

Clarity

Number 53

May 2005

Journal of the
international association
promoting plain legal language

Editor in chief:
Michèle Asprey

Guest editor for this issue:
Catherine Rawson

In this issue

Multilingual legislative drafting

William Robinson
*How the European Commission drafts legislation
in 20 languages* 4

Juliet Weenink-Griffiths
*The European Central Bank's approach to
drafting legislation in 20 languages* 11

Duncan Berry
*The effect of poorly written legislation
in a bilingual legal system* 15

Emma Wagner
Producing multilingual legislation in Switzerland 18

Ian Frame
*Linguistic oddities in European Union legislation:
don't shoot the translator* 21

Plain language in non-English speaking and multilingual countries

Catherine Rawson
Just fix the English 25

Christopher Williams
*Progetto Chiaro! and the
plain language movement in Italy* 30

Cheryl Stephens
Canada's multilingual plain language projects 33

Myla Kaplan
*Legalese of biblical proportions:
some observations on legal language in Israel* 36

Maggie Jo St John
Citizen's Language: Plain language in Mexico 39

Daniel Cassany
Plain language in Spain 41

Vijay Bhatia
Plain English in Asia 45

Kyal Hill
Legal English in Japan: a translator's perspective 48

Lei-Theng Lim
*Plain English in Singapore:
preparing the next generation of lawyers* 51

Other ways of tackling clear writing

Mike Unwalla
ASD simplified technical English 54

Margaret van Naerssen
A forensic test of a Pennsylvania contract 57

Book reviews 63

Clarity and general news 65–72

Conference announcements & reports 65

Patrons The Rt Hon Sir Christopher Staughton and The Hon Justice Michael Kirby

Founder John Walton

Committee

President: Professor Joseph Kimble (kimblej@cooley.edu)

Members: Country Representatives *plus* Simon Adamyk, Mark Adler, Michèle Asprey, Peter Butt, Sir Edward Caldwell, Robert Eagleson, Nicole Fernbach, Robert Lowe, John Pare, John Walton, Richard Woof.

Country representatives

Australia: Christopher Balmford
Words and Beyond Pty Ltd
1 Barrack St, Sydney NSW 2000
02 8235 2337 (fax 9290 2280)
christopher.balmford@cleardocs.com

Brazil: Dominic C. Minett
Lex English Language Services Ltda
Rua Humberto I, 298
Bloco B, Sala 2, 2o andar, Vila Mariana
Sao Paulo, SP 04018-030
011 5084 4613 (phone & fax)
dominic@lexenglish.com.br

Canada: Philip Knight
1074 Fulton Avenue
W. Vancouver, BC V7T 1N2
604 628 0387 (fax 925 0912)
philknight1@mac.com

France: Anne Wagner
Département Droit
Université du Littoral Côte d'Opale
21, rue Saint-Louis, BP 774
62327 Boulogne sur Mer Cédex
03 21 99 41 22 (fax 21 99 41 57)
valwagnerfr@yahoo.com

Hong Kong: Wai-chung Suen
Department of Justice
9/F Queensway Govt Offices
66 Queensway, Admiralty
2867 4171 (fax 2845 2215)
wcsuen@doj.gov.hk

India: Sandeep Dave
4 Kanch, Plot No 191, 11th Road
West of Khar, Mumbai 400052
22 2600 0550 (phone & fax)
sandeepdave@hotmail.com

Israel: Myla Kaplan
POB 56357, 34987 Haifa
054 3132010 (fax 04 8110020)
mylakaplan@yahoo.com

Italy: Christopher Williams
Via Taranto 33
70031 Andria (BA)
0883 554171
cjwilliams72@hotmail.com

Japan: Kyal Hill
Apartment 706 Presle Tamaishi
4-15-28 Toshima, Kita-ku
Tokyo 114-0003
080 3415 2082 (fax 03 5390 1700)
kyal.hill@mhmjapan.com

Malaysia: Juprin Wong-Adamal
Department of Human Resources Development
7th Floor, Block A, Wisma MUIS
88999 Kota Kinabalu, Sabah
88 218722 ext. 199 (fax 88 211 554)
Juprin.Adamal@sabah.gov.my

New Zealand: Richard Castle
148A Tinakori Road
Thorndon, Wellington 6002
04 938 0711 (fax 934 0712)
schloss@paradise.net.nz

Philippines: Victor Eleazar
4/F Unit C-2 Marvin Plaza Building
2153 Chino Roces Avenue
Makati City 1200
02 897 1681 (fax 897 5257)
attyvye@msn.com

Singapore: Lei-Theng Lim
Faculty of Law
National University of Singapore
13 Law Link, 117590
6874 6464 (fax 6779 0979)
leitheng@nus.edu.sg

South Africa: Adv Annelize Nienaber
Law Faculty, University of Pretoria
Pretoria, 0002
012 420 2634 (fax 420 4524)
anienabe@hakuna.up.ac.za

Sweden: Barbro Ehrenberg-Sundin
Justitiedepartementet
SE-103 33 Stockholm
08 405 48 23 (fax 20 27 34)
barbro.ehrenberg@justice.ministry.se

UK: Paul Clark
Cripps Harries Hall
Wallside House
12 Mt Ephraim Road
Tunbridge Wells
Kent TN1 1EG
01892 515121 (fax 01892 544878)
pec@crippslaw.com

USA: Prof Joseph Kimble
Thomas Cooley Law School
PO Box 13038
Lansing, Michigan 48901-3038
1 517 371 5140 (fax 334 5781)
kimblej@cooley.edu

Other European countries:
Catherine Rawson
legal_easy@hotmail.com

All other countries:
Please contact the USA representative



Clarity

An international association promoting plain legal language www.clarity-international.net

President

Professor Joseph Kimble
kimblej@cooley.edu

Clarity ... the journal

Published in May and November

Editor in chief

Michèle Asprey
PO Box 379 Milsons Point
NSW Australia 1565
Fax: 61 2 9252 0189
asprey@plainlanguage.com

Guest editors for next issue

Nicole Fernbach
Juricom, Inc.
Phone: 1 514 8454834
nicole@juricom.com

Edward Caldwell
Law Commission
Phone : 44 20 7453 1206 (direct)
or 1238 (secretary)
edward.caldwell@lawcommission.gsi.gov.uk

Advertising rates

Full page: £150
Smaller area: pro rata
Minimum charge: £20
Contact Joe Kimble, kimblej@cooley.edu

Copyright policy

Authors retain copyright in their articles.
Anyone wanting to reproduce an article in whole or in part should first obtain the permission of the author, and should acknowledge *Clarity* as the source of the original.

This issue

This issue reviews plain language initiatives around the world, particularly in non-English speaking countries and multi-lingual countries. About half the articles discuss the complexities of drafting legislation in more than one language. Most of the others deal with the challenges of translating and editing texts written by non-native speakers of English. Two articles deal respectively with a linguist's forensic test of the "plainness" of a contract, and "simplified English"—the plainer-than-plain international writing standard used by the aero industry to promote safety.

Getting news of what is going on around the world has taken imagination and persistence. How do you find someone to ask? Having found a likely person, how do you persuade that person to write for *Clarity*?

Despite the bumper size of this issue, its overview is not comprehensive. Some countries apparently they do not have plain language initiatives in the public or private sectors. Other countries' fledgling plain language initiatives seem to have lost momentum, leaving little of consequence to talk about. In some cases I was unable to find anyone who would respond or who was willing to contribute.

But Asia is awakening to the benefits of plain language. In February, the Malaysian Securities Commission published *The Plain Language Guide for Prospectuses*. And last year the Hong Kong Mortgage Corporation, a statutory authority, issued HK's first plain language prospectus. Readers will be able to read about this experience in *Clarity* No 54.

The *Clarity and Obscurity in Legal Language* conference being held in France in July (see pages 65–67) has two sessions reviewing plain language around world. We hope that this issue of *Clarity* will act as a "tickler" for the conference, encouraging you to come along and share your experiences.

Finally, if you know of a plain language initiative not mentioned in this issue, please email me about it because *Clarity* is keen to learn of developments and hear of your experiences.

Catherine Rawson
legal_easy@hotmail.com

Catherine Rawson helps multi-lingual organisations ensure that their staff write clear, concise, readable English, regardless of their native language. By using tailored software to reinforce Catherine's plain English training, her clients are able to monitor the quality of their English communications.



How the European Commission drafts legislation in 20 languages

William Robinson

Coordinator in the Legal Revisers Group of the European Commission's Legal Service, Brussels, Belgium

European Union (EU) legislation applies to 450 million people in 25 countries and exists in 20 languages which all have equal status. This article describes how the European Commission drafts legislation, what it has already done to improve drafting quality and what more it could do.

The article expresses the author's personal views and does not necessarily reflect those of the Commission. It is far from exhaustive and focuses on actual drafting of European Community legislation in the Commission, not what happens before or after.

The European Community (EC) legislative process

Under the EC Treaty as amended over the years most basic Community legislation is adopted jointly by the European Parliament, directly elected by EU citizens, and the Council, representing the governments of the Member States, with only a few fields such as taxation, agriculture, and fisheries being reserved to the Council alone. But in almost all cases the proposal for legislation—the first draft of the measures—must come from the Commission, and without such a proposal the other institutions cannot act.

Also under the EC Treaty, most of the detailed rules to give practical effect to the basic legislation are to be adopted by the Commission, which must generally act with the approval of a committee composed of representatives of the Member States.

The EU has 20 official languages

Article 290 of the EC Treaty states:

The rules governing the languages of the institutions of the Community shall ... be determined by the Council, acting unanimously.

Those rules were laid down by Regulation No 1¹, as amended by successive Acts of Accession, under Article 1 of which:

The official languages and the working languages of the institutions of the Union shall be Czech, Danish, Dutch, English, Estonian,

Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish.

Article 4 provides "Regulations and other documents of general application shall be drafted in the twenty official languages", thus indicating that there is not simply one original language version and 19 translations. Under Article 5, the *Official Journal of the European Union* must be published in all 20 languages.

Exceptionally, because of difficulties regarding translation into Maltese, Regulation (EC) No 930/2004 lays down that, for a limited period, acts need not be drafted and published in Maltese. Irish is not an official language under Regulation No 1, but the Treaties themselves are authentic in Irish.

Although all 20 official languages are the working languages of the institutions according to Regulation No 1, the institutions' day-to-day work can hardly be carried on in all of them simultaneously. Different institutions have chosen different practical solutions, a number of which have faced legal or political challenges. Some institutions have opted for a single internal working language: French for the European Court of Justice, English for the European Central Bank, for example. The European Commission has a policy of using three languages for internal purposes: English, French and German. In practice, French and English are the main languages of internal communication and drafting. Formerly French enjoyed a clear predominance but in recent years the balance has shifted and now within the Commission most drafting is done in English.

How the Commission drafts legislation

Step 1—First draft written by technical experts

Legislation is drafted by the technical department for the sector concerned, not by a corps of drafting specialists. The first drafts are generally written not by lawyers but by technical experts such as economists or scientists: veterinarians draft animal health rules and so on. Until recently, new arrivals were not even given much in-house training in drafting and would have to depend on their own experience and national background and the experience of colleagues.

Drafters must write in either English or French and their choice is determined by the language used in their department. So most write in a foreign language, and it is harder for them to write exactly what they want to say or to express their ideas in the clearest possible way.

One result is a tendency for drafters to follow precedents. It is much easier for non-native speakers of a language to stick to provisions or phrases that have been used in earlier legislation. Non-lawyers gain some comfort from the fact that provisions or phrases have been used before and therefore—they assume—cannot be wrong. Adherence to precedents drawn from past legislation is all the more tempting since they exist in all the languages. All those dealing with the new draft in English or French will be able to find out what it will look like in their own languages. Translation will probably take less time and present fewer problems because the translators can rely in part on the old text.

Unfortunately the precedents chosen may not be best suited to the new circumstances. Because the drafters are not lawyers, they may not always analyse sufficiently the circumstances they are dealing with and those dealt with by the precedent. And because they have to work in a foreign language, they are not in a position to judge the linguistic quality of the precedent they have chosen. Moreover, drafting standards have evolved and over-reliance on precedents tends to perpetuate past faults and weaknesses.

Step 2—Consultation within the Commission

Once the technical department has prepared its preliminary draft, it is submitted to the other Commission departments concerned as part of the internal consultation procedure. The Commission's Legal Service has to be consulted on all draft legislation. Lawyers specialising in the sector concerned will examine the draft for compliance with the law and coherence with other legislation in the field. The Commission's legal revisers, who all have dual legal and language qualifications, will examine it for compliance with the rules on form and presentation of legislation, in particular the *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of legislation within the Community institutions*².

At this comparatively early stage when the draft exists in only one language, far-reaching changes can be suggested if the legal revisers believe them necessary. Unfortunately the strict, short deadlines under the internal rules and the volume of work prevent the revisers from always achieving the standard they would like. The formal Legal Service response is drawn up by the lawyer for the sector concerned and generally—but not always—incorporates all the legal revisers' suggestions. The lawyer will sometimes drop some of the legal revisers'

suggestions in deference to the wishes of the originating department.

If the originating department chooses, it may also consult a team of editors in the Translation Directorate-General who will suggest linguistic improvements.

After those consultations it is up to the originating department to take account of the comments received. Generally the Legal Service's suggestions must be followed although it does not have the power to block a text altogether.

Step 3—Translation into the other official languages

The text must then be translated into all the official languages by the Translation Directorate-General, before formal adoption by the Commission. Sometimes the originating department has already begun the translation process before receiving the Legal Service's suggestions. It may then be reluctant to accept any drafting changes because of the difficulty of having the changes made in all the other language versions by the Translation Directorate-General, or else it may have the changes made by members of its staff who are not trained translators: a hazardous course.

The legal revisers may have another opportunity to revise the text at this stage. Revision may be requested by the originating department, often at the instigation of the Legal Service or of the Commission's Secretariat-General, which has general responsibility for ensuring that procedures are properly followed. Since the text has passed through extensive consultations, is often the fruit of difficult compromises, has been translated into all the official languages and is to be adopted in a matter of days, the revisers must confine themselves to correcting formal or terminological errors and ensuring that the legal scope is exactly the same in the different language versions.

What happens when the Commission has adopted a legislative proposal?

The Commission's proposal is submitted to the European Parliament and the Council, where it passes through those institutions' internal pre-adoption procedures. In the European Parliament it is considered by a committee of Members of the European Parliament, which submits a report to the plenary. In the Council it is considered by working groups consisting of experts from the Member States.

Each institution has its own team of legal revisers who will also ensure that the drafting rules are complied with. At the more advanced stages of the procedure, however, it is harder to propose restructuring or rewriting for the sake of clarity and the revisers' primary responsibility is to correct mistakes and ensure that the various language versions correspond exactly.

How the European Commission drafts legislation in 20 languages

(continued)

Particular features of EU law

Multilingualism

A unique feature of EU legislation is that it exists in 20 language versions, each of which has equal force. This fact and the multilingual drafting process are the source of certain complications.

The handicap of having to work in a foreign language weighs heavily on the authors of the first drafts but it affects the subsequent stages of the procedure too. Most of those involved in discussions on that draft will also be working in a foreign language and will have extra difficulty, first in understanding what is in the draft, and then in explaining how they want it altered. The resulting text must then be translated, which creates scope for misunderstanding, especially if the original text is not clear. The text will also undergo various word-processing manipulations as it passes from one department to another. At all these stages mistakes can creep into the various versions. In a monolingual system, there is less scope for linguistic errors in the first place, and most errors that do slip in will tend to be corrected by those involved at later stages, right up to the level of the minister who signs the final text. In a multilingual system, few of those involved at later stages will actually be native speakers of the language version concerned and so such spontaneous correction is less likely.

It may happen that a term used in one language leads to a misunderstanding in another. In Regulation (EC) No 141/2000³, the term “orphan drug” is used in a technical sense (known to the trade circles) of a drug which is used to treat a rare disease and for which the manufacturer receives special tax credits and marketing rights as an incentive to develop the drug. However, a German expert has assured me that she has seen it translated as “medicine for children without parents”!

In the *Koschniske* case⁴, the Court of Justice was asked whether “diens echtgenote” (Dutch: “whose wife”) in a provision of a regulation on social security could also be understood to mean a married man. The Court held that it could, by interpreting it in the light of all the other language versions, which used a word such as spouse to cover both sexes, as well as the purpose of the provision and the principle of equal treatment.

In June 2004 a Directive on jams, jellies and marmalades⁵ had to be amended because the German version had used the terms “Konfitüre” and “Marmelade” for “jam” and “marmalade” respectively, while in certain local markets in Austria and Germany the term “Marmelade” is traditionally used

for “jam” and the term “*Marmelade aus Zitrusfrüchten*” is used for “marmalade”.

A recent example of the pitfalls of the system was the native-English-speaking author who refused to accept the revisers’ correction of “ton” to “tonne”. He said that “tonne” had been in all the documents submitted to him but he had checked in an English dictionary and the correct spelling in English was “ton”. He was clearly unaware that a tonne or metric ton is 1 000kg while a British ton is 2 240lb (1.016 tonnes).

To ensure that the legal effects of an act are identical in all languages the various language versions must, as far as possible, have the same form. It is not permissible to adopt a solution to a drafting problem that works only in one language. For example alphabetical order cannot normally be used because items would appear in a quite different order in most languages.

During the drafting of the Constitution one thorny problem was the names for the various components of the Court of Justice. Some languages, such as French, have two words (“*cour*” and “*tribunal*”) which on their own convey a hierarchy which could not be reflected by two words in some other languages, including English. Moreover, in some languages two words similar to the French words exist but the hierarchical order is not clear. The solution finally adopted was to call the lower body “general court” or the equivalent except in languages where single words were enough to convey the hierarchical relationship.

Multilingualism is not just a complicating factor. It brings benefits too: the original text is subjected to a particularly close scrutiny as all the translators and revisers consider how the meaning should be rendered in their own languages. Mistakes or lack of clarity or consistency in the original are often brought to light by the translation process and corrected.

Multiculturalism

EU legislation becomes more complex because it has to deal with many different cultures and divergent local conditions. The animal health rules contain many examples.

The rules on ear tags on bovine animals had to take account of the particular cases of bullfights in some Mediterranean countries and the custom in some Nordic countries of displaying animals in traditional rural settings, in farm museums for example. When pet passports were introduced to make it easier for citizens to travel with their pet animals, they catered not just for cats and dogs, which are common pets throughout Europe, but also for ferrets, much to the bemusement of countries with no ferreting tradition.

During a case at the Court of Justice in which the French word “chasseurs” had to be translated into English, the translator pointed out that in England hunting would conjure up images of red-coated horse riders in pursuit of inedible foxes whereas in France hunters are often local farmers and workers out with a gun and a dog shooting birds for the pot.

Taking account of multiculturalism is a dynamic process since local conditions are evolving at different speeds in different countries. Even areas where there was once a large degree of uniformity across the Member States may become more complex. For example, marriage has generally been regarded as an institution with common core features across the EU. Since the introduction of same-sex marriages in the Netherlands, however, some people there find it is no longer enough to say they are married but feel it necessary to specify the sex of their partner.

Negotiated law

The first drafts of legislation are not of the highest quality and the text becomes even heavier through the cumbersome process of multilingual committees whose members are making textual suggestions in one language but “thinking” in another, whether their native language or one in which they formerly worked.

At a very early stage the draft becomes the expression of the policy and many subsequent attempts to influence the policy consist of textual suggestions by bodies largely made up of non-native speakers of the drafting language.

Changes are made with a view to achieving policy ends rather than producing clear, simple and precise legislation. It sometimes happens that a provision is deliberately left vague (known in French as *flou artistique*) to paper over a failure to reach full agreement. This is a situation addressed by the *Joint Practical Guide* in point 1.3:

Provisions that are not clear may be interpreted restrictively by the Community courts. If that happens, the result will be just the opposite of what was intended by the incorporation into the text of grey areas intended to resolve problems in negotiating the provision.

The *Joint Practical Guide* cites the example of the *ProSieben* case in which the Court concurred with the conclusion of Advocate General Jacobs, after having applied all the available methods of interpretation, that two opposing interpretations were possible⁶.

AG Jacobs stated (at Point 53):

in the present case, ... the provision in question appears to be, in the light of the arguments advanced on both sides, not only equally open to two conflicting interpretations, but perhaps

deliberately ambiguous. An ambiguity—and particularly a deliberate ambiguity—cannot be invoked to restrict a fundamental freedom.

Lack of continuity in the drafting process

The European drafting process differs from many national systems in that there is not a single department with responsibility for total quality. Texts are largely drafted by committee with the familiar danger that all contribute but no one single person assumes full responsibility.

The danger exists within the Commission itself because so many different departments, each with different priorities, are involved in the drafting process. In 2001 an attempt was made to tackle part of the problem by adopting guidance on the responsibilities of those involved in the drafting process within the Commission⁷.

The danger is aggravated by the fact that for all basic legislation, the texts produced by the Commission pass to the European Parliament and the Council, where they may be substantially changed by committees and working parties before adoption.

Steps taken to improve drafting?

As long ago as 1992 the European Council adopted the Birmingham Declaration including the strong message: “We want Community legislation to be clearer and simpler”.

At the Amsterdam Intergovernmental Conference in 1997 the heads of State and of government adopted Declaration 39 calling on the Community institutions to adopt common guidelines for improving the drafting of Community legislation and to take “the internal organisational measures they deem necessary to ensure that these guidelines are properly applied”⁸.

On 22 December 1998 the institutions adopted an Interinstitutional Agreement⁹ setting out 22 guidelines for drafting, based in large part on suggestions from the Member States. The first guidelines include general principles familiar to all drafters: draft in clear, simple and precise terms; think of the addressees; keep sentences and provisions short; use plain language; be consistent both within one act and between acts in the same field.

That agreement also listed the internal measures to be taken.

The very first was to produce, in March 2000, the *Joint Practical Guide* for persons involved in the drafting of legislation. That guide was translated into all the official languages and distributed within the institutions. In 2003 it was published and put on the EU’s website for legislation, EUR-LEX¹⁰. The guide is quite short with less than 100 pages, laid out in accessible form and illustrated by models and

How the European Commission drafts legislation in 20 languages

(continued)

examples of good and bad drafting. It is designed to help all those involved in the legislative process, those writing the first draft, those commenting on drafts, the translators of the various language versions and those negotiating the final text.

Secondly the institutions undertook to enable their legal services and in particular their legal revisers to make drafting suggestions earlier in the process. The Commission's legal revisers now have the opportunity to revise all draft legislation as soon as the originating department submits it to the other Commission departments for approval, and they handle some 2000 drafts a year.

The institutions also committed themselves to providing drafting training to their staff. Since 2001 the Commission's legal revisers have been offering basic legislative drafting courses, which have been attended by some 400 staff.

A computer programme has been introduced to standardise the presentation and formatting of legislation and to steer drafters in the right direction. Contacts have been established with the Member States to exchange views on drafting and ways to improve legislation. The legal revisers of the three institutions sometimes liaise with each other to harmonise their practices and agree on common solutions to problems.

At the end of 2003, the institutions adopted a new Interinstitutional Agreement¹¹ reaffirming their commitment to the full application of the 1998 Agreement and to "ensure that legislation is of good quality, namely that it is clear, simple and effective" (point 25). As part of efforts to make European legislation more accessible, the institutions have also adopted agreements on codification and recasting¹².

Other possible steps

In 1995 an influential report on the quality of Community legislation was produced by a committee of senior Dutch civil servants chaired by a former judge at the Court of Justice, Judge Koopmans. One of its suggestions, endorsed by other commentators, was an independent body to review acts at the stage of the Commission's proposal or just before they become law, on the model of the French Conseil d'état or similar bodies in some Member States.

At the end of 2003 the United Kingdom Foreign and Commonwealth Office presented a report examining the drafting of EU legislation and identifying problems relating to the application and interpretation of EU legislation in Member States¹³. It suggested an EU Legislative Drafting Office, perhaps modelled on

the UK Parliamentary Counsel Office, independent of present institutions, with responsibility for draft legislation throughout the legislative process.

In January 2004 the four countries holding the rotating presidency of the European Council in 2004 and 2005 (the Netherlands, the United Kingdom, Ireland and Luxembourg) launched a Joint Initiative on Regulatory Reform¹⁴ to maintain the momentum in implementing the Commission's Action Plan on simplifying and improving the regulatory environment. Other Member States have since backed the initiative.

The standards by which EU legislation has to be judged

At a Colloquium of the Association of the Councils of State and Supreme administrative jurisdictions of the European Union in The Hague in June 2004, it was suggested that EU legislation should be judged by different standards from national legislation. The President of the Association, Mr. H. Tjeenk Willink, Vice-President of the Dutch Council of State said:

The European legal order was devised to serve diversity and pluralism and the EU's legislators must take this into account. Were some law introduced in the name of the free market which made it mandatory for all cafés in Europe to meet the same requirements, it might denote a success for that free market but it would spell failure for the concept of Europe. Of Europe as a cultural and social reality. "European legislation is not intended to take away the diversity of legal traditions, methods and systems in the Member States, but rather to shape their compatibility".

This means that the EU's legislators do not necessarily play the same role as national ones. While national legislators focus primarily on how to find uniform solutions to what are experienced as common problems, European legislation must define the scope for diverse solutions. National legislators will often indicate what must be done while EU legislators will indicate what must be stopped.

Is it possible then that the lack of clarity and lack of precision resulting from the process by which EU legislation is adopted are not just unfortunate side-effects of that process but are actually essential to enable the system to work by giving the Member States the leeway they need to adapt it to their own legal systems? Perhaps in EU law the point of balance between fuzzy and fussy legislation is different from that in national systems. Whatever the answer, the acknowledged need for some leeway or "wriggle room" cannot be treated as licence to be sloppy.

Communicating the law

G.C. Thornton has written that the legislative draftsman's "task is not only to determine the law, but also to communicate it"¹⁵. At the 1990 Commonwealth Law Conference, he suggested:

Communication depends on an overlap of the linguistic experience of the sender and receiver of the message. There must be a shared context of both linguistic experience and social experience if ambiguities and other comprehension problems are to be avoided or resolved.¹⁶

For European legislation, identifying a shared context presents particular problems. While there is perhaps some overlap of linguistic experience at the level of the government representatives who negotiate the texts, there is less overlap at the level of the lawyers and civil servants in the Member States, and still less in the case of the ordinary citizen.

A shared context of social experience must be viewed in relative terms. While a person at one geographical extreme of the Community may perceive considerable cultural differences between his or her social context and that of the other geographical extremes, those differences might appear quite small to a person viewing the situation from the other side of the world. Perhaps we Europeans are too conscious of our differences and not enough aware of the increasing amount that we have in common.

Language

In view of the trends in language knowledge and teaching in Europe, more of the institutions' day-to-day work will probably be done in English. The problem of authors or negotiators thinking in French (because they have been doing so for many years) but drafting in English will tend to diminish. At the same time, and partly as a result of that change, the general standard of English amongst its staff will probably improve.

This does not mean that EU English will come to use only words in common use in the British Isles and that those words will have the same meaning. Indeed the Court of Justice has held that it is unsafe to assume that words used in EU law have the same meaning as in national law¹⁷. In fact EU English is an international medium of communication divorced from any one national culture.

Is it possible that, in the same way as EU legislation has to be judged by different standards from national legislation, EU English cannot be judged by domestic standards in the British Isles? It is perhaps indicative that a booklet published in English by the EU institutions advising authors how to draft in order to make sure translation is easier and more faithful was based on a Swedish document which in turn was a translation and adaptation of a

Finnish guide produced for Finnish domestic purposes¹⁸. This "internationalisation" of English is part of a wider trend, not just confined to the EU. In England itself, Leeds Metropolitan University is "launching a new MA in Teaching English as an International Language in September 2005 which will be staffed by a team of mainly non-native speaker lecturers"¹⁹.

Euro-speak

On 2 September 2004 *The Economist* published a light-hearted article in its Charlemagne column entitled "Decoding a Euro-diplomat takes more than a dictionary". It looked at some of the language problems in the institutions and concluded:

But ever-inventive Brussels is coming up with a solution of sorts through the emergence of "Euro-speak"—a form of dead, bureaucratic English.

The joy of phrases like "qualified majority voting", "the community method" and "the commission's sole right of initiative" is that they are completely meaningless to all ordinary Europeans—whether in translation or in the original. But, crucially, they are crystal-clear to insiders.

