



A movement to simplify legal language

Patron: Lord Justice Staughton

No 31: October 1994

## Index

|  |             |
|--|-------------|
| Advertisements.....  | 14,16,23,40 |
| Articles   |             |
| <i>The international plain language movement - a business plan</i> by Judith Bennett and Chris Balmford..... |             |
|  | 37          |
| <i>Linguistics and plain language</i> by D. Kurzon.....  |             |
|  | 38          |
| <i>"Themselves" and non-sexist style</i> by D. Revell et al.....   |             |
|  | 27          |
| Back numbers.....  | 16          |
| Book reviews   |             |
| <i>How to write regulations</i> by Anita Wright.....   |             |
|  | 18          |
| <i>Lucid law</i> by Martin Cutts.....  |             |
|  | 17          |
| <i>Legal practice course guides</i> .....  |             |
|  | 19          |
| <i>Media Relations for lawyers</i> by Sue Stapely.....   |             |
|  | 17          |
| British court procedure.....   | 2           |
| Campaigns  |             |
| British Humanist Association.....  |             |
|  | 26          |
| Midland Bank.....  |             |
|  | 24          |
| Press notices.....   |             |
|  | 24          |
| RAC.....   |             |
|  | 26          |
| Conferences  |             |
| Law Society.....   |             |
|  | 24          |
| <i>Linguists and lawyers</i> (Aarhus).....   |             |
|  | 33          |
| Statute Law Society.....   |             |
|  | 40          |
| Drafting points  |             |
| <i>Drafting snippets</i> .....   |             |
|  | 22          |
| <i>Land Registry titles</i> .....  |             |
|  | 26          |
| <i>Some cases on And/or</i> .....  |             |
|  | 21          |
| <i>That's their problem</i> .....  |             |
|  | 10          |
| EU demands plain consumer contracts.....   | 8           |
| Interpretation clauses.....  | 12          |
| Legislation for plain language.....  | 3,8         |
| Legislation in plain language.....   | 2-6,10      |
| Letters.....   | 15          |
| Members and committee.....   | 41-43       |
| News.....  | 2-9         |

### Publication dates

The editor apologises for the delay in bringing out this issue, the first since March. We will try to produce the next early in the new year.

## Annual supper and meeting

Friday, 28th October 1994

6pm for 6.30

Chez Gérard, 119 Chancery Lane,  
London WC2

All members are invited to the annual supper and meeting. Guests are welcome. We normally have between 20 and 25 people, and the atmosphere is informal.

We will gather at 6 o'clock, and eat at about 6.30. Charles Harpum, a CLARITY member, will speak for 10 or 15 minutes about his work at the Law Commission on the reform of land registration, and we hope to have a second speaker. There will then be elections, and an opportunity for anyone to raise points about CLARITY's management or activities. This opportunity is rarely taken, and members may feel that serious points can be aired better in this journal than at a convivial meeting attended by only a small minority. In any event, any discussion at the supper will be reported in the next issue.

If you would like to come, please complete the form enclosed (if there is one) or contact Mark Adler at the address on the inside back page. We must give our best estimate of numbers to the restaurant three days beforehand. The cost will be something over £20 a head with drinks, and we pay on the night.

### Subscriptions

The subscription for the year beginning 1st September is now due, unless you first joined CLARITY during 1994 (in which case you are exempt) or have paid by standing order.

## Britain

### Vice-chancellor's initiative in simplifying High Court forms

In *Clarity* 28 (August 1993, page 7) we reported a major project by Sir Donald Nicholls VC and Bill Heeler, head of Chancery drafting, to translate High Court forms into plain English. On page 10 of that issue we published the draft Anton Piller injunction which Mr Heeler was circulating, and we offered some suggestions for further improvement.

The new anton piller order and mareva injunctions (both England and Wales only, and international) were issued by practice direction on 27th July 1994. They represent a substantial improvement, and we hope that the profession will use them as a style-model for other draft orders.

Mr Heeler is now working on another group of forms.

Sir Donald Nicholls' promotion to the House of Lords, whilst welcome, has taken him away from the project, but we hope that the momentum is retained.

### Lord Woolf reviews civil procedure

Meanwhile, another project has started. A committee headed by Lord Woolf is reviewing both county court and High Court practice.

Diane Burleigh, The Law Society's head of court business, has expressed the hope "for an amalgamation of (the two) procedures into one volume, 10% of the current size, and in clear, simple, plain English."

But Lord Woolf is not committing himself, and no member of CLARITY has been approached for help. Let us hope this opportunity is not lost.

### Plain costs leaflet from Law Society

The Law Society has asked CLARITY to vet the draft of its booklet about solicitors' costs.

### Martin Cutts forms Plain Language Commission

Martin Cutts, who has been writing, editing, and training as *Words at Work* since 1989, has now formed the *Plain Language Commission* as a sister organisation.

The PLC's first project was the publication of *Lucid Law*, the final version of Mr Cutts' paper on the Timeshare Act. Details of his interim report, *Unspeakable Acts*, appeared in *Clarity* 26, and *Lucid Law* is reviewed by Justin Nelson on page 17 of this issue.

The Commission has also announced the *Clear English Standard*, its own "seal of approval" for plain documents. An applicant's first document to earn the award is entitled to use it without charge, but its use on further documents costs £175 or £250, depending on length. The fee is payable on application, but 75% is refunded if the award is refused. Discounts are available for bulk applications. Several awards have already been made, and many more applications - including those from two government departments - are in hand.

### Forthcoming training package

Martin Cutts and Mark Adler are collaborating on *Lucid Legal*

*Language*, a package which will enable firms to run their own drafting seminars. The Law Society has expressed interest in publishing it.

## Canada

### Plain language policy protects Saskatchewan insurers

(reported in *Lawyers Weekly*, and quoted in *Rapport*)

Lay plaintiffs who claimed they were unaware of "small print" terms of their insurance failed in the Saskatchewan High Court. Mr Justice Kyle said:

The plaintiffs are literate adults capable of reading a contract. The insurance policies ... are written in easily understandable language.... I am not prepared to hold that insured persons are under no obligation to read the contracts which they make. There was a time when insurance policies were so poorly drawn that no-one could reasonably be expected to understand them without special training. Efforts made by insurance companies to relieve this problem have resulted in documents such as those filed in evidence in this case.

Munro v. Shackleton  
*Lawyers Weekly*  
Vol 13, No 33, Jan 14, p.11

### Improving the readability of regulations

Susan Krongold, consulted by the Director-General of the Transport of Dangerous Goods Directorate,

as reported in a paper entitled *Transportation of Dangerous Goods Regulations: Making the regulations more inviting and easier to understand*.

We hope to deal with this project in greater detail in the next issue.

### Consumer contract legislation in Quebec

(first reported in *Rapport*)

Quebec's new civil code came into force on 1st January.

Article 1436 provides:

In a consumer contract or a contract of adhesion, a clause which is illegible or incomprehensible to a reasonable person is null if the consumer or the adhering party suffers injury therefrom, unless the other party proves that an adequate explanation of the nature and scope of the clause was given to the consumer or adhering party.

## Australia

### Developments at the Centre for Plain Legal Language

We reported some changes under *News about members* in *Clarity* 30 (March 1994, page 37). The re-organisation of the Centre has now been completed, with Mark Duckworth taking over as director. It is now part of the Faculty of Law at Sydney University (which earlier shared responsibility first with the English Department and later with the Law Foundation of New South Wales). This is the last surviving plain legal language institute, and

we are glad that its future seems assured for the time being.

The Centre is now managed by a committee chaired by Professor David Weisbrot, dean of the law faculty. The other members are Professor Terry Carney, head of the law department, Dennis Murphy QC, chief parliamentary counsel for New South Wales, Terence Purcell, director of the Law Foundation, and Mark Duckworth.

The Centre lists as its main functions:

- encouraging the use of plain language by lawyers, legislators, government officials, and people preparing standard documents.
- researching the use of plain legal language, and publishing the results.
- preparing precedents and sample documents using plain legal language.
- developing training programs in the use of plain legal language.
- providing consultancy services in the use of plain legal language.
- co-operating with people and institutions in drafting and using documents and forms in plain legal language.

The Centre helps fund itself with consultancy work. Large commercial clients pay commercial rates; other clients - notably community or public organisations - normally pay a reduced fee just covering costs; the work is done without charge if there is an important public benefit and the client cannot afford to pay. Clients are asked to acknowledge the Centre's role. Recent redrafting projects include:

- The 40-page constitution of Sydney Community Television (although the new constitution has not yet been adopted).

- The form of agreement used by the Legislative Council of NSW to license functions, exhibitions, and other events at Parliament House.

- The memorandum and articles of association of PRIDE, a charity.

- The NSW Director of Public Prosecutions' standard letter to victims of violent or sexual crimes about their role as prosecution witnesses.

- The 70-page standard retail lease, and the accompanying manual, used by the owner of several large shopping centres.

- A lease for the Land Titles Office.

The Centre has also collaborated with the parliamentary counsel's office on the redesign of NSW legislation (reported separately on the next page), with the Australian Centre for Industrial Relations Research and Training, and with the Supreme Court of NSW.

The Centre has conducted many training courses for lawyers, and has developed a range of seminars. It brought Professor Joseph Kimble from America for a lecture tour at the end of 1993 (reported in *Clarity* 30, page 36). The law faculty's own students have the benefit of a course on *Legal drafting and interpretation*.

Mark Duckworth is researching the costs and benefits of plain legal language in a joint project with the Centre for Microeconomic Policy Analysis. A discussion paper, *The costs of obscurity*, was produced in June. We hope to report this in greater detail in our next issue.

The Centre keeps a fairly high profile. In June it published the first issue of its own newsletter. It has had a busy speaking programme at conferences around Australia and abroad, and was very well represented in Aarhus. It promotes plain language in the media, and communicates with other plain language

practitioners and organisations, maintaining over 1300 names on its worldwide mailing list. In particular, the Centre itself and several of those involved in it are members of CLARITY.

**Improved design for New South Wales legislation**

In June New South Wales attorney general John Hannaford launched a new design for legislation. This was published with a discussion paper *Review and redesign of NSW legislation*, and has been a joint project between NSW parliamentary counsel's office and the University of Sydney's Centre for Plain Legal Language. It is the latest stage in a series of improvements introduced since the PCO adopted a plain language policy in 1986.

A survey had revealed that users of legislation find their way only with difficulty around legislation in the existing format.

The proposed new design has been tested, and seems to ease the problem. It features:

- Running heads showing part name and number, and the numbers of the division and section.
- A distinctive typeface for headings, with sizes and weights indicating heading levels.
- Improved positioning of section and subsection numbers.
- More white space between sections, subsections, and paragraphs, with each new part starting on a new page.
- A reduction in the use of capital letters, with headings using lower case text.
- Headings flushed left.

- Body text in Times and headings in Helvetica (as in this journal).
- The absence of superfluous colons, dashes, and semi-colons.

A page from the sample bill published with the report appears opposite.

The central aim of the project so far has been to redesign principal Bills and Acts. More work is needed on the design of amendments to blend with the existing text. Styles having changed over the years, this is not a simple problem, particularly as some Acts have been amended periodically in the style current at the time.

The promoters hope that the new design will soon be applied to all fresh legislation, and that it can be applied to the entire body of legislation as it is reprinted over several years.

The discussion paper has been widely circulated, and suggestions for improvement are invited. Queensland's parliamentary counsel, in particular, is interested in collaborating.

Meanwhile, it is interesting to compare this design with those of the New Zealand Law Commission (reported in *Clarity* 30 [March 1994, pages 16-23] and on page 8 of this issue) and of Martin Cutts' Clearer Timeshare Act. Both are acknowledged in the report's bibliography.

**New South Wales Law Society forms plain language committee**

**Formation of the committee**

Michèle Asprey reports from

Australia that she has convened and is chairing a plain language committee of the New South Wales Law Society. Its first meeting was in February, and they continue monthly. The committee members are 10 solicitors who are committed to helping other NSW solicitors adopt plain language.

The project has the support of the Law Society, which wants to encourage its members to use plain language. The Executive Council in particular was extremely positive when Ms Asprey approached them with the idea.

The committee is already involved in a number of projects. For example:

**Survey of the profession's attitude to plain language**

In August the committee organised an insert (copied on p. 7) in the Society's *Journal*. It was a one-page survey form with a series of questions about attitudes to plain language drafting. The *Journal* circulates to all practising solicitors in NSW, to some barristers and retired solicitors, and to a few subscribers outside NSW - about 12,500 people in all.

In the next few weeks the committee will collate the responses and will write about them in future issues of the *Journal*, and in *Clarity*.

**Other Journal articles**

The committee is planning a series of articles on various aspects of plain drafting. For example, they want to put under the microscope some of the more common or "boilerplate" clauses found in legal documents.

**Powers of attorney**

The committee has almost finished drafting plain enduring power of attorney. There are actually two forms: one suitable for

**Clause 1      Legislation Redesign Bill 1994****Part 1          Preliminary**


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The Legislature of New South Wales enacts

**Part 1      Preliminary**

**Introductory note.** This Act provides for the establishment of a Commission to make recommendations and reports about the design of legislation. Its functions are set out in section 11, which includes examples of the matters it may consider. The Act also amends Acts such as the Reprints Act 1972 so that recommendations of the Commission can be given effect to when Acts are reprinted. 5

**1      Short title**

This Act may be cited as the Legislation Redesign Act 1994. 10

**2      Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3      Definitions**

(1) Expressions used in this Act (or in any particular provision of this Act) which are defined in the dictionary at the end of this Act have the meanings set out in the dictionary. 15

(2) In this Act

*Chairperson* means the Chairperson of the Commission.

*Commission* means the Legislation Redesign Commission of New South Wales established by this Act. 20

*design* of legislation includes

(a) the appearance of any printing, and

(b) the use and appearance of chapter, part, division, section and other headings, and 25

(c) any other matter relating to the layout or appearance of legislation.

**Note.** Expressions used in this Act (or in a particular provision of this Act) which are defined in the Interpretation Act 1987 have the meanings set out in that Act. 30

use under current NSW law, and one that could be used if the law were uniform throughout Australia.

### Lexpo 94

The committee will put on a breakfast forum, *Plain Language in Practice*, at the Law Society's Legal Expo - "Lexpo" - in October. The idea is to give solicitors and other interested people a chance to express their views about plain language and the law.

### Ethics statement

The committee has recommended to the Law Society's Council that it amend the Society's Ethics Statement to include "a duty to communicate with the client clearly and concisely".

### Young lawyers seminar

Michèle Asprey spoke - at an August lunchtime seminar run by NSW Young Lawyers - about drafting plain documents.

### Corporations law simplification program proceeds apace

Dr Robert Eagleson has sent more information about the program, reported in *Clarity* 29 (December 1993, page 3).

The "Plan of Action", the first of a series of leaflets published by the attorney-general's committee since

the end of last year, is set out below.

### Corporations law: progress

Since that plan was published the Task Force has published:

- Small business: a proposal to simplify proprietary companies (March 1994);
- Share buy-backs: a proposal for simplification (March);
- Annual returns and Financial reporting to shareholders: proposals for simplification (May).
- First Corporate Law Simplification Bill: exposure draft (July).

### Corporations law: plan of action

#### Objectives

The central objective of the program is to simplify the Corporations Law and make it capable of being understood so that users can act on their rights and carry out their responsibilities.

#### Immediate priorities

To provide the community with early benefits and because of the size of the enterprise, the Task Force has identified segments of the current law to tackle first. The selection of these priorities has been influenced by the views put to government by sections of the business community when the program was announced initially. The first plan of action encompasses:

- Corporate structure for small business
- Share buy-backs
- Share capital rules
- Annual reporting provisions

- Register-keeping requirements
- Company names
- Company meetings

#### Implementation

The list of immediate priorities establishes a working plan only. It is flexible and can be adjusted and rearranged to respond to emerging and urgent needs. The goal is to produce a steady stream of results which achieve practical benefits in themselves and which can fit together eventually into a coherent whole.

The plan will be implemented by the Task Force, who will be working closely with a private sector consultative group, representative of the wide range of users of the law.

The Task Force will work very much as a team to make the best use of its members' different skills and experience. The Task Force comprises Ms Claire Grose, a partner of Freehill Hollingdale & Page, who is an experienced corporate lawyer, Dr Robert Eagleson,

a consultant to Mallesons Stephen Jaques, who is a plain English expert, Mr Vince Robinson, a senior drafter from the Office of Parliamentary Counsel and Mr Ian Govey, Principal Adviser in the Business Law Division of the Attorney-General's Department.

