Clarity

Number 62 November 2009

Journal of the international association promoting plain legal language

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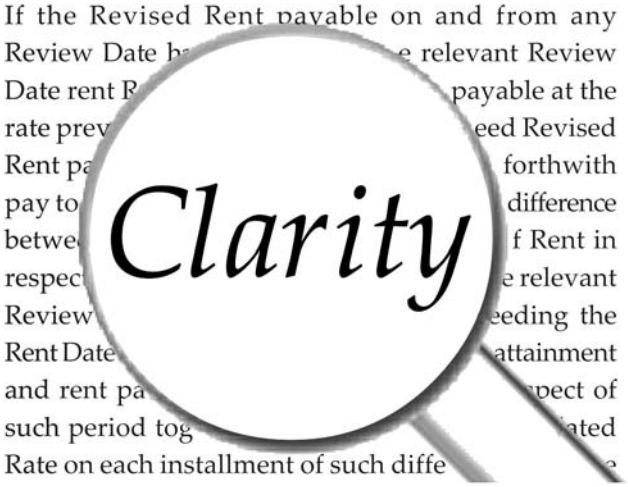

An international association promoting plain legal language

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Clarity … the journal

Published in May and November

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

Submissions
We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to editor in chief Julie Clement. Please limit submissions to approximately 1,500 or 3,000 words.

This issue

Raising the standard

Dr Neil James

Executive Director, Plain English Foundation
Co-convenor, PLAIN 2009

This issue of *Clarity* takes "Raising the Standard" as its theme. This was the title of the seventh biennial conference of the Plain Language Association InterNational (PLAIN) held in Sydney, Australia in October 2009.

PLAIN 2009 sought to raise the standard in three ways:

- showing industry professionals how to improve their communications
- helping plain language practitioners to strengthen their own practice
- exploring options for plain language to evolve as a profession.

The 80 speakers at the conference came from 13 countries and presented 45 sessions to an audience of over 300. With such riches to draw from, representing the event in a single issue of *Clarity* was always going to be a challenge.

We started with the keynote speeches and plenaries. PLAIN 2009 had the ideal opening address from New South Wales Premier Nathan Rees, who promptly announced a major plain English initiative in Australia's largest state. Emeritus Professor Pam Peters kept up the standard with an excellent keynote on the prospects for more consistent standards in international style. And we could have asked for no better finish than Michael Kirby's dinner address, which showed that a High Court judge can turn plain language into fine oratory.

The plenaries highlighted two of the hottest topics of the year: the global financial crisis and the push for plain language laws. The articles from PLAIN President Bill Lutz and the Netherlands' Wessel Visser discuss how poor language contributed to the global financial crisis. To these we've added Angela Colter's case study on the usability of credit card disclosure documents, which fed into the new credit laws Congress passed in 2009.

Plain language laws were also the subject of the second plenary, which represented a country that already has them (South Africa) a country poised to get a new Federal law (the United States) and a country just setting out on that journey (New Zealand). In this issue, Candice Burt shares the South African experience and the pitfalls other countries might watch for.

To maximise relevance for Clarity members, the next papers we selected were also strongly related to the law. So we have Dr Robert Eagleson's industry seminar exploring why lawyers write the way they do. Ben Piper's workshop looks at the dangers of plain language in legal drafting. Caroline Lindberg's showcase outlines a model plain language project for developing multilingual information in the law.

But already this was too much material for a regular *Clarity* issue, and we hadn't even represented the panels or conversations. Fortunately, Clarity was amenable to a longer issue (albeit late) and the Plain English Foundation was able to cover the cost.

So we added Lynda Harris's speech on making a business case for plain language. Given that Lynda runs one of the most successful plain language enterprises in the world—Write Limited, the home of the WriteMark—we could hardly do better than a piece from her on the topic.

Then I couldn't resist the temptation of an original, unpublished piece from one of my intellectual heroes. This emerged from one of the 'in-conversation' interviews with and about major figures in our field—such as Bill Lutz, Martin Cutts, Cheryl Stephens, Robert Eagleson, Ginny Redish and Peter Butt.

In one of these sessions, Ann Scott spoke about the biography she has just published of her grandfather Sir Ernest Gowers, whose 1948 book *Plain Words* arguably did as much as anything else last century to popularise our work. When Ann suggested there was an unpublished Gowers speech on the topic of "plain words", the opportunity was too good to pass up. It is as relevant today as it was nearly 60 years ago when he delivered it to English teachers of the London County Council.

Yet Gowers' speech also highlights how far we have come in 60 years. Plain language no longer focuses solely on word choice and syntax as it did in his day. It involves design and layout, topics also represented at the conference. It involves new assessment tools such as Texamen, SEPADO and the Dialect Interface Survey (DIS). And it is forging ahead through the work of the International Plain Language Working Group that is drafting an Options Paper on six issues that are vital for the development of our profession:

- a standard definition
- an international standard
- the institutional structure
- certification and training
- the research base
- advocacy.

The group presented a preliminary report at PLAIN 2009, and its paper should be published in full in a future issue of Clarity. In the meantime, there is plenty to enjoy in this issue to help you raise your own standard.

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Dr Neil James *is the Executive Director of the Plain English Foundation in Australia, which combines plain English training, editing and auditing with a campaign for more ethical public language. Neil has published three books and over 60 articles and essays on language and literature. His latest book* Writing at Work *(Allen and Unwin, 2007) is a practical book on the use of plain language and rhetoric in the professions. Neil is currently chair of the International Plain Language Working Group and was co-convenor with Dr Peta Spear of the PLAIN 2009 conference.*

Further papers, video and photos of PLAIN 2009 are available at http://www.plainenglishfoundation.com/tabid/3276/default.aspx.

Opening address

The Hon. Nathan Rees, MP

Premier of New South Wales, 2008–2009

The Premier gave this address at the opening session of the seventh biennial conference of the Plain Language Association InterNational (PLAIN) in Sydney, Australia on 16 October 2009.

Let me begin with a plain statement in plain English:

> *Thank you for inviting me to your conference.*

Or to put it another way:

> *It is appropriate at the outset to record significant levels of interpersonal gratitude and relevant appreciation indicators in respect of the invitation to be present at your conference in order to facilitate a meaningful values-driven contribution to the proceedings.*

Well, I exaggerate, but not a lot. And it may be significant that when that sentence was typed into a computer, the computer didn't question it with a wavy green line. Standards are certainly on the slide when computers let us down.

So it's good to be among the champions and defenders of good, plain English, and to welcome, especially, those of you who have come from overseas.

Raising the standard of government

Your conference theme is "Raising the Standard". And by raising the standard of English expression we are doing more than making government documents easier to read. We are raising the standard of government.

Because clear English makes for clear thinking. And clear thinking makes for better decision-making, with all the benefits that come with it:

- improved delivery of services
- cost-savings
- a healthier, more responsible democracy.