The idea of Euro-speak dictionaries explaining to outsiders what EU insiders are talking about is one to be taken seriously²⁰. There are precedents. Back in 1886 a guide to Indian English words called *Hobson-Jobson* was published by Yule and Burrell to explain new words such as "curry" and "juggernaut" that we now accept without question in everyday English. A dictionary explaining the Euro-English expressions listed by *The Economist* but also many more such as "transposition" (the way European directives are made part of national law) and "Comitology" (the system of committees of Member States' representatives overseeing the Commission's exercise of the powers delegated to it) would certainly help the "outsiders" now, even if it might seem quaint in years to come.

A critical approach to the quality of language and legislation in the EU is healthy. But critics should ensure that they know what they are talking about before they sound off. In 2004, BBC journalist John Humphrys published a book entitled *Lost for Words: The Meaning and Manipulation of the English Language*, in which he blamed institutions like the EU for the decline in standards of English. He complained of the use of such words as "pertannually" in the draft European Constitution and the fact that when concerns were raised, the word was replaced with "insubdurance", an assertion picked up by various reviewers. In fact those words did not exist. According to *Private Eye* magazine, Humphrys had simply been taken in by a spoof by Simon Hoggart published in the *Guardian* newspaper in June 2004.

How the European Commission drafts legislation in 20 languages

(continued)

What more could be done?

The departments and staff of the institutions must be made aware that even if imprecision, diplomatic vagueness, linguistic slips and awkwardness are inevitable and tolerable in their day-to-day communications, much higher standards must apply to the drafting of legislation.

Moreover, while numerous routine management laws may continue to be drafted by a production-line process, special procedures may be needed for drafting fundamental laws. Those could be entrusted to specialist drafters who should be allowed the extra time and resources necessary to produce a quality product.

The Commission's technical departments, which under the present internal rules are responsible for the quality of the first drafts, should each set up their own drafting units (as called for in the 1998 Interinstitutional Agreement) to meet that responsibility, facilitate all the work on the text downstream, and pave the way for a better final product.

More generally, all departments and staff of the institutions should recognise the crucial importance of effective communication and take language skills more seriously, especially in the main internal working languages, English and French. All staff concerned should be offered advanced training in those languages. Greater emphasis should be placed on drafting as a specialist skill and all drafters should be offered reinforced back-up, both by human drafting specialists and by computer systems.

© W Robinson 2005
William.Robinson@cec.eu.int

¹ OJ 17, 6.10.1958, p385/58.

² <http://europa.eu.int/eur-lex/en/search/search_lip.html>.

³ OJ L 18, 22.1.2000, p1.

⁴ Case 9/79 *Wörsdorfer, née Koschniske v Raad van Arbeid* [1979] ECR 2717.

⁵ OJ L 219, 19.6.2004, p. 8.

⁶ Case C-6/98 *ARD v Pro Sieben* [1999] ECR I-7599.

⁷ *Communication on simplification and rationalisation of the language process in Commission decision-making procedures* (SEC (2001) 2031).

⁸ OJ C 340, 10.11.1997, p139.

⁹ OJ C 73, 17.3.2000, p1.

¹⁰ <<http://europa.eu.int/eur-lex/en/about/techleg/index.html>>. Paper copies may be obtained from: <Juristes-reviseurs@cec.eu.int>.

¹¹ OJ C 321, 31.12.2003, p1.

¹² OJ C 102, 4.4.1996, p2 and OJ C 77, 28.3.2002, p1.

¹³ *Implementation of EU legislation*, an independent study for the FCO by R. Bellis, available from: <www.fco.gov.uk>.

¹⁴ <www.finance.gov.ie/viewdoc.asp?DocID=1804&CatID=1&StartDate=1+January+2004&m>.

¹⁵ *Legislative Drafting*, 4th edition, Butterworths 1996.

¹⁶ <www.plainlanguagenetwork.org/Legal/lawdefn.html>

¹⁷ Case C-103/01 *Commission v Germany* [2003] ECR I-5369

¹⁸ *Writing for Translation*, Translation Centre for the Bodies of the European Union, 2003 ISBN 92-894-6331-7.

¹⁹ *Guardian Weekly*, 17-23 September 2004.

²⁰ English reference works already available include: Bainbridge, T. and Teasdale, A.L., *The Penguin Companion to the European Union*, London, Penguin, 1995; Leonard, D., *The Economist Guide to the European Communities*, 8th edition, Profile Books; Davies, E., *Eurojargon: a dictionary of European Union acronyms, abbreviations and terminology*, 7th edition, European Information Association.

William Robinson has for many years worked in the field of European law and language. He started his career in Luxembourg as a legal translator at the European Court of Justice before moving to Munich as a translator, reviser and editor for the European Patent Office. He then returned to the Court of Justice where he revised translations of its judgments and produced guidance for English translation. Since 1996 he has been a legal reviser in the European Commission's Legal Service in Brussels revising draft legislation and working on guidance and training for drafters.



The European Central Bank's approach to drafting legislation in 20 languages

Juliet Weenink-Griffiths

*Head of Institutional Legal Framework Section
Juristes-Linguistes Division, European Central Bank,
Frankfurt am Main, Germany*

This is an overview of the European Central Bank's (ECB's) Juristes-Linguistes Division (JLD): how it is organised, its principal responsibility for producing ECB legislation in the 20 official European Community languages, and its working procedures and quality standards. The article also considers future challenges for the JLD.

The views expressed here are the author's and are not necessarily shared by her employer, the ECB. The article concentrates on the drafting and publishing of legal acts and instruments, and does not cover the court cases and other legal documents that the lawyer-linguists also handle.

A History and organisation of the Juristes-Linguistes Division

The European Central Bank (ECB), the central bank for the European Union's single currency (the euro), has regulatory powers that enable it to adopt legal acts (regulations, decisions, recommendations and opinions) and other legal instruments (guidelines, instructions and internal decisions). The difference between legal 'acts' and other legal instruments is that legal acts are those also used by other European Community institutions, while legal instruments are forms of rulemaking used by the ECB for specific purposes. The ECB's powers stem from two sources:

- the Treaty establishing the European Community, and
- the *Statute of the European System of Central Banks and of the European Central Bank*.

In June 1999, the ECB's Governing Council followed other European Union (EU) institutions in creating a dedicated juristes-linguistes (lawyer-linguist) unit. In 2000, it adopted a 'transparency' policy under which it publishes almost all of the ECB's legal acts and instruments in all of the 20 official languages of the European Community (see the article *How the European Commission drafts legislation in 20 languages* by William Robinson, in this issue on page 4). This policy went beyond the requirements of European

Council Regulation No 1/58 on the languages used by the European Community, which would require only ECB regulations to be published in the 20 official languages in order for them to be directly applicable. European Community Regulations rank highest in the hierarchy of secondary legislation because they are the only legal acts that are directly applicable in all Member States. Member States have to implement them word for word into national law without variation.

The ECB's Juristes-Linguistes Division (JLD) has been fully operational since early 2001. Unlike the other European institutions, where the lawyer-linguists are linked to the Legal Service of the institution concerned, the JLD forms part of the ECB's Directorate General Secretariat and Language Services. Having a position *within* the organisation means that the JLD is integrally involved in decisions on the form and wording of legal acts and instruments.

The ECB's lawyer-linguists are all fully-trained lawyers, able both to draft legislation in their mother tongues, and translate legislation from English (the ECB's working language) into their mother tongues. The Division comprises two sections, each of which mirrors one of the Divisions within the ECB's Legal Services: Operations Legal Framework Section and Institutional Legal Framework Section. Within each section, the lawyer-linguists belong to specific subject teams.

B Responsibilities of the JLD

The ECB's lawyer-linguists, like those of the European institutions, ensure that the legal acts and instruments comply with national linguistic rules and legal terminology, as well as the requirements of both the law of the European Community and national legal systems. However, each EU institution has a different approach to the way in which lawyer-linguists contribute to preparing legal acts and instruments. For example, at the European Court of Justice, the lawyer-linguists either translate or revise translations. At the European Commission and the Council of the European Union, the lawyer-linguists revise translations and provide both legal advice and advice on legal drafting rules. At the Parliament, the lawyer-linguists' main task is to revise translations and to coordinate language versions for the various hearings and committee

The European Central Bank's approach to drafting legislation in 20 languages

(continued)

<i>Institution</i>	<i>Drafting</i>	<i>Editing</i>	<i>Translating</i>	<i>Revising</i>	<i>Coordinating</i>	<i>Legal advice</i>	<i>Publishing</i>
Court of Justice			X	X			
Commission				X		X	
Council				X		X	
Parliament				X	X		
ECB	X	X	X	X	X	X	X

meetings. The table on page 12 shows the different tasks of the lawyer-linguists in five of the main EU institutions.

The JLD carries out all the tasks shown above for the ECB, and performs several other tasks that are vital to ensuring consistency both within one text and between various texts (known as 'concordance'). The ECB's 'cradle to grave' approach involves the lawyer-linguists from the initial drafting of a legal act or instrument until its publication. The ECB's lawyer-linguists participate in drafting panels, edit all legal acts and instruments, ensure their translation, play a coordination role, give legal advice, advise on legal drafting rules, and organise the publication of legal documents.

Within the ECB, the JLD has primary responsibility for two main areas:

- the quality of the drafting of ECB legal acts and instruments; and
- preparing all ECB legal acts and instruments in the 20 official languages.

Quality of drafting

The JLD ensures that the ECB legal acts and instruments comply with the European institutions' rules and advice on legislative drafting. Some of the most important are:

- Joint Practical Guide for the drafting of Community legislation
<<http://europa.eu.int/eur-lex/en/about/techleg/index.html>>;
- Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of drafting of Community legislation (OJ C 73, 17.3.1999, p1);
- Interinstitutional Agreement of 16 December 2003 on better lawmaking (OJ C 321, 31.12.2003, p1); and
- Interinstitutional Style Guide (on style and presentation)
<<http://publications.eu.int/code/en/en-000300.htm>>.

Although the ECB is not party to these agreements or guides, it fully complies with them. The English-mother-tongue editors and draftspersons are responsible for enforcing the drafting rules and for producing the English text on which translations are based. However, the JLD's multilingual approach to drafting allows timely and valuable input from colleagues covering the other 19 official languages.

The JLD has two main aims in its drafting: *clarity* and *consistency*.

Clarity

Clarity means ensuring clear, simple and precise drafting whenever possible. The English-mother-tongue lawyer-linguists enforce the merits of plain English, in particular:

- avoiding unnecessarily vague or indirect language, and unnecessary 'legalese' and jargon;
- checking for correct use of specific terminology;
- checking for clear structure (for example, using headings when necessary);
- avoiding long sentences or paragraphs, and repetition;
- lessening use of the passive;
- replacing nouns by verbs whenever possible; and
- applying gender-neutral language.

Consistency

Consistency is more complex and involves ensuring that:

- a word in a text has the same meaning throughout;
- conventions, such as the rules set out in style guides, are followed; and
- there is consistency between all language versions ('concordance').

The JLD has developed, with Legal Services, a series of legal templates for the ECB's legal acts and instruments to ensure that legal acts and instruments comply with all the relevant rules for presentation.

A further quality control measure involves applying the 'four-eyes' principle so that each editor/drafts-person asks a colleague to revise their work. In addition, the English lawyer-linguists have developed a checklist like Dr Betty S. Flowers' madman-architect-carpenter-judge approach to the writing process (see Christopher Balmford's article in *Clarity* No. 43, May 1999). Under this approach the four stages are:

- Madman—creative brainstorming stage;
- Architect—reviews information and outlines document;
- Carpenter—lays down structure and produces first draft; and
- Judge—edits and reviews drafting.

All lawyer-linguists cooperate closely and exchange ideas with their colleagues at the Council of the European Union, European Commission and Parliament, as well as with the ECB's lawyers, who ensure the timely involvement of the lawyer-linguists in the drafting process. Together the lawyers and lawyer-linguists aim to balance the speed of adoption of legislation with the need to allow plenty of time to get the legislation right.

As mentioned earlier, the JLD is responsible for preparing all ECB legal acts and instruments in the 20 official languages of the European Community. All texts must be legally, linguistically and terminologically consistent and accurate so that the effect of legal acts and instruments is identical in each different language.

The ECB publishes its legal acts and instruments in the 20 official languages whenever possible (unless confidentiality justifies otherwise). It also aims to publish anything that could be of interest to the financial markets or the public. If it is not possible to publish all of a legal act because certain aspects of it need to remain confidential, then the ECB adopts two separate acts—a public and a non-public version. (There is more information on the institutional framework of the European System of Central Banks in an article in the ECB's July 1999 *Monthly Bulletin*.)

The final stage for the JLD is arranging for the ECB's legal acts and instruments to be published in the *Official Journal of the European Union* and on the ECB's website in the electronic legal compendium: <www.ecb.int/ecb/legal/1341/1342/html/index.en.html>.

C Working procedures

The JLD's work relies heavily on effective teamwork, both externally with Legal Services and the business areas involved, and internally between the lawyer-linguists. Projects generally involve four phases:

1. Preparation

When the JLD receives a request from Legal Services to edit or draft, and translate a legal act or instrument, it first chooses an English editor/draftsperson, a project coordinator and several subject experts representing a cross-section (usually four or five) of the official languages. The team then draws up a draft production schedule with Legal Services and the business area or areas involved. The JLD is aware of legal acts and instruments in preparation, so it can effectively plan resources and avoid bottlenecks. Past practice has shown that the earlier the lawyer-linguists are involved in the drafting or editing of legal acts and instruments, the shorter the text and the fewer the number of revisions needed.

2. Editing and drafting

There may be several rounds of editing or drafting, as the ECB's various expert committees usually change the legal document. The subject experts do a multilingual drafting check. They start to translate the non-final version of the legal act or instrument, to highlight any drafting, translation or other problems the English text presents. The subject experts discuss all these problems and issues with the English editor/draftsperson, who amends the legal document as necessary. This not only improves the quality of the draft text at an early stage, but also uses resources more efficiently. The group that works alongside the English editor at this stage produces several reference versions that help the lawyer-linguists to answer queries. The project team identifies useful background information and sources of specialised terminology. The English editor/draftsperson and the coordinator may also meet with Legal Services and business area experts. By the end of this phase, the legal act or instrument should be stable enough for translation into the other 19 official languages.

3. Translation

During this phase, the coordinator gathers further comments on the English text and arranges a 'translatability' meeting with the relevant business area and Legal Services' representatives. Ideally, the editing and drafting phase has already identified most problems. However, further points often arise during the 'translatability' check which lead to changes to the source text. Lawyer-linguists also do a 'concordance' check comparing their language version, or selected parts of it, with one or two other language versions, to ensure that each version has equally binding legal effect in all targeted jurisdic-

The European Central Bank's approach to drafting legislation in 20 languages

(continued)

tions. To simplify this task the German and French versions of a legal act or instrument are established early in the drafting process, so they can serve as additional reference versions during translation. For regulations, which are not just published but also adopted in all 20 languages, individual lawyer-linguists may informally consult contacts in the relevant national central bank.

4. Publication

After the legal act or instrument is adopted by the ECB's Governing Council or Executive Board, the JLD arranges its timely publication in the *Official Journal of the European Union*. Some legal acts or instruments (mainly statistics texts) are proofread by the ECB's lawyer-linguists before publication. All ECB regulations are proofread after publication. Once a legal act or instrument is published, all language versions of the text are placed on the 'legal framework' section of the ECB's website.

D Future challenges

1. 'Better regulation'

The 'better regulation' agenda is currently in vogue, in part prompted by the European Commission's 2002 Better Regulation Action Plan (which promoted impact assessments, and simplifying and modernising existing legislation) and the 2003 Interinstitutional Agreement on better lawmaking. Under this Agreement the European institutions committed themselves to transparency, accountability, better preparation of legislation, impact assessments, public consultation before making proposals, and to legislate only when necessary. Wider use of public consultations and the possible introduction of legal impact assessments are almost certain to prompt calls for greater clarity in drafting legislation. The ECB has carried out public consultations, but not yet for a legal act or instrument.

2. Joint Initiative on Regulatory Reform

In 2004, Ireland, the UK, Luxembourg and the Netherlands launched a Joint Initiative on Regulatory Reform (as mentioned on p 8 of William Robinson's article in this issue). The Joint Initiative makes recommendations about:

- improving the quality of regulatory proposals by better impact assessment procedures;
- ensuring that impact assessments influence decision-making;
- encouraging greater consideration of the outcome of legislation; and

- simplifying regulation and looking at alternatives to it.

The JLD is closely watching to see how these recommendations develop to ensure high quality drafting.

3. Even more languages

The increasing number of languages used within the EU makes it even more important for the ECB and other European Community legislators to improve the quality of legal drafting. In 2004, the number of EU Member States increased from 15 to 25, nearly doubling the number of official languages—from 11 to 20. If Romania and Bulgaria join the EU on 1 January 2007, it will be necessary to translate the body of common rights and obligations that bind all EU Member States (known as '*acquis communautaire*') into those languages. The ECB's lawyer-linguists will again help the relevant institutions to translate the ECB's part of the *acquis communautaire*.

These are just a few of the issues that challenge the ECB's lawyers and lawyer-linguists. It is critical to the quality and transparency of ECB legislation that we meet those challenges.

© J Weenink-Griffiths 2005
juliet.weenink_griffiths@ecb.int

Juliet Weenink-Griffiths has been working in the field of EC law for over 18 years having studied English and French law in Birmingham and Limoges. While working for the Com-



mission, a law firm, a European Industry Association, a multinational company, and the European Central Bank, she gained broad insight into the drafting of Community legislation from both a European and a

national perspective, and from the position of the drafter as well as that of the end user. Having always worked in a multicultural environment she is attuned to the challenges posed by producing legislation in many languages and is firmly convinced that clear and precise drafting is the key to success in this area.

Country reps wanted

If you are in a country without a Clarity country representative and you would consider taking on the job, please contact Joe Kimble at kimblej@cooley.edu.

The effect of *poorly written* legislation in a bilingual legal system

Duncan Berry LL.M, MPP, SJD

*Consultant Parliamentary Counsel, Office of the
Parliamentary Counsel to the Government, Ireland;
formerly Deputy Principal Government Counsel
Hong Kong Department of Justice; Dublin, Ireland*

Hong Kong is unique in having legislation that is written in both the English and Chinese languages. But despite the improvements in the Chinese drafting style over the past few years, the Chinese version of Hong Kong legislation will still be difficult to understand if the English text from which it is derived is not itself readily comprehensible.

Until the late 1980s, it was the policy for Hong Kong legislation to be drafted and enacted only in the English language, with only explanatory notes being written in both languages. A change in policy occurred with the signing of the Sino-British Joint Declaration of 1984 on the restoration of Chinese sovereignty over Hong Kong. Three years later, the Hong Kong Legislative Council enacted the *Official Languages (Amendment) Ordinance 1987* (No. 17 of 1987) (HK) and the *Interpretation and General Clauses (Amendment) Ordinance* (No. 18 of 1987) (HK). Shortly afterwards, the first Chinese language versions of Hong Kong legislation appeared and a program to produce Chinese language versions of existing Hong Kong legislation was established.

Under section 10B(1) of the *Interpretation and General Clauses Ordinance* (Cap. 1) (HK), both the English and Chinese texts are equally authentic and both texts are regarded as having equal status. Although Hong Kong's Basic Law does not explicitly provide for English to be an official language of Hong Kong, Article 9 of that Law does say that "...English may be used as an official language ...".

The normal Hong Kong practice is for the English text to be drafted first and for that text to be the basis for preparing the Chinese text. This may be contrasted with Canada where, at the federal level at least, separate English and French texts are drafted contemporaneously by Anglophone and Franco-
phone legislative counsel.

During the period immediately after the introduction of the new policy, the Chinese language versions of legislation were basically translated texts. Legislative counsel concentrated on closely

adhering to the style and format of the English texts and ensuring that legislative concepts in the English version were accurately replicated, even at the expense of readability and comprehensibility. In other words, in preparing the Chinese version of a legislative provision, readability and comprehensibility were sacrificed for accuracy if alternative (but more readable and comprehensible) Chinese versions would result in an interpretation different from the interpretation of the English version. One reason for this was that the drafters of the Chinese versions were then relatively inexperienced in original legislative drafting. Nevertheless, according to Tony Yen, Law Draftsman, Hong Kong Department of Justice, a Chinese version of a legislative provision would not be adopted if it would depart so far from the grammatical norm in the Chinese language that it would fail to convey accurately, or even adequately, its technical meaning.¹

In recent years, Sinophone legislative counsel have gained more experience and confidence in the preparation of the Chinese versions of Hong Kong legislation and so those versions are no longer a word-for-word translation of the English text. Nevertheless, the meanings that Sinophone users elicit from the Chinese version of the legislation are still expected to be the same as those elicited by Anglophone users who read the English version.

Despite the improvements in the Chinese drafting style that have evolved during the past 3 or 4 years, I contend that the Chinese version of Hong Kong legislation will still be difficult to understand if the English text from which it is derived is itself not readily comprehensible. Because of the semantic, grammatical and syntactic differences between English and Chinese, achieving exactly the same legal effect of the English statutory provisions by Chinese translation is far from easy. The difficulty lies in the structural differences between the English and Chinese languages. This can result in legislative texts that differ in effect. If therefore the English text is obscure, producing the Chinese version becomes nightmarish. According to Fung and Watson-Brown²:

Without clarity, the law becomes a trap. What relevance is that to translation? Before the translator can hope to be understood, he must understand. The translator should not be led

The effect of poorly written legislation in a bilingual legal system

(continued)

into the trap of misunderstanding the law. In recognising the issues that blur communication, the translator is able to work his way through the complexity of the law.

It should therefore come as no surprise to learn that at least some Chinese versions of Hong Kong legislation have been described as being difficult to read and comprehend. However, some of the critics may be unaware of the constraints imposed on those responsible for producing the Chinese version of a legislative document. Others may not yet have become used to using Chinese as a “legal language”. The problem of ensuring that legislation is both readable and comprehensible is not unique to the Chinese texts. Users of the English versions of legislation make similar complaints. For example, see Fung³. Other contributors to the *Hong Kong Lawyer* have voiced similar criticisms about the complexity of the Chinese texts of Hong Kong legislation.

Many older Hong Kong statutes and regulations are modelled on old English Acts that are drafted in archaic English and in a convoluted, opaque style that is difficult to understand. According to Yen⁴, it has been particularly difficult to create readable and comprehensible Chinese language versions of these statutes and regulations. Hong Kong Sinophone legislative counsel have on many occasions told me how much easier it is to create readable and comprehensible Chinese versions of legislation when the English texts from which they are derived are themselves drafted in clear, user-friendly English, with shorter and less complex sentences and more familiar words.

In order to determine whether or not this view was valid, I identified what I considered to be fairly difficult sections in the *Police Force Ordinance* (Cap. 232) and the *Fixed Penalty (Criminal Proceedings) Ordinance* (Cap. 240) and, as part of a legislative drafting training exercise, asked some of the legislative counsel who were participating in the exercise to provide me with interpretations of the them. Each of the provisions was misinterpreted by at least one of the counsel. All of the counsel involved in the training exercise were employed in the Legislative Drafting Division of the Hong Kong Department of Justice and were well-qualified lawyers who had been regularly exposed to Ordinances and subsidiary legislation for at least 2 years. Far from being a reflection on them, their inability to accurately interpret the sections concerned is a reflection on the readability and comprehensibility of those sections.

I subsequently redrafted the provisions with a view to making them more readable and more intelligible and asked one of the Sinophone legislative counsel

in the Department to say whether those versions would enable a Sinophone version to be produced that would be easier for a Sinophone to read and understand than the original (existing) Chinese versions. One of the sections that I redrafted for the purpose of this exercise was section 9A of the *Fixed Penalty (Criminal Proceedings) Ordinance*. The section reads as follows:

9A. Additional penalty in proceedings on complaint

Where a person, having notified the Commissioner of Police, in accordance with a notice under section 3(3), that he wished to dispute liability for a scheduled offence or having been given leave under section 3B(1)(a) and having been served with a summons, does not appear before the court or, having appeared, offers no defence or a defence which is frivolous or vexatious, the magistrate shall, in addition to any other penalty and costs, impose an additional penalty equal to the amount of the fixed penalty for that offence.

In my view, the section is too long; it is too compressed; and it contains too many ideas for the reader to absorb on first reading. Furthermore, the section is ambiguous because it is not clear which of the preceding clauses the clause “and having been served with a summons” modifies.

My redraft of the section is as follows:

9A. Additional penalty in proceedings on complaint

(1) A magistrate who hears the proceedings in respect of a scheduled offence must impose on a person to whom this section applies an additional penalty in addition to any other penalty and costs if the person—

- (a) does not appear before the magistrate; or
- (b) having appeared, either offers no defence or offers a frivolous or vexatious defence.

(2) The additional penalty must be equal to the amount of the fixed penalty for the offence.

(3) This section applies to a person who—

- (a) has given a notice of an intention to dispute liability for a scheduled offence to the Commissioner of Police under section 3(3); or
- (b) has been given leave under section 3B(1)(a) and served with a summons.

Although the redraft contains more words than the original, it arguably expresses the ideas in a way that is more readable and comprehensible. The comments of the Sinophone legislative counsel (who prefers not to be named) on the redrafted section are as follows:

The tabulation of the English text of section 9A improves its comprehensibility greatly and also helps to remove ambiguities contained in the original text. If correspondingly structured, the Chinese version will be much more focused with the legal subject (the magistrate) and the legal action (imposition of the additional penalty) stated upfront. Placing the circumstances and conditions under which the law operates in a tabulated subsection (3) can offload the original Chinese sentence, streamline its syntax and convey its meaning much more clearly.

Along with others, I have proposed to the Hong Kong Department of Justice that the English versions of older Hong Kong statutes and regulations could be re-written in plain, modern language that would be much easier for Anglophone users to read, understand and use. If this suggestion were implemented, it would surely facilitate the creation of Chinese versions of those statutes and regulations that Sinophone users would find much easier to read, understand and use. Although the proposal has been favourably received by the Department, it remains to be seen whether there is sufficient political will to implement it in the foreseeable future.

© D Berry 2005
Duncan_Berry@ag.irlgov.ie

- ¹ Yen, T. "One law two languages", *The Loophole*, (Journal of the Commonwealth Association of Legislative Counsel) 1997, Dec, 4-11, p 4.
- ² Fung, Y.C. and Watson-Brown, A. *The Template—A Guide for the Analysis of Complex Legislation*, London: Institute of Advanced Legal Studies, 1994.
- ³ Fung, Y.C. "Law and disorder: Bilingual agenda", *Hong Kong Lawyer*, 1998, July, 28, 29.
- ⁴ Yen, T. "One law two languages", *The Loophole*, 1997, Dec, 4-11, p 4.

Duncan Berry graduated LL.B University of Nottingham July 1957. He was called to the English bar (Grays Inn) Nov 62; joined NZ Parliamentary Counsel Office Aug 65; joined NSW PCO 1975 and was Senior Legislative Drafting Officer NSW PCO (1975-78 & 1984-1995). He was Chief Parliamentary Counsel of Tasmania (1978-83) and Deputy Principal Government Counsel Hong Kong Department of Justice (1995-2001). He was awarded his SJD (Doctor of Juridical Science) by the University of Technology Sydney (thesis: 'Designing Usable Legislative Texts') in May 2003, and is currently Consultant Parliamentary Counsel, Irish Office of Parliamentary Counsel. He is also secretary of the Commonwealth Association of Legislative Counsel (CALC) and editor of 'The Loophole' (journal of CALC).



Ambiguous and unhelpful signs

From *The Sydney Morning Herald*, Thursday 21 April 2005.

Ambiguous and unhelpful signs (Column 8, Friday and beyond) continue to roll in. "A simple 'Egress' sign is bad enough," writes Bob Watson, of Pennant Hills, "but even more irksome is the Pennant Hills Community Centre's exit doors, which are marked 'Alternate Egress'. Don't get me started on 'alternate' instead of 'alternative'." As for hospital signs, where this whole shemozzle started, sometimes the very word "hospital" has gone by the wayside. "It is of interest to see the use of the word 'campus' by the Health Department of NSW," writes Bob Triebel, of Casino. "If you are looking for the hospital in Coffs Harbour, give up, you should be looking for the 'Health Campus'. These signs may well mean nothing in an emergency or late at night."

Reprinted with permission from 'Column 8', The Sydney Morning Herald.

