



A movement to simplify legal language

Patron: Lord Justice Staughton

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Guest editors' note

PHIL KNIGHT AND PEG JAMES

Recently Canada's Minister of Intergovernmental Affairs said, "Canada is a country that works better in practice than in theory." We feel the same way about co-editing this issue of CLARITY. We hoped to offer a Canadian perspective, without losing sight of CLARITY's role as the only international journal concerned with plain legal language. We also hoped to balance news and views, two types of content that are not always compatible. And we had to hope, as does every editor of CLARITY, that the contributions we received would make a coherent and useful tapestry.

In Canada and elsewhere, the plain language movement has matured in recent years. We recognise that bringing clarity to the law is a work-in-progress, with achievement measured in frustratingly small steps. We see that recognition reflected in the articles submitted for this issue—in the reports on projects that have achieved some (but not all) of their clarity goals, in the test results that answer some questions but reveal more complex lines of enquiry, in the summary of an Auckland tax simplification conference, and in the report from South Africa on constitutional drafters' attitudes towards plain language. The language of law is being taken seriously. Clarity as a goal is everywhere accepted as both desirable and achievable. But, these days the tone of the discussion reflects an attitude of inquiry, rather than just an attitude.

Editing a journal can be a lonely occupation. Co-editing has proven to be a happy opportunity to collaborate, to share insights, and to discuss ideas. And, yes, to parcel out the work. We recommend it to other CLARITY members who find themselves on the receiving end of Mark Adler's 'invitation' to serve as editor.

Alan James contributed his considerable computing skills and much of his time to create the layout and styles and to produce innumerable proof sheets as the journal evolved. By taking on the production half of the work, he freed us to concern ourselves primarily with content and made it possible to publish on schedule.

Joe Kimble has one of the sharpest eagle eyes in the business. He kindly proofread the galley draft of the entire journal, but he says that he edited lightly.

CLARITY members around the world sharpened their pencils and answered the call for materials. It has been a pleasure to compile their work and bring it to you.

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Cleaning up our acts: B.C. statute revision makes room for plain language changes

JANET E. ERASMUS

The Office of Legislative Counsel for British Columbia is in the final stages of preparing a complete revision of the Province's public acts. Statute revisions are generally housekeeping opportunities to consolidate amendments, omit spent provisions, and renumber inserted provisions. The new B.C. revision goes further and incorporates a number of plain language improvements. This article describes some of those improvements.

The new *Statute Revision Act*

A new *Statute Revision Act* was enacted in 1992. Section 2 of the new act gives those authoring a revision a number of useful powers. They can:

- combine acts or provisions of them
- alter the numbering and the arrangement of acts or provisions
- rename an act or portion of an act
- alter language and punctuation to achieve a clear, consistent, and gender-neutral style
- make minor amendments to clarify the intent of the Legislature, to reconcile inconsistent provisions, or to correct grammatical or typographical errors.

The core of our goal in this revision is found in these powers: to achieve a clear, consistent, and gender-neutral style in our statute law—mindful, of course, of the obligation to avoid changing the effect of that law.

Specific objectives

The goal is easy to express, but we recognized from the start that redrafting using plain language principles can be even more time-consuming than original writing using those same principles. The revision could not hope to accomplish everything, so translating the goal into reality meant setting more specific objectives:

- The revision would eliminate the traditional 'gender-specific' approach to legislation.
- It would replace unnecessarily legalistic terms with more common expressions.
- The statute format would be redesigned using plain language principles.
- To the extent there was time for more, redrafting efforts were to be directed where they would be of the most benefit. The chief factors we considered were how much public use the statute got and how impenetrable it was to its usual readers.

Some examples of the review questions:

- ◆ Split section? Split subsection? Split into paragraphs?
- ◆ Use full list style? (e.g., "one or more of the following:")
- ◆ Delete archaic, legal, or Latin terms? (See word list on the next page.)
- ◆ Use definite and indefinite articles consistently?
- ◆ Use plural or singular consistently?
- ◆ Rewrite split verbs?
- ◆ Redraft nominalizations to use verb form?
- ◆ Change double negative to positive?

The revision guidelines

A committee within the Office was established to provide direction on issues as they came up. One of its first jobs was to prepare a set of guidelines for the revision. These included a set of questions to be used in drafting and a list of 'unplain' words to be changed.

Gender-neutral language

The revision is intended to completely remove the traditional 'he includes she' approach to legislative drafting. From one perspective, this can be seen as an equality issue. It can also be seen as a plain language issue—a law that reads as though it applies to only one-half of the population is not plain. Gender-neutral language allows the law to speak directly to every reader.

Much has been written on techniques for eliminating gender-specific language forms, particularly on dealing with pesky pronouns. The revision uses a number of these techniques, the most common being a simple repetition of the reference noun. Our revision guidelines did allow use of the epicene pronoun *they*, but this was not widely embraced by the drafters.

Shall becomes must

Traditionally, *shall* and *may* have been the two principal legislative verbs. It is no surprise, then, that proposals to change *shall* to *must* have generated substantial legal debate. British Columbia made the decision to go with the change. To support the shift, our *Interpretation Act* was amended (at the same time as the new *Statute Revision Act*) to direct that “*must* is to be construed as imperative.” We have been using *must* in new legislation for the past four years and have had a largely positive response. Being able to point to the support of the *Interpretation Act* answered the few queries that were received from bench and bar.

Letting the light in

For acts where greater effort was directed, the most effective improvement technique was to separate the component parts of legislation into more accessible units for the reader. This might be as simple as splitting sections. In one particularly egregious example, a section that ran on for some 14 pages, with such

unfriendly subsection numbers as ‘(4.016)’, is being split into 18 separate sections, each with a distinct marginal note.

Far more challenging, but with more impact, is the task of splitting up the dense blocks of text that characterize much traditional drafting. A section might begin with a string of alternative conditions triggering the application of the rest of the section, follow with a list of persons to whom the section applies, include a number of different legal effects, and end with exceptions from these general

rules—and this all in a single sentence. (This description alone gives a sense of the complexity, and the challenge to a reader, that such drafting presents.)

Access improved by more informative marginal notes

Each section of a B.C. statute has what is known as a ‘marginal note’ (although they are in fact placed as head-notes to their sections). The revision continues our practice of starting each published act with a section-by-section table of contents based on those marginal notes.

As we have no current subject index for B.C. statutes, these tables of contents are key tools for readers attempting

to locate relevant legislation. Marginal notes for the revision have been redrafted recognizing this use. The uninformative and legalistic ‘*Idem.*’ (few of which remained in our statute books) was the first to go. Without overusing the technique, some marginal notes were reworked into the direct who-what-when-how format: “Who may apply for a refund” or “How to make an application.”

Some examples of word changes:

| from | to |
|-------------------------|---|
| ascertain | find out, determine |
| attain | reach |
| by reason/ virtue of | because |
| commence | begin (except for legal proceedings) |
| deemed | considered (except for legal fiction effect) |
| fix | set, establish |
| notwithstanding | despite, as an exception to, even though |
| Province | British Columbia (if geographical) government (if Crown) |
| prior to | before |
| the manner in which | how |
| said | the, that, those (or delete if unnecessary) |
| where | if |

Brevity was sacrificed for information: 'Bond' became 'Commissioner may require bond deposit.'

Format improvements

The most striking 'at a glance' change with the revision will be in statute format. Our 1979 format provided few visual cues for component parts of a section. A page could present the reader with a solid wall of text. Our new revision template adopts the 'more white space' model of indentation and spacing. For this we give nods of thanks to the work done on legislation format in New Zealand and Australia and to the now-defunct Plain Language Institute of B.C. for its assistance in conducting a user-survey of format preferences among subscribers to our legislation.

Experimentation on format began in 1990 for new acts. Along the way there have been improvements and trade-offs, the trade-offs being a matter of cost—a 'white space' format substantially increases the printed length of a statute, and paper costs have been climbing sharply. Spacing between subdivisions has been tightened up over earlier test formats. Times Roman 12-point has been reduced to 11-point. Line length has been increased somewhat over the recommended plain language maximums. Even with these compromises, the improvement over the previous format is significant.

The result of an ambitious revision

Most statute revisions are in the nature of housekeeping exercises. Ours was more ambitious. The *Revised Statutes of British Columbia 1996* will not be 'plain language law'—but we do believe they will be more readable law. Let the users judge.

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Letters

Better Drafting (CLARITY 36, p. 18)

ANDREW MELLING

Lionel J. Lewis & Company, London

It is not only the drafting of the will precedent that deserves criticism. The precedent itself is surprisingly out of date.

It was as long ago as 1964 that the rules were changed requiring permanent trust money to be held by the Diocesan Board of Finance instead of the Incumbent and Churchwardens. Gifts of money where the capital can be spent should be made to the Parochial Church Council, and that has been the case since 1921.

It would be nice to know the name of the book containing this precedent so I can make a point of not getting a copy!

On choosing book reviewers

PETER RODNEY

J A Hassan and Partners, Gibraltar

I was surprised—and saddened—to see the review by Martin Cutts of two Plain English Campaign books, *Utter Drivel* and *Language on Trial*, both of which were written before I became associated with the Campaign. I do not intend to discuss the views expressed by Mr Cutts, but rather your choice of Martin to review those particular books.

As you know, Martin left the campaign some eight years ago. Since then, there has been a history of acrimony between him and the Campaign, which I think is reflected in the tone of his review. Expecting Martin to write a fair review of any publication by the Campaign is like expecting Ian Botham to write a fair review of Imran Khan's autobiography.

Reviews in CLARITY should be solicited or accepted only from impartial reviewers. Without that assurance, readers cannot have much confidence that the views being expressed reflect fairly on the merits of the text under review.

In this case, CLARITY members might do better to buy *Utter Drivel* and *Language on Trial* and decide for themselves.

Alberta Agriculture saves money with plain language

CHRISTINE MOWAT

Thanks to Susan Barylo and her plain language committee, the Alberta government now has clear evidence that plain language forms have already saved money for Alberta Agriculture, Food and Rural Development (Alberta Agriculture). Few plain language project coordinators bother to measure before and after changes. Barylo's results are a welcome addition to plain language research.

In July 1993, Alberta Agriculture hired Barylo as the plain language forms coordinator. By April 1996, 92 of the 646 forms had been revised in plain language. Over a million (1,034,530) of the 92 forms are used each year. The longest revision is a 35-page scholarship application booklet; most, however, are one or two pages.

First steps involved choosing cross-department representatives and narrowing to an initial 24 forms. The process varied from one-to-one rewriting to gathering a team of people who used the form.

Beware of resistance to plain language changes

Barylo says newcomers to a plain language process react in predictable ways: some resist the policy changes that clarifying language often leads to; some fear changes to their job, especially from the question, "Is this form needed?" People find it difficult to rethink familiar forms and the process. And some teams do not agree to testing.

Another problem is that some don't like the team approach, and others procrastinate or stall. Initially, certain team members allow only small changes, then months later, when they see the value of the changes, are ready for more. Barylo claims that plain language by edict doesn't work; the process must be a gradual, seductive one. News of project successes throughout the department helps add credibility.

How do you start a plain language process?

The plain language writer may begin by sitting down with the user, administrator or 'owner' of the form and assuming the 'play-dumb' approach. She may ask, "What does this mean? What kind of questions do you get on the form? Where and how is the form used? What do you do with the information?"

Barylo outlines the whole process before a project begins, and suggests obtaining data on the 'before' form before changing it. For example, her collection of data on the original Operating Grant Application - Class B Agricultural Societies made possible this comparison: Staff processing time on a grant application was reduced from 20 minutes on the original to 3 minutes on the redesigned form. On the original of a Grant Report Form, the department had only had a 25% return rate. With the new plain language form, the return rate doubled. An Annual Report of Agricultural Societies form, originally eight pages, is now reduced to one fold-over page. Mailing costs are one-third less. Before-and-after data on using a Tree Nursery Order Form is especially persuasive. Almost 20 work days were saved though there were 22% more applications. See the table below.

| | Tree Nursery Order Form | |
|------------------------------|--|---|
| | 1993 Original Version | 1994 Plain Language Version |
| Number of applications | 2900 | 3540 |
| Error rate | 40% | 20% |
| Staff time to correct errors | 10-minute telephone calls per form (almost 27 work days) | 5-minute telephone calls per form (8.5 work days) |

Design is crucial to plain language forms

A dramatic example of a visually enhanced form is the new Elk and Deer Registration Certificate. Formerly the Game Production Animal Registration Certificate, the original was a crowded typed page with segments for data on the animal and its owner and another for applying to transfer ownership. The old form had gaps in the required information for users and confusing requests for information. For example, instead of asking for genetic status, the new form asks for the species of animal.

On one side of the new form is the registration certificate designed as a certificate and enhanced with lightly monogrammed deer and elk heads. There are clear instructions for using both sides of the form. The second side, a notice to change registration and a newly designed tear-off notice to update inventory, makes the form efficient and multi-functional. The form breathes and is visually welcoming.

Cost savings tell the story

Barylo describes her research as 'anecdotal' though she has used surveys, focus groups, and participant descriptions. She reports that not all the groups who participated in the forms improvement projects have as yet measured efficiency improvements between the old and new forms.

In Alberta Agriculture, the cost savings from the plain language form project are real. With 400 administrative support staff (average salary of \$24,000), 200 managers (average \$60,000) and 700 professional staff (average \$40,000), Barylo uses as a base an average AAFRD-person-year valued at \$38,154. With 1,034,530 forms processed a year, and savings in staff time of at least 10 minutes per form, she calculates that the annual saving to the government is an astounding \$3,472,014.

Barylo further qualifies that figure. "This is average," she says. "The real savings based on a detailed evaluation may be significantly higher." She refers to a detailed analysis of six redesigned forms from the Rural Development Division. Total staff time saved on six forms was 62.1 work days, or a total of \$9077.

Coincidentally, the public's time saved on these forms was 235 days!

In my view, Alberta Agriculture's plain language initiative is beginning to produce some of the most significant measurements on plain language this province has seen. The department stands as a model to others in government and business. 'Putting your money where your mouth is' has a new plain language meaning now.

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| Stressing | Use of notes |
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Clearly better drafting: testing two versions of the South African Human Rights Commission Act, 1995

PHIL KNIGHT

Overview

Legislation prepared using 'plain language' drafting principles is easier to use and is more accurately understood than legislation that follows traditional drafting methods. Previous research tells us that some readers—lay people in particular—claim to prefer 'plain language' law and think it is easier to use than other law they have experienced. But those studies have been criticised since they don't actually demonstrate improved comprehension.

In 1992, Robyn Penman of the Communication Research Institute of Australia wrote:

To verify that (plain language) is a solution, we need empirical evidence that shows that understanding is improved when clear and simple English is used—whatever clear and simple English may be.

As a long time advocate of plainer legal language, I viewed that statement as a fair challenge and decided to take it up. A year ago, an opportunity to explore this question presented itself in the form of a research project funded by Plain English Campaign. This article summarizes my report, which addresses two issues:

1. Did the plain language version of legislation yield any improvement in understanding?
2. Is there any relationship between improved ease of use and improved understanding?

The full report can be obtained, in the United Kingdom, from the Plain English Campaign, and outside of the UK, directly from me.

Background

In March 1995, The Plain English Campaign, responding to a request from the South Africa Ministry of Justice, organized and led an international team to help the Government of South Africa launch a plain language initiative.

All the team members participated in a formal series of presentations hosted by the Ministry of Justice.

During those presentations, three CLARITY members, Joe Kimble, Christopher Balmford, and I, discussed principles of plain language statute drafting. We used a typical South African bill, the *Human Rights Commission Act*, for illustration.

Later, the Minister, through his staff, asked us to produce a revision of the *Human Rights Commission Act* to demonstrate the principles we had taught, and as a possible model for future South African legislation.

Drafting legislation in plain language is controversial. Those of us involved in the revision project believe that plain language drafting represents an improvement over traditional standards of statute drafting. We believe that:

- Plain language is an important part of creating a system of justice that people can access, use, and respect. Legislation is an appropriate place to begin using plain language because it sets the tone and accent for all the documents that cascade behind it in the administration of justice.
- Plain language laws allow people to visualize themselves as subjects of the law, and to imagine themselves in the circumstances with which the law deals. This ability to place or imagine oneself within law is an important distinction between a system of justice and a regime of enforced order.
- Law can be written in plain language without losing the benefit of established legal meaning, without compromising the need for legal certainty, and without creating undesired administrative problems. In fact, plain language respects and clarifies established legal meaning, enhances certainty, and reduces administrative problems and costs.

This approach has been criticised by experienced drafters and other observers of the language used in law. Joe Kimble reviewed the critical literature in *Answering the Critics of Plain Language* (1994-95) 5 *Scribes Journal of*

Legal Writing, p. 51. With this case study I hope to restate the goals of plain language as practiced by those of us involved in the *Human Rights Act* revision and to demonstrate that our efforts succeeded in making it easier for both lawyers and non-lawyers to use, understand, and apply the law.