#### Directions of activities

The plan has three interlocking components:

- simplification of content
- clarification of drafting
- comprehensive consultation

#### Simplification

Action to simplify the content will concentrate on those sections of the law where policies:

- are unclear or uncertain or no longer relevant
- do not cater for the needs of small business
- place undue regulatory burdens on business
- thwart the efficient operation

»» Continued on page 8

Law Society of New South Wales

**Plain Language Committee**

**Plain Language Survey 1994**

The Plain Language Committee is a newly formed committee of the Law Society of New South Wales.

We aim to have lawyers write and speak in plain language.

To achieve this we will:

1. Promote clear, precise and effective communication between lawyers and the people who use the documents they draft.
2. Promote a better understanding of plain language.
3. Help lawyers understand the principles of plain language so they can apply the techniques to their drafting.
4. Help other Law Society committees target and rewrite standard documents and forms in plain language.
5. Be a contact and referral point for lawyers on plain language.
6. Be a contact and referral point for other organisations wishing to simplify legal documents, eg. the courts, industry bodies, other professional associations, government departments.
7. Encourage language reform initiatives from both within and outside the profession.
8. Publicise plain language developments to lawyers and others.

On the back of this sheet [opposite] there is a series of questions about your attitude to plain language drafting. The Plain Language Committee would like you to complete the survey and return it to us c/o the Law Society.

We want to know what you think about plain language in legal drafting, and why. If you want to expand on your answers to the survey questions, or make other comments, please do.

We are interested in your attitudes and your ideas. The way you respond will influence the things we do as a committee. We will publish the results in a future issue of the Law Society Journal.

**Plain Language Survey 1994**

1. Are you in favour of plain language in legal drafting?

YES NO UNDECIDED

2. Do you think it is possible to draft legal documents in plain language?

YES NO

3. Do you think it is appropriate to draft legal documents in plain language?

YES NO

4. Do you think you understand what is involved in plain language drafting?

YES NO

5. Do you draft legal documents in plain language?

YES NO

6. Do you draft letters and other work-related material in plain language?

YES NO

7. If you had a choice would you draft in plain language?

YES NO

8. Are you opposed to legal drafting in plain language?

YES NO

Please give reasons .....

9. Have you had any formal training in plain language drafting?

Before admission

YES NO

After admission

YES NO

10. Would you like to learn more about plain language drafting?

YES NO

Why? .....

Any further comments: .....

11. Are you a principal or partner, employee, corporation solicitor, government solicitor, non-practising solicitor? *Please circle.*

Please return your completed response to:

»» Continued from page 6

of the law

- do not achieve their objectives on technical grounds

The objective is to streamline the law, procure consistency and coherence, strip away unnecessary complexities, maintain effective protection for investors, and bring significant cost benefits both to business in complying with the law and to relevant authorities in administering it.

### Clarification

The central objective of the simplification program is a law capable of being understood by its users. Vital to this is a reduction in the complicatedness of its language, a reconsideration with users of the current version of the Corporations Law, and a reshaping of drafting principles and practices.

Redrafting will be enlightened by the principles of plain English with a conscious thrust to uncover fresh applications to legislation and to develop approaches which will enhance the whole process of drafting to produce legislation in tune with the community's need and aspiration for clear law.

Drafting practice will focus on:

- audience
  - the presentation of material so that it meets the needs of a variety of types of users and is in a form that enables them to put it to use immediately; the concentration where applicable on what to do and how to do it rather than the construction of abstract concepts; the introduction of aids to ease the comprehension of abstract or new concepts, such as examples, graphs and tables.
- purpose
  - the inclusion of purpose statements at the beginning of separate divisions or

parts to enable users to grasp their objectives and to make explicit the direction being taken.

- organisation
  - the coherent arrangement of the information so that it is easy to follow; explicit revelation of the structure across the whole law and in its various segments; the clear signalling of main provisions and a balanced handling of ancillary material so that it neither swamps the major concepts nor is concealed.
- language
  - the control of grammatical constructions and words to achieve ease of comprehension and efficiency in reading; the choice of terms to match the practice and vocabulary of the main users of different sections; rigorous restriction on resorting to definitions.
- layout
  - the introduction of design features to reveal the hierarchies in the structure of the information, to provide readers with a ready identification of the broad area in which a section they are consulting is located, and to make it easy to find material.

### Consultation

Because the Corporations Law is complex and wide ranging, the program calls for a measured approach which embraces extensive consultation. The involvement of individuals from the private sector in the Task Force and the appointment of a private sector consultative group are enlightened components of the desired consultation process. But a far wider activity is intended so that the Task Force can have the vital insights into the daily ramifications of the law from

those most closely associated with its operation and administration.

Testing straddles both the drafting and the consultation process. In a sense it is a very active form of consultation. It provides a different opportunity for contact with users and offers them a way to comment penetratingly on how effective proposed changes would be for them.

The drafting process will incorporate qualitative testing at every stage from the planning to the final draft. It will be used to reveal the particular emphasis and perceptions of users and to influence the scope and organisation of the material. Testing will also expose whether the drafting strategies adopted achieve a comprehensible text for the primary audience of a particular segment and in what ways changes and refinements need to be made.

Testing will range across all users of the law in both the private and public sectors. In any one area of the law it will concentrate on those most likely to use the law and be affected by it. It will cover not only comprehension but also practical matters, such as how quickly users can find information.

The goal is to produce a law that is readily intelligible to its chief users, that is accessible and that sets a new effective direction for the drafting of legislation, not just in the choice of language and layout principles, but equally in the blending of private as well as public experts in policy and drafting in the process.

### Community participation

The Task Force recognises the critical necessity for contributions from the community. It would welcome comments on any aspect of the simplification program and on this plan of action. It would also be delighted to hear from anyone who would be prepared to take part in its testing program.



## The folly of euphemism

According to *The Daily Telegraph*, the Labour Party passed a resolution last week "to reintegrate special needs children into mainstream education". On the face of it, this means that children who need special treatment won't get it. The reader is left to guess that this is not what was intended.

I leave aside the dubious syntax involved in treating "special needs" as an adjective. I don't like it, but suspect that is just my conservative pedantry.

We ask ourselves, "What are special needs?" Vegetarian meals? Instruction in their native literature for foreign pupils? Advanced mathematics for a prodigy?

We should not use vague words to avoid the negative content of precise ones. It is pointless because the vague words either do not carry the writer's meaning (if the reader does not understand the code) or carry the negative meaning anyway (if the reader does understand).

Every so often the delicate word-smiths concoct a new euphemism. We guess, or are taught, its real meaning. But once the new word (or more often, the new clumsy phrase) is generally understood, it has outlived its purpose, and is replaced in its turn. So we have artificially fast obsolescence. We replaced "backward children" with "educationally subnormal", moved on to "ESN", and through "children with learning difficulties". This last is more precise than "special needs children," but does it include bright children too bored to concentrate, and intelligent dyslexics?

There is no point in telling your readers that someone has difficulties requiring special treatment if you do not say what the difficulties are or what treatment you recommend.

## European Community demands plain consumer contracts from January

The directive on unfair terms in consumer contracts (93/13/EEC) requires legislation by all member states bringing its terms into effect by 1st January 1995.

### The effect of the new law

The directive calls on member states to provide that:

- Consumers are not bound by unfair contractual terms which have been imposed on them; and
- Written consumer contracts must use "plain, intelligible language".

"Consumers" are defined as "natural people" (as opposed to corporations) not acting in the course of their business. But they are only protected when dealing with a supplier of goods or services who is acting in the course of business.

In England, the Department of Trade and Industry is on its second round of consultation, and hopes that the new regulations will be made - by statutory instrument under the European Communities Act 1972 - in time to come into force on New Year's Day.

Unfortunately, neither the directive nor the draft regulations provide any significant penalty for non-compliance. A spokesman for the DTI said "The problem is to define the standard: is it objective or subjective?" The nearest thing to a penalty in the first draft takes its wording from the directive:

Where there is doubt about the meaning of a term, the interpretation most favourable to the consumer shall prevail.

But that just restates the old *contra proferentem* rule.

CLARITY has drawn the Department's attention to the American experience of plain language legislation, and as we go to press the committee is drafting a set of recommendations.

Exempted from the regulations will be:

- Contracts
  - of employment.
  - relating to succession rights.
  - relating to rights under family law.
  - relating to the incorporation and organisation of partnerships.
- Terms
  - in contracts of insurance which define and circumscribe the insured risk and the insurer's liability.
  - which reflect
    - mandatory statutory or regulatory provisions of the UK.
    - the provisions or principles of international conventions to which the member states or the Community are party.

But we understand that the SIB - the regulatory body - is introducing regulations stipulating plain English in pension and life assurance contracts, and forbidding hidden clauses and small print.

## Report on the format of legislation

A note from Sir Kenneth Keith  
President of the New Zealand Law Commission

In my letter of 14 February (*Clarity* 30 [March 1994], p.16) I mentioned that the format we proposed in our recent report (R27) was used in another report released last September by the Working Party on the Reorganisation of the Income Tax Act 1976. It occurs to me that you might like to have some details of the latter for a future issue of CLARITY, since one of the principal objectives of the Working Party was to make the Act more user-friendly.

The report proposes a structure within which the statute can be progressively rewritten. It is essentially a resequencing exercise, the first phase in a lengthy process which is expected to take up to five years to complete. It will move next to the rewrite and enactment of the core provisions of the Act, and finally to the review and rewrite of the remaining legislation.

The key to the process of reorganisation is the reduction of the legislation to 15 "robust and durable" parts, coupled with the adoption of a new alphanumeric referencing system. This will allow new subparts and provisions to be inserted over time (as they surely will be) without resulting in complex section identifiers such as "394ZZZA", for instance.

The new system does not number the whole Act consecutively from 1; instead each subpart will begin with the number 1. Parts and subparts will be lettered in separate series, but each beginning with A. Thus a reference to each section of the Act will begin with an alphabetical reference,

first to the part, and secondly to the subpart, followed by a number. So a reference to a specific section will take the form "CB 3". Paragraphing and subparagraphing will continue as at present.

Apart from resequencing and the adoption of the new referencing system, the Working Party has also recommended a number of drafting changes. These include

- bringing together scattered provisions concerning certain topics;
- collecting all definitions used in the Act in a dictionary at the back of the legislation;
- omitting redundant provisions which no longer have any practical application;
- omitting or replacing redundant and archaic terms, as well as redundant references;
- introducing gender-neutral language.

The Report has received a good measure of support within both government and professional circles, and the resulting Bill is now working its way through the legislative process, being intended to come into force (along with the core provisions) on 1 April 1995.

*The editor regrets that the last three words of Sir Kenneth's article at the top of p.23 in the last issue were lost by electronic whimsy. Although they appeared on the computer screen they were omitted from the print-out. The note in parentheses should have read "(see, for example, New South Wales legislation)".*

## "That's their problem"

I was recently discussing with an experienced solicitor - who takes pains to get his documents right - how to advise clients on the choice between joint tenancy and tenancy in common. He told me how he explained it, and I suggested - tactfully - that many clients wouldn't understand. He replied, "That's their problem".

I found this attitude shocking, but it seems to be common. It follows from the "objective" view of our work. In the same way as a doctor might satisfy a patient's requirements by setting a broken bone, and an architect might fill a brief by designing a building, a lawyer does his or her duty by conveying land, obtaining a judgment, or preparing a will. But giving advice is different; it is not the empty, pointless ritual of uttering words which though "correct" (capable of giving accurate information to another lawyer) are not understood by the client. Our job - and that of other professional advisors - is not to beam ideas into the unknown but to lodge them in our clients' minds.

No solicitor would abandon a negligence claim against a surgeon who "told" a patient in a foreign language that the proposed operation was unnecessary and likely to be fatal.

Revised  
**Code for Crown  
Prosecutors**

The Crown Prosecution Service of England and Wales has revised its inhouse *Code for Crown Prosecutors*.

Launching the new code on 21st June, Barbara Mills QC, the Director of Public Prosecutions, said that the policy had not changed but was more clearly expressed. She hoped that this would lead to greater consistency in deciding who should be prosecuted.

The code is given to police officers as well as to CPS staff.

The new version is a great improvement, as can be seen from the following "before and after" extracts.

The old ..

**The Evidential Sufficiency  
Criteria**

4

When considering the institution or continuation of criminal proceedings the first question to be determined is the sufficiency of the evidence. A prosecution should not be started or continued unless the Crown Prosecutor is satisfied that there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by an identifiable person. The Crown Prosecution Service does not support the proposition that bare prima facie case is enough, but rather will apply the test of whether there is a realistic prospect of a conviction. When reaching this decision, the Crown Prosecutor as a first step will wish to satisfy himself that there is no realistic expectation of an ordered acquittal or a successful submission in the Magistrates' Court of no case to answer. He should also have regard to any lines of defence which are plainly open to, or have been indicated by, the accused and any factors which in his view affect the likelihood or otherwise of a conviction.

.. and new

**5 THE EVIDENTIAL TEST**

- 5.1** Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be and how that is likely to affect the prosecution case.
- 5.2** A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.
- 5.3** When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

**Can the evidence be used in court?**

- a** Is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of a conviction?

**Is the evidence reliable?**

- b** Is it likely that a confession is unreliable, for example, because of the defendant's age, intelligence or lack of understanding?
- c** Is the witness's background likely to weaken the prosecution case? For example, does the witness have any dubious motive that may affect his or her attitude to the case or a relevant previous conviction? ...

Richard Castle and Justin Nelson  
offer for discussion draft

## CLARITY Interpretation Clauses 1994

It is proposed that we offer the final version to  
the profession as a set of standard terms for  
incorporation into contracts

### Introduction

by Alison Plouviez

A string of interpretation clauses appears at the end of many legal documents. This conventional arrangement is a desirable practice and a time-saving essential for busy lawyers, so CLARITY should promote its own, standard, plain English ones, shouldn't it? Well, maybe. What about the other side of the argument?

Plain English demands something different from conventional legal practice. Isn't it argued that one of the biggest problems with legalese and legalese-think is that they generate numerous, apparently endless, dreary (and unpunctuated) precedents designed to cover every eventuality, most of which will be irrelevant to the parties concerned, and which lawyers use over and over again, just in case, without considering what is really appropriate to their clients' needs or the purpose of the document? Should we encourage lawyers to use standard clauses? Isn't there a risk that standard clauses will not be read through from one year's end to the next? Shouldn't we encourage drafters to think out for themselves what they're saying - every time?

Well, maybe. As usual, the answer lies somewhere between drafting everything afresh in spark-

ling prose and carrying on regardless. There's no point in reinventing the wheel, after all, and a keynote of professionalism and experience is having the technicalities all lined up in your arsenal ready for use.

But there are many traps in having standard clauses attached to every document. The first and most obvious one is bulk. Standard clauses can run to dozens of pages. A standard definition of "the Planning Acts" is unlikely to be relevant to an employment contract, so why put it in? This objection can be quite easily countered by using modular clauses, so that you can pick and choose which ones to include - so that you don't include the definition of "landlord" in a yacht hire contract, but you do include things that might be useful such as "working day".

A much more serious objection is that interpretation clauses can be misleading. Take the common, "singular includes the plural". If you attach this to a document referring to trustees' powers, you may go wrong - one trustee's powers are not always the same as those of two. You have to be a lawyer to know when the singular may include the plural and when it may not - in other words, the document is not clear on its face, the interpretation clauses confuse the issue, and no reference is made to where the facts of the matter can actually be found.

As to "the masculine includes the feminine", what effect does that have if your document includes, say, a reference to use of gentlemen's and ladies' lavatories or single-sex education facilities? It is not enough simply to answer objections like these by saying, "Well, it's obvious what I mean". Lawyers, and plain English supporters of all people, should know the oceans of ink and the bottomless pits of cash which are expended yearly on litigation, demonstrating that nothing is obvious at all.

My own view is that it is useful to have on the word processor a range of clauses that cover factual matters like what a working day is. (Even this is difficult though - what in reality if not in law is the normal course of post when the Post Office's targets are anything other than to deliver 100% of post the next day? Isn't this something which should be spelt out - after all, it determines who bears the risk.) Anything substantive, or partially so, particularly when addressed to non-lawyers, like rent having to be paid without deductions, should, I believe, go in the body of the text.

In fact, the more you think about it, the more difficult it gets: few documents are addressed exclusively to lawyers. Most are prepared for ordinary clients, and many deal with the rights and obligations of people with unequal bargaining power, such as landlords and residential tenants. Is it really fair to include something which can have so crucial an effect as Service of Documents (a) tucked away in an interpretation clause at the back of a document and (b) without the document itself clearly spelling out what most people would regard as pretty odd - that you will be regarded as having received something, and knowing what's in it, even though you didn't get it, provided the originator posted it according to the protocol set out?

