

# Clarity

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# Clarity

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## This issue

### Evidence-based practice

When I worked as a research manager in the UK's National Health Service in the 1990s, 'evidence-based practice' was the latest thing. My job was to encourage health professionals to keep up to date with the latest research, and apply it to their daily work.

All over the world, professionals in different fields are increasingly expected to do the same. And evidence-based practice is vital to the field of plain language, which requires practical skills underpinned by sound theoretical knowledge: a blend of intellectual rigour and pragmatism. Amsterdam, a first-of-its-kind plenary session saw representatives of Clarity, PLAIN and the US Center for Plain Language present their views on standards, accreditation and a plain-language institute. More on this in *Clarity 58*...

### A role for Clarity

Plain-language lawyers and other professionals—like doctors and other clinicians—are busy people. So it's important to present research findings to them in a manageable format. In British healthcare, an important journal is *Bandolier*—so called because it finds information about what works (and what doesn't) and puts the results forward as simple *bullet points*. In the worldwide practice of plain language in law, *Clarity* is the only (and an indispensable) journal—so called, it seems to me, because it finds *clear* articles about *clear* language that can *clarify* our thinking and so our practice.

### Getting research into practice

So the theme of *Clarity 58* is: getting research into practice. And by 'research', I mean research in its broadest sense—not just formal, academic studies but, just as importantly, practical tips from experienced plain-language practitioners. In this issue, you will find a wide range of articles that relate to this theme in a number of different ways, including:

- plain-language projects applying research to practice—with John Hinze describing the British Columbia Securities Commission's plain-language measurement methodology and results, and Chris Lentz his experience of bridging the consumer-to-customer gap

- studies and other work producing results relevant to plain-language practice—as Richard Castle contrasts readability with legibility, quoting a range of research, and Audrey Garner and Janet Pringle describe their community development project, *Connecting Literacy to Community*
- practical tips based on experts' own experiences—on proofreading from Martin Cutts, and drafting letters of advice from Robert Eagleson
- hints for doing and keeping up to date with legal research—as Tania McAnearney describes her work as a specialist independent researcher and the methods she uses
- reviews of useful books relevant to this theme—with Neil James reviewing Pam Peters' addictive, corpus-based *Cambridge Guide to English Usage*, while Nigel Grant reports on *Indlish*, written by Jyoti Sanyal, who has 40 years' experience both practising and teaching journalism.

Also included in this issue are:

- Francesca Quint's obituary for Lord Renton—Britain's longest-serving parliamentarian and a strong supporter of plainer language in law—who died in June, aged 98
- our regular column, Linguistic lingo for lawyers, which I am most grateful to Robert Eagleson for writing this time. The piece is based on a dialogue between Robert and me on personal pronouns and gender.

#### **New 'Ideas for articles or research' box**

This issue of *Clarity* tries out an idea that supports its theme. Each author has been given the opportunity to include a small box

at the end of their article with any ideas for further articles or research relating to what they have written. I hope this will catch on and be useful:

- to potential authors, giving them ideas for articles to write
- to *Clarity's* editor in chief and future guest editors, helping them to compile a list of possible articles to ask people to write
- to those interested in plain-language research, giving them ideas for possible studies
- to the plain-language field as a whole, encouraging people to advance and share knowledge in this field.

#### **Thank you**

I would like to thank the authors—all busy people with plenty else to spend their time on—who have supported *Clarity* (and me) by contributing to this issue. Special thanks too to Mark Adler, Julie Clement, Robert Eagleson and Joe Kimble, for generously sharing their experience of what works and what doesn't in guest-editing *Clarity*. I hope the result is a useful and enjoyable issue.

Sarah Carr has a first degree in French and Scandinavian with Teaching English as a Foreign Language, and a master's in business administration (MBA). Sarah worked as a manager in the National Health Service (NHS) for seven years. She now runs Carr Consultancy, specialising in plain English writing, editing and consultancy for the NHS. Sarah is also an associate of Plain Language Commission. Her publications include *Tackling NHS Jargon: getting the message across* (Radcliffe Medical Press, 2002).



# Measuring plain language at the British Columbia Securities Commission

## John Hinze

*Director of human resources and chief financial officer,  
British Columbia Securities Commission (Canada)*

*Clarity 54 included an article entitled "Plain Language at the Regulator." In that article, Robin Ford mentioned the British Columbia Securities Commission's (BCSC's) use of plain language audits to measure their progress. John Hinze now follows up, with an article describing the BCSC's plain language measurement methodology and results in detail.*

Committing to use plain language is the easy part. Delivering on that commitment requires careful management. This article explains how the BCSC is using a plain language audit process to test our performance and maintain employees' commitment to plain language.

### **Clear, understandable rules and guidance are central to achieving our mission**

The BCSC is the provincial government agency responsible for regulating trading in securities in BC, and the third largest of Canada's provincial securities regulators. As the senior regulator in the BC securities market, our actions, including our communications, set the tone for public issuers and securities dealers.

We believe securities regulation should be clear and understandable to all market participants—from sophisticated securities professionals to unsophisticated investors. Unfortunately, the opposite is still too often true for many market participants.

Securities markets are complex and fast-changing, and we need a lot of sophisticated rules to govern them. However, too many of our rules are needlessly complex and confusing, making them accessible only to a narrow "priesthood" of securities lawyers. Despite our efforts to streamline and simplify our rules, few business people or investors can decipher them without professional advice.

As we continue to pursue simplicity, plain language is one of our key tools. We use it to challenge ourselves, and our regulatory colleagues, when fuzzy or unnecessary language creeps into our regulatory documents.

### **Growing pains**

We formally adopted an objective to use plain language in 2000. We contracted with Wordsmith Associates Communication Consultants Ltd to train our employees. Wordsmith developed two two-day workshops: one for lawyers and other professional staff and one for general administration staff. Staff mentors then received additional training. Wordsmith also helped us write our Plain Language Style Guide.

Some of our employees, like those who worked on the drafting of the *2004 Securities Act and Rules*, embraced plain language wholeheartedly. Others resisted. There are many sources of resistance. For example, the professional services firms that first employed many of these professionals still often teach that complexity equals precision. The holdouts felt that writing plainly was either not relevant to, or would undermine, their work. To help to address employee concerns, in 2002, we asked Wordsmith to audit our work to identify the gaps in employees' plain language skills.

Conducting the 2002 plain language audit was useful. Employee awareness and acceptance of plain language increased because they saw specific changes they could make to improve their writing. With a better understanding of our plain language gaps, we were better able to justify the value of improving our skills and to provide specific training to close those skill gaps. Measuring success and identifying areas for improvement through plain language audits was exactly what we needed to increase employee awareness of, and commitment to, plain language.

## Chronology of the BCSC plain language initiative

2000	Identify effective communication as a key organizational behaviour
2001	Recognize plain language as a strategic initiative
2001	Write BCSC public statements in plain language
2001	Send all employees to a two-day plain language course
2002	Identify and train plain language employee mentors
2002	Develop plain language style guide
2002	Conduct first plain language audit
2003	Write all multi-jurisdictional exemption decision documents in plain language
2003	Send all employees to a one-day plain language “refresher” training course
2001–2004	Write the <i>Securities Act and Rules</i> , in plain language—the 2004 Act passed but its implementation is on hold while we work with other provincial jurisdictions to put in place a more advanced mutual reliance system (passport)
2004	Introduce divisional plain language targets
2005	Conduct second audit
2005	Send all employees to a one-day plain language “refresher” training course
2006	Tie a portion of divisional incentives to plain language targets
2006	Conduct third audit—we score 87%, or “good to very good”
2006	Increase divisional plain language targets from 75% to 85%
2007	Conduct fourth audit— we score 86%, or “good to very good”

After the 2002 audit, we decided that tying incentive pay to plain language audit results would further motivate employees to improve. We used the 2005 audit to help establish baseline performance. Then, in 2006, we settled on a more formal audit methodology and included plain language targets in our incentive plan.

### Plain language audit methodology

Our audit methodology is as follows:

- We call for documents—division heads lead the process of selecting samples. We ask them to be as objective as possible. Our 2007 move to an electronic document management system will allow us to reduce or eliminate the risk of bias in the self-selection process.
- We encourage submissions that reflect the variety of internal and external documents we produce, including e-mail, intranet and public website postings, memos, letters, and reports. A typical total sample size for each year audited is 400–600 pages.
- We send the sample to Wordsmith to perform the audit. Our current Wordsmith audit team includes an MA in English, an MA in comparative literature, and a law graduate. The auditors score all documents against the guidelines in our plain language style

guide. Auditors explain their scores and give examples of better drafting. The audit team members check each other’s reviews to ensure consistency in scoring.

- We return the annotated documents and comment sheets to division heads and document authors. The feedback, while sometimes humbling—like being back in high school English class—is productive. We have seen significant improvements, and we expect additional gains.
- We allow authors to appeal. They must demonstrate that their use was appropriate in the circumstances. We receive few appeals.
- We share summarized results, including common errors and areas for improvement, with all employees.

The process works well.

### Other plain language supports

Our plain language audit is one of many tools we use to maintain our plain language focus. Other tools include regular training, extensive resource materials, and ongoing communication about plain language, as follows:

- We send all new employees to a two-day in-depth plain language course.
- We periodically send all employees to a one-day refresher course that focuses on the gaps identified by the most recent audit.
- We recruit about 10% of employees as plain language mentors. We offer additional training through Wordsmith for willing but untrained mentors.
- We have extensive plain language resources on our corporate intranet and post our style guide on our public website so it is also accessible to industry.
- We post regular plain language tips and tricks on the “today’s news” section of our intranet.
- We reserve space in our monthly employee newsletter for plain language articles.

#### **You get what you measure (and pay for)**

This year, we conducted our fourth audit. Our target score was 85% (the mid-point of “good to very good” on Wordsmith’s audit scale). No documents failed (below 60%), all divisions averaged over 80%, and we achieved an 86% overall score. Grammar remains our weakest area, at 77%, so we have room to improve. Tailoring our message to be audience-appropriate is our strongest area, at 95%, so we have reason to be proud.

Plain language audits bring two main benefits for us. They help maintain employee focus on effective communication, one of our core behaviours. Audits also test our progress, giving us the feedback we need to manage our plain language initiative. The time and money we invest to test our plain language skills are well worth it—communicating more clearly helps market participants understand their rights and obligations.

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*Chartered Accountant and Audit Manager. He joined the BCSC in 2000 as Controller. In 2003, John accepted a one-year secondment to the BCSC’s Corporate Finance division, where he was the Manager, Financial and Insider Reporting. He returned to administration in 2004 and was promoted to his current position in 2005.*

## Plain language in financial correspondence: bridging the consumer-to-customer gap

### Chris Lentz

*Senior business communications editor (US)*

So you've decided to entrust your financial future with a company. You were charmed by the marketing pieces. (They were clear and easy to understand.) You have a nice relationship with your agent. (You believe he or she's working in your best interest.) You apply for a product and send in the paperwork. "Congratulations and welcome to a bright financial future!" states a clear, engaging welcome package. Then, a month later, you open up your first piece of correspondence and read this:

Pursuant to the conditions outlined in your policy contract, payment in the amount of \$35.00 must be remitted to our office to cover the costs of insurability, as indicated, on the monthiversary of your policy start date. If payment is not received, your policy may be subject to fees and/or enter a lapse pending state. See your policy contract for details.

That kind of copy can erase the warm, trusting sentiments you felt when applying for the product. What happened? You're no longer being courted. You've gone from consumer to customer. And the change can be dramatic.

### The consumer-to-customer gap

Marketing departments target consumers because consumers have the potential to purchase products. When a consumer purchases a product, sales increase. And sales are considered the lifeblood of many companies.

Marketing departments create pieces designed to be charming, interesting, and engaging. Companies fill marketing departments with staff writers who are experts on word choice, white space, copy length, action verbs, and readability. Research divisions conduct surveys and generate reports to analyze competitors, to measure the effectiveness of campaigns

and strategies, and to identify how best to appeal to the consumer. The end goal is to convince the consumer to purchase a product.

But once the consumer purchases the product, he or she becomes a customer, and the marketing department's job is finished. It shifts its focus back to the ever-populated pool of consumers, leaving the new customers to a customer service department.

Customer service departments are designed to listen and respond to customer inquiries, effect customer-requested changes, and service products. There are often few, if any, writers assigned to these departments to write correspondence. Instead, correspondence may be written by lawyers, customer service representatives, programmers, compliance analysts, or managers. Some may be competent writers; some may not. But for all, writing correspondence is not a primary focus.

Aside from a potential lack of writers, customer service departments differ in another way from marketing departments. Marketing departments are continually updating, revising, and developing strategies for reaching the consumer. Customer service departments, however, often use the same correspondence over and over, perhaps with occasional changes, for many years. Correspondence can quickly become stale, outdated, and overlooked.

### Bridging the gap

The financial services industry is heavily regulated, and companies must be cautious about the information they release. Therefore, correspondence may consist of contract language already blessed by the legal and compliance teams. In essence, then, correspondence is written to regulators instead of customers.

To move forward and improve financial customer correspondence, it takes a dedicated



and forward-thinking team of lawyers, analysts, and writers.

The purpose of this team is to keep the customer as the primary focus of correspondence. For many customers, finances can be complicated, serious, and emotional, and correspondence should respond to those traits. Jargon and legalese won't accomplish this. Customers generally don't trust correspondence that reads like a contract. At best, the customer may simply discard the piece. At worst, he or she may feel that a company is hiding something.

In a highly competitive market, financial companies need any edge that they can find. Customer correspondence can be that edge. Customers want direct, clear, and engaging communication. Why not give it to them? Show customers that the friendly, interesting, clever image the company presented to them as consumers was not a façade.

### **Real-life bridge building**

Rewriting customer correspondence from a marketing and plain language perspective can yield encouraging results.

I am fortunate to work in a marketing division as a writer of customer correspondence. I get to see both sides, and I strive to incorporate as much of the marketing style and tone as I can into the letters. My goal is to create a seamless transition from the marketing pieces to the correspondence. It's a work in progress, but work that I feel is important.

