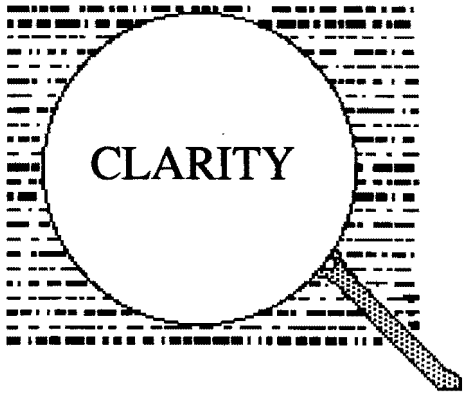


A movement to simplify legal English

Patron: Lord Justice Staughton

No 27: April1993

Index

Press date for the next issue: 9th June

Contributions would be welcomed, especially if accompanied by a copy on 3.5" Macintosh-readable disc using Ready Set Go, Microsoft Word, MacWrite 1 or Teachtext.

10th anniversary celebration

The Law Society's Hall
113 Chancery Lane, London WC2

Tuesday, 8th June 1993

6.00 - 7.00 pm

CLARITY was founded by a letter which appeared in The Law Society's *Gazette* on 8th June 1983.

To mark our 10th anniversary, we are holding a short ceremony on the evening of Tuesday, 8th June. We are grateful to The Law Society for their kind hospitality in offering us a room without charge.

Apart from members, we are inviting prominent members of the legal profession, a few others in public life who may be interested, and the press.

To save the work and expense of a separate circular, would members please accept this as their only invitation? If you would like to come please contact our Surbiton office as soon as possible, and preferably before 24th May, so that we know how many to expect. We hope many of you will be able to come, but are asking for a contribution of £5 toward the cost of the evening.

During the ceremony we will review CLARITY's achievements, publish the results of our current research project, announce our plans for the future, and honour the foundet, John Walton. Light refreshments will be provided.

Members are invited to send a brief, quotable note to Surbiton, explaining why they joined CLARITY or what it has done for them. A selection of these will be included in the press pack.

News

Britain

Law Society calls for plain English

In its evidence to the Hansard Society Commission on the Legislative Process, the Law Society writes that it:

> would wish to see legislation that is 'user friendly'; clearly drafted in plain English and intelligible both to the lawyer and layman.

Meanwhile, the Law Society is continuing work on improving its many documents, and is from time to time consulting CLARITY.

Plain Language Bill

The second reading, scheduled for January, was postponed, and we are waiting for further news. However, Mr Brandreth's promotion to a junior ministerial post may affect the progress of what was a private member's bill.

Meanwhile we have passed to Mr Brandreth the drafting suggestions of those CLARITY members responding to the item in the last issue.

Commonhold and long tenancies

The Housing and Urban Development Bill now before parliament will give most residential long leaseholders the right - in each case as a group comprising at least two-thirds of those qualifying - to buy the freehold of their building and grounds. However, this will affect only the identity of the landlord and not the terms of the leases.

However, the commonhold proposals have not been abandoned. These were welcomed in *Clarity* 20 (April 1991) as the answer to our plague of badly drafted leases, and are to be the subject of separate legislation. Details are available from:

Ian Johnson

The Lord Chancellor's Department
Southside, 105 Victoria Street
London SW1E 6QT
071 210 2108

Insurer's progress

Guardian Royal Exchange has recently announced changes to its renewal documents for household and motor policies. A circular to their agents says:

> Research has shown that simple, concise renewal documentation is appreciated by both client and intermediary.
>
> As a result of this, we are pleased to announce major changes to the format of our renewal packs (all of whose documents are) clearly and concisely written.

Canada

British Columbia's Plain Language Institute replaced by government program

The Government of British Columbia has reduced its plain language budget. This forced the closure of the Plain Language Institute on 31st March, after three years in operation and only five months after its successful conference. Another victim is Peg James' Plain Language Project.

The province will now have no plain language initiative directed specifically at the legal profession.

But what funds remain were transferred on 1st April to a plain language program run by the Ministry of Government Services. Philip Knight, the executive director of the PLI, will work as advisor to the the new project until the end of 1993. Meanwhile, two branches of the Ministry of the Attorney General have joined CLARITY in the last few weeks.

United States

Joseph Kimble writes:

Thomas Cooley to update its review of plain language worldwide

Later this year I will be updating the summary of worldwide developments in plain language published in the 1992 Thomas M. Cooley Law Review (Vol. 9, no. 1).

I would like to receive a one- or two-page summary of its activities from any organization involved in plain language (or clear communication) projects. Please write to:

Thomas Cooley Law School
Box 13038
Lansing
Michigan 48901
USA.

Michigan bar introduces plain langage awards

The Plain English Committee of the State Bar of Michigan has introduced what it calls a Clarity Award for organizations that have taken steps to remove legalese from their documents.

So far six awards have been made:

- The Michigan State Court Administrative Office, for court forms;
- Lawyers' Cooperative Publishing Company, for a volume of civil practice forms;
- The Michigan Judicial Institute, for its opinion-writing seminars and its manual for trial judges;
- The Legal Drafting Division of the Michigan Legislative Service Bureau, for its generally modern approach to legislative drafting;
- The Michigan Special Committee on Standard Criminal Jury Instructions, for revising three volumes of jury instructions into plain English; and
- The Committee on Pattern Criminal Jury Instructions for the United States Sixth Circuit, for writing new criminal jury instructions in plain English.

More research from Michigan

by Joseph Kimble

We have started to sample lawsuit documents for legalese.

We did a rough survey of 30 complaints, 30 judicial orders, and 30 affidavits, all filed in Michigan courts. Results: 24 of the complaints begin *Now comes*; 29 of the complaints begin the last paragraph with *Wherefore*; 19 of the orders use the word *hereby*; and 25 of the affidavits are marked *SS*.

These results are preliminary, since I am working on a more detailed study. But they do suggest some conclusions:

- What should be the easiest step towards plain English - giving up archaic language - seems to be the hardest step to take. We all know that, taken as a whole, plain English is devilishly hard and involves more than just getting rid of *hereby*and the like. Cutting the archaic language should be the easy part - intellectually, at least. But emotionally, it seems to be the hard part.
- The research suggests a wide gap between preference and practice. My earlier research, reported in *Clarity* 24, p.11 and 25, page 18, showed that judges and lawyers overwhelmingly prefer to read plain English. In fact, one of the choices in my study was between starting a complaint with the old formalism *Now comes the above-named plaintiff...* and starting with *The plaintiff says.* About 75% of readers preferred the simpler version. But now it seems that writers do not practice what they prefer as readers. Nor can lawyers claim that it would be difficult or expensive to change this one line in their complaints. In short, you can add hypocrisy and inertia to all the other reasons for legalese. It is probably no surprise.

Letters

Obscure Clarity

John Fletcher

Thanks for the poster, but is CLARITY going to issue the magnifying glass in their logo to all postmen?

There was much predictable barracking about the microscopic address labels under whose cover the last issue was distributed.

After several weeks during which commitments to family and clients were subordinated to the preparation of the journal, the editor was left with scant patience for the temperamental shortcomings of a database which refused to fit addresses onto labels unless they were printed in 5-point type. There came a stage when either the editor or the postmen had to have a nervous breakdown. We opted for the postmen.

Nicholas McFarlane-Watts, a member who writes legal software for the Macintosh, has kindly been customising a database to replace the one which so disgraced itself. I hope it will be installed before this issue is ready, and that the labels this quarter will be written in headline type.

Copyright notices

John Fletcher

One tiresome piece of legalese is that notice on the copyright page of many books. It is so widespread I presume it comes from the Publishers Association with legal support. The 1992 *Chambers Pocket Dictionary*, for instance, says

> **No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of the copyright holders.**

According to the dictionary itself, in the ordinary meaning of those words you need permission to read it aloud (reproduce), shelve it or retrieve it from the shelf, or send it through the post.

Can any members with copyright knowledge suggest something both more accurate and more readable?

Robert Swift, a copyright specialist at Linklaters & Paines, replies:

Copyright notices are often written in jargon. In fact, the copyright laws of most countries do not require a notice at all. But there are some advantages to a simple, easily understandable notice, both legally (in giving rise to statutory presumptions) and practically (by warning people against infringement).

I suggest something like this:

> **Copyright** [name of owner] **1993. Copying all or part of this book by any means, including electronic storage, is prohibited without prior written consent. Copyright infringement may give rise to criminal as well as civil liability.**

[We now have:

> *The right of John Smith to be identified as Author of this work has been asserted by John Smith in accordance with the Copyright, Designs and Patents Act 1988.*

It would have been more sensible if the Act had permitted this unsurprising information to be implied by the appearance of the author's name under the title. -Ed.]

Tasmanian studies

Veronika Maddock

Deputy Chief Parliamentary Counsel

I would appreciate a small paragraph being published in the next issue of Clarity asking anyone who is carrying out research or other studies on plain language in the area of legislative drafting or statutory interpretation to contact me at

Office of Parliamentary Counsel
GPO Box 1409P
Hobart
Tasmania 7001
Australia.

I would be happy to pass on any information or experience I have in the field to anyone who may be interested.

I am planning a visit to the UK to work on my thesis, probably in 1994/95, and hope to meet you and other members then.

International contract of sale

Sandra M.Lang

Towards the end of their studies our students are expected to be able to understand legal documents connected with international trade. So far I have been unable to find an international contract of sale written in plain English. Would you have either a model draft or, better still, a genuine one (identifying words deleted, of course), which I could use for teaching?

Please contact me at:

Department of English
Vienna University of Econ &
Business Admin,
Augasse 9, A-1090 Vienna, Austria
Tel: (010) 43 222 313 36 4717
Fax: 36 740

Ms Lang has sent a traditional version of the type of contract she has in mind, but at 7 single-spaced pages it is too long to reproduce; copies are obtainable from her or from Surbiton. It covers the export of machinery, and includes sections on:

Goods	*payment*
packing	*documentation*
guarantee	*inspection*
claims	*force majeure*
late delivery and	*arbitration.*

And/or

Robin Towns

In *re Lewis* (1942 2 All ER 364) the court had to construe a gift in a will "to X and/or Y". The Crown argued that the gift was void for uncertainty and that there was thus an intestacy, but the court held that X and Y should take as joint tenants and that if only one had survived the testator the property should go to the survivor. In the then rarified and uncommercial atmosphere of the Chancery Division Farwell J. was able to observe of "and/or" in that case that "It is an unfortunate expression which I have not met before and which, I hope, I may never meet again."