Here in New South Wales, with the support of the Plain English Foundation, we've seen some excellent progress in a number of agencies.

In Treasury, as I'm advised, the drafting time for documents has been reduced by half through adopting plain English principles. At Sydney Water, the time spent by management editing documents has been cut by 40 per cent. At the Audit Office of New South Wales, client satisfaction is up to around 92 per cent.

All positive signs.

But despite the excellent work of the Foundation, the battle is far from won. Or as some might say:

> *Optimum levels of output in facilitating strategic plain English objectives have not been identified consistently in all sectors.*

It's not just governments and the bureaucracy that have developed a culture of using language to create ambiguity to distract, or even to hide, the true intent or meaning. Don Watson, one of the great warriors in the cause of plain English, has pointed out that the disease has infected academia and the professions, not to mention the language of corporate management. A culture that can turn people into "human resources" is a dangerous one. In Watson's words, and I quote from his book *Death Sentence: The Decay of Public Language:*

> *There have been signs of decay in the language of politics and academia for years, but the direst symptoms are in business. And the curse has spread through the pursuit of business models in places that were never businesses.*
>
> *Universities that once valued and defended culture have swallowed the creed whole. Libraries, galleries and museums, banks and welfare agencies now parrot it. The public sector spouts it as loudly as the private does. They speak of focusing on the delivery of outputs and matching decisions to strategic initiatives … In an education curriculum or the mission statements of an international fast food chain you will hear the same phrases.*[1]

That's vintage Watson.

And among Australian writers, he's been joined by Clive James—another great fighter for good English. Both are the beneficiaries of an English literary tradition in which the models of plain English prose in the 20th century were the writings of Bertrand Russell, George Orwell, J.B. Priestley, and the historian Paul Johnson.

Paul Johnson's advice to writers, written 25 years ago, has lost none of its force today. He wrote:

> *Beware of what I call bow-bow words. These are words which in effect say "keep off" to intruders, and are used by bureaucrats, politicians, educationalists, economists and other groups in real or supposed authority.*

And Johnson listed some examples: programming, cost-effective, counter-productive, pluralist, optimum, utilize, ongoing, orientation, parameters, structured, unilateral, growth-point, potential, significant (meaning big), environment, dialogue. There are a great many others.

But it's not enough to avoid bureaucratic jargon. Plain English, if it is to serve the objectives we seek for it, must also be *good* English. And clarity of expression isn't just a matter of simplifying the vocabulary. Or of resorting to a kind of facile colloquialism that may, in fact, be no clearer than the original.

Nor is it matter of brevity alone. If it were, Twitterers and Facebook users would be writing exemplary government submissions.

The story is told—and doubtless it's been told in many versions—of how Winston Churchill asked an official at the Admiralty to summarise on a single sheet of paper the condition of the British Navy. "Impossible," said the Admiralty man. "Really," said Churchill, "I could do it with just one word. It's 'good' or it's 'bad'. Anything beyond that is a lot of useless detail."

The importance of grammar

Well, Churchill was always one for hyperbole. But he was also a master of the language. He understood that the best plain English requires a thorough grounding in basic literacy. And that must start in our schools. It must start with the teaching of grammar. I don't mean that plain English requires a strict observance of every grammatical rule, a point Clive James has argued.

James, of course, is a stickler for good grammar, and has written widely in praise of it. But in his latest collection of essays he makes the point that grammar isn't everything. He tells us in *The Revolt of the Pendulum*:

> *Bad writing often doesn't need bad grammar to make it awful. It can be awful even while keeping all the formal rules. A perfectly bad sentence, indeed, can be an intricate miracle of ostensibly correct construction.*[2]

What is required is a good working knowledge of grammar and a respect for the disciplines that good grammar instills: economy of language, precision, consistency, a logical structure. Let me quote an example of an English sentence from a recent New South Wales Government document:

> *Development that is to be demolished as exempt development under the Code must be development that can be constructed or installed as exempt development.*

It reads like a brain teaser. And if you parse and analyse that sentence in the old-fashioned way, it boils down to something like this:

> *You can only demolish something that you would have been allowed to build in the first place.*

From which it follows that you cannot demolish anything that you would not have been allowed to build. That's confusing enough for me. Imagine how I'd feel if I was actually wanting to understand what I could or couldn't demolish! No wonder grammar comes in handy.

Here in New South Wales, our schools are now giving a higher priority to grammar. The NSW English Syllabus developed by the Board of Studies explicitly requires the teaching of grammar *in a practical and engaging way.* Texts are used as the basis of grammar lessons and students apply the grammar they have learned to their own writing.

And the good news is that these methods are working. I'm proud to say that our state has the best literacy and numeracy rates in Australia—with 94–97 per cent of children reaching nationwide literacy and numeracy benchmarks.

And I apologise for using that word *benchmarks.* Don Watson and Paul Johnson would almost certainly not approve of it.

But it's not only students who need help with grammar. Many teachers need help as well. So the Department of Education and Training is planning a training program for teachers to improve their knowledge of grammar and help them teach it more effectively.

Plain English in public language

All this will lay a solid foundation for the development of plain English skills in public life. I am advised that the Plain English Foundation has already trained more than 4,500 New South Wales public servants in improving their writing skills.

Clear communication builds trust and confidence. As a government, we can never be truly accountable to the public unless we communicate in ways that people can readily understand or respond to.

In particular, people who speak English as a second language may well have trouble understanding government information and accessing services. I am advised by the Community Relations Commission that around 7.3 per cent of the New South Wales population acknowledge that they speak English "not well, or not at all". So it's essential that public documents are written in good, plain English.

Even the general public—people with normal language skills—can have difficulty with technical language and jargon. According to a 2006 survey, *Adult Literacy and Life Skills*, around 46 per cent of New South Wales people have trouble locating and using information in everyday documents such as job application forms, payroll forms, transport timetables, maps, tables and charts.

In New South Wales, our agencies are working hard to improve the information they provide to the public. Especially those agencies, like State Emergency Services, where clear English may literally save lives.

We have a long way to go. The roots of the problem are deep and complex. But as Don Watson has reminded us, the English language has always been strong enough to survive assaults on its integrity.

His latest book, *Bendable Learnings*, is an attack on the language of modern corporate management[3]. But he also takes a sideswipe at politicians. I quote him in one of his pessimistic moods:

> *Can anyone imagine a premier sometime in the future speaking to us in a spontaneous and amusing way? One might as well imagine a government department that isn't values-driven, a bank that isn't customer-focused, schools that teach rather than deliver learnings and outcomes.*

Don, I don't take it personally. After all, I spent some years studying English literature. And I lead a government that takes these issues seriously.

Plain English in New South Wales

Let me mention a few other initiatives my Government will be adopting shortly.

I'll be issuing a memorandum to the entire NSW public sector stressing the importance of plain English—particularly in publications and documents intended for public use.

I want that memorandum to set the tone and establish the benchmarks for agencies in promoting the use of plain English.