Producing multilingual legislation in Switzerland

Emma Wagner

Ex-Eurocrat, Brighton, UK

Legislating clearly in one language is hard enough—but it is even more difficult when several equally authentic language versions have to be produced. Switzerland is one country that faces this difficulty and still produces clear legislation. Has Switzerland solved the problems of legislating multilingually and if so, could the people producing European Union legislation copy the Swiss model?

Switzerland is not a member of the European Union. However, it has one characteristic in common with the European Union: it is multilingual. Switzerland has three main official languages: French, German and Italian, plus a fourth, the Latin-based local dialect called Romansh. Switzerland must produce its legislation in all three (and in some areas four) languages.

In the early days of the European Union there were only four official languages: French, German, Italian, and Dutch. Now the EU has grown to 25 Member States, with 20 official languages, but the obligation to produce multilingual legislation remains the same. As explained in a recent European Commission press release:

The scale of [the EU's] multilingual regime makes it unique in the world, and to some the extra work it creates for its institutions may seem at first sight to outweigh the advantages. But there are special reasons for it. The Union passes laws directly binding on its citizens and companies, and as a matter of simple natural justice they and their courts must have a version of the laws they have to comply with in a language they can understand. Everyone in the Union is also entitled and encouraged to play a part in building it, and must be able to do it in their own language.¹

Translation versus co-drafting

Given this similarity of obligations, it is interesting to compare the systems used to produce multilingual legislation. The EU system, discussed by William Robinson in this issue of *Clarity* (page 4), is based on translation of an original text into all the

other languages required. Much effort is then expended on the legal checking of the translations (these checks are carried out by lawyers, not by translators) to ensure that all the language versions are legally sound and can therefore be equally valid.

Critics of EU legal jargon have suggested that there is an alternative to translation, called **co-drafting**. This practice is followed in some bilingual countries, notably Canada, where Bills are co-drafted by pairs of drafters in the Legislation Section working simultaneously on English and French versions of the bill. Neither version is subordinated to the other.²

Co-drafting is well defined by Winston Roddick QC, Counsel General to the Welsh Assembly, in this evidence to the Richard Commission of the National Assembly for Wales:³

Co-drafting is the process by which each of the versions of the Bill is drafted simultaneously with the other—more or less—and there is a dialogue between the one version and the other in which the wording of one informs the wording of the other. The simultaneous evolution of the two versions is bound, I would think, to manifest itself in legislation the content and form of which is quite different from that of legislation made in English and then simply translated into the other language. The Canadian experience was precisely that.

According to Mr Roddick, co-drafting improves the brevity and clarity of texts:

The different approach required by co-drafting produced legislation that was briefer and clearer than legislation produced in English and then translated into French. The form of one influences the form of the other.

And he explains why this is:

When you have to give effect to something in two languages, each one as legally valid as the other, you really have to know what that something is.

It has always been clear to me, as a translator, that co-drafting would produce clearer results than translation. In the process of translation, most translators will find obscurities in the original text: passages that could have been worded more clearly.

They are often obliged to reproduce this ambiguity. But if the obscurities could be nipped in the bud at the drafting stage, in a 'dialogue' between the language versions, the resulting texts would be clearer.

As for procedures, though: while co-drafting is viable when producing a bilingual text, it is difficult to imagine how it could be organised when more than two languages are needed. So, having heard that legislation is produced in multilingual Switzerland by co-drafting, and that Swiss legislators attach importance to clear language, I decided to investigate.

An interesting Swiss hybrid (co-drafting plus translation)

My first discovery, based on information for which I thank Christine Guy of the Federal Office of Justice in Berne, was that Swiss legislation is not produced by simultaneous co-drafting in all three official languages. Co-drafting is used in two languages only: French and German. The third, Italian, is added by translation. All three language versions are equally valid, but the drafting is done in two languages only, because of the practical difficulty of conducting a dialogue between more than two participants. Co-drafting is restricted to important legislation, and to certain departments. However, it is considered very beneficial. As Christine Guy said in a private e-mail: 'Co-drafting not only helps to simplify and clarify legal style; it also enriches the substance.'

This echoes the point made independently by Winston Roddick QC in the passages quoted above, reporting on the Canadian experience. Co-drafting does indeed appear to concentrate the mind of the drafters, forcing them to think harder and more clearly about what they are trying to say. I can imagine, too, that the more different the two languages of co-drafting are, the greater the pressure on the drafters to move away from the surface words and think about the deeper meaning. French and German are very different languages, with profound differences in word order, grammar and vocabulary. The distance between them is even greater than the distance between English and French. Probably this makes for even better results in co-drafting Swiss legislation. Certainly there is a consciousness of the need to avoid interference between the two; this is spelled out in one of the excellent on-line guides for Swiss drafters: 'Take extra care when translating from German: its syntax and compound words can lead to a clumsy style in the French version; make sure the French is idiomatic.'⁴

Clarity tools in Switzerland

Co-drafting is not the only tool in the Swiss legislators' clarity toolbox. There are several others. One is wide public consultation on important draft

laws.⁵ The effect of public consultation is twofold: first, there is pressure to write comprehensible drafts in order to minimise criticism during consultation; and second, as Christine Guy points out, 'It is not unusual for comments made in the consultation process to lead to linguistic improvements'. There is nothing like a critical test reader (or several) to ferret out any obscurities persisting in a draft.

Another tool is the set of excellent legal drafting guides provided by the Swiss authorities, in French and German, and offered on-line so that they can be updated as required. These guides include the *Guide linguistique des lois et ordonnances de la Confédération* which—despite its unsnappy title—provides pithy advice such as the following, which could usefully be framed and hung in the offices of officials in civil services everywhere:

If a provision can only be understood by the officials who wrote it, it is badly written.⁶

The main drafting guide for Swiss legislators is the *Guide de Législation* mentioned earlier. This is an exhaustive 500-page manual, in French and German, covering all aspects of the legislative process, from inception to implementation. After the chapters on legislative technique, and forms and precedents, there is a fascinating chapter on legal language, including guidance on clear language such as the following:

- On concision: check that every word is really necessary.
- On syntax:
- the simplest forms are often the best;
 - use short sentences;
 - use simple constructions;
 - avoid embedded subordinate clauses.
- On vocabulary: use modern, everyday words.
- On verbs: use the active voice.
- On definitions:
- if definitions are necessary, group them in the same article;
 - definitions can be avoided if everyday words are used with their everyday meaning.

Little of the advice given above will be new to *Clarity* readers. But should anyone mistakenly suppose that concern about clear legal language is restricted to English-speaking countries, they need only look at the *Guide de Législation* to see that in Switzerland there is official encouragement to write clearly in French and German, with excellent advice on how to do it.

Producing multilingual legislation in Switzerland *(continued)*

Can co-drafting work for the EU?

Does Switzerland have anything to teach the EU institutions about procedures for drafting multilingual legislation? It seems that the answer is 'Probably not.' Of the three aids to legislative clarity mentioned here—co-drafting, public consultation and drafting manuals—the last two are already part of the EU legislative process.

As for co-drafting, the Swiss experience has shown that while it is possible when working with two languages, the practical and economic difficulties of bringing a third language to the co-drafting table may be insurmountable. So there is not much hope for the EU, with 20 official languages! Nevertheless, even limited co-drafting can bring benefits, as the Swiss and Canadians have found. An experiment with co-drafting in two languages in the EU context might bring the sort of clarity and brevity benefits observed in Canada and Switzerland.

© E Wagner 2005
emma.wagner@btopenworld.com

- ¹ Commission Press release, 13.1.2005.
- ² Ch 2.3 of the *Guide to Making Federal Acts and Regulations* produced by the Privy Council Office of the Government of Canada.
- ³ <www.comisiwnrichard.gov.uk/content/template.asp?ID=/content/evidence/oral/councilgeneral/index.asp>.
- ⁴ *Guide de Législation* <www.ofj.admin.ch/f/index.html>.
- ⁵ For consultation procedure see RS 172.062 <www.bk.admin.ch/ch/f/ts/c172_062.htm>.
- ⁶ *Guide linguistique des lois et ordonnances de la Confédération* <www.admin.ch/ch/f/bk/sp/guide/memoire.htm>.

Emma Wagner worked for the European Commission for 30 years as a translator and translation manager. While there, she coordinated the 'Fight the Fog' campaign to encourage clear writing. She is now living in England and is on the Council of the Institute of Translation and Interpreting, a UK professional association. She has co-written two books on translation-related subjects, as well as Clarifying EC Regulations, with Martin Cutts of Plain Language Commission; she writes articles and gives lectures on these topics.



A new service for law firms

Mark Adler

a solicitor now retiring from general practice after 25 years
and a former chair of Clarity

is offering

clear-legal-writing courses by email

(accredited by the Law Society for up to 12 CPD hours)

and will also draft documents as your agent, or in consultation with you.

Details, and terms of business, are available from
adler@adler.demon.co.uk and www.adler.demon.co.uk

April Cottage, Logmore Green, Dorking, Surrey RH4 3JN, UK
Phone: +44 (0)1306 74 1055 Fax: 74 1066

Linguistic oddities in European Union legislation: don't shoot the translator

Ian Frame

Lawyer-linguist, Court of Justice of the European Communities, Luxembourg

Translators are often blamed for oddities and infelicities in Community legislation, yet they are rarely at fault. Rather it is the system that is to blame.

The role of the English language

European law has been a reality in the United Kingdom for more than 30 years. Throughout that period the United Kingdom has not only been subject to Community law but has participated actively in the process by which it is adopted.

The Community legislative process has always been multilingual but with each enlargement of the European Community there has been an inexorable progression towards the use of English as the drafting language for the majority of Community instruments.

It is undeniable that there have been linguistic errors in EU legislation over the years and all too often the easy option has been taken of attributing them to translators. What is miraculous is that there have been so few mistakes, given the enormous number of enactments. But, as will become apparent from a brief examination of the legislative process, the translators are rarely to blame.

The start of the legislative process

All secondary legislation in the EU (that is, regulations, directives and other measures that the Community institutions adopt under the various Treaties) originates in the Commission. Specialised departments write the first draft of an instrument (known as the 'proposal'). Those who do so will almost certainly have limited experience of legislative drafting. They may be, for example, economists, tax specialists, pharmacists or veterinarians, depending on the subject of the proposal.

Although English is now the language in which most documents are drafted, particularly in the 'co-decision procedure' (see below), it is not necessarily the mother tongue of the drafter. That said, the standard of English of the majority of drafters is impressively high, whatever their linguistic background.

The result is that the raw document produced by the originating department in the Commission will in most cases display a reasonably good standard of English but there will be errors of style and vocabulary, and many other imperfections in need of tidying up.

Legal revisers

It is at this stage that, in theory, the Commission proposal will be looked at by a Commission legal reviser. The legal reviser's job is to check the instrument for compliance with the rules on form and presentation and to improve the quality of drafting generally.

However, correctness of another kind—political correctness—is a factor that complicates matters. Since the majority of Community acts first see the light of day in English it would be logical for the Commission to have more legal revisers of English mother tongue than of any other language. However, political correctness prevents the recruitment of significantly more English legal revisers than those of other languages, with the result that there are not enough of them to ensure that all the documents that need to be examined by a legal reviser of English mother tongue are in fact so examined.

Another adverse factor is that it is extremely difficult to recruit English legal revisers to work in the EU. Although the UK is considerably more linguistically aware and competent than it was 30 years ago, there is still a shortage of English lawyers with an in-depth knowledge of two or more foreign languages. Those who do possess this dual qualification tend to look first to the City of London for employment where they can often earn more and look forward to speedier promotion. Large financial incentives will be needed before a sufficient number of UK multilingual lawyers will consider abandoning claret in the winebars in London's Bishopsgate for the raspberry-flavoured beer served in the bars around the Rond Point Schuman in Brussels.

Whilst it is acceptable for the thousands of routine documents that the Commission drafts every year not to be revised by a native speaker (for example, those concerning agricultural prices will often differ from earlier ones only as regards the date and the price levels), important documents really need linguistic scrutiny as early as possible.

Linguistic oddities in European Union legislation: don't shoot the translator

(continued)

There is also an understandable temptation for the Commission to be economical with its overstretched resources by not revising instruments that are to be examined in detail by legal revisers elsewhere at a later stage, because they will ultimately be adopted jointly by the Parliament and the Council. This procedure—known as the co-decision procedure—is an important innovation introduced by the Maastricht Treaty to give the Parliament more powers and raise its reputation from that of a mere talking shop. The documents adopted under the co-decision procedure are looked at, first separately and then jointly, by the European Parliament legal revisers and by their counterparts in the Council (who refer to themselves as *jurist-linguists*). More than 95% of the acts adopted under this procedure are drafted in English.

Where documents are drafted in English by a non-native speaker, the originator of the document may be mentally translating certain passages from a language that may or may not be his or her mother tongue into English. Even if the drafter is of English mother tongue, he or she may not have developed the linguistic awareness needed to produce a document that is grammatically as well as legally cohesive. As a result, any linguistic peculiarities present at this early stage are attributable not to professional translators but to the drafters.

The amendment stage

The draft instrument now moves forward in the legislative process, and numerous participants, many (sometimes most) of whom are neither lawyers nor linguists, add their contribution. All draft legislation is of course forwarded to the Member States for consideration by their domestic civil servants and politicians. At the international level, there are working groups, consultative committees, management committees, groups of experts, meetings of the various national representatives—the list goes on—so that changes and additions come from many sources. And in the co-decision procedure the Parliament's contribution is in the form of numerous amendments tabled by Members of the European Parliament [MEPs] (many of which do not attract enough votes to survive).

MEPs' amendments are usually, but not always, drafted in the language of the document to which they relate. Some are drafted by the MEPs and their assistants and some are mere echoes of suggestions made by lobbyists—it is not unusual for the text of lobbyists' amendments to be lifted verbatim. Because they are interpolations, they often fit with difficulty into the grammatical structure of the sentences of which they aspire to become part, and they often introduce inconsistencies of vocabulary. Those that

are not drafted in English have to be translated into English. But the translator does not have the last word. That responsibility falls to others. The final versions of the amendments are checked by the Parliament's legal revisers.

As a result of the many changes which documents undergo, imperfections arise or in some cases are wilfully introduced, or are at least tolerated. It must not be forgotten that the Council is not just in the thrall of the Member States—it is virtually an emanation of the Member States. Therefore, there is a tendency to do those things which ought not to be done and to leave undone those things which ought to be done, at the behest and for the convenience of the Member States.

The imperfections are many and diverse. They derive from political disingenuousness, a desire for vagueness, or outright spin; from application of the 'principle of inertia' (including the subprinciple of 'even if it's broke don't fix it'); from overreliance on technical experts; from inadequate knowledge of English on the part of some of those involved in the legislative process, including some native speakers of English; and from indifference about the quality of the language of legislation (sometimes exacerbated by the desire of national civil servants to escape from long meetings and catch flights home).

Inertia: even if it's broke don't fix it

Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time

Article 21(7):

Member States may provide that workers on board seagoing fishing vessels *for which national legislation or practice determines that these vessels* are not allowed to operate in a specific period of the calendar year exceeding one month, shall take annual leave in accordance with Article 7 within that period.

Even if we disregard the lonely comma between the subject and the main verb, we cannot overlook the fact that the sentence structure goes awry with the phrase *for which national legislation or practice determines that these vessels . . .* In 2003, when the directive was being amended, the Council squandered the opportunity to rectify this provision by refusing to adopt the following wording suggested at the legal revisers' meeting, which would have enhanced both the grammar and the clarity of the provision:

Member States may provide that workers on board seagoing fishing vessels *which, by virtue of national legislation or practice,* are not allowed to operate in a specific period of the calendar year exceeding one month shall take annual leave in accordance with Article 7 within that period.

The longer a document exists, the harder it becomes to change it. For this reason it would—as suggested above—be extremely useful for the Commission’s Legal Service to have more English-language legal revisers available to remove grammatical and stylistic errors before the consultation stage from draft legislation produced in English. By the time draft legislation finds its way to the Parliament’s and the Council’s legal revisers, time allows only for legal niceties and logical inconsistencies to be corrected. Moreover, because most of the participants are not native English speakers, they are unlikely to regard grammatical errors and stylistic infelicities in the English version as important.

Political meddling

Member States’ representatives often make changes for political reasons which override linguistic considerations. Particularly in the case of directives, Member States often prefer ambiguity to clarity since this enables them to implement a measure in a way that suits their domestic agenda. Even if the Court of Justice ultimately finds that a Member State has not properly transposed a directive into its domestic legislation, this tactic buys years.

The taming of terminology

Directive 2002/30/EC of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports

The wording of this directive is vague, which comes as no surprise since the United Kingdom Government is sensitive about steps to reduce aircraft noise, fearing that commercial interests might be damaged. Thus, at the end of the legislative process the measure contained strange linguistic deviations that remove the sting from plain words such as ‘aggravation of noise pollution’ (which would have been the obvious translation of the French *aggravation de la pollution sonore*) and substituted the anodyne expression ‘deterioration in the noise climate’. Other examples of tampering include ‘assessment of the noise impact’ for *évaluation des incidences des nuisances sonores* and ‘a policy approach to address aeroplane noise’ for *une méthode d’action pour traiter des nuisances sonores générées par les avions*. No English-speaking translator would have produced these translations from French; they are politically massaged versions of faithful translations.

The translator as healer

In contrast to linguistic chicanery of the kind illustrated above, translation can sometimes rectify and heal. This happens when a translator improves on the original text. For example, an English draft that contains errors intentionally overlooked or even or

created by disingenuous participants may be translated correctly into other language versions. Consider the following example.

Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport

Article 4(1)

In the report covering the year 2006, Member States shall indicate their national indicative targets for the second phase. In these reports, differentiation of the national targets, as compared to [sic] the reference values referred to in Article 3(1)(b), *shall be motivated* and could be based on the following elements (emphasis added).

The words ‘shall be motivated’ in the original English were doubtless written (in English) by someone whose mother tongue is French, Spanish or Portuguese (French *sera motivé* or Spanish and Portuguese *será motivado*). No translator in the Commission or the other EU institutions would use the word ‘motivated’ in that context. They would usually use the words ‘reasoned’ or ‘reasons’ as in Article 85 EC: ‘a reasoned decision’; or Article 253 EC: ‘shall state the reasons on which they are based’). Here, an acceptable translation might read ‘the reasons for differentiation of the national targets ... shall be specified’. A United Kingdom civil servant would only insist on retaining ‘motivated’ because its meaninglessness attenuates the force of the obligation imposed on the governments of the Member States, including the UK.

The ironical result is that the only version that is meaningless is the original language version, which the translator, as healer, has not had an opportunity to improve.

Misconceived mastery of experts

Sometimes native speakers of English defer to technical experts even when they must know the English is wrong or that jargon should be translated into plain English. Here is an example.

Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (as amended by Directive 2001/34/EC)

These securities may include different products, such as debt securities, certificates and warrants, or the same product under the same programme, and may have different features notably in terms of seniority, *types of underlying*, or the basis on which to determine the redemption amount or coupon payment [emphasis added].

Whether or not it is customary to use ‘underlying’ as a noun in the securities industry, this usage confuses most readers who assume that ‘under-

Linguistic oddities in European Union legislation: don't shoot the translator

(continued)

lying' is an adjective and so look in vain for the noun it modifies. Translators into other languages added the noun 'assets' or 'securities' after 'underlying' in their versions.

Drafters in denial

To end, here is an example of the Council painting itself into a corner by publishing an error in its *Manual of precedents for acts established within the Council of the European Union* (the English version of which, for some undisclosed reason, has an index only in French).

A provision that appears in numerous measures conferring powers on a committee (a process called 'comitology') refers to *Council Decision 1999/468/EC laying down procedures for the exercise of implementing powers conferred on the Commission*.

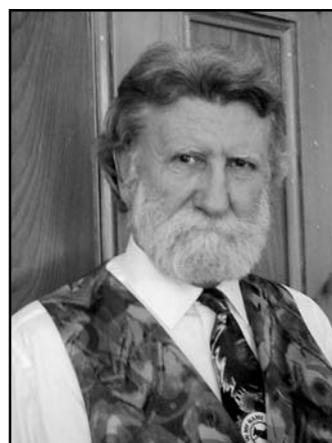
The provision states incorrectly that for certain committees *the period laid down in Article 4(3) [of Decision 1999/468] shall be set at [x] months*. Article 4(3), however, does not lay down a period but refers to 'a period to be laid down in each basic instrument', so there is a clear contradiction. Apart from the standard clause being wrong, the expression 'shall be set at' implies that further action is to be taken at a later stage. This is not the case since the instrument containing the comitology clause sets that time-limit.

The Parliament's efforts to amend this recurrent error (by suggesting the wording: *the period referred to in Article 4(3) shall be [x] months*) usually fail because the Council will not admit that it has been wrong for many years to use the illogical wording enshrined in its *Manual of Precedents* and, thanks to its superior bargaining power in this, the so-called co-decision procedure, the Council's wishes mostly prevail.

I could give many other examples, but I hope that those I have given show that it is rarely the translator who is responsible for the oddities found in Community legislation.

© Ian Frame 2005
ianframe@primexplus.com

After eight years with a City of London law firm, in 1981 Ian Frame became a lawyer-linguist in the Court of Justice of the European Communities where he has worked ever since, apart from a period of about 18 months as a legal reviser scrutinising legislation in the European Parliament. He is also a Scrivener Notary Public of the City of London, having been attracted to that profession by the dual qualification in law and foreign languages which Scriveners must obtain, during a five-year traineeship, before being entitled to practise.



Clarity: electronic or paper?

We publish *Clarity* in both electronic (.pdf) and paper forms, in May and November. The electronic version reaches you sooner, because the paper version has to be posted from the US all around the world. You can ask for *Clarity* to be delivered to you either or both ways.

Just let your country representative know if you want to change the way you receive *Clarity*.

Just the English

Catherine Rawson

International Legal English, Consultant, Beijing, China

Non-native English speakers who expect a quick fix of their writing are usually indulging in wishful thinking and making the mistake of forgetting the needs of their readers—the overriding principle of plain language writing. Editing this sort of English is skilled work. While some errors are obvious and easy to correct, others are not, especially when tangled up in tortuous sentences with legal concepts. If allowed, an expert legal editor can greatly improve a text by not only correcting the errors, but also by “translating” and “interpreting” the text to meet the needs of international readers.

As guest editor of this issue of *Clarity*, the reason I chose to explore the extent to which plain language is used in multilingual and non-English speaking countries, is that I have found that using plain language (like plain speaking) raises deep cross-cultural issues. German lawyers, for example, are inclined to perceive plain language as unscholarly, whereas English-speaking lawyers consider it to be the hallmark of competence. The difference in perception is *cultural*. German academic tradition equates transparency with superficiality, while Anglo cultures admire thinkers who make their ideas “crystal clear”. Non-native English writers whose native language has both a formal and informal mode of address can feel uncomfortable following the plain English recommendation of using “you” to involve their reader. To them this form smacks of rude informality.

This article is in two parts. Here I review some of the problems non-native English lawyers experience writing in English, and the extent to which meaning and language are inseparable. In *Clarity* No 54 I will expand on what is involved in editing non-native English texts, and how firms can dramatically improve writing standards while reducing costs by lessening their lawyers’ dependence on native English speakers. With training supported by software tools, non-native English lawyers can correct style and translation errors themselves.

“Reading maketh a full man, writing maketh an exact man”

When Englishman Sir Francis Bacon (1561-1626) wrote these words 400 years ago England was a multilingual country, so Bacon would not have been a stranger to the misunderstandings that occur when speakers use a foreign language. Bacon understood that we must be exact in how we write, if others are to understand our thoughts and be persuaded to our way of thinking.

Each of us is shaped by our family, education, and national culture. Frustration and misunderstandings can easily result when we communicate in a foreign language to a different audience. Without the benefit of non-verbal signals and voice tone, the written word presents our readers with a linguistic guessing game. The task of the non-native English lawyer is to remove the guesswork.

Standard English

Today more people use (abuse?) English as a foreign language than use it as a native language. To be comprehensible as an international language, English must follow one standard. Since each English-speaking country has its own usage standards for grammar, vocabulary, spelling, and punctuation, writers must choose one standard and stick to it. This is easily done with computerised grammar- and spell-checkers, although the prompts designed for native English speakers may sometimes puzzle and confuse non-natives.

Editing out “foreignness”

If “foreignness” could simply be skimmed off a text as cream is from milk, an editor could “just fix the English”. The problem is that gleaning meaning comes before editing. If a legal editor cannot understand what a text is about, then if the intended reader is to understand it, the editor will need to go beyond merely correcting the odd foreign error. A plain English text, as *Clarity*’s readers know, allows the intended reader to get its message on first reading.

Just fix the English

(continued)

A legal editor plays the role of an expert surrogate reader for the target audience, which for a lawyer is mostly prospective and existing clients. If a text is unclear or poorly written or both, the editor will stumble and backtrack, just as the reader would. The editor's task is to correct flawed writing and fill content gaps to create flow. Sometimes this involves "translating" foreign concepts and language and "interpreting" assumed cultural messages.

"Lawyers have two common failings. One is that they do not write well and the other is that they think they do."¹

This statement made by Prof Carl Felsenfeld in 1982 about US lawyers, applies to non-native English lawyers today. How well a foreign lawyer writes in English depends on the lawyer's grasp of law, English level and writing ability. A writer whose thoughts are unclear finds it hard to write clearly, regardless of the vehicle language.

Non-native English lawyers who write poorly in their mother tongue have trouble writing well in English. Like their native English speaking colleagues, these lawyers do not know the difference between good and poor writing because they have not been taught how to write plainly. Once non-native English lawyers accept that writing quality can be measured objectively, they are motivated to improve their writing skill, because they realize that both English speaking and writing competence are the keys to their success in the international work place.

What errors do foreign lawyers make?

Non-native English legal writers often make mistakes in content and writing. The main content error is assuming that all readers share their cultural and legal context. They make errors in grammar, vocabulary, spelling, punctuation, tone, linkages, and layout. Let's consider these cultural and writing errors in six classes (of which only the first three are unique to non-native English speakers):

- Learner errors
- "Signature" errors
- Misjudged cultural assumptions
- Problems with flow and tone
- Proofreading errors
- Poor writing style.

Learner errors

Non-native English speakers' errors are rather like a foreign accent. A light accent does not affect understanding but a thick accent does. Similarly, occasional errors do not affect a text's readability, but endemic errors do.

Because they are all learners of English, they nearly all make mistakes. Learners with upper intermediate English or better can cope with legal writing if they use plain English. (See my article in *Clarity* No 45 (Dec 2000), "Plain English is a Gift for Foreign Lawyers"). Less competent users of English do better to use a translator. Editing a garbled English text takes longer and is less reliable than translation, because the native English editor has to guess the meaning.

"Signature" errors

When language learners transfer some of the patterns of their mother tongue to English they make "signature" errors. *Dunglish*, for example, is Dutch that's gone English² and *Japalish* is Japanese that's gone English³.

Another type of sub-English is *EuroEnglish*. This is the insider-speak of the European institutions, and is as much a dialect to outsiders as *legalese* is to non-lawyers. EuroEnglish is especially unintelligible to native English speakers with no knowledge of European languages. Take this meaningless sentence:

The *modalities* of the situation dictated a complicated solution.

Modalities, a word with French roots, is a chameleon word whose meaning changes according to context. Since its natural habitat seems to be abstract, jargonised sentences, nothing short of a rewrite is usually necessary to expose meaning. In the example, the writer might have been trying to say that:

Involved procedures were needed to solve the complicated situation.

The closer a language is to English, the more likely a learner is to transfer signature errors. Linguistically, English is a fixed-word-order, non-inflecting, subject-prominent language. In other words, English is a language where meaning comes from the order of the words and not how they are modified by others around them. Being a subject-prominent language requires the order: subject-verb-object (S-V-O). The expected pattern of an English sentence is thus *Who-Did-What-To-Whom or What?*, followed or preceded by *When?-How?-Why?* detail. This is why plain English experts advocate writing short sentences in the active voice without embedded clauses.

The table on page 27 gives examples of signature errors.

