none are serious:

- Full stops are strangely omitted, but as these would only occur at the end of each paragraph or sub-paragraph, no real harm is done. Perhaps this was done to avoid the choice between full stops and semi-colons at the end of each item in a list, but it is a pity that the drafters lost their nerve, and did not follow the grammatical rule.

- The coloured background, applied to headings and clause numbers, is too dark, and the lines are to broad. The result is unattractive and produces a poor photocopy, although reproduction is permitted (and is needed for the exchange of drafts).

- In sub-clauses 16.2 and 16.3, too many of what should have been sub-paragraphs have been included in single sentences. This is out of kilter with the rest of the document, and was probably imposed by lack of space. Nevertheless, the language remains clear;

- The sub-clauses of clause 6 are inconsistent in their grammatical structure.

These are small criticisms. The leases are an enormous improvement. A conventional drafter would consider them radical, but they merely say what is intended simply and without pretention.

Compare, for example, these alternative treatments:

A traditional lease might provide:

> The Lessee hereby covenants with the Lessor in manner following (that is to say):-
>
> (1) To pay the several rents and sums hereby reserved at the times and in the manner at and in which the same are hereinbefore reserved (.)

The Law Society leases say:

> 1. The tenant is to pay the landlord:
>
> 1.1 The rent (.)

The drafter has taken the opportunity to abolish the ludicrous quarter-day payments, and provide for

> equal monthly instalments in advance on the ... day of each month

These payments are more regular, and break down the tenant's liability into more manageable instalments without seriously prejudicing the landlord. And who <u>has</u> ever paid their rent on Christmas Day? And how many tenants remember which are the other due dates?

Most of the usual obligations are included, but I noticed some exceptions.

The landlord may not:

- Cause uncompensated havoc developing adjoining property;

- Avoid liability for negligence or that of his employees (if he ever could);

- Erect a sale board (although, anyway, in traditional leases

this is permitted only for the last 6 months of the term, and not for sales of the reversion meanwhile.

The tenant does not have to:

- Keep the property clean and tidy (although I think this traditional obligation is rarely enforced outside shopping malls);
- Pass on notices to the landlord;
- Warn the landlord of new windows opened by the neighbours;
- Comply with common restrictions on sub-letting (although there is a rather vague requirement that

  any sublease is to be on terms which are consistent with this lease, but is not to permit the sub-tenant to underlet (;)
- Indemnify the landlord against practically everything (although I am not certain that the usual indemnities are helpful: some are superfluous and others I suspect are unenforceable.

These leases reflect a policy of reasonableness which may not suit some of the more notorious institutional landlords, but which I hope will be widely accepted. My own principle has been never to put into a draft anything which I would condemn as unreasonable if acting for the other side, unless I am specifically instructed to do so by the client. I rarely have such instructions. Conveyancing is supposed to be uncontentious, and few landlords are looking hard for ways to persecute prospective tenants; they want a return on their investment, and a quiet life. Moreover, a reasonable draft will be more quickly agreed, so legal fees will be reduced, and the rent paid sooner.

The Law Society permits reproduction of the lease on the word processor, without fee, provided that a statement is added, broadly to the effect that the Law Society's standard form has been used without change. This very sensible rule absolves tenants' solicitors from the need to scour the document for hidden changes; all variations must be made separately.

So the leases can be used even by landlords who disagree with the policy decisions: terms which are too soft on the tenant can be varied without abandonding the plain format. And it suggests that The Law Society would not object if solicitors wanting very substantial changes adopted the linguistic style of these precedents without "using" them. If the Society promotes the use of plain English, and allows use of these precedents free of charge, it would be unreasonable to enforce copyright against firms who wish to follow the language but not the content.

The leases were also discussed in an article by J.E. Adams in the *Solicitors Journal* of 12th and 19th July. Professor Adams generally welcomes them, whilst pointing out some difficulties which call for amendment.

»» **Ontario drafting** (page 7)

sentences within the original provision.