Key aspects of the revision

All the changes we made to the Act were chosen to create a document that would be as clear as possible to as many readers as possible. As drafters, even as we attempt to make legal texts clear, we must remain true to the core values of our craft: the law must accurately reflect the will of the legislature; be justiciable within the existing legal framework of the country; and clearly prescribe duties, establish rights, proscribe unwanted behaviour, and serve as a basis for reasonable assessment and prediction of the legal consequences of relevant actions. These requirements remain fundamental; we believe it is possible to remain true to them while writing more clearly.

Building on those basic drafting requirements, we attempted to craft a Bill that was clear, concise, readable, comprehensible, and useable to as many readers as possible. We did that by applying three communication principles, which each have a pronounced effect on readers' ability to understand the law accurately and to use a document effectively. They are:

- Organise the Bill well, bearing in mind its purposes, the probable readers, and their purposes in referring to the Act.
- Write the Bill well, bearing in mind the legal nature of the document, the probable readers, and their experience with written language and with legal processes and vocabulary.
- Present the Bill well, bearing in mind the official, authoritative quality of the document, the probable readers, and their experience with complex, official, and technical texts of any kind.

Comparative research: did plain language make the revised statute easier to use?

I used two research approaches. In one, law students at four universities were set a 'mock examination' based on the statute. In the second, individuals with no legal training or experience were interviewed and asked to perform specific tasks using the statute. I isolated the following four 'reader' tasks in using and comprehending legislation:

- Finding relevant information in the statute
- Reading the text
- Understanding meaning from the text
- Applying the meaning to a fact situation

The research was conducted using randomly selected volunteers in the United States, South Africa, Australia, and New Zealand. In each country, half the volunteers were presented with the original statute, the other half with the revised version. Each of the non-legal volunteers performed five exercises in each task.

The results offer empirical evidence showing how (and by what margin) useability and comprehension are improved by plain language drafting techniques.

Law students using the plain language version (compared to their colleagues using the traditional version):

- required 12% less time on average to complete the test
- scored 17% higher on the test
- produced 28% more correct answers per minute spent on the test
- demonstrated a 30% increase in comprehension of the statute
- were 22% more likely to achieve a passing grade (of 60%) on the test
- accounted for 70% more passing grades within the threshold of average time

Among volunteers with no legal training, users of the revised version (compared to users of the traditional version):

- found information 45% more quickly
- accurately completed 41% more searches
- experienced 21.7% less difficulty when searching for information
- were 71% more successful in finding relevant information.
- scored 18% better on the reading assignments
- scored 19% better on understanding the text
- scored 17.8% better on applying the text to fact situations

I measured the overall 'useability' for these readers by combining each person's score for the four tasks, since the tasks, by nature, are sequential. The resulting composite scores, expressed as a probability that an 'average, non-legally trained' person would be able to effectively use the statute, are:

- 23.87% for the original text
- 54.93% for the revised text

The distribution of the averages among the members of those groups shows that the average improvement was general, rather than the result of a few remarkable volunteers. Here is the table showing what fraction of volunteers obtained a score within selected ranges:

| Score | Original version | Revised version |
|-----------------|------------------|-----------------|
| Zero | 31.9% | 12.24% |
| 0% to 33.3% | 46.8% | 34.7% |
| 33.31% to 66.6% | 10.6% | 16.3% |
| Over 66.6% | 10.6% | 36.7% |

Compared to the original, the revised Act resulted in improved scores for every task involved in use of the text by legal professionals and lay readers alike.

For both groups of readers, the ease of use improved more dramatically than did comprehension or application. The improvement in useability could be due to a combination of factors. The revised text had been redesigned,

reorganised, and equipped with several reference devices to guide the reader. It is impossible to tell from this research what effect any one of those factors, in isolation, had on the outcome. Intuitively, all of them seem helpful, but more research will be needed to determine which of them is more or less significant.

The significant changes to vocabulary resulted in modest increases in readability. But compared to the effect of restructuring sentences, it made a less significant contribution to improved useability or comprehension. On the other hand, those changes may have been helpful in ways that I could not measure in this test. Interviewers reported comments by the participants suggesting that the language of the original was forbidding. One participant compared the original text to "one of those 3-D pictures you see in shop windows, where if you know how to cross your eyes just the right way, you can see the picture; otherwise, it is just a lot of confusion."

Similarly, there were comments suggesting that the language of the revision was "more comfortable" than the volunteer expected it to be. I do not know how extensive that impression was, or what effect mental 'comfort' has on comprehension. Again, intuition suggests a positive link, but I do not have evidence to prove it.

Experimental research: does it really matter if the statute is easier to use?

A colleague inspired the second half of my analysis. After hearing the overall comparative results, particularly the results concerning search times, he asked me: "But does it really make any difference how long it takes a person to find information? Can't we assume that if people really need to find something in a statute, and they look long enough, they will eventually find it?"

To test that idea, I analysed the data from the finding exercise, hoping to understand readers' tolerance to continue searching for information in a statute and to understand the effect of long searches on comprehension.

During the interviews, I timed each of the 500 searches and asked each respondent once to state their reaction to the length of the search. I discovered that 75 seconds is the maximum tolerable time for a search. Interestingly, the group with the revised statute set higher standards for their document: they were only prepared to work for 65 seconds, while the other group were willing to go on for 85 seconds.

Of course, this reflects people's feelings about the time, but not how well they performed beyond the preferred time. But I supposed that, if people begin to feel that something is taking too long, frustration will build, and, being frustrated, they might be more prone to making mistakes. This is exactly what happened.

Regardless of the version of the statute used, accuracy levels remained reasonably constant at between 60% and 80% for searches that took less than 75 seconds, and declined rapidly after that time. There are two possible explanations for this. It could be that accuracy of search results declines over time; or it could just be that smart people work fast, and less capable people work more slowly. To sort that out, I examined the results separately for four sub-groups of respondents, dividing them up according to how well they performed their other tasks. Although general ability accounted for some variation in the results, the overall pattern was consistent. Regardless of the ability of the respondents involved, each of the two documents, considered separately, demonstrated a common property—accuracy declined 50% when the search time extended between one and two minutes.

At each time interval, there was a difference in the accuracy levels between the two documents. For example, of all searches completed within 40 to 45 seconds using the revised text, 70% were completed accurately. By contrast, only 50% of the corresponding searches using the original text were completed accurately. The margin between those results represents one part of the improvement in the revised text. Regardless of time taken for a search,

respondents using the revised text more accurately related the things that they found to what they were searching for. I attribute that to improved comprehensibility of the revised text.

The users of the revised text experienced a second advantage over users of the original. It was easier to use, so people were able to work more quickly—completing 50% of all searches within 45 seconds, and 70% of all searches within 70 seconds. By contrast, users of the original text had completed only 50% of their searches after 75 seconds. This part of the improved results I attribute to improved usability of the revised text.

These two advantages worked together. Because the revised document was easier to use, people completed more of their searches during the time that search accuracy was still at or near its peak.

Furthermore, the volunteers seemed to sense that time matters, and with uncanny ability were able to predict the significant point at which time was critical. Recall that in expressing their own opinions about search times, they revealed 75 seconds to be the maximum tolerable time. And consider that 75 seconds is just about the point at which accuracy levels begin to fall. And ask yourself, how were the respondents able to predict that?

The answer is that each respondent expressed a feeling about the time they had spent, and 75 seconds was the point of balance when bad feelings began to outweigh good feelings. After that time, they were beginning to be frustrated and suffered one effect of frustration: declining accuracy.

Because ease of use affects search time, and search time can affect accuracy, it follows that ease of use is a factor in accuracy of information retrieval, and thus in general comprehensibility of the document generally.

The easier we make it for a reader to find information, the more likely the reader will do so accurately. This is critical—the volunteers showed a marked preference to “find some-

thing” rather than quit. Of 500 searches conducted, only 8 resulted in the volunteer giving up.

Now let’s consider the following:

- It appears that statute users prefer a wrong answer over no answer.
- It appears that there is a tendency after a certain time for statute users to choose wrong answers more often than not.
- Every statute user has a breaking point, a time after which they are dangerously apt to seize a wrong answer believing it to be correct.

If these observations are generally applicable, then the call for improved useability of statutes has deeper significance than just “making things easier for lay readers.” It is a call to improve accuracy, and thus reduce the risk of error, whenever anyone, in any profession, is called upon to look into a statute and advise a member of the public.

General observations

These results demonstrate the improved efficiency in the plain language legal text. That text enabled the public to get better access to the law themselves, and it equipped lawyers to work faster and smarter.

Law is intended to provide information to assist people in solving problems, and to inform appropriate decision-making. It is a tool used in pursuit of a social purpose: communication over time, distance, and circumstance. The ideas contained within a law must be applied in real life to have effect; and to be applied, those ideas must be discerned by reading the text. A technique that can reduce the effort required to accurately discern the law is an improvement that ought to be of interest to anyone involved in legal work.

This test establishes that the benefits of the plain language principles extend equally to professional and non-professional users of law. The plain language style of drafting and presenting statutes promises to increase the efficiency of users of the South Africa bill by as much as 70%.

Among other things, this research establishes that the traditional ‘methodology’ of statute drafting is inadequate, that new methods available today can produce improvements in comprehension and efficiency, and that the formal adherence to linguistic precedents costs the legal profession, and the rest of us, dearly. This should challenge all writers of legal texts to open our minds and our practice to the possible, to search with our public for the best ways to communicate, and to share with them the meaning in the living ideas that are the law.

Most important, because plain language works, advocates of clarity in the law ought to vigorously promote their vision of engagement with users of the law, professionalism in writing law, and a culture of effective, rather than formal, communication of the law.

Wager between CLARITY reps: might someone eat his socks?

Two of CLARITY’s overseas representatives have taken their jobs so seriously that they have an outstanding sign-up wager. If Australia’s Christopher Balmford signs up 100 CLARITY members in Australia before Joe Kimble enrolls 100 in America, Joe says he will “go to Australia and eat his socks in public, at high noon on Sydney’s Circular Quay.”

Both representatives have had a flurry of recent sign-ups. (Christopher has even enrolled his mother.) The latest count is US 82, Australia 68—which Joe admits is too close for comfort.

Just in case, Joe, may we suggest you place an early order for new hose, perhaps in rice paper fabric?

Drafters of South Africa's new Constitution adapt to plain language

To make its new Constitution understandable for more citizens, and to help the public participate in their new democracy, the South African government asked its constitutional drafters to use plain language. Then the government commissioned David Everatt, Debbie Budlender, and Joan De Castro of the Community Agency for Social Enquiry (CASE), a non-governmental research agency, to evaluate the public participation campaign and the plain language initiative. As a small part of its study, CASE interviewed some drafters about how this plain language initiative worked in their view. The drafters' comments make interesting reading for lawyers who have struggled with plain language themselves. The following summary of the CASE report covers some concerns constitutional drafters had as they drafted in plain language.

PEG JAMES

CASE interviewed ten people, only one of whom had had extensive previous drafting experience. Some had attended plain language workshops conducted by Phil Knight, a Canadian consultant. Their main concerns form the headings in this summary.

Who are we writing for?

Most interviewees focused on the non-lawyer audience, citing the citizens' right to understand the Constitution and other laws. They saw increased access to the law through plain language as a way to empower citizens and to increase observance of the law. Some said the Constitution in particular, being the supreme law of the land, should be a people's document and be understandable to as many people as possible.

However, two drafters questioned whether all laws have to be in plain language and whether it's equally important that all sections of a given law be expressed plainly. They pointed out that there are different main readers for different laws and for different clauses within a law and gave the transitional provisions as an example. These provisions are often technical and have a limited life, so the effort of putting them into plain language might not be justified.

Other drafters acknowledged that even legally trained readers benefit from plain language, since it saves reading time and results in a clear and unambiguous law being available to lawyers and the courts. (But at least one drafter

thought the courts would find the tortuous version easier.)

Some drafters worried that even a plain language document still excludes those with low literacy skills, those disadvantaged individuals who most need to know how the law can help them. Others noted that groups such as churches and schools are the most likely users, so individuals would have the group's help to understand the law. (In a footnote, CASE says it might be possible to create three versions of the constitution: a full plain language version, a summary plain language version, and a 'popular' version. The 'popular' version might meet the needs of the less educated.)

Is something 'lost' when we draft in plain language?

Half of those interviewed denied that anything was lost. A few felt plain language laws were not sufficiently dignified or poetic. Others were concerned about the possible loss of legal certainty:

The whole emphasis is what the ordinary man or woman understands. But the Constitution loses in the process. It loses legal meaning and status as a legal document—as a document regulating legal relationships which are very complicated. These are simply impossible to express in plain language. Trying to avoid difficult language means you skip matters you want to regulate.

Drafters were also concerned about the potential conflict between the plain language versions and international precedents. Might plain language versions cause prolonged litigation? Will courts interpret the plain language version in the same way as the more traditional version? How will the courts interpret the plain language version when there could be more than one interpretation of the traditionally phrased version?

What if clarifying the language means losing hard-won consensus?

Drafters found it particularly difficult to work with content that was still under political debate. Sometimes translating an idea to plain language led a politician to complain that drafters had altered the meaning so the politician could no longer agree with what was expressed. The plain language version sometimes led to further debate about whether to draft in general principles and leave it to the courts to interpret or draft specifically so that all can be clear as to the meaning. When what was to be expressed clearly was a moving target, drafters were unsure whether their plain language work facilitated or hindered reaching political consensus.

What about pressure against plain language from peers?

Plain language drafters felt some pressure from lawyers who were comfortable with the status quo. These resistant lawyers thought that changed language caused unnecessary confusion, while changed drafting processes undermined their established legal status. Those new to plain language drafting were nervous about sounding too different from their peers. Some resisters saw plain language as part of a broader political agenda with which they were uncomfortable. Drafters said resisters found it easier to agree on improved structure, layout, and design than on the nuances of phrasing. Resistance to plain language lessened over time, perhaps due to the explicit support for plain language from influential political players.

What about the extra time plain language takes?

Drafters agreed that plain language can take longer because, with no fixed patterns to follow, it requires more creativity. But with experience, plain language drafters expect to become more efficient, and most interviewees agreed that the time saved by readers made the extra time spent drafting worthwhile.

Do we apply plain language principles too rigidly, as if they were rules?

Drafters stressed the need for flexibility in applying plain language principles. It's not a matter of putting language through a 'plain language laundromat', rigidly applying rules like, "Be concise" and "Don't use passive voice." Instead, such principles must always take second place to the needs of particular readers. Some drafters were concerned about making plain language a new international orthodoxy. They pointed out the need for an indigenous, South African plain language drawn from their own vernacular.

How does plain language fit with our eleven official languages?

After their work on an English draft of the Constitution, drafters were asked whether it would be better to draft originally in several official languages or to translate into other languages from an English plain language draft. The varied responses to this question show the confusion and ambivalence about what it means to have eleven official languages. Some pointed out that a plain language version will be easier to translate, and that the process of translating provides opportunities to clarify still further the English version. (The working draft of the English version created problems for lawyers whose first language was not English.) Others mentioned that each language will make its own demands on plain language drafters: plain language principles applicable in one language don't necessarily apply in another.

Is plain language drafting worthwhile?

Despite these concerns, drafters were overwhelmingly positive about the plain language

initiative. The most frequent response was that plain language increased clarity. One respondent said that plain language drafting was able to uncover problems which might be hidden by traditional drafting methods: "Plain language draws attention to the legal problems, the policy problems, and the perceptual problems."

Several of the strongest supporters of plain language argued that the difficulties raised by those who were less certain about the initiative reflected poor plain language drafting rather than shortcomings in the concept itself.

All agreed that the best way to learn plain language drafting is through experience and practice, but a plain language attitude is also necessary. They learned the importance of having their work edited by others and of accepting contributions from a variety of people with different viewpoints. After going through the plain language process, these drafters viewed legal language in a new way: "It absolutely convinces me that all drafting does not need to be convoluted. I did not realize how much of it was."

The Constitution Assembly has completed its work and will close its office shortly. The Assembly's Executive Director advises that readers who want a full copy of the report may contact CASE directly.

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Word tonnage isn't the point. With no more than 18,000 different words, Shakespeare's writings have stimulated the western world for four centuries; the average American commands some 20,000 words and about four minutes of attention.

Arthur Plotnik,
The Elements of Expression

Plain language in Tenancy Agreement Regulations

PHIL KNIGHT

Last July, the British Columbia government introduced the Tenancy Agreement Regulation, establishing standards for the form and style of residential tenancy agreements. All new agreements must be "in not less than 8-point type and written in a manner which is easily read and understood by a reasonable person."

These words are close to, but slightly different from, the language used in 1994 in the Motor Dealer Leasing Regulations: "Every lease contract must be written in plain language, in not less than 8-point type, and in a manner which is easily understood by a reasonable person."

I wrote a long, strong critique of that regulation in CLARITY 33. Again, the new regulation raises some concerns. I note the following:

1. The expression 'which is easily read and understood' is ambiguous, leaving open to interpretation whether *easily* is intended to modify 'read and understood' or only 'read.' Which interpretation you choose makes quite a difference, as it is commonplace for text to be easy to read, but difficult to understand.
2. The ministry continues to use a 'reasonable person' test, which is inappropriate and counter-intuitive for all the reasons I discussed in CLARITY 33.
3. There are now two significantly different standards extant in regulations published by one ministry. This is confusing for solicitors and invites inconsistent judicial interpretation.
4. The ministry continues to prescribe an inadequate type size, one that flies in the face of the requirement that text be 'easily read.' They invented this test back in 1994; 8-point text was too small then, and it is too small now. All that has changed is that our eyes are all three years older.