When I first started to work on correspondence, my goal was to create a common voice and style using plain language. This meant going through the existing 2,000 letters that were used to service life insurance policies. Many served the same purpose but were written differently; many conveyed legal and compliance information but were outdated. Step one: wade through the morass, identify which letters were needed, consolidate where we could, and rewrite them all in plain language.

It took about a year to complete, and we were able to reduce the number of letters from 2,000 to 341—a reduction of 83%. The letters are now clearer, they support the marketing branding strategy, and they have begun to close the consumer-customer gap. In addition to the content change, the dramatic reduction of the volume of letters has made it easier to generate, manage, and track correspondence.

Our work has begun to yield fruit. An in-house customer-service-employee survey revealed that 57% agreed that the new letters are an improvement to the previous letters, 59% feel that the new letters are easier for customers to understand, and 25% have noticed a decrease in calls to the service center due to confusing letters.

Our own little bridge here isn't quite complete—and I'm not sure that it ever should be—but we're working at it. Changing the look and feel of customer correspondence is like whittling a piece of wood. It takes time, and must be completed in small steps.

### **Maintaining and supporting the bridge**

I keep pictures of my wife, parents, kids, and friends all around my desk to remind me of the people I'm writing to and the reason I'm writing to them. When I write correspondence, I may be writing to a new father in his early 30s, terrified of the financial responsibility he now "enjoys." Or perhaps I'm writing to a retiree who spends his day working on his sailboat and playing with his grandkids. I may be writing to a teacher, a college professor, a CEO, a senator, or even you.

All are different. All come from different places. But one thing is true: I'm not writing to a computer, a robot, or a machine. I'm writing to people who invest in our company and deserve honesty, clarity, and, if possible, a little charm.

More than 500 of our letters go out each day. They may carry simple messages asking for payment or complex explanations of US tax laws. Most of them will be read, reviewed, accepted, and set aside; few will elicit an emotional response. But they all represent the company and help shape the company's image. If they are easy to understand, then they are effective. If they are complicated, poorly constructed, and difficult, then they fail. And the company's image fails.

Customer correspondence directly reflects a company's image, but can be easily overlooked. Correspondence is the customer's most hands-on and regular experience with a company. Pay attention to it. Invest in it. I think your customers will notice.

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Chris Lentz is a senior business communications editor in the financial services industry. He primarily writes and edits correspondence but also provides plain language consulting on various business documents. During the past eight years, he has worked on documents in the customer service, education, and technology fields, in addition to financial services. He holds a bachelor of arts degree from Boston University.



## Obituary Lord Renton PC QC

1908–2007

### Francesca Quint

The late Lord Renton, who died in June, was born David Lockhart-Mure Renton in Dartford, Kent, on 12 August 1908, the only son of a Scottish doctor. He attended Oundle School and then went on to University College Oxford, where he read Jurisprudence in preference to Medicine. He was elected an Honorary Fellow of University College in 1997.

At Oxford he was President of the University Liberal Club and engaged enthusiastically in various sports. He continued to play tennis into his nineties and remained involved and influential in both law and politics until his late nineties.

David Renton led a very busy and varied professional life, being called to the Bar by Lincoln's Inn in 1933. He enjoyed a mixed civil and criminal practice at the Bar, served in the Army during the Second World War, was MP for Huntingdon from 1945 (initially as a National Liberal), and held various Government posts (as a Conservative) from 1956 onwards. After becoming a Privy Councillor in 1962 and being knighted in 1964, he capped his career with long, devoted, and enthusiastic service in the House of Lords, after being appointed a Life Peer in 1979.

His personal life had its sadnesses. His youngest daughter (who died in 2006) was severely handicapped, both mentally and physically, throughout her life, and his wife of over 40 years died of cancer in 1986. On the other hand, he had the pleasure of seeing another daughter establish herself as a successful practitioner at the Family Law Bar and marry a fellow barrister, now an eminent QC.

David Renton's achievements were impressive. He continued in practice at the Bar after becoming an MP, taking silk in 1954, after which he was elected a Bencher of his Inn in 1962 and Treasurer in 1979. His activities in Government were worthwhile. Among other legislation which he piloted through the House of Commons were the Clean Air Act, the Street Offences Act, and

the Commonwealth Immigrants Act. He also served on the Kilbrandon Commission, which recommended devolution for Scotland and Wales, and as a minister in the Home Office helped to promote legislation which assisted handicapped people to integrate into society.

Outside the Law and Parliament, he was actively involved in charitable work in the field of mental handicap, including being Chairman and then President of Mencap between 1978 and 1988. As chairman he was instrumental in establishing a specialised training course for special needs teachers and in persuading the popular comedian, Brian Rix, to succeed him.

Lord and Lady Renton had a flat in Lincoln's Inn, from where Lord Renton used to drive to the House of Lords. He had learned to drive before the driving test was introduced, and took and passed the test for the first time in 2003, at the age of 94, a feat which gained him an entry in the Guinness Book of Records.

What turned out to be one of Lord Renton's most abiding interests and valuable legacies, however, was the improvement of the quality of legislation. As Sir David Renton he was chairman of the Renton Committee, which reported in 1974 on 'The Preparation of Legislation', and whose forward-looking recommendations remain highly relevant in the drafting of statutes and statutory instruments today. The recommendation that statutes contain a statement of purpose, for example, chimed well with the newly developing European legislation and foreshadowed the increasingly 'purposive' approach which the courts have since adopted towards interpretation, even though there was stiff opposition to them from traditionalists at the time.

Not long after publication of the report, Lord Renton became closely involved with the Statute Law Society, an educational charity whose aims are to work for improvement in the drafting of legislation and to which he remained loyal for the rest of his life. He was successively chairman, President, and President Emeritus of the Society and for some years presided at meetings of its Council held at the House of Lords or in his flat.

Whilst not a lover of plain language, whose principles emerged too late to be absorbed in the Renton Report, Lord Renton welcomed the stimulation provided by speakers on plain language and plain drafting at the Society's evening seminars, and was happy to attend those occasions and argue spiritedly for his point of view.

Lord Renton's innate character played a very considerable role in his success in life. He was able to secure co-operation and support by means of his charm, his encouragement of others, his refreshing openness to the expression of ideas, and his energy, including (on occasion) in disputing the proposals put forward by others. He would readily adopt a colleague's phrase or idea if it served his own argument, and gladly acknowledged it. He could be vehement but was always positive and never arrogant. It is not surprising that he had many friends, by whom he was held in great affection.

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# What makes a document readable?

## Richard Castle

Solicitor, Cambridge City Council (UK)

*The vast majority of authors want their documents to be read. Sadly, only a small minority of the legal profession try to make their documents readable. For that small minority, readability is a constant challenge. They will use whatever devices they can to get their message across.*

*In this article, adapted from a report to the Inland Revenue Department of New Zealand in September 2006 on the readability of their Income Tax Act 2004, Richard Castle contrasts readability with legibility. He points out that most legal documents would fail the customary tests for readability, on account of long sentences divided into 'sense-bites'. Writing from an English perspective, he considers who legal documents are or should be addressed to, as well as structure and format. In conclusion, he makes a plea for greater use of a technique widely used in statutes but mostly ignored in private documents: the 'condition technique'.*

## Readability contrasted with legibility

Readability measures how comfortably a text can be read.<sup>1</sup> More specifically, readability has been defined as the quality that makes possible the recognition of the information in words, sentences or continuous text. To some extent, readability depends on the features of individual characters, but it relies more heavily on the spacing of characters and groups of characters, their combination into sentences or other forms, the spacing between lines, and on margins.<sup>2</sup>

Readability must be distinguished from legibility, which itself is of two types: legibility of characters and legibility of text. It is legibility of text which most concerns the reader of legal instruments. Legal documents are reader-intensive. The reader needs to be able to identify groups of characters quickly as words, and thus to see meaningful groups of words. Conspicuity

(or visibility) is relevant where some items are in bold type, some in italics and some in a smaller type.

## Readability formulas and 'sense-bites'

Readability formulas usually count syllables, sentence-length, passives, personal words and the like. But a high score on one of these tests does not by itself indicate easy readability. Rudolph Flesch, the well-known guru of readability formulas, himself cautioned against regarding them as the be-all-and-end-all.<sup>3</sup> Legal texts often contain extraordinarily long sentences which are broken down into shorter 'sense-bites'.<sup>4</sup> A 'sense-bite' is a discrete passage of text (usually not a full sentence) which in context can be understood on its own. Short sense-bites have been accurately defined as 'easily comprehensible, bite-sized amalgams of sense and structure'.<sup>5</sup> Both statutes and private documents score badly according to many readability formulas on account of the long sentences. Yet through sense-bites they can still be readable.

## Personal reading levels

Document users have reading levels<sup>6</sup> influenced by:

- their degree of interest—if readers are interested in the subject-matter they will read at a higher level than normal<sup>7</sup>
- the legibility of the type—a user's reading level decreases when type is too small, too dense or too indistinct<sup>8</sup>
- sentence length—short sentences (perhaps short 'sense-bites' for most formal legal texts) help people to read at higher levels than they are used to
- conceptual density—too many new concepts or excessive condensation in a given number of words tend to deter readers
- format—white space and pertinent illustrations provide visual breaks that encourage the reader to keep going.

## Other influences

None of this should minimise the importance of word choice, word order, meaningful variation, rhythm and flow. No discussion of readability, however, can be complete without considering the potential reader. So who are legal instruments intended to be read by?

## The audience

We need to make a distinction between public and private documents because different considerations apply to each group. On the face of it, a public instrument like an Act of Parliament affects citizens as a whole, at least potentially. In contrast, a private document affects a much smaller group, perhaps only one or two individuals directly. Naturally the principal person addressed in each case may differ.

### *New Zealand tax statutes*

In some instances, readers of statutes envisaged by drafters are not the citizens affected, but their advisers. For the Income Tax Act 2004 in New Zealand it was stated:<sup>9</sup>

The primary audience for the Act itself will comprise groups such as:

- the courts;
- lawyers and accountants (particularly tax specialists);
- authors of secondary sources that explain the application of tax laws;
- Members of Parliament;
- tax policy analysts and people who want to make submissions on proposed legislation;
- Inland Revenue staff.

Not everyone would agree. Tax compliance should improve if the tax office has a good relationship with the public. So directing tax legislation to the taxpayer would promote compliance.<sup>10</sup>

Many taxpayers simply do not want to know what the legislation itself says.<sup>11</sup> Even so, it is contemptuous to ignore the person who is paying the money—or if not to ignore the taxpayer, then to make an express decision not to address that person in the legislation. Moreover if the primary audience were the taxpayer, a dual purpose might be served: first to simplify the messages in the legislation so that they could be understood by the interested, educated layman; and second to serve the needs of the busy general practitioner who might not have the involvement or expertise of a specialist.

### *Australian tax statutes*

The contrast with the Australian Income Tax Assessment Act 1997 could not be greater. The Australian text speaks directly to the taxpayer: 'You must pay income tax for each year

ending on 30 June ...' (section 4–10) and so on throughout the statute. This approach is consistent: the taxpayer is the person affected and it is the taxpayer for whom the Act is written. So much so, that at times the Act reads more like a guidebook than an Act of Parliament—especially in the more general material at the beginning.

### *UK tax statutes*

Unlike New Zealand and Australia, the United Kingdom in its Income Tax (Earnings and Pensions) Act 2003 gives no clues about the intended audience. But the post-implementation review<sup>12</sup> was conducted amongst tax professionals only, thus implying that the Act was not intended for the layman. The research results, however, challenged this assumption.

It is mentioned that tax legislation – and in particular ITEPA – is unusual as it affects the majority of the British population; most people, at some point, will be subject to the clauses stated in it. Given that it does affect so many people and, moreover, affects them in the most fundamental manner – taking a substantial amount of their paycheck – the Government has a responsibility to ensure that the legislation that enables this is clear, accessible and understandable.

Furthermore, this is seen to be now of paramount importance in light of the driver on self-assessment. Given that so many people who are self-employed now undertake this for their tax returns it is essential that, should they need to, the legislation is easy to understand and can be used as a point of reference by anyone.<sup>13</sup>

### *Does it matter?*

Self-assessment of tax is the norm in many countries. And in a democracy, legislators ignore the voter at their peril. They ought not to write deliberately over the head of the interested, educated taxpayer. Remember too that many professionals asked to advise about tax are generalists; and some readers will be looking at the Act for the one and only time in their lives.

As for the question of whether openly addressing the taxpayer would make any difference to legislation as drafted, the answer might well be; 'Not much'. But a change in attitude, a mere announcement, can have an effect on writer and reader. Consideration of the taxpayer by the drafter is bound to have some beneficial effect.

## *Private documents*

Private legal documents are likewise addressed to a number of audiences. The primary reader is nowadays assumed to be the person who signs the document, namely the client. As Anthony Parker said in his notes to the 1964 'Modern Conveyancing Precedents':

Conveyancing documents are signed by clients and it seems wrong that people should be required to sign a document which is incomprehensible to them.

Secondary audiences abound. In a will, for instance, the executors and beneficiaries can hardly be far behind the testator in the mind of the drafter. Nor should successors in title to original parties be disregarded. Who can tell what might be the levels of understanding of assignees of a lease throughout a 100-year term? So it pays to 'write down' not in any patronising way but to ensure that as far as possible the document is understood by all those whose rights and privileges depend on it.<sup>14</sup>

Other lawyers and the courts cannot be ignored. David Mellinkoff has written:<sup>15</sup>

Some day someone will read what you have written, trying to find something wrong with it. This is the special burden of legal writing, and the special incentive to be as precise as you can.