Examples of signature errors Dutch (NL), French (FR), German (DE), Spanish (ES), Japanese (JP) General (Gen)		
False cognates	DE: The <i>actual</i> situation is serious ES: She is <i>embarrassed with a boy</i> FR: The market is fiercely <i>concurrent</i> NL: Her death was <i>dramatic</i>	<i>current</i> <i>pregnant</i> <i>competitive</i> <i>tragic</i>
Translation errors	DE: He did not <i>advise</i> the price correctly ES: Her book <i>has</i> 5 years old FR: The event <i>arrived</i> in 2000 NL: He <i>controlled</i> the accounts JP: He is 6 feet <i>high</i>	<i>guess</i> <i>is</i> <i>happened</i> <i>checked</i> <i>tall</i>
Abbreviations— not used in English	Gen: f.e. Gen: i.r.t.	e.g. (for example) in regard to
Punctuation— incorrect	Gen: A <i>Panda</i> eats shoots. Gen: “What nonsense”! Gen: When will you come.	A <i>panda</i> eats shoots. “What nonsense!” When will you come?
Unidiomatic English	Gen: When <i>I and you</i> arrive he’ll be happy Gen: <i>Later or sooner</i> he will agree Gen: That’s <i>less or more</i> correct Gen: His <i>carriage and horse</i> were out	<i>you and I</i> <i>sooner or later</i> <i>more or less</i> <i>horse and carriage</i>

Misjudged cultural assumptions

Cultural myopia occurs on two levels. At the country level, the writer assumes a universal understanding of how the world works. Take for example “business hours” which vary from place to place. To avoid confusion, a writer must spell out opening and closing times, not forgetting the lunch “hour” or siesta zzzzz.

In legal practice, cultural myopia shows in assumptions made about the way the law works. Every lawyer knows that the civil and common law systems are different, yet lawyers in different jurisdictions sometimes fail to set out the basic assumptions that underpin their advice. Consider the rules of inheritance. In Belgium forced-heirship rules override conflicting provisions in a testator’s will. Unless this is explained to a lawyer who is used to testamentary freedom, that lawyer is likely to assume that the Belgian has made a mistake in applying the terms of the will.

Problems with flow and tone

1. Linkages: tone and flow

Untrained writers often find it difficult to strike the right tone because they cannot manage smooth linkages. Sometimes this is because they have not mastered the use of subordinating conjunctions (*although, because, when*) and conjunctive adverbs

(*however, moreover*) or have fallen for the myth that it is grammatically incorrect to start sentences with coordinating conjunctions (*and, or, but*).

The end of an English sentence carries the rhetorical stress. Putting old information before new creates flow in a text. Sometimes to achieve flow, S-V-O word order must be surrendered in favour of the passive voice’s O-V-S order. Reversing the order allows the writer to lead the new sentence with information picked up from the previous sentence. Consider this example taken from Michèle M Asprey’s *Plain Language for Lawyers*⁴:

To acquit the accused, the jury must believe the accused’s alibi. The *alibi* must be confirmed by the evidence.

The focus in Dutch sentences is the reverse of English, leading many Dutch writers to “frontally overload” their English sentences. Joy Burrough-Boenisch⁵ gives this example of refocusing Denglish to English:

Especially in the social sciences, a clear bias can be observed in the development of models.
(Denglish)

A clear bias can be observed in the development of models, *especially in the social sciences*.
(English)

Just fix the English

(continued)

2. *Passive voice*

Many non-native English lawyers overuse the passive voice believing it creates the formal tone appropriate for legal writing. They may do this because this is how they write in their mother tongue or because they are imitating poor examples of English legal writing.

3. *Tense*

Some non-native English writing conventions do not transfer to English. For example, some Europeans record minutes of meetings in the present tense, not realising that English requires the simple past tense.

4. *Blockages and focus*

Most native English speakers instinctively recognise stilted English but many have difficulty in freeing blockages and refocusing sentences, let alone explaining why the changes are needed. Overly confident non-native English writers resent native English editors who cannot justify their changes, even if those changes result in flowing, idiomatic English.

Proofreading errors

Diligent users of English can proofread their own texts for spelling, grammar and punctuation errors by using Microsoft Word's spell- and grammar-checker. Checking for deviations from a firm's styleguide, if any, is more painstaking but nonetheless essential. A customised style-checker, however, does the job faster and better than a bored human.

Poor writing style

Poor native users of English make the mistake of writing long, complex sentences redolent with the style faults listed in the table below.

Style faults	
<ul style="list-style-type: none">• Passive verbs	<ul style="list-style-type: none">• Clichés—ordinary & business
<ul style="list-style-type: none">• Nominalisations	<ul style="list-style-type: none">• Redundancies
<ul style="list-style-type: none">• Misusing words	<ul style="list-style-type: none">• Tautologies
<ul style="list-style-type: none">• Confusing words	<ul style="list-style-type: none">• Overwriting
<ul style="list-style-type: none">• Archaic words	<ul style="list-style-type: none">• Weak modifiers
<ul style="list-style-type: none">• Foreign words	<ul style="list-style-type: none">• Cross referencing
<ul style="list-style-type: none">• Complex words	<ul style="list-style-type: none">• Elegant variation
<ul style="list-style-type: none">• Jargon	<ul style="list-style-type: none">• Abstractions

When non-native English lawyers ape traditional (poor) English legal writing it is often faster and better to rewrite sentences than to edit them. Teasing

out non-native English speaker errors from complex sentences riddled with style faults is more effort than the job is worth. In cases of truly dreadful writing, the editor may end up ghost-writing the entire text. If a text is to be assessed—such as a doctoral thesis—rewriting raises ethical issues.

Should an editor speak the non-native English speaker's language?

Fluency in the non-native English speaker's language can help an English editor pick up obvious transfer mistakes and odd literal translations. If the native English editor is also familiar with the non-native English speaker's culture, the editor will readily spot cultural gaps in understanding which need bridging. Countries and professions have cultures. For example, a Brazilian may not think to explain that insuring households in Brazil is a government-run monopoly. Similarly, a civil law practitioner may not realize that certain concepts deriving from Roman law are foreign to common-law practitioners.

Living in the non-native English speaker's country has a downside. Editors can lose their grip on English when immersed in another culture. One's sensitivity to sentences like "I've been working here since 10 years" dulls with time and repetition.

Can content be separated from writing?

Since the purpose of writing is to convey meaning, simply removing non-native English speaker's errors and style faults is often insufficient to convey meaning, as the following excursion into linguistics shows.

• **Correct but meaningless**

Leading linguist, Noel Chomsky⁶, gives this example:

Colorless green ideas sleep furiously.

• **Correct but ambiguous**

Please remove all your clothes when the washer's light goes out. (sign in a laundry)

• **Correct but confusing**

This charter is neither extensive nor exhaustive.

Plain language expert, Martin Cutts, in his *Oxford Guide to Plain English*⁷ says the confused public interpreted this sentence to mean:

This charter is neither costly nor tiring.

As Cutts says the government would have done better to write:

This charter doesn't try to give you every detail.

• **Correct but illogical**

Bargain basement upstairs. (department store sign)

• **Incorrect abbreviated writing (texting)**

RU OK 4 2Nite? It'd B GR8 2 C U!

- **Incorrect (jumbled) lettering**

Seieng is bleivoneig, rghit? It deosn't mtttaer what oerdr the ltteers in a wrod are so lnog as the frist and lsat ltteer aer in the rghit pclae, bcuseae we do not raed ervery lteter but the word as a ttoal.

- **Incorrect capitalization**

oNLy ThE GooD aRe ReWaRdED.

- **Incorrect spelling creating wordplay**

Bach in a minuet. (sign on a music shop)

Now let's try classifying the following ungrammatical non-native English speakers' sentences as acceptable, understandable, guessable⁸ and unintelligible.

- **Acceptable?**

Please *learn* me how to sing. (teach)

- **Understandable?**

Please *me* teach English. (teach me)

- **Guessable?**

The *veteran* typist did the job quickly. (Japalish for: *expert*)

- **Unintelligible?**

I was cried by the baby (Japalish for: *I couldn't lull the baby*)

Managing changes

When a writer believes that the editor has changed the meaning of a sentence the solution is rarely to reinstate the original text. If the editor didn't understand something then the reader probably won't either (even if the reader may know more about the subject than the English editor). Instead, the writer and editor need to agree an acceptable rewrite.

Writers should not judge an editor who asks questions and makes "wrong" guesses as incompetent. The line of least resistance (and greatest profitability) for an editor is to pander to clumsy writers' fragile egos. Fewer edits reinforce clumsy writers' misplaced confidence that they write well. More realistic writers respect the contribution an editor can make, invite the editor to do whatever is necessary to make the text comprehensible for the reader, and so help both the writer and the reader.

Do-it-yourself fixing for non-native English speakers

Once trained in plain English writing techniques, and armed with customised editing software, non-native English lawyers are able to correct common style and translation errors. My work with international firms is aimed at making their multilingual lawyers confident and self-sufficient English writers, who depend on native English legal editors only for honing content to meet their foreign readers' needs and expectations.

At Clarity's July 2005 conference in France, I will show how DIY editing saves money and fragile egos by allowing non-native English lawyers to:

- pick up predictable translation and signature errors
- access legal know-how relevant to an international audience
- enforce adherence to housestyle rules
- measure writing quality
- promote plain writing.

© C Rawson 2005
legal_easy@hotmail.com

¹ "The Plain English movement in the United States", Prof Carl Felsenfeld, *Canadian Business Law Journal*, vol 6, 1981-82.

² *Righting English that's gone Dutch*, 2nd ed, Joy Burrough-Boenisch, Kemper Conseil.

³ Noriko Nakanishi, an MA linguistics student at Kobe City University of Foreign Studies is studying the extent to which readers understand Japalish. You can help her by filling out her questionnaire at <<http://members.goo.ne.jp/home/questionnaire2005>>.

⁴ Michèle M Asprey, *Plain Language for Lawyers*, 3rd ed, Federation Press, at page 141.

⁵ Joy Burrough-Boenisch (see endnote 2 above).

⁶ Noam Chomsky, quoted by Steven Pinker in *The Language Instinct*, 1994, Penguin Books, at page 88.

⁷ Martin Cutts, *Oxford Guide to Plain English*, 2nd ed, OUP, 2004, at page 11.

⁸ Noriko Nakanishi's questionnaires allow subjects to choose from these categories when assessing Japalish sentences (see endnote 3 above).

Catherine Rawson helps multilingual organisations ensure that their staff write clear, concise, readable English, regardless of their native language. By using tailored software to reinforce Catherine's plain English training, her clients are able to monitor the quality of their English communications. Catherine has worked as a lawyer on three continents, is fluent in German and gets by in French and Portuguese.



Wanted: a pithy shortform description

Catherine needs your help. See page 38.

Progetto Chiaro! and the plain language movement in Italy

Christopher Williams

Associate Professor of English at the Faculty of Political Science, University of Bari, Italy

After an encouraging start, the state-sponsored plain language initiative 'Progetto Chiaro!' has fizzled out. So Italians are once again left to grapple with the complexities of bureaucratese, an area still in need of drastic reform.

I wish to thank Giovanni Vetrutto for his invaluable comments.

Anyone who has lived and worked in Italy will be only too aware of the mind-boggling complexity and sluggishness of Italian bureaucracy and of Italy's legal system. Small wonder, then, that there have been calls for reforming the language of officialdom to make it more user-friendly. But while in Britain, the USA and other English-speaking countries, the plain language movement has mainly found expression outside government institutions, the nearest equivalent in Italy, known as the *Progetto Chiaro!*, is part of the Department of Public Administration (*Dipartimento della Funzione Pubblica*).

The Department was set up in 1983 as part of the drive to modernise public administration, but it was only in the 1990s that a concerted effort was made to improve its quality and efficiency. This culminated in the setting up of *Chiaro!*, the so-called 'Project for the simplification of administrative language' <www.funzionepubblica.it/chiaro/>.

The language of officialdom

One of the characteristics, then, of the plain language movement in Italy is that it has so far concentrated its attention mainly on the language of officialdom and has tended to be less concerned than its English-speaking counterparts with, say, consumer rights such as ensuring that leaflets contained in prescribed medicines are comprehensible to non-experts, or with the language of prescriptive legal texts. Of course, the language of officialdom spills over into the legal field; moreover, in recent years attempts have been made within the Italian Parliament to improve the quality of legislative drafting, as Stefano Murgia and Giovanni Rizzoni pointed out in *Clarity* No. 47 (May 2002, page 20).

Thus, on the one hand, the focus of the *Progetto Chiaro!* is more limited than that of, say, the plain English movements in the UK, Australia and Canada but on the other hand, given the pervasiveness of state officialdom in most people's lives in Italy, the project has undoubtedly hit on the area that was most desperately in need of reform. A guiding source of inspiration behind the proposed reform of bureaucratese has been Alfredo Fioritto whose *Manuale di Stile. Strumenti per Semplificare il Linguaggio delle Amministrazioni Pubbliche* was first published in 1997. The manual provides practical advice on how to draft administrative documents, regulations, contracts etc (see Francesca Nassi's review in *Clarity* No. 47 (page 23)).

Gathering momentum

The most fruitful period in the drive towards the simplification of administrative language in Italy seems to have been between 1994 and 2002. It was in 1994 that the scheme for rewriting administrative documents was launched with Sabino Cassese as Minister (his *Codice di Stile* of 1993 was the forerunner to Fioritto's manual). Under his successor, Franco Bassanini, the project continued to flourish. On 8 May 2002, with Franco Frattini as Minister, the so-called 'Frattini directive' was introduced calling for an overhaul of administrative language by establishing drafting rules. To help in applying the directive the *Progetto Chiaro!* was set up that year, with an online consultancy service for local government employees and officials seeking guidance on how to draft administrative documents in accordance with the directive.

The directive's ten 'rules for writing texts'

The first part of the directive contains the (rather opaquely worded) 'rules of communication and legal structure', such as making sure the content of the text is always clear, always having a clear idea of who the recipients of the text will be, inserting information in a logical way, using notes, attachments and tables to lighten the text etc. This is followed by ten 'rules for writing texts':

1. Write short sentences.
2. Use words from everyday language.
3. Use technical terms sparingly and explain them.

4. Use abbreviations and acronyms as little as possible.
5. Use verbs in the active and in the affirmative form.
6. Connect words and sentences briefly and clearly.
7. Be consistent when using capital letters, small letters and punctuation.
8. Avoid neologisms, foreign words and Latinisms.
9. Use the indicative form rather than the subjunctive where possible.
10. Make sure the text is visually pleasing (i.e. use what modern technology has to offer, but don't get carried away!).

Sentence length, subjunctives and passives

One area where there is certainly room for reform—not just in legal or bureaucratic language—is that of sentence length. Not surprisingly it is put first in the list of rules above. There would seem to be an ingrained tradition in Italy of writing long sentences: anyone perusing the average academic textbook in Italian will see what I mean, with sentences laden with subordinate and parenthetical clauses.

Rule 9 is an interesting case. While subjunctives are almost non-existent in modern English they represent roughly 10 per cent of all verbal constructions in Italian legal texts. But in my opinion their use does not generate any particular ambiguity (they always refer to hypothetical situations); they simply make the text sound more formal (people tend to 'drop' their subjunctives in informal conversation). And, in common with many other countries, the directive calls for a reduction in the use of the passive, even if it is less frequently adopted in Italian (about 20% of verbal constructions in prescriptive texts are in the passive) than it is in English (about 25%).

Losing momentum

Unfortunately, the momentum favouring language reform came to an abrupt halt not long after the directive was passed, as can be witnessed by visiting the website where the information and documentation have not been updated for three years. When I emailed the address provided on the website for those seeking further information or advice, my email bounced back and I was informed that the user was unknown. The implicit message was, alas, *molto chiaro!* It was only after further investigation that I was informed that the project had been given a limited time span, after which it was shut down altogether and has not since been revived.

Top down

The hiatus in the activities of the *Progetto Chiaro!* reveals one of the inherent weaknesses in a move-

ment that springs from within the state itself rather than from the grassroots, namely that much depends on the interests and priorities of individual ministers. This is not to say that the average citizen in Italy does not moan about the incomprehensibility of official documents, but there is simply not much of a tradition in Italy as there is in, say, the UK, in forming pressure groups to do something about it. It is often the case in Italy that reforms take place as a result of adopting models from abroad rather than as a result of pressure from within.

Legal language

There are several possible reasons why legal language tends not to be the main focus of criticism in Italy as it is in most English-speaking countries. First of all, the type of language in which laws are drafted in Italy is not perceived as being as archaic or idiosyncratic as it is in English-speaking countries. There are few equivalents to the *hereinafters* and *aforetosaid*s that sound like something from the Elizabethan age. Laws drafted in Italian may not always be easy to follow, but they do not sound particularly antiquated. Secondly, like most other countries in continental Europe, by far the most commonly-used tense used in prescriptive texts in Italian is the present indicative, constituting two-thirds of all finite verbal constructions. So there is no ambiguity as there is often claimed to be in English between *shall* and the present tense: in the vast majority of cases *shall* would be rendered as the present simple in Italian. *Può* and *possono* (respectively, third person singular and plural of the modal verb *potere* = to be able to) are the equivalent of *may*, used for expressing discretion or, in the negative form, prohibition; while *deve* and *devono* (respectively, third person singular and plural of the modal verb *dovere* = to have to) are the equivalent of *must*, used for expressing legal requirements or conditions. To the best of my knowledge the choice of verbal constructions is not a major issue in drafting legislation in Italy.

Changing perspective

Another difference from the position in the UK or the USA, for example, is that there is no tradition of 'plain writing' courses in Italy. Fioritto's manual stands out like a beacon, and it has only given rise to one or two isolated initiatives in recent years.

Summing up, then, the situation of plain language in Italy has undoubtedly improved in the last ten years. It has been officially recognised that there is a problem with the language of public administration and it has been addressed, at least in part. What is lacking, rather, is a widespread determination among the general public and the state to apply plain language principles to other areas where citizens may feel excluded simply because they cannot understand what is being said. While consumer

Progetto Chiaro! and the plain language movement in Italy

(continued)

movements are fairly active in Italy, they have not yet fully grasped that plain language lies at the heart of the desire for reform and change. Few people in Italy would deny that abstruse language can be a problem, but there is not yet the perception that clarity begins at home (apologies for the pun!), and that lasting results can only be achieved by forming grassroots associations to tackle the practical issues at hand.

© C Williams 2005
cjwilliams72@hotmail.com

Christopher Williams was born in Nottingham and graduated in Modern Languages in London in 1974, the year he moved to Italy. He is currently Associate Professor of English at the Political Science Faculty of Bari. He also teaches English at the Law Faculty at Foggia University. He has a long experience of translating legal texts, mainly in labour law, from Italian into English. He has published several articles on legal English and has just completed a book, Tradition and Change in Legal English: Verbal Constructions in Prescriptive Texts, published by Peter Lang.

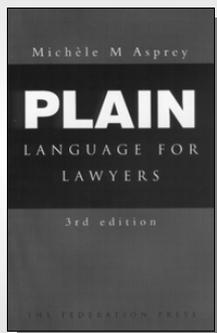


PLAIN LANGUAGE FOR LAWYERS

3RD EDITION

Michèle M Asprey

New!



Michèle Asprey's book has established itself in Australia as the best explanation of plain language for both lawyers and the profession generally. It is clear and easy to read: a great example of the art of plain language. The third edition is a comprehensive revision and update:

- ◆ It covers the significant developments in plain language and the law since 1996.
- ◆ It includes two new chapters, one on writing email and writing for the internet, and the other on designing documents intended to be read on the computer screen.
- ◆ Chapter 3 (Why plain language?) has been expanded and divided into two chapters:
Chapter 3 - Why plain language? and
Chapter 4 - Plain language around the world,
reflecting the many developments in plain language

ORDERING YOUR COPY

UK & Europe:
Willan Publishing (UK)
www.willanpublishing.co.uk
Email: info@willanpublishing.co.uk

North America:
Gaunt Inc (USA)
www.gaunt.com
Email: info@gaunt.com

All other countries:
The Federation Press (Aus)
see contact details below

The Federation Press
Published July 2003
ISBN 1862874646
Paperback, 336 pages
rrp AU\$45.00 (excl GST)



THE FEDERATION PRESS

PO Box 45, Annandale NSW 2038, Australia Phone (61 2) 9552 2200 Fax (61 2) 9552 1681
email info@federationpress.com.au www.federationpress.com.au

Canada's multilingual plain language projects

Cheryl Stephens

Plain language consultant, legal marketing and development coach, Vancouver, Canada

I want to share with you some of the lessons I learned from directly handling one project and from observation as a participant in another.

The two multilingual projects:

1. *Online Legal and Court-Related Dictionary*
2. *Plain Train, an online training course in plain language*

The biggest lesson I learned: the bigger and more complex the project, the more significant the “project management” needed.

First, you have to remember to include a line item in the budget for project management. Then you have to decide who will do it. If it is you, then I highly recommend you take a short-course in project management from a local institution.

Second, I advise you to take on such projects only if you are competent in the languages of the project. Of course, that is not always possible, as I'll discuss later.

It is difficult to understand the problems arising in one language when you do not know that language. Consultants working in other languages may be your experts in that language but they will need a great deal of guidance from the project manager on language issues—more than I ever imagined. By language issues I mean the register, and the choices of vocabulary and other factors that the particular audience and purpose require you to make.

The next concern arises with testing results on the foreign language materials when you do not know that language. You have to trust completely your language expert who may have a different sense of “plain language” than you or the project funders.

1. Online dictionary

The *Multilingual Online Legal and Court-Related Dictionary* is funded by the Law Foundation of British Columbia and managed by the Court Interpreter's Program at Vancouver Community College. This dictionary provides the equivalent to

an English term in five languages: Russian, Vietnamese, Mandarin, Farsi, Punjabi, and Spanish.

The process of producing the legal terminology

The project, which includes about 4,500 entries in each language, was organized to provide proof of the validity of the plain language. This proof came from linking to existing dictionary definitions which were more formal or legalistic.

The project began from a longer English word list prepared by a court interpreter and reviewed by two judges and a lawyer who whittled it down to 5000 words. Later it was reduced again by eliminating words that are used in their common dictionary meanings. It was expanded by updating the list as new laws presented new terminology during the 3 year project. Also, each variant of a word is defined separately. Some words are defined differently when used as both verbs and nouns, in both litigation and property, or in a local or national context (each variant is described as a term).

A legal researcher reviewed recent court decisions to determine the actual and current use of the word in the local legal system (the *term*). Then the researcher reviewed popular English dictionaries to discover an existing dictionary definition that suited the usage (the formal *definition*). When a suitable definition was not available, the researcher turned to legal dictionaries or wrote his or her own definition.

Then the researcher located an example of the word used in context (the *context*). In a few cases these examples came from court cases or other legal documents. But whenever possible, the example comes from a popular text so that the use is comprehensible.

At this point the plain language consultant trained in law (known to the project as the *Wizard*) reviewed and reconsidered all that material. Then she wrote a plain language definition identified as the *casual definition*. A professional terminologist dealt with about 1500 slang or technical words that are often used in criminal or family court.

Now we had the full term record consisting of the *term, formal definition, context, casual definition* and other components. The formal definitions obtained from commercial dictionaries are not included in the online publication, for copyright reasons. The term record will appear online as in this example.

Canada's multilingual plain language projects

(continued)

English	
Term	tort law
Part of Speech	noun phrase
Casual Definition	field of law devoted to compensating injury suffered by a person or their property under common law or private rights
Context/Example	While there has been much debate about the liability of the mentally ill in the context of *tort law*, considerable uncertainty still abounds...the topic exemplifies the confusion that has plagued this area of the law.
Source of Context	Fiala v. MacDonald, 2001abca169, Source: < http://www.canlii.org/ab/cas/abca/2001/2001abca169.html >
Synonyms and Variants of "tort law"	tort; tortious

A lawyer acquainted with plain language issues reviewed the entire *term record* and checked the legal validity of the casual definition. This sometimes led to a negotiation and revision of the casual definition.

The term record that resulted from this research and work provided the background support for the foreign language terminologists. These English term records provided a sound understanding of the Canadian (or specifically British Columbian) use of the term for determining the closest equivalent term in the other language. For each language, two people divided the word list: each dealt with half the term records and reviewed the work of the other.

We are lucky that Canada is a multi-cultural country and Vancouver the most rapidly changing city in the world in that respect. It was possible to find locally the qualified people in all these languages. Yet they were not necessarily trained in law in the country of their language.

It would not be easy to find a project manager who is fluent in so many languages. It fell to the foreign language terminologists to share their experiences and find a way to communicate their common concerns to the project management:

- There was often no equivalent word to the English legal term or to the particular use of that word. Rather than merely translate the English material, the aim was to create a new term record (or as many components of it as possible) in the target language using context examples from materials originally produced in that language.
- It was also a challenge to find materials in some languages. There were few resources online in which a discussion requiring legal terms would arise.

The working terminologists were operating in Canada, where they had minimal access to research or reference materials in their own language. This project would have been better carried out with an international workforce who could access libraries of information in their own languages.

2. Plain Train

Plain Train is an online training system currently hosted by the Plain Language Association International <plainlanguage.network.org/plaintrain/>.

It is based on pre-existing resources:

- A booklet: *Plain Language: Clear and Simple*
- A formal training curriculum: *Trainer's Guide to Plain Language: Clear and Simple*

produced by the National Literacy Secretariat of the Government of Canada and funded by Access to Justice Network <acjnet.org>.

The original materials were prepared in both English and French, Canada's official languages. Canada's population is about 30 million with 6.7 million speaking primarily French and a large proportion being multilingual.

I managed the project and Janet Dean designed the curriculum in the transformation of the in-person training to the online course.

The original French booklet and training program were not simply translations of the English version, but were original materials addressing the distinct character of the language. We based the French online training on the Canadian French materials.

As project manager, I would have been of more assistance to the French editor on the project if I were also bi-lingual. High school French was not enough; I can only shop in French. From second-hand observation, it appeared that the problems that arose for the French training course were:

- Archaic language used by government translators who had a hand in some of the training materials
- Colloquial or regional nature of the language used in some of the written material
- Differences of opinion over stylistic issues within the French language.

Nonetheless the program was well received and continues to be used regularly. Many educational institutions include the URL on course syllabi. The entry page for Plain Train receives about 400 hits every month with about 80 users proceeding to the French version.

It is so popular that a linguist working in a European state government who was producing a version of Plain Train in his own language wanted to know if I could provide the graphics in that language. The Canadian government holds copyright to the materials. I never heard from him again so I do not know the end of the story.

So, I will say again that working on a multi-language project requires expertise in project management and people management which must take into account cultural, in addition to language, differences. Nonetheless, the personal reward is tremendous when users value the product and I have received many emails from users saying they do.

© C Stephens 2005
email@cherylstephens.com

Cheryl Stephens, along with Kate Harrison, founded the precursor to the Plain Language Association International. A Canadian, Cheryl coaches lawyers on developing their professional and business skills and provides training in work skills development.



Beyond non-normal

From Flight 427: Anatomy of an Air Disaster, by Gerry Byrne, Copernicus Books, 2002, p99.

On July 13, 1993, Boeing issued a 6-page document as part of a series of occasional newsletters called *Boeing Flight Operations Review*. The new edition had an unwieldy title: "Guidelines for Situations Which Are Beyond the Scope of Non-normal Procedures". The average person would call a non-normal procedure on an airplane an emergency of some kind or other.

Clarity on the net

Each issue of *Clarity* since No 40 is posted on the Clarity website <www.clarity-international.net>. But we do not post an issue until it is superseded by the next one, so that members get the chance to read each new issue before the rest of the world can.

Legalese of **BIBLICAL** proportions: some observations on legal language in Israel

Myla Kaplan

*Attorney, legal writing instructor and legal translator
Haifa, Israel*

Hebrew is a plain language fan's dream, or at least it should be. It is a wonderfully concise language, which tends to be plainly spoken and plainly written. However, as I will discuss below, lawyers in Israel often write in a style that is anything but plain.

Hebrew is naturally concise and clear

The most dramatically concise feature of Hebrew is that it is written mostly without vowels. This alone makes the average Hebrew sentence take up much less space than its English equivalent. But it is the condensed Hebrew syntax that really shortens the sentence: most prepositions and conjunctions are prefixed onto the word they modify as one letter. Thus, the little words like "and", "the", "to", "in", "as" and "from" (which we all know take up quite a bit of space in the average English legal document) tend to disappear in a Hebrew document. Even compound prepositions such as "to the" and "in the" can be expressed as a one-letter prefix in Hebrew. And, possessive pronouns such as "our" and "your" are often suffixed onto nouns, saving even more space.

Hebrew's extreme conciseness can be seen in a translation of a typical sentence: "In our letter, we requested that the funds be allocated at the end of the year." In English this sentence has 16 words, or 78 characters including spaces. In Hebrew it has only six words, or a mere 39 characters!¹ The lack of written vowels creates most of the volume difference of course, but many words are saved because all of the prepositions are attached to their subjects. For example, the phrases "In our letter", "at the end", and "of the year" are each expressed as one word in Hebrew.