It is said that about the same time another Chancery judge, Bennett J., stated that he would deal with the expression "by making someone pay the costs of an affidavit framed in

that way".

It is a "bastard conjunction" which "has become the Commercial Court's contribution to basic English", according to Lord Simon L.C. in *Bonitto v. Fuerst Bros* (1944 AC 75, 82).

Continuing Legal Education Society of British Columbia

Peg James

Director, CLE Plain Language Project

As the CLE Plain Language Project winds down, I want to thank you for supporting our activities. Your interest in our work motivated us to successfully complete all of our projects, which were aimed at helping lawyers write more clearly.

The book we produce for bar admission students, called *Modern Writing for Lawyers,* is available through CLE, as are plain language retainer agreements, a will precedent, and two booklets of plain language tips. Our foreclosure precedents will be distributed under the direction of the Judges' Practice Committee. Other precedents that we reworked appear in bar admission materials and some CLE publications. For more information please call Karen Imeson at (010 1 604) 893 2110.

Although the project ends March 31st, CLE will continue to offer a plain language writing course, called *Clear Legal Writing - A Contemporary Approach,* in several forms. The course is offered in-house over one or two days. We also recently taught it as a five-part breakfast series that was over-subscribed and so became a lunch series as well. Now the course is scheduled in a 1.5 day form, and is to be held in Kamloops, Victoria, Surrey, and Kelowna in May and June.

Call Phil Knight at 604 687 8895 if you want to join the mailing list of the Vancouver or Victoria plain language groups.

A franchisee complains

Clive Cassel MSc

Nippers UK Franchising Ltd

We recently received from a new franchisee a photocopied extract from the agreement prepared by our lawyers, with the words mutatis mutandis highlighted and a sarcastic note asking for a translation.

Only one of my fifteen lawbooks explained the phrase, but after some research I was eventually able to reply that it meant *with appropriate changes.*

Why could the drafter not say so in the first place?

Successors in title

I have been trying to find a clear equivalent of "successors in title" for use in a lease, but can find no definition, plain or otherwise. Any suggestions?

Richard Castle replies

In view of section 79 of the Law of Property Act 1925 [in the next column], you may not need to use the phrase at all.

Trevor Aldridge in *Practical Lease Precedents* (an admirable work) has "whoever for the time being is entitled to the property under this lease". I like that and adopt it myself.

Although context is capable of changing virtually anything, a sub-tenant can not normally be regarded as a successor. A sub-tenant is a person who derives title from (or "under" or "through") the tenant. The distinction between successors and persons who derive title from another is frequently made and reasonably clear, I think.

You might be able to get round the problem by the phrase "any person who derives title from the tenant, including an assignee".

Section 79 LPA

(1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them....

(2) For the purposes of this section in connexion with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of such land.

Clarity 26

Joseph Kimble

Thomas Cooley Law School, Lansing, Michigan

First a slight correction. The "WGAS" story (*Clarity* 26, p. 36) was not mine. It was told by one of my fellow panellists at Vancouver, Andrew Sims.

But my compliments on issue 26. David Elliott and Martin Cutts have

contined on page 12 »»

Using plain English in Statutes

by David Elliott

The third part of

CLARITY's submission to the Hansard Society for Parliamentary Government

Part 3

Structure and format of legislation

Development of the structure and format

Henry Thring is usually credited with developing the structure and layout of legislation. He first used a new format in the 1854 Merchant Shipping Bill which he was retained to draft. Thring continued to develop the numbering system used in statutes after the Office of the Parliamentary Counsel to the Treasury was established in the United Kingdom in 1869. He was appointed the first Parliamentary Counsel.

Although Thring was the first to use a new format and numbering system, the idea of breaking up the text of Acts and legal documents had been promoted by Bentham over 50 years earlier. Bentham suggested[25]:

> *Denominate, enumerate and tabulate principles. It facilitates reference, and thereby contributes to conciseness ...*
>
> *After the verb governing, interpose between it and the list of substantives governed, the words "as follows" with a punctum; - then give to each item a separate line, preceded by a numerical figure.*

[25] Jeremy Bentham: *Of Nomography*, p.265.

Is there something better?

Our numbering system for statutes has served us well. But is there something better? - something that would work more conveniently with a computer? The Victorian Law Reform Commission of Australia thinks so. They suggest that a modification of the international standard for numbering (a decimal system) would

- *reflect an international trend towards the adoption of decimal numbering systems*
- *help provide access to legislation in electronic form*
- *make data retrieval more convenient (brackets and letters would not be used)*
- *leave less room for ambiguity when retrieving a section*
- *make reading easier from a screen (numbers replacing letters).*[26]

[26] Law Reform Commission of Victoria: Access to the Law, the structure and format of legislation (May 1990). But even so the Commission thinks letters are needed in some cases where Canadian jurisdictions would use ".1 or .2". The jury is out on the Commission's suggestion but it is worth studying.

It is time for a thorough review of the way in which the page of the statute book is designed. The results would surely be worthwhile. What efficiencies and economies can be introduced? What changes would improve ease of reading and improve understanding? Is the typeface, line length, page colour, numbering system, margin line and margin note placement the best it can be? We need that research to be conducted not in isolation but in cooperation with other professionals who design texts to help readers.

If just one or two changes could be made to improve the design of the statute book think of the tremendous savings of time that could be achieved throughout the statute book on an ongoing basis. And those improvements could be used for statutory instruments, local government bylaws, company

»»

[27] Say for example that comprehensive tests showed that readers were able to locate information a second faster if marginal notes were placed as true headings to sections. Or that the placement of section numbers alongside section headings speeded section location - (or vice versa) think of the cost savings that could be achieved by everyone reading the statute book.

bylaws, collective agreements and club rules as well as other documents.[27]

Typography [28]

Another aspect to improving the readability of texts is by the use of typographical devices. With the range of typographic tools now available is there any reason why we should not use them much more in legislation? Why not emphasize critical provisions or those that might be misread, for example, by underlining or italicising or otherwise emphasising a word or phrase? Typographical devices are one more tool drafters can use.

* * *

The point we want to make here about numbering systems, page design, and typographical devices is that drafters should at least be aware of them and have an open mind about their use. If new techniques, devices, or ideas will help communication, assist in aspects of computerization, help amendments, make consolidations easier, or help reader - then drafters should at least consider them.

Some observations on the 1991 statutes

We have already suggested that a drafting manual be adopted by the Parliamentary Counsel Office. Some of the following suggestions might be included in it.

In making these suggestions we appreciate that a number of them have other ramifications. For example, one consideration Parliamentary Counsel apparently have in drafting Acts is to reduce the number of clauses so that the opportunity for debate in Parlia-ment is reduced. The more clauses the more possibility for debate, the fewer clauses the less possibility. In our view, that approach to drafting should be disregarded. The number of clauses in a bill should be whatever number the drafter considers necessary to achieve the object with a view to making the legislation as understandable as possible. If a rule change is needed to make this happen then obviously we would urge a rule change. Many of the following suggestions are not new.

(a) Long title

We would eliminate them. They give legislation an unhealthy look and serve no useful purpose that cannot be achieved in other ways.

We appreciate that one purpose for long titles in the United Kingdom is to limit the amendments that can be introduced to a Bill. To eliminate long titles may require other rule changes. The point is that the rule about amendments to a Bill should not limit needed improvements to the legis-lative product. The rule should be designed to facilitate improve-ments in the product, not impede them.

(b) Sentence length

Sentence length for legislation should be short. Where it is not possible to be short the clauses should be tabulated.

There is a division of opinion in legislative drafting circles on this point. Documents must be read in the context of the whole document. In most cases it can be assumed that one thought leads to another, and various techniques can be used to indicate that. The use of the long sentence without tabulation is not a technique that should continue. Having said this we must also say that we found no gross examples of the long unbroken sections in the 1991 U.K. statutes - so perhaps the problem is no longer prevalent.

(c) Cross-references

Although we have pointed to some useful Canadian drafting practices cross-referencing in Canadian legis-lation is overdone and often unnecessary. Rarely are the cross-references helpful.

For the most part there is a different problem in the 1991 U.K. statutes. In an attempt to explain the cross-reference the text tends to give too much information. By the time the explanation about the cross-reference is absorbed, the sense of the text is lost.

For example, in the Statutory Sick Pay Act, 1991 (1991 c.3) section 1 reads:

> *(1) In section 9 of the Social Security and Housing Benefits Act 1982 (recovery by employers of amounts paid by way of statutory sick pay) in subsection (1)*
>
> > *(a) in paragraph (a) (which requires regulations to make provision entitling an employer who has made a payment of statutory sick pay to recover the amount so paid by making deductions from his contrib-utions payments) for the words "from payment" to "by making" there shall be substituted...*

In Canada, the actual amendment would be quite separate from the explanation. The equivalent amendment in Bill form in most Canadian jurisdictions would read:

> *(1) The Social Security and Housing Benefits Act 1982 is amended*
>
> > *(a) in section 9(a), by striking out... and substituting:*

[28] J Hartley: *Designing instruc-tional text* (2edn) (1985) Nichols Publishing.

reads:...

The extract of the legislation would be included. An explanation of the amendment might then follow. When the Act is passed the explanatory notes are dropped from the printed Act.

While the U.K. approach appears to give more information at first sight it in fact gives less because it does not explain the *effect* of the amendment. More helpful would be an explanation of what the amendment does.

The other advantage to the Canadian approach is that amending Acts are, for the most part, purely a means of making a change to the principal Act. Once the amending Act is passed its job is done, it merges with the principal Act, it does not continue to have a life of its own (there are some exceptions to this but they are limited).

Several Canadian jurisdictions are working on computer systems to trigger automatic amendments to principal Acts once the amending Act comes into force - so having an up to date statement of the statute law available as soon as possible.

(d) Formulae

The 1991 U.K. Statute Book shows extensive use of formulae and Parliamentary Counsel should be congratulated.

(e) Archaic words

Needless to say, archaic words should be eliminated. On the whole we did not find this to be a major problem in modern U.K. statutes.

(f) Unnecessary words

In the 1991 U.K. statute book more words are used than are necessary.