Yet it is possible to overstress this point. These days, thank goodness, the purposive approach to interpretation prevails. The judge who disregarded everything except technicalities was always a myth anyway.<sup>16</sup>

## **Structure**

The structure of a document influences readability too. Structure is the building of a document (including a statute) so that it stands solidly and (at risk of extending the metaphor too far) so that it is both readily useable by the people who are intended to make use of it and robust against the buffetings of later amendment.<sup>17</sup>

Any structure is better than no structure. Opinions will always differ on the logical sequence of an instrument.<sup>18</sup> Ultimately it is the users of a document who can say definitively if the structure is one they find helpful under the pressure of day-to-day decision-making. Users do not customarily

read the document from beginning to end, so it should not be assumed that they will. But if the document has a logical structure, unfolding sensibly as the reader leafs through its pages, it will seem friendly and understandable.

For long documents, a table of contents at the beginning is helpful. We never see general indexes, however. Why not?

## **Format**

Format embraces everything associated with the look of a document: page size, type size, type style, line length, line spacing ('leading'), general margins, indentations and headings. Reed Dickerson has pointed out that specifics like typeface, ink-to-paper contrast, paragraphing and cross-referencing are usually ignored or played down in the standard texts on legal writing or legal drafting. Attempts to list the full range of professionally useful devices that improve clarity or readability would be impossible.<sup>19</sup> Suffice it to say here a range of devices can promote readability, among them:

- the judicious use of running heads
- distinctive headings to both main clauses and subclauses
- indenting subsubclauses so that they are distinguishable from subclauses.

Moreover the consistent use of indentations and spacing helps to create a user-friendly page and encourages readers to delve around for their required information. Both drafts and engrossments are still typed with double line-spacing. If language and layout were clearer, the main text might be set out single-spaced. That would save a lot of paper.

## **The look and feel of a document**

Most documents are produced on white A4 paper with a weight of at least 100gsm for the engrossment. 120gsm induces a more professional feel. Type size is customarily 12-point though at a pinch anything down to 10-point can be acceptable.<sup>20</sup> As for type style, passions run high. Some authors are prepared to die in a ditch for their favourite. All we can say from the evidence about us is that seriffed typefaces promote readability (newspapers, novels, and this journal) whereas sans-serif fonts promote legibility (road warnings, hospital directions, and exit

signs). Beyond that, the choice is subjective, and committees will never agree. When the form of UK statutes was under consideration some years ago, the Lords wanted Times New Roman but the Commons preferred Palatino. Neither prevailed, and they compromised with Book Antiqua.<sup>21</sup>

As for right-hand margins, the consensus for private documents seems to be against justification, for fear of stretching words unnaturally on short lines. The practice for statutes differs from one jurisdiction to another.

### Punctuation

Private documents would take a great leap forward if they were punctuated normally, albeit lightly. The change would be akin to replacing 'shall' in the days when 'shall' was sprinkled unthinkingly throughout all legal documents. For some reason, the private drafter seems to find punctuation alien. But why make life difficult for the reader by leaving it out?

### The condition technique

Plenty has been written elsewhere about the desirability of standard language, short sentences and logical flow. One device which has possibly not received the attention it deserves, however, is the condition technique, widely used in United Kingdom statutes. The condition technique is a drafting tool for shortening sentences and making the passage more easily understood. The drafter first shortly states in a subsection that the general rule is expressly subject to conditions. Those conditions (sometimes called cases) are then set out in following subsections. This technique is illustrated (in this instance by using 'cases') in section 191 of the Income Tax (Earnings and Pensions) Act 2003 (UK) which is set out below.

#### 191 Claim for relief to take account of event after assessment

- (1) A claim may be made for relief in the following cases.
- (2) The first case is where—
  - (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that, for the purposes of section 175 (benefit of taxable cheap loan treated as

earnings), the whole or part of the interest payable on the loan for that year was not paid, and

- (b) it is subsequently paid.
- (3) The second case is where—
    - (a) the tax payable by an employee for a tax year in respect of a loan has been decided on that basis that, for the purposes of section 188 (loan released or written off: amount treated as earnings), the loan has been released or written off in that year, and
    - (b) the whole or part of the loan is subsequently repaid.
  - (4) The third case is where—
    - (a) the tax payable by an employee for a tax year in respect of a loan has been decided on the basis that—
      - (i) section 288 (limited exemption of certain bridging loans connected with employment moves), and
      - (ii) section 289 (relief for certain bridging loans not qualifying for exemption under section 288),will not apply because the condition in section 288(1)(b) (which requires that the limit on the exemption under section 287(1) has not been reached) will not be met, and
    - (b) that condition is met.
  - (5) Where a claim is made under this section the tax payable is to be adjusted accordingly.

The Australian Income Tax Assessment Act 1997 uses the condition technique sparingly but to telling effect, as in section 165-13:

#### 165-13 Alternatively, company must carry on same business

- (1) If the company fails to meet a condition in section 165-12 (which is about the company maintaining the same owners), it must instead meet the conditions in this section.
- (2) There must be some period (the *continuity period*) that satisfies these conditions:
  - (a) it must start at the start of the \*loss year (and end before, at or after the end of the loss year);

- (b) if the period were the loss year, each of the conditions in section 165-12 about the loss year would be satisfied.
- (3) The company must satisfy the \*same business test for the income year (the *same business test period*). Apply the test to the \*business that the company carried on immediately before the time (the *test time*) when the continuity period ends.

Readers will be aware that the condition technique is an extension of the methods recommended by English barrister George Coode in the middle of the nineteenth century.<sup>22</sup> It ought to be more widely used. Alienation and forfeiture clauses in leases (for instance) could then be made much more digestible.

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## Endnotes

- <sup>1</sup> Elizabeth Gregory 'Power in Print: developing effective newsletters and documents' (2001) at <agcomwww.tamu.edu>.
- <sup>2</sup> Mark S Sanders and Ernest J McCormick *Human Factors in Engineering and Design* 7th edition 1993 (New York: McGraw-Hill) p 102.
- <sup>3</sup> Rudolph Flesch *The Art of Readable Writing* 1949 (New York: Harper & Brothers) p (xi).
- <sup>4</sup> Peter Butt and Richard Castle *Modern Legal Drafting* 2<sup>nd</sup> edition 2006 (Cambridge: Cambridge University Press) pp 142, 181.
- <sup>5</sup> Edwin Tanner *Clear, Simple, and Precise Legislative Drafting: how does a European Community Directive fare?* (2006) *Statute Law Review* Vol 27 No 3 p152 at p152.
- <sup>6</sup> See <www.caslon.com.au/readabilityprofile1.htm>, and Elizabeth Gregory 'Power in Print' cited above.
- <sup>7</sup> See John Downing and Che Kan Leong *The Psychology of Reading* 1982 (New York: Macmillan) p 252; and Elizabeth K Knutson 'Reading with a Purpose: communicative reading tasks for the foreign language classroom' (1998) at <www.cal.org/resources/digest/reading\_digest.html>.
- <sup>8</sup> Miles A Tinker *Legibility of Print* 1963 (Ames, Iowa: Iowa State University Press) chapters 5 (size), 7 (leading) and 9 (colour).
- <sup>9</sup> *Rewriting the Income Tax Act: objectives, process, guidelines* 1994 (Wellington: Inland Revenue Department) para 3.4.
- <sup>10</sup> David Smith and Grant Richardson 'The Readability of Australia's Taxation Laws and Supplementary Materials: an empirical investigation' *Fiscal Studies* (1999) Vol 20 No 3 p 321 at p 325.

- <sup>11</sup> See eg the taxpayer response to a questionnaire about tax legislation cited in Ian G Wallschutzky 'TLIP: Stage 1—benchmarking' (1995) 12 *Australian Tax Forum* p115 at p121.
- <sup>12</sup> MORI *The Income Tax (Earnings and Pensions) Act 2003—Post-implementation review* February 2006, available at <hmrc.gov.uk/rewrite>.
- <sup>13</sup> MORI report p 18.
- <sup>14</sup> See Reed Dickerson *The Fundamentals of Legal Drafting* 2<sup>nd</sup> edition 1986 (Boston: Little, Brown and Co) p 27.
- <sup>15</sup> David Mellinkoff *Legal Writing: sense and nonsense* 1982 (St Paul, Minnesota: West Publishing Co) p 15.
- <sup>16</sup> Rudolph Flesch *How to Write Plain English* 1981 (New York: Barnes and Noble) p36.
- <sup>17</sup> See Reed Dickerson *The Fundamentals of Legal Drafting* chapter V 'The Architecture of Legal Instruments'.
- <sup>18</sup> See Piesse *The Elements of Drafting* 7th edition 1987 by J K Aitken (Sydney: The Law Book Co) p 11.
- <sup>19</sup> Reed Dickerson *The Fundamentals of Legal Drafting* p 176.
- <sup>20</sup> For a comparison with USA paper sizes and weights, see [www.colorcraft.com/ht/en/resources/paper-specs](http://www.colorcraft.com/ht/en/resources/paper-specs).
- <sup>21</sup> House of Commons Research Paper 01/04 *Tax Law Rewrite: the Capital Allowances Bill* 2001p 31.
- <sup>22</sup> *On Legislative Expression* 2nd edition 1852 (London: Thomas Turpin) reproduced in Stanley Robinson *Drafting* 1980 (London: Butterworths) p 331.

## Ideas for further articles or research

- Drafting techniques
- Definitions and labels—what's the difference?
- The psychology of typefaces
- Job satisfaction in document production
- Line-spacing, paper weight and paper colour in drafts and engrossments
- The indifference of the legal profession to writing well

Richard Castle is a solicitor with Cambridge City Council, England. He was a founder-member of Clarity and is a long-standing committee member. With Peter Butt, he is co-author of *Modern Legal Drafting* (CUP, 2nd edition 2006). He worked in New Zealand (where he was Clarity's representative) for seven years before returning to his native UK in March 2007.





# Learning about plain language through a community development project on adult literacy

## Audrey Gardner and Janet Pringle

*Audrey Gardner is the literacy programs coordinator at Bow Valley College (Canada).*

*Janet Pringle is a plain-language consultant (Canada).*

Low-literacy plain language is central to our work as adult-literacy practitioners. We talk about it all the time, facilitate plain-language workshops, and offer feedback to community-based organizations wanting to write their print materials in plain language.

### The project

In 2001–2003, we worked on a community development project in Calgary, Alberta. The ‘Connecting Literacy to Community’ (CLC) project worked in six communities, both urban and rural. The project aimed to reduce barriers to community services and to programs for adults with limited literacy. These include school drop-outs, people in crisis or living on the streets, people with developmental disabilities or mental illnesses, and people for whom English is a new language. The key approach in the CLC was using literacy specialists as change catalysts in agencies, groups, and organizations, to increase staff and volunteer awareness about adult literacy. The original project has led to similar projects, including a literacy specialist training course and a community development health literacy project.

In our role as literacy specialists, we provided literacy audits in organizations doing community programming and services. We helped these organizations see where they might improve their ‘literacy-friendliness,’ from the reception area to all the other aspects of their work and workplace. These audits included staff and volunteers in consensus-building discussions and activities, rather than having us create a ‘top-down’ model for change.

### Literacy specialist role

We offered workshops on low-literacy plain-language writing, literacy sensitivity and awareness, and verbal communication. Staff and volunteers were often not fully aware of the problems faced by many people who lack literacy skills, or, if they were aware, felt they lacked skills themselves to create easier-to-read materials. Similarly, many were not using alternative communication techniques, such as videos. What is more, the stigma attached to low reading skills is so acute, many people hesitated even to ask clients if they needed help, in case of causing offence.

Of several workshops we offered, our most popular ones were writing in plain language and developing literacy sensitivity and awareness. As literacy specialists, we gathered information and developed a low-literacy plain-language workshop that could be customized to meet each agency’s or group’s need. Our main tool in the project was the Literacy Audit Kit (1997), from Literacy Alberta (a provincial coalition on adult literacy). We changed the audit kit from a survey design to one in which workshop participants could discuss what worked well and what needed improvement. Consensus was a prime objective, so that the learning would be carried on after we had gone. We wanted to leave staff and volunteers eager to continue working together for improved literacy awareness. For the plain-language workshop, we built upon the ‘Print Material’ section of the kit.

### Partnerships

We developed partnerships with these organizations so that they understood their role was to be more than just as recipients of our information. We hoped in this way to encourage continuing planning around the literacy needs of their clients. This always included having a list of literacy services available for anyone who wanted them.

We focused on helping agency staff and volunteers to challenge their knowledge about each reader and their own assumptions about printed text. This produced lively discussions that touched upon the following:

- examining assumptions about agency clients, particularly their reading and writing skills
- developing a deeper understanding of the connection between privilege (class, income, education) and the power of language in print
- uncovering professional jargon
- exploring our tendency to have more text (and more complicated text) than necessary, in order to sound 'professional,' and
- linking personal histories about being a 'good writer' to writing with the reader in mind.

### **The significance of reader-based writing**

The more plain-language workshops we did, the more we saw a pattern developing. People's preference was to get caught up in the writing of the text, rather than letting the writing be guided by paying attention to the reader. In many of the workshops, the participants admitted that although they knew their clients, they had not considered them as readers of agency documents. The irony of this is that all community services and programs involved in the CLC project required clients to read and respond to printed text.

The significance of building awareness about the reader, and challenging assumptions about adults as readers cannot be understated. As Sally McBeth, of Clear Language and Design (CLAD) in Toronto, Canada, writes in *Literacies* #6 Fall 2005 (page 5):

When messages get 'lost in transmission' it's often not because the reader has a literacy problem. It is because the writer, through lack of awareness and skill, has created illiteracy. Helping people develop that awareness and skill is really what plain language is about.

To write successfully, using plain-language techniques, the writer must constantly ask, 'How much do I know about the readers? What does the reader expect from the text? What do I know about adult literacy?' We found that integrating awareness about adult literacy in all the workshops helped agency staff and volunteers find the switch to the light, to an 'aha' moment. This is when they

made the link between feeling intimidated by printed text, and finding that poorly written text is the fault of the writer, not of the reader.

As a community development project, the CLC assisted people to write for marginalized readers, using plain-language techniques and concentrating on how the reader would likely use the printed text. We were more focused on the actions that the reader would take in relation to the text, rather than the small details of the structure of the text. We started discussions about this before looking at grammar.