I want plain English to become an essential part of how the public sector does business.

I want to see training in plain English stepped up across the public sector over the next two years.

And with this in mind, I intend to establish, beginning in 2010, a special category in the Premier's Public Sector Awards for the best use of plain English in our public sector agencies.

But we must also ensure that the highest standards of plain English are achieved throughout the entire public sector. We need rigorous tests for readability applied to all Government documents for public consumption.

I will therefore be directing the Department of Premier and Cabinet to arrange for random checks by focus groups of selected documents from every public sector agency. The focus groups will assess the documents for readability, clarity, and ease of comprehension. It will be a plain English audit of the entire government sector.

And agencies that don't meet the high standards I require will be targeted for remedial training.

I am grateful for the support of the Plain English Foundation and Dr Neil James in this

important cause, and I look forward to your continuing support as we tackle the problem with fresh determination.

So ladies and gentlemen, I leave you with this thought.

> *Future parameters for key human resources language management indicators are predicated on a high expectation of values-driven optimisation.*

In other words: I remain confident.

And I wish you success in your important mission.

toongabbie@parliament.nsw.gov.au

The Hon. Nathan Rees, MP *holds the electorate of Toongabie in the New South Wales Parliament. After leaving school, he worked as a horticultural apprentice and greenkeeper before completing an honours degree in English literature at the University of Sydney. He then worked as a union representative before becoming an advisor to several ministers in the state Labor government. In 2007, he was elected to the Legislative Assembly and became Minister for Emergency Services and Water Utilities. When the Premier Morris Iemma resigned in 2008, Rees was elected unanimously as the 41st Premier of New South Wales. In early December 2009, after months of leadership speculation, Rees lost a spill motion in the Labor caucus and resigned as Premier after 15 months in the job. It is not yet known what will become of the plain English initiatives that he announced at PLAIN 2009.*

Endnotes

1 Don Watson, *Death Sentence: The Decay of Public Language*. Sydney, Knopf, 2003.

2 Clive James, *The Revolt of the Pendulum. Essays 2005–2008.* London, Picador, 2009.

3 Don Watson, *Bendable Learnings. The Wisdom of Modern Management*. Sydney, Knopf, 2009.

Ensnaring perceptions on communication: Underlying obstacles to lawyers writing plainly[1]

Dr Robert Eagleson

Down the centuries, lawyers have regularly been the butt of criticism and cruel jokes because of the convoluted way they write. From certain perspectives these unfavourable judgements are appropriate and fair; yet, in over 30 years experience working closely with lawyers, I have come across none who deliberately produce obscure, cumbersome documents. They intend to be lucid and, like writers in many other professions, believe their documents are clear when they release them.

Moreover, lawyers are not born speaking legalese: it is not natural to them. They begin practising it only as they take up legal studies and proceed in their profession. Along the way, they also absorb perceptions and conventions about communication that turn them aside from plain writing.

These perceptions lie beneath the surface of our consciousness, and it is only as we have insights on their existence and their impact on documents that lawyers can be released to produce highly comprehensible and efficient documents that will earn them the appreciation of the community.

This paper looks at five of these perceptions.

Perception 1: The paramountcy of precision

It is incontestable that accuracy of content is vital in any legal document. But in preparing their documents, lawyers often give the impression of a single-minded commitment to precision. Other considerations—and especially ease of comprehension for the audience—do not seem to come into play.

The experience of writing at university and law school contributes to the development of this restrictive outlook. Students prepare papers for readers (their professors) who can be taken to know more about the topic than they do. As a result, there is not the same pressure to explain explicitly the connection between items of information or to help readers understand the flow of the arguments. Instead, the main thrust is to impress the professor with the students' knowledge of the law. The emphasis is on providing correct and ample information.

These experiences get transposed into practice in the legal office. As soon as they include all the correct and necessary information in a document, many lawyers see the writing task as finished. It does not seem to concern them that the material is not tightly organised, or that they have assumed knowledge that their clients would not have. The difficulties that inexpert readers could have with their documents seem outside their ken simply because their previous major writing experiences have not called upon them to give attention to these matters.

Unfortunately, comments of practitioners of legal writing in highly respected positions have encouraged this unbalanced emphasis on precision. Sir John Rowlatt, a former First Parliamentary Counsel in Great Britain, observed:

> *The intelligibility of a bill is in inverse proportion to its chance of being right.*[2]

How we can tell if the contents of a bill are correct the more unintelligible the bill becomes is something of a mystery, but we can recognise how Rowlatt's forceful pronouncement promotes undue, if not exclusive, concern with precision.

Incongruously, Sir Ernest Gowers, of *The Complete Plain Words* fame, expressed similar thoughts:

> *being unambiguous … is by no means the same as being readily intelligible; on the contrary the nearer you get to the one, the further you are likely to get from the other.*[3]

During the 1970s, legislative drafters in Australia seized on these words to justify their own excruciatingly entangled compositions when the drafting of legislation came under renewed attack from the plain language movement.

The notion that there is an inherent antagonism between precision and intelligibility or clarity, that where one is achieved the other must suffer, is palpably false and contrary to the true purpose of language—which is to inform, to edify, to illumine. We write so that another will understand us, and not be left in a fog. If we cannot express our ideas clearly, then we have to question how sure and clear-cut is our understanding of them.

Examples abound to demonstrate that there is no real opposition between accuracy and clarity, and that the attainment of comprehensibility does not jeopardise precision. To select a straightforward illustration, *The Accident Compensation Act 1985* (Victoria) followed the then normal practice in legislation of this type by first establishing the legal and administrative frameworks by which the legislation was to be conducted before setting out the substantive matters of the legislation:

> *The Accident Compensation Act 1985*
>
> *Part 1 Preliminary*
>
> *Part 2 Accident Compensation Commission*
>
> *Part 3 Accident Compensation Tribunal*
>
> *Part 4 Types of compensation*

This arrangement is puzzling and frustrating to members of the public, ignoring their expectations and order of priorities. Their major interest lies in what forms of compensation are available to them—the details of how the scheme is administered is of little immediate concern. In short, the Act should have begun with the contents of Part 4, and this is now the approach to this type of legislation in Australia. Importantly, the change in organisation has no impact on the precision of the material but greatly increases its accessibility for general readers.

The same may be said for new ways of organising letters of advice, court rulings, and contracts, and for different choices of grammatical structure. The actual details of the content and its exactitude are left untouched. Only the comprehensibility of the documents is improved.

Perception 2: Inseparability of related details

The second ensnaring perception intertwines somewhat with the first one. A lot of drafting has been influenced by the belief that every qualification and exception relating to a proposition must be held together in the one sentence. This leads to the production of overlong, convoluted sentences—often of 200, 500 or even 800 words in length. The worst I have seen is a sentence with over 1200 words in a residential mortgage!