Are the considerations which

arise for documents such as leases, which may come to apply to circumstances other than those of the original parties (after assignment, say) different from those which arise for documents which are usually confined to the original, or identifiable, parties, such as wills or employment contracts? What is different about the way standard documents like insurance policies should be handled from the way a family settlement should be written?

What do you think? The committee would like members' views. Two members have produced some draft clauses for comment, which appear below. Please send your comments to the editor and a selection will be included in the next edition of the journal.

## The draft Interpretation Clauses

### 1. Introduction

- 1.1 An instrument which incorporates these clauses must be interpreted in accordance with them, except so far as the instrument indicates otherwise.
- 1.2 In any conflict between the provisions of the instrument and these clauses, the provisions of the instrument prevail.
- 1.3 Each clause incorporates the provisions of all the others.

### 2 Gender and number

- 2.1 Words of one gender include all genders.
- 2.2 Singular words include the plural and vice versa.

### 3 Persons

"Person" includes a body of persons, whether corporate or incorporate.

### 4 Office holders

A reference to an office holder is a reference to the holder of that office (or his or her deputy) at the relevant time.

### 5 Statutes

- 5.1 If an Act is repealed and re-enacted (with or without amendments), references to a repealed provision are references to the re-enacted provision.
- 5.2 References to an Act (or a section or other portion of an Act by number or letter) are references to the amended version.
- 5.3 General references to an Act include all derivative regulations or orders.

### 6 Planning

- 6.1 "The Planning Acts" means -
- the Town and Country Planning Act 1990.
  - the Planning (Listed Buildings and Conservation Areas) Act 1990.
  - the Planning (Hazardous Substances) Act 1990.
  - the Planning and Compensation Act 1991.
- 6.2 "Development" has the meaning given to it by the Town and Country Planning Act 1990.
- 6.3 "Planning Control" has the meaning given to it by the Town and Country Planning Act 1990.

### 7 Consents

- 7.1 Any consent, approval or authorisation must be in writing and signed by or on behalf of the person giving it.
- 7.2 Any provision that a consent, approval or authorisation must not be unreasonably withheld also means that it must not be unreasonably delayed.

### 8 Rights and obligations

- 8.1 As far as the law allows, rights and obligations pass to successors in title.
- 8.2 All rights and obligations are cumulative.

8.3 Rights granted are not exclusive to the grantee.

8.4 An obligation not to do an act includes an obligation not to allow that act to be done by another person.

8.5 If an obligation is owed to or by more than one person, that obligation is owed to or by those persons separately, jointly or in any combination.

### 9 Headings

Headings are for guidance only, not interpretation.

### 10 Plans

References to plans are to plans attached to the document.

### 11 Days, dates, etc

11.1 References to a working day exclude Saturdays, Sundays, Bank holidays and the period beginning on Christmas Eve and ending on New Year's Day.

11.2 A working day starts at 9.00am and ends at 5.00pm.

11.3 "Today" means the date of the document.

11.4 "Month" means calendar month.

### 12 General and particular words

General words are not limited because they are preceded or followed by particular words in the same category or covering the same topic.

### 13 Pipes, etc

13.1 References to conducting media or conduits include all pipes, wires, cables, drains, channels, sewers, flues, ducts, water courses, gutters, culverts, soakaways, fixings, cowls, covers, and other ancillary apparatus.

13.2 References to conducting media or conduits being "in" or "on" property include conducting media or conduits

in, on, under, over or through that property.

#### 14 Banks and interest

- 14.1 "Base rate" means the base lending rate of Barclays Bank plc (or, if that rate is abolished, the rate of interest most comparable with it).
- 14.2 "The interest rate" is 4% above base rate from time to time.

#### 15 Service of Documents

##### 15.1 Place of service

A document may be served on the recipient at -

- (a) his last known home or business address; or
- (b) any other address notified by him as an address for service; or
- (c) the registered office of a recipient company, if in England and Wales; or
- (d) property of which the recipient is a tenant, if served in that capacity; or
- (e) property of which the recipient is a mortgagor, if served in that capacity.

##### 15.2 Method of service

A document may be served -

- (a) by post; or
- (b) by fax; or
- (c) by Document Exchange; or
- (d) by personal delivery

##### 15.3 Time of service

A document is served -

- (a) if served by post: when the letter would be delivered in the ordinary course of post;
- (b) if served by fax: when transmitted;
- (c) if served by Document Exchange: the next working day after it was committed to the system;
- (d) if served by personal delivery: when delivered.

#### 16 Leases

- 16.1 "Lease" includes an underlease and an agreement for a lease or underlease or for a tenancy or sub-tenancy.
- 16.2 "Landlord" means the person who, at the relevant time, is entitled to the reversion on the lease.
- 16.3 "Tenant" means the person who, at the relevant time, holds the lease.

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16.4 The demised property includes the property's -

- ceilings;
- internal wall coverings and decoration;
- floorboards;
- internal non-load-bearing walls;
- doors and door frames;
- windows, window frames and window glass (but not window cills);
- shop fronts; and
- conducting media which serve only the property but excludes all other parts of the building.

16.5 Rent must be paid quarterly in advance on the usual quarter days without any deduction or set off.

16.6 An obligation to maintain property is an obligation to keep it clean, tidy and decorated, in each case to the same standard as at the date of the lease.

16.7 References to the expiry of the term (or to the last year of the term) are to the end of that term (or its last year) however the lease comes to an end.

16.8 "The 1954 Act" means Part 2 of the Landlord and Tenant Act 1954.

## Letters

### He or she

Phil Knight

The discussion (*Clarity* 30 [March 1994, pages 14-16]) of *they*, *them*, *their*, etc, as a form of singular neutral pronoun reminds me of a conversation with Bryan Garner on the subject of gender-neutral writing. Apparently disagreeing with Alan King, I allowed that *they* etc seem to be commonly and acceptably used in oral communication, especially when the subject is anonymous. Thus, hearing an unexpected knock at the door, many people are apt to say "Someone is at the door; I wonder what they want." I have never heard anyone - regardless of the degree to which they are inclined to take "sex equality" - say "Someone is at the door; I wonder what he or she wants." People just don't speak that way.

Bryan, while being careful to avoid endorsing my view entirely, expounded his distaste for the artificiality of *he or she*, *his or her*, *s/he*, or the simply awful *s/he/it* - "a word form which", he said, "cannot be pronounced by any speakers of the English language, with the possible exception of those who frequent certain East Texas bars."

### Respective

Andrew Melling

Professor Kimble tells us that "The respective Parliamentary Counsel of Queensland and New South Wales have publicly endorsed a plain English style of drafting, and it shows in their work".

The word "respective" is used here by a prominent exponent of plain language in the leading plain language journal so it must be right. Am I then out of line in being irritated by such frequent use of the word "respective" most often in ways which seem inappropriate?

I have always understood the correct use of the word "respective" to be illustrated by: "A and B sat next to C and D respectively", meaning that A sat next to C and B sat next to D. It is commonly used in solicitors' letters in the expression "our respective clients" to mean "our client Mr Smith and your client Mr Jones" rather than "our clients Mr and Mrs Smith" which the omission of the words might suggest. There must be a better way of making the distinction.

Professor Kimble seems to use the word to emphasise that the Parliamentary Counsel of Queensland is (are?) distinct from the Parliamentary Counsel of New South Wales but I wonder if the reader would be led to think otherwise if the word were simply omitted. If so, would not a simpler, more elegant and more correct expression be "The Parliamentary Counsel of Queensland and of New South Wales"?

Is the use of the word "respective" in this and similar contexts an example of the stubborn infection of legalese?

Or am I entirely out of line?

*Professor Kimble replies:*

I have to plead not guilty. My letter to *Clarity* did not include the word *respective*.

I don't use *respectively*. You are right that one conceivable use is "A and B sat next to C and D respectively." Even then, I would say, "A sat next to C, and B sat next to D."

*I am the culprit. Professor Kimble's manuscript read "The Parliamentary Counsel of Queensland and the Parliamentary Counsel of*

*New South Wales". I trimmed it without realising the change would be controversial, but after reading the letters from Melling and Kimble, and Fowler (in the vain hope of justifying myself), I am chastened. My thanks to Melling and Kimble for drawing my attention to a fault of which I was not aware. - Ed.*

### American Institutes for Research

Anita D. Wright

To update you on our work on IRS form 2119 (*Clarity* 30 [March 1994] p.24), I recently saw the new form and was pleased to see that the IRS had made all the changes to line items and instructions that we recommended. Although the design unfortunately remains unchanged, the three line items that caused the most errors have been either revised or eliminated, and the instructions have been expanded to include two worksheets and definitions. The form is only a small part of the IRS tax package, but the exercise seems to have helped IRS see the value of usability testing; we're talking to them now about testing more of their forms.

### "Shall" and BSI

Dr John Kirkman

The British Standards Institute has a guide to the preparation of technical specifications (BS 7373: 1991). In its discussion of language, it recommends that writers should use *shall* when a requirement to comply with the contents of a clause is intended, and continues: "'must' and 'will' should be avoided. The use of these terms is confined to regulatory/statutory requirements."

Are you or any of your readers

aware of any authority by which *must* is "confined to regulatory/statutory requirements"? In the world of technical documentation in which I work, *must* is the most reliable term for expressing an obligation or requirement. Many writers and readers of technical specifications are uncertain about the uses of *shall* and *will* to express future tense and obligation. Accordingly, though *shall* is unquestionably correct for requirements, *must* minimises the likelihood of mis-writing or mis-reading. I can see no objection to the use of *must*. Can you?

**To be or not to be?**

A prize for explaining these paragraphs of schedule 3 to the Planning (Consequential Provisions) Act 1990, sent in by Adrian Taylor.

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3. Without prejudice to the generality of paragraphs 1 and 2, notwithstanding the repeal by this Act of Schedule 24 to the 1971 Act, the provisions of that Schedule shall continue to have effect,

in so far as they are not specifically reproduced in this Schedule and remain capable of having effect, with any reference to those provisions to any provision of the repealed enactments which is reproduced in the consolidating Acts being taken, so far as the context permits, as including a reference to the corresponding provisions of those Acts.

4. The repeal by this Act of an enactment which has effect as respects any provision of the repealed enactments (being a provision which is not reproduced in the consolidating Acts but continues in effect by virtue of this Schedule or the Interpretation Act 1978) does not affect its operation as respects that provision.

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## Book reviews

### Lucid law

Martin Cutts

Plain Language Commission  
Stockport, England, 1994  
63 pp A4 paperback  
£10.00

Martin Cutts is a writer and typographer who is director of "Words at Work" and of the Plain Language Commission. He has an impressive CV, including co-founding the Plain English Campaign, which he left in 1988.

This publication is the sequel to *Unspeakable Acts?* reviewed in *Clarity* 26 (December 1992) at page 21. It is the latest stage of his attempt to prove that English statute law is not as clear as it might be. In the early 1980s Martin Cutts met the first parliamentary counsel to discuss the prospects for plain language in Acts of Parliament; he suggested that statutes could be more plainly drafted than they were. Then and ever since he was told that Acts of Parliament were drafted as clearly as possible, given the constraints on resources (both time and money) and the need to be clear and comprehensive. The immediate genesis of Martin Cutts' campaign was a meeting in 1987 with the then first parliamentary counsel, who set the challenge that Mr Cutts has tried to meet: if Mr Cutts thought he could do any better than parliamentary counsel in drafting an Act clearly, he should go ahead and re-draft an existing Act.

Taking that challenge at face value, Mr Cutts selected the Time-

share Act 1992 as a suitable Act for re-drafting. *Lucid Law* is a report on his progress to date; it explains why and how he feels Acts of Parliament can be more clearly drafted, why he thinks they should be more clearly drafted and why he selected this Act as the specimen.

The report shows how a significantly clearer Act is possible; there is no doubt at all in my mind that the version which Martin Cutts has produced is infinitely preferable to the original in many ways. The whole document is far more "user friendly" than the original in terms of language used, use of language, typography, and layout. The clearer version is almost a pleasure to read, while the original version is the chore that (in my experience) all Acts of Parliament tend to be.

The clearer version has been tested on lawyers and nonlawyers alike, with significantly better results than the original version. Despite this, it has received a lukewarm response from the parliamentary drafters, who have offered various justifications for their work not being as clear as it might be. While some of those justifications are perfectly valid in the context of the available resources, they do not detract from the success of the project that Martin Cutts has undertaken. The project proves that, given the will, the technical ability and the resources, Acts of Parliament can be much clearer than they tend to be under the present system. It also challenges the legislature in general, and parliamentary drafters in particular, to clean up their Acts.

The final comments which Martin Cutts received on his Clearer Time Share Act must have been disheartening, but the foreword (by the Master of the Rolls) to this report includes three tests of success for his endeavour:

1. Is the Clearer Timeshare Act clearer?
2. Is it ambiguous or uncertain?

3. Does it leave out anything of importance from the original?

In my view, the answers to these questions are "Yes", "No", and "No" respectively. The question "Who has won the original challenge?" must be decided in favour of Mr Cutts.

This report shows that, with the time, energy, and inclination, statute law can be dramatically clarified. The next question is whether politically there is the will to devote the resources to ensuring that future statutes are as clear as they can be.

Justin Nelson

### Media relations for lawyers

Sue Stapely

The Law Society, London 1994  
£25; 225 pp paperback

I wish I had had this book at the beginning of my term as chairman, instead of at the end. It leaves me with a feeling of missed opportunity.

Some of the advice seems obvious, but that is inevitable if a "how-to" manual is to be comprehensive: different things are obvious to different people. In any case, we sometimes need to be reminded of the obvious. (At present I need to be reminded to mow the lawn, but I am keeping my head down.)

Don't let this put you off. There is much useful advice on dealing with journalists. "Print media", radio, and television all have their own detailed sections. Another chapter gives a platform to ten people with press experience; some are broadcasters and journalists themselves (for example, Sir Robin Day and Marcel Berlins); others are lawyers

whose work has brought them into contact with the press (including the solicitor who represented the Guildford Four and the one who represented the first child to "divorce" her parents under the Children Act). There is a chapter on the sub judice rule, and The Solicitors' Publicity Code is set out in an appendix. Other appendices include "Support available from the Law Society" and "Useful names and addresses" (with telephone and fax numbers).

Readers are reminded from time to time to avoid the traditional pomposity of lawyers and to speak so they are understood. Ms Stapely stresses the point that lawyers who talk gobbledegook to the press waste the opportunity to put their case across, and are unlikely to be approached again.

The book is so well set out that no index is necessary.

The manuscript would have benefited from another round of editing to avoid infelicities like "This is largely totally untrue", but that is a minor complaint. The style is casual and the book is an easy read.

Don't wait till you have a high-profile case before you read it; that will be too late. And if you want to publicise your plain English practice this guide is ideal.

M.A.

**How to write  
Regulations and other  
legal documents in clear  
English**

Janice C. Redish PhD

American Institutes for  
Research, Document Design  
Centre, Washington DC, 1991

47 pp large paperback \$11.95

I had rather thought that Americans drafted simply and

clearly. After all, "all men are created equal" seems an uncomplex concept. However, Janice Redish has changed my mind about that. It appears that American regulations are (or were) as complex as ours. But help is at hand.

The first and most fundamental question Dr Redish asks is "what is a regulation?" This is an important issue because it gives the flavour to the rest of the book. Firstly, a regulation is a legal document; it must be legally accurate and sufficient because we want it to be enforceable in a court of law. Secondly (and more important to her thesis), a regulation is a set of rules about how people behave. The latter is more important because regulations - according to Dr Redish - must communicate to those whose everyday lives they affect.

She then goes on to state an obvious but not said enough idea that regulations can be accurate and still communicate. She offers a four stage process to put this into practice:

- plan before you write
- write a clear first draft
- review and revise
- evaluate the regulation.

Dr Redish gives guidelines for each of these stages. Whilst the examples given seem almost bizarre to English eyes (for example, the Citizens Band Radio Regulations), the guidelines are extremely helpful and would enable those who do not have an inborn talent for drafting to produce a good result. There are useful "before and after" examples to reinforce the guidelines. Under the rule "plan before you write" the most important message is to consider the audience or reader and to involve them in what you are doing.

In the section on writing a clear first draft the emphasis moves to simplicity of language. Again, the reader is involved. Again, although

what is said is obvious it is well worth stating:

- use pronouns or simple names
- write in the active voice
- use action verbs instead of nouns made out of verbs.