Some of the things we learned from the CLC project were that:

- everyone can write using plain language
- the context that the print material is used in is as important as the text. Keeping the spotlight on how people were using the text helped agency staff and volunteers improve how they verbally communicated and interacted with clients (improved client service)
- learning how to write in plain language improved staff's writing (and communication) skills
- staff and volunteers felt they could articulate their programs and services better.

### **Talking-to-writing**

Interestingly, the more time we spent talking about writing in plain language, the easier it was to write. Natalie Goldberg in *Writing Down the Bones* (1986) states on page 77:

It is good to talk....Talk is the exercise ground for writing. It is the way we learn about communication.

We talked with agency staff and volunteers, who then talked with their clients about printed material. Many agencies asked clients for the first time about agencies' written documents, and found that what the clients (readers) had to say about the forms, brochures, and other program materials were things they hadn't considered before. One comment highlighted the redundancy of asking people to write their birth-date as well as their age. Another significant impact of the CLC is that rather than sending their printed material to a plain-language consultant to re-write, agencies began to do it themselves. This learning-while-doing approach was a tremendous opportunity to assimilate the knowledge that writing demands talking. Agencies had to talk

among themselves and with clients to ask, 'Are we getting it right?' They also had to learn that writing in plain language is a cyclical process that involves revisiting who the readers are, incorporating program and service changes, and looking at what people are doing with the text.

Our plain-language workshops would range from approximately two hours to a full day. We worked with non-profit organizations, government services, and community volunteer groups. Below is a typical workshop outline. Agency staff were required to bring one or two client documents to the workshop so they could start re-writing them.

### Plain-language workshop (three hours)

- What do you know about adult literacy?  
Discussion, and video from Literacy Audit Kit
- What do you know about plain language?
- What do you think plain language is? Why do we use complicated language?
- Benefits of plain language
- Components of plain language
  - Considers the audience
  - Organizes information logically and simply
  - Speaks directly to the reader
  - Emphasizes the positive
  - Uses concise words and phrases
  - Avoids clichés and explains jargon or technical terms
  - Uses clear and effective sentences
  - Uses inviting layout and design
- Practice with print material: group decides how to divide up a brochure and work on sections.

At least half of the workshop time was designated to rewriting one of the agency documents. This involved small-group work and presentation of their work-in-progress to the rest of the group. They had to describe the purpose of the text, details of the readers, and changes they made to make it easier to read. Literacy specialists were 'on hand' but encouraged participants to discover for themselves.

### Conclusion

There has been a noticeable move towards creating print materials for marginalized people. They are easier to read and have been designed with care and attention to serve those who are excluded from general print information. Some agencies continue to explore for themselves what they can do to create a literacy-friendly environment and produce plain-language materials. Requests for literacy specialists have continued beyond the end of the project, and several literacy specialists are involved in further projects now. Non-government health organizations, seniors' groups, Aboriginal groups, parenting groups, and at least some municipal organizations are recognising the need and working to fulfill it.

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### Ideas for further articles or research

How to reach marginalized groups with information useful to them. These groups might include people with:

- English as a new language
- learning disabilities such as ADHD
- developmental disabilities (called 'learning disabilities' in the UK and in the USA)
- mental illnesses
- high-risk lifestyles.

Audrey Gardner *had over 10 years of experience in the non-profit sector before bringing her experience of community building to the adult literacy field in 2001. She is the Literacy Programs Coordinator at Bow Valley College, Calgary, Canada. Audrey has worked with many community-based organizations to help improve staff and*



*volunteer knowledge and skills to better serve adults with literacy challenges. She developed and facilitated a training program on community capacity building for adult literacy for practitioners in adult and family literacy.*

Janet Pringle was born and raised in Scotland but now lives in Canada. She has been a researcher and writer in Calgary for thirteen years, mainly working with people who have developmental disabilities. From them, and from immigrants with English as a new language, she first learned how to write plain language. She also teaches plain-language writing to audiences who need to communicate with readers at many different educational levels. She enjoys crossing the gap between literacy work and plain-language writing and teaching.



## Clarity seminars on clear legal writing

conducted by Mark Adler

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.

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The length of the seminars can be tailored to your convenience but they usually run for 3 hours, 5 hours, or 1.5 days.

Individual tuition is also available (in person or by email) to combine training with the improvement of your own documents.

**Contact** Mark Adler at  
adler@adler.demon.co.uk

## Keeping errors in Czech

**Martin Cutts**

*Research director, Plain Language Commission (UK)*

A reader's letter to the *Daily Mail* on 9 August urges: 'There is one way to rescue reality TV—make it educational. The Big Brother house members should have to give a ten-minute talk on their job and life, followed by a quiz. There could be awards for the house member who makes the fewest grammatical errors and uses the most coherent sentences.'

This must rank high among wishes least likely to be realized. And I'm beginning to wonder if one of my own pipe dreams is just as unattainable, namely to convince lawyers to proofread their letters and emails before sending them to clients.

*Clarity* is rightly concerned with clarity. But as an occasional client of a few law firms and a provider of writing-skills courses to rather more, I've noticed that lawyers' letters and emails are often error strewn. In one legal executive's 2-page advice letter, I counted more than 70 errors of spelling, punctuation and grammar, including several missing words. This meant some of the sentences were indecipherable. The whole letter looked like a hoax. I asked the author, who didn't seem particularly aghast, how he'd managed to produce this lamentable offering. He replied that he'd written it hurriedly, late at night, and had typed it himself. Had the client complained or even mentioned its failings, I mused? Apparently not. The same author had many foreign clients. If they thought his writing odd, perhaps they blamed their own lack of English. After all, their expensive London lawyer must be right.

I'm not saying that people in other professions necessarily check their writing more carefully. Last week I received this email from an alleged proofreader in the medical field: 'do you ever recruit staff? I have been a medical professional for 21-years and do vast amopunts of written work on almedical issues for a variety of audiences .for many years I have been the

recognised proof reader in our dept .Iam looking for additional part time work'. So far, I've managed to resist her offer.

Partners at one of the firms I work for seek to impress on new starters the importance of proofreading the drafts they submit for approval. A frequent comment is: 'Trainee solicitors don't seem to realize I'm not their £350-an-hour proofreader. They should check their stuff themselves.' In that firm, careless proofreading can even make the difference between the trainees (all graduates) surviving their probationary period and having to look for a new job.

One of our commercial services is to accredit documents with the Clear English Standard logo, and as part of the process we give them some plain-language editing. So when I noticed that a major insurer (I'll call them XYZ) was printing our logo on its brochures without troubling to ask us first, it seemed reasonable to protest, especially as the documents were full of unclear English and errors—eg, many of the apostrophes were wrong. But XYZ told me to go away and get stuffed. So I shopped around for an intellectual-property lawyer and hired what seemed to be a stellar firm in Manchester. Their customer-service brochure made all the right noises about attention to detail, supervision of juniors' work by partners and first-rate performance, and I agreed to pay them about £300 an hour. Their first letter had me biting the desk with regret. It begins:

I enclose letter which I have received from XYZ along with their two brochures.

Er, that would be better as 'a letter dated 10 June 2005', just for certainty. And I'd expect the sentence to be followed by the names of the 2 brochures, plus some clarity on whether the author is enclosing them now or whether she's holding on to them. The letter goes on:

Looking at point 1 in the letter, it does not say after the change the logo was used or not.

This makes no sense because 'whether' has been omitted after 'change'. Also, the author has not explained what 'change' is being discussed. Compared to these horrors, her hanging participle 'Looking' is a minor concern.

Although I left a message with Mr Bolton on Friday, he has not come back to me. I will go back to him and ask for these docu-

ments, but perhaps it would be better if I wait until you have had an opportunity of looking at his comments first? Perhaps you could telephone me to discuss?

As 'documents' haven't been mentioned before, I'm left to guess what they are and who Mr Bolton is. Moreover, 'opportunity of looking' is not really English. And the successive questions leave me wondering what actions the author is really planning to take.

While that letter calls into question the quality of supervision by the author's principal, it's not just the junior staff who don't care to check their stuff. On a relative's behalf, I was recently corresponding with a law firm's senior partner about the way one of his team had been using (or perhaps misusing) a power of attorney. His letters usually included several typos, and one had the following statement (both names changed):

I am able to confirm to you that Mr Pillion retired from my firm and was not in any way connected with Mrs Smith's matter.

When I queried this, since Mr Pillion had undoubtedly been dealing with Mrs Smith's affairs for many years, the senior partner replied:

I am not in any way saying that Mr Pillion did not act in respect of the affairs of Mrs Smith as it [sic] is apparent of [sic] all that he did. I do not therefore understand why you have read this interpretation into my letter.

In full pedant mode I asked him to re-check his original letter, and he at last responded more graciously:

I now fully understand the issue you are raising...the word 'this' was omitted...I apologise for not properly proofreading the letter before signing it. As you will now appreciate I meant to say that Mr Pillion had retired from the firm, as had been agreed for some time, and this retirement was not in any way connected with the matter you have raised with me.

My feeling is that few clients are likely to be as persistent as me or the average Clarity member, so lawyers get away with a lot. Moreover, most clients imagine that their lawyers are good at putting the right words in the right places—that's after all what they're paid for. Just as clients are reluctant

to challenge obscure wording in their wills, they're not confident enough in their own knowledge of English to demand letters and emails that meet a high professional standard. Or perhaps they just don't care, as long as they think they've got the gist of it. The trouble is, clients sometimes think they've understood a legal letter and act on it, only to find they've got the wrong end of the stick.

Error-strewn letters give an impression of incompetence and detract from the professional image law firms want to display. If lawyers blunder so badly in their letters, readers are entitled to wonder about the quality of their decision-making and advice.

So how can authors do better? Proofreading on screen seems to be less effective than on paper, partly because the characters are less legible. However, the size of the image on screen can usually be enlarged, which may help. When checking on paper, though, authors can more easily bring into play one of their most potent weapons, of which most people have several—their fingers. If you run your finger beneath the line of text, the eye tends to examine each word more closely. This is reading for errors, not skim-reading. It's also helpful to make several passes at a document, reading in turn for such things as headings, paragraph numbers, sense, spelling, and footnotes.

Other things authors can do include leaving a document overnight and proofreading it with fresh eyes next morning; getting a colleague to read it; reading it from the last word to the first (for spelling); and using a spellchecker. But unless they're lucky enough to have recourse to a professional proofreader, they'll be doing all these things for themselves—which costs time and the client money.

Well, the odd mistake will always slip through because we all tend to read what we think is there, not what really is. In haste, I once made some last-minute amendments to a book of mine that included a chapter extolling plain language in legal writing. A kindly reviewer noted that it included the following sentence: 'Similarly, organizations that want to win the confidence of customers should give them incomprehensible legal agreements to sign.'

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## Drafting matters— letters of advice

**Dr Robert Eagleson**

*Plain-language consultant (Australia)*

*This article on drafting considers letters of advice that arise in those situations where the client has approached the lawyer for a solution to a problem.*

*The content of the letters is not at issue. No matter which approach they adopt to drafting—traditional or plain language—all lawyers endeavour to supply their clients with all the information they require to receive satisfactory and satisfying advice. Their letters cover the same range of items and contain virtually the same blocks of information. There is no essential difference in the material covered by both approaches, and cannot be if the lawyers are to fulfil their duty of care to their clients. Notwithstanding this similarity, there are critical variations in where and how the content is organised and presented in a letter of advice. It is the reasons underlying these variations that we are concerned to explore, and where the advantages lie.*

### The 2 approaches

Here are common arrangements of the blocks of material that appear in traditional and plain

language approaches to letters of advice. (*T1, P1, etc* are added to aid cross-referencing in the following discussion.)

### The major divergence

#### *T2-3 versus P2-4*

Immediately after an opening sentence acknowledging receipt of the client's request, traditional letters of advice move to confirm the nature and extent of the instructions received. The initial sentences launching this activity ordinarily proceed along the lines of:

You have instructed us to ...

Although this segment amounts largely to a repetition of the instructions which the client had given previously, possibly orally at a meeting or conference, it is reasoned that this step is essential to avoid misunderstanding between the lawyer and the client.

On the heels of this opening gambit clarifying the instructions comes, where necessary, a statement of relevant background information on the client's business. Initiating sentences here take the form of:

We understand that ...

We note that ...

Again, most if not all of the material in this section would have been communicated to the lawyer by the client earlier. The purpose of the repetition is to compel clients to check any details they had given for accuracy and for omissions and to clear up any misconceptions the lawyer might have formed.

<b>Traditional approach</b>	<b>Plain language approach</b>
<i>addressee</i>	<i>addressee</i>
<i>T1</i> Subject title of letter	<i>P1</i> Subject title of letter
<i>T2</i> Confirmation of instructions	<i>P2</i> Issue
<i>T3</i> Relevant background information	<i>P3</i> Findings/Recommendations
<i>T4</i> Assumptions of lawyer in arriving at solution	<i>P4</i> Important considerations/Scope/Assumptions
<i>T5</i> Evidence forming the basis for a solution	<i>P5</i> Explanations/Reasons for findings
<i>T6</i> Findings/Recommendations	<i>P6</i> Applicable legislation and court rulings
	<i>P7</i> Further action/What you need to do/How we can help you
<i>sign off by lawyer</i>	<i>sign off by lawyer</i>

It is proper and prudent for lawyers to be clear about instructions and background information and to assemble evidence before they develop solutions to problems. But this is from their perspective and how they should tackle problems. But well before the time they post off their letters of advice, events have moved on as far as the clients are concerned.

Clients go to lawyers with the assumption that they are reasonably intelligent and capable of understanding ordinary conversation, and consequently they do not expect to have to confirm that the lawyers have understood their instructions accurately. Nor for the same reasons are they looking for a repetition of all the details that they had given to the lawyer and that are familiar to them. What they want to learn first and foremost is whether the lawyer has been able to come up with a solution to their problem—even if it turns out to be an unfavourable one. In short, they want section T6 (=P3) as near to first in the letter as possible.