Hebrew is by nature a coherent language. Most verbs are regular and easily conjugated. Related words tend to have a common root making it easy for readers to interpret words, even in legal language. For example, the words for contractual obligations—binding, charge, commit, debit, debt, debtor, duty, liability, must, and obligation—all contain the same three-letter root in Hebrew.

Legal Hebrew is neither concise nor clear

Lawyers in Israel, like many lawyers everywhere, seem to prefer a dense and highly formal style. Legal documents are rife with long and complex sentences, passive voice and archaic language. This phenomenon of Hebrew legalese is especially ironic, considering that its predecessor, the ancient Hebrew legal language in the Bible, is a model of clarity. The British are partly to "blame" for modern-day legalese, since modern legal Hebrew developed during the thirty years the British ruled under mandate, establishing Israel's court system and drafting many of the current laws.

American English has recently had a strong influence on legal language due to the close business ties between Israel and the US.

Unfortunately, the international trend toward plain language has not yet taken hold in Israel; legalese conventions that have been dropped from British and American documents are still very popular in their Hebrew counterparts, particularly in contracts. Contracts in Israel usually contain a long list of recitals, whether they are helpful or not, and each recital begins with an equally archaic equivalent of "whereas". Contract obligations are often prefaced with useless legalese such as "it is expressly agreed hereby by the parties that..." or "in order to remove any doubt, it is hereby clarified that...". This is particularly true of the documents large law firms produce thanks to their heavy reliance on old-form precedents. Solo practitioners are more likely to draft their own contracts and do so in clear, readable Hebrew.

Hebrew "lawyer's letters" have their own special legalese. Letters to adversaries inevitably start with a formal introduction such as: "On behalf of my client ABC Ltd., I hereby contact you in the above-referenced matter as follows:". The word used for "client" (*marshi/marshati*) is so archaic that many lay people do not know what it means. When even British lawyers are adopting a much less formal style of letter writing, it is strange that lawyers in this very informal society continue to use archaic language in correspondence. After the introduction, letters generally launch into a numbered list of short points, describing the dispute and making demands for payment or action. Presumably the crisp style

and numbered points have their roots in the military, where nearly every Israeli lawyer spends several years before starting law school.

Attitudes toward plain language in Israel

In the legal writing workshops I teach, I take an informal poll to gauge Israeli lawyers' attitudes toward plain legal language. Many of these lawyers recognize the benefits of plain legal English, but object to using plain legal Hebrew in their own writing. Like lawyers in other countries, they often perceive formal legal language as being more impressive and more appropriate for the legal profession. In a country with a lawyer for every 200 residents, lawyers want to maintain some distance between themselves and the public. They fear that clients will not respect lawyers if they think they can write the documents themselves. Some lawyers also believe that legal matters are too complex for plain language, and that obscure and complex language protects client interests better.

An interesting observation that I hear from Israeli lawyers is that a ruling by Israel's Supreme Court is deterring them from drafting contracts in plain language. Attorneys and law students in Israel often quote the revolutionary 1993 *Apropim* decision, which says that courts dealing with contract disputes should look beyond the terms of a contract for the parties' true intent, even when the contract's terms are crystal clear.² This decision has created a stir in the legal community, as it leaves even the best drafted contracts open to court reinterpretation. Unfortunately, it also seems to be inspiring lawyers in Israel to bolster their contracts with legalese and redundancy, so that judges will have less room to interpret what the parties "really" meant. Of course, there is no evidence that legalese has ever saved a contract in court, but it will be hard to convince lawyers that the opposite is true until the courts begin to send a signal that clear language is preferable to legalese.

Despite these problems, I do try to promote clear legal writing in all the work I do. I relentlessly point out the advantages of plain legal writing when I conduct in-house workshops on English legal writing skills and contract drafting, and in the continuing legal education courses I teach. I discuss plain language in the Legal English course I teach to first-year law students at the University of Haifa, as I believe it is a good place to guide future lawyers toward better writing habits. Recently I wrote an article (in plain Hebrew!) summarizing plain language movements internationally, and suggesting that lawyers here strive toward clarity and readability in their documents. As far as I know, my article was the first of its kind in Israel. It was published in a bar association journal and on a popular legal website, and has received a surprising amount of positive feedback.

The legal profession in Israel does not seem to be under any public pressure to make its writing more accessible to clients. Israel does not have any legislation requiring the use of plain language. The Standard Contracts Law offers some protection to consumers from unfair terms in typical consumer purchase contracts. Although this law does not require plain language in consumer contracts, it does give a special tribunal the right to void or change any term in a standard contract that oppresses consumers or gives an unfair advantage to suppliers that could be oppressive to consumers. However, the law's range is limited to contracts that have "standard" terms determined in advance by the dominant party for use in multiple transactions with unspecified third parties.

Translating legal texts from Hebrew to English and English to Hebrew

Over the years, I have translated every type of legal document from Hebrew to English and quite a few from English to Hebrew.

One problem in translating legal documents with defined terms from English to Hebrew is that Hebrew has no capital letters. Thus definitions do not stand out in Hebrew text and often get hidden in the middle of compound words. For instance, if a contract says something is "attached to the Agreement" in English, the words "to the Agreement" appear as one word in Hebrew, and the defined term becomes difficult to distinguish, especially without the capital letter.

When translating from Hebrew to English, I exercise a wide discretion on word choice, since there are four or five English equivalents for most Hebrew words. My policy is to translate into plain language to improve the readability of the translated document. Of course, I cannot do this in all cases. Certain legal documents such as signed contracts, statutes, and judicial opinions for instance must be translated to reflect the original Hebrew as nearly possible. Although I have more leeway when translating unsigned contracts and other documents needed for international transactions, I always ask for permission before "plaining" the Hebrew in the source document. So far no one has declined once I explain how a plain language translation will improve their document. Client reactions are very positive, especially after I "retranslate" a legal document from impossible English legalese into plain English.

Business people react positively to plain language. This is not surprising, since this audience appreciates readable, user-friendly documents. Translating into plain language is less expensive too. After all, translators are paid by the word. But even legal clients are invariably pleased with the results of a plain language translation on their

Legalese of biblical proportions

(continued)

legalese-filled documents. This gives me hope that lawyers' objections to plain legal Hebrew are mostly due to their lack of awareness of its benefits. It often seems that many lawyers in Israel write the way do without thinking about the readability or communicativeness of their writing. They assume that reading legal language has to be a chore because it always has been, but when they see their writing translated into clear, concise, readable English, they cannot help but appreciate it.

© MKaplan 2005
mylakaplan@yahoo.com

- ¹ Transliterated, the sentence reads: *B'michtaveinu bikashnu she'yutzku hac'safim besof hashana.*
- ² In *State of Israel v Apropos Construction and Development Co. Ltd.*, P.D. 49(2) 265, Civil Appeal 4628/93, Justice (currently Chief Justice) A. Barak created a rule of subjective inquiry into both the contract's language and the circumstances under which the contract was made, even when the language of the contract is clear. Section 25(a) of the Contracts Law, however, seems to call for such an inquiry only when the contract's language is unclear: "A contract shall be interpreted in accordance with the intent of the parties as it appears in the contract, or, in so far as it does not appear in the contract, as it appears from the circumstances."

Myla Kaplan is an American-born attorney licensed to practice in Israel and New Jersey. She received a JD from Georgetown University Law Center in Washington DC and an MA in Communications from the Hebrew University in Jerusalem. She is a member of the Clarity Committee and Clarity's Israel representative.



Next Clarity annual meeting

Clarity's annual meeting for 2006 has been fixed for Saturday, 4 February. Barring any change of plan it will be held that morning in London.

Wanted: a pithy shortform description

Teachers of English as a foreign language describe their students as:

- a. NNS (non-native speakers of English)
- b. NNE (non-native users of English)
- c. ESL learners (English as a second language learners)

What pithy shortform description can you suggest for lawyers who use English as a foreign language?

"Foreign lawyers" won't do because "foreignness" is a matter of perspective and smacks of cultural insularity. "NNS lawyers" is unsatisfactory because the contrasting term for native English-speaking lawyers would need to be "NES lawyers" or "NS lawyers" both of which are clumsy.

Please email your suggestions to Catherine Rawson at legal_easy@hotmail.com

Citizen's Language

Plain language in Mexico



Maggie Jo St John

Freelance English for Specific Purposes consultant; co-ordinator of the voluntary English and community eco-tourism project with UCA Mirafior, Nicaragua; world citizen, Birmingham, UK.

In the last issue, an interview with Jesus Mesta introduced the Mexican government's initiative on Lenguaje Ciudadano—Plain Language (Clarity No 52, November 2004, pages 40-41). He spoke of an international conference to be held on 4 October 2004, referring to it as 'one step in their three year strategy to reform internal regulations and the first one in changing government-to-citizen communication'. I was privileged to attend and speak at that conference.

The Mexicans chose to launch their initiative by learning from the experience of others. Four of us, from countries where plain language movements are prominent, spoke of the approaches, the hurdles and the successes in our countries and cultures. I spoke on behalf of Plain Language Commission, an independent business in the UK. We also observed the first pilot workshop for civil servants and held discussions with representatives of the legal professions.

The conference

Some 800-900 people attended the conference, which was well-planned and had support at the highest level. The President, Vicente Fox, sent a special video message and Juan Carlos Murillo, the Presidential Office advisor for government innovation, chaired the day.

The team working for regulatory simplification recognises that citizens cannot exercise their rights or fulfil their obligations, if the messages from government institutions lack clarity. They see Citizen's Language as a tool to improve transparency, quality and efficiency within government.

Although we had the same brief, our talks complemented rather than reiterated. We emphasised our hope that Mexico could learn from the experience of our countries and 'skip' a couple of decades of procrastination and resistance to change.

I quoted the example of Britain's Tax Law rewrite: after many years of saying that they 'wrote as plainly as possible', the Parliamentary Counsel's Office finally had to acknowledge that they could make improvements.

Annetta Cheek from the USA provided good examples of time and money saved: rewriting one form in Canada lifted the compliance rate from 40 % to 95%, while an improved letter is saving the Veterans Benefits Administration several million dollars a year.

We emphasised the value of training, the use of guidelines, and the need to rethink model documents. And we mentioned that final telling mark of success: not one organisation adopting plain language documents had ever reverted to the original style.

The workshop

Around 20 civil servants attended and were very positive in their attitude. Lively interaction is a characteristic (for me) of Mexicans and the workshop was no exception.

A common activity in workshops is re-writing a convoluted text into plainer language. The workshop leader used a variation that I found effective. He used PowerPoint to present a short plain text. And then he gradually reverted to the original. Each new slide showed the text with yet another improvement being 'undone'. To see so clearly how a clear piece of communication could be mangled was salutary.

The manual

A manual written for 'those who write in the Ministry of Public Administration' was ready for the conference and every participant received a copy, as did workshop participants—a good illustration of the co-ordinated planning that lies behind this initiative of the Mexican government.

The 48-page guide contains 3 sections:

- A summary of plain language initiatives in Sweden, Australia, the UK, Canada, the USA and Spain.
- Descriptions of the stages in the writing process with the focus on audience analysis, planning, drafting and revising.
- A style and layout guide covering 16 key points. Each point is explained and illustrated with 'before' and 'after' examples. The key points fall into 4 categories: *words*—simple, precise, essential and positive; *sentences*—short, simple structure; *discourse*—markers, headings, introductions and conclusion; *layout*—lists, tables, diagrams, contents pages.

Citizen's Language Plain language in Mexico

(continued)

Lenguaje Ciudadano

The naming of a new concept is important, and tricky. The Spanish chose *Lenguaje Llano* as their term. *Llano*, of a surface, means flat, smooth, level, open. Figuratively it means open, frank, plain and simple.

I wondered why Mexico had not adopted the same term. The term, Citizen's Language, however, reflects the origin of the movement. The initiative stems from the Government's Good Government Agenda and is part of the strategy to transform itself into a citizen-driven government, responsive to citizens and focused on results. It is an internal campaign and Citizen's Language is seen as a tool to help civil servants embrace the cultural shift.

In the wider community the term may ring less clearly.

The Mexican way

The Mexicans have looked worldwide for best practice and selected an approach they believe will work in their context.

They, like the Swedes, are starting at the top. This is a government issue—not a people's movement. Conferences, video conferences and workshops are spreading the word throughout the Ministry of Public Administration. As Britain did in the 1980s, they are eliminating regulations and have a moratorium on new ones; there's a 25% reduction to date and many others have been standardised between departments. Training trainers will start in February, so future regulations should be drafted on plain language principles.

They are making full use of technology (although they must recognise that the vast majority of the population has no access to computers and the internet). Every participant at the conference received a CD-ROM of the presentations and there's been a very positive response to their website, launched in December: <www.lenguajeciudadano.gob.mx>

Look out for the Mexican 'clear language' awards and their own standard. Both of these ideas, mentioned during the conference, struck a chord. The Mexicans hope to externally verify documents, as happens in the UK through non-government organisations such as Plain Language Commission and Plain English Campaign Ltd. And they are working on a contest for the best documents of 2005.

Plain language is a way of thinking. Editing can improve a document, but the best documents place the reader at the centre of the complete decision-making process. Getting that message across is difficult. The sound bites—avoid the passive, use familiar words, be positive—are remembered more strongly than the fundamental message.

© M J St John 2005
maggiejo@miraflor.freemove.co.uk

Maggie Jo St John graduated in Chemistry, has an MSc in Teaching English for Specific Purposes (TESP) and an MBA. She taught in science in South America, and lectured in ESP at Aston University. She has worked freelance since 1987 running ESP and Communication Skills courses for scientists and business people overseas and in the UK, training teachers, writing teaching materials, and publishing books and articles. Her current commitments include:

- running a voluntary project in English and community eco-tourism on the Miraflor Nature Reserve in Nicaragua;
- teaching professional writing skills courses for UK businesses and Government Agencies for Plain Language Commission;
- promoting fair trade.

Hospital signage scandal

From *The Sydney Morning Herald*, Monday 18 April 2005.

The hospital signage scandal deepens (Column 8, last week). "My doctor recently directed me to outpatients at St Vincent's Hospital," Roslyn Forest says. "I asked at reception for 'outpatients' and followed their directions, but I couldn't find it. Finally, with much eye rolling and patronizing, a woman held my hand and dragged me there. You know what the sign above the door said? 'Ambulatory Care'."

Reprinted with permission from 'Column 8', The Sydney Morning Herald.

Plain language in Spain

Daniel Cassany, Spain

Lecturer, Universitat Pompeu Fabra, Barcelona, Spain

For thirty years Spain has been striving to improve its communicative style to create a democratic community proud of its linguistic and cultural diversity. Progress has been good but there is still much to do.

This article reviews the communicative style Spain inherited from the dictatorship, Spain's conception of plain language, the goals it set for the four most widely used languages, and the results achieved.

Spain has seen enormous changes since the dictatorship ended in the 1970s. In these thirty years Spain has moved from a dictatorship to a democracy and from a centralised government to one closely resembling a federation, with autonomous parliaments and administrations. Spain joined NATO, the European Council, the European Union, and adopted the euro.

Languages

While Spanish remains the country's *lingua franca*, Spain recognises four co-official languages:

1. Aranese in a small valley in the Pyrenees
2. Basque in the Basque Country and Navarre
3. Catalan in Catalonia, the Balearic Islands and Valencia (where it is known as "Valencian")
4. Galician in Galicia.

The academic community further recognises languages such as Asturian and the Aragonese Faba and languages imported by immigrants even though they don't have official status.

Nearly 42% of Spaniards are bilingual or live in bilingual communities with autonomous governments, parliaments and administrations. It is not easy to summarise plain language in Spain because the situation has yet to be studied as a whole. In writing this article I have relied on information given to me by experts¹.

Our inherited style

From the dictatorship

The administration's communicative discourse during the dictatorship was unwieldy, obscure and

written exclusively in Spanish. This discourse featured:

- Syntax that tended towards long, complicated sentences with much subordination
- Vocabulary that included words rarely used in everyday spoken and written language
- Documents that were organised into lengthy sections and paragraphs with rigid and obsolete structures
- Idioms that were flattering for civil servants and humiliating for citizens.

Civil servants had to be flattered to get them to carry out their normal duties with addresses such as: "according to your faithful knowledge and understanding (*según su leal saber y entender*)"; "... grace which is hoped to be obtained through your just action, most illustrious One (*gracia que espera obtener del recto proceder de Vuestra Ilustrísima*)"; "my very Lord (*muy Señor mío*)".

Citizens on the other hand had to plead (*ruega*) with and supplicate (*suplica*) to officials to give them the rights they were due.

While we all recognised this style was artificial, old-fashioned, and often incomprehensible, we had to use it when dealing with the administration.

From earlier times

Certain characteristics of our inherited style predate the dictatorship and have legal and socio-cultural roots.

From 1881 to 1985 the law required court judgments to introduce every fact and ground for a decision with the gerunds *resultando* (being) and *considerando* (considering). Doing so resulted in a very long subordinate clause with no full stops; a judgment could be delivered in a single sentence several pages long. This style influenced all administrative and legal writing even though it is rarely used in spoken Spanish. Solemn written forms of address reflected a view of society which was both hierarchical and class-oriented. For example, *Vuestra Ilustrísima* (Your Most Illustrious One); *Vuestra Señoría* (Your Lordship/Ladyship); *Excelentísimo Señor* (Most Excellent Lord); *Muy Ilustre Señor Don* (Very Illustrious Sir Lord). Nowadays, as we all have the same legal status, the law recommends using *usted* (you) and *señor/a* (Mr/Ms). The old-fashioned forms, however, are occasionally still found.

Democratic aims

With political change, Spanish institutions began to adapt their language to the needs of a modern democratic society just as our neighbours had done. This marked the birth of the effort to develop a communication style that could better reflect citizens'

Plain language in Spain

(continued)

rights and obligations. The starting point for each of the four main languages was very different.

Spanish

Language change involved dealing with the unwieldiness of a writing tradition consolidated over centuries. Linguistic alternatives that were closer to the common language needed to be developed, on many levels (syntax, terminology and discourse). It was also necessary to change people's attitudes and values. Many people honestly believed that complex, incomprehensible text transmitted relevant information better than simple, clear text, possibly because it sounded more formal and therefore more appropriate. Besides, they were simply more used to reading and writing this unwieldy style, and so changing this habit was even more of a challenge.

Basque, Catalan and Galician

These languages faced a double challenge. Firstly, they needed to create a register. Having been outlawed for most of the 20th century, these languages effectively lacked a register because they had rarely been used for contemporary public communication. Secondly, they needed to struggle against the influence of Spanish's obscure style and against the process of linguistic substitution.

The result has been that these languages have focused on designing a new style suited to the needs of their recently regained autonomous administrations. The basic principles guiding their efforts are:

1. to respect the inherent characteristics of each language as spoken and written;
2. to recover their historical traditions (whether medieval, renaissance or literary); and
3. to adopt international standards, including the use of plain language.

The creation of plain Catalan, Basque and Galician has gone hand in hand with linguistic "normalisation". According to Spanish sociolinguistics, normalisation revives the use of a language and is thus the opposite of linguistic "substitution". This probably explains why in many ways plain language has developed much more quickly in these three languages than in Spanish.

Using language simplification as a tool for linguistic normalisation has not always achieved its goal. For example, judges, solicitors and barristers translate Catalan model documents into Spanish instead of using them as written. Basque institutions are considering publishing their manuals in Spanish as well as Basque because their efforts at simplified Basque have failed to change the habits of Spanish speakers.

Language typology

Spanish, Catalan and Galician are Indo-European Romance languages. The approach to designing a plain style for these languages is not so different from that needed for French or even English. Basque, however, comes from a different linguistic family and has different lexical and syntactical structures from Roman or Indo-European languages. So developing a plain style for it requires a different approach.

Despite historical and typological differences, many principles for plain writing apply to all four languages. For example, writers are asked to avoid using nominalisations, passive verbs, verbal paraphrases, abstract words, long sentences, and excessive subordination. These recommendations are reflected in the spoken form of each of the four languages.

The concept of plain language

There have not been many campaigns focused exclusively on simplification in Spain. The reason is that plain language—though important—is seen to be only an element of a more ambitious and relevant purpose: to create a register that satisfies citizens' communicative needs in a democratic community. Other features of this purpose are:

1. Creating a modern linguistic tool that:
 - allows people to express any idea in any of the four languages;
 - avoids the colonising influences of one language over another. For example, English over all the four languages, Spanish and French over Catalan and Basque, and Spanish and Portuguese over Galician; and
 - is in keeping with the tradition and idiosyncrasies of each language.

I believe that this public register should meet the dynamic demands of language (neology) while filtering out interference from other languages such as barbarisms, syntactic calques (direct, word-by-word translations) and code switching. How can *software*, *impeachment* or *tsunami* be said in each of these four languages? In answer to this, the following agencies maintain plurilingual terminological data bases and on-line computer tools:

- Euskaterm for Basque <www1.euskadi.net/euskalterm/indice_c.htm>
- Termcat for Catalan <www.termcat.net>
- Termigal for Galician <www.cirp.es/>
- *Real Academia de la Lengua Española* for Spanish <www.rae.es>.

2. Creating a respectful language, which does not discriminate on the basis of sex, race, sexual orientation, ideology or religion.

Examples of changes to avoid sexual discrimination include:

- job descriptions: *personal sanitario* (health personnel) instead of *medicos* (doctors, m) and *infermeras* (nurses, f);
 - forms of address: *señora* (equivalent to the English Ms) instead of *señorita* (Miss) which was used to refer to a girl and an unmarried woman; and
 - married women: continue to use their maiden name after marriage. Thus *María Solís* who marries *Pedro Pérez* would not be called *María Pérez* or *María Solís de Pérez*.
3. Encouraging communicative practices which respect language plurality by defending citizens' right to speak their own languages and to understand other languages. Each community has enacted regulations on language use. These are designed to promote a linguistic register which is both useful and modern.

In this context, plain language is seen as an important tool for citizens to exercise their rights and obligations. Plain language:

- improves citizens' ability to read and write;
- increases their understanding of democracy, and therefore can reduce corruption and marginalisation; and
- changes the values and communicative habits of the population, which are remnants of the dictatorship.

There are also valid economic reasons for using plain language such as reducing reading and production time, reducing costs and errors, and increasing efficiency. Although important, these economic reasons are neither essential nor urgent.

Campaigns and results

The communities run campaigns to change peoples' attitudes and values on language use and their institutions were the first to adopt simplified forms that used modern language. Recently some private banks and service providers have followed this example with varying degrees of success.

Public sector

Governments and local administrations (town and county councils) were the first to change the style of their discourse with citizens. Various public agencies such as ministries, schools for public administration, ad hoc language services, and language schools offered recommendations for simpler discourse and published simplified forms. Since the

1980s specialised journals on administrative language have been published. Today the following journals provide an important reference on the subject and include the legal framework, simplified models of documents (structure, phraseology, format), grammar and vocabulary (discussions about rules, terminology, neology, place-names), translation (linguistic interference), writing techniques and bibliography:

- in Catalan: *Llengua i Administració*, 1982
- in Galician: *Revista de Administración Galega*, 1985; *Boletín de Administración e Lingua*
- in Basque: *Administrazioa Euskaraz*, 1993.

During the 1990s, manuals were published in all four languages that greatly influenced administrative language. In 1991 and 1994 the Ministry of Public Administrations published in Spanish the *Manual de estilo del lenguaje administrativo* and *Manual de Documentos Administrativos* <www.igsap.map.es/sgpro/documentos/sgprg.htm#instru>. Similar manuals were published in 1991 in Catalan and Galician and in 1994 for Basque. Like the Spanish manuals these have since been updated and republished.

Bureaucrats have learned how to write better from training courses based on the manuals' recommendations and from international plain language specialists. Ensuring familiarity with the linguistic register appropriate for the public administration has become an essential part of civil service training programmes. The following websites publish the manuals and other information about each language:

- Basque: <www.ivap.com> by the Basque Institute of Public Administration
- Catalan: <www.eapc.es> by the School of Public Administration of Catalonia
- Galician: <www.egap.xunta.es> by the Galician School of Public Administration
- Spanish: <www.inap.map.es> by the *Instituto Nacional de la Administración Pública*.

Legal writing

Here language renewal has probably been much slower, although notable efforts have also been made. Several institutions, including the Autonomous Parliaments and the Ministries of Justice, have established language services and set up networks of consultants to correct, edit and translate legal documents. Manuals on how to simplify rules, laws and technical documents have gradually improved the clarity of legal documents. The plurilingual journal, *Llengua I Dret*, has been gathering research on legal language usage since 1983 <www.eapc.es/rld.html>.

Plain language in Spain

(continued)

The Spanish Government has passed rules to simplify the style of judgments, and the official associations of lawyers have published some model forms for legal proceedings. Despite these efforts most Court documents are still written in obscure language. This may be why the Ministry of Justice of the central Government recently set up the Committee for Modernising Legal Language.

Other institutions

Public institutions such as universities, town councils, labour unions and chambers of commerce have actively contributed to creating and publishing plain language. Many of these organisations employ language experts to draw up, correct and translate their documents according to their style rules. Noteworthy examples are the universities of Barcelona and Santiago de Compostela which have published style manuals and standard-form documents. Although these manuals and documents are aimed specifically at academics they are useful to other groups and some are available online. Each year the University of Barcelona gives an award to the organisation which has communicated best with its community. Some town councils' "quality-of-service" campaigns include improving their oral and written communication.

Private sector

The demand for a plain language has increased as people's attitudes and values have changed. The public increasingly expects industry to communicate more clearly and efficiently having seen that public institutions are doing so. Companies are responding to this demand because they want to retain and expand their customer base, not because they want to promote democratic renewal. Banks such as La Caixa, Banc de Sabadell and Gipuzkoa Donostia Kutxa have style manuals and model forms to encourage simplification and clarity. Utility companies have redesigned some of their documents including invoices, contracts, rules and regulations to make them easier to read and understand.

Style manuals

These are one of the most important tools for improving language. Both the private and public sectors use style manuals to set down guidelines for clear writing. Manuals are published in print and on the web. They have sections on grammar, punctuation, capitalisation, and preferred vocabulary, and often include models of commonly-used documents such as the most usual internal (reports, memos) and external (correspondence) documents;

technical documents (reports, research protocols); administrative documents (official letters and requests); and courtesy documents (invitations, notices, replies to complaints). All of these standard form documents tend to some extent to abide by and promote international principles of plain language.

Conclusion

Spanish communication is gradually becoming more comprehensible. People are coming to understand that they need not use complicated or obscure language to make what they have to say sound important. Similarly, when people do not understand something, they no longer assume they are ignorant; instead they call on the author to write more clearly.

For example, the internet is further pushing organisations to simplify the way they communicate with their customers. Interactivity depends on easy-to-understand, simple forms. Consequently mutual comprehension is increasing.

Much remains to do. Old-fashioned, incomprehensible discourse persists in the courts, in legal contracts, and in many organisations' rules and regulations. New challenges continue to arise because communication is dynamic, but plain language is taking hold because Spaniards want to understand their rights to euthanasia and justice, and read about scientific developments in medicine and the environment.

© D Cassany 2005
daniel.cassany@upf.edu
<www.upf.edu/dtf/personal/danielcass/index.htm>

¹ I would like to thank Carles Duarte, Cristina Gelpí, Lisa Gilbert, Joseba Lozano, Susana Mayo, Mònica Pereña, Ramón Sarmiento and Montserrat Veiga.

Daniel Cassany is a lecturer on Catalan Language and Discourse Analysis at the Universitat Pompeu Fabra in Barcelona. He researches literacy on the Internet, in academia and in scientific writing,



taking a critical viewpoint. Daniel has published books and around 50 articles on these subjects in Catalan, Spanish, English and Portuguese. Daniel has worked with the governments of Catalunya, Galicia, Spain, Argentina, Chile and Mexico on education, teacher training and curriculum. He has been a visiting professor at several universities in Spain, Italy, Japan and Latin America.

Plain English in Asia

Vijay K Bhatia

*Professor, Department of English and Communication,
City University of Hong Kong*

Although the plain English movement is well established in countries such as the UK, the USA and Australia, it has apparently not gained a strong presence in many Asian countries, including India, China, Singapore and Hong Kong. This does not mean that plain English practices have not influenced legal writing. However, public and bureaucratic writing show a distinct lack of awareness of plain English.

This paper draws on the findings of an international project entitled Generic Integrity in Legal Discourse in Multilingual and Multicultural Contexts, funded by the Research Grants Council under their Competitive Earmarked Research grant (No. CityU1108/99H).