We are encouraged to write short sentences, avoid double negatives, and (perhaps the most difficult for a lawyer) to adjust our vocabulary for the audience. To emphasise the folly of trying to cover all possibilities, Ms Redish quotes this from the National Park Service Regulations:

No person shall prune, cut, carry away, pull up, dig, fell, bore, chop, saw, chip, pick, move, sever, climb, molest, take, break, deface, destroy, set fire to, burn, scorch, carve, paint, mark, or in any manner interfere with, tamper, mutilate, misuse, disturb or damage any tree, shrub, plant, grass, flower, or part thereof, nor shall any person permit any chemical, whether solid, fluid, or gaseous, to seep, drip, drain or be emptied, sprayed, dusted or injected upon, about or into any tree, shrub, plant, grass, flower, or part thereof, except when specifically authorized by competent authority .... (and so on)

Ms Redish comments:

All of this verbiage means, "Don't harm the plants."

We are told to review and revise not only to improve the writing but because policy may change along the way.

Finally, we must evaluate. Although I cannot imagine carrying out audience research in the ways suggested, it would be a useful exercise to ask the end-users of our regulations whether they can understand what is being written.

There have been longer guides to drafting. However, in 47 pages of very helpful text, Dr Redish sets

out the fundamental principles that anyone wishing to communicate should follow. It is a long time since I drafted regulations (and I would have liked *How to write regulations*) but applying the principles to one of my favourite contract clauses:

#### Before

Force Majeure/Excusable  
Delay

Neither party shall be liable for any delays or failures in performance in whole or in part (excluding payment of monies due) if such delay or non-performance is due to any cause beyond its reasonable control, including but not limited to delays caused by the other party's failure to perform or delay in performing its obligations under this Agreement, third party delay or non-performance, Act of God, war, insurrection, riot, civil disturbance, rebellion, government regulations, embargoes, explosions, fires, floods, tempest, strikes, lock outs, labour disputes, failures in hardware, heating, lighting, air conditioning, public supply of electrical power or telecommunications equipment or lines.

#### After

If we can't help it (except non-payment), it doesn't affect the contract.

**Anita James**  
Department of Social Security,  
London

*How to write regulations* is available from the Document Design Centre, 3333 K St NW, Washington, DC 20007, USA. We hope to review Dr Redish's new book, *A practical guide to usability testing*, in the next issue.

### Legal Practice Course Guides

Blackstone Press Ltd:  
£14.95 each

These guides explain the relevant

substantive and procedural law, giving precedents and check lists, to bridge the gap between lectures and practitioners' textbooks.

## 1. Lawyers' skills

**Author: Philip Jones**

This book covers basic lawyers' skills: research, letter writing, document drafting, interviewing, negotiating and advocacy.

Of most interest to members of CLARITY are the sections relating to legal writing (by Caroline and Mike Maughan) and drafting (by Marcus Keppel-Palmer).

### Letter writing

The section on legal writing encapsulates all the recommendations supported by CLARITY to ensure that the writing is clear and in an appropriate style. Emphasising that writers need to tailor their language and style to suit the specific reader, the authors explain the importance of planning, and encourage students to avoid inelegant writing, the passive voice, redundant words, jargon, technical terms, etc.

Paragraphing is explained in considerable detail and the degree to which "correct" grammar is important is discussed. The section includes a useful "self-editing checklist".

There is a practical exercise, pointing out many errors in a sample letter of the sort written by many solicitors every day. As well as analysing the specific individual shortcomings, the authors rewrite the letter in a far more "user friendly" style.

In all, this section is welcome to CLARITY: it is encouraging to see the importance that the authors place on clear and effective writing — a basic skill for lawyers.

### Drafting

The section on drafting is less encouraging. It clearly sets out the steps to draft or amend a document so that it is clear, comprehensive,

effective, and according to the client's wishes. However, far less emphasis is placed on clarity of language than in the section on letter writing. Indeed, the author includes a warning against using wording that is too radical:

There is a certain amount of formal necessity [presumably "formality necessary"] in many agreements and deeds, and this wording, even if it seems arcane, has been judicially or statutorily approved. That is one of the purposes and comforts in using precedents. The words have already been approved by the Courts, then if used again in the same context they should bear the same meaning.

The pace of evolution of formal legal language is slow in comparison to the change in spoken and written English. The Plain English Movement is likely to triumph ultimately, but until then there can only be a slow integration of wording into documents that had previously been judicially approved.

In such circumstances, it is not wise to depart from the approved wording simply to assuage the first of the gods of modern and plain English, as your paraphrase or rewording may be ambiguous and uncertain where before there was legal clarity and certainty.

The two obvious answers to this are:

- Words that have been judicially interpreted have only needed judicial interpretation because they were ambiguous in the first place, which is no recommendation for using them again.
- If the rewording is genuinely clear it will not be ambiguous.

Omitting or rewording apparently innocuous wording might render the redraft ineffective for technical reasons; this is not an argument

against clear wording — merely an argument in favour of drafters knowing the law.

#### Other sections

The other sections of the book deal comprehensively and effectively with their subjects. I could find little in them to warrant comment in a review for *Clarity*.

From our perspective, this is a book I recommend to students. If they all followed its advice on letter writing and document drafting, CLARITY would be close to becoming redundant.

## 2. Conveyancing

**Authors: Philip Kenny and Russell Hewitson**

This book gives a background to conveyancing and to land registration; it then runs through the normal procedures in conveyancing transactions (taking instructions; drafting contracts; pre-contract investigations; exchanging contracts; deduction and investigation of title; the purchase deed; pre-completion searches; completion and post-completion procedures). There are also chapters on planning considerations (including building regs), remedies for breach of contract, mortgages, new properties, and the granting of leases.

Although an appendix includes sample letters and forms for a standard domestic purchase, it does not include the National Conveyancing Protocol forms (except the contract used by the protocol), nor does it give sample letters for a domestic sale. It is a shame that the authors did not include letters prepared by a seller's solicitors as well as by a buyer's; perhaps the relevant letters are so obvious as to need no demonstration.

Of most interest to CLARITY members is the approach adopted by the authors to the drafting of the purchase deed. Obviously, a transfer of registered land is for the most part in prescribed form — a conveyance of unregistered land

leaves more scope for good or bad drafting. It is therefore disappointing to see that the sample conveyance is in traditional form and language. For instance, it includes recitals, introduced with the word "Whereas" — although the authors make the point in the text that -

as a golden rule, in drafting a modern conveyance one might be advised to omit recitals wherever possible. Nevertheless solicitors are loath to discard even a time wasting habit and, for example it is still customary to recite the seisin of the seller although this is quite unnecessary.... However ... the sounder principle is to omit all unnecessary non-operative words where the alleged benefit is hypothetical and potentially hazardous.

Although a counsel of perfection, it would have been better if the authors had included both the traditional and the modern versions, illustrating the redundant verbiage in the traditional version and showing how relatively efficient the modern version is.

No doubt the authors would argue that it is not their job to proselytise but to prepare their students for the world they will actually encounter in the office. However, they should appreciate that students will treat their sample conveyance as the "right" version, and view a more modern version with suspicion.

A bouquet to the authors for including the chapter on planning, and explaining (necessarily briefly) the circumstances in which planning permissions may be needed; perhaps more importantly, they also explain when breaches of planning control can no longer be enforced.

## 3. Business law

**Authors: Anthony King and John Barlow**

This book gives an outline of the

basic law of partnerships and limited companies, the relevant taxation, the influence of the European Union, and insolvency law. It also contains practical information on documents (such as a partnership agreement, debenture, or shareholders' agreement) and on fundamental procedures (such as carrying out company searches and the interpretation of the results).

The authors do not include specimen or precedent documents. Presumably this is because students are not expected to recognise such documents to pass their exam — merely to understand the basic provisions that the documents should contain. In practice also it would be impossible to include a worthwhile selection of precedent documents if the book is not to become unwieldy.

As a result, there is little to say from the CLARITY perspective.

## Also received

for review in the  
next issue:

**Grievance mediation**  
Why and how it works

David C. Elliott and  
Joanne H. Goss

**Mellinkoff's**  
**Dictionary of**  
**American Legal**  
**Usage**

David Mellinkoff

## Some cases on "and/or"

### *Vilando v. County of Sacramento*

54 California App 2d 413 (1942)

The complaint alleged that at the time of trial of an earlier dispute the judge was related to a Mr Deterding, "ambiguously described as 'an officer and/or agent' of the (defendant) County."

#### **Held:**

1. There was no direct affirmative allegation that he was an agent of the county.
2. The complaint therefore disclosed no cause of action, and failed.

### *Sproule and/or Fidelity Life Ins Co v. Taffe*

294 Illinois App 374 (1938)

A judgment by confession on a written lease entered against the tenant by "Charles R. Sproule, trustee, and/or Fidelity Life Insurance Company of Philadelphia" was void for failure to specify "with any certainty" in whose favour it was entered.

### *Shadden v. Cowan*

213 Georgia 29 (1957)

This was an action against the local mayor and aldermen by petitioners alleging that they were city taxpayers "and/or" patrons of public schools.

The Court of Appeals held that the use of "the equivocal term 'and/or'" failed to describe the petitioners' right to bring the action. Justice Mobley said, citing four Georgia cases:

The use of the equivocal term "and/or" has often been criticised.... In [Ralls v. Taylor], in answer to a certified question by the Court of Appeals, this court held:

Where the affidavit under the Code, §61-301, alleging one ground for dispossessing a tenant, is followed by the words 'or and' and then another ground, it is not a positive allegation of either ground, and is subject to an oral motion to dismiss.

### *Underhill v. Alameda Elementary School District*

133 Cal App 733 (1933)

A complaint about injuries suffered by a pupil in a schoolyard baseball game alleged that the plaintiff and other children were taking part in a game "and/or" were playing in the immediate vicinity of the game.

The trial court's dismissal of the complaint as inadequately pleaded was upheld on appeal. The Court of Appeals said:

We deem it appropriate to call attention to the confusion brought about by the misuse of the term "and/or".

### *Gurney v. Grimmer*

44 Lloyds List LR 189 (1932))

The plaintiff underwriters had compromised an insurance claim and asked their defendant reinsurers to indemnify them on the ground that they had "compromised and/or arranged the total loss

of the vessel". The defendants refused, arguing that the underwriters had "settled the constructive total loss at 100% and there is no proof that there was constructive total loss".

Brandon J found for the defendants:

I am of the opinion, therefore, that the word "arranged" in this clause means no more than "compromised", and that the presence of the words "and/or arranged" does not entitle the plaintiff to succeed.

After several days argument, the Court of Appeal overturned the decision. The case did not strictly turn on the meaning of "and/or" but on the comparative meanings of "arranged" and "compromised", but Scrutton LJ said:

I am quite aware of the habit of some business people and some lawyers of sprinkling "and/or"s as if from a pepperpot all over the documents without any clear idea of what they mean by them, but simply because they think it looks businesslike.

### *Conclusion*

Each of these cases except the last failed because of the use of the expression "and/or" in the pleadings. The expression has caused problems in many other cases, yet lawyers continue to use it, often without thought as to its meaning. (For example, did the attorney in *Underhill* really intend to keep open the possibility that the plaintiff had been playing in two games at once in different places?). The use of "and/or" is often absurd, frequently disastrous, and always unnecessary. If with its long history of disputes it causes more litigation, there can be no answer to a claim for negligence against the drafting lawyer. How much more of an embarrassment must it be to the drafter if the litigation is not only fought but lost?

Here is an "aid" to interpretation which seems a prime candidate for dispute:

Unless there is something in the subject or context inconsistent therewith ...

where two or more persons are included in the expression "the Tenant" and/or "the Surety" the covenants contained in this Lease which are expressed to be made by the Tenant and/or the Surety shall be deemed to be made by such persons jointly and severally

## Drafting snippets

### Ambiguity

A covenant binding freehold purchasers of houses on an estate provided that:

No hut shed caravan house on wheels or other chattel intended or adapted for use as a dwelling or sleeping apartment shall be erected or placed or allowed to remain upon the property or any part thereof nor shall any advertisement be placed *thereon* nor shall any boundary wall or fence be used for display or advertisements.

Does the italicised "thereon" refer to the property or to the caravan (etc)?

In favour of the first interpretation:

- There is no apparent reason to forbid advertising on a caravan wall whilst permitting it elsewhere on the plot.
- "Thereon" sounds as though it refers to the same thing as

"thereof" on the previous line.

In favour of the second interpretation:

- The clause seems to be about caravans (etc) rather than about advertising, which suggests that a reference to advertising is about advertising on caravans (etc).
- If "thereon" referred to the property as a whole, the subsequent bar against advertising on the boundary structures would be otiose.

### Morals

- Keep separate subjects in separate paragraphs.
- If you must use archaisms like "thereon", make sure your readers know where "there" is. The best way to do that is to keep sentences short and to the (single) point.

### New stamp duty requirement for leases

Leases executed after 6th May need a new stamp duty certificate unless an agreement for lease is also presented for stamping. The Inland Revenue say it should be worded "along the following lines":

I/We certify that there is no agreement for lease (or tack) to which this lease (or tack) gives effect.

On enquiry to the stamp office I was told that a "tack" was a Scottish lease, and that the following would normally do in England:

There is no agreement to which this lease gives effect.

However, there was a problem with the lease I had in hand, inherited from another practice. It followed the strange practice of reciting the parties' agreement to the transac-

tion it was about to effect. As is often the case with such recitals, it meant not more than the obvious and pointless

The parties having agreed to sign this document...

but it contradicted the proposed certificate, which had to be amended to

There is no written agreement to which this lease gives effect.

### Relative words

This extract from the judgment in *Underhill v. Alameda Elementary School District* (cited on page 21 under "and/or") is of wide application:

The plaintiff places great stress in the briefs upon the size of the school yard. It is merely alleged in the complaint that it was "small"; and we presume that was intended to convey the impression that the yard was inadequate in size for the playing of the game in question. The word "small" is a relative term which is meaningless from a legal standpoint when applied to a school yard. It is of no greater value to the pleader here than the allegations in *Hauser v. Pacific Gas* that certain wires were "in dangerous proximity to" and at "an insufficient height". It was there said:

Such words are meaningless as allegations of fact, and are averments of opinion of the pleader only".

### Company deeds

In *Clarity 30* (March 1994, p. 35) we reported that the Land Registry had approved this wording for a company deed:

Signed as a deed by Samuel Bernard as director authorised to sign on behalf of Sound Ltd.

A District Land Registry recently queried a deed signed by only one director, but agreed to accept it with a certificate from the solicitor that the deed was properly executed, either in accordance with the memorandum and articles of association or on some other authority. The solicitor has relied on section 36A(5) of the Companies Act 1985 (added by section 130 of the CA 1989), which reads (with italics added):

A document executed by a company which makes it clear on its face that it is intended by *the person or persons* making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.

### Imprecise statutory definition

Section 1(2)(b) of the Timeshare Act 1992 reads:

A period of not more than one month, or such other period as may be prescribed, is a period of short duration.

But the fact that all As are Bs does not mean that all Bs are As. "One second is a short time" is consistent with "two seconds is a short time".

### Customising the standard conditions of sale

It is regrettable but unsurprising that the plain English standard conditions for the sale of land are varied by special conditions in legalese.

It seems that more contracts than not contain a special condition

## CLARITY SEMINARS

on writing plain legal English

CLARITY now offers seminars by

**Professor John Adams** and **Trevor Aldridge QC**

28 Regent Square  
London E3 3HQ  
081 981 2880

Birkitt Hill House  
Offley, Hitchin  
Hertfordshire  
Tel: 0462 768261  
Fax: 768920

and (as before) by

**Mark Adler**

(whose contact details appear on the inside back page)

All seminars comprise a mix of lecture and drafting exercises.

**Professor Adams** concentrates on property and commercial law, and

**Mr Aldridge** on commercial leases and other property documents.

**Mr Adler** deals with drafting in general and for part of the time works on documents supplied by the host firm.

All the seminars last 3hrs 30mins (including a 20-minute break).  
Mr Adler's is accredited under the CPD scheme, with a 25% uplift.  
Accreditation of the other seminars is under discussion.

The standard fee is £600 plus expenses and VAT,  
but an extra charge may be negotiated for long-distance travelling.  
CLARITY's share of the fee is £150.

**Please contact the speaker of your choice.**

which seems to have spread almost verbatim through the profession, despite its obvious illogicality:

If the deposit actually paid on exchange of contracts shall be less than 10% of the purchase price then notwithstanding a payment of the lesser amount by way of deposit the balance of the 10% deposit shall at all times remain due to the Seller and in the event of rescission or failure to complete through no fault of the Seller such balance shall be a legal liability of the Buyer to the Seller as a condition of this Agreement.

Is the balance due "at all times" or only after failure to complete? Presumably the latter, especially as the reduced deposit will invariably

have been agreed before exchange, often because the buyer cannot afford the full amount. But why must the balance be paid on rescission, when (except in certain circumstances) any deposit that has been paid must be refunded to the buyer?