Traditional letters of advice rarely ask clients explicitly to check and confirm details. At the same time it is naïve to imagine that clients would conceive that their instructions had been unclear or incomplete. Who of us—including lawyers—ever entertain the possibility that what we have said or written might be obscure or deficient? It just does not occur to us, as some of our past endeavours testify. As a result, clients often do not see the repetition in sections T2 and T3 as sagacious but only tiresomely overcautious, unnecessary and time-wasting.

Several consequences follow from this predominant desire of clients. First, will they read sections T1–5 carefully, as their lawyers hope, or just skim them? Are they in a calm enough state to pay proper attention to the details in these sections until they have the satisfaction of knowing that there is a solution?

Secondly, will clients go back to read sections T1–5 more carefully once they come across the solution? And if they do, will they be lulled into thinking that they have already read these sections, when all they did on the first reading when they opened the letter was to skim them? The result could be that they quickly slip into skimming again and so overlook salient facts and crucial assumptions. This is especially likely to happen if the recommendation suits them. If it goes against their interests,

they might scrutinise the earlier material looking for possible loopholes or errors on the part of the lawyer, but this means that only the disappointed part of the audience will engage in this careful reading.

Wise as the traditional arrangement and valid as the arguments used to bolster it might seem to lawyers, it does not avoid the dangers it aims to elude.

### **Resolving the conflict**

The organisation adopted by the plain language approach relieves the conflicting tensions flowing from the arrangement of the material in the traditional approach and in the process offers a rounded solution—not a compromise that encompasses the legitimate interests and considerations of both clients and lawyers and that goes a long way to counteracting feared dangers of inattention to details.

### **P2 The issue**

The plain style letter starts with a concise statement of the matter at issue in the advice, which provides a context for the information that follows. It is necessarily brief because the objective is to get to the recommendations or findings as quickly as possible for the benefit of the clients. 1 sentence is usually sufficient—or at most, 2. There is no need for a heading, such as *Issue*, as the section comes under the umbrella of the subject title of the letter and is an elaboration of it.

Sample sentences take the form of:

- We have considered whether the Financial Transaction Reports Act 1998 requires Outback Bank to carry out identification procedures, as requested in your letter dated 15 March 2007.
- We have examined the constitution of CHT to determine whether it can undertake a renounceable rights issue rather than an institutional placement.

### **P3 Findings/Recommendations**

In a plain language letter, an announcement of the findings or recommendations follows immediately on the statement of the issue. This is the core of the advice which clients are eager to discover. They are hard-pressed by a problem; they are anxious to learn if their lawyers have unlocked a solution for



them. At the first instant they are happy to entrust the details to their lawyers' professional expertise: it is the answer that they desire at once. Only then can they relax to turn their attention to the accuracy of what seems to them secondary matters of detail.

Once more, unless the problem has several branches, this section is not ordinarily lengthy. 1 or 2 succinct sentences regularly are sufficient. For example:

- We recommend that you ...
- You will need to review the structure of ...
- We consider that the replacement of the refrigeration pipes is a deductible repair for income tax purposes.

Appropriate headings are *Findings* or *Recommendations*. In some instances *Implications* might be applicable, or some other term that more nearly matches the character of the advice being given.

#### **P4 Important considerations/Scope/ Assumptions**

Some sample sentences from actual letters of advice give the flavour of the content in this section.

- Our proposal is only valid if ....
- Our finding is based on ... (details from instructions)
- In making this recommendation we have only examined ABC, as you directed. We have not examined XYZ.
- We have assumed that DEF does not hold 15% or more of the shareholding of an Australian company.

The material in P4 is essentially the same as that in T3, but the clients are being asked to engage with it in a vastly different manner. Rather than being involved in a more superficial activity of confirming whether they had given their lawyers the necessary information and whether the lawyers had understood them, now the clients are tackling a challenging task of problem solving with vital consequences for them. In the context of P4 they are assessing whether there is a congruence between the characteristics of the solution proposed by the lawyers and the characteristics of their circumstances. The comparative assessment

involved forces to the surface any contradictions or mismatches. It promotes meticulous reading.

Locating the background material and assumptions at P4 after the statement of the solution then is a far more effective strategy for the integrity and success of a letter of advice. With the material at P4, clients are scrutinising it against the backdrop of the proposed solution, a more productive and interesting task, whereas with the material at T3 (the traditional approach) they are only assessing it against the instructions previously given. The solution, the real core of a letter of advice, receives more searching attention in the plain language approach.

If we are worried that clients may not give due attention to this section, then headings such as *Important Considerations* or even *When this solution will work* may be apposite.

#### **P5 Explanations/Reasons for Findings**

As everywhere else, be as brief as possible in this section. Do not overload it with minuscule items that do not add to what has already been stated.

Arrange the evidence or reasons in order of importance, starting with the most significant. Clients will expect such an arrangement, will be puzzled if you begin with a minor point, and may have their confidence in your judgement unsettled.

Do not quote large slabs of legislation or court rulings. Instead show clients how a piece of legislation or a court ruling applies to their situation. They have come to you as the expert in law. They want you to unravel the law for them, and not just locate it. If lawyers have trouble at times comprehending laws and rulings, how much more do clients?

Introductory sentences could be general:

- Federal law requires you to submit 2 additional reports each quarter if the mine is open cut.
- Several recent court cases have established that the conversion of an asbestos tile roof is tax deductible.

or more specific:

- Under section 10 of the Financial Services Act you must hold a current fiscal trader licence from the Finance Commission.

However, do not let citations even of a section as well the title tempt you into quoting the section or portion of a court ruling. Concentrate on its implications and applications, using your own words.

Although lawyers put the evidence (P5) after the solution (P3) in composing plain language letters, nevertheless they still tackle the concerns raised with them by their clients in the accepted sequence for problem solving. First they identify the issues, then assemble relevant evidence, and finally—and only then—develop the solution. It is just that when they come to write their letters of advice, they do not record the material in the chronological sequence in which they handled it and through which they reached their decision. Instead, they change the order to put the solution earlier to meet the expectations of their clients and for their benefit.

But this action of re-arrangement is not only for the benefit of clients: there are advantages for lawyers also. With the solution already set down in front of them, they have a yardstick with which to check whether any piece of evidence they are proposing to include is actually relevant and telling. At the same time there is a curb on them to avoid inconsequential and unrelated material. Equally important, they are induced to make explicit how a fact applies so that clients do not have to work out the connections for themselves and are not left mystified.

#### **P6 Applicable legislation and court rulings**

This section appears only in those letters of advice which address situations that require wider consultation of legislative and judicial sources. It lists the legislation and court rulings that inform the findings or recommendations in section P5. Some of these may have been alluded to directly in P5.

The intention is not to impress clients with how much material their lawyers have covered but to give them essential information if they want to follow up a matter. It sometimes happens that clients have separately become aware of the likely impact of a particular Act or court ruling on their affairs and it is convenient for them if they can confirm from the letter of advice that their lawyer has taken it into account.

Introductions to the lists can take the form of:

- In arriving at these findings we considered:
  - The Credit Act 1984 (Victoria)
  - The Income Assessment Act sections 89-95.
- We also examined the rulings in the following court cases:
  - Halwood Corp v Road Corp, No. 6596 (Victoria Supreme Court 30 June 1997)
  - GM & AM Pearce and Co v RGM Australia Pty, 26 ACSR (1998).

The entries for each item can provide precise references to sections or parts of an Act where suitable. Annotations on special items, but not all, can also be in order. It may be, too, that we could improve the details in the citations of court cases to make it easier for clients to track down the rulings.

To reduce disturbing the flow of the letter, there is a good case for putting this section P6 into an appendix, especially if it is lengthy.

#### **P7 Further action**

This is another optional component which has a place only in some letters. If in scattered parts of a letter of advice you have pointed out obligations that the client must comply with to implement your recommendations, then it is a constructive practice to gather them together in a checklist at the end of the letter. For example:

- You will need to:
  1. lodge an application with the Securities Commission by 10 May
  2. file a VAT return by 30 June
  3. notify your customers of the changes by 31 July.

Clients do not regard these final checklists as patronising. On the contrary, they see them as further proof of a quality of genuine helpfulness on your part.

The checklist could lead to a further positive ending:

- We would be pleased to help you with any of these matters.

The wording of the heading could be varied depending on the types of actions listed in the section.

## Are lawyers so different?

So different from clients, that is.

To the point here is the behaviour of lawyers. Many have confessed to me that, when faced with letters of advice written in the traditional format by other lawyers, they immediately go to the end (the recommendation) and then work their way back to the beginning. In handling exercises in redrafting traditional letters of advice during workshops I have run on plain language, I have regularly noticed many of the lawyers starting by reading the first couple of paragraphs then quickly switching to the last page to examine the recommendation before taking up the beginning again. When challenged about their practice, they openly confessed that knowing the recommendation made it easier for them to follow the letter because it provided a context in which to make sense of the facts and information the lawyer-writer was presenting in the earlier sections.

Again, the in-house lawyers (numbering 10–12) of a large commercial company in Australia took up with their external lawyers whether they could present their letters of advice in a more readily accessible form. The in-house lawyers wanted to be able to adapt the letters easily, mainly by extracting specific components of the advice, for distribution to different divisions within the company. Using a letter that was in preparation at the time, we presented a version in the traditional style, which the external lawyers had normally been following, and another version in the plain language approach to provide a concrete and comparative base for discussion on how we might proceed to develop a solution. The in-house lawyers instantaneously voted for the plain language version. To some divisions within the company, they could simply send off sections P1–4; with others they might include P5 as well. Their preference was to move section P6 (Applicable legislation and court rulings) to an appendix, because they would rarely distribute it outside their own legal division.

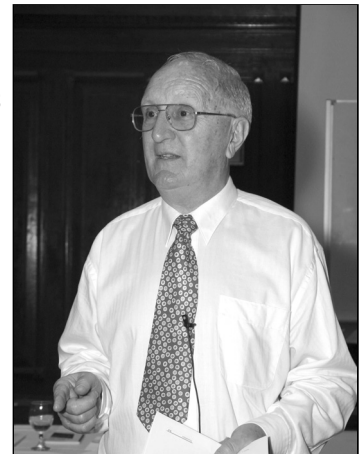
Because of the confusion in the community over the implications of the Mabo ruling on Aboriginal land rights of the High Court of Australia, in 1993 Peter Butt asked me to collaborate with him in preparing a plain language version of the ruling, which appeared as *Mabo: What the High Court Said* (Sydney: Federation Press). The first edition was widely

reviewed in legal journals in Australia. Pertinently for our present interest, many reviewers went out of their way to comment favourably on our approach of starting with a statement of the issue giving rise to the case, followed immediately by the ruling, and only thereafter progressing to set out the evidence amassed by the judges. The reviewers found it a much easier way to come to grips with a long and intricate ruling, which is after all similar in nature to a letter of advice. All the reviewers were lawyers!

We can safely jettison past myths, traditions and methods of drafting letters of advice in favour of the plain language approach. Its appeal is comprehensive and well nigh universal.

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Dr Robert Eagleson is a plain-language consultant in Sydney, Australia. He received 3 awards in each of the competitions Clarity conducted for plain language documents in 1996, 1999 and 2000. While Professor of English Language at the University of Sydney, he researched usage, sociolinguistics, grammar, lexicology, plain language and writing.



## Tips from a unique provider of South African legal research

**Tania McAnearney**

*TMc Legal Research (South Africa)*

### Introduction

It's been a hard day's night, and I've been working like a dog.

It's been a hard day's night, I should be sleeping like a log.

The lyrics of the Beatles' 1960s classic, 'A Hard Day's Night', swam through my mind on too many occasions when I was serving my articles of clerkship in a prestigious South African law firm. I soon discovered that I wasn't a court 'adrenaline junkie', and that my *forté* clearly lay in the research side of the law—getting into the 'nitty gritty' of the legalities of a client's case. But what was I, as a newly qualified attorney, to do with my research passion, other than work as an in-house legal adviser?

My inspiration to create my business, TMc Legal Research, came directly from my experience as an articled clerk. I found that there was a niche for a specialist independent researcher in the legal market, especially for smaller law firms (larger South African firms generally having their own in-house legal researchers). Many attorneys have neither the time to conduct their own thorough research nor adequate research material on hand. In a nutshell, my research service includes drafting opinions, researching precedents and legislation, postgraduate (LLM/LLD) research and writing freelance legal articles.

Over time, I began to realise that legal research is a skill that should be acquired at university level and nurtured by legal practitioners, to create their own methodology of research that works for them. However, in reality, law students in South Africa are taught very little about research. (Please note that I am generalising—I'm sure that there are some fantastic lecturers and law departments in the country, where

research is prioritised, but my experience has shown that this is rare).

### So what *are* law students taught about research?

South African law students are taught only the bare skeleton of legal research. They are shown where to find journal articles, case law, reference books and textbooks in the university's library and what online research databases are available, but aren't taught any practical research skills. Let's take online legal databases as an example of this shortcoming—students are, by and large, left to navigate the databases themselves and, without being equipped with the necessary product 'know-how', will often get frustrated that they can't find what they're looking for or not even bother trying to use the database in the first place. During my final year at university, I had to write a dissertation as part of my LLB degree and, as I had possibly the most demanding promoter in the faculty, I had some real incentive to learn how to navigate all of the library's facilities to the best of my ability. (I did manage to achieve an LLB *cum laude* for all my efforts!) Sadly, some local universities don't require LLB students to write dissertations anymore, which simply exacerbates this general lack of research skills.

### What are the consequences of this limited research training?

The outcome of this limited research training, in practice, is that many attorneys have no idea how to research cases and other authority for their matters. Through my court exposure as an articled clerk, I discovered that a number of sole practitioners often rely on authority from outdated textbooks to argue their clients' cases in court, only to be condemned by the magistrate for failure to properly prepare for their cases! Other attorneys instruct their clerks to conduct research for them, which may end up being wholly inadequate, depending on the clerk's skills and knowledge of the law. This often leads to attorneys spending a fortune on briefing counsel, when they could have done the research themselves, if they had the time and good research methodology. Not only that, but I have found that some attorneys struggle to formulate both opinions to clients and arguments to be raised in court; they aren't sure how to link the key elements in cases and legislation and how to allow one train of thought to flow to the next (so failing

to 'connect the dots'). On top of that, to be brutally honest, many attorneys simply don't have the inclination to conduct thorough research themselves.