Legislative drafting

The writing style of legislation in Asia is generally plainer than public and bureaucratic writing. This is surprising because the style of legislative drafting was considered to be resistant to change. Perhaps the plainer style is explained by the fact that some Asian countries appropriated the content and style of their new laws from the developed democracies of the west. This is particularly so in international trade and commerce, where businesses crossing national borders require laws to be accessible and consistent globally.

Often an Asian country improves and adds to a law it has appropriated. Take for example the grounds for challenging the appointment of an arbitrator in the laws of India, Sri Lanka and People's Republic of China, which were adapted from Article 12 of the United Nation's UNCITRAL model law.

UNCITRAL: Article 12 — Grounds for Challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

This section is not particularly difficult to understand and, by the standards of traditional legislative drafting, may even be considered easy, partly because it has been divided into separate subsections: one requiring a potential arbitrator to voluntarily disclose information that may give rise to doubts about his impartiality or independence; the other setting out the procedure for challenging an arbitrator's appointment.

Let us now see how UNCITRAL's Article 12 has been rewritten in three Asian countries.

India: The Arbitration and Conciliation Ordinance (1996)

Article 12 — Grounds for Challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.
- (2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if —
 - (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
 - (b) he does not possess the qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

In substance there is no significant difference between the Indian and UNCITRAL provision. But the style of the Indian version is more accessible due to the use of textual-mapping devices to spread the information load over four sub-sections instead of just two. The *Singapore Arbitration Act, 2001*, Section (14) (Grounds for challenge) is almost identical to

Plain language in Asia

(continued)

the Indian section. Perhaps the Singaporeans borrowed from the Indians.

Sri Lanka: Arbitration Act, 1995

10. Grounds for challenge ...

- (1) ...
- (2) ...
- (3) A party who seeks to challenge an arbitrator shall, unless the parties have decided that the decision shall be taken by some other person, first do so before the arbitral tribunal, within thirty days of his becoming aware of the circumstances which give rise to doubts about the arbitrator's impartiality or independence.
- (4) Where a party who makes an application to an arbitral tribunal under this section, is dissatisfied with the order of the tribunal on such application, he may within thirty days of the receipt of the decision, appeal from that order to the High Court.

The first two sub-sections were borrowed from UNCITRAL but the second two are original additions. The first specifies the procedure for challenging an arbitrator if doubt exists as to his impartiality and independence. The second allows a party to appeal to the High Court if they feel dissatisfied with the outcome of a challenge. The additional provisions do not compromise comprehensibility because the drafter has carefully controlled the information load.

Compare these additional provisions with the section below from the People's Republic of China, a country with a civil code system.

China: The Arbitration Law (1994)

Article 34

An arbitrator shall withdraw from serving in the tribunal when his case is one of the following, and the litigants also have the right to present a withdrawal request:

- (1) where he is one of the litigants in the arbitration, or he is a close relative of any one litigant, or a relative of the attorney;
- (2) where he has a vital interest in the arbitration;
- (3) where he is related to the litigants, or their attorneys, in other respects in the case and the relationship may affect an impartial arbitration; or

- (4) where he has had private meetings with the litigants or with their attorneys, or when he has accepted the invitation of the litigants of the attorneys, to dine, or accepted their gifts.

Like the provisions of the Asian countries considered above, the Chinese provision uses textual-mapping devices to spread the information load, thereby making the text more accessible to its intended readers. However, the Chinese provision goes one step further by specifying examples of unacceptable bias such as the arbitrator having a close relationship with a litigant, or dining with litigants.

These three examples show that despite there having been no visible campaigns for clear legislative writing in Asia, legislators are using plain English strategies.

Initiatives to help the public

Most Asian countries have introduced simpler versions of laws to increase public awareness of new and existing laws. The Law Society of Singapore's website has a section where the public can read simplified versions of many Singaporean laws in English including topics like 'Giving Evidence', 'Road Accidents', 'Arrest & Bail', 'Buying & Selling A House', 'Workers' Compensation', 'Making A Will', and 'Divorce'. But the simplified versions are not original or authentic versions of the legislation. Thus the website gives this disclaimer:

This segment contains only general and basic information on the law... provided as a public service by The Law Society of Singapore... However, neither the Society nor their representatives accept any responsibility for errors or omissions in the write-ups.

Similar initiatives have been taken in other countries such as India and Hong Kong too. Here is an example of an Indian tax law that has been made more accessible for the public.

Salary Tax

Money which you earn from different sources is taxed differently. So if you are a salary earner, your salary income to be taxed will be calculated in a different way from gains. The term "Salaries" includes remuneration in any form for personal service, under an expressed or implied contract of employment or service. Section 17 of Income Tax Act defines Salary to include:

- Wages
- Pensions or Annuities
- Gratuities
- Advance of Salary

- Any cess, commission, perquisites or profits in lieu of or in addition to salary or wages.
- Any encashment of leave salary.
- Any amount of credit to provident fund of employee to the extent it is taxable.

Therefore “salary” includes basic salary, encashment of leave salary, advance of salary, arrears of salary, various allowances such as dearness allowance, entertainment allowance, house rent allowance, conveyance allowance and also includes perquisites by way of free housing, free car, free schooling for children of employees, etc.

Drafting Guidelines

Some countries have published plain English alternatives for archaic expressions to help lawyers write better legal English. The Singapore Academy of Law’s list contains some of the following examples:

<i>Actus Reus</i>	— guilty act
<i>Bona Fide</i>	— in good faith
<i>De jure</i>	— by right/ as a matter of law
<i>Ex Parte</i>	— by one party only
<i>Habeas Corpus</i>	— produce the person/ for the production of the person
<i>Inter Alia</i>	— among other things
<i>Mens Rea</i>	— guilty mind
<i>Obiter Dictum</i>	— observations made in a judgment other than on the point decided
<i>Ratio Decidendi</i>	— point decided
<i>Sine Die</i>	— without any fixed date.

Judicial writing

Let me take a section from a Malaysian court judgment.

Dalam Mahkamah Rayuan Malaysia
(Rayuan Jenayah No W-05-10-2000)

Balachandran (Appellant) and
Public Prosecutor (Respondent)

The result is that the force of the evidence adduced must be such that, if unrebutted, it is sufficient to induce the Court to believe in the existence of the facts stated in the charge or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts exist or did happen. On the other hand if a prima facie case has not been made out it means that there is no material evidence which can be believed in the sense as described earlier. In order to make a finding either way the Court must, at the close of the case for the prosecution, undertake a positive evaluation of the credibility and reliability of all the evidence adduced so as to determine whether the elements of the offence have been established.

This is just one illustration of the typical traditional style that the judiciary persists in using in some Commonwealth countries. While legislation in Asia is gradually changing, probably because of internationalisation, bureaucratic and other forms of legal writing continue to adhere to the so-called ‘prestigious’ literary style of a bygone era. This adherence seriously undermines the accessibility of the message to ordinary people. The *Deccan Herald* correctly summarized the position on August 10, 2003:

English is not our first language in India. But the union government, the judiciary and the state governments at the higher levels conduct their business in English... But no attempt seems to have been made... to simplify the English used by government agencies. The Plain English Movement seems to have left the shores of India untouched.

© V Bhatia 2005
enbhatia@cityu.edu.hk

Dr. Vijay Bhatia is a Professor in English at the City University of Hong Kong. His main areas of research interest are applied genre analysis of academic and professional discourse, including legal, business, newspaper, advertising, and other promotional genres; ESP (Theory and Practice); simplification of legal and other public documents; and cross-cultural and disciplinary variation in professional discourse. He has published in several international journals associated with these areas. His books Analysing Genre (Longman) and Worlds of Written Discourse (Continuum) are widely used by researchers interested in genre theory and practice.



Legal English in Japan: *a translator's perspective*

Kyal Hill

Legal translator
Tokyo, Japan

Plain legal English is rare in Japan. Most legal translators and Japanese lawyers dealing with English texts are inured to traditional legal English. Textbooks written by Japanese authors about legal English perpetuate poor legal writing. The outlook for legal English here is bleak: a government initiative to translate Japanese laws into English is heading toward authorizing and effectively mandating legalese, including the dreaded "shall."

Translators and Japanese lawyers perpetuate legalese

Post-war Japan has made noticeable efforts toward modernizing legal Japanese. While legal Japanese is still often identifiable as such, there is not the huge gap between ordinary and legal Japanese that there is in English. But a tradition of using traditional legal English (legalese) has grown up among Japanese-to-English (J-to-E) translators and Japanese lawyers. They do not seem to realize that plain English serves the purpose of legal translation better—clearly and precisely creating the same legal relationships in English as are created in Japanese.

Unfortunately, as long as examples of legalese appear to outnumber plain English examples, these translators and lawyers will stay within what they perceive to be the safer confines of the traditional majority. Few will question the reasons underlying this way of writing. Instead they will trust that those who wrote the examples must have known what they were doing.

At an international J-to-E translation conference held last year in Yokohama, a speaker showed just how weak the presence of plain legal English is in Japan. According to her, "[f]or a while there was a movement toward making legal English more colloquial ... but because I haven't heard about it recently, it mustn't be around any more."

The handout included a "model" English agreement written in pure legalese, a model of everything self-respecting drafters try to avoid. Thankfully, a lawyer-translator present remarked how she and her colleagues would be embarrassed to use such language.

Books on legal writing perpetuate legalese

The problem is worsened, however, by authors of Japanese books on legal English giving tacit support to this legalese mindset. Take this example of an English purchase agreement in a popular Japanese book, *The Basics of English Contracts* [Eibun Keiyakusho no Kiso Chishiki]:

WITNESSETH:

WHEREAS, KOBAYASHI is desirous of purchasing requirements of certain products from MIYANO hereinafter more particularly specified (hereinafter referred to as the "Products") and reselling them to MORI hereinafter referred to ;

...

NOW, THEREFORE, in consideration of covenants and agreements herein contained, the parties hereto hereby agree as follows:

After stating that "[t]he winds of Plain English are blowing through the world of English contracts, and it seems that in drafting contracts, young lawyers are often choosing not to use Middle English," the book presents this "plain English" rewrite that borders on satire:

WHEREAS, KOBAYASHI is desirous of purchasing requirements of certain products from MIYANO hereinafter more particularly specified (hereinafter referred to as the "Products") and reselling them to MORI hereinafter referred to ;

...

NOW, THEREFORE, the parties hereto hereby agree as follows:

Translators need to look beyond Japanese books on legal English if they are to translate well. If they read books by quality commentators on legal English, they would know the above mumbo-jumbo should be avoided.

The Japanese authors merely describe what is commonly found in legal texts, rather than describe what constitutes good, clear legal English. They certainly do not explain how to write it. The problem is that native Japanese writers and translators use these books as guides on how to write in Eng-

lish, mistakenly assuming that if the language is good enough for English agreements, it must be good enough for English translations. Consider these examples from another popular reference, *Reading and Writing English Contracts* [Jissen—Eibun Keiyakusho no Yomikata & Tsukurikata]:

the following terms shall have the respective meanings set forth below

MIYANO shall be liable for, indemnify and hold KOBAYASHI and/or MORI, including their officers, directors, employees, or agents, harmless from all damages, claims, losses, expenses and/or reasonable attorneys' fees including, but not limited to, suits or claims for damages for death, human bodily injury, or other property resulting from any defects of the shipments of the Products ...

The sloppy use of *shall*, the archaic *set forth*, the pretentious overcapitalisation, the ambiguous and much vilified *and/or*, and the "stylistically and substantively indefensible"¹ *indemnify and hold KOBAYASHI ... harmless from* are enough to make careful drafters cringe. Yet, since not a word of warning is mentioned in these books, they impart a false sense of security, inculcate imprecision, and inure readers to poor writing. For these reasons translators should wean themselves from them.

Precision or imitation?

Translators should translate, not imitate. Often legal terms in translations are incorrect or unjustified translations of plain Japanese terms. Phrases like *made and entered into* and *by and between* in an English translation of a Japanese agreement reveal the translator's bias toward imitating flawed precedents, because Japanese agreements do not contain any such doublets. Likewise, Japanese agreements say *2 weeks*, not *two (2) weeks* and do not usually have *hereby* or any other *here-* or *there-* words.

But translators and Japanese lawyers are caught up in the myth of precision created by this type of legalese. Unjustifiably polluting translations with *said* or the illiterate *such* (using it to mean *the* or *that*) is another problem. The most serious problem, however, concerns words of authority. These words are crucial to precise legal writing, yet the Japanese books brush over them with brief and simplistic explanations, creating a dangerous impression of infallibility.

For instance, the only discussion in *Reading and Writing English Contracts* on the uses of *shall* and *may* is this:

In contracts, *shall* indicates the duty of "to have to do," the same as *must*. Other terms used to indicate a duty are, for example, *be liable to* and *be responsible for*. *Must* and *can* are usually not used in contracts.

May indicates the right of "it's okay to do." Other phrases used to indicate a right are *be entitled to* and *shall have the right to*.

The Handbook for Drafting Contracts in English [Eibun Keiyakusho Drafting Handbook] confusingly suggests creating a duty by using *shall*, *will*, *be obligated to*, or *undertake to*, giving poor examples such as "JEX shall be responsible for providing direct support with its end users."

The Basics of English Contracts wisely states "it is better not to use *shall* with a negative subject" but then uses this formulation in its "model" license agreement: "[n]o disclosure shall be governed by this Article to the extent that the information disclosed shall be: (a) publicly known"

Not only do such comments stand in stark contrast to the length and detail these words are dealt with in English books, but after reading them, you wonder how these books can then go on to give examples of *shall* in so many different senses, such as these from *Reading and Writing English Contracts*:

Governing Law. The construction, interpretation, validity and performance thereof shall be governed by the laws of _____ without regard to principles of conflicts of laws.

This agreement shall become effective on the date of this Agreement and shall [be] valid for five (5) years.

Neither party hereto shall be liable for failure to perform its obligations under this Agreement when caused by acts of God [or any of the other 24 events listed].

These examples demonstrate the false imperative usage of *shall* and are what modern drafters would describe as nonsense. The Japanese books on legal English don't discuss the false imperative.

Disregarding the basics with the "proviso fragment"

An error peculiar to J-to-E translators is how they create sentence fragments by placing *Provided*, *however*, *that ...* at the beginning of sentences. This is a knee-jerk translation of the Japanese word *tadashi*, which creates the Japanese proviso. Translators fall into this trap partly because *tadashi* comes at the beginning of the Japanese sentence. But that is no excuse for ending up with incomplete sentences such as this from *The Handbook for Drafting Contracts in English*:

Provided, however, that neither party shall be prohibited from making disclosures to the extent required by law.

Legal English in Japan: a translator's perspective

(continued)

The Basics of English Contracts even sanctions the proviso fragment, saying "you can also end the [previous] sentence with a period and begin [the next one] with 'Provided'" *How to Write Contracts in English [Eibun Keiyakusho no Kakikata]* confuses the issue by stating "you occasionally come across drafts that use *however* or *but*, but *provided*, *however*, *that* is the more established phrase."

Poor grammar aside, no Japanese authors I have read even mention that the proviso itself should be avoided in the interests of precision and clarity.

English translations of Japanese laws and the future for legal English in Japan

The outlook for clear legal writing in Japan is not good. The Japanese government is translating major Japanese laws into English, an initiative which, done properly, would help lawyers, translators, and business. But it seems the translations will end up in legalese.

The Consultation Group on Internationalization, a group of experts involved in the translations, says that a Japanese term could be translated as *shall apply to* or *shall apply mutatis mutandis to*, depending on the context. The group seems blissfully unaware, however, that *shall* is derided for its potential

ambiguity by case law and legal experts in English-language jurisdictions; that *mutatis mutandis*, being Latin, is not going to be widely understood; and that both are poor choices when better options exist.

Plain English offers better, clearer alternatives that the Consultation Group, J-to-E translators, and Japanese lawyers would do well to use. If they persist in using outdated legal English, they will only hold Japan back.

© K Hill 2005
kyal.hill@mhmjapan.com

¹ Bryan A. Garner, *A Dictionary of Modern Legal Usage* (2d Ed. 1995) 436

Kyal Hill did a 2-year masters degree in Japanese interpreting and translation at the University of Queensland, Australia. Halfway through that, he obtained his translator's qualification from the Australian accreditation authority and freelanced as a translator for 18 months before moving to Japan. Since then he has been working in Tokyo for 2 years as a translator in the Japanese law firm Mori Hamada & Matsumoto.



Silly signage

From *The Sydney Morning Herald*, Friday 22 April 2005.

Paul Neary, of Rouse Hill, says it can take some time before building managers settle on the correct wording of a sign. "When the train line was first opened at Sydney Airport," he writes, "the buttons in the lift were labeled Concourse 1 and Concourse 2. Fortunately, someone realized that this was silly. The labels now read Planes and Trains."

Reprinted with permission from 'Column 8', *The Sydney Morning Herald*.

Plain English in Singapore: preparing the next generation of lawyers

Lei-Theng Lim

Deputy Director, Legal Writing Programme,
Faculty of Law, National University of Singapore

English is the official language of Singapore. We are not a country that regards English as a foreign language. Yet Singaporeans cannot strictly be regarded as native users of English. The multi-cultural environment affects how we acquire and use language. Plain English in Singapore is a struggle between ensuring that language use is grammatical, and discouraging arcane, pompous verbiage. This article provides a brief overview of the plain English movement in Singapore and focuses on the efforts being made to promote plain English through the law school.

This issue of *Clarity* focuses on how users of English as a foreign language are faring. Singaporeans do not consider English to be a foreign language. Yet it is sufficiently foreign for Singaporeans to face problems when they use the language.

English in legal practice

Singapore has four official languages: English, Malay, Mandarin, and Tamil. English is the language of business and administration. Almost all Singaporeans understand or speak English to some degree. All lawyers, judges, civil servants and academics speak and write in English. Most even think in English. The use of English is so pervasive that the government has taken steps to preserve the cultural heritage by mandating “mother tongue” (native language) classes in school. Therefore, Singapore does not regard English as a foreign language.

Despite this, not all Singaporeans have the same level of proficiency in English. While this may also be true of countries where English is a native language, legal practitioners would usually be proficient in written and spoken English as this is a necessary tool of the trade. Unfortunately this is not true for Singapore, where some members of the legal community have not mastered English grammar. The proportion of such lawyers is small but significant enough for the judiciary and profession to complain about it.

Singapore’s legal system has its roots in the British Empire. Although we have been independent for more than 30 years, we are still trying to cut the

apron strings. We still rely on English common law, so lawyers must read and apply English cases. Over the last decade, we have been increasingly referring to Commonwealth decisions—mainly from Australia and Canada. But the predominant source of case law remains England. And in Singapore there is a common misconception that good lawyerly writing must be the same as much of it used to be in England—that is, complex, convoluted, and liberally sprinkled with qualifications and indirect references.

Couple this fondness for convoluted writing with poor grammar, and you have a picture of some of the worst writing that the legal profession can produce. Admittedly, it is hard to gather evidence of such poor writing. My impression is formed from reading other lawyers’ submissions and correspondence, and the time I served as a law clerk for the Judiciary, when I read submissions to the Court of Appeal. Most lawyers and judges that I have spoken to about this share my view.

The plain English movement

It is hard to pinpoint a particular starting place for the plain English movement in Singapore. Suffice it to say that today, the use of plain English in legal practice is promoted and encouraged in several ways.

The first glimmers of interest in plain English began when the Law Society of Singapore ran several workshops on plain English. Then the Board of Legal Education introduced plain English into the Postgraduate Practice Law Course (“PLC”). The PLC is a 5-month fulltime course that culminates in written examinations. It is compulsory for admission to the bar in Singapore. The legal profession in Singapore is a fused profession where there is no distinction between advocates and solicitors. The PLC therefore trains potential advocates and solicitors. In the PLC, Michael Hwang, a respected Senior Counsel (the Singaporean equivalent of a British Queen’s Counsel) introduces students to plain English. Then students learn to draft in small groups supervised by practising lawyers. The drafting classes cover the gamut of legal practice from wills and pleadings to affidavits and agreements.

In 2003, the Chief Justice, Yong Pung How, requested that “changes be made to the terminology and language of the courts in Singapore to make the legal

Plain English in Singapore: preparing the next generation of lawyers

(continued)

process more understandable to the public". A year later, in January 2004, the Singapore Academy of Law's Law Reform Committee released the *Plain English Guide to Latin Expressions* (available online at <www.sal.org.sg>). The Singapore Academy of Law ("SAL") is a body created by statute and governed by a Senate that includes all members of the Judiciary, the Attorney General, the Solicitors General, the Dean of the Law School, and the President of the Law Society. The SAL's functions include providing continuing legal education.

In May 2004, the SAL invited Dr Robert Eagleson to present workshops on *Drafting in Plain English*. Over 150 attended the workshops, including legislative drafters, and there were rave reviews.

The Law School's involvement in plain English

The Faculty of Law in the National University of Singapore is the only institution in Singapore allowed to offer a degree in law that qualifies graduates for entry to the bar. For this reason, there is intense competition for admission to the 4-year undergraduate law degree.

In 2001, the law school implemented a new Core Curriculum programme. A major part of the programme is the Legal Writing Programme, which seeks to develop law students' skills in legal analysis, writing and research. The Legal Writing Programme emphasises plain English writing skills.

The Legal Writing Programme spans the first 2 years of the undergraduate law course. The first year of the programme is the most rigorous and pays most attention to legal writing. In Legal Analysis, Writing and Research ("LAWR"), students begin by reading cases. From reading one case and extracting the rule, students progress to reading several cases and extracting or synthesizing a rule to apply to a particular set of facts. Next, students are introduced to legal research, where they undertake a research project requiring them to develop a research plan, discover the applicable law, formulate arguments, and find support for them. The students present their findings orally, and go on to prepare an appellate moot argument.

Throughout the LAWR course, students receive writing assignments to test their learning. These assignments also serve to teach the elements of good legal writing. They include a case brief, a predictive legal opinion, a client letter, and persuasive written arguments for an appeal. Some assignments consist of rewriting a previous piece of work to reinforce learning points, and to inculcate in students the habit of editing their work.

The mainstay of the first-year LAWR course is its legal writing instructors. Most of the instructors are practitioners or former practitioners with experience in corporate practice or litigation. When marking writing assignments, the instructors take great pains to give constructive feedback. Over the 10 weeks of a semester, a student sees their instructor at least twice for a one-on-one conference on their written work. Instructors often spend an hour, or longer, marking an assignment. Assignments range from 1,500 to 3,000 words.

Early in the LAWR course several classes are devoted to plain English grammar as an introduction to the basics of good writing. The main course text is Richard C. Wydicks's *Plain English for Lawyers*. Supplementary materials are also used. Learning is reinforced by written assignments, feedback and rewriting.

Plain English is also about good organization. This is emphasized in the LAWR course through the rubric of CRuPAC (Conclusion, Rules, Proof, Application, Conclusion) as described by Richard K. Neumann, Jr. in his book *Legal Reasoning and Legal Writing*, another text used in the LAWR course.

The main problems with plain English

The LAWR course hits students in their first week at law school, to prevent the students from developing the habit of relying on Latin phrases and archaic language. Lists of Latin phrases and commonly used legalese are given to students so they have a clear picture of what we discourage.

The main problem for the instructors is not the archaic form of the language used, but grammatical errors mixed into convoluted sentences and paragraphs. I set out below 3 examples of the students' writing. Let me extend my apologies in advance for the headaches these may cause you.

Sample 1

This stand is further supported by Lord Steyn, who in *Cattanach* was said to have expressed his repudiation for the public policy considerations believed to be grounded in the English case of *McFarlane* which disallowed recovery of upbringing costs.

Sample 2

Firstly, when it came to awarding damages for the cost of education, it was assessed whether such an education were to be provided to the children of the family, as seen in *Benarr* where the cost of private education was allowed as the child was born into an upper middle class.

Sample 3

Kirby J.A.'s dicta in *Cattanach* rightfully states that Judges have no authority to adopt arbitrary departures from the basic doctrine of law on the footing of personal beliefs concerned in the form of legal principles asserts the view that Judges should decide a case based on legal principles rather than policy considerations.

Improving the writing is not merely the (relatively) simple task of editing the work. LAWR's student-oriented approach emphasises that students must find their own answers instead of being given them.

For the instructor marking these papers, improving the writing begins with identifying the problem underlying poor construction. The simplest answer would be the student's failure to edit but this would not explain the underlying problem. Having identified the problem, the instructor then has to find a way for the student to identify the underlying problem, and solve it.

Has there been an improvement ?

The Legal Writing Programme is now in its third year, so the pioneer group of students is completing its third year of law school. According to the academic staff, the standard of legal writing has improved. Instructors have tracked the development of their students over each academic year, and noted significant improvements. For example, a student whose first written assignment was incoherent, ended up near the top of the class in first year, and beat more senior students in his second year to win a competition for the best-written appellate arguments. The effect this pioneer batch will have on the legal profession will only be seen after they graduate in July 2006. We are optimistic.

© L Lim 2005
leitheng@nus.edu.sg

Lei-Theng Lim (LL.B. Hons. NUS, LL.M. Harv.) taught at the Faculty of Law, National University of Singapore from 1992 to 1999. After several years as a litigator in private practice, she returned to academia in June 2003 to serve as Deputy Director of the Legal Writing Programme. She has run workshops on teaching law and moot skills in Singapore, Hong Kong, Thailand and Laos, and recently taught a Negotiation Workshop in Vietnam. Lei-Theng coaches the NUS Space Moot Team. She is an accredited mediator with the Singapore Mediation Centre, and editor of a new publication, The Asian Journal on Mediation.



Clarity seminars on clear legal writing

(accredited by the Law Society for CPD)

Mark Adler uses many before-and-after examples to teach the theory and practice of clear, modern, legal writing, covering style, layout, typography, and structure. One handout gives an outline of the lecture, which is interspersed with exercises and discussion; the other gives model answers to the exercises.

The seminars are held on your premises, and you may include as many delegates as you wish, including guests from outside your organisation. The normal size ranges between 4 and 25 delegates.

The full version lasts 5 hours (apart from breaks) and costs £750 + travelling expenses + VAT. But the arrangements are flexible, with shorter versions available.

Contact Mark Adler on
+44 (0)1306 741055
adler@adler.demon.co.uk

Wanted: drafting discussion

- Do you have any helpful drafting tips or techniques that might interest our readers?
- Do you need help with a puzzling drafting problem? Our readers may be able to help.

Please email one of our next guest editors:

Nicole Fernbach at
nicole@juricom.com, or

Edward Caldwell at
edward.caldwell@lawcommission.gsi.gov.uk

ASD simplified technical English

Mike Unwalla

Documentation consultant, Sheffield, UK

This article explains the benefits of using a 'controlled language' to create technical documentation.

English is the international language of the aerospace industry. ASD Simplified Technical English (ASD-STE100) is used in the aircraft industry to ensure that aircraft maintenance instructions are clear and unambiguous. This is especially important for readers who use English as a foreign language. Since the first publication of the specification in 1986, other non-aerospace industries have adopted the principles of ASD-STE100 for their own documentation.

Beyond plain English

Plain English saves industry and commerce millions of dollars every year. Important guidelines for writing plain English include writing *short* sentences and choosing words *appropriate* to the reader.

Words such as *short* and *appropriate* are open to interpretation. English abounds with verbs and nouns that have two or more meanings. Plain English is not sufficient to eradicate ambiguity. A *controlled language* overcomes ambiguity by limiting word use and by specifying permissible grammatical structures. ASD-STE100 (originally called AECMA Simplified English) is an example of a controlled language.

How ASD-STE100 works

ASD-STE100 provides a set of writing rules and a dictionary of words and their meanings. ASD-STE100 limits the number of words that can be used, it allocates each word to a particular part of speech, and it specifies the meaning of each word.

1. Limited number of words

Different words may have a similar meaning. For example, consider the sentence 'Locate the pin in the aperture'. Synonyms for the verb *locate* are *fit, mount, position, place, put, set, situate*. Which one should a writer use? ASD-STE100 specifies *put* to mean, 'to cause something to move or to be in a position'.

Similarly, instead of *deactivate*, choose: *stop, disconnect, or isolate*.

The majority of the ASD-STE100 specifications are in a dictionary of keywords that is sufficiently large to express any technical idea. The dictionary distinguishes between approved words (chosen for their simplicity and common usage) and disapproved words. Approved keywords and examples are in capitals, as shown in Figure 1.