The frequent appearance of this clause reveals the profession's lack of basic drafting skills, and indicates the widespread unreflective use of bad precedents.

But it is unusual to find anything quite as daft as this gem, produced by a city firm representing a well-known developer:

The expression "the Buyer" shall mean "the Purchaser".

**Stop press**  
Lord Renton QC chaired our lively fringe meeting at The Law Society Conference on 7th October and Judge Cook gave our presentation. A report will appear in the next issue.

# Campaigns

## Midland Bank's "plain" mortgage

Midland Bank's standard mortgage - admittedly no worse than those of its main competitors - contains 27 clauses on two closely printed A3 pages. Each line of text is a quarter of a metre long. One unpunctuated, 214-word sentence (which covers just over 7 lines in the original) reads:

This Charge and the security hereby created shall cover the full amount of the monies and liabilities from time to time and so long as this Charge remains in effect the Mortgagor shall not unless the monies and liabilities have been paid and discharged in full be entitled to share in or succeed to or benefit from (by subrogation or otherwise) any rights the Bank may have or any security (whether by way of mortgage guarantee or otherwise) the Bank may hold or all or any of the proceeds thereof nor until the monies and liabilities have been so paid and discharged shall the Mortgagor exercise enforce or seek to enforce without the prior written consent of the Bank any rights it may have against the Principal or any other person and arising by reason of the Bank's receipt or recovery of or the payment and discharge of part only of the monies and liabilities Provided

that any monies received recovered or realised by the Mortgagor in or as a result of the exercise (whether with or without the Bank's consent) of such rights shall be held by the Mortgagor as Trustee upon trust to apply the same as if they were monies received recovered or realised by the Bank under this Charge

Our suggestion that the document be written more plainly produced a long letter (in poor English) excusing the form on various grounds:

A mortgage is by its nature, a complex document and a further reason for the length of the Midland form is that it is intended to cover a great variety of situations, everything from a simple house mortgage to development land, farms, factories, office blocks etc. If we produced more than one form, confusion could arise....

It is primarily for the reason that mortgage forms are explained to mortgagors by their solicitors that we have not felt the need to depart radically from customary language....

But we are assured that our remarks will not be ignored.

## Press notices

Legal notices in the press are intended for the attention of the lay public, but the standard of drafting is abysmal.

Here is a typical warning to the creditors of a newly deceased:

Pursuant to the Trustee Act 1925 (as amended)  
NOTICE is hereby given that any person having a claim against or interest in the Estate of JAMES OLIVER SHOWLEM of 15 Lancaster Road Cranleigh Onslow Devon who died on the 2nd May 1994 is hereby required to send particulars in writing of such claim or interest to the undersigned on behalf of Nick Forgovett the Adminis-

trator of the Will of the Deceased before the 15th October 1994 after which date the Executors will distribute the Estate to the persons entitled thereto having regard only to the claims and interests of which the Administrator shall have then had notice.  
DATED this 27th day of July 1994  
(Name and address added)

This verbiage is not required by the Trustee Act, which advises trustees only to advertise for claims if they are to avoid personal liability: they may choose their own words.

Nor is this wording precise. There must have been either an administrator or executors, but there could not have been both.

The solicitors could have made the advertisement more effective, and substantially reduced the advertising fee, by using this form:

The executors of James Oliver Showlem (who until his death lived at 15 Lancaster Road, Cranleigh Onslow, Devon) intend to distribute his estate. Anyone with a claim should send details by 15th October to ...

(I had to stand up to one local paper, whose advertising junior telephoned to say that the typesetters wanted to use the traditional wording. She received a dusty answer, and backed down. They tried to strike back by adding above and below the text large and unsightly blank spaces for which they tried to charge, but when challenged they accepted 50% of the bill in full settlement. I have not had these difficulties with other papers.)

The traffic redirection notice reproduced opposite is also typical. I wrote to the offending solicitor at Surrey County Council:

CLARITY is a group of lawyers campaigning for the use of plain English in legal documents, and I hope you will not mind a local



solicitor writing to you on its behalf.

My attention was drawn to the "Public notices" section of last week's *Dorking Advertiser*.

It seems to be the custom - not limited to that paper or Surrey County Council - to publish notices without regard for their readability. I think a straw poll around your office would show that:

- Few people who would be interested in the information contained in

a notice become aware that it has been published.

- Those who do look at the notices must spend unnecessary time deciding whether they are of interest.
- Even those who see a notice and realise they are affected by it are unlikely to read and understand it thoroughly.

Surely the point of publishing a notice is to make those affected by it aware of its contents? If the notice is not read, or is read but not under-

stood, publication will have been a waste both of your time and of public money, and the purpose of the legislation requiring it will have been frustrated. The notice may as well have been written in Chinese, or not at all.

As an example of what can be done without increasing publication costs, I have reproduced one of your notices, with a suggested revision alongside. I do not claim that it is perfect: I left out information that I thought was of no interest, and have rearranged what was left; you may disagree with some of those decisions. But I offer my version as a suggestion of how notices might be improved.

A few points about the original should be made:

NOTICE  
ROAD TRAFFIC REGULATION ACT 1984-SECTION 14(1)  
SURREY COUNTY COUNCIL  
BETCHWORTH STATION LEVEL CROSSING  
TEMPORARY PROHIBITION OF TRAFFIC ORDER 1994

NOTICE is hereby given that the Surrey County Council have made an order the effect of which is that no person shall by vehicle enter or proceed in that length of B2032 Station Road, Betchworth which is crossed by the Betchworth Station level crossing, from Saturday 6 August 1994 for a maximum period of one month unless extended or until earlier completion of the works. Pedestrian and equestrian access will be maintained at all times. The order is necessary to enable British Rail to carry out essential maintenance work to the level crossing.

The prohibition shall apply during the maximum period specified above only during such times and to such extent as shall from time to time be indicated by traffic signs prescribed by the traffic signs regulations and general directions 1981 and it is anticipated that the temporary prohibition will only be required between 24.00 hours on Saturday 6 August 1994 and 07.00 hours on Sunday 7 August 1994.

The alternative route for vehicular traffic from the northern end of the temporary prohibition is: B2032 Station Road, Pebblehill Road, and Dorking Road (to the roundabout situated at the junction of Dorking Road, B2220 Tadworth Street, A217 Brighton Road and Bonsor Drive), take the fourth exit into A217 Brighton Road (to the roundabout situated at the junction of the M25, Brighton Road and Reigate Hill Road and lying directly above the M25, take the second exit into Reigate Hill Road (to Castlefield Road), Castlefield Road (to A25 Church Street), Church Street, High Street, West Street, Buckland Road and Reigate Road (to the roundabout situated at the junction of Reigate Road and B2032 Station Road) and take the third exit into Station Road (to the southern end of the temporary prohibition). The alternative route for vehicular traffic from the southern end of the temporary prohibition is: B2032 Station Road (to the roundabout situated at the junction of Reigate Road and Station Road), take the first exit into A25 Reigate Road, Buckland Road and West Street (to London Road), London Road (to Reigate Hill Road), Reigate Hill Road (to the roundabout situated at the junction of the M25, A217 Brighton Road and Reigate Hill Road and lying directly above the M25), take the second exit into Brighton Road (to Mill Road), Mill Road (to B2032 Dorking Road), Dorking Road, Pebblehill Road and Station Road (to the northern end of the temporary prohibition).

Dated 4 August 1994

J.H.Jessup  
County Solicitor  
County Hall  
Kingston Upon Thames  
KT1 2DN  
(31M)

**Temporary closure of  
Betchworth Station level crossing  
in the small hours of 7th August  
(and possibly later)**

The level crossing in Station Road, Betchworth (the B2032), will be closed to vehicles (but not to trains, pedestrians or horse-riders) for as long as British Rail need to repair it, starting at 00.01am on Sunday 7 August.

The work should be completed by about 7am, but BR may close the crossing for up to a month if necessary, and even that period can be extended by a further order of the Council.

Traffic going south will be diverted:

North up the B2032 (Station Rd, Pebblehill Rd and Dorking Rd) to the A217 (Brighton Rd);

South down the A217, across the M25 and into Reigate;

Round Reigate's one-way system, leaving westward along the A25 towards Dorking;

And so back to Station Rd, Betchworth.

Traffic going north will be diverted along the same route in the opposite direction (except that traffic may cut the Brighton Rd/Dorking Rd corner by turning left into Mill Rd at Banstead Newton).

This Temporary Prohibition of Traffic Order 1994 was made <when?> by Surrey County Council under section 14(1) of the Road Traffic Regulation Act 1984.

J.H. Jessup, County Solicitor  
County Hall, Kingston upon Thames KT1 2DN

- When I first scanned the notice (probably with as much care as most readers do) I was left with the impression that the crossing would be closed for about a month. Only when I re-read it with particular care did I realise that the closure was expected to last for only a few hours, and that it was to be at a time when I would not be affected.
- It sounds distinctly odd to say - as you effectively do - that the closure will be "for a maximum period of one month unless longer or shorter".
- The description of the alternative route is detailed, but I find it hard to imagine that people who arrived at Betchworth early that Sunday morning would have navigated the diversion using a copy of your notice. Had they tried to follow the text while driving, they would probably have had an accident.
- The separate stages of your instructions, which should have been divided by semi-colons if not by full stops, are ungrammatically separated only by commas.

I look forward to receiving your comments, which I will, if I may, publish in the next edition of our journal. A complimentary copy of the last issue is enclosed with this letter in the hope that it will be of interest to you.

We have had the following reply:

I was most interested to read your suggested wording for this type of Order and in cases

where temporary Traffic Orders are concerned, provided they contain legally required elements there is no objection to their appearing in the type of format which you have produced. The law has comparatively recently been changed to allow the wording in these notices to be simplified and so long as they do not lose what I would call the accuracy of description I can see no difficulty in their rewording if that results in their being more clearly understood by members of the public.

Having said that I am reluctant for the notices to reach the stage where they may be seen as too vague to comply with the legislative requirements and whilst I have no quarrel with the sort of thing you have produced I am concerned that the Council could be accused of uncertainty if it were to implement Orders quite in the way you have suggested. Whilst the Orders might be quite understandable to someone with local knowledge they might not be someone new to the area. The Council therefore have to insure that the notice is descriptive enough to accommodate both the local resident and the stranger.

I am grateful to you for drawing this matter to my attention and will be forwarding your comments to my engineering colleagues to agree with them how and to what extent we can in future simplify our approach.

We have asked to be kept informed, and will watch the local press. So far, there has been no improvement.

**Humanist wills**

The British Humanist Association, which recently published a traditionally drafted form of codicil for bequests, has accepted a CLARITY offer to draft the next edition (though stocks will last some time).

**The RAC**

We reported in *Clarity* 30 (March 1994, p.2) the confusion which was arising from the use of the word "clarity" in the Plain English Campaign's crystal mark. However, our letter to the Campaign has not been answered, and people continue to express the belief that CLARITY is involved in the award.

In July I wrote to the Royal Automobile Club about the crystal mark awarded to its *Terms of Membership* booklet. I pointed out that we had not approved the document, and that a number of drafting flaws would have prevented us doing so. I also wrote on my own behalf as an RAC member querying the vagueness of some fundamental points.

Only as we go to press have I received a reply, declining to answer the "hypothetical" criticisms. I do not consider the terms acceptable, and have cancelled my RAC membership.

MA

**Land Registry titles**

Two different clients have recently referred to a copy conveyancing document as "the land registry".

After a moment's puzzlement, I realised they were confused by the strange habit of putting at the top of transfers, as though it were the title of the document, the uninformative wording "HM Land Registry" followed by what seems a pointless reference to the Land Registration Acts.

Yesterday we were on the edge of a great abyss. Today we have taken a giant step forward.

Leonid Kravchuk  
president of the Ukraine

# "Themselves" and nonsexist style in Canadian legislative drafting

by Donald Revell, Cornelia Schuh, and Michel Moisan

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*Cornelia Schuh is Deputy Chief Legislative Counsel in the same province, drafting legislation in both English and French.*

*Michel Moisan has been an English-French translator since 1976 and linguistic advisor to Ontario's legislative counsel since 1984. He is now head of the Translation and Linguistic Services Section, responsible for the translation into French of all public bills and much secondary legislation.*

The following letter was written to the editor of *English Today* on 25th May 1993:

Dear Dr McArthur:

In the April 1990 edition of *English Today*, you asked for citations and comments respecting the use of "themselves".

The government of Ontario, in 1985, adopted an official policy of using gender-neutral language in all official publications, including bills and regulations. All bills and regulations drafted in Ontario since that time have been prepared using the gender-neutral style. Beginning in 1988, this office undertook the task of revising all existing public general statutes and all existing regulations. As part of our mandate as Statute Revision Commissioners

we followed government policy to use gender-neutral language.

One problem that we faced is the fact that in law "person" includes both individuals and bodies corporate. This meant that achieving gender-neutrality was not a mere matter of replacing "he", "him", "his" and "himself" with "he or she", etc. The appropriate gender-neutral replacement is "he, she or it", etc. This can be a rather unwieldy word string. In moving to gender-neutral language, we decided that in many cases it was more appropriate to repeat nouns than use these cumbersome word strings.

We decided as a matter of policy in replacing the masculine singular pronouns that if the actor could only be an individual we would use "he or she". However, if a corporation could be involved we decided to avoid the use of the strings. Our review of the literature, including such works as

*Webster's Dictionary of English Usage* and *The Handbook of Non-sexist Writing* by Miller and Swift, made it abundantly clear that "they", "their" and "them" have had a long history of proper usage as singulars. It was also quite apparent that they were gaining popularity as singulars

despite the position of the prescriptive grammarians. Based on our research, we decided that we would use these pronouns in a singular sense.

Reflective verbs remained a problem. Our research indicated virtually no commentary on whether or not "themselves" was an acceptable replacement for "himself, herself or itself". After considerable debate in our office we decided that this usage was a logical extension of the use of the other third person "plural" pronouns as singulars.

I am pleased to enclose copies of s.25(1) of the *Building Code Act 1992*, the *Psychologists Registration Act* (Revised Statutes of Ontario, 1990) chapter P.36, section 11(2)), and the definition of "consumer" from the *Tobacco Tax Act* (Revised Statutes of Ontario, 1990 chapter T.10). I also enclose a bill which is currently before the Legislative Assembly of Ontario which, among other things, will amend some eighteen Acts to use the word "themselves".

I am also pleased to enclose a copy of a paper on gender-neutral drafting which was written by two

In our opinion, the use of a non-sexist style in English results in better drafting. The restructuring that becomes necessary to avoid repetitive language or unnecessary pronouns often yields clearer, more concise sentences.

of my colleagues and myself.

I hope that you have found this information useful. In closing, I would appreciate receiving any information on this subject that you may care to share with me.

Yours truly,  
Donald L Revell

*Dr McArthur corresponded with Donald Revell, and the valuable result was the following slightly adapted version of the paper mentioned in his letter, and the accompanying panel material.*

### Introduction

The paper recommends that the Drafting Section of the Uniform Law Conference adopt a non-sexist legislative drafting style and briefly sets out the reasons supporting the recommendation.

In North America and Europe, the last decades have seen greater attention being paid to questions of sex and gender in language. There is an increased sensitivity to the images of men and women that our languages create and reflect. In the English speaking world, a major focus has been on the third person singular pronoun, although the titles of occupations and positions (like "chairman") have also received attention. Among French speakers, a major focus has been on "la féminisation des titres" - the creation and use of feminine forms of the masculine nouns that are generally used for occupations and positions.

Linguistic changes that were originally thought extreme have become part of current usage and indeed of government policy. In recent years, legislative counsel in a number of Canadian jurisdictions (including Manitoba, Newfoundland, the Northwest Territories, Nova Scotia, Ontario and the Yukon) have adopted drafting styles that are intended to be non-sexist. The

Government of Ontario announced in the summer of 1985 that it was committed, as a matter of policy, to a legislative style that "fully expresses and enhances the equality of the sexes". The Yukon will publish the forthcoming revision of its ordinances in a non-sexist style. The federal Parliamentary Committee on Equality Rights in its recent report (*Equality for All*, October 1985) recommended that legislation be drafted in non-sexist language.

### Tobacco Tax Act

1. In this Act,  
"consumer" means any person who,  
(a) in Ontario, purchases or receives delivery of tobacco, or  
(b) in the case of a person ordinarily resident in Ontario or carrying on business in Ontario, brings into Ontario tobacco acquired outside Ontario,  
for their own use or consumption or for the use or consumption by others at their expense, or on behalf of, or as the agent for, a principal who desires to acquire the tobacco for use or consumption by themselves or other persons at their expense; ("consommateur")

At the outset, we note that sex and gender issues present themselves in very different forms in English and French because of their different grammatical structures. Obviously, there can be no uniform solutions that apply in the same way to both languages. However, the underlying principles are the same because of social and political changes that have led to demands for "non-sexist" language and are the same for speakers of both languages. In a bilingual context, to consider either language in isolation gives an incomplete picture. It is necessary to study the implications of French

and English usage together in order to develop a consistent approach.