For example, when an internal cross-reference is made in an Act it is usually followed by the word "above" or "below". But this is not consistent and we see no need for it. (This practice is better than saying "of this section" or "of this Act" after every section reference.) The drafter of the *Registered Homes (Amendment) Act 1991* gave precise one word amending instructions, for example: "substitute", "add", "omit". Contrast that style with most of the other amending Acts in the 1991 statute book which say "there shall be inserted", "there shall be substituted", "there shall be added", and so on. (See the *Crofter Forestry (Scotland) Act 1991* for example.)

To summarize: we think useful work could be done to standardize amending instructions using the precise model of the *Registered Homes (Amendment) Act*.

As mentioned earlier the U.K. drafting style still clings to the outmoded "shall".

For example:

(i) "This Act shall come into force on...."

(Why not "This Act comes into force on . . ."?)

(ii) "Paragraph (b) of subsection (2) above shall not apply where . . . " (s3 1991 c25)

(Why not "Subsection (2)(b) does not apply when . . ."?) Earlier in the same section the following words were used: "This section applies", *not* "shall apply".

(iii) ". . . a person shall be entitled to the care component of a disability living allowance" (s37ZB 1991 c21)

(Why not "a person is entitled to the care component . . ."?)

There are many other examples. Drafting in the present tense would not be a difficult change of drafting style to make but would improve the tone of the Acts considerably (as well as saving words).

(g) Using examples

The United Kingdom has been the leader in using examples in legislation. The technique is not often used, but has been applauded by academics and the judiciary alike. More use could be made of them.

(h) Tone

A more conversational tone could be used in statutes.

For example:

"A person who is under 18 years old"

instead of

"A person who has not attained the age of 18 years".

(i) Definitions

Definitions tend to be scattered all over the place, and difficult to follow and find.

(j) To summarize

Many of these suggestions may seem "picky", but combined they would lead to improvement in drafting.

The *real* test of course is to take a complete recent Act and try to redraft it in a plainer style *and* get the same legal effect in the rewrite. That would be a challenging project but probably the only way of proving what can be done. Unfortunately, time did not permit us to attempt that.

Computers and the drafter

No doubt the Hansard Society will be familiar with what "the computer" can do to help drafters. But too

many drafters either don't know, or worse, don't seem to care. Because the computer can be so helpful to legislative drafters in a variety of ways we touch on some of them here.

It goes without saying that the sooner legislation in all its forms is on a readily accessible database, and in its most up to date form, the better. We assume that the Parliamentary Counsel Office has computerized facilities which allows them to search the statute book to help with consequential amendments to other Acts, and to store and retrieve up-to-date versions of legislation.

The typical functions of a word processing system are well known: the capacity to move text around, to search and replace words and phrases, to spellcheck, to check the occurrence of words and of their use in defined senses, are all particularly helpful to legislative drafters.

But there are a number of facilities that are not as well known and not used as much as they might be in drafting.

These include

- automatic numbering and renumbering systems
- creation of tables of contents
- a program that will automatically mark all additions and deletions to a previous draft (extremely helpful for readers who just want to check the changes made from one draft to another)
- programmable programs which can be designed to automatically point out errors or inconsistencies, overlong sentences, overuse of the passive voice, and so on
- other editing functions.

Helping to design a precedent bank of questions and clauses

But a computer can do more than this. It can help drafters significantly improve the quality of their work.

(i) drafting the law

Not only must legislation be legally sound but possible alternative approaches, solutions or options to a given problem or issue need to be considered. The traditional precedent only gives a standard form answer - it does not exercise the mind. If the drafter does not think of an alternative a precedent will not help.

(ii) knowledge of the facts

Knowledge of the facts is based on asking the right questions. Again the traditional precedent does not help - it gives answers without necessarily knowing all the relevant facts.

(iii) integrating the law and the facts

The aim of drafting legislation is to achieve a client's purpose in the best way without unforseen consequences. Computer software programs are now available to help with the task. Computer programs can be developed to help draft the simplest to the most complicated legislation - but the program would take some time to develop.

(iv) the program

The program builds on what Parliamentary Counsel already have in a written questionnaire form (standard questions to ask) or what they have learned to ask clients through years of experience. Typically asked questions are re-designed and loaded into the computer program. Any particular answer to a question will initiate a whole new series of questions. All the variations, options and alternatives Parliamentary Counsel would normally ask a client are put into the program. Each Counsel in the office would be asked to participate in the questions, variations, options and alternatives. The result is a very comprehensive program containing the collective knowledge and experience of the Office. It can, of course, be modified from time to time as necessary.

Because the questionnaire is computerized it can be structured in the form of a logic tree. This means the answers to certain questions automatically cause the system to move into specifically selected lines of other questions - questions that might not have been raised without the help of the computer. Alternatively, the computer will automatically eliminate other questions which are not relevant (a bit like the typical passport form which allows you to skip several questions if, for example, you are not married or have no children). By this sophisticated branching system the Parliamentary Counsel is led through all the questions necessary to get a detailed description of the law to be created. For many questions the computer provides a suggested answer - if the answer is accepted the return key is tapped - variations to the answer are also given if requested and problems highlighted.

The system can be seen as the collective wisdom of the Office in asking the questions to get the facts which can then be turned into clauses, reflecting the office drafting style.[29]

[29] This description is based on an 11 November 1985 *National Law Journal* article called *Help in drafting complex documents*. The article described a program called "Workform" available at that time in the United States.

There are other programs similar to this on the market and some word processing systems allow this form of program to be developed. (See The Lawyer's PC, 1 October 1987 issue, describing Wordperfect as a legal systems engine.) We do not know of any legislative drafting office that has experimented with this program. It is being used in some private law firms.

The advantages of this kind of program to lawyers in private practice are obvious. Even the most junior of lawyers has the benefit of the program when asking questions and thinking of the kinds of questions to ask. A similarly structured program to develop legislation seems to be equally advantageous. Parliamentary Counsel do not use precedents - certainly not in the same way or to the same extent as lawyers in private practice. The drafter is often left to his or her own devices. The dangers of the drafter not asking all the right questions, or of not thinking of all the options, are very real. With programs designed to ask the right questions the drafter has a helpful support system.

Over time it should be comparatively easy for the Parliamentary Counsel Office to pool its collective knowledge about the questions that should be commonly asked and the things that should be considered when designing particular pieces of legislation or elements of them.

Drafting precedents

Obviously computer programs that develop questions can also propose precedent clauses. Whether for law firms or Parliamentary Counsel Office standard clauses[30] can provide consistent style and quality. If a drafter proposes a variation to the standard, justification for the change could be required, or approval from a senior member of the office.

There seems to me to be a considerable opportunity to improve substance, style and consistency of legislation with this kind of project.[31] We suggest the Hansard Society recommend it.

[30] The great fear of precedent clauses is that once a precedent is established it stagnates.

Parliamentary Counsel can avoid this by periodic review.

Part 3
Structure and format of legislation

General

The best statutory drafting is now very good. See for example, the Local Government Act 1988 and the draft bill attached to the latest Law Commission report on land registration. Some legislative drafting is bad: see the notorious Leasehold Reform Act 1967. Many problems remain with statutory amendments.

To the extent that they are not now the practice in the Parliamentary Counsel Office, Clarity endorses the recommendations of the Statute Law Society Memorandum of October 1973 to the Renton Committee. Virtually all of those recommendations are part of normal practice in Canadian jurisdictions and have been the practice for many years.

Accessible statute law

The accessibility of statutes, that is, being able to get a copy of the law in its most up to date form, is obviously an integral part of having accessible and understandable law. This is not a new issue. In 1835, the Statute Law Commissioners said in their first Report,

> *The statutes have been framed extemporaneously, not part of a system, but to answer particular exigencies as they occurred.*

The Statute Law Society made the same point in its memorandum to the Renton Committee in 1973. Although improvements have been made in recent years much more remains to be done. For example, a system of statute revision along Canadian lines should be considered in association with computerization of statutes and an automated amending system.

Vetting of drafting style

There have from time to time been suggestions that some form of vetting procedure be put in place to ensure consistency with other legislation and adequacy of drafting style. Some have suggested the House of Lords might perform that function, others that a special committee be established for vetting by experts. This proposal was made by Lord O'Hagan in 1877:

> *A department by which bills, after they have passed Committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Partliament before they are passed into law.*

The French have a system by which the Conseil d'Etat have oversight of style and this system of audit is supported by some.

The question of auditing bills has some intrinsic difficulties but in concept has some points to recommend it. This cannot replace the attempt at the earlier stages of drafting for clarity. An audit committee might be linked to the general concern about lack of proper consultation with those most affected

[31] A project of this nature could be Commonwealth in scope - perhaps in one sense picking up on the suggestion made by Francis Bennion in 1980 in *Statute Law* (p.24):

Standardization is an area where cooperation between Commonwealth countries would be fruitful. Model clauses on topics like strict liability or powers of entry could be drawn up in uniform terms applicable to any common law country.

by new law. Once again quoting the Statute Law Society:

> *We think it essential that ways are found whereby users can so far as possible be properly consulted*
>
> *(a) before a bill is drafted,*
>
> *(b) when it is being drafted, and*
>
> *(c) at all stages of its passage through Parliament.*

That consultation could well include issues of clarity.

As Francis Bennion has said

> *It is time for heads to go down and for close attention to be paid ... to statute law.*

Earlier we suggested that a Committee of both Houses of Parliament might be involved in authenticating a drafting manual for guidance of Parliamentary Counsel Office. The same Committee might also be given oversight of Bills from a drafting perspective.

Other odds and ends

There are a multitude of other things that could be said; a new Interpretation Act; further support for recommendations of the Renton Committee that have not been implemented; support for Bennion's "Keeper of the Statute Book"; the uses of computerization of statutes; and so on.

The present statute law system has grown up to serve the legislators not the legislated. The whole movement for reform should be based on the principle that the legislative process should be concerned with the end product, and the ultimate users of it. While this may be oversimplistic, we believe that goal must be kept in mind by reformers or else there will be a real danger of getting bogged down in apparantly mind-boggling, if not mindless, detail. Readers may note that we have not defined "plain English". We do not need to - we are confident that readers will give the term a purposive interpretation.

Last words

Parliamentary Counsel and other writers of law don't write for themselves; they write for others. The essence of writing law is communication.