### **How do I assist legal practitioners?**

That's where my business comes into the picture: as my legal research business is a unique concept in South Africa, I have taught myself a number of research skills that have assisted me in drafting legal opinions and attending to other research-related mandates for attorneys. Since starting my business, I have spent numerous hours harnessing my research skills, beginning at grassroots level. This article is far from an in-depth analysis of my research skills, but is meant simply to lend an idea of the methodology that I have acquired over the past few years.

### **What is my research methodology?**

#### *Where do I start and what sources do I use?*

#### *What is the main topic?*

The first step that I take for any type of research, whether an in-depth study of a topic for a thesis or research on current case law for a certain standpoint, is to consider the bigger picture and decide the main area of law that the topic falls under. Let's say that I'm conducting research on 'reverse engineering'. I know that 'reverse engineering' is an exception to copyright infringement in terms of the Copyright Act, so it falls under the subject of copyright law, which is a category of the main area of intellectual property law. This might seem like quite a simple exercise and certainly is in most cases. However, when I am briefed to draft an opinion on various co-existing legal matters, deciding what the main area of law is can sometimes be quite time-consuming. I have found that attorneys have a *penchant* for over-complicating what is, in fact, quite a simple legal scenario!

#### *What possible key terms are there?*

The next step is to consider possible key terms that I can use when researching the topic. Using the 'reverse engineering' example, key terms would be 'copyright', 'reverse engineering', 'utilitarian objects' or 'reproduction of three-dimensional utilitarian objects'. I also think of synonyms for the key terms. Synonyms are especially important when researching foreign law, as foreign countries often use different

terminology to the South African legal system, for example 'delict' versus 'tort'.

I then head off to the University of South Africa's (UNISA's) library to conduct my research. I usually begin my research in the computer room using Lexis Nexis Butterworths online. This database contains a wide variety of information, from textbooks by learned local authors, which are searchable under subject headings, to reported local case law and reference works, such as The Law of South Africa (LAWSA). I have found that LAWSA, together with its yearly updates (The Law of South Africa Current Law), is a good starting point. LAWSA gives a good overview of the topic, and the updates list the most recent journal articles and case law. Unfortunately, the LAWSA Current Law isn't available online and is available in hard copy only in the library's reference section. (I find electronic versions of products far more user-friendly than the hard-copy versions!)

As I peruse the research material, I often find that a number of more key terms arise—I make a note of these, always being careful not to lose sight of the original topic in my client's mandate.

#### *How do I research case law and legislation?*

If I'm researching case law or legislation, I will usually start my research on Jutastat. This is the CD-ROM or on-line version of South African legislation and Juta's law reports dating back to 1946. These are the local law reports most often cited in legal proceedings. Jutastat is quite simple to use, but does take a bit of time to get used to. Legislation is easily searched by using the number and year of the statute or its name, or by searching under the legislation subject index if I'm unsure which legislation may be relevant.

When searching for case law, I often start with the subject index (using the key terms that I've considered) and search for any relevant case law. Then I'll search for a phrase (again using my key terms) under the 'advanced search' facility. I'll read through the cases and see what further relevant cases the courts referred to. Admittedly, I usually read a case's headnote (editor's summary of the judgment) to decide whether or not it will be relevant. As a law student, I was always taught not to rely on the headnote and I am in no way implying that the headnote is the 'be all and end all', but I have found that it usually gives

a true and good indication of the crux of the judgment. Often, the facts of the case aren't vital to my research, and the headnote contains enough information about the facts to enable me to make an informed judgment as to whether the *ratio decidendi* (reasons for the court's findings), or dissenting judgment, will be of use to my research. This enables me to 'skim over' the first couple of pages of the judgment dealing with the case facts. I am wary of doing this in complex factual situations though, as I have encountered cases where the summary of the facts in the headnote oversimplifies the facts to such an extent that they are almost incongruous with the actual facts. Most case headnotes refer to the various important paragraphs of the judgment's *ratio decidendi*. I often find that the paragraphs leading up to or after the paragraph referred to are also important in correctly understanding the judgment. Wherever possible, I use these references to the judgment's paragraphs as my platform in examining the case. In this way, I am able to limit my time in reading through unnecessary case information. Sometimes I go right down to the order of the court to find out what aspects the court has ruled on and then work my way back up.

I also check for any 'Annotations' to the case law I've found—these are an index of subsequent decisions in which reference was made to a particular case. Juta's index indicates whether that particular case was followed, criticised or distinguished in a later case. This is most important in ensuring that the case law I've researched is still applicable—if there is a recent Supreme Court of Appeal or Constitutional Court decision that differs from a High Court's decision in a particular case, then the High Court's decision is probably no longer the applicable law.

I'll also often search for case law on LexisNexis Butterworths. I find Juta's database simpler to use for case research, but Butterworth's case 'Noter-up' (similar to Juta's 'Annotations') is very comprehensive and worth reading through.

*How do I research journal articles?*

If I don't find enough case law, or if my client requires more in-depth research (for theses, articles for publication, assignments etc), I then search for journal articles. Again, the key terms that I thought about (and any further key terms

that I've found researching the case law) are used. UNISA has its own database of local journal articles called 'UNISA Law Index', where journals such as 'De Rebus', 'The South African Law Journal' and 'The Mercantile Law Journal' are indexed.

If I need to locate foreign journal articles, for example, for comparative law purposes, I use a different database called the 'Index to Legal Periodicals' and then search for hardcopies of the articles in the library. If I'm lucky, after searching UNISA's Law Index, I sometimes find references to local journal articles, which contain information regarding comparisons with foreign law. Depending on the scope of my mandate (and research time), this may limit my need to research foreign articles.

*What about foreign case law?*

Locating foreign case law can get a little trickier. If an in-depth analysis of foreign case law isn't required, but more of a broad overview or idea of what the foreign position on a certain legal topic is required, I often find that the journal articles themselves have enough information about the cases. Unfortunately, most universities in South Africa don't subscribe to international databases such as LexisNexis or Westlaw, due to the exorbitant costs. If I know the exact citation of the foreign case that I'm looking for (for example, I may have found reference to a certain case in a journal article) and if the case is recent, then I try to search for the case on the internet, using search engines such as [www.austlii.edu.au](http://www.austlii.edu.au) or [www.worldlii.org](http://www.worldlii.org). Sometimes I'll find what I'm looking for, but other times, only part of the judgment will be posted. If I'm really desperate, then I try a general search on Google.

*And newspaper reports?*

There is a fantastic local online daily legal news service that I subscribe to called 'Legal-brief' ([www.legalbrief.co.za](http://www.legalbrief.co.za)). Using the key terms regarding my topic, I often use their 'advanced search facility' to find relevant newspaper reports.

*Last, but certainly not least...*

I search for relevant information in hardcopy textbooks. UNISA's online catalogue of books, OASIS, is quite extensive. Again, I use my topic's key terms to search in books' indexes and contents pages.

### *How do I elicit required information from various texts?*

When it comes to actually reading through articles or extracts from books, I always look at the introduction, conclusion and subheadings first. The concluding paragraph, or few paragraphs of a well-written article, should contain all the main points covered in the main body. I often find that if the conclusion is poorly drafted, then it means that the rest of the article has also been poorly structured or drafted! Such articles then take longer to read through and to extract the relevant information from. The same goes for the introduction of the article. I have a look at that first and then read through the conclusion. I find that this gives me a good idea of what the article is about. When it comes to reading through the bulk of the text, a good trick that I've learnt is to read the first sentence of every paragraph. Again, if the article has been reasonably well-written, I should be able to glean a good idea of the contents of the paragraph from the first sentence. This trick comes in very handy for longer articles where I may not need the bulk of the information and I'm only focusing on a specific aspect. Admittedly, years of experience in reading and writing has taught me to speed-read, which helps a great deal! If I'm looking for information that is quite uncommon or the article doesn't directly refer to my topic, I browse through the footnotes, which are often invaluable keys in assisting me to find further relevant articles.

Let's not forget the internationally infamous Murphy's Law: in my experience, I have found that one of the worst mistakes in researching information is disregarding certain material as being unimportant and then later discovering that it's actually vital and having to search through all the documents again to find the relevant extract! It's a time-consuming and annoying exercise. I am a huge fan of highlighter pens and sticky notes. If I know first-off that something is important (whether in a judgment or article), I flag the page with a sticky note and highlight the relevant information. I use a different coloured sticky note for material that I'm unsure of, so that I can come back to it at a later stage. The sticky notes come in very handy—for example, I use a numerical or alphabetical system to mark the pages that I flag with a list of sub-topics. This simplifies my task of the actual drafting of the research document.

### **How do I present my research to clients?**

Once all the background research has been attended to, I revert to my client's mandate to decide how my research should be presented.

If, for example, I am assisting my client with postgraduate degree research, I place the research material into a lever-arch file and divide the copies into the following sections: reference works, legislation, local case law, foreign case law (if applicable), local journal articles, foreign journal articles (if applicable), newspaper reports and extracts from textbooks. I ensure that the cases appear in order from most recent to oldest and that the articles appear in order from most to least relevant.

If, on the other hand, my mandate is to draft an opinion on a certain aspect of law, then I formulate an opinion based on all the relevant information that I research. In drafting my opinion, I try to ensure that it is as succinct as possible. I usually separate the body of my document into main sections such as instruction, legislation, relevant case law, learned authors' opinions (from journal articles and textbooks, etc) and conclusion. The introduction gives a summary of my client's instruction, and the conclusion is a wrap-up of all the main points referred to in the body of the document. I use sub-headings as often as I can, to make the opinion as 'user-friendly' as possible. If simply giving the gist of a case or citing an extract from a judgment or legislation doesn't seem to be enough information for my client's purposes, I always attach the full text of the judgment or legislation as an annex to my final document. I find that a contents page is a necessity, even for smaller mandates. On this page, all the legislation is listed and all the case law is cited, together with their relevant page numbers, for my client's ease of reference. Whenever possible, I email the final document and any attachments to my client, so that it is in an easily workable format.

### **Has my methodology been successful in practice?**

I take a huge amount of pride in my business, and my aim, when completing my mandates and delivering my clients their work, is that they are completely satisfied with the end-result. Research leading to a winning court case is always an ego-boost (for both my

client and me!) Even a seemingly negative opinion (where, for example, I have found that my client's prospects in court are minimal) can also often be positive in the sense that it saves my client time and money in the long run.

The results of my research methodology in assisting attorneys with their post-graduate degree research speak for themselves: a number of my clients have obtained distinctions for their dissertations or theses.

I hope that this article has given you at least a brief insight into a possible manner of re-researching South African law. I have found that my methodology works well for me and enables me to assist my clients in a successful manner. However, as with all things in life, I have found that what's good for the goose isn't always good for the gander: as an individual, with your own set of strengths and weaknesses, I suggest it wise to take time to develop a research methodology that best suits you and your clients' needs.

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Tania McAnearney is a qualified attorney (LLB cum laude) and the sole proprietor of TMc Legal Research (<http://www.legalresearch.co.za>), a specialised research and legal advisory service for legal professionals throughout South Africa. Apart from her research services, she writes freelance feature articles, which regularly appear in the



corporate legal magazine, *Without Prejudice*, as well as co-writing articles for publications such as *Business Day*. In her spare time, she enjoys dancing, reading, spending time with her husband, son and cats and, from time to time, indulging in the Cape's fine wines!

#### Ideas for further articles or research

1. If you are a lecturer, how do you train law students to:
  - draft opinions to clients
  - make proper use of research tools
  - formulate legal arguments so that one idea flows into the next?
2. Do law graduates feel equipped to draft opinions and legal arguments in plain language?



## Book reviews

### Informed choices with a capital 'G'

*The Cambridge Guide to English Usage*  
(by Pam Peters, Cambridge University Press 2004,  
ISBN: 0 521 62181 X)

**Neil James**

*Executive director, Plain English Foundation (Australia)*

Not long after Tom McArthur agreed to edit the *Oxford Companion to the English Language*, he realised that 'going to sea in a sieve' would be safer. Integrating thousands of entries from myriad contributors was the least of his worries. His biggest challenge was the impossibility of reconciling the competing passions the English language attracts. The pedants would bring out their magnifiers, the plain English campaigners leap on every passive verb, the linguists condemn the merest hint of the prescriptive. It was rather like 'being asked to write the Bible'.

How much braver then is the publisher who offers an 'international' guide to English usage, and bills it as 'the new reference Guide for the 21<sup>st</sup> century'—with a definite article and a capital 'G'. For as English has diversified around the globe, so too have the theories and methods we use to write, analyse, teach, edit and publish it.

When Fowler compiled his first usage guide almost a hundred years ago, there was at least some consensus about the fundamentals of grammar. Since then, grammar has gone in and out of fashion in the school system and split into traditional and transformational sub-factions. The British–American divide over punctuation is best captured by the New Yorker's recent critique of Lynne Truss: that the British lecturing Americans on punctuation 'is a little like an American lecturing the French on sauces.' Then there is the plethora of professional style guides and national dictionaries, each tailored to local circumstance. The serial comma alone has been known to sunder marriages, so how feasible is a definitive,

international, capital-G, 'Guide to English Usage'?

Pam Peters has trudged a cheerful yet careful path through this maze and has emerged with a reference of both local relevance and universal appeal. What sets this Guide above all others is simple: evidence. It is 'the first of its kind to make regular use of large databases (corpora) of computerised text as primary sources of current English'. It sounds mundane but accumulates great authority. A typical entry will begin with some grammatical context, then give the current positions of the dictionaries before finishing with the varying rulings of style guides on three continents. South Africa, New Zealand and Australia get a look in as well as the United Kingdom, Canada and the United States. Then Peters turns to the 100 million word British National Corpus, and the 140 million word Cambridge International Corpus, each brimming with written and spoken texts in various contexts. This allows her to look 'more neutrally at the distributions of words and constructions ... [and] see what is really "standard"' (p vii).