A shorter example comes from a superannuation policy for the staff of a major Australian bank:

> *The total number of shares issued in consequence of acceptance of the share offers made on a particular occasion shall not exceed the number which is equal to 0.5% of the aggregate number of shares that were on issue on the first day of the year in which that occasion occurs, and if the number of the shares the subject of all such acceptances exceeds that limit every such acceptance and the contract constituted by it shall be deemed to relate to that number of shares (being a whole multiple of 10 shares) which is the greatest that can be accommodated within that limit having regard to the number of acceptances.*

As the staff was having so much difficulty in understanding the clause, the editor of the staff magazine decided to run an article on it in the hope of throwing some light on its meaning.[4] During an interview for the article, the Chief Legal Counsel acknowledged the trouble the clause was giving staff and that it was "a good example of legalese". The journalist queried:

> *"Couldn't this clause be at least divided into two sentences? That would make it at least a little easier to read."*

The lawyer responded firmly:

> *"No. You can't afford to separate the two ideas in that paragraph with a full stop. It would be encouraging people to ignore the second clause, which tends to qualify the first. It might* just possibly *lead to misunderstanding"*

He preferred to concentrate on a risk that was minute—"just possibly" are his words—and to ignore the massive likelihood, and in

the bank's case the reality, that by not dividing the sentence many would be bamboozled and never arrive at the meaning. Worse still, this approach ignores the natural reading processes of people who, when faced with contorted language, will stop reading altogether or, in despair of unravelling the message, will guess at it.

Some studies have shown that the limit of frustration for most readers is 80–90 seconds. If they cannot decipher the meaning of a sentence in this period, they will guess at a meaning and pass onto the next sentence. They can hardly be blamed for this action. While readers have a responsibility to approach a document with interest and commitment, writers have an equal responsibility to shape their message in a way that is congenial for readers.

This type of frustration is not limited to non-experts, but professionals also yield to it. When asked what he thought of the plain English NRMA car insurance policy when it first appeared in 1976 (a first for Australia), and in particular whether he thought it was better than the old one, the then Chief Justice of New South Wales responded that "he could never bring himself to read the old policy: he just trusted that the NRMA was an honourable company"!

Perception 3: The pre-eminence of custom

We can all be bedevilled in various ways by an unthinking, blind acceptance of what has been, investing it with an unchallengeable superiority, and persisting with using it.

The action of over 400 scientists in Great Britain is instructive.[5] When asked to assess two versions of a technical article—one which had been prepared in the traditional style for science and a second version rewritten according to the principles of plain language—the scientists favoured the rewritten version overwhelmingly in answer to these questions:

Which style is more precise?

Which writer gives the impression of being a more competent scientist?

Which writer inspires confidence?

Which passage shows a more organised mind?

The scientists nominated the original version when the question became:

Which passage is more difficult to read?

Yet many felt constrained by convention to follow this more difficult style in their own writing. Their behaviour is irrational, but it shows the force of custom. Writers need to be given confidence to adopt what their judgements tell them is clearer and more effective.

The conventionally held view that writing is a more elevated form of speech largely lies behind the bloated, obscure form of advice offered by the Heart Foundation:

Severe dietary restriction is usually unnecessary.

The recommendation started out in the more direct form of:

You usually don't have to diet strictly.

Mixed in here too is the notion that utterances of an organisation with the important status of the Heart Foundation call for inflated language.

Similarly, at the end of a workshop a senior judge in the Court of Appeal complimented me on the instruction I had given to the junior judges and registrars on how rulings should be expressed and on how to write plainly, but went to add, "But I can't write like that. I must appear erudite."

And so our perception of our supposed status in the community and what it requires of us comes to overrule other considerations, and in particular that language was given to us so that we could help others to understand and acquire knowledge. We may not change the message, but it becomes harder for others to perceive it. There is also the danger that others may not value our efforts as erudite!

Perception 4: The permanence of language

Many have also come to hold that the lexical and grammatical structures established in past documents are fixed and permanent, and essential to preserve the intended precision. Change is seen as decadent. As a result, we can still find clauses holding onto words in senses they no longer carry, such as *severally:*

The defendants are jointly and severally liable under the Home Loan.

This practice ignores the fact that when Elizabethan lawyers framed the clause they did not hesitate to use current words in the

current senses of their times. They believed that the language of their day could cope. To prevent a gulf developing between the usage of law and the usage of the general community, we too should turn to the words of our day to help us. We can safely do so, as the use of *individually* demonstrates:

> *The defendants are jointly and individually liable under the Home Loan.*

Change, when it is rigorously selected, is possible without destroying meaning.

This fourth perception encourages slavish subservience to grammatical conventions that have become outmoded, and so leads to graceless and unnatural writing. The singular use of *they* is a good case in point. The Australian project to rewrite the Corporations Law in plain language exploited its convenience and familiarity:

> *A person is entitled to have an alternative address included in notices if their name, but not their residential address, is on an electoral roll …*[6]

This practice avoids the cumbersome repetition of the noun (*the person's* name, *the person's* residential address) or the equally awkward *his or her.*

During the testing sessions held on the new version of the law in all states in Australia, most participants—including the legal and other professionals taking part—welcomed this development. The small number who objected on the grounds that it was "ungrammatical" were unaware that the practice had begun in the Middle Ages and that by the twentieth century had become dominant. Nor did they seem to realise that the English language had experienced a similar change in the sixteenth and seventeenth centuries when *thou* virtually disappeared from the language and *you* came to serve in both singular and plural contexts.

A major legal firm has adopted the same contemporary approach in its style book:

> *When a partner signs their own name*

Perception 5: The narrowness of plain language

There is a misconception that plain English is a basic form of the language, one that is severely reduced and truncated. As well, it is wrongly imagined that it has only one form, without variation and variability. Instead it is a full version of the language, calling on all the patterns of normal, adult English. It embraces in its scope:

> *The three terminal gills of zygopterous larvae are borne by the epiproct and the paraprocts. Usually they have the form of elongate plates, but in certain species they are vesicular.*

This is an instance of plain (scientific) writing, but it is plain only for its particular, intended audience: advanced students of entomology. Despite the inclusion of several less familiar words, it is easy to recognise the direction of the sentences and any of us could answer a question like *What is the function of the paraprocts?*

Plain language does not ban or exclude technical terms, or any other of the varied structures in the language. Lawyers, for example, are free to use terms of art when writing to colleagues because they are efficient and effective in these contexts. Shakespeare demonstrated this flexibility and freedom when in *Macbeth* he first penned:

> *The multitudinous seas incarnadine*

This line no doubt would have appealed immensely to those in the audience who had an education in the classics and who were aware of the tremendous number of borrowings from the classical languages that was occurring in English at the time. But Shakespeare realised that the line would have been meaningless to another important segment of the audience, and so he added:

> *Making the green one red*

We all need a similar facility and fluency in language. To write plainly does not call on us to abandon any portion of our language or restrict our linguistic repertoire, but rather to enlarge and enrich it so that we can encompass the demands of our diverse audiences dynamically and incisively. What shapes our repertoire, what determines our choice in any given document, is the needs and capacity of our audience. Only as we achieve clarity of expression and ease of comprehension can we genuinely serve the members of our community.