Plain French in Canada: a review of past and present activities

NICOLE FERNBACH

The need to communicate clearly with citizens and clients has led to original solutions in the Canadian bilingual context. Federal institutions practice official bilingualism, which means that our laws and regulations as well as court cases are in both English and French. Provinces where legislation is bilingual also provide administrative services in both languages. In Québec, plain French has made more inroads because French is the official language of expression for both the lawmaker and the government.

In the late 1970s, the Québec tax authorities decided to introduce some plain language solutions in their tax forms and guides so as to simplify them and make them more accessible to the general public. They were successful in their efforts, and other Québec government agencies regarded this as a trend worth imitating.

A few years later, the Canadian Legal Information Council created a Plain Language Institute with a French division in Toronto and in Montréal. From 1988 to 1992, the French division was called upon by various Federal departments to organize training programs for legal and administrative writers, linguists, and lawyers. The objective was to harmonize the changes in style and structure of simplified documents, whether they would originally be written in French or translated from English. The 'Style clair et simple' was introduced as a counterpart to 'Plain English' writing.

Federal institutions which have adapted their written communication in French include the Ministry of Revenue, Heritage Canada, and the Ministry of Justice.

In Ontario, the provincial government has also favoured the use of plain French in legislation, regulations, and administrative forms, more particularly the Ministry of the Attorney General with its Plain Language Policy.

In Québec, several institutions have made radical changes in the way they communicate with the general public, especially in the areas of social and retirement benefits. The most visible initiative comes from the Régie des rentes du Québec, where training programs have been conducted so as to simplify both style and graphic presentation. Efforts are being made to gather information from other jurisdictions where French is used in governmental communication in order to improve access to public legal information in particular.

The use of a different language does not change the basic problems of access to law and administrative procedures. By comparing principles of clear and simple writing in the Anglo-American context as well as improvements suggested by experts based on testing, on the one hand, and what seems to work for the French-speaking reader, on the other hand, one may develop useful techniques adapted to the legal and cultural requirements of Canada.

In that respect, the CLARITY network has proven extremely helpful and is welcomed by French-speaking lawyers and writers. By distributing documents, research, and before-and-after versions, it has contributed to the development of a more daring plain French style. By its audacity and openness to change, in spite of the conservative nature of legal communities in whatever language, the plain English network has been an inspiration to those who are engaged in a constant battle against obscure and convoluted styles of writing while trying to preserve the integrity and correctness of the French language.

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Plain language: lighting the way through informed consent

DEBORAH GORDON

In January 1995, Anna Patricia Smith sued for damages from Dr. Peter Tweedale, a B.C. gynecologist.¹ She charged that he had failed to adequately explain that the sterilization procedure she would undergo was irreversible and that other options were available. The trial judge held for the plaintiff, and Dr. Tweedale's subsequent appeal was dismissed.

This unfortunate situation illustrates the critical relationships among plain language, informed consent, and liability of health care professionals. Physicians who are unaware of literacy issues and the need to communicate clearly with their patients may put themselves at risk of being sued.

The events in this case unfolded as follows. When she was about to undergo a Cesarean section to deliver her second child, Ms. Smith asked Dr. Tweedale to tie her tubes. In response, Dr. Tweedale proposed a procedure that involved removing Ms. Smith's Fallopian tubes. He told her she should consider the procedure permanent.

Although Ms. Smith signed a consent form which authorized a C-section and tubal sterilization, she alleged that Dr. Tweedale did not make clear how the procedure he proposed, a bilateral tubal salpingectomy, differed from a tubal ligation. A tubal ligation would leave her a 50% chance of becoming pregnant in the future, but the bilateral tubal salpingectomy would be permanent and irreversible.

The trial judge held that Dr. Tweedale breached his professional duty by choosing language that left doubt in his patient's mind about what he meant and by failing to make sure that she understood the consequences of the procedure.

The trial judge stated that Dr. Tweedale could have been clearer and more explicit. He

could have asked, "Are you sure you understand that this procedure is permanent?" or made other simple but definitive statements that would have removed any ambiguity.

Members of the medical profession explain medical procedures to patients every day, and they must be very sure that the consent they obtain is truly informed. This is especially vital considering what we now know about low literacy levels in Canada. According to Statistics Canada, 42% of Canadians have weak reading skills and have difficulty reading maps, job applications, and tables.² Literacy levels tend to be lower in Quebec and the Atlantic provinces (50% have low literacy skills) than in Ontario and Western Canada (between 40 and 45% have low literacy skills).

Many more Canadians have difficulty understanding written and spoken medical information, which is often complex or confusing. The quality of their medical care may be compromised if they misinterpret a physician's instructions (for example, failing to take medication as directed). Also, as we have seen from Dr. Tweedale's example, misunderstanding may lead to alarming legal consequences.

Legally, physicians have two competing interests to consider in their professional practices: therapeutic privilege and their duty to disclose risks inherent in any treatment when obtaining informed consent from their patients. The former gives physicians some latitude to exercise professional judgement about what patients need to know, while the latter ensures that patients understand what they are consenting to.

To obtain informed consent, physicians must communicate clearly with their patients. This means not only must they give the required amount and kind of information guided by the doctrines of informed consent and therapeutic privilege, but they must also know their patient's ability to understand the information they are giving.

Plain language can help. Two principles of plain language could have guided Dr. Tweedale and possibly saved him from a liability suit:

1. Use common words, rather than technical jargon. Dr. Tweedale could have explained the outcome of the procedure in simple terms and then posed additional questions to ensure his patient understood the outcome. He could have said: "I want to make sure you understand that this operation means you can't have children ever again. Is this what you want?"
2. Give patients a chance to express how they are feeling. Acknowledge that a patient is in pain, is uncomfortable, or has strong feelings about the proposed treatment. This empathy helps patients listen and learn better because they feel understood.

The issue of language also arose in an earlier case tried in British Columbia's Supreme Court in September 1993.³ Dr. Peter Carpenter, a dental surgeon, was found liable to Theresa Finch, his patient, for damages resulting from the displacement of an impacted wisdom tooth.

Dr. Carpenter gave his patient a printed page called *Impacted Teeth*, a document in relatively fine print and technical language that did not impress upon his patient the spectrum of risks involved in the procedure. The trial judge stated that giving the patient only print information in technical language fell short of what was necessary to obtain informed consent in these circumstances.

Furthermore, there was a reference in the print information to the surgeon's probably discussing these risks with the patient at the time of the pre-operative consultation. It was reasonable, according to the trial judge, for Ms. Finch to conclude that, if Dr. Carpenter didn't discuss a particular risk, it did not apply to her.

This finding does much to support one of the chief guidelines of plain language: written information should only supplement the spoken exchange between the health provider and

patient. Personal contact is the best way to make sure patients have understood a health provider's message.

The trial judge was satisfied that Ms. Finch would have asked questions and declined the procedure had Dr. Carpenter adequately explained the risks at the outset.

A plain language approach also reminds physicians that many patients have limited reading, writing, and listening skills. When patients don't ask questions or resist a physician's instructions, physicians should consider that the patients may not understand what is being suggested.

The Canadian Medical Association promotes the use of plain language in professional practice by participating in the Canadian Public Health Association's National Literacy and Health Program. The program, which brings together 22 national health associations, focuses on plain language health information and clear verbal communication between health professionals and the clients they serve.

CPHA's National Literacy and Health Program provides resources to help health professionals serve clients with low literacy skills. Simple instructions and easy-to-read health information will help improve health care for many Canadians and may decrease the risk of physicians' professional liability for failing to ensure informed consent.

Footnotes:

1. *Smith v. Tweedale*, [1995] 4 B.C.L.R. 19 pp.
2. Statistics Canada. Backgrounder, *Literacy Economy and Society, International Adult Literacy Survey*, Ottawa, 1995.
3. *Finch vs. Carpenter*, [1993] 19 B.C.J. 14 pp.

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SEC to issue 'plain English manifesto'

SEATTLE-The Securities and Exchange Commission announced it would issue by fall 1996 'the plain English manifesto,' a release addressing the need for companies to make required filings in language that is understandable to the majority of investors, Brian Lane, director of the Division of Corporation Finance, told the American Society of Corporate Secretaries national conference June 29, 1996.

Later, Lane told the Bureau of National Affairs (BNA) that the commission release, which is not yet in final form, will probably "make the case for plain English," possibly propose the use of 'plain English summaries' of filings, and perhaps include some guidance on just what the commission means by 'plain English.' The commission, Lane told BNA, also hopes to issue in the near future a 'style manual' to help make clear to issuers what it means to write in 'plain English.'

In addition, Lane said that his division, which reviews all proposed filings submitted to the commission, "will provide incentives for guinea pigs," that is, for issuers that volunteer to submit plain English filings for various transactions, including proxy statements for mergers and registration statements. Specifically, he said the staff will try to review more quickly than usual filings purporting to be in plain English. Lane told BNA that he envisions this as an informal effort, not a formal pilot program. He invited companies that would like to volunteer to submit filings in return for a 'quick review' to call Ann Wallace, who is senior counsel to Lane. Lane noted that he has appointed Wallace to head the division's plain English initiative.

The push for plain English filings has been embraced by SEC Chairman Arthur Levitt and received a boost when the Disclosure Simplification Task Force issued a report March 5 that recommended simplification of the language in prospectuses (28 SRLR 327).

The task force report stated that the language in prospectuses often is "turgid, opaque, and unreal," Commissioner Isaac C. Hunt Jr noted in a June 26 address to the Corporate Secretaries conference.

Hunt said he had seen an example of this himself, noting that one draft notice of a company's annual meeting, filed with the commission in May, contained one sentence consisting of 445 words.

Some securities professionals have argued that it is necessary to use certain specialized terms when addressing sophisticated users of SEC filings, Hunt said. By seeking plain English in those filings, they argue, the commission is asking them to "dumb down their documents." "We believe nothing could be further from the truth," Hunt declared. It may be necessary to use specialized terms in some instances, Hunt conceded. Nevertheless, "better disclosure is synonymous with comprehensible disclosure."

Plain English does not mean that all filings must be written in terms so simplistic that they could be used "in a flier for a garage sale," Lane noted. What the commission is interested in is documents whose meanings are clear and that use proper grammar, he told BNA.

The SEC began a pilot program in 1995 under which mutual funds have issued 'profile prospectuses' that are intended to be both shorter and more readable than full prospectuses, but have also made full prospectuses available to investors (27 SRLR 469). Preliminary findings in connection with the pilot indicate that it "does serve as a model" for clear disclosure and that investors like the short-form prospectuses, Hunt said. "We need to develop similar partnerships" in other areas of securities regulation, he told conference attendees. "I think you'll see more efforts in this area."

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SEC plain English guidelines

From the draft of *The S.E.C. Plain English Handbook*, here are several guidelines for writing clearly, with examples of tortured writing from current prospectuses and samples of improved versions. (Company names have been changed by the S.E.C. to protect the guilty.)

Avoid ~~unnecessary~~ ^{superfluous} words.

Before: Machine Industries and Great Tools Inc. are each subject to the information requirements of the Securities Exchange Act of 1934, as amended (The Exchange Act), and in accordance therewith file reports, proxy statements and other information with the Securities and Exchange Commission (The Commission).

After: We file annual, quarterly and special reports, proxy statements and other information with the Securities and Exchange Commission.

Use ~~utilize~~ concrete rather than abstract words.

Before: The markets for certain of the Machine Tools Inc. products historically have been highly cyclical, characterized by periods of supply and demand imbalance.

After: The markets for some of our products vary dramatically. In the past, we have seen sharp increases and decreases in orders for our products.

Avoid, ~~wherever possible,~~ clauses that interrupt a thought.

Before: Machine Tools Unit, a wholly owned subsidiary of Machine Tools Inc., will be formed by Machine Tools Inc. solely for the purpose of effecting the Merger.

After: We will form a subsidiary called Machine Tools Unit solely to accomplish the merger.

Use personal pronouns in ^{your} a document, and be precise.

Before: Sandyhill Basic Value Fund Inc. (the "Fund") is a diversified, open-end investment company seeking capital appreciation and secondarily, income by investing in securities, primarily equities, that management of the Fund believes are undervalued and therefore represent basic investment value.

After: At the Sandyhill Basic Value Fund Inc., we will strive to increase the value of our shares (Appreciation) and, to a lesser extent, provide income (Dividends) to our shareholders. We will invest primarily in undervalued stocks, meaning those selling for low prices given the financial strength of the companies.

As reported in the *New York Times*, August 25, 1996.

Canadian prospectuses becoming clearer

Canadian prospectuses, too, are becoming clearer to potential investors as firms move toward plain language. Ellen Roseman, writing in the *Globe and Mail*, reviewed new prospectuses from Canadian Imperial Bank of Commerce Securities and Altimira Investment Services Inc. "CIBC's effort is high quality, attractive and easy to read. Altimira's prospectus, too, is written in admirably plain and direct language. A definite plus: both Altimira and CIBC provide a detailed breakdown of fees, costs, and expenses."

George Orwell once blamed the demise of the English language on politics. It's quite possible he never read a prospectus.

Arthur Levitt, Jr., Chairman,
Securities and Exchange Commission.

A U.S. update

JOE KIMBLE

Good news: the activities described on pages 19-22 are only part of a much larger effort by the federal government to start using plain English in administrative regulations.

A seminal event, on September 30, 1993, was President Clinton's Executive Order No. 12866. As one of its directives, the Order stated: "Each agency shall draft its regulations to be simple and easy to understand, with a goal of minimizing the potential for uncertainty and litigation arising from such uncertainty." (Shades of Jimmy Carter.)

President Clinton has continued to sound this theme. On March 4, 1995, he issued a memorandum to heads of federal departments and agencies. He directed them to "conduct a page-by-page review of all your agency regulations now in force and eliminate or revise those that are outdated or otherwise in need of reform."

The effort to simplify and streamline federal rules and the regulatory process has been coordinated by Vice-President Gore's National Performance Review. The Review involves a cross section of persons from different agencies, and it has increasingly supported plain-English activities. It's now working with agency representatives and the Office of the Federal Register (which publishes new regulations) to develop plain-English guidance for the regulation writers. You can check out <http://www.upr.gov> for the Review's home page.

Late last year, I searched for the words 'plain English' on the Westlaw® database for federal regulations—and up came over 160 entries within the last few years. In one proposed rule after another, the agency says that the rule "has been rewritten in plain English" or that the agency is "committed to writing the final rule in plain English." The Department of Interior is very active, with dozens of rewritten rules. But there are also new and proposed rules in plain (or plainer) English from the

Department of Labor, the Environmental Protection Agency, the Department of Commerce, the Small Business Administration, and many others.

And the Securities and Exchange Commission continues to forge ahead. The article on pages 19-20 describes their pilot projects in 1995 and 1996: they allowed mutual funds to use 'profile prospectuses' with their full prospectuses; and they provided expedited review for various filings that were written in plain English. Then in January, the SEC took two more steps. First, it issued a proposed rule to require the use of plain English on three sections at the front of prospectuses - the cover page, summary, and risk factors. The rule is accompanied by a strong defense of plain English based on the literature and on the SEC's own experience. According to the SEC, "Our ultimate goal is to have all disclosure documents written in plain English." Second, the SEC staff issued the draft text of A Plain English Handbook—How to Create Clear SEC Disclosure Documents and asked for suggestions on how to improve it. You can check out <http://www.sce.gov/news/plaineng.htm> for the rule and the Handbook.

In short the U. S. is back—on the administrative front. Now if we could just get the attention of the federal legislative drafters.

Joe Kimble teaches legal writing at Thomas Cooley Law School in Lansing, Michigan, edits the "Plain Language" column in the Michigan Bar Journal, and is the managing editor of The Scribes Journal of Legal Writing. He recently published "Answering the Critics of Plain Language" in Volume 5 of The Scribes Journal.



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OSHA proposes its first rewrite of requirements into plain language

U.S. DEPARTMENT OF LABOR PRESS RELEASE,
SEPT. 10, 1996

Standards for workplace emergency routes to be offered in two versions

OSHA is becoming user-friendly. The Occupational Safety and Health Administration is suggesting that its guidelines for leaving a building in a hurry or otherwise be changed to plain language. In other words, what employers once found listed as 'Means of Egress' will now be listed under 'Exit Routes.'

OSHA wants to know what employers, their employees and the general public think about this proposal, which was advertised today in the government's non-plain-language Federal Register.

Labor Secretary Robert B. Reich says the simplification makes for better government. "Today, we've made a substantial down payment on a government that works better," Reich said. "Americans are well-served when government communicates simply and clearly about worker safety and health."

This is the first of OSHA's standards to be simplified. Others will follow.

"To make this standard as user-friendly and understandable as possible, we also are pro-

posing this in two plain language formats," said Assistant Secretary of Labor for Occupational Safety and Health Joseph A. Dear, the head of OSHA. "The first version is organized in the traditional OSHA regulatory format, and the second version uses a question-and-answer format. We want to know which version is the most effective."