Take, for example, the case of 'less' versus 'fewer.' Hard-core sticklers fume every time they enter a supermarket to buy a few groceries because the express lane reads '12 items or less' instead of '12 items or fewer'. Peters' entry begins with the traditional explanation for this distinction: that 'fewer' should be used with count nouns and 'less' with collective or mass nouns. Then she shows that we do not actually make this distinction with other comparable words. The 'rule', it seems, is relatively recent, born in Baker's *Reflections on the English Language* (1770) before spreading among prescriptivists throughout the world. By contrast, the use of 'less' with count nouns actually goes back a thousand years. Even today, 'less' tends to outnumber 'fewer' by as much as 7:1 in the corpora, and even the dictionaries note its popularity despite its 'being regarded as incorrect'. Peters concludes sensibly that the case for 'fewer' seems 'to have developed out of all proportion to the ambiguity it may create' (p 205).

No doubt this is too wanton for some, and too indecisive for others. Thus it will ever be. The rest of us can simply put it to work in making informed choices. Peters empowers readers 'to choose and develop their own style, for their

particular purpose'. While this might sound like a recipe for linguistic anarchy, I suspect it will do more to unify English usage than any guide has done since Fowler. Too many of the current guides reflect regional practice or the personal preferences of their authors. Debates on usage quickly descend into unproductive lobbing of one authority against another. By drawing together evidence from so many sources, Peters gives us a more rational basis to resolve disputes. In some of the most contentious cases, she distils an 'international English selection' from the competing prejudices.

Let's trial her approach with a few of the chestnuts of English usage. Peters is in line with Fowler on split infinitives—don't fear to split them to remove ambiguity, avoid awkwardness or preserve the rhythm (p 513). Conjunctions generally join phrases and clauses, but can also 'conjunct' sentences (p 38). Regional prejudice rather than grammar seem to dictate the alternating use of 'different to/from/than', and 'the etymological arguments used to support "different from" no longer seem so powerful' (p 153). While the choice between 'that' and 'which' as relative pronouns is partly influenced by the restrictions in the clauses these introduce, it is also 'stylistic, a matter of their relative weight, and the need to vary one's pronouns' (p 577).

The Guide is also comprehensive and up-to-date on spelling. Peters makes a practical case to standardize '-ize' endings 'on distributional and phonological grounds' (p 299). She is convincing on the likely winner of the Internet/internet battle, arguing that the lower case is inevitable despite its current minority status (p 298). She is less committed to the result of e-mail/email, but notes that 'email' is the preferred form on Google by a ratio of 14:1 (p 178). She safely concludes that although 'amongst' is more popular in Britain than the US, it is still the minority usage in both countries when compared with 'among' (p 35).

Each entry is concise, informed, balanced and alive. Founded on sound scholarship, the Guide has an underlying dry humour that saves it from the stiffness of too many language references. When discussing, for example, the trend toward less capitalization, Peters notes that corporations 'may nevertheless capitalize all references to their executives' (p 91). It's hard to imagine her writing with an entirely

straight face as she laments 'the scant evidence' of 'shit' in the past tense, and the difficulty of ruling between 'shat' and 'shitted' (p 498).

The *Cambridge Guide to English Usage* does indeed live up to the definite article and the capital 'G' of its cover. In the face of the impossibility of pleasing everyone, it should at least win universal respect. It may even become the new Fowler.

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Dr Neil James is executive director of the Plain English Foundation in Australia, which combines plain English training, editing and evaluation with a public campaign for clearer language in the professions. Neil has a doctorate in English from Sydney University, and has published over 50 essays and articles on language and literature. The latest of his three books is *Writing at Work: How to write clearly effectively and professionally* (Allen and Unwin, 2007).



## *Indlish*

(by Jyoti Sanyal, Viva Books 2006, ISBN: 81-309-0281-8)

### **Nigel Grant**

*Nigel Grant Training (UK)*

As this is a review of a book about the problems of Indian English, their causes, and how to cure them, it may help to look to the BBC's former India correspondent, Mark Tully, for some context. Tully was born in India, educated in England and worked in India for the BBC for 22 years. He loves India and presents its issues lucidly and honestly.

In *No Full Stops in India* (Viking, 1991), Tully says "The British...degraded Indian languages by installing a new language of the elite—English." He continues: "Because the teaching of English is so bad in most schools, less than 3 per cent of Indians are reasonably competent in the language."

Tully relates his meeting with Father Kunnankal, one of India's leading educationists, who had changed the main language of instruction in a prestigious school from English to Hindi, "because he believed very strongly that the influence of English as the language of the elite was harming his country".

A similar perception of English as an agent of elitist control informs *Indlish*. Pre-independence English, the language of official control, was old-fashioned in contemporary England sixty years ago, but formed the standard for decades to come in India. Over-formality and the curse of East India Company commercialese, inherited from generations of Indian clerks and their ill-educated English masters, still characterise much official Indian English.

Sanyal's reaction to this perception is very different to Father Kunnankal's. Sanyal is a fine writer of English, knows a lot about it and wants Indians to use it well. If Indians can write effectively and efficiently, their internal and international communication will flourish. Not to do this would be to restrict development in all important areas.

This reviewer, like Tully, was born in India. My parents grew up in the later days and ways of the Raj. Their spoken English, more grammatically consistent and lexically varied than that of the east Londoners whom they settled among in the 1950s, was to western

ears a little archaic. My father's absence notes to my teachers were models of punctiliousness: thorough, lengthy, wrapped in complex sentences, divided into main and subordinate clauses, and never willing to prefer simple diction to an ornate alternative. This formality and complexity stemmed from his education and professional training, not a desire to impress beyond the wish to look correct.

The impulse to write in what looks to native English speakers like a pastiche of florid Victorian verbosity still, Sanyal argues, runs deep in much Indian English. He ascribes this to two main influences: the inheritance of the empire, and the natural tendency of Hindi and Bengali to use noun-dependent language structures.

Sanyal fires polemical shafts at particular members of India's elite: journalists, lawyers, companies and government officials. All those people wield a range of power through their use of language, which, he argues, often runs counter to clear, effective communication.

Jyoti Sanyal is well fitted to write this book. He wrote for *The Statesman*, Calcutta, for 30 years before becoming Dean of the Asian College of Journalism. He now heads Clear English India, a training and editing firm. His experience, interest in good writing and perseverance in fighting for high standards of professional English are evident throughout *Indlish*.

*Indlish* is not a disinterested appraisal of the English language in India. What Sanyal does very well is expose difficulties, and show, simply and vigorously, how to deal with them. Every chapter is practical and helpful, with bags of examples taken from real documents.

Sanyal's humour, learning and enthusiasm carry the reader into rich new fields of language resource. Take 'Wanted a piano for a lady with mahogany legs' (pp 259–260), where Sanyal breaks fresh ground with this well-known type of absurdity. He deals with it swiftly, but then explains the particular problem for the native Indian writer of English, the dissimilarity between Indian and English syntax. It's this attention to detail that will be so helpful for the Indian writer. The point—keep related words together—is well-known; what's especially helpful for the

Indian reader is the reference to the different syntax. Information is always supported in this book by explanation and reason, with succinct, relevant examples often taken from literature.

Chapters 48 and 49 (the chapters are short) tackle one of the main difficulties for Indian writers and speakers, when and how to use articles. The discussion is crisp and, though brief, packed with useful tips and explanation. Sometimes, the going gets tough for the grammatically uninformed reader: "The indefinite article should not be used with the comparative degree in such expressions as 'India has had no better a batsman than Sachin'". Sanyal rescues both reader and sentence with a suitable example, swift and apposite.

*Indlish* deserves a place on the shelves of anyone interested in good written English. In time, it may become a standard reference work, along the lines of Gowers' *Plain Words*. It is not an academic study (though much of it could find its way into academic study), but is a fine, readable, well-researched and well-informed handbook for all writers, Indian and others, who aspire to the best standards of current usage.

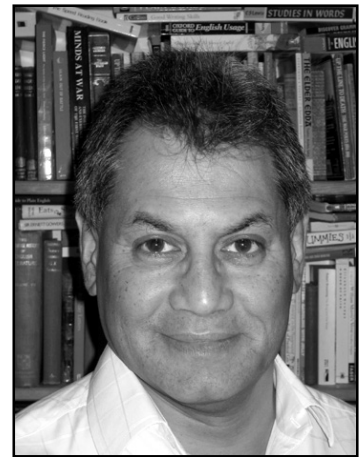
One small quibble, from a reviewer who has been fascinated by Victorian writers for many years: Sanyal refers frequently to the corrupting influence of Victorian creative writers on the language habits of his

countrymen. This is simply not the case. Nineteenth-century official English at home and abroad is a legitimate target, but it is wrong to confuse it with some of the best writing in the history of the language.

There. Quibble over. *Indlish* is a fine book that will gain a wide following. Buy it, read it, refer to it and recommend it. It is a welcome, refreshing addition to the world of English manuals, and reaches far beyond the needs of the uncertain writer. Experienced writers whose first language is English will gain from and enjoy this insight into the linguistic world of their Indian colleagues.

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Nigel Grant has two English degrees and taught to A level for 23 years in British grammar, comprehensive and private schools. While a teacher, Nigel wrote literature study guides for Pan and produced plays. Someone once walked out of his production of Arthur Miller's *The Crucible*, saying, "The atmosphere of evil is too convincing." After a year with Plain English Campaign Limited, he set up Nigel Grant Training in February 2005. Nigel has led over 250 plain-English training events.



# Linguistic lingo for lawyers— personal pronouns and gender: a dialogue

## Dr Robert Eagleson and Sarah Carr

*In response to Sarah Carr's article on personal pronouns and gender, published in Clarity 56, Robert Eagleson entered into a dialogue with Sarah on this topic.*

*The starting point for the dialogue was the original table Sarah produced to set out the operation of the personal pronouns in English (Clarity 56:53). The relevant part of the table concerning gender in the pronouns is:*

Person	Grammatical gender
First	( <i>I, we</i> ) masculine, feminine and neuter
Second	( <i>you</i> ) masculine, feminine and neuter
Third	( <i>he</i> ) masculine
	( <i>she</i> ) feminine
	( <i>it</i> ) neuter
	( <i>they</i> ) masculine, feminine and neuter

### First and second person pronouns

#### Robert Eagleson

I admire your valiant efforts in recent issues of *Clarity* to set out aspects of English grammar in clear tables. But sometimes the symmetry we feel driven to achieve in tables can impose grammatical classifications that are alien to a language, although appropriate to other languages, and conceal distinctions that users make in practice. For example the table on page 53 in *Clarity* 56 specifies that all 3 persons of the personal pronoun express masculine, feminine and neuter gender.

Is the table accurate in presenting the first person pronouns, *I* and *we*, as signalling neuter gender? You describe—correctly—'first person' as applying to the speaker or writer. But doesn't being a speaker or writer imply knowledge

of language and so restrict the candidates for addresser to beings (human or spiritual) who are persons? In normal everyday circumstances other animate beings, such as animals, and inanimate objects do not speak or write and so never feature in the role of addresser. In the light of these realities the first person pronouns can only refer to male and female persons, and never indicate neuter gender creatures or things.

It is true that in fiction, such as children's stories, other creatures can be given the power of language and other attributes of persons, and have first person pronouns apply to them. But it is equally to the point that in these stories these nonpersons are treated as if they were persons: they are 'personified'. Pertinently, sketches that often accompany the stories, for example *Alice in Wonderland*, have them dressed in human clothes and even standing upright. In short, whereas persons can exercise the role of addresser because of their intrinsic characteristics, animals can appear in the role of addresser only if they have attributes that are not natural to them added. In effect the creatures have to be moved out of the domain of 'neuter gender' into, or towards, the domain of 'person gender', and it is in this new status as quasi persons that first person pronouns can be applied to them. As a result, the principle that first person pronouns refer only to persons still effectively continues to operate.

On the face of it, the table in its current form gives no hint of this critical transformation that must take place but instead gives the impression that the neuter gender creatures and objects can occupy the role of addresser on the same footing as persons. It is not the norm in the language but a special variation, requiring exceptional conditions to apply. The table needs to reflect these levels of use.

The same principle operates with the second person pronoun *you*: the listener or reader

can only be a person, with the result that the pronoun can only refer to male or female persons.

As well, because *I*, *we* and *you* cannot refer to animals and things in and as themselves, the only grammatical gender (as opposed to natural or biological gender) these pronouns can signal is the gender of 'person'. While we are restricting ourselves to the domain of grammar, we cannot go beyond this to specify, as the table does, masculine or feminine. The third singular pronoun in English varies its form from *he* to *she* or *it* to signal a different grammatical gender, but the first and second person pronouns do not share this facility. As they have only 1 undifferentiated grammatical form, we can only decide whether *I*, *we* and *you* refer to male or female persons by going outside the grammatical context to look at other information.

### *Sarah Carr*

There is a range of personification forms, of which your examples from fairy tales present possibly the most complete. In devising the table originally, I had in mind not animals but more inanimate examples, such as the mirror in *Snow White* and the wall in *Shirley Valentine*. While they may be weaker forms of personification, their stories assign to these objects attributes, such as the powers to judge, and to speak or listen, that are not typically associated with objects. They have been elevated to a higher status, and their ability to speak or listen would not be considered the norm outside the universe of their stories or plays.

A parallel example from daily life rather than fiction might be diaries. Some seem to address their diaries directly, 'Dear Diary,' and treat them as if they were live addressees. On the other hand, the vast majority of people who keep diaries and journals simply regard them as insensible objects in which they can record events and impressions. Those who insert the address 'Dear Diary' are not following the normal pattern and are looking on the diary as something more, as a kind of confidant, a person with whom they can safely share intimate feelings. Again, they are taking the diary beyond the normal realm of inanimate object and moving it in the direction of person.