24.—(2) "Clause sandwiches" should be avoided.

Arrangements of a flush passage followed by a series of clauses and a closing flush are undesirable.

26. Cross references should be used sparingly.

A logical arrangement makes frequent internal references unnecessary.

Internal references should clearly identify the provisions referred to by their number or letter. It is not necessary to describe the provisions referred to as of this Act", unless there is danger of confusion with another Act that has been mentioned.

27.—(1) Derogations and restrictions ("despite" and "subject to") should be used sparingly and only if there is an inconsistency, to make it clear which provision is to prevail.

Inconsistencies can often be eliminated by redrafting the passage.

29. Tables and mathematical formulas should be used if they make the text clearer or more concise.

31.—(1) An Act should be written as much as possible in ordinary language, using technical terminology only if precision requires it.

(2) The terminology of an Act should be suitable for its intended audience.

32. Redundant or archaic words and phrases should be avoided.

Legislation should be written in a style that is correct and up to date without being either faddish or excessively conservative. Many words and phrases that are often seen in legal documents belong to an earlier age and are no longer well understood. They should be replaced by a contemporary equivalent. If they add nothing to the message, as is often the case, they should be eliminated.

33. Neologisms should be used with caution.

In principle, terms that are not found in standard reference works should be avoided in legislation. Sometimes it is necessary to invent a term or to use a recently coined term; in that case it is prudent to define it. The use of neologisms often causes special problems in blilingual drafting.

Note that in bilingual common law jurisdictions, often the use of neologisms is the only way to express in French with precision legal concepts that derive from English law.

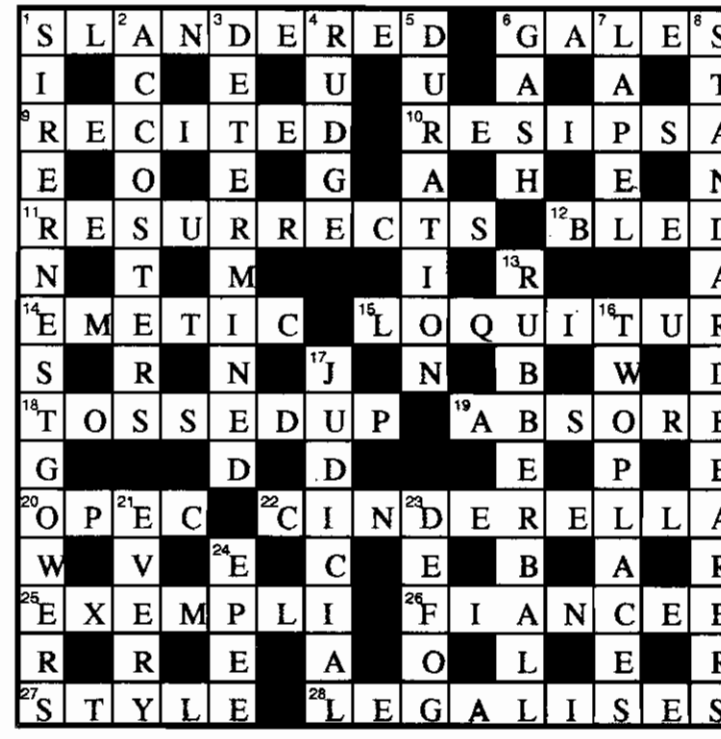
34. In the English version of an Act, terms from other languages should be used only if they are generally understood and if there is no equally clear and concise way of expressing the concept.

37. Each [bilingual] version should be written in correct and idiomatic language, and neither version should be forcibly adjusted to fit the peculiarities of the other language.

■

CROSSWORD
Solution

John Walton has kindly agreed to prepare another crossword for the December issue.



NEUTRAL LANGUAGE
by Mark Adler

'In a recent radio interview, a sociologist, careful not to insult women by suggesting that they were excluded from the ranks of homicidal psychopaths, referred to "mad axe-persons". This illustrates a common confusion between bias and accuracy.