There is no special language - grammar, syntax, or composition, for statutes.[32] The form of statutes over the centuries and in different countries attests to the correctness of that view. Each in their own way create law. Each in their own way must be interpreted by those who must administer them, the public affected by them, the parties bound by them, and by judges who must make decisions about them.

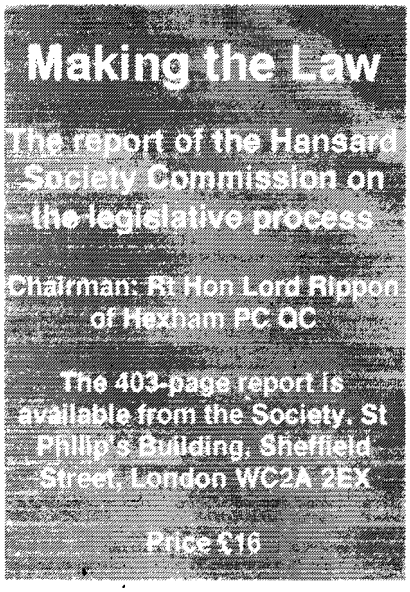
We can all improve our communication if we adopt the late Dr Elmer Driedger's philosophy, which is valid for all legal writing,[33]

> *a writer of laws must have the freedom of an artist, freedom to use to the fullest extent everything that language permits, and (the writer) must not be shackled by artificial rules or forms; and further, laws should be written in modern language and not in ancient, archaic or obsolete terms or forms.*

Next issue: Appendix

[32] So wrote Dr Elmer Driedger in *A Manual of Instructions for Legislative and Legal Writing*.

[33] Driedger's manual, p.4.



The aspects of legislation on which the Commission commented are:

consultation;
drafting;
parliamentary processes;
access to the statute book;
parliamentary programming; and
the impact of EC legislation.

The Commission welcomed CLARITY's "critical and constructive" arguments, published with other selected evidence as an appendix to the report. Although it does not agree with everything in our submission, it commends it to all those interested in parliamentary drafting.

Points made in the report

- Parliamentary drafting has improved to some extent since the Renton Committee reported in 1975 "widespread and deep-seated concern about the style in which Acts were drafted, especially about lack of simplicity and clarity in their language."
- There has been some improvement, notably in the adoption of textual amendment.
- According to Lord Renton, two of the most important points made in his report had not been

implemented. They were that bills should not attempt to cover every contingency (which is any case an impossible task), and that they should be less detailed, and more concerned with principles and purpose (which can be generalised to cover unforeseen contingencies).

- The general tenor of most of the comments we received on this matter was of continuing dissatisfaction about the style in which UK Acts of Parliament are drafted.
- Critics of the complex or obscure language included

The Law Society;
The Bar Council;
The National Audit Office;
The National Consumer Council;
The Institute of Public Relations;
The Association of Chief Police Officers;
Various local authority associations;
Shelter; and
Lord Howe, the former deputy prime minister.

- Statute law ought to be drafted primarily for the convenience of the user (who is not necessarily the man in the street).
- Drafters in Australia, Canada, and New Zealand have reviewed their styles and practices and come up with some interesting innovations. Further consructive ideas have been put to us by CLARITY and others.

Selected recommendations

- The Legislation Committee of the Cabinet should always ensure that "bills conform with the best constitutional principles and, where appropriate, that they have been prepared after full and genuine consultation".
- The Attorney General should take over ministerial responsibility for the work of the Parliamentary Counsel Office, and particularly for oversight of the drafting methods employed and scrutiny of the drafting of all government bills.
- The Attorney General's Department should watch, and where necessary seek to harmonise, the drafting styles of statutory instruments.
- We should study Canadian and other overseas methods of recruitment and training of parliamentary counsel, and we should study their drafting procedure.
- We need more parliamentary counsel to avoid the drafting defects caused by lack of time.
- Before parliamentary counsel begin drafting a bill, or a departmental lawyer drafts a statutory instrument, a definite decision should be taken by the department and drafter concerned as to who are to be considered the main users of the legislation. The drafter should then adopt a style appropriate for those users.
- Drafters should always seek clarity, simplicity, and brevity in their drafting, but certainty should be paramount.
- Parliamentary counsel take to heart criticism of their style.
- Ministers, civil servants, and parliamentary counsel should do all they can to eliminate unnecessary and complicated detail in the bills for which they are responsible.
- Citizens, their lawyers, and the courts should be of the intention underlying the words of a statute. Every Act and statutory instrument should be accompanied by notes explaining the purpose and intended effect of each section. Courts should be allowed to use these to resolve problems arising from the wording of the legislation.
- Acts should be kept as short, simple, and clear as possible, with detail supplied by delegated legislation.
- Henry VIII clauses (which permit amendment of primary legislation by secondary) should not normally be used.
- Getting a bill right should always have priority over passing it quickly.

»» contined from page 5

done us a great service with their work on legislative drafting. And I enjoyed the articles by Barbara Child and Jeanne Pasmentier. Pasmentier's report, short as it is, is the best evidence I have seen that plain language acts are working.

Clarity's layout

Anthony Wickens

There appear to be seven ingredients of the criticism in the second paragraph of J.B. Stutter's letter (*Clarity* 26, page29): (1) presentation; (2) layout (which to a publishing layman like me is difficult to separate from presentation); (3) typography; (4) paper; (5) boxes with round corners; (6) shaded boxes; (7) absence of cover.

I do not see the connection between the alleged "faults" and clarity of

contined on page 15 »»

Plain Language Act

by David Elliott[1]

A draft for public discussion

Contents

[1] David Elliott is a barrister and solicitor. Comments and suggestions on the draft are most welcome and can be sent to him at:

313 LeMarchand Mansion
11523-100 Avenue
Edmonton, Alberta
Canada T5K 0J8

Plain Language Act

WE, THE PEOPLE OF CANADA,[2] MAKE THIS LAW:

1 Purpose of this Act

The purpose[3] of this law is to improve the language and design of legal documents by

(a) changing attitudes and approaches to writing legal documents so that the documents communicate their message as clearly as possible;

(b) putting the obligation for clear communication on the writer or person responsible for the legal document;

(c) imposing legal consequences if there is not a genuine attempt to communicate clearly;

(d) supporting the research and services provided by the Plain Language Institute[4] in improving business, government, and legal communication.

2 Plain language in legal documents

Legal documents[5] must

(a) be written in as understandable language as the subject matter allows, and

(b) be designed[6] in a way that helps readers understand the document.

[2] This draft is compiled as a result of conversations and comment from people across Canada. It is a first attempt to bring the views together in the form of draft legislation.

The Act is designed so that it could be introduced in the Federal Parliament, a Provincial legislature, or a Territorial Legislative Assembly.

[3] Many people oppose purpose sections in legislation. I support them in appropriate cases because, as Sir William Dale put it:

An enunciation of principle gives to a statute a firm and intelligible structure. It helps to clear the mind of the legislator, provides guidance to the Executive, explains the legislation to the public, and assists the courts when in doubt about the application of some specific provisions.

In this Act it is important to stress its prime purpose - to change attitides and approaches to official writing.

[4] Since this draft was written the Institute has closed because of withdrawal of its funding.

Obviously another entity could be named, a special fund created, or other ingenious idea designed to support research and practical improvements to legal, government, and business documents.

[5] "Legal documents" are defined in section 11.

[6] "Design" is defined in section 11.

3 *Obligation for creating plain language documents*

(1) The obligation to comply with this law is as follows:

(a) for Acts, the obligation is on the Crown;

(b) for regulations, the obligation is on the Minister, person, or entity making the regulation;

(c) for municipal bylaws, the obligation is on the municipality making the bylaw;

(d) for other legal documents, the obligation is on

(i) the person who writes it or is primarily responsible for its contents;

(ii) the corporation, government, or entity that uses the document or proposes its use;

(iii) the person who publishes the document or who offers if for sale.

(2) When 2 or more persons, governments, or entities are obliged to comply with this law, the obligation is joint and individual.

4 *The cost of using gobble-dygook*

(1) Those persons, governments, and entities that are obliged to comply with this law must pay to the Plain Language Institute the fees set out in the Schedule.

(2) The fees payable are a debt due to the Institute and can be collected by legal action for debt if they are not paid voluntarily.

5 *Legal liability and defence*

(1) A person, government, or entity that does not comply with this law is liable for any loss sustained by another person because of that non-compliance.

(2) It is a defence if the defendant can show that

(a) reasonable efforts were made to comply and maintain compliance with this law and that, when appropriate, the results of those efforts were used in the legal document, or

(b) the language and design of the legal document in question cannot be significantly improved.

6 *Additional court powers*

(1) In addition to or in substitution for any other remedy a court can impose, the court may

(a) order a defendant who is responsible for an Act, regulation, or bylaw to review it with a view to rewriting or redesigning it;

(b) for legal documents other than Acts, regulations and bylaws:

(i) order a defendant to rewrite or redesign it;

(ii) order a defendant to stop using, publishing, or selling it;

(iii) order a person to take courses or training to improve their knowledge of written communication or documents design, or both;

(iv) order a person to provide community service explaining complicated texts to the public, rewriting legal documents in plain language, or providing another service to the public.

(2) An order of the court may be made subject to conditions.

7 *Declarations of non-compliance*

A not for profit corporation may bring an action for a declaration that a legal document does not comply with this law and, in addition to the declaration, may ask for an order under section 6.

8 *Agreements cannot prevent this Act applying*

An agreement that tries to limit or prevent this law from applying to a legal document is against public policy and of no effect.

9 *Crown must comply with this Act*

This law binds the Crown.

10 *Application of the Act*

This law applies to legal documents created after the date this law comes into force.

11 *Definitions*

In this law

"design" includes the legibility and layout of the document'

"legal documents" means

(a) Acts, regulations, and municipal by-laws.

(b) agreements,

(c) wills prepared by one person for another,

(d) forms containing a certification, declaration, undertaking, or affirmation, or forms that are intended to

create a legal relationship, and

(e) every other document that is intended to create a legal relationship,

unless a particular document or class of documents is excepted from this law by regulation of the [Governor General] [Lieutenant Governor] [Commissioner] in Council, but the definition does not include court judgements, arbitration awards, or other decisions having legal effect.

12 Repeal of the Act

This law is repealed on 1st January 2003.[7]

[7] No law should stay on the statute book without a regular review. This section proposes repeal of the law about 10 years after it comes into force. The section will force an evaluation of its effectiveness - if the law works, it can be extended.