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Robert Eagleson *has been involved in ground-breaking plain English work in Australia. He contributed extensively to the first plain English legal document (a car insurance policy) in 1976. As commissioner in charge of the plain English reference to the Victorian Law Reform Commission, he demonstrated that even complex legislation could be written in plain language. From 1993–97 he was a member of the taskforce directing the rewriting of the Australian Corporations Law in plain English. From 1983–87 Robert was Special Adviser on plain language to the Australian Government. He acted as consultant in plain legal language to Mallesons Stephen Jacques from 1987–2000. He was appointed Founding Co-Director of the Law Foundation Centre for Plain Legal Language.*

Robert has also been a consultant to Law Reform Commissions in Canada and New Zealand and has conducted workshops in Canada, France, Hong Kong, Malaysia, New Zealand, Singapore, Sweden, Thailand, the UK and the USA. He has received a number of awards from the Australian Government and national and international professional associations for his contributions to plain writing and literacy.

His publications include Writing in Plain English *and over 60 monographs and articles on plain English, as well as some 50 books and articles on English language, including a dictionary of Shakespeare's language for Oxford University Press.*

At the PLAIN 2009 conference in Sydney, Robert was presented with the Plain Language Association InterNational Award for an outstanding contribution to plain language internationally.

Endnotes

[1] This paper was originally delivered at the seventh biennial conference of Plain Language Association InterNational, Sydney, 15-17 October 2009. It is also being published in the *Michigan Bar Journal*, and is reproduced here with many thanks to Joseph Kimble.

[2] Cited in H. Kent, *In on the Act,* London, Macmillan, 1979, p. 79.

[3] Ernest Gowers, *The Complete Plain Words,* London, Pelican, 1962, p. 18-19. A careful reading of Gowers shows that he was not talking about intelligibility at all but rather grace or elegance of style.

[4] *Changes,* Sydney, Westpac, May 1987, p. 5.

[5] C. Turk, "Do you write impressively?" in *Bulletin of the British Ecological Society* 9, 1978, pp. 5-10.

[6] Commonwealth of Australia, *First Corporate Law Simplification Act 1994* section 242 (5).

From the editor

Clarity 62 has been an adventure. Last summer, we hoped to publish our November 2009 issue a few months early. We wanted to encourage you to read more and think more about plain-language standards, to prepare for the 2009 PLAIN conference in Sydney. For a variety of good reasons, this plan—"plan A"—was abandoned . . . along with plans B and C. Through it all, our guest editor, Neil James, has been a rock. If you attended PLAIN's 2009 conference, you know that Neil does nothing halfway. This issue is no different. Neil has pulled together an incredible collection of articles, most of which are from the Sydney conference. And while I must apologize for the delay in publishing *Clarity 62*, I believe this issue is worth the wait. Thank you, Neil.

As you read this, we're finishing *Clarity 63*, and we've begun *Clarity 64*. And *Clarity 65* will highlight our 2010 conference.

These are important times for plain language. On April 29, the Center for Plain Language will give ClearMark awards to the best examples of plain language in several categories and WonderMark awards to the worst examples. Emcee for this important Washington D.C. event will be our own president, Christopher Balmford. In Portugal, Sandra Martins is planning Clarity's October 2010 conference. And in Sweden, Helena Englund is planning PLAIN's 2011 conference.

I hope you enjoy *Clarity 62* as much as I've enjoyed reading these articles as Neil has sent them. And I hope to see you soon—in Washington D.C., in Lisbon, and in Stockholm.

The credit crisis has its roots in Main Street, not Wall Street

Wessel Visser

Director, BureauTaal Plain Language

Incomprehensible mortgage offers and financial products were the cause of the current credit crisis. To prevent another crisis from occurring, we desperately need plain language in the financial markets.

To understand the link between plain language and the credit crisis, we have to go back to the very beginning. Our story begins with a mortgage agent, Brad Kent, asking Joe Simpson, a local supermarket manager in Florida:

"Why don't you buy that house?" Brad was pointing to a spacious new home down Main Street.

"No," Joe said, "I cannot afford it.

"Yes, you can," Brad replied, "the house only costs $600,000."

"That's what I mean," Joe said, "that's far too expensive for me."

"Well, Brad replied, "can you afford $500 a month?"

"Of course," Joe said, "I earn $4000 a month."

"Listen," Brad replied, "I can offer you a mortgage that will let you buy that for only $500 a month."

Obviously, Joe had to discuss the option with his wife Cynthia, a hairstylist. They signed the mortgage. Part of the offer was a provision that the interest rate would rise from one per cent to eight per cent after two years. But this provision was incomprehensible to Joe, just as the language of loan offers is incomprehensible to many Americans.

Not long after closing the deal, mortgage agent Brad contacted a bank. He offered them a complex financial product with a six per cent annual return for the next 30 years. The prospectus defined the product to be based on high-quality real estate in sun-state Florida. The prospectus contained an overkill of abstract and ambiguous language about the nature of the investment.

But one thing in the prospectus was specific and unambiguous: the expected return is six per cent annually for 30 years. That would flow from the eight per cent mortgage payments that Joe and Cynthia were facing from year three. No matter that Joe and Cynthia had no hope of paying. All the prospectus needed was the following mandatory phrase: "past results don't guarantee future gains".

The rest of the story is well known. The financial product was traded on international financial markets. It ended up in the portfolios of Swiss UBS, Dutch Fortis or Lehman Brothers.

Meanwhile, Joe Simpson's monthly mortgage payment leapt to $4000 a month. Which he could not afford. He defaulted. And with too many like him in the area, the value of the house plummeted to the point where it wasn't saleable. So UBS or Fortis or Lehman Brothers suddenly owned a worthless financial product. This was the essence of the credit crisis.

How can we prevent this from happening again? Is it feasible to leave governments to manage the international financial markets? Or—as some European governments put it—to have socialists march into Wall Street?

The solution is simpler. If Joe Simpson had understood that he would be paying one per cent interest for no longer than two years and eight per cent for the next 28 years, then he would never have bought the oversized home he couldn't afford. And if the bank had understood that the complex financial product was based on eight per cent mortgages on ordinary Americans who had bought homes worth ten times their annual income, it would not have bought that product.

Economists know that markets only operate well if all participants are well informed. The 2001 Nobel Prize winner George Akerlof identified the severe problems that afflict markets characterized by asymmetrical information. Joe Simpson didn't understand his mortgage offer. Many top economists in international financial institutions didn't understand the complex financial products they bought.

The solution is to communicate financial products in plain language. A language that Joe Simpson understands. A language that all financial experts can be held accountable to. We don't need socialists on Wall Street. We don't need to curtail the freedom of financial markets with peculiar rules. But we do need to communicate in plain language.