Then there are the moments when we turn our computers into addressees, pleading with them not to crash or abusing them as if they

acted autonomously. We would be horrified if others really thought we considered them to be independent, thinking creatures. Our behaviour is atypical and momentary, not serious, intended to relieve tension and frustration.

There is validity in your argument that these situations are not fully normal or natural. They all involve a degree of 'willing suspension of disbelief'. We are really dealing with items that have a mixture of human and nonhuman characteristics, with hybrids, and no longer with pure neuter-gender items.

I tend to agree that all this means that the table needs to have either a more elaborate structure, which separates these conditioned variants from the norms in the language, or a series of footnotes offering explanations. For the moment, the footnote seems to be the easier solution. The table then might appear as:

Person	Grammatical gender
First ( <i>I</i> , <i>we</i> )	Person <sup>1</sup>
Second ( <i>You</i> )	Person <sup>1</sup>

<sup>1</sup> Explanation of the role of personification, etc in enabling animals and objects to become addressers and addressees.

### **Third person pronouns**

#### *Robert Eagleson*

The criterion of person also dominates in the uses of the third person singular pronouns. While English distinguishes in the third person singular the 3 genders of masculine, feminine and neuter grammatically, that is, by having a separate form for each gender—*he*, *she*, *it*—in normal practice *he* and *she* are only used with persons, and *it* is used with all nonpersons, even when they are animate creatures with sexual characteristics. In short we differentiate between persons and nonpersons, not animate and inanimate. For example:

The man (The woman) is in the barn. He (She) has a broken leg.

The kangaroo (The chair) is in the barn. It (It) has a broken leg.

Even when the sex of the animal is clear from the word used, the regular practice is to use *it*:

The bull (The cow) is in the barn. It (It) has a broken leg.

Animals and other animate creatures are grouped with inanimate objects, not with humans.

Again, there are special circumstances in which we can vary these rules, so that *he* and *she* may appear in the context of an animal or an object, but these are not the norm.

### Sarah Carr

It is interesting, as you demonstrate, how our English culture divides the universe into the 2 categories of people (for example humans) and non-people (other animate beings and inanimate objects), and how our language reflects this division by restricting *he* and *she* in normal practice to people. To show this practice in the language more transparently, we should adjust the original table to:

Person	Number	Grammatical	Gender
Third	singular	person	masculine ( <i>he</i> ) <sup>1</sup>
			feminine ( <i>she</i> ) <sup>1</sup>
		nonperson	neuter ( <i>it</i> ) <sup>1</sup>

<sup>1</sup>Explanations of exceptions

This tabulation certainly parallels the rules for personal pronouns that we were taught at school and that appear in grammar texts. The footnotes would show when and how users depart from the norm.

For example, *she* turns up in the context of some inanimate objects, notably ships and cars (although writers on equality in language advise against this usage to avoid associating the feminine with men's possessions). But these are rare instances and the majority of objects never seem to attract the feminine form of the pronoun. Significantly, car buffs may reserve *she* for their own cars but will probably refer to all other cars as *it*. For those who do this, there is a special bond or relationship with the personal car: for them it is more than an object. And so we are dealing with a special situation and not the usual. The switch in pronoun from *it* to *she* reflects this new status.

Something akin to this is also true with animals. As your illustrations show, the usual practice is to use *it* in reference to an animal. But once an animal has become a pet, owners will regularly refer to it as *he* or *she* depending on its biological sex. Again though, we are dealing with a change in circumstances and different

relationships. The animal has been elevated above its normal status to something closer to a personal friend, as is evidenced by the practice of many owners even talking to their pet.

### Robert Eagleson

There is a revealing illustration of this usage in the novel by Hazel Holt ironically entitled *The Only Good Lawyer*. Sheila, the narrator, is visiting a famous actor for the first time. She is being entertained by the actor's dresser Penrose while waiting for the actor to come in.

He [Penrose] turned and saw me stroking the cat. 'Turf Trinculo off that chair—he always chooses the best one.'

I [Sheila] picked up the cat, sat down and settled it on my lap, stroking its large, handsome head.

Why does Hazel Holt have Penrose refer to the cat as 'he' and have Sheila adopt 'it' for the same cat? Even after she had just heard Penrose refer to the cat as *he*, Sheila uses *it* in the very next sentence.

For Penrose over time the cat had acquired a persona as it were—human attributes. Penrose's use of *he* for the cat is valid grammatically but only on the grounds that he invested the cat with other qualities which took the cat beyond the category of nonperson and led him to see it more akin to people. His usage is determined by psychological rather than purely logical factors.

In contrast, Sheila has had none of these experiences with the cat and regards it in its basic state as an animal, a nonhuman. She restores it to its proper lower-order status. It is not that she hates animals—her actions belie this—but she sees the situation in terms of the accepted order of things: humans versus everything else. She adheres to the textbook rules of grammar. Hazel Holt has perceptively caught the subtleties of pronoun use in English.

The availability of switching pronouns in the language enables us to make vital discriminations and introduce nuances in meaning. *He*, *she* and *it* are not in free variation in the context of the third singular. *It* is the base or unmarked form for nonpersons, while *he* and *she* are conditioned variants, available for special circumstances. We must take switching and other devices into account when describing the operation of the language.

This brings us back to the point on which our discussion began: the limitations and dangers of tables in representing the structural patterns of a language. They can cope reasonably well with the basic rules but they exert pressure to fit every type of use that occurs into the same orderly columns, which suggests greater uniformity than exists and which disguises the subtleties practised by users. Tables need some form of elaboration, such as the proposed footnotes, to capture and explain the intriguingly rich variations in the language.

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*Please see page 27 for Robert Eagleson's photo and biographical information.*

*Please see page 4 for Sarah Carr's photo and biographical information.*

## From the President

### Standards? Accreditation? a plain-language Institute? ... the formal discussion begins

**Christopher Balmford**

*Melbourne, Victoria, Australia*

We plain-language practitioners, advocates, and change-agents often grapple with the possibilities of:

- setting standards for plain-language documents
- establishing a profession with accreditation for plain-language practitioners
- founding a well-funded institute in our field.

Good news: the discussion became more formal in a panel session at the recent conference in Amsterdam organised by PLAIN—The Plain Language Association InterNational, see

[www.plainlanguagenetwork.org/](http://www.plainlanguagenetwork.org/) with BureauTaal, see [www.bureautaal.nl](http://www.bureautaal.nl).

The session was the heart of the theme of the conference—"The Amsterdam challenge: building a plain-language profession". It was a fine conference. Congratulations to all involved.

Clarity participated in the session:

- former Clarity President Joe Kimble chaired the session
- on behalf of the Clarity Committee I presented a paper (approved by the Committee) setting out Clarity's position.

Clarity's position can be summarised in 3 short sentences: "Strong, cautious support. That's strong support. That's strong caution". Those 3 sentences catch the diversity of views on the Clarity Committee and reflect the combined position of those diverse views.

Other speakers at the session were:

- Christine Mowat, then Acting Chair of PLAIN
- Annetta Cheek, Chair of the U.S. Center for Plain Language, see [www.centerforplainlanguage.org](http://www.centerforplainlanguage.org). Annette's paper was presented by Allen Rotz



- Neil James on behalf of the Plain English Foundation, Australia.

The next issue of *Clarity* will publish the papers from the session and some related papers that have evolved out of discussion at the conference.

It promises to be a long, interesting, and probably passionate discussion.

The topics of standards and accreditation always attract a wide range of views—not just on the Clarity committee. The topics are often a major theme of the “off-program” discussions at conferences and they are regularly mentioned in the email discussion group at PLAIN. Similarly, in the Clarity Committee’s email discussions preparing, and then approving Clarity’s position paper, discussion was full and frank and diverse.

The next steps in the ongoing discussion are for an international working group to develop an options paper. Neil James is to coordinate that group. The plan is for:

- the options to be discussed at [waiting for confirmation Clarity’s 2008 conference Salomè]
- a model to be approved at PLAIN’s 2009 conference in Australia.

If you would like to put your name forward to be considered to be involved, please contact [neil.james@plainenglishfoundation.com](mailto:neil.james@plainenglishfoundation.com).

#### **A correction and a clarification**

We need to correct a typo—which slipped in during the editing process for the last issue of *Clarity*. An “s” disappeared from “allows” in Richard Oerton’s letter. Our apologies to Richard.

Also, in the previous message from the President, I mentioned that—like Clarity—PLAIN was not a legal entity. PLAIN’s committee has—quite reasonably—asked me to point out that when PLAIN has organised conferences, it has partnered with other host organisations, which enter into contracts and collect revenue etc. This is the same model Clarity has used for its conferences.

#### **Growing Clarity**

We are updating the Clarity brochure. We hope it will help us, and you, to attract new members. Please let me know if you would like copies of the brochure.

Would you like to be more involved in Clarity? We need active people.

In my piece in the previous issue of *Clarity*, I raised various topics about Clarity’s future. And I asked members to express any concerns or comments. Very few members commented. No one was against the plans. So the Committee will continue as planned.

Upward & onward

Christopher

#### **PS A donation—sponsorship—for an online membership system?**

If you—or your organisation—would like to contribute to the cost of an online membership and payment system, then please contact me or Joe Kimble ([kimblej@cooley.edu](mailto:kimblej@cooley.edu)).

#### **Does Clarity have your email address?**

If you’re willing, would you please send your email address to Mark Adler <[adler@adler.demon.co.uk](mailto:adler@adler.demon.co.uk)> so that he can add you to his email list of Clarity members. We promise not to bombard you with emails, but from time to time Mark sends out information that should be of interest to members. You will also receive a PDF version of the journal as soon as it’s available.

## New members

### *Argentina*

Maximiliano Marzetti  
Capital Federal

### *Australia*

Annette Corrigan  
Holland Park  
Kathryn O'Brien  
Mallesons Stephen Jaques  
Sydney

### *Canada*

Veronica Armstrong  
egX Group Inc.  
Vancouver, British Columbia  
Marie Audren  
Borden Ladner Gaervais s.r.l.  
Montreal, Quebec  
John-Mark Keyes  
Legislative Services Branch  
Dept. of Justice Canada  
Ottawa, Ontario  
Wilfred Popoff  
Executive Editorial  
Consultants  
Saskatoon, Saskatchewan  
Margaret Stanier  
Vancouver, British Columbia

### *England*

Jennifer Campbell  
Nabarro  
London

### *India*

Dr. K.R. Chandratre  
Pune  
Jyoti Sanyal  
Clear English India  
Kolkata

### *Italy*

Prof. Alesandro Torre  
Bari

### *New Zealand*

Lynda Harris  
Write Group Limited  
Wellington

### *Portugal*

Assembleia da Republica  
[Rui Costa]  
Lisboa  
Neville de Rougemont  
[Geoffrey Graham]  
Lisboa

### *United States*

Kristina Anderson  
EasyRead Copywriting  
New Mexico  
Pat Barnett-Mulligan  
State of New York  
Dept. of Taxation and Finance  
New York  
Paul Groenwegen  
Hiscock & Barclay, LLP  
New York  
Robert Lauchman  
Maryland  
Stewart G. Milch  
Shandell, Blitz, Blitz &  
Bookson, LLP  
New York  
John Spotila  
R3i Solutions, LLC  
Virginia  
Ronald Wohl  
In Plain English  
Maryland

## Member news

### **Bar association lauds state's chief justice**

The American Bar Association (ABA) has honoured California's chief justice, Ronald George, with its John Marshall Award, given annually to a judge or lawyer for contributions to the administration of justice.

George, a judge since 1972, was appointed to the state Supreme Court by Governor Pete Wilson in 1991 and promoted to chief justice by Wilson in 1996. His nomination by a Los Angeles judge for the ABA award cited his role in:

- winning state funding for California trial courts, legal aid for the poor, and an increase in court interpreters
- sponsoring plainEnglish jury instructions and limits on individuals' jury obligations
- improving relations between the courts and the governor and legislature.

This news was published in the *San Francisco Chronicle*, 10 August 2007; we thank Mark Adler for bringing it to our attention.

## Members by country

Argentina	1	Germany	3	Nigeria	9
Australia	104	Gibraltar	1	Philippines	1
Austria	1	Gran Canaria	1	Portugal	3
Bahamas	2	Hong Kong	17	Scotland	11
Bangladesh	6	India	8	Singapore	8
Belgium	5	Ireland	5	Slovakia	1
Bermuda	1	Isle of Man	1	South Africa	137
Brazil	1	Israel	4	Spain	3
British Virgin Islands	1	Italy	4	St. Lucia	2
British West Indies	3	Jamaica	1	Sweden	16
Canada	79	Japan	7	Switzerland	1
Chile	1	Jersey	3	Thailand	1
China	1	Lesotho	1	Trinidad and Tobago	3
Cote d'Ivoire	1	Malaysia	1	USA	205
Denmark	2	Mexico	7	Wales	6
England	309	Mozambiue	1	Zimbabwe	1
Finland	6	Netherlands	6	<b>Total</b>	<b>1,019</b>
France	2	New Zealand	14		

# Application for membership in Clarity

Individuals complete sections 1 and 3; organisations, 2 and 3

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## 1 Individuals

*Title*                      *Given name*    *Family name*

Name .....

Firm ..... Position .....

Qualifications

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## 2 Organisations

Name .....

Contact Name

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## 3 Individuals and organisations

Address .....

Phone ..... Fax .....

Email .....

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### Annual subscription

Argentina	90 ARS
Australia	A\$50
Bangladesh	BDT 1500
Brazil	R50
Canada	C\$40
Chile	\$30
Finland	€ 35
Hong Kong	HK\$275
India	1,000 INR
Israel	NIS125
Italy	€ 35
Japan	¥4000
Lesotho	M100
Malaysia	RM95
Mexico	250 Pesos
New Zealand	NZ\$70
Nigeria	2500N
Philippines	₱ 1500
Portugal	€ 35
Singapore	S\$55
Slovakia	SKK700
South Africa	R100
Spain	€ 35
Sweden	SEK280
UK	£20

USA	US\$35
Zimbabwe	US\$35
Other European countries	€ 35
All other countries	US\$35

### 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.