2. Parts of speech

In English, one word may be used in different ways. For example, the word *oil* can be used both as a noun and as a verb:

- The *oil* is contaminated.
- *Oil* the bearings liberally.

For each word, ASD-STE100 specifies how you can use the word. For example, you are allowed to use the word *oil* as a noun, but you are not allowed to use it as a verb.

AECMA SIMPLIFIED ENGLISH			
Keyword (part of speech)	Assigned Meaning/ USE	APPROVED EXAMPLE	Not Acceptable
capable (adj)	CAN (v), APPROVED	THE POWER UNIT CAN SUPPLY 28 VDC. AN APPROVED PERSON MUST DO THE IMPORTANT CHECKS.	The power unit is capable of producing 28 VDC. Vital checks are to be carried out by a capable person.
CAPACITY (n)	The maximum quantity that something can hold or make	THE CAPACITY OF THE FIN FUEL TANK IS 564 LITERS.	

Figure 1. Part of a dictionary page from the AECMA SE specification (now ASD-STE100). Reproduced with the kind permission of ASD.

3. One word, one meaning

In everyday English, a single word can have many different meanings. Usually, we can understand the meaning from the context. For example, the noun *drive* may have more than one meaning:

- The *drive* is faulty. (Context tells us this is a component of a machine.)
- The *drive* is tedious. (Context suggests this is a car journey.)

One word might have different interpretations. For example, the sentence 'Replace the filter' could mean either of the following:

- Put back the filter that you took out.
- Install a new filter.

For each allowed word, ASD-STE100 usually specifies just one meaning. In the case of *install*, ASD-STE100 specifies that it means, 'to remove an item and to install a new or serviceable item'.

For product-specific terms, such as the names of parts, ASD-STE100 recommends that the user adds to the dictionary's word base.

4. Rules for writing text

There are many ways of categorising information. ASD-STE100 uses:

- *Description* to mean explanation, information, or a statement about something.
- *Procedure* to mean an instruction telling someone how to perform a task.

ASD-STE100 has a set of rules that specify how to write text. It does not teach people how to write English; it states that the user should have good writing ability and it assumes that the writer is familiar with the basics of standard English grammar.

Many of the rules incorporate the best-practice guidelines that most technical writers follow anyway. For example:

- Use short sentences. (In ASD-STE100 the recommended maximum is twenty words in a procedural sentence and twenty-five words in a descriptive sentence.)
- Avoid the passive voice.
- Be as specific as possible.

However, some rules are very specific:

- Use the conjunction *that* after subordinate clauses that use verbs such as *make sure* and *show*. For example, write *Make sure that the valve is open*. Do not write: *Make sure the valve is open*.
- Introduce a list item with a dash (hyphen).

- Do not use clusters of more than three nouns. For example, instead of *Runway light connection resistance calibration* write *Calibration of the resistance on a runway light connection*.

ASD-STE100 does not deal with formatting issues such as the typeface or its size, the width of margins, and the form of cross-references.

Compliance

Compliance with ASD-STE100 is sometimes required by contract. For example, the S1000D specification for military vehicles, which defines the layout and format of technical documentation, demands compliance with ASD-STE100. Software tools that help authors to comply with the standard include:

- HyperSE from Tedopres: <www.simplifiedenglish.net>.
- MAXit from Smart Communications, Inc: <www.smartny.com>.
- Boeing SE Checker from Boeing: <www.boeing.com/phantom/sechecker/index.html>.
- Bespoke tools from Mekon: <www.mekon.com>.

Globalisation and ASD-STE100

Although ASD-STE100 was designed for use in the aircraft industry, the principles of a controlled language apply to all technical fields. ASD-STE100 has been modified for many industries, including the automotive, banking, engineering (civil, electrical, and mechanical), retail, software, and telecoms industries.

Globalisation and outsourcing presents a major linguistic challenge. According to John Smart¹, some of the benefits of using a controlled language are:

- Reducing call-centre and product-support costs.
- Training technical people faster.
- Creating legally-defensible technical manuals.
- Reducing the cost and time needed to write technical documentation.

Translators know that to produce high-quality translations, it is important that the original copywriting is precise. Documents that are written using ASD-STE100 or other controlled languages are excellent source material for translation because they are precise.

There can be a further benefit if a translator uses a translation memory (TM) system to help create translations. A TM system is used with documents that are in electronic format. Essentially, it is a database that contains previously translated segments of text. When a new document is translated, each

ASD simplified technical English

(continued)

segment of text is compared with previously translated segments. Good matches are automatically presented to the translator, who can accept, reject or modify them. This methodology greatly improves both the speed of a translation and its consistency.

Discussion

For many years, I have believed in controlling the language that I use in technical documentation. Working with ASD-STE100 has reinforced my belief. I learnt a lot from reading the specification, and although I needed to know about it for a particular project, I feel it was well worth the money in general.

Many of the writing rules are based on best practice but some rules go beyond this, for example, by specifying the number of words in a sentence.

A very few rules are unduly restrictive for some forms of technical writing. For example, the specification does not allow the continuous tenses (also known as progressive tenses or 'ing' - verb form). Thus the sentence *we are working on the XYZ project* would have to be rewritten.

The dictionary is for the aircraft industry, so many terms are not relevant to other domains. While the specification allows for tailoring the dictionary, the rules advise against introducing synonyms. I think that for some types of writing this rule is too restrictive.

A sentence may follow all the rules of grammar and all the rules of ASD-STE100, and still it could be ambiguous. Following the rules blindly is not sufficient—writers must use their intelligence.

For technical and business writers, the specification is a good resource. Not so for writers of marketing and publicity materials because it does not allow for

persuasive language (see my comments in <www.techscribe.co.uk/techw/se.htm>). Would legal writers benefit from using it? I leave that to you to decide.

ASD-STE100 is available from:

- InfoVision Systems Ltd: <www.infovision.co.uk> (GBP 131)
- Air Transport Association (ATA) of America, Inc: <www.air-transport.org> (USD 300).

For more information about the history of ASD-STE100 see <www.simplifiedenglish-aecma.org>

© M Unwalla 2005
mike@techscribe.co.uk
www.techscribe.co.uk

¹ The author would like to thank John Smart from Smart Communications, Inc for providing information about the use of ASD-STE100 outside the aircraft industry.

Mike Unwalla FISTC is a freelance documentation consultant. He writes user guides, online help systems and reference manuals for computer software applications. Many years ago he taught English as a foreign language. His doctoral thesis dealt with how to split very large files in database systems. That combination of language skills, teaching skills and technical ability means that Mike can talk to technical people in their language and then re-present the information for the non-technical readers of the documentation. The British Standards Institution appointed Mike as Principal UK Expert for System Software Documentation in November 2004.



Has “exit” made its exit?

From *The Sydney Morning Herald*, Thursday 14 April 2005.

Dr Barry Williams, of Baulkham Hills, asks if the word “exit” has made its exit. “A sign on a door in a newly built facility in the Children’s Hospital at Westmead reads ‘Emergency egress only’. Perhaps ‘egress’ is an upmarket version.” And probably needlessly confusing for patients and parents whose mother tongue is not English.

Reprinted with permission from ‘Column 8’, The Sydney Morning Herald.

A forensic test of a Pennsylvanian contract

Margaret van Naerssen

Lecturer, Immaculata University, Immaculata,
Pennsylvania, USA

By law, consumer contracts in the State of Pennsylvania have to be "easy to read and understand". When a forensic linguist ran her Clarity magnifying glass over a construction contract she found it failed the test.

US courts accept testimony from forensic linguists about contract language¹. Recently, I analysed the compliance of a construction contract with the

guidelines of the *Pennsylvania Statutes Trade and Commerce (Title 73) Plain Language Consumer Contract Act* (the Plain Language Act). Those guidelines advise on writing contracts that are "easy to read and understand".

The plaintiff consumer's attorney, Max Lieberman, relied on my analysis to try to prove that parts of the contract were "unfair and deceptive" as a consequence of violating the Act's guidelines for readable writing. The case was settled out of court so my report is unrecorded. This article summarises my unreported analysis.

Plain Language Act — readability test

§ 2505. Test of readability.

(a) General rule.

All consumer contracts executed after the effective date of this act shall be written, organized and designed so that they are easy to read and understand.

(b) Language guidelines.

In determining whether a contract meets the requirements of subsection (a), a court shall consider the following language guidelines:

1. The contract should use short words, sentences and paragraphs.
2. The contract should use active verbs.
3. The contract should not use technical legal terms, other than commonly understood legal terms, such as "mortgage," "warranty" and "security interest."
4. The contract should not use Latin and foreign words or any other word whenever its use requires reliance upon an obsolete meaning.
5. If the contract defines words, the words should be defined by using commonly understood meanings.
6. When the contract refers to the parties to the contract, the reference should use personal pronouns, the actual or shortened names of the parties, the terms "seller" and "buyer" or the terms "lender" and "borrower."
7. The contract should not use sentences that contain more than one condition.
8. The contract should not use cross references, except cross references that briefly and clearly describe the substance of the item to which reference is made.
9. The contract should not use sentences with double negatives or exceptions to exceptions.

(c) Visual guidelines

In determining whether a contract meets the requirements of subsection (a), a court shall consider the following guidelines:

- The contract should have type size, line length, column width, margins and spacing between lines and paragraphs that make the contract easy to read.
- The contract should caption sections in boldface type.

The contract should use ink that contrasts with the paper.

A forensic test of a Pennsylvanian contract (continued)

Linguistic analysis

To decide whether the contract was “easy to read and understand” I needed to apply the readability guidelines to the disputed provisions. The difficulty here was that some of the guidelines are vague. I overcame this by referring to appropriate US sources on legal writing and applying my own expertise to specify the vaguer guidelines².

The linguistic evidence took the form of frequency counts. But simply counting the violations of the guidelines would not be much help to the fact-finders (judge and, possibly, jury). They needed to know to what extent the guidelines were violated. Thus, I looked at the linguistic evidence in terms of

- accumulation of violations by sentence and paragraph; and
- clustering of violation types.

Applying the readability guidelines

In my court report I ordered the evidence by the guidelines in the Act. In this article I group the guidelines in five plain language categories: *Length*, *Terminology*, *Syntax*, *Referencing*, and *Visual guidelines*. The guidelines are each followed by a bracketed abbreviation to tie in with the graphs.

The basic unit of analysis was the paragraph as this is the organization a consumer encounters. However I had to count words and sentences as evidence of violations of the guidelines.

Length [LNG]

Guideline 1. The contract should use short words, sentences and paragraphs.

This guideline does not define “short” so I set the following criteria:

- length of paragraphs: best if under 100 words a paragraph
- length of sentences: best if average 20 words a sentence, upper limit 25
- avoidance of extra words such as “and/or” and number doublets such as “twenty-five (25)”
- exclusion of captions of sections and subsections from the word count.

Terminology

Guideline 3. The contract should not use technical legal terms, other than commonly understood legal terms, such as “mortgage,” “warranty” and “security interest.”
[LEG]

Garner also advises against the use of such words as “shall,” instead of “will” or “should” and back-referencing words (“anaphora”), including “such,” “same,” and “said.”

Guideline 4. The contract should not use Latin and foreign words or any other word whenever its use requires reliance upon an obsolete meaning.

I only found one violation—“per”—used twice.

Guideline 5. If the contract defines words, the words should be defined by using commonly understood meanings.

The violations referred to definitions outside of a paragraph and vague definitions.

Syntax

Guideline 2. The contract should use active verbs.

This guideline does not require expert interpretation.

Guideline 9. The contract should not use sentences with double negatives or exceptions to exceptions.

This guideline does not require expert interpretation.

Guideline 7. The contract should not use sentences that contain more than one condition.

After considering several concepts of “conditions,” I finally realized I had to interpret “conditions” in a legal context, specifically as they are understood in contracts. I used Blum’s definitions:

“A condition is an event that is not certain to occur.”

“A promised performance under a contract is subject to a condition if the parties agree that the performance is contingent on the occurrence of the uncertain event.”

I also used Blum’s four purposes of using conditions in a contract (below) to verify that what I had identified were conditions.

1. As a complete or partial “escape clause.”
2. To permit the exercise of judgment by one of the parties or a third party.
3. To provide for alternative performances.
4. To regulate the sequence of performance.

In ambiguous cases I made decisions and recorded the types and examples. As I was not able to arrange for a second coder, I made one final check for consistency of all the conditions against the purposes and verified my decisions on ambiguous instances. Below is an example of a sentence with two conditions.

Such agreed costs of changes shall be added to the total consideration, to be paid in case by Buyer[condition] prior to the making of such changes[condition].

Referencing

Guideline 6. When the contract refers to the parties to the contract, the reference should use personal pronouns, the actual or shortened names of the parties, the terms "seller" and "buyer" or the terms "lender" and "borrower." [P-REF]

Seller and Buyer are used throughout contract, except for one inappropriate use of it in reference to the Buyer.

Guideline 8. The contract should not use cross references, except cross references that briefly and clearly describe the substance of the item to which reference is made. [X-REF]

I counted cross-references to documents outside the contract as violations because the consumer cannot easily access them.

Visual guidelines

- *Format [FRMT]: The contract should have type size, line length, column width, and margins, spacing between lines and paragraphs that make the contract easy to read.*

I identified only two types of violations: using all capitals in words, phrases, and sentences (font or type size); using long noun series across text lines (instead of listing). During my deposition I was challenged about the use of all capitals. I supported my testimony with evidence from reading and cognitive-processing research.

- *Captions [CAPT]: The contract should caption sections in boldface type.*

I found no violations.

- *Contrast: The contract should use ink that contrasts with the paper.*

The only violation I identified was the use of underlining instead of boldface.

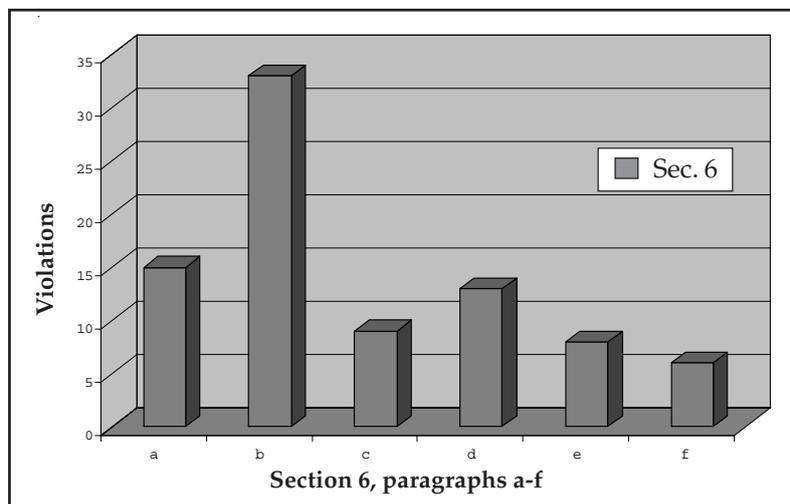
Summary of violations in Section 6

Three contract sections were disputed. In Table 1 and Graph 1 below I summarise my analysis of Section 6.

Table 1: Summary of violations in Section 6.

Section 6 Paragraphs: 6 Sentences: 21 Words: 698		
Paragraph	Violations of the guidelines	Violations not covered by the guidelines
(a)	14	03
(b)	32	04
(c)	08	04
(d)	12	04
(e)	07	0
(f)	05	01
Total	78	16

Graph 1: Summary of violations in Section 6.



A forensic test of a Pennsylvanian contract
(continued)

Section 6 (b)

This paragraph, which had the most violations, reads:

Only such changes as are ordered in writing by Buyer and approved by Seller, at agreed costs, will be made. [20] Such agreed costs of changes shall be added to the total consideration, to be paid in case by Buyer prior to the making of such changes. [26] Notwithstanding anything to the contrary set forth herein, in the event Buyer orders in writing changes which are approved by Seller or selects extras as provided in this Paragraph, any required payments by Buyer made with respect thereto are not refundable to Buyer under any circumstances (including but not limited to the provisions of Paragraph 7 hereof regarding Buyer’s inability to obtain a mortgage commitment), unless settlement does not occur because of Seller’s default hereunder or unless this Agreement is terminated pursuant to Paragraph 25 hereof. [86] Buyer must make all color selections (e.g., carpet, tile, etc) and selections of upgrades and extras, and pay for all upgrades and extras within twenty-one (21) days from the date of the Agreement of Sale. [36] If within the twenty-one (21) day period Buyer fails to make color selections, Buyer’s color selections are incomplete, or Buyer fails to pay any additional charge for upgrades or extras, then Seller shall have no obligation to make any upgrades or extras, and Seller may choose the color selections for the Premises in Seller’s sole discretion. [56] Exterior selections, upgrades, and extras are subject to Seller’s approval in Seller’s sole discretion. [15]

Statistics

Total words:	239
Lines:	24 (original text)
Line spacing:	Single
Sentences:	6
Words/sentence:	20, 26, 86, 36, 56, 15
Max words/sentence:	86
Min words/sentence:	15
Average words:	39.8

Violations

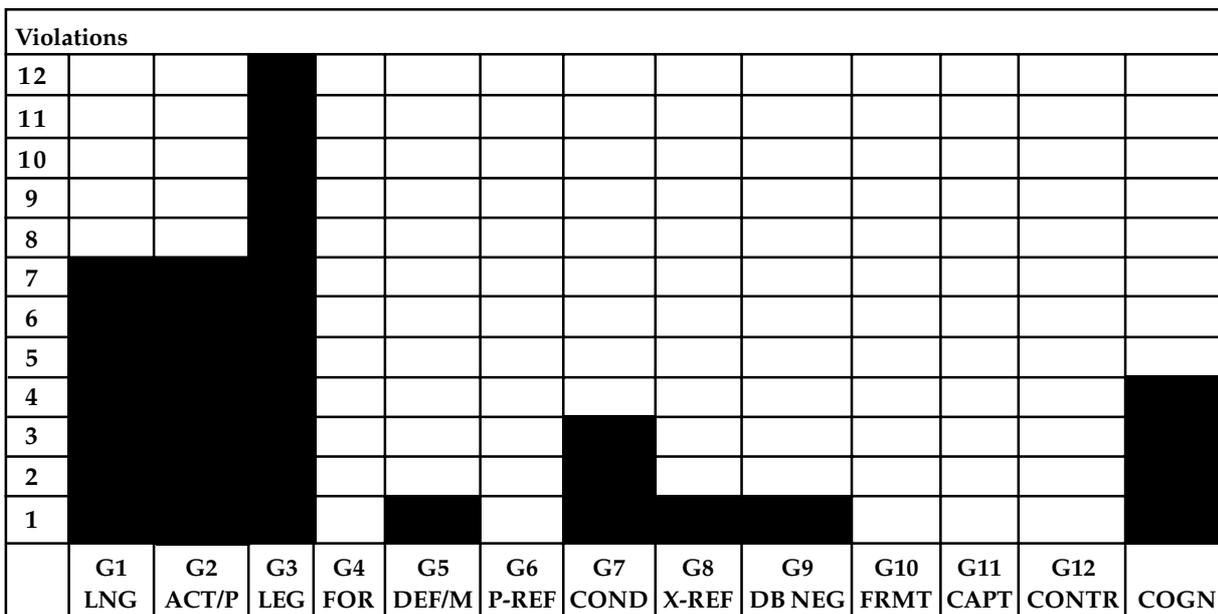
- Act guidelines: 32
- Outside of guidelines 04

Guideline 7 (one-condition rule) is violated by five of the six sentences in Section 6(b). Sentences 1, 2 and 4 have two conditions. Sentence 3 has seven. Sentence 5 has five.

The Terminology criteria (legalese and wordiness) are violated by the following:

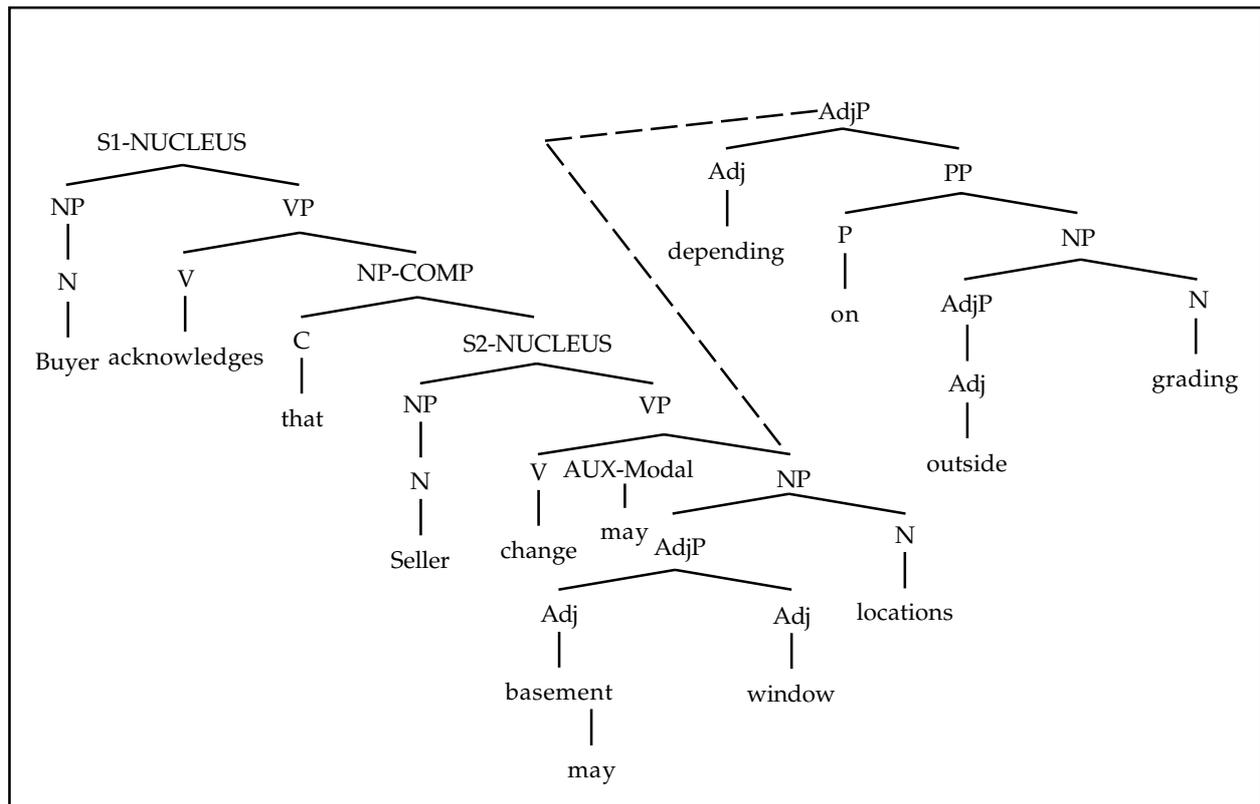
<ul style="list-style-type: none"> • <i>Notwithstanding anything to the contrary set forth herein</i> • <i>with respect thereto</i> • <i>thereof</i> • <i>in the event</i> 	<ul style="list-style-type: none"> • <i>hereof</i> • <i>hereunder</i> • <i>such</i> • <i>said</i> • <i>in Seller’s sole discretion</i> • <i>pursuant to Paragraph 25 hereof</i>
--	---

Graph 2: Number of violations of Section 6(b) by guideline



12 guidelines for plain language + other cognitive complexity features

Syntactic tree diagram of Section 6 (f)



The first sentence in Section 6(f) is relatively easy to read with just 13 words.

Buyer acknowledges that Seller may change basement window locations depending on outside grading.

This diagram³ shows that this sentence has a main sentence with a single subject and a single verb followed by a that-clause. Together they contain two sentence nuclei (S1, S2) composed of noun, verb, adjective, and prepositional phrases (NP, VP, AP, PP) and their elements: nouns (N), verbs (V), adjectives (A), prepositions (P), and modal auxiliaries (AUX, M).

A syntactic tree shows that words, phrases, and sentences are not simply linearly processed, one word after another. To understand the meaning of a sentence the reader has to hold in memory the relationships of words and phrases across the sentence. Imagine how complex the diagram would be for the longer sentences (56, 61 and 86 words) found in Section 6(b).

How readable was the contract?

I could not testify about how difficult the plaintiffs found parts of the contract to understand. I could testify, however, that I believed that someone unaccustomed to reading contracts would very likely find those parts difficult to understand. Using the bar graph to show how violations of the guidelines build up across Section 6(b), I could imply that the greater the build-up, the more likely it is to adversely affect a reader's cognitive processing.

The guidelines do not include embedded clauses and big gaps between the subject and verb. Based on my background in psycholinguistics, I considered these features as additional violations. Researchers on memory and cognition agree⁴.

There were two challenging areas in this case that I would like discuss in more detail.

First, I chose to interpret the guidelines using plain language principles. As an alternative, colleagues suggested I test people with a similar background to the plaintiffs or even the plaintiffs' understanding of the specific contract sections. Below are my conclusions.

1. This type of testing would have been beyond the scope of the legal question. Plain language experts had already established certain principles in the Act necessary to promote access. Legally it was not my job to test or justify those principles.
2. Testing the texts with similar populations would not really take into consideration the effect of background knowledge or the needs and motives of the plaintiffs with regard to the contract content. All three are factors in processing language.
3. It would have been impossible to determine how objective the plaintiffs would be in responding to a comprehension check.

A forensic test of a Pennsylvanian contract (continued)

4. If I had become acquainted with the plaintiffs and their specific contract comprehension issues, this would have compromised my status as an "objective" expert witness. Even when I finally had to meet the plaintiffs to present my report, I told them I had to avoid getting to know anything about their backgrounds and about their specific concerns regarding the contract. Even while getting coffee from the attorney's office kitchen, we only exchanged social pleasantries. This avoidance strategy preserved my independence which proved to my advantage at the deposition hearing when I was aggressively cross-examined about my knowledge of the plaintiffs' background and concerns.

Second, I was initially unsure what to do about Guideline 7 which provides no definition for "conditions". Eventually I decided to go to contract law for definitions after rejecting the idea of trying to locate minutes from the state legislative drafting committee to identify the drafters' intent.

I did not have time for this type of research. When doing linguistic work on a live case, a linguist doesn't have the luxury of time for designing and implementing a detailed research study. Plain language guidelines did not help me much. When I tried to apply rules of grammar and logic, I found that they either did not apply or that they produced many micro-level conditions for a single sentence. I felt that this would be overkill; I did not think the judge and attorneys would find such analyses useful or credible. I realize now that reference to Coode's rules for legal drafting might have been helpful in understanding the meaning of the word "condition" in Guideline 7. However, I could not be sure that these British rules would be relevant to the Pennsylvania Plain Language Act.

I could not ask the plaintiff's attorney for help because I had to maintain my independence. Instead I considered the socio-cultural context of the contract. I could not look at language in isolation from the values and concepts of the community that uses it. I did draw on contract law for help as I felt the attorneys and judge would probably find this perspective credible. In the end I feel the definition and principles I found provided a strong, rational basis for interpreting the Act's guidelines.

I would like to exchange ideas with anyone who is testing or has tested linguistically a plain language act or regulation in court.

© M van Naerssen 2005
mvannaerssen@immaculata.edu

¹ Kimble, Joseph. 1992. "Plain English: A charter for clear writing." *Thomas M. Cooley Law Review*, 9:1, 1-58. He summarizes laws addressing insurance contracts. Roger Shuy, "Warning labels: Language, law, and comprehensibility" in *American Speech*, 1990, Vol. 65. Plain language has been tested in Shuy's analysis of a warning label on a tampon packet in the case *Karen Rinehart v. International Playtex* (the "Tampons toxic-shock" case).

² Blum, Brian A. 2001. *Contracts*, 2nd ed. New York: Aspen Publishers, 467-495. Garner, Bryan A. 2001. *Legal Writing in Plain English*. Chicago: The University of Chicago Press. Fraser, Helen. 2003. "Issues in transcription: Factors affecting the reliability of transcripts as evidence in legal cases." *The International Journal of Speech, Language and the Law: Forensic Linguistics*, 10 (2): 215-226.

³ The diagramming system I've used follows those set out in *The Grammar Book* by Larsen-Freeman and Celce-Murcia (2001). I am responsible for any errors in the interpretation of their system.

⁴ Fraser, *The International Journal of Speech, Language and the Law: Forensic Linguistics* (2003). Larkin & Burns (1977) in *Memory & Cognition*. Mathews & Chodorow (1988) in the *Journal of Memory and Language*.