President Clinton's re-inventing government initiative prompted OSHA's review of its standards to determine which should be rewritten in plain language.

The requirements for exit routes for general industry have been rewritten in simple, straightforward, easy-to-understand terms. The proposals also reorganize the text, remove inconsistencies among sections, and eliminate duplicate requirements. The proposed rules also are performance-oriented and shorter than the existing standards.

Each of the two proposed versions includes a detailed table of contents, to make them easier to use.

Both proposed versions leave unchanged the regulatory obligations on employers and the safety and health protection provided to employees.

The proposed question-and-answer version is very different from the approach taken in current OSHA standards. Each provision is written in the form in which an employer might ask a question about the rule, and this question is followed by an answer that tells the employer about the applicable requirements.

Example of plain language standards

The following page shows a comparison of an existing regulatory provision and a plain language version of the same provision. This example is about width and capacity of means of egress in the current 'Means of Egress' standard.

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Desktop access for Mac users

Current provision - 29 CFR 1910.37(c)

(c) Width and capacity of means of egress.

- (1) The capacity in number of persons per unit of exit width for approved components of means of egress shall be as follows:
 - (i) Level Egress Components (including Class A Ramps) 100 persons.
 - (ii) Inclined Egress Components (including Class B Ramps) 60 persons.
 - (iii) A ramp shall be designated as Class A or Class B in accordance with the following Table E-1:

Table E-1

| | Class A | Class B |
|----------------|------------------------------------|------------------------------------|
| Width | 44 inches and greater | 30 to 44 inches |
| Slope | 1 to 1 3/16 inches in 12 inches | 1 3/16 to 2 inches in 12 inches |
| Maximum height | No limit | 12 feet between landings |

- (2) Means of egress shall be measured in units of exit width of 22 inches. Fractions of a unit shall not be counted, except that 12 inches added to one or more full units shall be counted as one-half a unit of exit width.
 - (3) Units of exit width shall be measured in the clear at the narrowest point of the means of egress except that a handrail may project inside the measured width on each side not more than 5 inches and a stringer may project inside the measured width not more than 1 1/2 inches. An exit or exit access door swinging into an aisle or passageway shall not restrict the effective width thereof at any point during its swing to less than the minimum widths hereafter specified.
- (d) Egress capacity and occupant load.
- (1) The capacity of means of egress for any floor, balcony, tier, or other occupied space shall be sufficient for the occupant load thereof. The occupant load shall be the maximum number of persons that may be in the space at any time.
 - (2) Where exits serve more than one floor, only the occupant load of each floor considered individually need be used in computing the capacity of the exits at that floor, provided that exit capacity shall not be decreased in the direction of exit travel.

before

Plain language version (Q. and A. format) - 29 CFR 1910.36 (i)

(i) What is the required capacity for exit routes?

An employer must ensure that each exit route supports the maximum-permitted occupant load for each floor served by the exit route. The capacity of an exit may not decrease with the direction of exit travel.

after

For further information, contact Frank Kane at OSHA, +1 202 219 8151.

EDITORS NOTE: Old subsection (c) was dropped in favor of a 'performance-oriented' rule. So once again, plain language sharpens the thinking and militates against unnecessary detail.

Clearer fireworks regulations in Canada

EXCERPTED BY PEG JAMES

In 1995, three departments of the Canadian government worked together to redraft the Consumer Fireworks Regulations in plain language and to evaluate the process. The report on this pilot project tells about the consultations, revisions to the regulations, results of usability testing, and advantages and disadvantages of various procedures employed. Before and after examples are also included.

The project demonstrates that regulations can be written in plain language. It also demonstrates the value of developmental consultations and usability testing with stakeholders.

The executive summary to the report points out that, although the short-term cost of developing plain language regulations might be greater than the cost to develop other regulations (because it includes consultations and usability testing), there are a number of long-term benefits and savings:

- there is a much diminished need to develop secondary documents to explain the regulations
- since the product is of better quality, it will not need to be revised as frequently
- there should be less time spent answering questions concerning the document
- the consultations allow the drafters to understand the context of the regulations better, allowing for more informed drafting
- since the user group is involved in the development of the product, it should be of better quality and there should be a higher degree of commitment
- the usability testing will ensure that individuals understand the document and that there are no gaps

A second report describes the usability testing for the project and the tools used (Schmolka, *Consumer Fireworks Regulations Usability Testing*, 1995).

As a follow-up, an interdepartmental group is developing guidelines for a plain language approach to drafting regulations. The group has gathered comments on a first draft of the guidelines and, when time allows, will incorporate the suggested changes before distributing the guidelines.

For more information on the fireworks regulations, contact Shelley Trevethan, Senior Research Officer, Research and Statistics Section, Department of Justice, Canada, Ottawa, Canada, K1A 0H8.

Tel: +1 613 941 4146

To follow-up on the plain language guidelines, contact Wendy Gordon, Counsel, Regulations Section, Department of Justice, Ottawa, Canada, K1A 0H8.

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Here's how one lawyer described the process of rewriting legal documents into plain language:

First, while the task of translating documents into simple, everyday language was a difficult one, it was not the impossibility that we had initially believed it would be.

Second, as we worked on the forms, and they did go through a number of drafts, we found that they did improve both in appearance and substance. So I think we will end up with a better form, regardless of whether it is a revision that is mandated by statute.

Finally, I think it was a fascinating, although difficult and time consuming, intellectual exercise for everyone involved. Articles on plain language always point out that consumers for years have signed all kinds of atrocious documents without reading them or thinking about the consequences. However, I think that members of the legal profession who deal with particular documents every day frequently don't think about them or really question their format or content either, and the task of rewriting the forms in simple language often forces the drafters to rethink the content.

Browne, *The ABC's of Language Simplification*, American Banker, Aug. 14, 1978

Mission improbable: simplifying Commonwealth tax law

The lawyers who constitute the largest and most active professional group in both Houses (of Parliament) may perhaps be actuated by the desire to provide work for their colleagues, when they allow such obviously meaningless collocations of words to go on the statute book.

It is highly undesirable that every citizen should have to run to a lawyer or an accountant to find out what the government meant when it passed the Act. So far as it applies to individuals, the income tax should be so simple and so lucid the individual can tell just what he is liable for without going outside his study."

The Financial Times of Canada, 1917

Seventy five years later we've got an entire industry of tax accountants and a legion of 9,000 professional 'tax preparers' as testimony to our legislators' shortcomings.

The Financial Times of Canada, 1992

Canadians in 1997 may still have to engage legions of accountants, tax lawyers, and professional preparers as the price of calculating the state's slice of the national income, but elsewhere in the Commonwealth there is hope for the vision expressed so long ago by the editors of the Financial Times. In three countries, New Zealand, Australia, and the United Kingdom, the Inland Revenue Department has launched a major initiative to simplify the income tax law. According to New Zealand, their aim is "to make it easier for users to understand the rules that apply to them, find those rules, and be sure they haven't overlooked any relevant ones." The Inland Revenue Department of New Zealand hosted a conference in Auckland (27 to 29 November 1996) to review these projects. Amanda Armstrong, partner in the Johannesburg law firm Cheadle, Thompson & Haysom, sent this report on the conference to CLARITY.

AMANDA ARMSTRONG

Most of the 60 delegates were from three countries: New Zealand, Australia, and the United Kingdom and were directly involved in the rewrites. There were also a few delegates from Canada, Hong Kong, Ireland, Lesotho, and South Africa.

The context of the rewrite

It is important that the reason for rewriting tax legislation be clear at the beginning of the project. Rewriting can be done to simplify tax legislation and write it in plain language as part of tax management or as part of tax policy reform.

Australia, New Zealand, and the UK have chosen to simplify their tax legislation and write it in plain language in the context of tax management reform. Specifically, those countries seek to facilitate self-assessment by tax payers, increase voluntary compliance, and reduce the cost of collecting tax.

Although these rewrites are not taking place in the context of tax policy reform, policy issues arise if provisions of the old law serve no purpose or are legally out of date. Policy issues may also arise when contradictions emerge or when the law fails to address relevant issues.

Extent of progress

Each country began with a macro structure for the new legislation before starting to draft distinct parts. The progress in the three jurisdictions varies. Australia's rewrite project is the most advanced. Their Income Tax Assessment Bill, 1996, is presently before their legislature. New Zealand has re-ordered its tax legislation in a logical way and re-numbered it. The Taxation (Core Provisions) Act, 1996, sets out the key laws on which the rest of the income tax law is to be based. The UK's Tax Law Rewrite Project Team has set up an impressive process to manage the project and will begin drafting in early 1997.

Differences in the nature of the rewrite

Australia is only going to replace the old tax legislation with the new legislation once the rewrite has been completed, while New Zealand and the UK are both adopting an incremental approach. Once a distinct part of tax legislation has been rewritten, it will be introduced on a piecemeal basis with transitional provisions to link the new law to the remaining law.

Who is the audience for tax legislation?

Again, the three countries have answered this question differently. Australia decided to improve the law from the perspective of regular or potentially regular readers and users of the Income Tax Act, noting:

The emphasis should be on satisfying the everyday needs of practitioners and their customers who just want to get on with business in a reasonable certain climate . . . It is on the 99% or more of ordinary non-litigious situations that we concentrate.

New Zealand decided that most taxpayers seldom consult tax legislation, and therefore the primary audience consists of groups such as the courts, tax specialists, lawyers and accountants, people concerned with tax policy and Inland Revenue staff.

The British identified the following five categories of users, and decided to draft tax legislation as simply as possible for them:

- taxpayers themselves
- persons on whom tax law imposes specific obligations e.g. employers
- tax professionals, e.g. accountants, lawyers
- those who apply, enforce, and interpret tax law
- those concerned primarily with changes to tax law

Should tax legislation be written from a 'principles and purpose' point of view or a 'precise and detailed' point of view?

This topic generated the most clearly articulated opposing positions, though the relative advantages and disadvantages of each approach are widely recognised. Drafting legisla-

tion from a 'principle and purpose' point of view has the advantage of creating flexibility but places broad policy decision-making in the hands of the judiciary. Drafting legislation from a 'precise and detailed' point of view emphasizes predictability, but comes at the expense of exceedingly overburdened legislation that will inevitably omit some intended detail.

Fortunately, the chief protagonists for each position provided written papers, and interested readers should refer to the articles by Martin Smith and John Prebble. (See articles list at the end).

Are plain language and tax legislation compatible?

The conference considered whether plain language and tax legislation are compatible. It was widely acknowledged that there can be no universal approach to drafting legislation, and that tax legislation has to deal with the complexities of income and tax liability while giving effect to the economic policies of the government. However, there was consensus that none of those requirements need detract from drafting the legislation as simply as possible.

Drafting In plain language

The approach to style and language principles was fairly uniform. However, there was debate about the following design and layout issues: page design; navigational aids; and aids to understanding (e.g. flow charts, tables, examples, graphs and formulae).

To date, Australia has been the most innovative and creative concerning design and layout, though it is too early in each of the other projects to determine whether they will follow traditional publishing style or copy the Australian approach. Again, excellent materials were available. See, in particular, the articles by David Elliott and the Australian project.

In discussing these issues, the question arose "What is law and what is not?". The conventional view was that law is the text in its familiar numbered sections, and that the remaining materials were simply aids. A

second view considers this distinction to be artificial. Believing that all the material in the published Act provides a context for understanding, this view holds that it all ought to be considered part of the legislation.

Testing

Testing was not openly on the conference agenda, but it arose out of discussions about the use of plain language and the effectiveness of aids to understanding. To date, only the Australians have conducted tests of the usability and comprehensibility of any of their material, though both New Zealand and the UK are exploring different ways of testing.

The possibility was raised of testing the macro structure of the legislation before starting the drafting and the subsequent testing of the draft itself.

Software

The use of software as an aid to drafting legislation in plain language was discussed. Australia has designed software specific to the tax rewrite project.

Structure and process

Australia, New Zealand, and the UK estimate that their tax rewrite projects will run for five to six years. Each country has established a multidisciplinary team made up of people who manage the project, people from the Department of Inland Revenue or the private sector who have a substantive knowledge of tax law and policy issues, and legislative drafters.

Linguists, software experts, design and layout specialists, accountants, lawyers, economists and communications experts are also used by these teams.

It seems that the success of each rewrite project will depend on:

- broad support for the project by all stakeholders
- an open and consultative process
- a dedicated team
- the quality of the team work
- a willingness to learn from the experience of teams in other jurisdictions

Overall impressions

I was impressed by the shared sense of purpose and excitement among the different teams and their evident willingness to be creative and innovative in communicating the law. All were willing to share ideas and discuss the experience of the different teams. People offered their solutions, not as the only right solution, but as decisions they had taken in their particular context. There was a willingness to debate and constructively critique the work done and to continue the dialogue and open it up to other countries.

See the next page for further information.

Amanda Armstrong is a partner in the Johannesburg law firm Cheadle, Thompson & Haysom.

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Legislative drafting institute this June

Tulane University Law School in New Orleans will host the annual International Legislative Drafting Institute June 16 - 27, 1997. The Institute offers lectures, readings, drafting exercises, site visits, computer research, instruction in the use of word processors, roundtable discussions, and individual student conferences with faculty.

The training, intended for both lawyer and non-lawyer drafters, emphasizes 'learning by doing' through drafting exercises, research assignments, and preparation of a formulary for use in participants' own drafting offices. Lecture topics include the ethics of drafting, confidentiality, matters of style, agency rulemaking, constitutional revision, international trade agreements, and codification agencies. The training emphasizes the importance of public participation and describes an appropriate role for interest groups and individuals in the legislative process. For information, contact The Public Law Center at Tulane University.

Tel: +1 504 862 8850

Fax: +1 504 862 8851

E-mail: tplc law.tulane.edu

Further information and documentation from the tax conference

Contact the following people for further information or documents from the conference:

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Canada

Phil Knight—Tel: +1 604 925 9031

David Elliott—Tel: +1 403 482 2379

List of articles

The documents available at the conference are listed below, with their source country indicated. (A =Australia; NZ= New Zealand; UK = United Kingdom). CLARITY members David Elliott and Phil Knight also supplied papers to the conference; their articles are available from them personally.

- Conference programme
- Income Tax Assessment Bill, 1996 (A)
- Rewriting the Income Tax Act, A short guide (NZ)
- The core provisions - Stage 1 of the rewrite of the Income Tax Act (NZ)
- Tax Reform in New Zealand (NZ)
- Major Tax Reforms in Detail: 1981 to present (NZ)
- Tax Information Bulletin (NZ)
- Inland Revenue as an Organisation (NZ)
- The New Zealand Tax System (NZ)
- The New Zealand International Tax System (NZ)
- New Zealand Revenue Statistics (NZ)
- The audience for tax legislation: is it different from that for other legislation, should it be considered to be the same for all sections or parts (UK)
- Should Tax Legislation be Written from a Principles and Purpose Point of View or a Precise and Detailed Point of View? J Prebble (NZ)
- Should Tax Legislation be Written from a 'Principles and Purpose' Point of View or a 'Precise and Detailed' Point of View? M Smith (NZ)
- Graphical aid other aids to understanding included in legislation (A)
- Tools for Simplifying Complex Legislation. D Elliott
- Using Examples in Legislation. D Elliott
- Linguists and Lawyers - Issues We Confront. D Elliott
- Clearer Drafting & Better Law - A Report on a Comprehension Test Comparing Traditional and Simplified Legislation. P Knight
- Pamphlet advertising the International Legislative Drafting Institute, Tulane Univ., New Orleans.

Papua New Guinea welcomes plain language

PHILLIPPA WEARNE AND CHRIS TRICKER

The Centre for Plain Legal Language in Sydney recently conducted a workshop on writing in plain language for the magistrates and judges of Papua New Guinea (PNG). The Centre's contribution was part of the Judicial Writing Workshop for Judges and Magistrates organised by the PNG Continuing Legal Education Committee. More than 50 judges participated in the two day workshop, which was held in Port Moresby in September.

The speakers at the conference, Philippa Wearne and Anne-Marie Maplesden, represented the Centre for Plain Legal Language, and ran a number of sessions at the workshop. Justice Mahoney, Acting Chief Justice of the NSW Supreme Court and President of the Court of Appeal, also spoke. His comprehensive sessions on writing judgments were both practical and inspiring.

Language and the law in PNG

English is the official judicial language in PNG. However, the PNG courts must cater for a population that speaks over 800 different languages. For most of the judges and magistrates, English is a second or third language. In this context, many people who have to read, or write, or listen to judgments have to come to terms with English, so plain language is an absolute necessity:

Issues raised in the workshop

The main emphasis of the workshop was on writing with the audience in mind. A problem facing many courts is that defendants often appear unrepresented. This makes it especially important for judges and magistrates to clearly explain to defendants all the relevant court procedures and all relevant legal consequences affecting the defendant. The judges and magistrates also recognised the need to make sure that defendants are not confused by the questions of the prosecution or plaintiff. For example, negative questions are notorious for confusing defendants. Take

the question: "Did you not go to Port Moresby on Monday?" In local custom, the response "No" means that the person did go the Port Moresby on Monday. Everyone at the workshops agreed that it is best to put questions in positive form.