### The Question

It is now time to ask if the Drafting Section should adopt the following statement of policy:

Sex-specific references should be avoided.

We suggest that the Uniform Law Conference should consider this question and the matters set out in this paper and take a position on non-sexist drafting that reflects current and accepted developments in language.

### Basic Principles

In our opinion, the following basic principles of legislative drafting relate to the question of non-sexist drafting.

1. Legislative drafters have an obligation to use plain language. Legislation should be written in a style that is as close to ordinary language as is consistent with the accuracy requirements of the legislation. For example, a statute should not use a masculine form when a correct user of the language would use a neutral form or would indicate the possibility of a choice between alternatives.
2. Legislation should address all its readers equally. Neither women nor men should be required to perform adjustments to the text that the other is not required to perform. Persons of either sex who are "targeted" by a provision should clearly understand this without having to convert the text by looking in an obscure place (i.e. an interpretation act).
3. The language of legislation should not offend any of its readers. Increasing numbers of women and men are offended by language that they consider

sexist, believing that such language creates images that are inappropriate today. The following books will be of interest to those who wish to consider this issue further:

*The Handbook of Nonsexist Writing*, Casey Miller and Kate Swift, Barnes and Noble Books, New York 1981.

*Words and Women*, Casey Miller and Kate Swift, Anchor Books, Garden City, New York 1977.

*Man made Language*, Dale Spender, Routledge & Kegan Paul, London 1985 (2nd edition).

*Les mots et les femmes*, Marina Yaguello, Payot, Paris 1978.

4. Legislation should be drafted in a manner that is neutral in terms of language issues, correct and up to date, neither faddish nor stodgy. It is not the function of legislation to coin new words or use language in a way that has not yet become accepted. On the other hand, to resist change where a trend has been firmly established is to endorse language that no longer reflects current use.

Sex-neutral legislative language is not a fad. As noted in our introduction, it is being used in several Canadian jurisdictions and has been endorsed by a parliamentary committee at the federal level. Robert Dick, a well-known Canadian commentator on legal drafting in English, recommends a sex-neutral style in the 1985 edition of his already classic text *Legal Drafting* (Carswell, Toronto) and provides recommendations (at pages 167 to 169) for reducing, if not eliminating, sex-specific references. It is Dick's conclusion on the matter that "Modern society demands that new approaches be taken both for the drafting of documents and judgments".

Furthermore, the federal government has endorsed sex-neutral writing in all official communications (see, for example, Appendix II to *The Canadian Style: a Guide to Writing and Editing*, Department of the Secretary of State, Dundurn Press, Toronto 1985 and *Guidelines Respecting the Elimination of Sexist Language in Departmental Communications*, Department of Justice 1984).

5. Legislative counsel should use a drafting style that is consistent with political reality. By adopting a non-sexist approach at the outset, one avoids the possibility of hurried and awkward amendments at the committee stage.
6. The Uniform Law Conference should use a style that permits participating jurisdictions to adopt Uniform Acts with a minimum of change.

We have found that it is easy to convert an English draft that is written in the new style to the old style, but that the reverse process is often difficult. If a sex-neutral drafting style is adopted at the outset in both languages, the conversion problem disappears for everyone.

## English and French

We would now like to consider the implications of the proposed statement of policy for the English drafter and the French drafter.

### *The English language*

The English drafter confronts non-sexist drafting issues in relation to nouns and pronouns. The major problems are not with nouns but with the third person singular pronouns.

It is increasingly clear that many people no longer believe that "he" functions as a generic pronoun to include "she". In fact, one must

question if in ordinary English "he" ever was a true generic or dual gender pronoun. When one is expecting a visitor but does not know the visitor's sex, one would not say "he is coming at three o'clock". One would say "my visitor is coming at three o'clock".

As much as anything, it is the use in interpretation acts of provisions such as the following:

In every Act, ... unless the contrary intention appears, words importing ... the masculine gender only include ... females and the converse. (*Interpretation Act*, R.S.O. 1980, c.219, s.27(j))

that has tended to cement the idea in lawyers' minds that "he" is sex-neutral. In other words, this is not a linguistic fact but a convenient legal fiction, developed at a time when the subjects of legislative statements were likely to be males. One must always question the utility of such interpretation act provisions. G.C. Thornton at p.96 of the second edition of *Legislative Drafting* (Butterworths, London 1979), states:

... the process of shortening laws by interpretation statutes cannot be taken too far without risk of defeating its own ends. Unless a provision in an Interpretation Act serves to advance the successful communication of law, it should not be there. Written law should not be misleading or incomprehensible without reference to interpretation legislation. Indeed it may be said that in many respects the Interpretation Act forces the draftsman to walk a tight-rope; a balanced approach is called for.

Most people will have a mental image when reading a sex-specific reference that is different than when reading a sex-neutral reference. Provisions such as the one quoted from Ontario's *Interpretation Act* do not serve as aids to successful communication when a person who reads "he" does not see at once an image of "he and she" in

the mind's eye. If such is the case, then it is time to stop relying on the excessively artificial provisions contained in many interpretation acts. This returns us to the point raised in the discussion of the first basic principle. If the use of "he" by itself is not plain English then we should discard the practice.

The argument is frequently made that "he or she" is awkward. In fact, often the discipline of avoiding the third person singular pronoun, except where it is really essential, clarifies, shortens and improves the text. Pronouns can always be eliminated by the repetition of nouns. Restructuring sentences avoids unnecessary or boring repetition of nouns. Eliminating pronouns has the very real advantage of eliminating for all time the possibility of committing the error of incorrect pronominal reference.

We recommend that pronouns and possessive adjectives not be used at all if the noun can be either an individual or a corporation. The strings "he, she or it", "his, her or its" or "him, her or it" are so ungainly that they should be avoided as much as possible. "It" and "its" may be used if the noun can not be an individual. "he or she" and "his or her" may be used if the noun can only be an individual.

Sometimes one can use the plural rather than the singular. This totally eliminates the problem of third person singular pronouns. However, we would caution that this is frequently not the appropriate solution.

Nouns create relatively minor problems in English. With the exception of a few nouns that always denote one sex (e.g. "husband" or "wife"), a very few nouns that have both a masculine and feminine form (e.g. "executor" and "executrix") and a few other nouns that have an established form that some people consider to be masculine only (e.g. "chairman" and "alderman"), English personal nouns appear to have no grammatical

gender because their form is the same in the masculine and the feminine.

The problems that do arise can be avoided by using common sense. Apart from nouns with natural gender like "husband" and "wife", it is best to use forms like "police officer" (rather than "policeman") and "flight attendant" (rather than "stewardess"). It is our opinion that synthetic absurdities such as "peshole cover" must be avoided in legislation. The words that create the most difficulty are words like "chairman" and "alderman" which some consider to have dual gender and which others consider to have masculine gender only. Some people do not like the alternatives, such as "presiding officer", and it would appear, from our experience, that the use of words such as "chairman" or any of their alternatives is not merely a drafting issue but a hot political issue that should be considered by the drafter with his or her clients at an early stage.

### *The French language*

The French speaking reader is left cold by the debate over "he" and "she", since in French the grammatical gender of nouns governs the gender of pronouns that refer to those nouns. This rule is almost too basic for discussion. Questions arise, instead, where the gender of the nouns themselves is concerned, because of the growing tendency to "feminize" titles or occupational designations that are grammatically masculine ("la féminisation des titres"). Any difficulties that the use of "he or she" might cause in English drafting pale into insignificance beside the problems that a systematic "féminisation des titres" would present for drafters working in French, because of the complicated rules whereby adjectives, pronouns and even verbs in some forms must agree with the nouns to which they are linked.

Problems of gender do not

present themselves in the same way in French and English; hence, the solutions used cannot be the same either. It would be impossible to devise a universal drafting recipe capable of producing a non-sexist style in both languages. While many drafters appear to be of the opinion that adopting "he or she" in English would automatically require the adoption of feminized titles in French, we do not share this view.

It is highly ironic that the same feminist movement expresses itself so differently in the two languages. In English, feminine endings are being dropped and there is growing preference for titles and designations that apply equally to both sexes (so that terms like "poetess" and "actress" are disappearing). In French, on the other hand, a tendency to develop and use new feminine forms of titles and occupational designations is clearly emerging. These differences are best explained by basic structural differences between the two languages, rather than by differences in the socio-political context.

We should also point out that, although discussions of "féminisation des titres" usually only deal with occupational titles and designations, the principle that applies to "l'avocate" and "la juge" (feminine forms of "lawyer" and "judge") should be applied as well to "la conjointe" and "la propriétaire" (feminine forms of "spouse" and "owner"). In other words, to be consistent, one would have to feminize all nouns that refer to human beings. This could lead to an excessively awkward and repetitive legislative style.

The traditional argument is that the masculine form of a word like "conjoint" (spouse) is a fact of the language and merely a grammatical convention. The person designated by the word may be either a woman or a man. In this sense, the masculine gender in French performs the function of a dual gender. Hence it is possible to say

that a woman is “le rédacteur en chef” (editor in chief) of a magazine or that she is “un écrivain à succès” (a best-selling writer). Sometimes the feminine gender plays the same dual role: for example, “une personne” (a person) or “une vedette” (a movie star) may be of either sex. But feminine nouns designating occupations do not usually have this property: for example, most men would not want to be referred to as “une bonne d’enfants”, even if they were in fact working as nannies.

The traditional argument is losing ground, precisely because of the growing tendency to use feminine titles which could eventually, to the extent that they become accepted usage, undermine the generic function of the masculine gender. As Robert Dubuc wrote recently (*C’est-à-dire*, vol. XVI, no.5, 1986):

Although we must welcome the use of feminine forms of occupational titles when they are applied to women, which is in keeping with the traditional use of grammatical gender to indicate sex, it must be borne in mind that this legitimate development may be compromised in so far as it involves the rejection of certain functional uses of the masculine gender such as the “masculin d’espèce” and the generic masculine. (Translation)

The government of Canada and the Office de la langue française in Quebec have already expressed official support for “féminisation des titres”, but not in the context of legislative writing. For example, in the French version of its “Guidelines respecting the elimination of sexist language in departmental communications”, published in 1984, the federal Department of Justice states:

It must be borne in mind that the masculine does not necessarily include the feminine - except in legislative texts, which are governed by the Interpretation Act whereby the masculine also includes the feminine.

(Translation - emphasis added)

This rather artificial distinction is difficult to reconcile with the principle that legislative language should follow the rules of ordinary language as much as possible. Why should there be such a large gap between legislative and non-legislative French?

Has the feminization of nouns spread so that a reasonably correct speaker of standard French no longer recognizes the traditional *generic* or *dual gender* function of titles in masculine form? If so, this evolutionary linguistic development must result in a systematic feminization of titles in our French legislative text.

However, it seems to us that the French language has yet to reach this point. When basic building blocks of a language are questioned and perhaps changed, as is the case here, the pace of linguistic evolution is quite slow. (Note that the case of English is different. The “he or she” formula won the sanction of general use surprisingly quickly, and precisely because most English personal nouns have the same form in the masculine and the feminine. It is possible to say “he or she” without touching the rules of English grammar at all.)

If and when the masculine loses its generic function, it will quite naturally become apparent that changes in the style of legislation written in French are needed. The skill of future drafters will be put to the test in writing French which is not unduly repetitive or loaded with parentheses.

For the moment, how do the basic principles set out at the beginning of this document apply to drafting in French? Without attempting an exhaustive definition of what constitutes a non-sexist style in French, we can say that it is desirable to limit the use of forms which might be seen as referring only to men. For example, it is often appropriate to use expressions based

on the grammatically feminine “personne”. Grammatically masculine pronouns such as “celui” can be avoided, especially when the context would require them to be followed by an “il”. Context permitting, the plural can sometimes be used (because the plural, even though it may be the masculine plural, is felt to be less clearly or exclusively masculine than the singular.)

But, in the present situation, masculine forms will continue in use for most titles and job designations, as the standard reference works recommend. The justification for this approach has to be general usage and not an interpretation act. This is a solution that we may need to reconsider in the foreseeable future. The principle to bear in mind will always be that legislation must be written in a language that follows current usage without being either rigidly conservative on the one hand or too daringly innovative on the other.

## Personal observations

The Ontario Government’s “non-sexist style” policy created no problems for legislative counsel in Ontario when preparing English language materials since, for the most part, we had already implemented a style that eliminated sex-specific references. Several major new Acts, such as *The Family Law Reform Act 1978*, the *Courts of Justice Act 1984*, the *Loan and Trust Corporations Act 1985*, and the proposed *Personal Property Security Act* (as set out in the Catzman Committee Report of 1984), and numerous amending Acts, including a major set of amendments to the *Workers’ Compensation Act* (which was replete with masculine references), were prepared in a non-sexist style before the Government adopted the new policy. There has been no adverse reaction either to our initial

Continued on page 41 »»

# Legaldegook awards

from the Texas Bar subcommittee  
chaired by Bryan Garner

## The Plastic Surgeon's Lobby Award

*For the most surprising instance of legislative coercion to undergo surgery*

A person commits an offense if he intentionally or knowingly possesses ... knuckles.

Texas Penal Code Ann. §46.06l

## The "Here! Here" Award

*For a sentence that knows where it's at*

The Court may take judicial notice of such pleadings which are on file herein and such pleadings are incorporated herein by reference and made a part hereof as if copied here in full.

## The "What language is this" Award

*For the most bemusing introduction to a court paper*

Defendant/Counterplaintiff responds to Plaintiff's Motion to Strike and states that if its allegations through paragraph 68 in Count II of the Second Amended Counterclaim are not sufficient to support punitive

damages to be awarded for a large corporation attempts to through conspiracy in sheer corporation throwaway to muscle out of business a sole proprietorship for punity, then so be it.

## The Obtuse Titling Award

*For the most obscure name of a court order*

Order Striking Affirmation in Opposition to Allowance of Claims Seeking the Disallowance of Invalid Claims

## The "Here, there and everywhere" Award

*For the most impressive succession of locatives*

It all fully appears from the affidavit of the publisher thereof heretofore herein filed.

## The "She left before she really got here" Award

*For a law that was formally repealed before it was enacted*

In 1990, the New York Legislature repealed a section of the Insurance

Law before enacting it. (See 29 McKinney's Consolidated Laws of New York Annotated §2235.)

## The Chicken Little Award

*Now what's going to happen, in this brief-writer's view?*

To adopt Petitioner's argument that it should be allowed to rely upon information not given, which was not asked for, would result in bad policy and negatively affect the ability of the Comptroller's Office to answer any taxability question because of a fear that possible questions which could be raised by someone like Petitioner, but aren't, will not be answered, and result in claims like the one before us today.

## The Heinous Headnote Award

*An Australian contribution to the art of legaldegook*

Held, that in determining whether an act or omission which constitutes a permitting of a thing caused the damage which subsequently resulted, what is involved is the selection from the events preceding the damage of the events which are, for the purposes of the law, to be seen as in the relevant case causally responsible for it.

*Petrou v. Hatzigeorgiou*  
New South Wales Court of Appeal  
*Australian Tort Reports* 68, 559  
(1991)

This admitably plain example of contextual ambiguity, experienced by the chairman on his way to the airport, stood a 50% chance of preventing his attendance at the Aarhus Conference





## International conference on legal language

# "Linguists and lawyers - issues we confront"

Aarhus: 23rd to 27th August 1994

### Introduction

Just over 100 lawyers and linguists met in Aarhus, Denmark's second city, for this conference on legal language. There were many interesting presentations, and it was an enjoyable reunion for some 20 CLARITY members from America, Australia, Canada, Denmark, England, and Wales.

But I am not sure that it worked as a joint conference of linguists and lawyers. On the whole, each discipline kept to its own events. An informal discussion at the end concluded that the two groups had different aims: these were not incompatible, but there was little common ground.

(But see Dr Dennis Kurzon's reply to this criticism on page 39.) The lawyers were promoting the change from legalese to plain language. On the whole, the linguists were not promoting change but merely wanted to document whatever legal language there was, often in language as complex and jargonistic as that of traditional lawyers. The principal exception, of course, was Robert Eagleson, who though not qualified as a lawyer is an experienced plain legal drafter.

Gwyn Winter is another linguist who favours plain language (to the extent that she joined CLARITY some months ago) but her paper seemed closer to traditional sociology than to the campaigning zeal of this journal.