In the last 30 years many of us have realised that it is offensive - and often innaccurate - to belittle other groups. This humanitarian campaign began by outlawing racial stereotypes. For example, it became widely accepted that Jews are not as a people more avaricious than their neighbours, and there was no point in hurting their feelings by saying that they were; and once that was admitted, there did not seem much sense in breaking their windows, or excluding them from the golf club.

But it so happens that only men chop their fellows into frenzied pieces. Do we denigrate anyone by accepting this? Truth is a good defence to allegations of prejudice.

The hard of thinking also assume bias in the bare mention of a group. So "chairman" is sexist, even if it is no secret that the occupant of the chair is a man. By that account, we should not refer to a "chairwoman". But if we say "A is chairman of this club, and B is chairwoman of that club", which sex are we demeaning?

Admittedly, it would be useful to have a generally accepted gender-neutral replacement for the suffix "...man", to use when the sex of the office-holder is irrelevant or unknown. But so far none has emerged. "Chair" destroys the distinction between bums and seats; "...person" is clumsy; both sound unnatural, and therefore distract the reader. Perhaps "...mun" could fill the gap? It sounds like "...man" or "...men", but also like "mum"; yet it is different from both, and it is – as a suffix should be – unobtrusive. (It could also be used for both singular and plural; why do we distinguish between 1 and any higher number, but not between all those other numbers?)

Meanwhile, let us remember that there often is a distinction between the sexes, and we do no good by suppressing the knowledge. Or must we refer to "chest-feeding", to avoid the implication that men are excluded?

REFERRALS REGISTER

The full list is published from time to time but copies are available from Mark Adler on request.
Please send stamped or DX addressed envelope.

The list is open to any member willing to accept client referrals from other members.
All are solicitors unless indicated.
Please write in if you would like to be included.

There is only one new entry.

Name	Area	Telephone	Field
Jeremy Holt	Swindon, Wiltshire	0793 617444	Computer law

WELCOME TO NEW MEMBERS

Centre for Plain Legal Language, University of Sydney Faculty of Law, 6th floor, 173 Phillip St, Sydney NSW 2000
Donald Revell, Chief Legislative Counsel, Government of Ontario, Toronto, Canada
Tony King, solicitor & director of education, Clifford Chance, 19 New Bridge Street, London EC4V 6BY
The Plain Language Institute of British Columbia, 1500-555 West Hastings Street, Vancouver, BC, Canada V6B 4N6
John Pullig, solicitor, 44a Hayes Way,Park Langley, Beckenham, Kent
Stuart Walker, solicitor, barrister & law lecturer, 26 Martin Rd, Fairfield, Dunedin 9006, New Zealand

and to **Judith Bennett**, principal researcher at the Sydney CPPL, who will be in England in September and October.

BEST WISHES TO ...

Professor Robert Eagleson, on his resignation from Sydney University and the Centre for Plain Legal Language to concentrate on various plain language projects. He has been appointed consultant to the leading Australian plain language law firm, Mallesons Stephen Jacques, and will also be working with the Document Design & Research Group. He will continue to work with government and other organisations.
Keith Edwards, on his retirement from the senior partnership of Edwards Geldard of Cardiff.
Professor Patricia Hassett, on her full-time appointment to the Lord Chancellor's Advisory Committee on Legal Education and Conduct. This will enable her to stay in England for another 2 or 3 years, instead of returning to Syracuse in August.
Tony Holland, on completing his term as President of The Law Society.
Alexandra Marks, on her marriage.

We apologise for continuing production delays, and regret that the knock-on effect will restrict publication to 3 issues this year.

To compensate, this issue is larger than usual, and we hope the next one will also be extended.

We plan to return to quarterly publication after the December issue.

Please provide copy as early as possible.

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Mark Adler is looking for a partner or assistant to join him in his one-solicitor general practice. He is currently at Hampton Court but considering a move towards Guildford.