Response to the plain language sessions

The judges and magistrates said they benefited greatly from the exercises, which were drawn from their own decisions. The redrafting exercises made them more aware of ambiguity and how easily meaning may become obscured. By applying the principles of plain language, including focussing on the needs of the audience, participants were able to redraft the passages in a much clearer way. One of the exercises the Centre set was to draw a summary of judgment and a record of hearing. Many of the participants found this exercise particularly constructive. The Centre has offered to write model formats of these items for the PNG judiciary.

Phyllippa Wearne, LLB B.Juris LLM, is a drafter and trainer at the Centre. Previously, she lectured at the University of New South Wales and worked as a Legal Aid solicitor.



Chris Tricker, AMusA BA, is a final year law student and a drafter and researcher at the Centre. Earlier this year, Chris was runner-up in the Law Society-Minter Ellison plain language drafting competition.



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Defining Plain English

DR. JANICE REDISH

In the October 1995 issue of *Australian Language Matters*, David Sless argues that plain English is the “wrong solution to the problem of ensuring that written communication is accessible and easily readable.” He condemns plain English as wrong and immoral, and argues that there is no evidence it works.

Sless doesn't define plain English, but it's clear, from this and other articles, that to Sless and his colleague, Robyn Penman, plain English means just writing short sentences and choosing short, simple words.

Most plain English advocates have never defined plain English in that very narrow way. In fact, in a 1992 article, Penman identifies me as a plain English advocate and quotes my definition of plain English: “For a document to be in plain English, the people who use it must be able to find the information they need easily and understand it the first time they read it.”

That definition is about readers, not just about writing; about organizing documents, not just about sentences and words. For me and most plain English advocates, plain English has always meant a process that results in a document that works for users.

Plain English has always meant understanding what all the stakeholders want to achieve, who all the users are, how different people are going to use the document, what **tasks users** need to accomplish through the document, and how the document fits into the **system**.

Plain English has always meant deciding what type of document is appropriate for the users and the situation; selecting guidelines for organization, style, layout, and graphics that are appropriate to the users and the situation; and testing and revising with users until we know that we have made good choices, because we can show that users can find what they need and understand what they find. We've embodied that definition of plain English in a flowchart that has been published in newslet-

ters, journal articles, and textbooks since the early 1980s.

I have room here only to comment briefly on each of Sless's four points.

Does plain English work?

Sless says that there is no evidence that plain English works. He ignores or would argue with the many studies that Joseph Kimble cites in CLARITY 34 and volume 5 of *The Scribes Journal of Legal Writing*. Furthermore, Sless and Penman refuse to consider many other successes because they insist on limiting plain English to their narrow definition. Penman in her 1992 article writes: “when these . . . claims [of savings due to plain English] are subject to . . . criteria for assessing empirical research they are found . . . to have used far more than a Plain English writing style in the document development (e.g., the work of the Document Design Center).” Plain English is more than just a writing style and, in its broader definition, has had many successes.

Is plain English only about crafting words?

Sless says that language is only one element in good communication. That's definitely true, but it doesn't mean that plain English is wrong. It means that we should continue to define and advocate a broad view of what it means to conduct a plain English project. Sless suggests that “calling this diverse range of activities ‘plain language’ is . . . misleading.” He doesn't suggest another name for it. My colleagues and I have sometimes called it ‘plain English,’ sometimes ‘document design.’ In the software world, making products that **work** for people is called ‘usability.’ Whatever **Sless** wants to call it, it's what I and many others have been practicing all along under the **rubric** of plain English.

As Sless points out, one of the tasks in any communications project is negotiating with stakeholders. Documents must often meet multiple purposes for multiple audiences, and getting the final document may require compromise. Testing with users is critical both because it is the only way to know that the document works for users and because it lets

other stakeholders appreciate the problems that users have when the document doesn't work for them.

In the real world, however, the documents that emerge are seldom perfect, even when users are involved and drafts are tested with users. Time and other constraints intervene. After almost any project is completed, another communications specialist can find flaws in the new documents. To condemn the plain English movement because any particular document has flaws is an extreme reaction and unnecessarily divisive. It confuses people who support the idea that documents should be improved. No doubt, it discourages some organisations from embarking on plain English projects.

Are plain English principles wrong?

Sless condemns plain English because he defines it as applying a small set of style guidelines without regard to users. Yes, some people think that applying ten 'rules' will solve all problems, but most of us know that there are no such magic solutions. There are no rules of style, only guidelines, which must be applied with an understanding of the context. The Document Design Center's 1981 book, *Guidelines for Document Designers*, says you must first analyze purposes, audiences, tasks. You must decide if you need a document or how many different documents you need. You must select the content the audiences need.

Only then are you ready to apply guidelines. Even when you come to the guidelines, the advice is, "Don't be rigid." As Joseph Kimble says in his *Scribes* article, "every reputable book on plain language recognizes . . . the good uses of the passive voice." Sless is correct when he says that the right words may sometimes be technical and some short words are not useful because they have complex meanings. However, when we revise a document from gobbledygook to plain English, using all the techniques of the reader-centered process, the new document is almost always quite a bit 'plainer' in its overall structure, the structure of individual sentences, and the number and difficulty of the words.

Is trying to achieve plain English immoral?

In his last section, Sless suggests that plain English may be immoral if it produces documents that look good but are hard to use. His example is from a Life Insurance Federation of Australia (LIFA) project. But his example is not from a final document. It is from testing on a draft document—testing during the process of a plain English project, exactly the kind of testing that Sless wants us to do.

Christopher Balmford, who worked on that project, tells me: "Where the testing showed that the document failed to communicate, we changed the document dramatically. It is wrong of Sless to make it sound like we stopped writing, then tested, and never edited the document in light of what we learned from the testing." Balmford says that he and his colleagues included the test results on their interim draft in their report because "we were keen to show the value of testing, just how humiliating testing can be, how much can be learned from testing, and perhaps most of all that it is comprehensibility testing, rather than 'how people feel about it' testing, that teaches us the most." Sless should not be using results of testing on a draft document to suggest that either LIFA documents or plain English are immoral.

To summarize:

Sless and Penman define plain English much more narrowly than most plain English advocates. They dismiss our success stories because by their definition we are doing more than plain English. However, for at least fifteen years many of us have been saying and publishing much of what they are saying—namely that, in most situations, it's not enough just to shorten sentences and shorten words without thinking about the context and the users, without working with users and testing drafts with users. Our definition of plain English is much broader than Sless and Penman's. Instead of being divisive and wanting to throw out plain English, why not say, as we have been doing, that plain English means making sure that the people who have to use the document can find what they need and understand what they find?

One issue: Is a text-based approach ever useful?

Joseph Kimble suggests a difference between documents written for the general public or for employees in a large company and the individual documents that lawyers in private practice create for their clients. As Kimble argues in *Scribes*, applying even the narrow definition of plain English to these traditional legal documents can move them a long way towards being more accessible and comprehensible. Dealing with their archaic language and absurdly long and convoluted sentences can also be the first step towards a complete review of the document.

Reprinted with permission from *Australian Language Matters*. This article was first published without the last paragraph because of space constraints.

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The clearest possible language is essential for democracy to function, for it is only through clear language that we have any hope of defining, debating, and deciding the issues of public policy that confront us. The corruption of public language—the language we use to discuss public affairs and to decide public policy—is the corruption of democracy.

William Lutz, *The New Doublespeak: Why No One Knows What Anyone's Saying Anymore*

Arguments against big words have a way of descending into anti-intellectualism, so we ought to recognize that a liberal use of the English vocabulary ought not to be stifled . . . But if you are to engage in sesquipedality, as by using *sesquipedality*, assure yourself that you have done it because no other term will serve better in context, not because you want to teach your readers a new word. Otherwise, you may find yourself being congratulated for a "triumph of obfuscation, full of big words . . . —all whizz and pizazz and canal water."

Bryan Garner, *The Elements of Legal Style*



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Use of the present tense in legislation

DUNCAN BERRY

Many people who read legislation seem to be unaware that the law is constantly speaking. They do not appreciate that the relevant time to consider whether a particular statute or statutory rule applies to a particular situation is not when the statute or rule was drafted or even when it was assented to or brought into force, but when the readers are using it. In other words, a statute or statutory rule is a movable feast—it speaks at whatever time it is being read rather than at the time when it was drafted, enacted, or put into effect.

In this regard, it is worth reiterating what Bryan Garner says in his *Dictionary of Modern Legal Usage* (1987):

The fundamental mode of expression in statutes, as worked out by Coode, is to recite facts concurrent with the statute's operation as if they were present facts, and facts precedent to the statute's operation as if they were past facts.

The drafter should not attempt to render every action referred to in a statute in a future tense. Some drafters erroneously assume that the words 'shall' and 'shall not' put the enacting verb into a future tense. Yet in commanding, as in a statute that mandates a certain action, 'shall' is modal rather than temporal. Thus, it denotes compulsion, the obligation to act, not a prophecy that the person will or will not at some future time do the act. "Thou 'shall not murder'" is not a prediction: it is obligatory in the present tense, continuously through all the time of the law's operation.

Likewise, when the verb 'may' is used, the expression is not a future possibility: instead, it is of permission and authority.

"The chairman is authorized to canvass the committee members."

Yet, because the legal action referred to in the statute is sometimes—when 'shall' is used—supposed to be in the future tense, drafters often attempt (for the sake of consistency) to express the circumstances that are required to precede the operation of the statutes (i.e., the

case or condition) in the future perfect tenses. Thus, in poor drafting language, one frequently finds the following expressions:

1. *If any person 'shall give' [read 'gives'] notice, he may appeal*
2. *If the commissioners 'shall instruct' [read 'instruct'] by order*
3. *All elections 'shall' [read 'are'] hereafter, so far as the commissioners 'shall direct' [read 'direct']*

The fear that gives rise to this use of 'shall' is that, if the case or condition for the operation of the statute were expressed in the present tense (when any person is aggrieved), the law would be contemporaneous, and would operate only on cases existing at the moment of enactment of the statute. Likewise, it is erroneously assumed that if a statute were expressed in the past tense (when any person has been convicted) the law would be retrospective, and would apply only to convictions that took place before the Act was passed,

This apprehension is founded on a mistake. An elementary rule of statutory construction is that past tenses never give retrospective effect to a statute, unless the intention is clearly and distinctively framed in words to that effect. Any number of statutes are written in the present or present perfect tense but still are given prospective application only."

Inexperienced lawyers seem to be particularly confused by 'shall', 'will', and 'may.' These words are confusing because they are often used for different purposes. They may express the future tense:

"The sun will set at. . . ." (at a time in the future)

However, 'shall', when used in the third person, is correctly used as a command:

"The inspector 'shall' [prefer 'must'] produce a certificate of authority when exercising the powers conferred on inspectors by this Act. (an order) etc. . . ."

As several writers have pointed out, it is inappropriate to use *shall* to express futurity. The use of the present tense can avoid the confusion and ambiguity.

Moreover, laws that are drafted in the present tense make statements instead of predictions. For example:

NOT: “All persons ‘shall’ be equal before the courts and tribunals [of Hong Kong].”

BUT: “All persons ‘are’ equal before the courts and tribunals [of Hong Kong]” or perhaps better still, “All persons are entitled to be treated equally before the courts and tribunals [of Hong Kong].”

Take another example:

“Slavery and the slave trade ‘shall’ be prohibited.”

‘This is unclear for two reasons:

1. Is slavery prohibited now?
2. Who is responsible for ensuring that slavery is prohibited? Converting this to the present tense, this would read:

“Slavery and the slave trade are prohibited.”

This should be clarified either by making it clear that

“Every person has a right not to be enslaved,”
or

“It is unlawful for any person to enslave another or to engage in the slave trade.”

according to whether the focus is on the right of people to be free from enslavement or on the illegality of enslaving others. But perhaps both propositions need to be expressed.

If, while it remains in force, a statute or statutory rule is regarded ‘as constantly speaking,’ then the following simple two-part rule will serve to guide legislative counsel in drafting statutes and statutory rules:

- a) Use the present tense to express all facts and conditions required to be concurrent with the operation of the legal action. For instance: “If an employer cannot, because of circumstances beyond the employer’s

control, comply with the requirements of Schedule 7, the employer must”

In this conditional sentence, both the subordinate clause (containing the condition) and the main clause (creating the obligation) are in the present tense.

- b) Use the present perfect tense to express all facts and conditions required as precedents to the legal action. For example: “If the members of the corporation, assembled at a general meeting, have agreed that the corporation’s objects cannot be achieved, it may pass a resolution winding up the corporation.” (The left-branching dependent clauses contain verbs in the past perfect [*assembled, have agreed*] to indicate necessary precedent conditions that now exist and thus make the legal action possible.)

EDITORS’ NOTE: Incidentally, wouldn’t it be better to put the independent clause first, since the dependent clauses are fairly long?

Confusion can be eliminated by using the present tense whenever possible. The present tense addresses readers whenever they use the document. The important time is not when the document is being drafted—but when readers are using it.

EDITORS’ NOTE: Mr Berry mentioned in a letter accompanying this article that the state of legal writing in Hong Kong leaves a lot to be desired. There appears to be no move, either in government or the legal profession, toward writing legislation or legal documents in plain language. The legalese that has been almost eliminated from new statutes in Australia is still rife in Hong Kong.

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Form, function, and faxing in the legal world

PHIL KNIGHT

These days, advocates of clarity all over the world stress the importance of two things—understanding the needs of the readers of a document, and being clear about the function and purpose of the document. We have come a long way from counting words and eschewing the passive voice. Yet once in a while, I see something that reminds me how easily the detail of editing can cause any of us to overlook the first questions of purpose, form, audience, and design. An article in *CLARITY* 36 reminded me of this. I refer to Carol Ann Wilson's commendable report about revising the confidentiality notice on her firm's Fax Cover Sheet.

Let me say first that I think Ms Wilson deserves full marks for tackling head on one of the most egregious displays of modern legalese, a wordy bit of boilerplate, notable only for accompanying every fax emanating from a law office, and no fax originating anywhere else. Given the relatively short history of common fax communication, those notices are sure proof that precedent, judicial interpretation, and ancient tradition cannot be the only impetus for legalese. Apparently, some lawyers feel they must write that way even when addressing novel issues in a modern context.

Ms Wilson did an excellent editing job, offering two simpler versions of the notice. These clearer versions might actually be read. I especially appreciate the fact that she explained all her changes; as advocates of clearer legal language, we must be prepared to do that consistently, to demonstrate convincingly that clarity does not sacrifice precision.

Yet something about the whole exercise troubled me. It is a first principle of plain language that the form of expression should reflect the function of the idea being expressed. So, while Ms Wilson has given us a much finer form of expression, I am still left wondering, "what is the function of that notice, anyway?" Presumably it is intended to

serve a loftier purpose than simply filling up the otherwise empty space on the cover sheet.

Using each clause of her preferred version as a heading, I have these observations about the apparent purposes:

Clause one: This information is protected by privilege.

This statement looks as if could serve any of three purposes:

1. It may be a description, though if it is meant to be, its ritual overuse strains credibility. Law firms attach these notices to every fax they send, regardless of whether the fax is advice to a client, a copy of some legislation, or merely a favourite recipe for chocolate chip cookies. If all the stuff that flashed around the world under cover of this clause were truly privileged, the courts would have to cease operation for lack of admissible evidence.
2. It may be an attempt to create privilege. But whether a document is privileged is a question of law and fact. Privilege cannot be created merely by asserting that it exists. Stamping the word *Privileged* on the cover of a fax does not exclude the contents from admissibility in court, any more than writing the word *Confidential* on a postcard makes the message invisible to the postman.
3. It may be an attempt to display power and authority, the sort of statement that we know is so much hocus-pocus, but is made with a full blast of bluster so as to put the fear of something or other into the heart of the uninitiated. But this just leads to the question, "Why is instilling fear such a desirable thing to do?" The only answer seems to be, "Because a colourful display of authority will engender sufficient awe on the part of unintended recipients that they will honour the confidentiality, and thus protect the client's privilege." Accuse me, if you like, of attempting to pierce pomposity, but I just don't believe that sort of thinking works any more.

Clause one seems not to serve its purpose.

Clause two: If it is not for you, don't read it

This clause seems to be an instruction, presumably intended to be followed, and given in the hope that it will protect the confidentiality of the document.

Does anyone seriously expect a statement like this to be effective? If the law firm that uses this statement intends by it to prevent unauthorised reading, they have two problems.

First, the statement only sounds like a prohibition; in real life, it is difficult to imagine a statement more calculated to arouse the curiosity of the unintended recipient. The immediate natural reaction is, "Oh, sure, yeah, right, I won't read it, not at all; the idea would never enter my mind, not for a minute! What's in it anyway? Maybe it tells us who killed JFK."

Secondly, there is no way to verify whether the prohibition has been observed. If you send a letter in an envelope and it is returned by an unintended recipient, you can ordinarily tell whether the envelope has been opened and confidentiality breached. But send it by fax, and you have to assume that anyone who sees it will read it.

Clause two seems not to serve its purpose.

Clause three: Don't make a copy

You will never know if readers made a copy, unless a copy circulates back to you—or to your client. You will never find out who first made a copy of it.

Clause three seems not to serve its purpose.