The first days, formally "pre-conference", offered a choice

of two two-day seminars, *Clear business writing* by Mark Vale, and *Drafting legal documents*, a joint presentation by David Elliott, Bryan Garner, and Joseph Kimble. All are long-standing CLARITY

members deeply committed to plain language, and experienced presenters and legal writers. It is impossible to do justice to either seminar here, and I can manage only a brief summary.

### Mark Vale

Dr Vale stressed a point which recurred throughout the conference: that plain language was not objective - the application of strict rules, such as to write short sentences and use the active voice - but subjective - the tailoring of

documents to meet a reader's individual needs. The objective "rules" are merely guidelines, usually necessary but not sufficient. This point is of little comfort to practising lawyers, who cannot possibly test their daily written output for comprehension by the intended audiences; (if only they would apply a few objective rules for plain writing what enormous improvements there would be!). But testing and subsequent revision should be considered by those preparing documents which will be used often enough to justify the time and expense, and even busy lawyers could occasionally seek out feedback from their readers to check that the sending and receiving minds are broadly in tune.

Some points of interest raised by Dr Vale were:

- Explaining to clients is a form of cross-cultural communication (and as such fraught with possibilities for misunderstanding).
- There are no objective standards for communication, as evidenced by matrimonial misunderstandings.
- The established view is that short Anglo-Saxon words (like "get") are easier for the reader than the longer Romance language equivalents (like "obtain"). But this rule is reversed for those familiar with a Romance language and for whom English is a second language.
- Although the official Canadian literacy rate is about 99%, 15% of adults cannot cope with printed text and a further 25% can only cope with it if they are familiar with the context.
- When simplifying Canadian court forms it was found that although people understood the words they did not know

Those who will  
write well must  
speak as the  
common people  
do and think as  
the wise people  
do. So shall  
everyone  
understand them.

Aristotle  
quoted by Mark Vale

enough about the context for real understanding.

- Tax forms increase the pulse rate; court forms involving the possibility of losing home and children induce terror. Both conditions impede understanding.

**When the document has been drafted, consult the experts - your readers.**

Mark Vale

- Graphics may make a document more fun but they are not safe from ambiguity. They are more open to interpretation than text, so they need careful testing. Nor are they necessarily popular: some graphics tested for Canadian court leaflets were liked by some members of the public and seriously disliked by others.
- Before you begin writing, ask yourself these questions:

1. Who is your audience?

- Is there more than one audience?
- What do they know about the subject?
- What beliefs and attitudes do they have about the subject? What vested interests do they have?
- How fluently do they read?
- Where and under what conditions will they be reading?

2. Why are you writing this document?

- To report?
- To ask?
- To inform?
- To influence?
- To explain?

(The risk of failure increases with the number of different purposes.)

3. What do you want your reader to do?

- Take some action?
- Learn something?
- Learn to do something?
- Change their point of view?
- Keep the document for future reference?

4. How will your reader use the document?

5. How should you organize the document?

- Consider the most logical way to organize the information.
- Orient your reader to the text.
- Put the most important information first.
- Help your readers find information.
- Put all the information about a specific subject in one place.

6. How should you present the information?

Dr Vale considered the usual writing guidelines before comparing various methods of document testing, including focus groups, scenario testing, surveys, and site tests.

He pointed out that readability tests - the best known - cannot tell you:

- How complex the ideas are.
- How well or poorly the mat-

erial is written.

- Whether vocabulary and tone are appropriate for the intended audience.
- Whether there is gender, class, racial, or cultural bias.
- Whether information is presented in a sequence that makes sense to the reader.
- Whether readers can find the information they need.
- Whether the design makes the document inviting and easy to read.

**These two texts receive the same readability score:**

"Enter your gross annual income. Add all your assets in real estate, stocks and bonds. Figure your taxes from the table."

"Write down your first name. Now put down your middle initial and your last name. Fill in your age on the next line."

Mark Vale

**Bryan Garner**

In the other seminar, covered *The elements of good drafting: balancing simplicity with precision*. Among the points he made were these:

- When asked to revise the *Texas rules of disciplinary procedure* in 1990, I found "shall" used in four different ways, making it laborious to sort out what the word was

Lawyers spend a great deal of their time shovelling smoke.

Justice Oliver Wendell Holmes  
quoted by Bryan Garner

doing in each of the various contexts.

- "Shall" - [described by Joseph Kimble as] "the most misused word in the legal vocabulary" - commonly raises three problems:
  - It's used as a future-tense modal verb instead of as a mandatory verb.
  - It purports to impose an obligation on the wrong actor.
  - It's used in a permissive rather than a mandatory sense.
- If you must use "shall" (using the American system):
  - Differentiate between "shall" and "may".
  - Differentiate between "shall" and "must". Use "shall" to impose a duty on the subject of the clause ("The tenant shall ...") and "must" when the subject of the clause is an inanimate object ("The meeting must ...").
  - Avoid stating rights as if they were duties. "The Secretary shall be reimbursed for all expenses" does not mean that the secretary violates the rules by not recovering his expenses.
  - Avoid using a negative subject with mandatory verb "shall". "No person

shall [=no person must?] walk on the grass." but "No person may [=no one is allowed to] walk on the grass."

- To avoid ambiguity, refrain from using "shall" as a future-tense verb instead of as a mandatory word. "Thou shalt not commit murder" is not a prediction; it is obligatory in the present tense.

- The prevailing Australian-

What is often called 'legal phraseology' is no more than inept writing or the unnecessary use of obscure or entangled phrases.

Samuel A. Goldberg  
quoted by Bryan Garner

British-Canadian view is that legal drafters would benefit most from eliminating "shall" altogether from their vocabularies.

In discussing rules of construction Dr Garner said:

- The phrase "including but not limited to" can help overcome the principles *amibur a sociis* ("it is known by its associates") and *expressio unius est exclusio alterius* ("to say one thing is to exclude others"). But it doesn't always achieve its desired breadth. For example:
  - A homeowner's policy excluded from coverage

any loss resulting from "earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting." Is the phrase "including but not limited to" broad enough to include swelling and contractions caused by fluctuations in the water level? No: "The earth movement exclusion contemplates abnormally large movements such as the examples listed." [Jones v. St Paul Ins Co, 725 SW 2d 291, 294]

How might the drafter have prevented this construction? Perhaps in this way:

earth movement of any kind, however slight and regardless of the cause.

- The canon of construction known as *ejusdem generis* ("of the same kind") provides that when general words follow the enumeration of persons or things of a specific meaning, the general words are to be construed as applying only to persons or things of the same general class as those enumerated. The doctrine of *noscitur a sociis* is similar but broader, applying to the general context of words and not just to enumerated specifics. Note that the *ejusdem generis* rule doesn't apply when specific words follow general words, so the words "including but not limited to" don't implicate this rule.

There are only two things the matter with legal writing: its style and its content.

Fred Rodell  
quoted by Bryan Garner

- Rules of constructions are a little like hackneyed aphorisms. You can usually find a wise old saw to support the course of action you propose. For instance:

A proviso qualifies the provision immediately preceding

but

A proviso may clearly be intended to have a wider scope.

Dr Garner explained his step-by-step editing method, which included a warning - not generally seen in plain writing guides - that "of" was a much overused word, often the symptom of clumsy construction.

He provided a copy of his *Guidelines for drafting court rules*, produced in his role as style consultant to the rules committee. He said that all those judges on the committee who expressed scepticism about plain language drafting were won over when the process unearthed mistakes which had lain unnoticed under the verbiage of the old rules, and when they saw the potential for improvement.

In a parting tip, Garner said:

Only use "prior to" rather than "before" if you do so consistently, and then always use "posterior to" instead of "after".

### Joseph Kimble and David Elliott

Joseph Kimble spoke on *Drafting documents in plain language* and David Elliott on *Applying the elements of good drafting*.

We hope to cover these in the next issue.

### Martin Cutts

Martin Cutts showed a demonstration extract from the self-administering plain drafting

Good legal writing makes people feel smart. Bad legal writing makes them feel stupid.

Bryan Garner

seminar workbook he is developing with Mark Adler.

### Mark Adler

Mark Adler spoke about CLARITY's research projects (reported in detail in *Bamboozling the public* [New Law Journal 26th July 1991] and *British lawyers' attitudes to plain English* [Clarity 28, Aug 1993, p.29]).

### Other presentations

We hope to summarise other presentations, and perhaps print articles based on individual presentations, in the next issue.

### Closing discussion

**Susan Krongold:** There is too much repetitious preaching to the converted, and not enough audience participation. We could have sessions on different narrow points, like *The use of tense in legal documents*.

**Amanda Bear:** I would like to know more about the problems of implementing plain language policies in commercial organisations, and in particular about the experience of those testing plain documents, and how to interpret the results.

**Robert Eagleson:** It might be worth forming an international committee.

**Mark Duckworth:** Bryan Garner's

guide to drafting court rules was very useful. We might lobby for their adoption in other jurisdictions. In fact, we could lobby simultaneously around the world on other single points.

**Susan Krongold:** Perhaps a year of wills? We need a plan for international action.

**Chris Balmford:** At the next conference, someone might summarise the points raised for a half-day discussion at the end - or perhaps for the next conference - to produce a unified strategy.

**Judith Bennett:** I have been at a conference at which this was done, and it was excellent.

**Martin Cutts:** A strategy paper prepared in this way would have been useful to hand out on my Indian tour.

**Chris Balmford:** It could deal with plain language generally, not just legal language. It could be hugely successful, with wide press coverage.

**Mark Duckworth:** We could also talk about interdisciplinary points.

The mark of a great mind is the ability to simplify complex ideas. The best legal writers write simply (Granville-Williams, Denning, Oliver Wendell Holmes, Charles Alan Wright).

Bryan Garner

# The international plain language movement: a business plan

by Judith Bennett and Christopher Balmford

The plain language movement has achieved an enormous amount all over the world.

However, we often seem to be preaching to the converted. How do we attract more people and promote the movement? How do we help them understand the broad concept of plain language? What about those who say they support plain language, but do not practice it? Why are there so many projects where we redraft one or two documents, then our client fades away...

These questions were raised at the plain language forum at the *Law and Linguists* conference in Aarhus, Denmark, in August. This is a report of the discussion. At the Aarhus forum, it was agreed that members of the plain language movement needed to:

- keep the momentum of the movement going
- broaden the movement to include other professions and experts with common goals
- co-ordinate our approach and strategies to strengthen the movement and make it more effective
- re-image and broaden the concept of plain language as involving more than just language and more than just documents.

The last point is vital. Too many people think plain language is just about language - or, even worse, eliminating jargon. Although some are aware of the importance of clear thinking and logical structure, few are aware of the crucial role of

design, and fewer of the need to test the useability of the documents. This lack of knowledge often causes doubts and concerns.

And as we know, plain language involves much more: it involves the content, the processes, the contexts, and the management of the information in the documents - from the users' point of view. But this broad concept is simply not getting out into the general community.

We need to ensure that this broad concept of plain language gets into the heads, rhetoric, and actions of the public, business, government, and legal profession. We need to do this without undermining the wide recognition and high approval of the "plain English" brand name.

The Aarhus forum agreed that the message is more likely to be promoted if as many of us as possible say the same things internationally. Total uniformity may not be possible. But a focused and consistent message is possible.

To achieve this, the Aarhus forum widely supported developing an international business plan for the movement. We discussed likely objectives of the plan. And using these as the focus for the next international plain language conference. At the conference we can work together to brainstorm methods of implementing the objectives.

Suggested objectives for the international business plan are:

- educating the public, business, government, and the legal professional about this broad concept and its benefits

- involving experts with other skills: for example, communication and language experts, management and process experts, human thinking and behaviour experts
- implementing world-wide collaborative projects: for example, each country to produce a plain language will or set of jury instructions in the same year
- skilling plain language practitioners in information and design issues
- developing knowledge of the social contexts and purposes of legal documents
- implementing and managing plain language projects

In the conference, each session focuses on one international objective. The participants in the session produce a summary of the opportunities, tasks, strategies, policies, and the people needed to achieve the objective. The conference organisers gather the information from each session and display it on a notice board during the conference. At a final session, a representative from each session presents that session's objective and plans. These are debated and an endorsed plan is produced - and released to the media and the wider plain language movement.

If you are planning a conference, please feel free to use these ideas. We'd be delighted to help develop them further. And many thanks to all who participated in the forum at Aarhus.

# Linguistics and plain language

by Dr Dennis Kurzon

Linguist, Hebrew University, Jerusalem

At a conference of linguists and lawyers at the Aarhus Business School in Denmark in August 1994, a number of problems arose because of some misunderstanding concerning the contribution linguists may make to the plain language movement. The communication so far between lawyers and those linguists interested in legal language tends to be a one-way affair. Lawyers supply linguists with the data - the legal documents and other texts - to be analysed as language phenomena. Lawyers, however, may see very little benefit for their own professional needs in these linguistic analyses.

I would like to explain what the linguist is after when he or she studies legal language. Modern linguistics, a social science that has developed in the course of the twentieth century, is a counterweight to two separate, although at times interrelated, language studies. Firstly, we have language learning in the traditional grammar-translation method. Learners of a foreign language, dead (Latin, Greek) or living (often French), learned the grammar of the language, and its vocabulary, and their proficiency in the language was tested by their ability to translate written passages from one language to the other. After the Middle Ages, no attempt was made to teach spoken varieties of these dead languages (hence they are “dead”), while learning to speak living languages tended to be a female pastime, especially in Western Europe.

The model of Latin as an example of a logical language (it is no more or less logical than any other language such as English, Zulu, Korean, or the American Indian language Hopi), was imposed on living languages, and the rules were proposed (and in some cases invented) so that native speakers, and writers of English and other languages, were compelled to adopt them, because these rules reflect the “logic” of Latin. We are all acquainted with such so-called rules as (1) “sentences cannot end with prepositions”, (2) “don’t split infinitives”, and (3) “don’t use double negatives”. These three features were not found in Latin, or at least not in the Latin that is extant in written texts.

But Churchill’s intentionally absurd “This is the sort of English up with which I will not put” disposes of rule 1.

With regard to rule 2, in English the infinitive form is the same as the stem of the verb, and does not always require *to*. For example, we say “I can go”, where *go* is the infinitive without *to*. In “I want to go” *go* is accompanied by *to*, and even if we call the two-word phrase “to go” the infinitive, it is still two words, a fact that does allow an adverb to be inserted between them if the meaning is made clearer. To get rid of the so-called split infinitive would mean getting rid of Captain Kirk’s “to boldly go where no one has gone before”.

As for rule (3), Old English and Middle English had double neg-

atives, and so do modern French and Russian. Double negation is used in spoken English (although in a slightly substandard one) for purposes of emphasis, e.g. “I don’t want nothing” does NOT mean “I want something” on the basis that two negatives make a positive, but something like “It’s nothing that I want”. Language is not mathematics, nor is it logic.

The father of modern linguistics, a Swiss named Ferdinand de Saussure, insisted at the beginning of this century that the task of a linguist is to describe language as it is, and not language as it ought to be. That remains the aim of linguistics, although today’s standards for analysis are somewhat stringent: an analysis should explain and not just describe language structures. This demand for “explanatory adequacy” is one of Noam Chomsky’s major contributions to modern linguistics. Language teachers may, and even have to, tell their pupils what is right and wrong both grammatically and stylistically. Their job is *prescriptive* in nature. The linguist’s job, however, is *descriptive*. His or her task is to offer descriptions and explanations for language phenomena, usually from a psychological or sociological perspective. The resulting analysis may say what the situation is, and more significantly, why the language is such and not something else (for there seem to be certain universal principles which no human language can violate).

The other language field that modern linguistics initially reacted against was historical linguistics - the history and development of individual languages, and of language families. An underlying belief was that the history of a language can tell us what the present state of the language ought to be. This is paradoxical, for a study of the history of a language provides substantial evidence that language constantly changes. What was possible a hundred years ago may not be possible today. Saussure insisted

that linguists should study the language system at any one time, and describe the features of that language as they are at that time, and not relate to previous states of the language. Part of the prescriptive approach to language was based on history; the language of great writers of the past was, and is still, considered a model to be copied. This is not to belittle the contribution of historical linguistics to our understanding of language; certain phenomena may be explained best in historical terms, but the authorised version of the Bible (published in 1611), or the works of Shakespeare, may be examples of good style, although they are certainly not to be imitated in the 1990s. The same may be said for a legal document which has appeared in a form book in the same way for a few hundred years.

When linguists study legal language they are looking for those linguistic characteristics that distinguish legal language from other types of language. (Under legal language (or more accurately "language in the judicial process"), we include not only contracts, wills, and statutes, but also legal textbooks, and the language that is used in the courtroom, to question the witnesses or instruct the jury.) The distinguishing features may be in syntax, in vocabulary, even in speech sounds, and may include sentence length, complexity of syntactic structures, word or phrase order, and terms of art as specialised vocabulary. The linguist may conclude that it is these items that mark language as legal language.