Wessel Visser *is director of the Netherlands' first plain language organisation, BureauTaal, which he established in 2002. BureauTaal works for a range of organisations, including government agencies, financial services companies and health care organisations. The company also developed Texamen, an instrument that measures the readability level of text in Dutch and English. They organised and hosted the sixth Plain Language InterNational conference in Amsterdam in 2007. That year, Bureautaal also rewrote the Dutch Constitution in plain language, attracting considerable public and media interest.*

Contributing to the journal

Clarity often focuses on a specific theme (like conferences or drafting or standards), but we also publish articles on a variety of other plain-language topics. Please submit your articles to the editor in chief for consideration.

Would you like to be a guest editor? Our guest editors gather articles, work with the authors, make layout decisions, and edit and proofread a single issue. If you would like to guest edit an issue of the *Clarity* journal, send an email to the editor in chief.

Finally, if you have ideas about improving the journal, the editor would like to hear from you, as well. Our editor in chief is Professor Julie Clement, with the Thomas M. Cooley Law School. Email her at clementj@cooley.edu.

Call for special papers

Join a team to clarify a legal document

Clarity2010 will bring together plain language specialists, information designers and legal experts from around the world to exchange experiences and new ideas about promoting clear communication in the public and private sectors.

We are looking for law students, information designers and plain language practitioners to work in teams and turn complex legal documents into things of dazzling clarity.

You will get the chance to present your projects during the conference, 12-14 October, and get feedback from the world's top experts. If you're interested, email us and we'll put you in touch with potential team members around the globe.

Deadline: 30 April 2010

Plain language and financial transparency

What you don't understand can cost (or make) you money

William Lutz

President
Plain Language Association InterNational

In October 2000, James Chanos, a hedge fund manager, started to analyse the financial disclosure statements of a major and very well-known American corporation. The document he used is known as the Form 10-K, which publicly traded corporations must file with the Securities and Exchange Commission every year. The form must disclose the complete financial status of the company, so it is audited and reviewed for accuracy and completeness by hordes of accountants and attorneys before it is filed. Analysts, investors, and others use the form to evaluate the soundness of a company and whether to invest in it.

But the more Chanos looked at this 10-K, the more he became convinced that this document was less than forthcoming. He was concerned about the murky language filled with vague references. Then, too, there were the sentences that were so convoluted and filled with so much jargon that they were meaningless. The more he read the less he knew, and the less he understood what the company was doing—and how it was supposedly making money. So he decided to invest on the assumption that the company had little if any future.

A few months later, a writer at *Fortune* magazine examined the company's financial statements and came to a less harsh conclusion. She published what has now come to be regarded as a prophetic article. "Is Enron Overpriced?" appeared in the 5 March 2001 issue, and prompted a lot of comment. Throughout the article, the reporter asks simple questions that should have been answered in the company's 10-K: how exactly does Enron make its money, and just how much money is it really making? These should be easily answered by reading the company's 10-K, but no one the reporter spoke to could answer them. "If you figure it out, let me know," one analyst said.

The importance of transparency

We all know the ending to this story. Transparency in financial disclosure is the foundation of capitalism. That is, everyone involved in investing must understand what they are investing in and what the risks are. Indeed, there are thousand of pages of regulations specifying the information companies must disclose to investors. Unfortunately, there are few regulations requiring that companies make that disclosure clear, understandable and transparent. In the world of financial disclosure, it's reader (and investor) beware. In this world, words are your enemy, and you had better be prepared to fight for the information you want.

Fortunately, all is not lost. If we have learned anything these last two years, it's that transparency must be required of those who would have us invest in their ventures. Warren Buffett pointed out that he never invested in the now infamous collateralised debt obligations (CDOs) because he simply didn't understand them. And he doesn't invest in what he doesn't understand. Indeed, he wondered how anyone could claim to understand them, since the document explaining a CDO could run from 15,000 to 750,000 pages! And he wasn't exaggerating. Even a normal 10-K document can easily be 1500 pages long. As Mr. Buffett said, given the length and complexity of these documents, "nobody knows what the hell they're doing".

The value of plain language

Using plain language in financial disclosure can be done and is being done by a number of companies (by plain language, I include information design and the full range of techniques that are now a part of the field). And it is clear that plain language pays off. Two professors in the College of Business at the

University of Notre Dame recently published a study of 56,079 10-Ks that were filed between 1994 to 2006.[1] They reached a number of conclusions about the value of plain language, including:

- greater participation by small investors in companies that use plain language
- greater participation by seasoned investors in companies that use plain language
- higher absolute stock returns after filing a 10-K in plain language.

In short, plain language serves the financial interests of the companies using it as well as investors.

Another study, this one by the New York firm Siegel+Gale in January 2009, says it all in the title: "Simplicity Survey: A Clarion Call for Transparency."[2] Again, the findings are no surprise. Two-thirds of the people surveyed believe companies deliberately make things complicated to keep people in the dark. Because of this belief, people don't trust banks, mortgage companies, and Wall Street. Indeed, over 84 per cent said they were more likely to trust and do business with a company who communicates in clear, jargon free language. And 75 per cent believe complexity helped cause the financial crisis.

A new approach to transparency

In 2008, I undertook a project at the Securities and Exchange Commission to outline a plan for making financial disclosure not just more transparent, but more useable. But while examining the mountain of paper that flows into the SEC each year, we quickly realized that even plain language wouldn't help investors. There's just too much to read—as Warren Buffett pointed out. It was clear that in a time when people use the Internet to find the data they want and assemble it into the information they want, a static, paper-based financial disclosure system could not and does not serve investors.

Our final report recommended moving from paper to an electronic-based, interactive disclosure system where investors can easily find the data they want to create the information they want. And that data would be in plain language.[3]

There is currently a great effort to bring plain language to the health care system because it is obvious that clear communication in medical matters can be a matter of life and death. Not understanding (or understanding incorrectly) what to do can have tragic results. So too with our financial health. As we have learned, a lack of clear communication led to many people taking on mortgages they could not afford, to people buying stock in companies they didn't know weren't financially sound, and to investment bankers investing in CDOs they did not understand.

Unfortunately, we're all paying the price for the lack of transparency. Everyone, that is, except the few who bet against the jargon and complex language. Because he couldn't understand Enron's financial disclosure, James Chanos shorted the stock and made a windfall for himself and his investors when the stock's price collapsed. But he didn't make as much as hedge fund manager John Paulson made from opaque CDOs. Like Buffett, Paulson didn't understand how all those mortgage-backed CDOs were worth so much. So he bet against them, and in one day he made $1.25 billion. Yes, billion with a "b". And in 2007, his fund made $15 billion in profits from betting against those impossible-to-understand CDOs. His personal take was $4 billion.

Sometimes, for some people, a lack of transparency is a good thing—a very good thing—because what you don't understand can cost (or make) you money. Lots of money.