Clause four: And please send it back

This is a request for action. If the unintended recipient acts on the request, the lawyer will be aware:

- a) that the client still needs a copy of the document he or she expected to receive, and
- b) that the confidentiality of the client's affairs has been breached.

If it is honoured, this clause will serve its function. This is a useful function, and the drafter ought to use every bit of skill to improve the probability that the request will be honoured.

So, to return to first plain language principles,

how should this notice read? It should take a form that can best achieve its only useful function. I suggest:

At the law office of Winkin, Blinkin, and Nod we aim to serve the public effectively and efficiently, while we strictly protect the confidence entrusted to us by each of our clients.

This fax message was intended only for the person whose name appears on it. If it has reached you by mistake, please take the time to call us collect and let us know. Then, please destroy the fax. Thank you for your help.

Our number is +1 123 456 7890.

CAROL ANN WILSON REPLIES:

I love your article! It's great, and I really like that kind of thinking.

I agree with your observation that describing something as being privileged only works if it is in fact a privileged document. However, if it is privileged, having it clearly marked on the cover sheet certainly helps in sorting material when preparing for production of documents.

As for your observations about hocus-pocus and bluster, well, I know of many lawyers who do, indeed, try to instill fear. Their pomposity hurts the image of the legal profession. But, we need to remember that in many firms, the fax room is staffed by junior clerks who need strong guidance. A blustering cover message might serve to instill the requisite sense of urgency and confidentiality.

Overall, I like your suggested cover message, and, if you don't mind, I'd like to steal it.

One more thing: I never really intended my 'preferred' version to be taken seriously. At the end of a seminar, I read with great overacting the original legalese version—playing up every unnecessary word with great relish. I told the audience that I would never let such a thing go out if there was any chance it could be traced to me. Then I gave them the edited version and ended my talk with the laugh-getting "preferred" version. I doubt I would ever get away with actually using it in my firm.

Book Reviews

Dictionary of Modern Legal Usage,
by Bryan A. Garner
(2nd edition, Oxford University Press 1995)

If you missed the first edition of Bryan Garner's *Dictionary of Modern Legal Usage*, buy the second—using it will improve your communication skills and make you a better lawyer. If you have the first edition, you know the value of this work. Do your good deed for the day and give your copy away to another lawyer, then buy yourself the second edition. It is even better than the first.

The main improvement is the expanded number of entries. When Garner wrote the first edition, he had just finished his law degree and was clerk to a judge of the US Court of Appeals for the Fifth Circuit. Since then, he has done a great deal indeed. He:

- has written the *Elements of Legal Style*, an excellent style guide for lawyers—similar in concept to Strunk & White's writing guide,
- is editor of *The Scribes Journal of Legal Writing*,
- is the founder of the HW Fowler Society which monitors developments—'most often linguistic degradations'—in the English language,
- has prepared a pocket edition of *Black's Law Dictionary*, and
- runs courses on legal writing and legal drafting for thousands of lawyers each year.

All these activities enable Garner to discover matters on which his readers need his help. It is not surprising that the publisher claims the second edition has "more than double the length and coverage of the original."

Improving clarity everywhere, but especially in the law, is a major theme of all Garner's work. In the preface to his first edition of the *Dictionary*, he wrote:

Indeed, simplicity and directness, two of the touchstones of good writing, are advocated throughout this Dictionary in an effort to tag legalese and hi-falutin' jargon.

Garner again emphasizes this theme. His entry for *PLAIN ENGLISH* in the first edition was no more than a short bibliography. The entry for *PLAIN LANGUAGE* (note the change) in the second edition runs for eight-and-a-half columns, beginning:

Albert Einstein once said that his goal in stating an idea was to make it as simple as possible but no simpler. If lawyers everywhere adopted this goal, the world would probably change in dramatic ways.

But there is little reason for hope when so many legal writers seem to believe that to seem good or competent or smart, their ideas must be stated in the most complex manner possible.

But Garner's efforts give us reason for hope. And they are made at a time when the legal and business worlds are—at last—taking giant steps towards clear communication. For years, progress was hindered by lawyers who argued that clarity was incompatible with precision. Thankfully, that claim is now seen as a myth, and there is a growing acknowledgment in legal circles that clarity enhances accuracy, precision, and certainty. Indeed, each of them depends on clear thinking. And without clear expression, it is often hard to be sure that there is clarity of thought.

Garner says that through his *Dictionary* he seeks:

to make legal writers sensitive to the aesthetic possibilities of their prose, to goad them into thinking more acutely about what works in a given context, and what does not.

Lawyers need to be goaded to do that.

The particular benefit of the *Dictionary* is that it has a legal focus. That means a lawyer can follow its guidance without worrying about whether there is a legal reason not to follow the guidance. For example, for many years, I have preferred *while* to *whilst*. Recently, I wondered whether *amongst* fell into the same category as *whilst*. I checked in Garner's *Dictionary*: answer, it does. Like *whilst*, *amongst* is old hat. *Among* does the job. Sure, I could have found the answer to that in Fowler. But I would have been concerned

whether 'amongst' was needed for some purposes in legal writing.

And that is the beauty of Garner's *Dictionary*. It removes any nagging doubt about the dreaded legal consequences of abandoning a particular word or phrase. Consider that famous doublet *force and effect*. Garner says:

'Force and effect' is a doublet that has become part of the idiom in the phrases 'in full force and effect' and 'of no force or effect', neither of which is a term of art. Either synonym would suffice just as well as the doublet; but the emphasis gained by 'force and effect' may justify use of the phrase.

And there you have it. There's no legal reason for the doublet. If you need the emphasis, use the doublet; if you don't need the emphasis, either of the synonyms will do. But its reassuring to know that there's no legal reason for the doublet. *Fowler* can't give you that reassurance.

For lawyers, the *Dictionary* has an advantage over other usage guides because Garner deals with many legal words—or legal meanings of 'non-legal' words—that other usage guides omit. For example: *corporeal* and *incorporeal*; the subtleties of meaning that separate *custody* and *possession*; or *judgement*, *decision*, and *opinion*.

Together with Mellinkoff's *The Language of the Law* (Little, Brown & Co. 1963), Garner's *Dictionary* provides the scholastic legal analysis so crucial to the credibility of the plain language movement.

Those of you concerned that Garner's book may be 'too American' need not worry. The *Dictionary* reflects the considerable time that Garner has spent studying and working in the U.K. Indeed, one of the beauties of his *Dictionary* is that it deals with the differences between American and British usage. For example, here is the entry for PRACTICE; PRACTISE:

in American English, the former is both the noun and verb; in British English, the former is the noun and the latter the verb.

Garner adds a note about a few subtleties and exceptions, but that general rule does the job.

Garner's *Dictionary* is thorough, scholarly, interesting, and entertaining. (If you imagine 'entertaining dictionary' is an inadvertent oxymoron, read the entry ON VERBAL AWARENESS.) Above all, the *Dictionary* is useful. I used the first edition at least once a week—until I gave it to my friend David when the second edition came out. I find myself turning to the second edition at least twice a week. I expect by Christmas, I'll happily be using it daily.

CHRISTOPHER BALMFORD

Plain Language for Lawyers

by Michèle M. Asprey
(2nd edition, The Federation Press 1996
In the U.K., Blackstone Press
In the U.S., Wm. M. Gaunt)

In a word, this book is outstanding. The new edition is not a radical change. It does include new chapters on document design and testing, and it expands and updates parts of other chapters.

Asprey's is among the most ambitious of the books on plain language. She spends about 70 pages—almost a third of the book—making the unassailable case for change. She aims to convert lawyers, but she knows that they need good reasons from someone who appreciates their concerns:

If . . . I am critical of legal writing, I hope you will realise that I write as a lawyer who understands the difficulties that lawyers have to cope with when they write. There are so many critics of legal writing, but . . . so few with anything practical and constructive to offer.

. . . I think that the vast majority of lawyers would embrace plain language in a moment if they knew what it involved and could be sure it was safe to do so. I have worked with many lawyers who have done just that. They have taken to plain language drafting with great enthusiasm, energy, and creativity.

In her first 70 pages, Asprey covers all the following:

- the myths about plain language (it's undignified; it's only about words; it's imprecise)
- the notion that there are 'right' words to express a certain meaning
- a summary of worldwide activities in plain language (including a description of CLARITY as "a mine of information both on the plain language movement in the law, and on drafting techniques")
- the potential benefits (savings in time and money, more comprehensible documents, a competitive edge, a better image for lawyers)
- some relevant laws and court decisions ("How far away is the time when the courts expressly state that it is a lawyer's duty to write documents that can be understood?")
- the notion that legalese is safe and plain language is dangerous.

Throughout the book Asprey draws on and carefully documents a wide range of sources. And that is no small feat, because those sources are from half a dozen different countries.

The rest of the book is devoted to the practice of plain language. It is addressed mainly to drafters of legislation, transactional documents like contracts, and client letters. Here (another list) are some of the chapters and a few of the items covered:

- **Fundamentals**—especially writing for the primary audience, the client (a private document), or the relevant public (legislation)
- **Structure**—important things first, sentence length, conditions
- **Words**—technical terms, archaic words, synonyms, definitions
- **Grammatical Structures to Avoid**—passive voice, separating subject and verb, provisos, masculine pronouns
- **Legal Affectations**—Latin, *said*, *at any time*
- **Little Words: Big Problems**—*and* and *or*, *shall* and *must*

- **A Plain Language Vocabulary**—a starting point for plain-language initiates
- **Document Design**—the graphic elements
- **Testing Your Writing**—some whys and hows.

Again, this is not a complete list, but only a sampling. Asprey gives sound advice and good examples. Most of the advice will be familiar to CLARITY readers, but even veterans should learn a few things about definitions, or new numbering systems, or the different forms of testing.

And Asprey practices what she preaches. Her writing is crisp and clear, engaging, and sometimes humorous. After quoting 50 lines of a lawyer's letter of advice to a client, she wonders: "Do we have the answer yet? The suspense is killing me!"

You could always find a few things to quibble about. It might be nice to have an appendix with a couple of longer before-and-after examples to see how it all comes together. The discussion of particular words and phrases is spread over different chapters, and so is the discussion of testing. And I would fuss with some of the punctuation.

But these are quibbles indeed.

Lawyers should have this book—and take it to heart. If this doesn't convince the doubters, probably nothing will.

JOSEPH KIMBLE

Plain Language Pleadings

by Carol Ann Wilson
(Prentice Hall Inc. 1996)

In *Plain Language Pleadings*, Carol Ann Wilson presents a practical approach for all involved in simplifying the language of the law. From the creation of our laws by the legislature to its daily refinement by legal assistants, legal secretaries, attorneys, and judges, Wilson brings into focus a growing movement. In the first half of her book, she reviews the reasoning behind plain language by quoting and summarizing the work of noted attorneys, law professors, judges, and other members of the legal

community. With the help of these experts, she points out the benefits of plain language to all concerned with the creation of legal documents. She also points out the dangers of a law removed from the people it governs. The warning signs are there: a growing distrust of the legal system and its representatives, more 'sophisticated clients' with greater access to the confusing text of the law through new technologies, and a growing number of people too poor to pay for an attorney to translate the law. She advocates that the wall of 'legalese' be torn down to return the language of the law to the lay person.

Recognizing the difficulty in creating this new language in pleadings, Wilson gives us practical examples in the second half of her book. Simple does not mean easy. On the contrary, a great deal of effort goes into simple, clear language. There are many barriers to simplifying the language of the law: the structures of our law schools discourage risks, the law is complex, and there is a tremendous need for uniformity. There is a temptation to cling to outdated forms and traditions in the pursuit of security. Wilson believes we can have precision without sacrificing clarity. The ease of relying on archaic convoluted forms must give way to a new set of rules and forms that require more thought on the part of the creator. Our language is alive, and so it changes. The language of our laws must also live and change. Wilson sets out rules of composition guided by E.B. White, Jan Venolia, Rudolf Flesch, and many others. She follows this general discussion with an analysis and examples of pleadings and other litigation forms.

Although she thought to create this book for other legal assistants, the ideas presented must be addressed by anyone creating or reviewing legal documents. Overall, this book presents theory and practical drafting advice true to the principles of plain language

MARIA SZAKASITS

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Guidelines for Drafting and Editing Court Rules

by Bryan Garner

(Administrative Office of the U.S. Courts 1996)

To outsiders, it must come as a surprise that the skills used by English legislative drafters—specialists in writing precise, concise and unambiguous rules—have for the most part been handed down from generation to generation of drafters as an essentially oral tradition. Nowhere does one find a 'Drafter's Bible' to which a neophyte can refer for guidance on accepted drafting conventions or how to best express a complex idea.

Bryan Garner's *Guidelines for Drafting and Editing Court Rules* comes as a welcome addition to the still limited body of literature on the speciality of legislative drafting. In its 35 pages, there are some 69 concise guidelines for drafting that Garner developed for the U.S. Standing Committee on Federal Rules of Practice and Procedure charged with developing new *Federal Rules of Appellate Procedure* and *Federal Rules of Civil Procedure*.

Experienced drafters will find that many of Garner's suggestions are already accepted practice in some jurisdictions—avoidance of ambiguity and 'elegant variation,' use of structure to enhance readability, drafting in the singular and preference of the active over the passive voice and of shorter expression over longer alternatives. That does not, however, detract from the virtue of having these traditional drafting rules reduced to print and made available to all.

Garner's suggestions and observations on organization of text are helpful and clearly illustrated by 'before and after' examples. He also provides many useful suggestions for simplifying a variety of commonly used expressions and grammatical structures. He gives a brief explanation of gender-neutral expression and offers suggestions for replacing archaic expressions and convoluted text. Many of these guidelines will greatly assist the reader in drafting with less ambiguity and more clarity. The only example that I would take issue with is his suggestion to break up a block of text by using bullets to separate listed items, since

such a practice creates a nightmare for the next person attempting an amendment.

Although *Guidelines* is a model of concision, with its rules and examples set out succinctly in numbered and subtitled paragraphs, its very brevity is a source of some frustration. What is missing in Garner's rapid-fire rule/example, rule/example format is any substantive analysis of the rules he puts forward. Although he admits to having omitted any *detailed* rationale, many of his rules lack any analysis at all. In some cases the reader can infer the reasoning behind the proposed rule. In others, the lack of any explanation or justification leaves the reader to wonder whether the stated rule reflects anything more than the author's personal stylistic preference, as opposed to a 'rule' of drafting that improves readability. Examples of this include his rules regarding use of the serial comma before conjunctions, numbering and placement of headings, and use of the hanging indent. This work would have benefited and been more valuable to professional drafters if it had contained an analysis (perhaps footnoting other authorities) of why each rule put forward is better than the available alternatives. This being said, the want of analysis does not undermine its value as an introductory tool for the non-specialist.

Although the guidelines were developed for use in redrafting rules of civil procedure, except for the examples used to illustrate the rules, there is little that is directed to a drafter of court rules. One might have expected a discussion, for example, of special considerations to be taken into account when drafting for an audience composed largely of lawyers. It would also have been interesting to see a discussion of the use or avoidance of, or suggested replacements for, procedural terms of art—such as 'pleadings', 'ex parte', 'in camera', 'motion', 'plaintiff', and 'garnishee'—that are found in rules of civil procedure. If anything, the title's reference to 'Court Rules' might dissuade many potential readers who might otherwise benefit greatly from the book's broadly applicable drafting guidelines.

WENDY GORDON, MARIE-ANDRÉE ROY, AND PAUL SALEMBIER

How to organise plain-language projects and measure their effects: a practical manual

by Mark Duckworth and Gordon Mills
(Centre for Plain Legal Language, 1996)

The purpose of the manual is made clear from the opening paragraph: "This Manual is designed to help people and organisations about to start on a plain language project. It covers how to set up and manage a project, and how to measure the effects of plain language documents."

I was asked by the editors of this edition of CLARITY to review a draft of the manual from the point of view of a practising lawyer and a partner in charge of implementing a plain language project. Given the stated purpose, I am acutely conscious that I may not do justice to the text. I am a commercial solicitor with an interest in plain language drafting. I practice in a firm of 40 lawyers with a busy commercial practice in British Columbia.

But this is not a manual for lawyers drafting the run-of-the-mill documents that are the livelihood of most commercial solicitors. The manual does not generally deal with practical drafting issues, and I cannot easily imagine following the process outlined in this manual for any of the legal documents I draft in my practice.

This is a manual for project managers working in government departments or public-sector agencies with high-use consumer documents. I am sure in that context experienced managers would find this manual a useful "aide memoire" or checklist. The sort of plain language project contemplated by the manual is an application form and its accompanying documents. In the second half of the manual the writers use such an application form as an example of the measurement process. They do so in part "because such applications are one of the main types of plain-language documents." This is a good indication of the focus of the manual. Though lawyers certainly have a role to play in the legal review of those forms, not many of them are much involved in managing the process of creating application forms.

The manual is divided into two parts. Part A deals with the issues that organizations should consider before starting on a plain language project. Part B part deals with the processes an organisation should use to measure the effectiveness of a project.

Part A discusses some questions with which a lawyer would be familiar: What is the type of document you are planning to rewrite? What is the purpose of the document? What is the document's audience? How will the main audience use the document?