13 Coming into force

This law comes into force [1 year after it is passed].[8]

Schedule
Gobbledygook fee scale

1 Gobbledygook list

(1) For each of the following words, phrases, or abbreviations used in a legal document there must be paid to the Plain Language Institute the amount indicated:

For each

said.....$75
aforesaid.....£150

herein.....$125

hereinbefore.....$200
hereinafter.....$175
heretofore.....$150
hereunto.....$125

whereof.....$75
wherein.....$75

AD (Anno Domini).$1,000

(2) If the word, phrase, or abbreviation is repeated in a legal document 10 times or more the fee for each use in the document is tripled.

2 Adding gobbledygook to the list

The [Governor General] [Lieutenant Governor] [Commissioner] in Council may, by regulation,

(a) add to the listed words, phrases, and abbreviations, and

(b) set the fee payable to the Plain Language Institute for use of the word, phrase or abbreviation.

[8] This section is designed to give people a reasonable chance to get legal documents in shape. Alternatively, the law could be designed to apply to different documents over a 2-3 year period, phasing in its application.

»» contined from page 12

expression, and the letterwriter does not explain the point. The letter certainly suffers from lack of clarity.

(3) Who thinks the type is unattractive? For ease of reading, the present typeface seems admirable. "Pretty-pretty" is not appropriate, and may we be spared the uncomfortable-to-read sans serif typefaces favoured by some of the trendies.

(2) I think I know what "bitty" layout is, but do not know how to avoid it when there are a lot of short pieces (which are often more likely to be read than fewer long "solid" sections).

(7) What is a cover? Does the criticism refer to the gauge of the paper forming the outside, or does it refer to the absence of an outside front page on which none of the "content" of the journal is printed? If the latter, has the inside front also to be kept bare, and what about the two sides of the back? This is a journal to be read, not one which needs to look "attractive" (ugh!) on the bookstall.

(4) With the exception of the cover, the criticism of "too shiny" paper presumably does not apply to that issue. This is the one criticism with which I would have agreed. *[No-one had a good word for the shiny inside pages, which originated as a result of a misunderstanding with the printer and has now been abolished. The shiny outside pages form the cover. - Ed.]*

(6) Shaded boxes contrast with boxes with white space, and this probably helps to emphasise the difference in status.

I do prefer the left-justified headings adopted in the last issue to the centred ones previously used. And I do not know why you should be defensive about justified type.

I have thoroughly enjoyed reading *Clarity* 26 (I usually do, but even more this time) and found all the articles except one most readable. No doubt that one was valuable and well-written, but for some reason it was low on my readability scale.

Drafting snippets

Ambiguous instructions penalised

In *Wormall v. RHM Agriculture* (1987 3 AER 75) the Court of Appeal upheld the trial judge's finding that a buyer was entitled to reject goods as being not of merchantable quality (under the Sale of Goods Act 1979) because the instructions which came with them were ambiguous.

Long clause penalised

In *Stewart Gill v. Horatio Myer* (1992 2AER 257) the whole of a clause was disallowed as unreasonable under s.11(1) of the Unfair Contract Terms Act 1977, and not just the unreasonable part.

Stuart- Smith LJ said (at page 262):

> **In my judgment it is the term as a whole that is to be reasonable and not merely some part of it. Throughout the Act the expression used is "by reference to any contract term...."**

The offending clause read:

> **The Customer shall not be entitled to withhold payment of any amount due to the Company ... by reason of any payment credit set-off counterclaim allegation of incorrect or defective goods or for any other reason whatsoever....**

A plainly drafted version, with each item a separate sub-clause, would have had a better chance of surviving in part. This decision also supports my personal view that (instructions permitting) we should exclude from a draft anything to which we would object as unreasonable if we were acting on the other side. This view is not shared by many CLARITY members, but I have found it works to the benefit of clients (most of whom do not want unreasonable clauses) by reducing the length of negotiations (so speeding agreement and minimising legal costs) and by reducing the badwill generated by unreasonable solicitors exceeding their instructions.

Unclear guarantee fails

In *Houlahan*, an Australian case heard in October, the bank lost its claim for a full indemnity from sureties who had thought they were signing only a limited guarantee.

The court found that:

- some parts of the guarantee were "couched in incomprehensible legal gobbledygook";
- some parts "would only be understood by a commercial lawyer with time and patience to read them carefully";
- the bank's counsel had been unable to construe one clause;
- neither the sureties nor the bank officers had understood the guarantee; and
- the sureties had not read the guarantee (and because they would not have understood it, it would not have made any difference if they had done);
- the bank officers must have known that the sureties' acknowledgement that they had read and understood the guarantee was false.

Criminal Justice Act 1991

John Richman, clerk to the Sheffield magistrates, has complained in a Channel 4 programme (not yet screened) of the time he wastes struggling to construe badly drafted legislation.

He gives as an example s.29 of the Criminal Justice Act. This has been widely criticised for its lack of common sense, and the Home Office is to review it after a public denunciation by the Lord Chief Justice. Mr Richman points to the difficulty of reconciling subsections (1) and (2):

(1) An offence shall not be regarded as more serious for the purposes of any provision of this Part by reason of any previous convictions of the offender or any failure of his to respond to previous sentences.

(2) Where any aggravating factors of an offence are disclosed by the circumstances of other offences committed by the offender, nothing in this Part shall prevent the court from taking those factors into account for the purpose of forming an opinion as to the seriousness of the offence.

Twisted passives

We sometimes distort our meaning,

when using the active mood to avoid the passive, by making the wrong noun the subject of the sentence. To use an example I heard recently:

Change is needed

becomes

Change needs to happen

instead of

We need change.

It is we, not the change, which has the need.

The diffident "perhaps"

"Perhaps" is often used arbitrarily, either modifying the wrong phrase or word, or inserted in a sentence where it has no business at all.

This morning I heard

The accident was not so serious as had *perhaps* been feared.

Or perhaps not? In which case

The accident was not so serious as had not been feared

which is meaningless. And if the opposite of an expression is meaningless, so must the original expression be.

Over-emphasis

Few things these days happen by halves; everything is "very much" something, regardless of the meaning of the words or the structure of the sentence.

It began when interviewed "personalities" fell "very much in love", as opposed to "just a bit in love". The extra depth of their emotion did not seem to inhibit early separation.

"Very much" has spread like Dutch Elm Disease.

We might have, for example:

This argument is very much circular.

This is as ungrammatical as

This argument is much circular

and the argument has the same circumference - I might say "very much the same circumference" - as an ordinarily circular argument.

Competition

Here is an extract from the lease of a flat in a Surrey block:

2. The Tenant hereby covenants with the Lessor and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Building that the Tenant and the persons deriving title under him will at all times hereafter observe the restrictions set forth in the First Schedule hereo

3. The Tenant hereby covenants with the Lessor as follows:-

(1) ...

4. The Tenant hereby covenants with the Lessor and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Building that the Tenant will at all times hereafter during the said term so repair maintain uphold and keep the Flat as to afford all necessary support shelter and protection to the parts of the Building other than the Flat and to afford to the lessees of neighbouring or adjoining flats or premises access for the purposes and conditions set out in Clause 3(9) hereof

You are invited to list the faults. One point will be given for each, with the more ingenious defects weighted with one, or (exceptionally) two, bonus points. The winner will be the person with the most points (but if there is only one entrant must earn 40 points). The prize is one choice from the following books (subject to availability):

Dictionary of Modern Legal Usage by Bryan Garner

Drafting Legal Documents by Barbara Child

The Language of the Law by David Mellinkoff

The Readership of Legal Texts

by Francis Bennion

I believe CLARITY will be helped in achieving its aims by having regard to the intended readership of legal texts. The requirements differ as the readers differ. What would be clear to an adult might not be clear to a child. What would be clear to a lawyer might not be clear to a lay person. And so on. In this article I particularly have in mind legislative texts.

Some definitions

CLARITY describes itself as "a movement to simplify legal English". Let's start by looking at some definitions.

The OED defines "simplify" as "To make simple; to render less complex, elaborate, or involved; to reduce to a clearer or more intelligible form; to make easy". It defines "simple" as "Free from duplicity, dissimulation, or guile; innocent and harmless; undesigning, honest, open, straightforward". Another OED meaning of "simple" is "Free from elaboration or artificiality; artless, unaffected; plain, unadorned". So we might expand "to simplify" as meaning to put into a form which is as clear (that is intelligible and free from elaboration) to the intended reader as is practicable.

The word "practicable" is defined by the OED as "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible'. Here it is useful to remember that apart from differences in readership there are limitations on clarity imposed by the nature of the English language. Often particular words do not have a clear meaning, or have several meanings. Also there are broad terms used to confer discretion on the interpreter, or to authorise the exercise of judgment in choosing from a range of meanings. Another language problem is that of *differential* readings, where different people legitimately and genuinely differ in their perception of the meaning of a passage. As Lord Dilhorne said, "due in part to the lack of precision of the English language, often more than one interpretation is possible" (*Black-Clawson International Ltd v. Papierwerke Waldhof-Aschaffenburg AG* (1975 AC 591, at 622). So we might translate "practicable" as feasible having regard to the limitations of the English language, the need to carry out the relevant purpose(s), and the need to be understood by the intended reader(s).

Next, what does CLARITY mean by "legal English"? It might be equivalent to "legalese", defined by the OED as "The complicated technical language of legal documents". However, we get nearer the object if we equate it to the language of legal documents generally. This extends to texts not yet in being, and so not yet complicated or technical. (Perhaps they never need be.) Before even starting to draft, we need to have the intention that our product shall be "simple" for the intended reader or readers.

Legislative texts

So far no one would disagree. However, I now have to tackle matters of controversy. In his *Utopia* Sir Thomas More said: "All laws are promulgated to this end, that every man may know his duty; and, therefore, the plainest and most obvious sense of the words is that which must be put upon them". In my textbook *Statutory Interpretation* I quoted More's statement, adding "This might apply in Utopia, but sadly does not hold good in real life" (2nd edn, 1992, p.21). Was I right? Many CLARITY supporters would say no.