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Bill Lutz *is Professor Emeritus of English at Rutgers University. He holds a Ph.D. in English and a Doctor of Law degree. He served as editor of the* Quarterly Review *of* Doublespeak *for fourteen years and is the author or coauthor of seventeen books, including* Doublespeak Defined*;* The New Doublespeak: Why No One Knows What Anyone's Saying Anymore*;* Doublespeak: From Revenue Enhancement to Terminal Living*; and* The Cambridge Thesaurus of American English.

As an expert on plain language, Bill has worked with over three dozen corporations and government agencies and has served as an expert witness on language and plain language in legal proceedings. In 1998, he helped

prepare the U.S. Securities and Exchange Commission's Plain English Handbook. *From 2008-09, he served as Director of the SEC's 21st Century Disclosure Initiative. He is also currently the President of the Plain Language Association InterNational.*

Endnotes

[1] Tim Loughran and Bill McDonald, "Plain English", 9 May 2008, available at <http://ssrn.com/abstract=1131643>.

[2] Siegel+Gale *Simplicity Survey: A Clarion Call for Transparency*, <http://www.siegelgale.com/mail/c/8/Simplicity%20Survey%20Results.pdf>

[3] You can download a copy of this report at <sec.gov/spotlight/disclosureinitiative/report.shtml>.

How to join Clarity

The easiest way to join Clarity is to visit http://sites.google.com/site/legalclarity/, complete an application, and submit it with your payment. You may use PayPal or a credit card to pay.

Prospective members in Canada, Italy, and the United States may also pay by bank draft. If you do not have internet access, you may complete the application on page 68 and contact your country representative for submission instructions. Country reps are listed on page 2.

Thanks to Richard Woof

Submitted by Nick Lear
Barcombe, England, December 2009

Richard Woof and I were partners at Debenham and Co. In the early 1980's we were both interested in pioneering property contracts and leases in modern English. Setting out the main information (we called it the "Particulars") at the beginning of a lease seems commonplace now. Then it was revolutionary and by no means met with universal approval among our peers in the world of commercial property. Richard set about educating our clients, who to their credit generally saw the advantages of clear layout and comprehensible language. We had little time for the received wisdom—that arcane language was right because it had always been that way. If our documents were incapable of being understood by the client, we had failed. Our views were not even shared by all the firm's partners. One of the younger ones felt she had failed if the client did understand her draftmanship!

Richard and I both responded enthusiastically to a letter in the Law Society's Gazette in March 1983 seeking interest in starting an organisation to promote plain English in legal documents. Clarity was born. Each of us was to take a turn on the committee. Richard persevered. His service there must be matched by few, the redoubtable Mark Adler apart.

It was not just use of words. Richard was always ready to adopt new technology—mastering early the intricacies of the electric typewriter, the golf ball typewriter, computers and the internet. He had an eye for layout and presentation. Long before others appreciated it, he understood that the look of a document affects the way it does its job. Before the word "user-friendly" came into general use, Richard preached the value of white space, bullet points and the like. In the early days of computers, the rest of us had no idea whether a certain effect could be achieved. Richard made it his business to know what the machines could do—and always pressed the operators on to greater things.

Brevity was always a holy grail. I remember once we discussed the origin of the story of a certain writer who had ended a long letter with an apology for its length, explaining that he had not had time to write a short one. Some said it was Mark Twain. Others favoured GK Chesterton. Richard set about researching the story, worrying away at it for months (it was long before internet search engines). It was typical of him to be thorough in everything he did. I believe he traced it back to Blaise Pascal, 1656. It's almost disheartening how easy it is today, using Google, to find a version attributed to Augustin (354-430 AD) or even Cicero.

Making the business case for plain English

Lynda Harris

Director, Write Limited

Enthusiasm isn't enough!

You're an enthusiastic proponent of plain English and its benefits for readers and organisations. And you can see that you or your client organisation needs it. But how do you educate and convince those who control the purse strings?

Whether you're an employee trying to persuade others to adopt plain English, or a professional trying to sell plain English to clients, you need to present a convincing business case for change and a clear return on investment. The discipline of writing a business case will clarify your thinking, get the facts and benefits down on paper, and greatly increase the chance that your proposal will be taken seriously.

After years of writing proposals for plain English projects, and helping clients write their own business cases, we've found a formula that works for us.

Getting your plain English project paid for

Identify your real proposition

It's all too easy to think that "plain English" is your proposition. It isn't. Plain English is simply a means to an end. Your real proposition is about creating a great leap forward in your organisation's ability to connect and communicate, and therefore fulfil its business purpose.

Identify the scale of what you are proposing. Are you proposing complete organisational change? Or a pilot project with a division or specialised team?

Find the compelling "why"

No proposal will succeed without a compelling "why". Think of the "why" as the "problem", with the benefits of your plan being the solution. Linking your proposal to the achievement of your organisation's mission and purpose is critical.

We can borrow a useful analogy from the manufacturing sector. A manufacturing firm sells products and needs a distribution system to deliver its products to customers. If the delivery mechanism fails, the company fails.

For most of the organisations we deal with, *information* is the product and *writing* is the delivery mechanism. In this context, a poor document (failed delivery mechanism) means that an organisation fails to connect and communicate. Albert Joseph, author of *Put it in Writing* (1983) says it beautifully:

> *The only purpose for cultures to create language is to transport ideas. Then it is simple; we cannot afford a transportation system that damages its cargo in transit.*[1]

Attaching the "why" to an organisation's fundamental purpose is vital. But your proposal will be even more compelling if you identify some very specific gains that can be made by adopting a plain English writing style. Several winners in New Zealand's annual WriteMark Plain English Awards expressed their "why" this way:

> *Plain English … motivates clients to approach us and helps us provide a more efficient service.'*
> New Zealand Trade and Enterprise

> *Nothing could be more frustrating for people with injuries … than having to wade through incomprehensible gobbledygook.*
> Accident Compensation Corporation

> *Team-Up aims to help parents get more involved in their education by providing practical, easy-to-follow tips in plain English.*
> Ministry of Education

> *BRANZ was very aware of the need to promote the science behind sustainability in an accessible way.*
> Building Research Association of New Zealand

Overly complicated communication serves only to deepen the divide between client and advisor… it is our job to know the technicalities behind our advice. It is equally important to demonstrate the value of it. Communicating clearly is the first and most vital step.
Deloitte[2]

Show "how"

Be very clear that your proposal isn't seen simply as "business writing training". You are proposing a comprehensive project that that will require a new way of thinking. Show exactly "how" you will solve the problems raised in your "why" section.

Converting an organisation to a plain English writing style is not for the faint-hearted. You need a long-term plan that is sound, achievable, and believable.

Our first step is almost always to establish an agreed, documented plain English standard for the organisation. We then plan a range of strategies and activities that will work together to publicise and gain enthusiastic compliance with that standard.

Always include measures to monitor success. These will give confidence to your decision-maker and indicate that you expect a measurable return on investment.