Margaret van Naerssen

(PhD in Applied Linguistics, University of Southern California, MS Georgetown University (Portuguese/Applied Linguistics)) is adjunct coordinator of graduate program in TESOL, Immaculata University. She is also consultant for Educational Testing Services, US Department of State (overseas) on language education grants, individual contracts in refugee centers, and is an expert witness/consultant in forensic linguistics.



Her long-term assignments have been in Washington DC, Michigan, California, China (as co-director of language center, Chinese Academy of Sciences/UCLA), Hong Kong, and Singapore. She has also worked short-term in Brazil, Egypt, Italy, Japan, Kazakhstan, Morocco, Pakistan, the Philippines, Sri Lanka, Thailand, Uzbekistan, and Venezuela.

Book reviews

Portuguese Irregular Verbs

Alexander McCall Smith

Published by Polygon, Edinburgh, 2003

Paperback, 128 pages

Recommended retail price AUS\$7.99

ISBN 0954407563

In this delightful, brief, and gently satiric piece, McCall Smith (author of the best-selling *The No. 1 Ladies' Detective Agency*) pokes fun at the narrowness and preciousness of German academics, in particular German professors of philology. He also paints a portrait of its pathetic central character, Professor Dr Mortiz-Maria von Igelfeld, whose one claim to fame (if not fortune) is his 'seminal work on Romance philology', *Portuguese Irregular Verbs*. The tome is 1200 pages, and is 'a work of such majesty that it dwarfed all other books in the field', the result of 'years of research into the etymology and vagaries of Portuguese verbs'.

The book traces the adventures and endeavours of von Igelfeld (rather like Mr Bean, that hapless comic character invented by British comedian Rowan Atkinson). He is accompanied throughout by his two friends, Professor Dr Dr (*honoris causa*) Florianus Prinzel and Professor Dr Detlev Amadeus Unterholzer. Their attempt to master tennis, which none of them has played before (using only 'an ancient dog-eared handbook' from the games cupboard), is, in a word, a 'hoot'—not only for the reader, but also for the other guests of the Hotel Carl-Gustav who watch from their windows.

Perhaps the most pathetic moment (of many) in the book is von Igelfeld's thwarted courtship of his dentist, Dr Lisbetta von Brautheim. Deciding that she is the one for him, he presents her with a copy of his book. He also tells Unterholzer about her excellent dentistry. Not only does Unterholzer get the girl, but the girl finds a practical use for 'such a large book': being quite short, standing on it brings her up to the right height for her patients when the dental chair is reclined.

Each of the eight chapters (numbered in German) provides a delightful vignette of von Igelfeld's pathway through life and love—wanting through it all to be respected and loved. It ends with a lament, with a certain echo of Eeyore (AA Milne, *The House at Pooh Corner*):

Oh! He thought. And then Oh! again. Why have I had such bad luck in this life? Why? All I want is love, and a tiny bit of recognition from the Portuguese, and I get neither. And soon it will be too late; nobody will read my book any more, and there will be nobody to remember me.

Perhaps McCall Smith's underlying message in *Portuguese Irregular Verbs* is that while academic writing can serve a range of functions—such as filling gaps in the literature (or as the reviewer of von Igelfeld's work comments, 'There is nothing more to be said on the subject. Nothing.'), its value, one would hope, lies beyond the fate of von Igelfeld's work. When only 200 copies of the book are actually sold it is to be rebadged with the title '*Portuguese Irrigated Herbs*' and used as 'book furniture'.

In this work McCall Smith gives us another example of the extraordinary range of his writing talents—beyond crime fiction, and his own academic writings as a Professor of Law at Edinburgh University, where he is best known for his works in medical law and criminal law. *Portuguese Irregular Verbs* is a delightful read and, like David Lodge's books on the idiosyncracies and peculiarities of academic life, is written with an insider's knowledge, amusement and apparent affection for the academy (in spite of itself). For those who find great entertainment in the preciousness of much academic (or quasi-academic) writing and the pretentiousness that can accompany it when the message is lost in the lard of language laid over it, don't miss this book!

Rosalind Croucher

Professor and Dean of Law

Macquarie University, Sydney, Australia

Rosalind.Croucher@law.mq.edu.au

Clarity back numbers

You can download recent issues (but not the current one) from the website <www.clarity-international.net>.

Mark Adler will supply individual earlier ones on request, without charge, as pdf files, if you don't ask for too many.

Order from: Mark Adler
adler@adler.demon.co.uk

Book reviews

(continued)

Oxford Guide to Plain English

Martin Cutts

Published by Oxford University Press,
Oxford, 2004

Second edition, Paperback, 202 pages

Recommended retail price GB£5.99 (CAN\$17.50)

ISBN 0-19-861011-4

From Brazil to Belgium, America to Australia, lawyers end their letters with with the clichéd invitation: *Please do not hesitate to...* But once they have read Martin Cutts' pocketbook guide (from OUP's reference series) lawyers will never end a letter this way. They will realise that formulaic endings rob their letters of effectiveness and sincerity, and will understand the benefit of closing letters thoughtfully. For example, to get action a lawyer could end the letter with a checklist of tasks for the reader to tick off. Or when a matter is completed, sincerely thanking the client for their business would foster the future business relationship.

In this revised second edition of his popular *Guide*, Cutts has expanded his advice on legal writing and added a chapter on email; he has enlarged the introduction to reflect progress and added new examples throughout the book. If you already know the first edition, you will find the second even more useful.

Cutts offers 21 guidelines (not inflexible rules) in as many chapters "to help you write and set out essential information clearly". These guidelines apply equally to native users of English and to foreign users. When English is read by an international audience, writers need to avoid cultural myopia. Cutts cites the example of a spam email from the US where a female "freshman" tells of having been busy at college "pledging a sorority". Don't know what this means? Then you know how it feels when a writer blithely assumes a shared cultural background that doesn't exist. Lawyers easily fall into this trap when they assume lawyers in other jurisdictions understand their legal system, Latin or abbreviations.

To write clearly one must think clearly. Obviously. But how do writers clarify their thoughts? Cutts deals with this problem in Guideline 14 (*Planning effectively*). Here writers learn how to organise their minds to help their readers grasp important information early and navigate their texts easily.

Guideline 15 (*Using reader-centred structure*) is a must-read for lawyers who find it difficult to stand in a client's shoes. By asking two questions—"So what?" and "How does this affect me?"—after every sentence they write, lawyers will find they can distil their legal knowledge to match their clients' needs. By writing less, and more relevantly, lawyers win client applause.

Cutts reserves a chapter for legal writing. Guideline 20 (*Lucid legal language*) opens with the telling observation of a 25-year-long campaigner for the consumer's right to clarity that: "*The way many lawyers write is disappointing to their friends and obnoxious to their clients*". While acknowledging that legal writing has the special challenge of thwarting self-serving readers from twisting text to their advantage, Cutts points out that plain English is up to the task when used cautiously and appropriately. He offers lawyers four proven techniques to make their writing more lucid: chop up "snakes" (long sentences), put people into writing, add headings and cut out or replace words with legal flavouring. To back up the last tip Cutts points out that only a few words, such as *estoppel*, *indemnity*, *negligence*, are genuinely terms of art and that a competent writer can easily explain such words and should do so to save the reader having to ask what they mean or, worse, risk a misunderstanding.

Opaque business writing is born of two fears according to Cutts: losing "wriggle room" and not being taken seriously. As to the second fear, lawyers can gain comfort from the research Cutts quotes. A study showed that 70% of scientists preferred scientific writing in plain English with 75% perceiving the plain writer to be "more competent and have a better organised mind". Readers of *Clarity* know that similar research into legal writing has proven that readers (both lay and expert) prefer and better understand plain language texts while judges perceive lawyers who use legalese as the least able practitioners.

Good writers care about writing well because the rewards make the effort worthwhile. Lawyers who apply Cutts's 21 guidelines will improve their writing no matter what their skill level. Give this book to people you care about. I do. I give it to my clients.

Catherine Rawson

Legal language consultant and trainer
legal_easy@hotmail.com

INTERNATIONAL CONFERENCE



Clarity and Obscurity in Legal Language

From 5 to 9 July, 2005

Boulogne-sur-Mer (France)

Université du Littoral Côte d'Opale

Conference Website: <http://www.univ-littoral.fr/confinter2.htm>

OFFICIAL LANGUAGES: French and English

Organised under the auspices of CERCLE, équipe VolTer (Vocabulaire, Lexique et Terminologie) and of LARJ (Laboratoire d'Analyse et de Recherche Juridiques)–Université du Littoral Côte d'Opale in collaboration with Clarity.

Organising Committee

Co-Chairs:

Anne WAGNER, Maître de Conférences
Université du Littoral Côte d'Opale
and

Prof. Joseph KIMBLE

President and Membership Secretary of Clarity
Thomas M. Cooley Law School

Members:

Nicole Fernbach

Jurilinguist
Juricom, Inc® and Centre International de Lisibilité,
Inc®

Francesca Quint

Barrister, Statute Law Society and 11 Old Square

Pierre-André Lecocq

Professor
Director of the research center : IRIED
Université de Lille II

Conference Office:

Catherine Wadoux and Monique Randon

34 Grande Rue
B.P. 751
62321 Boulogne-sur-Mer Cédex
Tel: 03-21-99-43-00
Fax: 03-21-99-43-91

Email: clarity2005@univ-littoral.fr

Webmaster: Samuel Adam

Program Committee:

Co-chairs:

Anne Wagner, Maître de Conférences
and
Nicole Fernbach, Jurilinguist, Centre International
de Lisibilité®

PROGRAM

TUESDAY, JULY 5

Registration and opening of the conference

Official introduction by French officials and academics. Presentation by Clarity and introduction by its President, Professor Joseph Kimble, and the Honourable Justice Michael Kirby, High Court of Australia.

WEDNESDAY, JULY 6

Keynote speakers

- Madame **Catherine Bergeal**, Director of Legal Affairs, Ministry of Defence, Paris, France, "The quality of regulations: A political issue"
- The Honourable Justice **Michael Kirby**, High Court of Australia

Writing the law

(Common session for all cultures and languages)

Panel Chair: **Sir Edward Caldwell**, Law
Commission, UK

Clarity and Obscurity in Legal Language

(continued)

Master Class in English: Writing the law in plain language I

Panel Chair: **Conrad Dehn**, QC, Barrister,
Fountain Court Chambers, Statute
Law Society Council, UK

Master Class in French: Writing the law in plain language Bilingual or multilingual law and the search for clarity

Panel Chair: **Lionel Levert**, Special Advisor,
Legislative Drafting, International
Cooperation Group, Department of
Justice, Canada

Master Class in English: Writing the law in plain language II

Panel Chair: **Joseph Kimble**, Professor, Thomas M.
Cooley Law School, USA

Master Class in French: Writing the law in plain language

Panel Chair: **André Labelle**, Chief Jurilinguist and
Legislative Counsel, Department of
Justice, Canada

THURSDAY, JULY 7

Keynote speech: **James Kessler**, QC,
Practitioner, English Revenue
Bar, UK, "Objectivity and
subjectivity in interpretation"

Plain language in the judicial context

Chairs: **Lawrence Solan**, Professor, Brooklyn
Law School, USA
Pierre-André Lecocq, Professor,
Université de Lille II, France

The computer tools of plain language: technical workshop

Panel Chair: **Jean-François Richard**, BridgeTerm,
Canada

Fuzziness in legal language

Panel Chairs: **Jan Engberg**, Professor, Aarhus
School of Business, Denmark
Anne Wagner, Senior Lecturer,
Université du Littoral Côte d'Opale,
France

Clarity in communication with citizens

Panel Chair: **Peter Tiersma**, Professor, Loyola Law
School, USA, "Textual traps for the
unwary"
Lawrence Solan, Professor, Brooklyn
Law School, USA

Readability in European institutions

Panel Chairs: **Pascale Berteloot**, Head of Unit on
Access to Law, Publications Office of
the European Union, Luxembourg
Daniel Fasquelle, Professor,
Université du Littoral Côte d'Opale,
France

Issues in plain-language writing

Panel Chairs: **Anne Wagner**, Senior Lecturer,
Université du Littoral Côte d'Opale,
and **Olivier Carton**, Member of the
LARJ, Lecturer, Université du Littoral
Côte d'Opale, France

Plain language in civil law cultures (French-speaking and others)

Panel Chair: **Nicole Fernbach**, Jurilinguist, Centre
International de Lisibilité®, Montréal,
Canada

Professional development of legal writers & drafters

Panel Chair: **Richard Foley**, Lecturer, University of
Lapland, Finland

EXHIBITIONS

- Legal Publishers, LEXIS NEXIS, BRUYLANT,
THEMIS, THOMSON, CARSWELL,
BRIDGETERM (TBC), Blackhall Publishing
PROPELX Parliamentary Workbench
- DUSA (French government agency responsible for
simplification) and software (LARA, Bullfighter,
and some lexicons and writing guides)

FRIDAY, JULY 8

Keynote speech: **Jean-Paul Gauzès**, Member
of Parliament, European
Parliament

**From plain English to plain languages:
A multilingual effort**

Panel Chairs: **Vijay Bhatia**, Professor, City University of Hong Kong, China, and **Sophie Cacciaguidi-Fahy**, Lecturer, National University of Ireland, Galway, Ireland

Impact of technology on access to law

Panel Chair: **Danièle Bourcier**, Laboratory Director, CERSA, Université Paris II, France

Plain language in multidisciplinary contexts

Panel Chairs: **Maurizio Gotti**, Professor, University of Bergamo, Italy, and **Ross Charnock**, Senior Lecturer, Université Paris 9, France

Past and future of plain language, or plain languages (European): informal roundtables

Panel Chairs: **Nicole Fernbach**, Jurilinguist, Centre International de Lisibilité®, Canada, and **Catherine Rawson**, Legal Writing Consultant and Trainer, Australia

Past and future of plain language, or plain languages (international): informal roundtables

Panel Chair: **Peter Butt**, Professor of Law, University of Sydney, Australia

Issues in French legal writing: two debates (gender-free writing and simplification of spelling)

Panel Chairs: **Michèle Lenoble-Pinson**, Professor, President of the Belgium Association for the Implementation of Spelling Recommendations (APARO), Belgium, "De la *Demanderesse* à la *juge*, Féminisation des noms de professions et de fonctions en Belgique" (Fr.) and **Olivier Carton**, Member of the LARJ, Lecturer, Université du Littoral Côte d'Opale, France

How to make clarity mainstream: overcoming the obstacles to plain language

Panel Chair: **Christopher Balmford**, CEO, Cleardocs.com, Sydney, Australia

Wrap-up and closing of the conference

(Vice-President, Conseil scientifique, ULCO)

SATURDAY, JULY 9

Guided excursion and luncheon

Departure at 9:00 am to visit "La Coupole"

Located in the Pas-de-Calais, 5 km from the Town of Saint-Omer, *LA COUPOLE* is a gigantic underground bunker designed by the Nazis, in 1943-1944, to store, prepare and launch the V2 rockets (first missiles to reach the stratosphere), the secret weapon that Hitler was counting on to destroy London and reverse the course of the war. <www.lacoupole.com/en/default.asp>. Luncheon at a local restaurant. Guided Tour « Les deux Caps : Cap Gris-Nez et Cap Blanc-Nez » <www.mincoin.com/php1/wiss.php>

For registration forms and conditions, as well as directions to Boulogne, see the bilingual site <www.univ-littoral.fr/confinter2.htm>.

Conference contact details

Anne Wagner
Département Droit
Université du Littoral Côte d'Opale
21, rue Saint-Louis, B.P. 774
62327 Boulogne-sur-Mer-Cédex
France

Tel: +33 (0) 3 21 99 41 22

Fax: +33 (0) 3 21 99 41 57

Email:

Inquiries, registration and accommodation forms:
clarity2005@univ-littoral.fr

Website:

<www.univ-littoral.fr/confinter2.htm>

Plain Language
Association International
Fifth Biennial Conference

November 3–6, 2005
Loews L'Enfant Plaza
Washington, DC, USA

Susan Milne, Chair of Plain Language Association International (PLAIN) sends this update about the fifth biennial plain language conference in Washington, DC, on from November 3-6, 2005.

The conference theme is "Adding up the Benefits." Presentations and workshops will focus on both tangible (cash savings, time saved ...) and intangible (happy customers, informed clients ...) benefits of plain language. Focusing on benefits should be enormously useful, especially if you have a tough time selling the benefits of plain language to clients. And we all do, on occasion!

Bryan Garner is a confirmed conference speaker. Bryan is senior editor of *Black's Law Dictionary*, and has authored several widely used books on legal writing, including *A Dictionary of Modern Legal Usage* and *The Elements of Legal Style*.

Session topics include financial disclosure, health literacy, updates on national and international programs, plus many others.

We're offering a basic plain language workshop ("Just the facts, ma'am!") on Thursday afternoon before the conference begins. For those who want to do a little sight-seeing instead, there's a trip to the National Archives. There'll be exhibit space where you can review publications and, best of all, network with colleagues from the USA, Canada, the UK and around the world.

The location of the conference hotel couldn't be better. The Loews L'Enfant Plaza is in the centre of Washington, right on the Mall and in walking distance to the Capitol, the White House and the Smithsonian museum. Special hotel conference rates are \$153 US per night.

For information about rates and early bird registration, please go to <www.plainlanguage.org/conferences/2005/> or contact Sarah Cooper, Program Chair, at <sarah@nataliepshear.com> or phone 202 833 4456 x103 (*within US & Canada*) or +1 202 833 4456 x103 (*international*).

Looking forward to seeing you in November.

Susan Milne, Chair
Plain Language Association International

*Next guest editors—
Clarity No 54*

Our next guest editors for *Clarity* No. 54, Nicole Fernbach and Edward Caldwell, will present highlights from the conference to be held in Boulogne, France, in July 2005 (see page 65). Nicole is both a lawyer trained in France and a linguist. She has practised legal translation in Canada for the past 30 years.



Edward is an English lawyer who has been drafting legislation for the UK Government for 36 years. They will aim to show the vitality and wide reach of the plain language movement.

Nicole Fernbach



Edward Caldwell

Legal writers all struggle with the issue of clarity, whether they are legislative drafters, judges or magistrates, professors or scholars, linguists or civil servants, legal translators or revisers, and whether they work in English, French or another language. *Clarity* No 54 (due November 2005) will show how writing clearly has evolved

into a professional and multidisciplinary endeavour. It will examine the universal appeal of plain language from different angles, reflecting issues that arise in common law and civil law contexts, and from cultural differences.

From the President

This will be the last issue of *Clarity* before our July conference in Boulogne, France. If you have not yet registered, there's still time. And if you need further encouragement, please look over the program summary in this issue, or look over the full program at the website <www.univ-littoral.fr/confinter2.htm>. The conference promises to be exceptional—three full days of sessions; a great range of topics; leading practitioners, drafters, academics, and government officials from around the world; a reception, a gala dinner, and a guided excursion on the fourth day, Saturday; and all in a beautiful setting.

Who could have imagined, even a few years ago, that *Clarity* would be involved in a conference like this or would be approaching 1,000 members or would have representatives in 17 countries? I'm sure that *Clarity's* founder, John Walton, would not have imagined it when he produced *Clarity* No 1, a four-page newsletter, in August 1983. And if a toast is appropriate, Boulogne would be the place to do it.

My thanks, on behalf of *Clarity*, to Anne Wagner and Nicole Fernbach for their work in organizing the conference.

My thanks, too, to all those who deserve credit for having now delivered the last five issues of *Clarity* right on schedule—Michèle Asprey, our superb editor in chief; guest editors Robert Eagleson, Peter Butt, David Elliott, Jacquie Harrison & Nittaya Campbell, and Catherine Rawson; and our layout specialist, Trish Schuelke. *Clarity* is a high-quality, professional, and informative journal—the international journal of plain language.



Finally, let me welcome two new country representatives. Christopher Williams is replacing Alfredo Fioritto in Italy. Christopher is an accomplished teacher, editor, translator, and author. He is currently an Associate Professor of English at the Faculty of Political Science at the University of Bari, Italy. And Victor Eleazar is our new representative for the Philippines. Victor is a practicing lawyer and a faculty member at Arellano University School of Law, where he teaches legal writing. I hope we see you in Boulogne.

Joe Kimble
Lansing, Michigan, USA

Members by country

Australia	121	Gran Canaria	1	Netherlands	5
Austria	1	Hong Kong	10	New Zealand	16
Bahamas	2	India	6	Philippines	1
Belgium	5	Ireland	3	Scotland	11
Bermuda	2	Isle of Man	1	Singapore	12
Brazil	1	Israel	2	South Africa	34
British Virgin Islands	1	Italy	2	Spain	1
British West Indies	4	Jamaica	1	Sweden	12
Canada	60	Japan	6	Switzerland	2
Denmark	4	Jersey	3	Thailand	1
England	370	Luxembourg	1	Trinidad and Tobago	1
France	1	Malaysia	1	USA	257
Germany	5	Malta	2	Wales	9
				West Indies	2
				Total	980

Clarity 2005 annual meeting

On 5 February 2005 at Lincoln's Inn, London. Nine members came, including two from Sweden. Officers were re-elected. The treasurer's and membership reports were given. UK finances in 2004 were helped by a surplus from the Cambridge conference, but only about one third of UK members appear to be paying subscriptions. Invoices are to be issued to all members who have not paid.

Joe Kimble's presidential report was read.

- Anne Wagner and Nicole Fernbach have done an enormous amount of work on the second Clarity conference, in Boulogne from 5-9 July 2005. Details are on the conference website and Clarity members are urged to attend.
- Country reps are urged to keep membership details and subscriptions up to date.
- The last four issues of the journal have been on schedule—thanks to the efforts of Michèle Asprey, as editor in chief, and guest editors.
- Finances are in fair shape, certainly enough for the 2005 journals.
- There are new country representatives in Italy (Chris Williams), South Africa (Annelize Nienaber) and Singapore (Lei-Theng Lim) and Victor Eleazar is recommended for the Philippines, [He has since been appointed—Ed]. We are looking for representatives for Spain and Mexico. The work of country reps is vital to Clarity's success and growth. Thanks to all.

Discussion centred on issues raised at recent AGMs.

- We should do more to promote Clarity among students at college, legal practice courses, other course providers and bar school. Others suggested government departments, professional support lawyers' organisations, trainee solicitors groups and the Institute of Legal Executives.
- What is Clarity's mission? If it is a forum for exchanging ideas we need to do more. Start a web-based discussion group? Hold more regular meetings? Use the journal to promote drafting tips? Has the journal become too academic? Does it adequately cater for new members?
- Should Clarity be actively promoting plain language? If so, how—apart from the work of individual members?

Other business. Congratulations on the redesigned web site! We do not qualify as a charity under UK

law. We are checking that we comply with UK Data Protection legislation. We have booked 4 February 2006 for the 2006 AGM. Please come if you can.

After coffee, Paul Clark, UK rep, illustrated from UK cases in the 21st century what can happen when drafting goes wrong. And we then had lunch at a local restaurant.

Reported by Paul Clark
pec@crippslaw.com

Letter to the editor

**Suggestions for the journal:
basic principles and drafting tips, and
a short history of Clarity?**

**Paul Clark
Tunbridge Wells, Kent, United Kingdom**

A few UK members have given as their reason for resigning from Clarity recently the fact that the organisation is now "too international", "not relevant to my practice any more". The comment was made at the [February 2005] AGM that the journal has become more academic.

It occurred to us during discussion that although the older members of Clarity have grown with the plain language movement, and for them the journal has become an ideal medium for advanced study, we are trying to attract new and younger members too. We therefore wonder whether space can be found in the journal for a regular section on basic principles and drafting tips—something that perhaps needs to be repeated every few years?

Since the AGM a further idea has occurred to me. The 52 issues of the journal are a rich resource. Very few members have access to all issues. Might it be possible to include a page in each journal: "Items from the past"? Or even to recycle the best of the material by devoting the whole of a future journal to "the best of Clarity since 1983"—perhaps including a short history of the organisation by the founders, before it is forgotten? If we printed extra copies of such a journal it would make an ideal recruiting tool.

Congratulations ...

to Clarity past-President **Peter Butt** on being awarded the degree of Doctor of Laws (LL D) by the University of Sydney, for published works on land law and legal drafting.

New members

Australia

Carol Lawson
Legal Communications Japan
Seacliff

Stephanie Pursley, Partner
Freehills
New South Wales

Felicity Rogers
National Library Manager
Freehills
New South Wales

Belgium

Marie Bourke
Member of DGT
European Commission
Overijse

Bermuda

Andrew Jones, Associate Attorney
Cox Hallett Wilkinson
Hamilton

Canada

Tannis Atkinson
Ontario

BC Securities Commission
British Columbia

Pierre Charbonneau
Legislative Drafter
Ministère de la Justice
Quebec

Community Legal Education
Ontario
[Caroline Lindberg]
Ontario

Richard Denis
Deputy Clerk/Counsel
House of Commons
Ontario

Francis DesCoteaux
Quebec

Robin Erica Ford
Commissioner
BC Securities Commission
British Columbia

Marie France Lemoine
Translation Counsel
Ministry of Attorney General
Ontario

Eugene Meehan
Lang Michener LLP
Ontario

Zzeem Inc
[Erin Roberts]
Ontario

England

Derrick Balsom, Partner
Onions & Davies
Shropshire

Julia Buckland
Darley Nook
Derby

James Chatfield
Rawlison Butler
West Sussex

Margaret Eddison
Keoghs
Lancashire

Ian Frame
Windsor
Berkshire

Mark Glenister
Matthew Arnold & Baldwin
Hertfordshire

Simon Jeffreys
CMS Cameron McKenna
London

Jayne Sweeney
Poems
Kent

Germany

Christine Mertzluft
University of Freiburg
Freiburg

Hong Kong

The Hong Kong
Mortgage Corporation Limited
[Ms Susie Cheung]
Central

Ireland

Clodagh McCarthy
Plain English Project
National Adult Literacy Agency
Dublin

Italy

Christopher Williams
Andria

Japan

Mori Hamada & Matsumoto
[Ms Tomoko Nakamura]
Tokyo

TMI Associates
[Ms Michiko Hamada]
[Ms Lisa Hew]
Toyko

Netherlands

David RM Alexander, Director
Ways with Words
English Language Services
Molenweg

New Zealand

The Lawlink Group Ltd
[Ms Vicky Stark]
Auckland

Write Group Limited
[Ms Lynda Harris]
Wellington

Nigeria

Godwin Gabriel Umoh
Legal Drafter
Ministry of Justice
Akwa Ibom

Philippines

Victor Eleazar
Makati City

Scotland

Isla Cruden
UHI Millennium Institute
Inverness

Ian MacDonald
Wright, Johnston & Mackenzie
Glasgow

Sweden

Anki Mattson
Ord-i-allo
Hägersten
Eva Olovsson
Mangold-Olovsson HB
Stockholm

United States

Scott Meyer
Sole Practitioner
Ohio

Regina Mullen
Litigation Data Services, PLC
Michigan

Laurel Prokop, President
Techstyle Group LLC
Texas

Margaret van Naerssen
Teacher/Linguist
Pennsylvania

Application for membership of Clarity

Individuals complete sections 1 and 3; organisations, 2 and 3

1 Individuals

Title *Given name* *Family name*

Name

Firm Position

Qualifications

2 Organisations

Name

Contact Name

3 Individuals and organisations

Address

.....

Phone Fax

Email

Main activities

Annual subscription

Australia	A\$35
Brazil	R50
Canada	C\$30
France	€ 25
Hong Kong	HK\$200
India	R1225
Israel	NIS125
Italy	€ 25
Japan	¥3000
Malaysia	RM95
New Zealand	NZ\$50
Philippines	₱1500
Singapore	S\$40
South Africa	R100
Sweden	SEK250
Thailand	THB1000
UK	£15
USA	US\$25
Other European countries	€ 25
All other countries	US\$25

How to join

Complete the application form and send it with your subscription to your country representative listed on page 2. If you are in Europe and there is no representative for your country, send it to the European representative. Otherwise, if there is no representative for your country, send it to the USA representative.

Please make all amounts payable to Clarity. (Exception: our European representative prefers to be paid electronically. Please send her an email for details.) If you are sending your subscription to the USA representative from outside the USA, please send a bank draft payable in US dollars and drawn on a US bank; otherwise we have to pay a conversion charge that is larger than your subscription.

Privacy policy

Your details are kept on a computer. By completing this form, you consent to your details being given to other members or interested non-members but only for purposes connected with Clarity's aims. If you object to either of these policies, please tell your country representative. We do not give or sell your details to organisations for their mailing lists.