But Part A goes much further and also discusses working out the scope and the administration of the project. This involves complex issues that more concern the manager than the lawyer: What is the underlying policy behind the document and should that policy be reconsidered? What other changes are taking place in the organization at the same time you will be working on the document? Are there other documents to be reconsidered at the same time? What do you know about how the document works and how the organization will use it?

Part B involves the kinds of questions with which a lawyer would very seldom be involved: the fieldwork approach to studying clients' experience with application forms; the fieldwork approach to measuring outcomes and task times within the organization; the "laboratory" approach to task timing and valuing the costs and benefits of a plain language project. The manual discusses such varied issues as how to sample, how to time tasks, and the choice of a discount rate in calculating the net present value of the costs and benefits.

Part A is written without any examples at all. Part B is written with the one protracted example of an application form. A few more "war stories" in both parts of the manual would not only make it a bit more readable, but would be a useful educational tool. A practical case study would flesh out and make more sense of the ideas that are being developed by the writers.

The writers practice good plain-language drafting, resulting in a clear, easy to follow

text. The plain and direct style of the opening paragraph continues throughout the document. The logic of text organization is clear, the prose is crisp and businesslike, and there are plenty of headings, short sentences written in the active voice, checklists, a good table of contents and ample cross-references. Everywhere there are bulleted lists rather than longer sentences broken with commas. Yet at times, this style seems a bit overused; here is an example from Part A:

If you do not, then:

- *you may produce a document that is no longer relevant*
- *you may have to re-edit the document to reflect the changes.*

This has an artificial feel, suggesting mechanical adherence to an approved form and style. That seems at odds with the subject, given the efforts of the plain language movement to break lawyers like me from our habit of adhering mechanically to an approved form and style of drafting.

Overall, this manual is a convenient checklist for the experienced manager but not one that will be particularly useful to someone who wants a general introduction to the subject or who hasn't tried to do it themselves. It is difficult to imagine that an inexperienced person, using only this manual, would be able to set up and manage a plain language project and measure the effects of plain language documents. The stated purpose might have been more effectively realised had the authors taken a little extra time to describe how a beginner would proceed.

MARTIN MACLACHLAN

Literacy and the Courts: Protecting the Right to Understand
by the John Howard Society of Canada
(video and booklet, 1996)

'Legalese' might as well be a foreign language for most people who come before the courts, even if they can read and write.

In 1989, the John Howard Society of Canada, a criminal-justice advocacy group, set itself the

task of asking "how literacy handicaps were affecting the clientele of programs operated by the Society." One of its early reports, *Presumed to understand: Do you understand?* examined closely the relationship between literacy handicaps and accused persons.

Literacy and the Courts is one part of the society's response to the conditions exposed in the earlier report. Anyone who cares about access to justice will find this booklet interesting and thought provoking. As the name suggests, *Literacy and the Courts* examines the special problems that arise when people with low literacy skills confront the highly literate, formal culture of Canadian courtrooms. The introduction states that the purpose of the book and accompanying video is

to assist lawyers, judges, police, court staff and others working in the criminal justice system to improve their awareness . . . and to improve the effectiveness of justice system communications with users.

The 15-minute video provides quick review of the issues, and probably will serve best to achieve the awareness-raising function of the project. The booklet is more practical, with a clear discussion of the social nature of writing as a barrier to justice, a legal analysis of recent court decisions in which failure to comprehend the language of law was considered, and suggestions of steps to take to reduce 'the barrier'. Clarity ranks high on the list of appropriate steps:

The use of clear, simple language without legal jargon is the single most helpful technique for making sure that everyone involved understands court proceedings.

But this booklet is not a guide to clear communication. Rather than focus on the familiar ground of how to communicate clearly, it serves best to illustrate when and why it is necessary to do so. The authors have done a good job exposing some of the myths about literacy, particularly the notion that people will speak up if they do not understand the law.

Accused persons can go right through the court process without anyone picking up on their

problem. Counsellors who work with women offenders told us that they know that most of their clients have low literacy skills, yet not one has ever brought this up.

Many judges, lawyers, and police officers consider it insulting to ask an accused if he has trouble with reading.

We will ask people all the details leading up to the crime, and all the details about the crime. We will ask them about their family life, relations with friends and partners. We will ask them about their drug, alcohol, and sexual habits. We will ask them about their employment record. But we cannot ask them about whether they can read and write because it would be too embarrassing for them.

The booklet concludes with a guide to Canadian public legal-education and literacy-support resources.

PHIL KNIGHT

Credit contracts in Plain language

Last year, the Consumers' Association of Canada produced a report on plain language credit contracts. In it, consumers present their views of credit documents and offer valuable suggestions for improved clarity. The study also presents the lenders' point of view. A leading market-research organisation researched this report for the Association. Phil Knight analysed existing credit card agreements and produced a model contract, which is included in the report.

The 75-page report is available from the Association for a fee. (Call +1 306 242 4909, or fax +1 306 373 5810.) This April, the Consumers' Association expects to publish a similar report on life insurance contracts.

Musings about *monies*

CAROL ANN WILSON

Here is a poem I wrote to my boss, who had changed *moneys* to *monies* despite my having shown the dictionary to him a couple of months before, proving that *moneys* is preferred.

I fail to see why lawyers insist on writing the plural of *money* like this.
 The plural *attornies* would be amiss, and even the most rigid would boo and hiss.
 Yet documents galore in offices and courts, talk about *monies* in contracts and torts.
 Whenever I see it, I just think "Abort!" But reason in form files sometimes falls short.
 In all dictionaries *moneys* is preferred; to resort to *monies* is really absurd.
 Yet lawyers continue, in spite of correction, to use the word *monies*—total imperfection.
 The rules are clear: add 's' when the word ends in 'y' preceded by 'e.'
 But I still have to wonder: what's the need for any plural of *money*?
 Money is money, if it's one or it's many; a dollar, a million, or even a penny;
 So what would be the time or a need for the plural? Can you think of any?
 Now, if just by chance, my office relents, and comes around to good common sense,
 Cleaning up all forms, with enlightened intent, I will then dance with total abandonment.
 For others will follow, as legions get smart, and realize that *monies* was only an art,
 An archaic habit, neither reasoned nor sane. We'll adhere to the rules and not be mundane.
 So my *moneys* quest will put me to the test, and till it is done, I never will rest;
 And when I am through, my next one will be to eliminate *Via* on notations of delivery!

My poem came back to me the next morning with this note from him:

Your ode to *moneys* is quite good,
 So I consulted my dictionary to learn
 what I could.
 It stated in words quite plain to see
 That either plural form of money was
 acceptable equally.
 Though others may wince if we use not
 the traditional *monies*
 I am willing to use the form *moneys*.
 So from this day forth let it be,
 That more than one *money* is *moneys*.

Carol Ann Wilson, a lawyer's assistant for 25 years, also teaches other lawyers' assistants and writes on many subjects. She serves on the Plain Language Committee of the State Bar of Texas.

Fax: +1 713 223 0103
 E-mail: carolw@netropolis.net



CLARITY awards and annual meeting

MARK ADLER

On 5th December we held our 2nd annual 'CLARITY awards' ceremony, again sponsored and organised by City law firm D.J. Freeman (one of whose partners, Paul Clark, is a long-standing CLARITY member). For the first time the Solicitors Journal co-sponsored. Thanks to both.

The awards were introduced by Paul Clark and presented by past Law Society President and CLARITY member Tony Holland, who kindly agreed to step in at short notice for his

colleague as current Law Society president Tony Girling (who had asked to be excused in favour of an invitation to 10 Downing Street). All the winners were present or represented, along with many CLARITY members and guests. There was a lively and friendly atmosphere, and many non-members expressed their delight at receiving CLARITY recognition. Norwich Union insurance sent seven employees to London to receive their commendation and accommodated them overnight.

Most of the eight winners accepted our sponsors' invitation to join us at our annual dinner at a nearby restaurant.

The evening was a great success, and is to be repeated next year.

CLARITY award winners:

FULL AWARDS

- Mallesons Stephen Jaques
 - confidentiality agreement
(See pages 47-50.)
- James Kessler
 - precedents for lifetime settlement
- Speechly Bircham
 - tax guide

HIGHLY COMMENDED

- Clifford Chance
 - guides to EU and UK government
- Norwich Union
 - a range of pension documents

COMMENDED

- Lewis Silkin
 - newsletter on employment law
- Sylvester & Mackett
 - guide to limited companies
- Titmuss Sainer Dechert
 - guide to new privity law for landlords and tenants

The judges were Lord Justice Staughton, Paul Clark, Eirlys Roberts of European Research into Consumer Affairs (ERICA), Alexandra Marks of Linklaters & Paines, and Mark Adler.

Annual meeting

However, at the subsequent committee meeting it was decided that the annual meeting, held immediately before the award ceremony, did not sit comfortably with the informal parts of the evening, and should in future be held separately. Next year it will be held on a Saturday morning, specifically to discuss CLARITY issues (for which no one had been in the mood at previous annual suppers).

In a brief meeting before the awards this year, the following were ratified unopposed as the committee:

- Mark Adler (chairman)
- Nick O'Brien (treasurer)
- Christine Graham (assistant treasurer—
to take over from Nick O'Brien next year)
- Simon Adamyk
- Richard Castle
- Stewart Graham
- Nick Lear
- Robert Lowe
- Richard Oerton
- John Pare

Nick Lear joined the committee on his retirement from the partnership of London solicitors Debenham & Co (where he remains as consultant).

Robert Lowe, the other new committee member, is the author of a leading textbook on commercial law and a partner in Lowe & Gordon Seminars. He is also a practising solicitor.

Mark Adler reported briefly on recent developments. He thanked Alexandra Marks (on her retirement from the committee) for her years of service and in particular for her help in organising the awards and supper. She said she hoped to serve again on the committee when other commitments permitted.

It was agreed that those willing to help should be welcomed onto the committee (now much larger than the traditional five members) rather than limiting the numbers and holding competitive elections.

Nick O'Brien reported that the funding crisis reported in July had now passed, and even if no more money came in, we had enough in the account to publish the newsletter and journal until January 1998.

I run two-day courses in official writing for organisations (on their premises and conditions); could I do something for yours?

Course size is usually about a dozen people who submit samples of their individual work which I analyse personally and criticise constructively (and privately) in writing.

Clients who have tried it and come back for more include: the Public Trust Office, Institute of Chartered Accountants in England and Wales, John Lewis Partnership, Lord Chancellor's Department (CLARITY distributed to all participants), Treasury, and Building Research Establishment.

Delighted also to coach individuals by correspondence.

John Fletcher, 68 Altwood Road,
Maidenhead, SL6 4PZ

Tel: 01628 27387; fax 01628 32322

CLARITY representatives

England

| | | |
|------------|---|--|
| Mark Adler | 74 South Street, Dorking, Surrey RH4 2HD E-mail: adler@adler.demon.co.uk | Tel: +44 1306 741055 Fax: +44 1306 741066 |
|------------|---|--|

Australia

| | | |
|----------------------|---|--|
| Christopher Balmford | Phillips Fox, 120 Collins Street, Melbourne, Victoria 3000 | Tel: +61 3 9274 5849 Fax: +61 3 9274 5111 |
|----------------------|---|--|

Canada

| | | |
|-------------|---|--|
| Phil Knight | 1074 Fulton Ave, West Vancouver, BC V7T 1N2 E-mail: 74104.254@compuserve.com | Tel: +1 604 925 9031 Fax: +1 604 925 0912 |
|-------------|---|--|

South Africa

| | | |
|---------------------|--|--|
| Ailsa Stewart Smith | 21 Roseland Rd, Rondebosch, Cape Town 7700 E-mail: aess@beattie.uct.ac.za | Tel: +27 021 686 8056 Fax: +27 021 61 0608 (fao Richard Smith) |
|---------------------|--|--|

United States

| | | |
|--------------------|---|--|
| Prof Joseph Kimble | Thomas Cooley Law School, PO Box 13038, Lansing, Michigan 48901 E-mail: kimblej@mlc.lib.mi.us | Tel: +1 517 371 5140 Fax: +1 517 334 5748 |
|--------------------|---|--|

Confidentiality Agreement
[INSERT NAME]

Contract Number: [INSERT CONTRACT NUMBER]

1

AGREEMENT made this day of 199

BETWEEN: Heavy Weather Pty Ltd. (A.C.N) (hereinafter called "Heavy") of the first part

AND: [RECIPIENT'S NAME] of [INSERT RECIPIENT'S ADDRESS] (hereinafter called "Recipient") of the second part

WHEREAS:

- A. Heavy holds in its own right and/or as licensee, agent or trustee for other persons certain Confidential Information which has substantial value to it and such other persons and which it is unwilling to disclose to Recipient and/or other persons.
- B. Recipient is required to access and deal with such Confidential Information as part of his work with Heavy.
- C. Heavy has agreed to permit or facilitate access by Recipient to such Confidential Information solely and strictly upon and subject to the terms and conditions of this Agreement.

NOW THIS AGREEMENT WITNESSES and the parties covenant and agree as follows:-

1. INTERPRETATION:

- 1.1 In the Agreement, unless the context requires otherwise, the following words and expressions shall have the meanings set opposite them:-

"Confidential Information"

means and includes the whole or any part of all and any information or data of any nature or description possessed, controlled, retained or held by Heavy in any medium or form whatsoever, and directly or indirectly relevant to or derived from the Confidential Information described in the First Schedule hereto, but specifically excludes Confidential Information which is either:-

- (i) known to the Recipient at the Effective Date of the Agreement; or

29 July 1993
[REF]

before

Confidentiality Agreement
[INSERT NAME]

Contract Number: [INSERT CONTRACT NUMBER]

2

- (ii) public knowledge by virtue of any means, except as a result of breach of this Agreement; or
- (iii) obtained or received by the Recipient after the date hereof from any other person except Heavy, which other person shall not be in breach of any agreement with Heavy intended to secure or preserve to Heavy confidentiality in respect of the Confidential Information.

“Effective Date of the Agreement” means 1st May, 1992, or the date on which Recipient first commenced performance of his duties for Heavy, whichever is the earlier date, notwithstanding the later execution of this Agreement.

2. CONFIDENTIALITY AND USE

- 2.1 Heavy shall make available the Confidential Information, or so much thereof as it shall in its absolute discretion determine to Recipient for such period or periods it may from time to time determine, and for the purpose specified in Clause 2.2 or such other purpose as Heavy may from time to time determine or permit.
- 2.2 Recipient acknowledges that the Confidential Information shall be made available to it solely for the purposes of Recipient undertaking and executing the duties as specified in the agreement (Contract No.[CONTRACT NUMBER]) between Heavy and [COMPANY NAME], effective from [DATE EFFECTIVE].
- 2.3 Recipient shall keep and maintain absolute confidentiality and secrecy in respect of the Confidential Information and shall not disclose and/or communicate, directly or indirectly, the same to any person whatsoever other than as required for the performance of the duties as specified in Clauses 2.1 and 2.2.
- 2.4 Recipient shall neither exploit or use the Confidential Information in any way whatsoever, nor cause or permit or any other person who shall obtain the Confidential Information from Recipient to exploit or use the same in anyway whatsoever, otherwise than for the purpose specified in Clause 2.2.

29 July 1993
[REF]

before



Confidentiality agreement

after

| | |
|-----------------------------------|---|
| Owner of confidential information | Light Reading Pty Ltd ACN 000 000 000 Level 58, 302 Gonzales Street, Alice Downs 2087 phone () fax () |
| Contractor | [name] [address] [phone] [fax] |
| Contract number | |
| Confidential information covered | Any information in any form or medium we make available to you in connection with: [specify relevant project] |
| Date of agreement | / / |

We accept this confidentiality agreement.

The common seal of Light Reading Pty Ltd was affixed by the authority of the Board



in the presence of

.....
Director

.....
Director/Secretary

Signed by the contractor

in the presence of:

.....
Signature

.....
Signature of witness

.....
Name - print

.....
Name - print

Light Reading

Confidentiality agreement

General Terms

When must we disclose the information to you?

- 1.1 We must make that part of the confidential information available to you that we consider in our sole discretion to be necessary for you to carry out the project.
- 1.2 The confidential information always remains our property. This agreement does not give you any right, title or interest in it.

How must you treat it?

- 2.1 You must use the confidential information solely for the purpose of carrying out the project. You must not use or exploit it for your own benefit or for any other purpose, or allow any other person to do so without our written consent.
- 2.2 You must not disclose it, and must ensure that your employees, contractors and agents do not disclose it to any other person except as required to carry out the project and then only on a confidential basis.
- 2.3 You must take reasonable steps to protect the confidential information and keep it secure from unauthorised persons.
- 2.4 You must inform us immediately if:
- (a) you become aware or suspect that there has

been a breach of these obligations; or

- (b) you are required to disclose the information by law.
- 2.5 At the end of the project or if we ask for it earlier, you must return the confidential information, and all copies, notes and memorandums relating to it, to us as we direct.
- 2.6 You do not have to treat as confidential information
- (a) which is or becomes part of the public domain, except information that is or becomes so because it has been disclosed without authority; or
- (b) which is lawfully known to you before the date of this agreement; or
- (c) which is or becomes available to you from another person who is in possession of it lawfully and can disclose it to you on a non-confidential basis; or
- (d) which you are required by law to disclose but you must seek to limit that disclosure in any way we reasonably request.

and costs arising because you do not observe the conditions of this agreement for any reason.