For me, this question goes back at least to 1966, when I wrote the first of many articles and books I have produced on the subject of statute law. All were directed to improving the state of our legislation, but all were written on the basis that the legislative readership is a professional one. My main concern, throughout my work, has been to bring about improvements in the form of legislation, with a view to helping professional users. (For a summary of users' difficulties and their cause see my textbook *Statute Law*, 3rd edn, 1990, chapter 13.)

Commenting on an earlier draft of this paper David Elliott pointed out that legislative texts are not exclusively addressed to lawyers, adding "many professionals in their fields of practice are able to comprehend, interpret and apply legislation". I accept that they *ought* to be able to do so, but it still leaves the readership a professional one. What is clear to a skilled professional cannot be expected to be always clear to a lay person. Indeed, if the text is intended for a professional audience it would often be inappropriate, and in some cases impossible, to try to word it as if a lay audience were intended. Too much would need explaining. As the Association of First Division Civil Servants told the Hansard Society Commission on the Legislative Process, and the Commission accepted, "What appears clear to the layman may not be certain in

meaning to the courts; and much of the detail in legislation, which can appear obfuscatory, is there to make the effect of the provisions certain and resistant to legal challenge" (cited in paragraph 219 of *Making the Law*, the report of the Commission, issued on 2nd February 1993).

One of the inexorable constraints on legal language is the need to fit into the language of the existing law. An Act intended to amend the law (as most Acts are) must fit into the existing *corpus juris* or body of law as well as expressing the reforming intention of the legislator. It must fit not only the existing language (which may well be unnecessarily complex if we could start again) but also the existing concepts. A document such as a will or mortgage has the prime purpose of being effective as a legal instrument, that is successfully doing what it is intended to do. Where the two aims conflict, as they sometimes do, it is more important that the text should be effective than that it should be clear. (I say this remembering desperate occasions when I strove to draft a Finance Bill clause so that it fitted effectively into the frightful mess that is the Income Tax Acts and did not cost the country millions in lost tax revenue.)

Another point to note is that obscurity in legislation is very often caused not by unnecessary complication of language but by complication (whether unnecessary or not) of thought. When I started drafting the Sex Discrimination Act 1975, for example, I began by writing "A person discriminates against a woman if on the ground of her sex he treats her less favourably than he treats or would treat a man". The intolerable complexity of that Act arose not from any wish of mine but because those instructing me insisted on overlaying it with innumerable refinements, exceptions, conditions and exclusions. In doing so they were genuinely seeking to conform to the popular will as manifested in representations from trade unions, women's groups, employers' organisations and other lobbies.

There are other causes of legislative complication. An obvious one is that a Bill has to run the gauntlet of parliamentary debate and amendment in both Houses. This imposes specific requirements on the drafter. (For the nature of these see my *Statute Law*, pages 28-40. For a detailed examination of the vices that block comprehension of legislative texts see chapters 14-19 of that book.) The drafter could usually produce a much better text were he or she free to start all over again, rejigging the finished Act. It is for this reason that I have advocated improving the presentation by what I call post-enactment processing, without of course altering the basic wording (see *Statute Law* chapter 23).

What of the legislator who, like most, is a non-lawyer? Am I really accepting that Bills and draft statutory instruments have to be beyond the understanding of their nominal creators? This would be paradoxical, if not perverse. There is quite a long history about this aspect, too long to examine here. Until recently Bills were drafted according to the four corners doctrine, under which legislators were supposed to be able to understand the gist of a Bill without going beyond its four corners (that is without looking at any other document). Unfortunately this distorted the finished product, so a system of textual amendment was adopted instead (for the story see my *Statute Law* pp 32 and 228-229).

A Bill or statutory instrument needs to be drafted in the way that is best from the point of view of its ultimate user. Lay legislators should be told exactly what it means by explanatory statements and notes, as they are under the present system (though this could be considerably improved).

Conclusions

I don't want anyone to take away from reading this article the idea that I am lukewarm about CLARITY's aims. I have tried to present some practical considerations, distilled from the experience of 45 years of working in the field of statute law. This has taught me that bringing clarity into the law is a slow job, though it is a very worthwhile one.

One thing I am sure about is that progress will be quicker if would-be reformers study the efforts that have been made in the past, the results of them, and the proposals that have been on the table for some time (such as my own ideas mentioned above). It is also necessary to realise and accept that, whether we like it or not, law *is* an expertise. A lay person would not think they could do better than a professional in assessing symptoms of illness, carrying out a diagnosis, performing a surgical operation, and issuing the prognosis. It's just the same when it comes to improving the products of our legislative process.

I end positively with another quotation from David Elliott's comments to me.

> [I have difficulty with] the notion that clarity and effectiveness are, if not mutually exclusive, at least not of equal importance and so should not be given equal attention .... I would like drafters to go the extra mile and make their drafts as intelligible as possible. The possibilities may be limited in difficult areas, but the attempt should be made, without loss of effectiveness .... If drafting is approached with a built-in attitude to clarity (which includes a knowledge of those things which assist comprehension and of those things which impede comprehension) I think we might see some dramatic improvement and some bold experimentation in legal drafting.

Those are inspiring words, which I would like to endorse.

Inland Revenue efficiency scrutiny

At the beginning of February we received this letter from the Inland Revenue:

> The aim of this scrutiny is to identify common causes of error for both customers and staff and to find ways to eliminate or reduce them. This is, of course, a vast subject which goes far beyond simple counting errors or identifying individual causes and takes us into exploring underlying problems which may lead to common causes for diverse errors.
>
> We are, amongst other things, carrying out in-depth research with our own operational staff and it would be immensely valuable if this could be complemented by the views of your members.
>
> One fundamental area we want to examine is the nature of tax legislation; its construction, ordering, revising and the language used. Essentially, we want to see whether there are ways of making it easier to follow to avoid errors whether of ommission or commission and whether made by Revenue staff or customers.
>
> Any comments or representations your members may wish to make are welcome but they may like, in particular, to consider three areas:
>
> a. The use of plain English in primary legislation.
>
> b. Continuous consolidation, ie updating the basic statutes after every Finance Act.
>
> c. Revising whole sections or sub-sections each year rather than using the technique of "add", "delete", "insert", and so on.
>
> Efficiency Scrutinies have very tight timetables and it has not been helped by my belated awareness of your organisation. I really need comments by the end of the first week in March. However, if your members would like to make preliminary comments within that timescale, there will be an opportunity over the following months to develop them.

The letter came from

Terry Hawes
Room 416, South West Wing
Bush House, Strand
London WC2B 4RD
(DX 1099 London)

We passed copies to it to members known to be interested in the field, and sent Mr Hawes a copy of David Elliott's submission to the Hansard Society (see page 3).

There was a considerable response, and we would like to thank those members who answered, and particularly for sending us copies, extracts of which appear opposite.

Mr Hawes has since written to express his gratitude for:

> ... stirring so many members to write to me.
>
> I now have a wealth of material and comments to consider. It is only fair to point out that the legislative process is just one aspect of the Scrutiny and that my powers of recommendation are limited given the relationship of the Department to Parliamentary Counsel. Nevertheless, I shall be looking carefully at what the Department itself can do directly and at how it can influence the legislative process in future to achieve greater clarity as we move towards forms of self-assessment.
>
> Once again, thank you very much for your help.

Clarity members reply

From **Lord Justice Staughton:**

May I whole-heartedly endorse your suggestion of continuous consolidation? In the Court of Appeal, as everywhere else, we suffer from the difficulty of finding the whole of statute law on a particular topic in one place. In addition, we have to persuade the Lord Chancellor to pay for the publication which contains it. I am sure that continuous consolidation is the answer.

Needless to say, I also support plain English.

Dr Robert Eagleson, on behalf of Mallesons Stephen Jaques, sent copies of their recent submissions to Australian government inquiries into *The Australian Taxation Office* and *Commonwealth Legislative and Legal Drafting.* These are too long to print in full, but make the following points:

Poorly drafted legislation does not create problems of interpretation only for lay people. All users of legislation, including experts, struggle to come to grips with much of our legislation. Indeed, judges have often commented on the incomprehensibility of legislative provisions they have had to consider. The problem is even more serious when one considers that many of the public servants who have to administer the law and explain it to the general public do not have legal training.

Much of the complexity in Australian legislation and legal documents could be overcome by:

- the rigorous and comprehensive adoption of plain language as a

drafting style;

- the participation of expert private professional services in the preparation of legislation;
- the appointment of language experts to drafting offices;
- improvement in the training and guidance given to instructing officers;
- a closer connection between the preparation of a piece of legislation and the regulations and forms that implement it.

The principles of plain English have been endorsed by Commonwealth and State parliamentary counsel. Plain English preserves accuracy and precision. Traditional legalese does not qualify as good writing and is not worthy of a modern democratic society. It does not guarantee precision as so is so often falsely claimed of it. It frequently conceals error and regularly leads to obscurity. Experience has shown that the use of plain English in commercial legal documents (for example, insurance policies) has significantly reduced disputes and litigation.

The government should consider appointing experts in the field of language and document design to drafting offices. Some European countries, such as Sweden and Switzerland, already recognise that presentation of legislation is not simply the domain of legislative drafters, and they draw on the expertise of non-lawyers.

Parliamentary counsel are solely responsible for the preparation of legislation. This is often not the most efficient approach. While they are highly qualified as drafters, they must be to a large extent generalists in the law. They do not have the close experience with its workings acquired by lawyers who specialise in specific areas. Some of the complications and errors in legislation and the difficulties in its operation arise as a result of this limited experience.

We propose the appointment of drafting teams to consist of experts from:

- the office of parliamentary counsel;
- the relevant government department;
- the relevant industry (in the case of tax statutes, the private taxation advisory professions);
- the private legal profession;
- the fields of plain language, document design, and document testing;
- systems design.

This level of collaboration goes beyond simply asking individuals or groups to comment on near final drafts. Whilst opportunities to comment should still be given, it needs to be recognised that they tend to restrict observations to individual sections. It is more difficult to comment on the entire structure or form of a bill. The more active participation of outside experts encourages that broader perspective.

We recognise that some may be concerned with confidentiality, but experience of other government projects shows that this problem can be overcome with appropriate undertakings.

Parliamentary counsel often receive inadequate instructions from the relevant government department. Many instructing officers are not legally trained, and may not occupy any particular position long enough to develop the necessary skills.