Other linguists may be interested in the function of legal texts (written and oral) in context. For example, one may study those features of a contract that make it at the same time an agreement and a declaration of obligation. How do people agree in the normal course of things? And how do people state that they place themselves under some sort of obligation? Linguists who are interested in linguistic

pragmatics may compare everyday promises to legal obligations, and show the differences and similarities.

This may sound very learned and not directly relevant to the interests of legal practitioners, whose wish to simplify their documents will not be helped by academic discussion of language change and language systems. But that is in itself part of the study of language. The linguists of the Prague school in the inter-war years were keenly aware of the interrelationship between linguistic features of speech and of written texts and the function of these texts in the "real world". Texts written in what they call a "technical functional style" (which includes among others the languages of the law, administration, and economics) have "a high degree of specialisation, precision, and exactness of utterances, systematic classification and definition of concepts". Furthermore, these functional texts are concerned fairly often with complex issues, and to spell out complex matters in simple language may defeat the purpose of the text. It is also possible that writers cannot sincerely make outright statements of fact. Because of a certain amount of speculation or because of controversial assumptions, the writer will hedge what he or she writes by using modal verbs (not *shall* of legal infamy, but certainly *may*, *can*, etc.), which in the eyes of plain language enthusiasts may (a modal verb!) be close to anathema.

But the nature of academic discourse is to make suggestions or to propose models, all of which are open to contradiction. Legal practitioners have no time for such niceties - even if they may be interested in it. I am distinguishing the legal practitioner from the legal theorist or academic who may think and write about the concept of "legal rights", the meaning of "obligation", and of course the meaning of "justice", and its relationship with what happens in the legal process. The linguist may be

able to contribute directly to such discussions, as is the case within the academic field of legal semiotics, with which I am associated.

But that still leaves us with the meeting point of linguists and plain language legal practitioners, those professionals whose business is to create legal relationships in a style that their clients can understand. There are at least two fields in which the linguist may help. The first concerns pre-drafting processes, and the second post-drafting analysis. In other words, the linguist can help the legal firm to train its personnel in changing drafting styles, and can explain the process of simplification after the job has been done. In neither case does the linguist tell the lawyer what to do, or in the terms I have used above (aforementioned?), what ought to be done. Linguistics has had, and still has, an honourable career in language teaching. So, courses that firms set up to train personnel may use the services of a linguist to make the teaching material linguistically and pedagogically more sound.

Linguists are experts in talking about language. Over the last hundred years they have developed methods of analyses using technical terms that may be known to lay persons, but whose exact definitions are linguistically based. Lawyers are also experts in language, but in this case in using language (and in improving on it). Lawyers, in describing what they do to achieve a plain-language text, often do the right thing for the wrong reason. I would like to illustrate this by giving one example, which came up in one of the lectures at the Aarhus conference. It was argued that one of the faults with the following sentence is that the subject is too far away from the verb:

Petitioner's argument that exclusion of the press from the trial and subsequent suppression of the trial transcripts is, in effect, a prior restraint is

contrary to the facts.

That is to say, the subject "argument" is separated from its verb, the second "is" (the fifth word from the end) by 21 words. Well, that is not so. One problem with the sentence, which makes it unacceptable to most speakers of English, is

that the subject itself is too long. It runs from "Petitioner's argument" to "a prior restraint" and is 23 words long. Long subjects are not tolerated in English or in many other languages. There are ways of changing sentences with long subjects - by making it passive for example, which may send the long

subject to the end of the sentence as a long object, but that is where long units ought to be. Syntactic units must not be thought of in terms of individual words, as has happened here. Subjects, objects, and even verbs are regarded as phrases which function as single units. We may replace, syntactically at least, the entire subject by the word "it", so the sentence would read "It is contrary to the facts". The pronoun "it" replaces all those twenty-three words, not just the word "argument".

I hope that I have not been too learned in my explanation, but both linguists and lawyers write, and sometimes talk, in a technical functional style, which may seem more complicated than necessary for lucid communication. But the situation is, I think, clearer. Linguists cannot tell lawyers how to simplify, but they can tell them what processes may be involved, and how to explain to new recruits in law firms what features should

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**Statute Law Society**

**Annual conference**

**London: 8th October 1994**

The Statute Law Society brought together a number of eminent speakers for its conference this month. About 30 people attended.

The morning session, introduced by **Lord Renton**, the president of the society, dealt with *The role of the Law Commission in simplifying statute law*. The afternoon session (which fell outside CLARITY's sphere but was none the less interesting) was devoted to privacy and the press, with presentations by Sir David Calcutt and Lord Deedes.

**Mr Justice Brooke**, the chairman of the Commission, said that its role was to make law "simpler, cheaper, and easier to use". This was more or less identical to the policy of the Statute Law Society. He spoke enthusiastically of the plain style of their recent draft bills.

**Mr Justice Buxton**, who was a law commissioner before his appointment to the High Court bench in 1993, spoke about his work at the Commission on the proposed criminal code, which we badly need.

**Lord Justice Staughton**, while endorsing the Commission's work, thought that its improvement of statutory language did not go far enough.

**Professor Michael Zander**, describing *Lucid Law* as "by far the most single important development in drafting standards this century", asked Mr Justice Brooke where the Commission stood in the debate between Martin Cutts and parliamentary counsel's office. The reply was disappointing: the Commission has considered and discussed *Lucid Law* but is waiting to see whether a consensus emerges before it takes sides.

This brief report cannot do justice to a lively conference, and it will be reported more fully in the next issue.

Meanwhile, the Statute Law Society is commended to members of CLARITY. Contact Carol Page, Robson Rhodes, 186 City Rd, London EC1V 2NU (071 251 1644). The subscription is £15 pa.



»» **Themselves contd from p.31**

efforts or to the government policy.

In adopting the new style we noticed two things. The first is that one must develop the self-discipline to use it. The second is that some clients must be educated to the fact that the *Interpretation Act* does require us to use “he or she”. We note that there have been no negative comments from the House, the press or the public with respect to the Ontario “non-sexist” style. Indeed, there have been almost no comments at all, which confirms our view that “he or she” is plain English and is taken for granted by users of our legislation.

In our opinion, the use of a non-sexist style in English results in better drafting. The restructuring that becomes necessary to avoid repetitive language or unnecessary pronouns often yields clearer, more concise sentences.

Our recommendations for a non-sexist style in French involve no fundamental changes of approach and no radical changes of old habits. It is only necessary to remain sensitive to the issues, to avoid exclusively masculine forms and to use feminine forms, or the plural, whenever appropriate.

## Recommendation

We recommend that the Drafting Section of the Uniform Law Conference take a position on non-sexist language in the drafting of Uniform Acts that reflects current and accepted developments in language. Sex-neutral drafting improves communication and is fundamental to plain language drafting. Whether a particular jurisdiction chooses to revert to the old style would be a drafting style matter and would not affect the object of uniformity.

To implement our recommendation, we would move that the Drafting Section adopt the following statement of policy:

Sex-specific references should be avoided.

We would further move that the English version of the *Canadian Legislative Drafting Conventions* be amended by adding the statement of policy as section 13a and that the French version of the *Conventions*, when adopted, also include the policy statement.

## Addendum - 1993

Following consideration of this

## Committee news

**Nick O'Brien** has kindly agreed to join the committee in the role of treasurer, to replace Justin Nelson, who has looked after CLARITY's money since John Walton stepped down in 1987. Mr O'Brien was called to the bar in 1985 and practises from the Temple, dealing mostly with family, property (including landlord and tenant), and employment, with some personal injury work for trade unions. He is a member of the Family Law Bar Association Committee and since 1986 has been a volunteer at the Central London Law Centre's Employment Unit. He is married, and enjoys opera and concerts.

As reported in *Clarity* 30, on 28th October Mark Adler will relinquish the chair, which he took over from Ken Bulgin in 1989. He hopes to remain on the committee for the time being. However, in order to give him a break from editing the journal - and to inject fresh ideas - we are inviting guest editors to produce some future issues.

**Professor Peter Butt** has agreed to co-ordinate an editorial board based in Sydney for either the March or June 1995 issue, and we hope other issues in the near future will be edited by prominent members in the United States and Canada. Regardless, copy can be sent to the

Surbiton address opposite.

**Justin Nelson** is the committee's nominee to take over the chair.

**Richard Castle** has accepted responsibility for administering the CLARITY mark. Members or others wishing to apply for the mark should approach him at the address on the inside back page.

Overseas members of CLARITY expressed interest at the Aarhus conference in taking a more active part in the organisation, capitalising on CLARITY's position as the only international group in the field. **Patricia Hassett** already represents the United States on the committee, and we plan to build on that, co-opting other prominent members in the States, Australia, and Canada. They will continue the drive for new members, particularly in the US.

## News about members

**Chris Balmford**, head of the plain language department of Melbourne solicitors Phillips Fox, and **Mark Duckworth** (see below), have been on a lecture tour of the US, promoting plain legal language among law firms nationwide.

**Fiona Boyle** has been appointed Public Enquiries Manager at the Securities and Investments Board.

**Keith Howell-Jones** has completed his year as the first president of the newly combined Surrey Law Society.

**Stephen Knafler**, a landlord-and-tenant specialist, has moved from the solicitor's branch to the bar, and is practising at 6 Kings Bench Walk, Temple.

**Phil Knight**, an attorney who presided over the Plain Language Institute and Plain Language Office before government cuts removed their funding, has established a plain language consultancy at 1074 Fulton Avenue, West Vancouver,

British Columbia V7T 1N2, Canada (fax 1 604 925 0912).

**David Pedley** has moved to solicitors Turner Lynam in North Yorkshire, where he specialises in drafting documents in environmental law. He has recently been instructed by the Convention on International Trade in Endangered Species to draft legislation for the South American state of Guyana.

**Dr Janice Redish** has left the Document Design Center of the American Institutes for Research in Washington, DC. She is now an independent consultant providing training and other assistance in clear writing, document design, user and task analysis, and usability testing. Her phone (and fax) numbers are 301 229 3039 (2971).

**John Young** has been elected Vice-President of the English and Welsh Law Society.

### **Robert Eagleson honoured**

Robert Eagleson has received the first "Hall of Fame" award to be given by the Australian Institute of Public Communicators for outstanding contribution to communication. Announcing the award on 18th July, the presenter said:

The intention of the Honour Roll is to recognise a particular person for exceptional achievement in the practice of communication. Candidates for the Honour Roll need not be members of the AIPC.

Plain language, plain legal language, and plain English are not Australian inventions. During the last 15 years, waves of reforms have revolutionised the practice of government, law and business globally, and they flow between countries with such rapidity - especially in the English-speaking world - that tracing their origins would be futile.

But in Australia there can be no question that the name linked inseparably with plain English is that of Robert Eagleson.

He probably came to the attention of most of us almost 20

years ago when, as an Associate Professor of Modern English Language at the University of Sydney, he created the NRMA's plain English car insurance policy. This was to be the first of many such tasks he undertook for businesses large and small, with his present challenge being the Corporations Law Simplification Program.

I confess I haven't attempted the calculations, but it could not be an exaggeration to say that the savings in costs, time and resources to business and to the community as a result of his work would probably have added a billion dollars to the nation's wealth.

In many cases the benefits have gone directly to those members of the community most in need of assistance: immigrants, people lacking intellectual or literacy skills, and those without the resources to obtain professional legal advice.

He is currently working for the Family Court, shortening their forms and removing questions that opened old wounds.

He has been an advisor to the New South Wales, Victorian, and Commonwealth Governments, and consultant to the Law Reform Commissions of Victoria, New Zealand, and Canada. He was responsible for the Law Foundation Centre for Plain Legal Language in 1990, and was partly responsible for the Plain Language Centre in Canada. And he has conducted workshops in Europe before his current visit.

In 1987, Robert joined Mallesons Stephen Jaques as a permanent part-time consultant, and it is there he has been a mentor to two other prominent AIPC members: Edward Kerr, our Institute's honorary solicitor, and Michèle Asprey, the author of Plain Legal Language.

Dr Eagleson is himself a prolific author. In addition to some 50 books and articles on language, including a dictionary of Shakespeare's English for OUP, he

has written more than 30 books and articles on plain English.

Robert Eagleson has a PhD from London, and an MA and Diploma of Education from Sydney. In 1990 he won the Special Award for Outstanding Contribution to Literacy.

### **CLARITY's 500th member**

Dennis Murphy QC, chief parliamentary counsel for New South Wales and a member of the committee managing the Centre for Plain Legal Language at the University of Sydney, was given a year's complimentary membership of CLARITY on becoming our 500th member.

### **Centre for Plain Legal**

#### **Language has new director**

At the beginning of the year Mark Duckworth was appointed Director of the Centre for Plain Legal Language in Sydney. He is a solicitor both in Victoria and in England and Wales.

He joined the Centre as research fellow in February 1993 after some years at the Law Reform Commission of Victoria. He co-wrote the Commission's second report on plain language, *Access to the law: the structure and format of legislation* (1990) and wrote the report on *Statute law revision and miscellaneous amendment* the same year. Whilst there he drafted many documents in plain English, notably a draft Credit Bill and a revision of the Mines Act 1958.

From 1988 to 1993 he was a Melbourne City Councillor, and for two years chaired the council's planning committee.

In autumn 1994 he toured America with Chris Balmford, lecturing on plain legal language. Whilst there he married (according to plan) and Lauren Duckworth accompanied him to England and on to the Aarhus conference.

## Welcome to new members

### Australia

**Amanda Bear BA, Lib;** project manager, MLC Life; Church Pt, NSW

**Judith Bennett;** solicitor, Freehill Hollingdale & Page; Melbourne

**Duncan Berry;** senior legislative drafter, parl. counsel's office, NSW

**Mark Duckworth;** solicitor; director, Centre for Plain Legal Language; Sydney

**Dennis Murphy QC;** chief parliamentary counsel, NSW

**Gary Parker**

**Robin Piper;** librarian, Freehill Hollingdale & Page; Melbourne

**Richard Reynolds;** solicitor on his own account and precedents consultant to Mallesons Stephen Jacques; Perth

**State Bank of New South Wales - legal library;** Sydney

**Mark White;** solicitor, Middletons Moore & Bevins; Brisbane

### England

**Tony Collins;** corporate copy manager, Leeds Permanent Building Society; Leeds

**Nigel Cullen;** solicitor, Freeth Cartwright Hunt; Nottingham

**N.J. Evans & Co;** solicitors; London docklands

**Lord Justice Hoffman;** Court of Appeal, London

**Penny Hopkinson;** technical writer and publisher, Manual Writers UK; London W6

**Daphne Loeb;** barrister; London

**Kate MacGregor;** training manager, Berrymans; London EC2

**Robert Owen;** solicitor and parliamentary agent, Dyson Bell Martin; London SW1

**Prettys;** solicitors, Ipswich

**Janet Wright;** solicitor; St Albans

### Hong Kong

**Anthony Watson-Brown;** deputy principal crown counsel, attorney-general's chambers

### Israel

**Dr Dennis Kurzon;** linguist,

Hebrew University; Jerusalem.

### United States

**Les Scharf;** Tampa, Florida  
**Roseann Termini;** senior deputy state attorney-general (with consumer protection and plain language responsibilities); Harrisburg, Pennsylvania

**Dr Janice Redish;** linguist; writing and document design consultant, Redish & Associates; Bethesda, Maryland

**Carol Ann Wilson;** writer, teacher, and former legal assistant; Houston, Texas

**Anita Wright;** Document Design Centre, American Institutes for Research, Washington DC

As we go to  
press on  
14th October,  
we have 507  
members in 24  
countries.

**Honorary President:** John Walton

#### Committee

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| Richard Castle<br>(CLARITYmark administrator) | 118 High Street, Hurstpierpoint, West Sussex BN6 9PX<br>DX 94803 Hurstpierpoint   | 0273 833171<br>Fax: 832007    |
| Alexandra Marks                               | Linklaters & Paines, 160 Aldersgate Street, London EC1A 4LP<br>DX 10, London      | 071 606 7080<br>Fax: 600 2885 |
| Justin Nelson<br>(nominated chairman)         | Meridian House, St David's Bridge, Cranbrook, Kent TN17 3HL<br>DX 38954 Cranbrook | 0580 714194<br>Fax: 714909    |
| Nick O'Brien<br>(treasurer)                   | 4 Brick Court, Temple, London EC4<br>DX 404 London (Chancery Lane)                | 071 797 7766<br>Fax: 7700     |
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#### and in the United States

|                       |  |                           |
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