Duration

4. Your obligations under this agreement continue after the project ends.

General

- 5.1 This agreement contains the entire agreement between you and us and takes the place of all other statements about the confidential information.
- 5.2 This agreement may be varied only if you and we agree in writing.
- 5.3 If we do not exercise a right at any time in connection with a default under this agreement, this does not mean that we have waived the right or cannot exercise it later.
- 5.4 This agreement is covered by the laws of New South Wales. You and we submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

we means Light Reading Pty Ltd.

you means the contractor named on page 1.

Indemnity

3. You indemnify us against all loss, damage, expense

after

Plain Language Commission's awards for 1996

Golden Rhubarb Trophy

Mrs Virginia Bottomley, the National Heritage Secretary, has won this year's top gobbledygook award from the Plain Language Commission for 'grotesque and baffling English' in the BBC's new royal charter and broadcasting agreement, drawn up mainly by her department.

The Commission has given Mrs Bottomley the Golden Rhubarb Trophy for a 'classic example of legalistic pedantry and fog' which includes a sentence of 210 words and such phrases as:

mutatis mutandis, conveyance of signals serving for the impartation of any matter, whereas on divers dates, subject as hereinafter provided, the aggregate of moneys, residual part thereof, aforesaid objects, pursuant to, next following paragraph hereof, formulation of the objectives, requisite for the proper performance and exercise of its functions, the concurrence of the Council, the power hereinbefore contained, deemed to vitiate any proceedings, exemplification thereof, and anywise notwithstanding.

Seminars and courses on advanced writing skills (including plain English for lawyers)

Editing and design of plain legal documents

Martin Cutts

The Castle, 29 Stoneheads

Whaley Bridge

High Peak SK23 7BB

Tel: 01663-732957

Fax: 01663-735135

E-mail: cutts@plc--waw.demon.co.uk



Silver Rhubarb Trophy

The Silver Rhubarb Trophy goes to Sir Richard Scott, the judge who delivered an 1,800-page report on the arms-to-Iraq inquiry. 'Sir Richard has buried his findings beneath a mountain of verbiage and ambiguity,' Mr Cutts, research director of the Commission, said. 'This document has cost taxpayers £5M to prepare. Yet it lacks an overall summary of its main conclusions, forcing people to read everything to find out anything. On several vital points it is so ambiguous that nobody knows what it means.'

Bronze Rhubarb Trophy

NatWest Bank gets the Bronze Rhubarb Trophy for a convoluted deed of guarantee:

Mr J Smith (the Guarantor) hereby guarantees payment to the bank on demand of all liabilities of the Debtor to the Bank (in whatever currency denominated) howsoever arising whether present future actual and/or contingent and whether incurred solely severally and/or jointly and as principal or surety and all legal and other costs and expenses (on a full indemnity basis) howsoever incurred by the Bank in connection therewith and so that as against the Guarantor interest shall be deemed to continue to accrue and be a liability of the Debtor hereby secured notwithstanding that for any reason interest may have ceased to accrue against the Debtor provided that the total amount recoverable in relation thereto under this Guarantee shall not exceed the sum of Six Thousand Pounds or the equivalent thereof at the date of demand on the Guarantor in one or more securities (the equivalent of any amount not expressed in Sterling being assessed by reference to the bank's spot rate of exchange at the time of demand hereunder).

Mr Cutts said: 'By signing this deed, people are agreeing to pay thousands of pounds if the debtor defaults. They ought to know exactly what the deed is saying, and should not have to buy professional advice to have it explained. By law, standard-form consumer contracts must be written in "plain, intelligible language." Business contracts like this deed should be brought within the scope of similar law. NatWest proclaims it is "committed to clear communication," and they should honour this by rewriting the guarantee immediately.'

Commendations

The Plain Language Commission gave three commendations for outstandingly good documents:

- To the Inland Revenue for a series of 'simple, eye-catching and amusing' press advertisements, written in the style of an agony aunt, explaining the new self-assessment scheme. Headlines include 'Too tired for tax' and 'Painful arrears.'
- To the Stonebridge Housing Action Trust (Harlesden, north London) for 'Stonebridge into the 21st Century.' The Commission said: 'This clearly written and beautifully presented consultation document enables local residents to weigh up all the options for the future of their estate.'
- To Unipath Ltd, the diagnostics company, for an instruction booklet about the new contraceptive system 'Persona.' The Commission said: 'The booklet succeeds in explaining a potentially complex process by using easy-to-read text and clear illustrations.'

Plain Language in Parliament Award to Julian Brazier, MP

Julian Brazier, MP for Canterbury, won the Plain Language in Parliament Award for introducing a Private Member's Bill (now law) that enables couples to choose a simplified form of words when getting married in a register office.

Instead of the 1949 version:

I solemnly declare that I know not of any lawful impediment why I, [name], may not be joined in matrimony to [name]. I call upon these persons here present to witness that I, [name], do take thee, [name], to be my lawful wedded wife [or husband].

The 1996 version says:

I declare that I know of no legal reason why I [name] may not be joined in marriage to [name]. I [name] take you [name] to be my wedded wife [or husband].

Mr Cutts said: 'It's good that couples will have a choice. The old wording makes some people stumble over antique English in front of their friends and relations. I heard one bride describe her partner as "my awful wedded husband."'

Updates on some CLARITY members

Maureen Fitzgerald, Policy and Research Lawyer with the Law Society of British Columbia, has recently published a first year law text titled *Legal Problem Solving: Reasoning, Research and Writing* (Butterworths 1996).

Ms. Fitzgerald also published an article titled *What's Wrong with Legal Research and Writing: Problems and Solutions* (1996) 88 Amer. Assoc. of Law Librarians 247. The article summarises research she conducted in 1993 about how legal research and writing are taught in Canadian law schools.

Sue Nelson has become President of the City of Westminster Law Society.

David Thomas has been appointed Banking Ombudsman.

John Watkinson, president of Simplified Communications Group Inc., a Toronto firm that helps companies make their documents more meaningful, spoke to the Investment Funds Institute of Canada annual meeting on the subject of prospectuses. He said that it's not enough to disclose information. Investors will be protected only if they understand the information, and this will only happen if the information is communicated to them effectively. Mr. Watkinson proposed a simple solution: ask investors what information they would like and in what form they would like it. Include only material that's absolutely required by current rules or that's clearly useful to investors.

Steven Weise, Howard Darmstader, and Joe Kimble were on the panel when the Business Law Section of the American Bar Association sponsored a program on plain language at the ABA's annual meeting in August. The other panellist was Ann Wallace, who is heading the plain-English initiative for the Securities and Exchange Commission.

Welcome to new members

Australia

- Mr James Higgins
attorney; Mallesons Stephen Jaques ;
Melbourne, Victoria
- Deacons Graham & James
(David Colenso, attorney); Brisbane,
Queensland
- Legislative Council, Parliament of NSW
(Mr J. Evans, Clerk of the Parliaments);
Sydney, NSW
- Mallesons Stephen Jaques Library
(Sophie Papapostolou, proofreader);
Melbourne, Victoria
- Queensland Law Society
(Dorothy Henderson); Brisbane, Queensland
- Victoria Legal Aid
(Kay Robertson); Melbourne, Victoria
- Ms Lyndal Arnott
attorney, NRMA Ltd; Sydney, NSW
- Judge Rosemary Balmford
Supreme Court of Victoria; East Ivanhoe,
Victoria
- Ms Jan Barnard
attorney; Richmond, Victoria
- Mr Rowan Bieske
solicitor, Marshall Marks Kennedy; Sydney,
NSW
- Mr David Carter
attorney, Madgwicks; Melbourne, Victoria
- Mr Doug Davies
attorney, Oceanic Coal Australia Ltd; Sydney,
NSW
- Ms Michelle Filler
precedents coordinator, Blake Dawson
Waldron; Sydney, NSW
- Mr Jamie Hutchinson
attorney, Mallesons Stephen Jaques; Sydney,
NSW
- Mr Sean Kidney
consultant, Social Change Media; Annandale,
NSW
- Mrs Prudence King
attorney, Tress Cocks & Maddox; Sydney,
NSW
- Mr Anthony Lang
attorney, Slater & Gordon; Melbourne, Victoria
- Ms Themis Lascaris
writer, NZI Insurance Australia Ltd; Sydney,
NSW

- Mr Scott Munro
attorney, Madgwicks; Melbourne, Victoria
- Mr Stephen Palyga
attorney, Lynch & Meyer; Adelaide, South
Australia
- Mr Ben Piper
attorney, Office of the Chief Parliamentary
Counsel for Victoria; East Melbourne, Victoria
- Mr Alan Shaw
manager, Australian Stock Exchange;
Melbourne, Victoria
- Mr Edwin Tanner
attorney, Victoria University of Technology;
Kensington, Victoria
- Mr David Totts
attorney, Kell Heard McEwan; Wollongang,
NSW
- Lyndall Varady
Refugee Review Tribunal; Sydney South, NSW

Canada

- Ms Karen Sharlow
attorney, Thorsteinssons; Vancouver, BC

Denmark

- Sydbank A/S
(Susanne Jørgensen, translator); Aabenraa

England

- Capital Taxes Office
(Diane Veale); Nottingham
- Mitchell Caulkett & Coiley
(Terence Coiley, solicitor); Maldon, Essex
- The College of Law
(Margaret Franks, librarian); London
- The College of Law
(Heather Smith, teacher); Chester, Cheshire
- Wright Son & Pepper
(Mr B.A. Wates, solicitor); London
- Mr Anthony Copeman
solicitor, Travers Smith Braithwaite; London
- Mrs Jane Dewar
legal executive; Northwich, Cheshire
- Mr Robert Grinter
writer; Exeter, Devon
- Mr Altaf Kara
solicitor, NCH Europe Inc; Bromwich, West
Midlands
- Ms Debra Kent
solicitor, Garrett & Co; Reading, Berkshire
- Mrs Susan Midha
solicitor, Manches & Co; London

Mr Derek Mount
solicitor, Humphries Kirk; Swanage, Dorset

Mr Michael Nield
barrister, London

Mr Peter Rodney
barrister, London

Mrs Julia Shaw
consultant, Sheffield

Miss Jane Vandervlies
solicitor, The College of Law; London

Mr Stephen Wyatt
solicitor, Dixon & Templeton; Fordingbridge,
Hampshire

Netherlands

Mrs Christine Gohres
translator, Gohres Legal Communications;
Heemstede

New Zealand

Law Commission
(Bill Sewell); Wellington

Scotland

Mr Ian Macdonald
solicitor, Wright Johnston & Mackenzie;
Glasgow

Switzerland

Dr Stephen Berti
attorney, Prager Dreifuss; Zürich

Dr Nedim Peter Vogt
attorney, Bar & Karrer; Zürich

USA

Mr Richard Adams
attorney, Slagle Bernard & Gorman; Kansas
City, Missouri

Mr Avery Aisenstark
attorney, Baltimore City, Dept. of Legislative
Reference; Baltimore, Maryland

Professor Carol Bast
teacher, University of Central Florida; Winter
Park, Florida

Mr William Bertrand
attorney, Jackson National Life Insurance Co;
Lansing, Michigan

Mr Richard Bingle
attorney, Research Institute of America Group;
Fairfax, Virginia

Mr John Bramfeld
attorney, Phebus, Winkelmann, Wong &
Bramfeld; Urbana, Illinois

Mr William Derick
attorney, Office of Chief Counsel, IRS;
Chicago, Illinois

Mr Richard Fine
attorney, IBM Corp.; White Plains, New York

Ms Christina Harris
attorney, AIG Risk Management Inc; San
Francisco, California

Ms Marcia Hebb
attorney; Lansing, Michigan

Ms Mary Hiniker
publications director, Institute of Continuing
Legal Education; Ann Arbor, Michigan

Judge Lynn N. Hughes
United States District Court; Houston, Texas

Prof Sam Jacobson
teacher, Willamette University College of Law;
Salem, Oregon

Mr Gary Klotz
attorney, Keywell & Rosenfeld; Troy, Michigan

Mr Jim Kohl
attorney, Plunkett & Cooney; Detroit,
Michigan

Mr Clyde Leland
editor and writing instructor, Crosby, Heafey,
Roach & May; Oakland, California

Mr Cornelius Lombardi
attorney, Blackwell Sanders Matheny Weary &
Lombardi LC; Kansas City, Missouri

Mr George T. Munsterman
director, Center for Jury Studies; Arlington,
Virginia

Mr Colvin Norwood
attorney, McGlinchey Stafford & Lang; New,
Orleans, Louisiana

Judge Mark Plawecki
Dearborn Heights, Michigan

Mr Robert Schmelzer
attorney, Gault Davison PC; Flint, Michigan

Professor Peter Tiersma
teacher, Loyola Law School; Los Angeles,
California

Laura Warfield
paralegal, Carlsmith Barr Wichman Case
& Ichiki; Honolulu, Hawaii

Wales

Mr Christopher Humphreys
solicitor, SWEB; Groesfaen, Pontyclun

CLARITY

document services

CLARITY offers two related but distinct services: the first is document drafting; the second is vetting documents for the award of the CLARITY logo. Both are coordinated by committee member Richard Castle.

1. Drafting

A CLARITY member will draft or redraft your documents applying the principles we advocate. Members working on this basis do so independently. CLARITY is not a party to the contract.

Fee: The fee is negotiated between you and the drafter.

2. Vetting

A CLARITY vetter will consider a document and

- approve it as drafted;
- approve it subject to minor improvements; or
- reject it with a note of the reasons.

If the document is approved, or approved subject to improvements which are made, you may use the CLARITY logo on the document provided the document remains exactly in the approved form.

Fee: The standard fee is £100, but it may be higher if the document is long or complex. Our vetter will quote before starting.

Common principles

In both cases:

- all types of document are included—letters, affidavits, pleadings, and manuals
- confidentiality will be respected
- the applicant is responsible for ensuring that the document does the job intended
- CLARITY is not insured and will not accept liability.

We will try to see that the drafter is not also the vetter, but we cannot guarantee this.

Applications should be made in the first instance to:

Richard Castle
 Wolfson College
 Cambridge CB3 9BB
 Tel: 01223 331879
 Fax: 01223 331878

CLARITY

advertising charges

Full page: £150, pro rata for small areas

Minimum charge: £20

back numbers

are available at the following prices:

| Issues | Cost each |
|--------|-----------|
| 1-4 | £1.00 |
| 5-11 | £1.50 |
| 12-24 | £2.00 |
| 25-34 | £3.00 |
| 35 | £0.50 |
| 36 | £2.00 |
| 37 | £0.50 |

Postage is extra.

UK seminars

CLARITY's UK seminars relaunched

These half-day seminars are now offered at the lower price of

£450 + expenses + VAT.

(An extra charge is negotiated for long-distance travelling.) The seminars are held on your own premises, and you can invite as many delegates as you wish.

Accredited under the Law Society's continuing education scheme.

A full-day version is offered for an extra £200 + VAT.

CLARITY ties

£8.50 each

Navy blue ties with the CLARITY logo (as nearly as it can be reproduced)

Please send your order with a cheque to our Dorking address.

CLARITY: Membership application form (please keep original and send photocopy)

| | | | |
|---|---|----------------|--|
| Membership in name of individual | | | |
| Title | First name | Surname | |
| Firm | Position in firm | | |
| Professional qualification | Occupation if different from qualification | | |

or

| | |
|---|--|
| Membership in name of organisation | |
| Name of organisation | |
| Nature of organisation | |
| Contact | |

| | | | |
|--|---------------------------------------|------------|--|
| All members | whether an individual or organisation | | |
| Home or business address (please specify) | | | |
| DX | | | |
| Home telephone | Work telephone | Fax | |
| Specialist fields | Email | | |

| <p>Please send this application</p> <p>to your country representative (see p.46) — or if none to our Dorking address — with a cheque in favour of CLARITY, or a completed standing order form, for the subscription.</p> <p>Your details will be kept on a computer; please tell us if you object. By completing this form, you consent to your details being given to other members or interested non-members (although not for mailing lists), unless you tell us you object.</p> | Annual rates | |
|--|-----------------------------------|--|
| | USA and Canada | \$25 |
| | Australia | \$30 |
| | South Africa | R100 |
| | UK | £15 |
| | Unsalariated students based in UK | £5 |
| | Elsewhere | £15 (or equivalent of £25 if paid in other currency) |

| | |
|---|--------------------------|
| Please tick the box on the right if you do not have a copy of <i>Clarity</i> issue 38 | <input type="checkbox"/> |
|---|--------------------------|

| | | |
|-----------------------|------------------|---|
| Standing order | For Britain only | <p>Please pay to CLARITY's account 0248707 at the Cranbrook branch of Lloyds Bank (sort code 30-92-36) quoting CLARITY'S ref</p> <p>[we will insert this]</p> <p>£15 immediately, and [we will delete this line if you join between 1st April and 31st August]</p> <p>£15 each 1st September.</p> |
| To: | Bank plc | |
| Branch | | |
| Sort code | - - | |
| Branch address | | |
| A/c name | | |
| A/c number | | |
| Signed | | |