It is worth developing sets of questions to guide the instructing officer. These, and computer-assisted drafting:

- increases consistency;
- speeds the drafting process;
- simplifies the drafter's job;
- focuses the attention of those giving the instructions and leads to more precise information;
- leaves the drafter free to concentrate on the more distinctive features of a particular bill.

Acts are usually drafted before the ancillary regulations, forms, and other supplementary documents. This can be unfair to those trying to comment on the drafts.

The savings in both public and private sectors would be immense. Tests have shown that experts take far less time to resolve problems if they work from documents in plain language. One test with lawyers found that reading time was reduced on average by 30%.

From **Sir Kenneth Keith** at the New Zealand Law Commission:

The use of plain English in primary legislation

A considerable amount of work has been done in this area by the Law Reform Commission of Victoria. In its Report no.9, *Plain English and the Law* (1987), it concluded that the use of plain English would make the law more accessible and thus "help members of the public to comply with their legal obligations"; that it reduces administrative costs and legal costs in general; and that documents drafted in plain English by no means suffer "a loss of precision or accuracy". Before it was abolished that Commission had also undertaken important work aimed at a major new tax statute.

The Law Commission thoroughly endorses these conclusions, and is itself engaged in preparing a *Manual of Legislation* which promotes the use of plain English wherever possible.

Continuous consolidation

The Commission considers that this practice is desirable largely because it facilitates access to the law.

Annual revision of whole sections or sub-sections

The Commission's view is that while this practice may make statutes easier to use, it is essential that amendments do not disturb the integrity of a statute's structure as a whole. This principle has become clear in the course of the review of the New Zealand tax legislation.

From **Judith Bennett** on behalf of the Law Foundation Centre for Plain Legal Language, Sydney:

(a) The use of plain English in primary legislation

Using plain English techniques in primary legislation is essential.

Complex, inaccessible laws impose huge costs on the administrators as well as the general public. Legislation must be drafted for the public first as they have the right, and the need, to know and understand their obligations and rights. If the public can understand a statute, the courts will also find interpretation easier.

This does not mean drafting for "the lowest common denominator" nor omitting technical terms; it means expressing ideas as clearly and as plainly as possible. Complex drafting and artificial concepts are rarely necessary.

Creating explanations is generally a less efficient method of communicating legal rights and obligations, and increases the risk of error. But it will be more convenient in some circumstances.

Informing the writers of legislation about plain English principles is also essential. Plain English is not just a style of language; it requires the logical and convenient layout and organisation of the information to help the reader.

(b) Continuous consolidation

In our *Design of Legislation* project the people we surveyed, including lawyers and law librarians, constantly criticised the updating methods as *ad hoc*, difficult to find, confusing, and costly. Continuous consolidation was widely supported. Law librarians and researching lawyers preferred consolidation on cheaper, computer technology, such as CD-Roms.

(c) Yearly revisions

The comments in (b) also apply here.

The NSW government has introduced "sunset clauses", requiring revision of all regulations.

From **Richard Oerton:**

(a) The use of plain English in primary legislation

My own view is that statutes, and especially taxing statutes, could and should be much clearer than they are. However:

> The Parliamentary Counsel are, in several senses, a law unto themselves. No one tells them how to draft and they have resisted, and no doubt will continue to resist, suggestions for change.
>
> The scope for clarification is not as great as might be thought, and it is not really a matter of "plain English". Parliamentary Counsel would claim already to use plain English, and in a sense they are right. The complexity of statutes arises largely from the need for them to express complex policies (and if the Inland Revenue could simplify their policies, that might contribute more than anything else to the reduction of error).

I do believe, however, that there is real scope for improvement in the construction of statutes, even if this were to involve some increase in length. (By "construction", of course, I mean not the way in which statutes are interpreted, but they way in which they are constructed, or built up.)

(b) Continuous consolidation

The statutory code of taxation is of course altered in two different ways. First, by textual amendment - that is, through the amendment of existing provisions normally contained in a "main" Act. Second, by the addition of "free standing" provisions. As to these two methods:

> There is no doubt that textual amendment is better and should be used whenever possible. Insofar as it is used, it does already result in a process of "continuous consolidation". Every year, Butterworths and other legal publishers produce an updated version of the taxing statutes, which incorporate all the changes in text which are made by means of textual amendment.
>
> This does not happen with "free-standing" changes. But legal publishers do include these in their annual publications. It may be that more changes which are now free-standing could be made by textual amendment instead. If so, they should be. In a sense, indeed, all changes *could* be made by textual amendment, even if this were to involve (for example) the creation of an entirely new "Part" for the main Act. For the practitioner this would be of only marginal advantage.

(c) Yearly revisions

I am not sure that there is, in practice, much difference between the two methods you mention. It may be helpful to see exactly what an amendment has added to or deleted from the original text, because otherwise its effect has to be laboriously disinterred from a much larger chunk of wording.

Francis Bennion has arranged a meeting with Mr Hawes rather than make a written submission.

Lawyers' attitudes to plain legal language

by Bron McKillip

Senior lecturer, Faculty of Law, University of Sydney;
Academic advisor to the Law Foundation Centre for Plain Legal Language

Extracts of this article have been published by the New South Wales *Law Society Journal*

Most Sydney lawyers think that the profession should be encouraged to use plain legal language. This was one of the findings of a recent survey of the attitudes of Sydney solicitors, barristers and legal academics to plain legal language.

The survey was based on a questionnaire containing 18 questions I prepared in consultation with the Law Foundation Centre for Plain Legal Language at the Sydney University Law School. The questionnaire was sent to six firms of solicitors in Sydney - one large firm, three medium-size firms and two small firms. Seventy responses were received. The questionnaire was also sent to six floors of barristers, resulting in twenty-five responses. The questionnaire was distributed as well to the academic staff of the Sydney University Law School, yielding twenty-five responses.[1]

The survey first sought to discover what lawyers understood by the concept of plain legal language.

The main ways stated of understanding the concept were "effective communication" and "no legalese". There is probably a substantial overlap between these two expressions. If legalese is a form of jargon peculiar to lawyers and not readily intelligible to non-lawyers then the absence of legalese would make communication between lawyers and non-lawyers more effective. So the lawyers surveyed saw the use of plain legal language as resulting in more effective communication with their readers. This confirms one of the main calls of the advocates of plain legal language and of plain English - first and foremost, consider your reader.

"Clarity" came next in the lawyers' understanding of plain legal language. It was also the factor the lawyers considered the most important for effective communication in legal matters. Clarity must clearly be sought in the eye of the reader.

The survey explored the benefits that might flow from plain legal language. Clients and the public were seen as major beneficiaries, but so were the lawyers themselves, indicating that legalese was seen as hindering communication within the profession. The type of legal drafting thought most likely to benefit from plain legal language was that of contracts.

Two types of contract, traditional insurance policies and commercial leases, were seen as the least comprehensible in a list of eight types of document submitted for a comprehensibility rating. Traditional insurance policies are already being converted into plain English. Solicitors for commercial lessees would doubtless appreciate receiving similarly converted leases for perusal, to say nothing of their clients.

One matter of concern for the advocates of plain legal language is whether legal terms of art should be rendered into plain legal language. A majority of lawyers surveyed thought that five of the six terms proffered for consideration (subrogation, bequeath, estop, escrow, *prima facie*) should be so rendered, and that one (vendor) need not be. Related to this concern is the question whether there are some legal concepts that are beyond the understanding of non-lawyers. The response to a question about this in the survey was that even those with a non-law university education would probably not understand some legal concepts.

Concerns among lawyers about more general aspects of legal writing were explored in the survey. The highest level of concern was about very long sentences (over 100 words); the next highest was about long sentences (40-100 words). This high level of concern is shared with advocates of plain legal language. Frequent use of the passive voice, another high concern of the plain legal language advocates, concerned the lawyers surveyed much less. Of more concern to them were lack of headings and minimal punctuation.

A question I though worth exploring in the survey was whether any distinction should be made between written and oral legal language in this context. Each of the three groups of lawyers was more or less equally divided about making a distinction. Those against making it generally thought that written legal landguage could and should approximate oral legal language

[1] There are some 12,000 practising solicitors in New South Wales, of whom some 6,000 practise in the Sydney metropolitan area (including Paramatta); some 1,800 practising barristers, of whom some 1,250 practise in the Sydney metropolitan area; and some 50 academics at the law school.

which, being close to everyday language, was already plain. Those in favour of making a decision generally thought that language used in writing would always differ from language used orally because of the different audience and processes of communications involved. Linguistic scholars general support this latter view.[2]

It may be helpful to consider the responses in more detail. (The percentages in the first five tables are of the items listed to the number of respondents. As each respondent generally nominated several items the vertical totals exceed 100. The "tots" are the horizontal totals.

1. What do you understand plain legal language to be?

	Sols	Bars	Acs	Tot
Effective communication	36	24	44	104
No legalese	36	16	48	100
Clarity	20	32	32	84
Simple language	24	28	20	72
Conciseness/precision	33	8	20	61

2. Should plain legal language be encouraged?

	Sols	Bars	Acs
Yes	87	84	91

3. What factors do you consider the most important for effective communication in legal matters?

	Sols	Bars	Acs	Tot
Clarity	39	44	44	127
Comprehensibility	33	16	12	61
Simplicity	21	16	20	57
Brevity/conciseness	20	12	12	44
Orderly structure	16	12	16	44
Knowledge of topic	14	20	–	34
Plain language	13	–	16	29
Short sentences	17	–	–	17
Clear thinking	–	16	–	16

"Clarity" was the clear winner in each of the three groups. The responsents seem to mean clarity of expression rather than clarity of thought or concept, as witness the alternative factors of "clear thinking" and "knowledge of topic". The two types of clarity do not necessarily go together. Clarity of expression can mask confused thinking and conceptual error. You can be clearly wrong, clearly.

[2] See David Crystal: *The Cambridge Encyclopedia of Language* (1987) 179, 386-7.

4. Who, in your view, would benefit most from the use of plain legal language?

	Sols	Bars	Acs	Tot
Clients	70	20	25	115
Lawyers	41	44	8	93
Public	23	28	42	93
Everybody	4	32	25	61

Of particular interest in these responses:

- the client orientation of the solicitors as opposed to the barristers and academics.
- the hopes for "everybody" of the barristers and academics as opposed to the solicitors.

5. For what types of legal work is plain legal language likely to be most beneficial?

	Sols	Bars	Acs	Tot
Contracts	61	44	36	141
All	21	48	28	97
Client correspondence	19	8	12	39
Legislation	4	8	24	36
Advice	11	8	–	19
Wills	17	–	–	17
Litigation	9	4	–	13

Of particular interest in these responses:

- the perceived benefits of plain legal language for contracts (including both consumer contracts and complex commercial contracts).
- the relative absence of benefit perceived by the solicitors and barristers for legislation.

6. [Respondents were asked to rate the comprehensibility of eight types of document, from 1 (most comprehensible) to 8 (least comprehensible.]

	Sols	Bars	Acs	Tot
Commercial corspdnce	1	2	1	4
Judgments	4	1	3	8
Letters from govt depts and agencies	3	5	2	10
Standard contract for sale of land	2	4	6	12
Court forms	5	3	4	12
Legislation	8	6	5	19
Commercial leases	6	7	7	20
Traditional insurance pols	7	8	8	23

- Of the three types of document rated on aggregate the most comprehensible it is salutary to note that two of them come from non-legal sources.
- The solicitor rate legislation as the least comprehensible

while rating it lowest of the types of legal work for which plain language would be beneficial.

7. Do you think the following terms should be rendered into plain language in legal discourse?

This and the following tables show the percentages answering "yes".

	Sols	Bars	Acs	Tot
Vendor	36	24	52	112
Subrogation	46	52	76	174
Bequeath	83	60	73	216
Estop	69	64	73	206
Escrow	70	56	90	216
Prima facie	60	48	64	172

Of note from these responses:

- the solicitors were more prepared to change these terms into plainer language than were the barristers, but less prepared than the academics.
- A majority of the solicitors and the barristers would change four of the six terms into plainer language, while most academics would change all six.
- There was no consensus on the term most in need of change, although on aggregate "bequeath" (clearly out of favour with the solicitors), "escrow" (even more clearly out of favour with the academics) and "estop" were the top contenders.

8. Do the following concern you in legal writing?

	Sols	Bars	Acs	Tot
Long sentences (say 40-100 words)	86	76	80	242
Very long sentences (say over 100 words)	99	96	92	287
Frequent use of the passive voice	57	64	62	183
Split infinitives	61	32	68	161
Sentences ending with prepositions	76	40	56	172
Latin words	76	64	48	188
Lack of headings	70	64	79	213
Minimal punctuation (eg few or no commas)	77	68	67	212
Initial capitals (as in Judge, Plaintiff, Will)	36	40	21	97

- Very long and long sentences were of most concern by far to the three groups.
- After that the solicitors and barristers were most concerned about minimal punctuation, and the academics about lack of headings.
- The matter of least concern for the solicitors and academics was initial capitals, and for the barristers split infinitives.
- The solicitors had the highest level of concern overall for the aspects of writing listed (636/900), followed by the academics (573/900) and then the barristers (544/900).

9. Do you consider that there are some legal concepts, rules or principles that are beyond the understanding of

	Sols	Bars	Acs	Tot
Some adult members of the community	91	96	83	270
A person who has completed secondary education	81	56	70	207
A non-law university graduate	70	48	54	172

- The solicitors rated lay incapacity markedly higher on aggregate (242/300) than did the academics (207/300) and the barristers (200/300).

10. To what extent do you think you would benefit from instruction in plain legal language?

	Sols	Bars	Acs
Not at all	9	24	12
A little	57	48	48
A lot	34	28	40

- For each of the three groups, "a little" polled best.
- Asked what form the respondents thought such instruction should take, the solicitors preferred seminars (or lectures) and workshops about equally, while the barristers preferred written instruction and the academics preferred workshops.

Conclusions

Some tentative conclusions may be drawn from this modest survey:

- The lawyers surveyed clearly support the use of plain legal language. They see effective communication, clarity of expression and absence of legalese as beneficial both to lay people and themselves.
- Whilst they thought that many legal terms should be rendered into plain English, they also thought that there were some which would not be comprehensible to non-lawyers.
- Lawyers have great concern about long sentences!

From the committee

Committee membership

Alexandra Marks, now back at work, has agreed to come back onto the committee, on the understanding that she will drop out again if it conflicts with maternity.

She fills the gap left by Michael Arnheim, whose commitments in teaching, and in his practice at the London bar, mean that he is no longer able to find the time for CLARITY work.

We would like to thank Michael for the contributions he has made since he joined the committee in October 1988.

We are also sorry to announce that Patricia Hassett will be going back to Syracuse in July, after 3 years on the committe. However, she has agreed to stay as a corresponding committee member from the United States, where she intends to remain active in promoting CLARITY.

Poster

A second batch of 500 posters has been printed, and we are considering a half-size version for the future.

A free copy was distributed to all members with the last issue of *Clarity*, but if you have joined since and do not have one please contact us. Extra copies are available at £1 each (or free if you want to distribute them to promote CLARITY).

A number of extra copies have been requested by members, some for branch offices and some to pass to third parties. We are trying to arrange wider distribution around solicitors' offices and barristers' chambers, and amongst law students.

CLARITY's slogan

We are considering the simplification of our slogan from "A movement to simplify legal English" to "Improving legal language". Comments and alternative suggestions would be appreciated.

The change from the reference to "legal English" to "legal language" is proposed to reflect the interests of members in more than a dozen bi- or multi-lingual jurisdictions.

Professional publication of *Clarity*

Tolley's expressed interest in publishing this journal, but unfortunately the cost is prohibitive. To make the venture commercially viable, assuming 300 subscribers (as opposed to 432 as at present, to allow for lapse) they would need to charge at least £70 a year. Nor does that figure allow any contribution to the expenses of CLARITY (the organisation).

We had hoped that a publisher would take it on in the hope of so greatly expanding the membership worldwide that the price could be kept in bounds. But perhaps this is too speculative.

News about members

CLARITY's patron, **Lord Justice Staughton**, has recently lectured on *Plain English for Lawyers* at University College, London, the University of Hertforshire, and the College of Law in Guildford.

Professor John Adams has been lecturing on the same subject at Queens University, Belfast, and in Hong Kong.

Trevor Aldridge QC is leaving the Law Commission at the end of the year.

Martin Cutts has just returned from a four-week lecture tour of South India, sponsored by the British Council.

Professor Patricia Hassett and a computer programmer are designing software to make bail decisions more rational. At present, she argues, decisions are hasty, arbitrary, and cause injustice beyond the temporary imprisonment of untried defendants. The system, with minor variations, will fit the legal requirements of the UK, Canada, the United States (except Louisiana), Australia, New Zealand, Hong Kong, Singapore, and India. Her working paper, *Using Expert System Technology to Improve Bail Decisions*, is available from The Institute of Advanced Legal Studies (17 Russell Square, London WC1B 5DR) at £5.50.

Associate Professor Joseph Kimble starts his sabbatical year this autumn with two months at the Centre for Plain Legal Language in Sydney.

Donald Revell will be chairing the session *Legal Drafting: Biases and Legal Ethics* at the CIAJ's Ottawa conference (for details of which see opposite).

Conferences

Canadian Institute for the Administration of Justice

Legal Drafting: Changing Times

The Radisson Hotel, Ottawa
6th-7th May 1993
Registration fee: $495
(simultaneous translation service)

Discussions will include:

- *Readers' Expectations* by George Gopen, Director of Writing Programs, Duke University, NC;
- *The Language of the Law and the Law-Maker* by Jean-Claude Gémar, Director, Department of Linguistics and Translation, University of Montreal;
- *Gender Neutrality in French* by Gérard Bertrand QC, Director, French Legislative Drafting Program, University of Ottawa;
- *The Political Nature of Drafting* by David A. Marcello, Executive Director, Public Law Centre, Loyola & Tulane Law Schools.

Further details from:
Faculty of Law
University of Montreal
PO Box 6128, Stn A
Montreal, Quebec H3C 3J7
Tel: 010 1 514 343 6157 (Fax: 6296)

Plain English Campaign

Queen Elizabeth II Conference Centre
London
24th-26th May 1993

The Campaign does not want us to publish details.

University of Gotesburg

Professional Language and Communication

12th-13th and 16th-20th August 1993

This course is part of the University's second annual Summer Academy. Its purpose is "to increase teacher readiness to develop models for new courses in their respective teaching institutions. The course will begin with a two-day symposium, where international guest lecturers will provide the theoretical basis for further discussion. The following week will offer ample opportunity for practical training and the exchange of ideas."

Further details from:
Eva Hood
Goteborgs Universitet, Vasaparken
S-411 24 Goteborg, Sweden
Tel: 010 46 31 773 1862 (fax: 4660)

Welcome to new members

Austria

Sandra Lang; lecturer, English Dept, University of Economics & Business Administration; Vienna

Canada

Alberta Law Reform Institute; Edmonton
Law Reform Commission of Nova Scotia; Halifax
Ministry of the Attorney General (Law Reform Commission); Vancouver, BC
Ministry of the Attorney General (Legislative Counsel); Victoria, BC
Senate of Canada; Ottawa
Joy Tataryn; editor, writer and communicator; Vancouver

England

Christopher Hall; solicitor; Cirencester
Stephen Levinson; solicitor, Paisner & Co; London EC4
John Richman; clerk to the justices; Sheffield

Richard Thomas, an early member of CLARITY, has rejoined. He is now director of the Public Policy Group at Clifford Chance.

Malta

Dr David Fabri; lawyer; general manager, Malta International Business Authority; consumer protection consultant to government

Thailand

David Lyman; lawyer, Tilleke & Gibbins; Bangkok

CLARITY now has 432 members in 19 countries

CLARITY SEMINARS

on writing plain legal English

We have now given nearly 30 seminars to a selection of firms of solicitors, to law societies, and to the legal departments of government departments, local authorities, and other statutory bodies. Delegates have ranged from students to senior partners.

The seminar has slowly evolved since we began two years ago, but it remains a mixture of lecture, drafting practice and discussion. It is accredited under The Law Society's Continuing Education scheme.

The fee is £500 + expenses + VAT for a half-day, with long-distance travelling an extra.

Contact Mark Adler at the address below.

BACK NUMBERS

of *Clarity* are available at the following prices:

Issues	1-4	£1	each
	5-11	£1.50	"
	12-24	£2	"
	25-26	£3	"

Please add 20% for handling and postage
[or supply sae or DX envelope (inland)
or send international postal coupons (overseas)]

Committee

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