Most often our proposal will recommend many tasks that the organisation can do internally—and the proposal will always aim to make our services redundant over time.

Include realistic costs

Decision-makers need to know exactly what a proposal will cost, over what time period. Most critically, they need to be able to see the expected return on investment.

While some aspects of your plan may be hard to cost, you need to be as specific and realistic as possible. Don't forget to factor in opportunity cost when fee-producing staff members are taken off the job to participate in project activities.

Use existing case studies to help calculate potential return on investment—even if you have to generalise. And remember to include gains in client or employee satisfaction. These gains are real and immensely valuable.

Also try to calculate the cost of doing nothing. How much is poor communication hurting the organisation? Link your statements back to your "why" section.

Itemise the deliverables and milestones

Your proposal should then set out the specific items or tasks that will be created, delivered, or achieved—and when.

For example, you might propose that a project committee will be set up by 6 May, a writing standard agreed by 4 June and a senior management training session held by 18 June, and so on.

Anticipate the risks

No proposal for a significant project is complete without a thoughtful assessment of any potential risks involved. Taking time at the start to identify what could go wrong, and planning accordingly, is your best form of risk management.

In all the years that we have been involved in large plain English projects, we have never seen any significant problem caused by a move to plain English. However, as the project sponsor and leader, you do face the risk of losing funding if you cannot demonstrate some early and ongoing success.

Obstacles to success can include lack of management support, unanticipated demands on staff time, insufficient motivation to change old habits, and continued use of old precedent material.

Paint a clear picture of success

Success is not merely about achieving deliverables and milestones. Your proposal should set out clear indicators of success that link directly back to your proposition—your "why" statements—and the plans to measure progress in your "how" section.

Your success indicators will be both tangible (x hours saved by each call centre staff member amounting to $x saved in wages, x per cent increase in response rate to survey) and intangible (fewer queries from clients who received legal advice, unsolicited positive feedback about the new application form, higher ratings in annual quality audit).

In our experience, even a little success is a great motivator—plan for it and it's more likely to occur.

Getting serious pays off

So the bottom line is, "get serious". The notion of plain English may be dear to your heart, but to turn your passion into reality you need a solid plan and a clear head. You also need tenacity and determination. Others have walked this path before you and have some stunning success stories to share. Do your research and learn from others.

Transforming the way an organisation communicates is not easy. But the value of the possible benefits far exceeds the cost of the project. Making that value clear is up to you.

Lynda@write.co.nz

Lynda Harris *is founder and director of Write Limited, a New Zealand-based company widely acknowledged as a leader in plain English business writing. Over 20 years, Write has become well established in the professional services market. The company has a broad client base of public and private sector organisations.*

Lynda also established the WriteMark, New Zealand's document quality mark, and is the founder of New Zealand's annual plain English awards. She is New Zealand's representative for Clarity and is a member of the International Plain Language Working Group.

Endnotes

[1] A Joseph, *Put it in Writing*. Cleveland, International Writing Institute Incorporated, 1983.

[2] WriteMark New Zealand Plain English Awards 2009. Viewed at <www.plainenglishawards.org.nz> on 13 January 2010.

Coming Conferences

June 2010, University of Naples 2

Faculty of Law of the Seconda Università degli Studi di Napoli (University of Naples 2), *The Language of Law–pulling together different strands and disciplines*

email languageoflaw@unina2.it

1-3 July 2010, Poznan, Poland

The Institute of Linguistics at Adam Mickiewicz University, *5th Conference on Legal Translation, Court Interpreting and Comparative Legi-Linguistics*

www.lingualegis.amu.edu.pl/index.php?option=com_content&view=article&id=19&Itemid=33.

12-14 October 2010, Lisbon

Clarity, *Clarity2010*

www.clarity2010.com/home.html.

9-11 June 2011, Stockholm

Plain Language Association INternational: *Establishing the Framework for Plain Language*

www.sprakkonsulterna.se/plain2011.

2-4 February 2011, Hyderabad, India

Commonwealth Association of Legislative Counsel (CALC) conference: *Legislative Drafting: A Developing Discipline*

www.opc.gov.au/CALC/conferences.htm

Plain words

Sir Ernest Gowers

Shortly after the Second World War, the British Treasury invited Ernest Gowers to write a training pamphlet for the civil service on the use of English by officials. The result, Plain Words, *was published by His Majesty's Stationery Office (HMSO) in April 1948. A review in* The Times *said that it "deserves to become a best-seller". It was an immediate success and by August 1950 had already been reprinted 12 times.*

In 1952, Gowers was invited to address London County Council teachers on the topic "Plain Words". The manuscript has been held in the Gowers family archives, and is published here for the first time thanks to Professor Ann Scott, Gowers' granddaughter and author of his biography Plain Words and Forgotten Deeds.

I have been asked to speak to you this evening on the subject of "Plain Words". That no doubt is because a few years ago I wrote a little book with that title. But it is only fair that I should begin with the confession that I am almost wholly uninstructed in the subject on which I am about to address you. I have never taught it, and it would be not far off the truth to say that I never learned it.

As I look back on the now distant days of my own education, there is very little direct instruction in the handling of words that stands out in my memory. I have dim recollections of being set at a very tender age to do something called "parsing and analysis", a form of mental gymnastic that I thought at the time exceptionally revolting—though I fancy it may in fact have been useful, like the scaffolding that can be taken down when it has helped to build something more durable.

I remember, more vividly (it is indeed an unforgettable memory) being called on at the age of ten to write my first essay, an ordeal that ended with tears of shame that I should have been so poorly endowed by Providence with the blessed gift of creative imagination—a misfortune that still depresses me from time to time, though I no longer show my regret in the same way.

Later in my school career, I remember clearly being taught to avoid the solecism committed by the translators of the *New Testament* in the sentence "whom say men that I am". At Cambridge, I recollect being taught not to split infinitives and (more usefully) to curb the exuberant rhetoric to which youth is prone. But I remember little other instruction than this in the art of expressing myself, though I daresay there may have been a little here and there.

So you must make allowances if, to those of you who have made a study of teaching English, I show signs of being ill-equipped for my present task.

The doctrine of plain words

I have spent much of what is now a longish life amid the torrent of words, written or spoken, that are the life-blood of our present-day democracy, sometimes battling with it, sometimes adding to it myself. And I have found much interest in the study of the use of words as a vehicle for conveying thought from one mind to another. It was as a result of that study that I wrote my book. I chose its title after much thought and rejecting many alternatives.

In a way, that choice has proved unfortunate. "Plain Words" has become a sort of cliché associated with my name, and I have been taken to task by some critics for preaching a doctrine I never intended. It has been said that the cult of plain words will produce a style just as artificial and unnatural, and therefore just as bad, as the use of words that are not plain, if those are a writer's natural method of expression. Thus I seem to have unwittingly added yet another to those vague and dangerous clichés that are so rife nowadays, to which we can all attach any meaning we please, and so save the trouble of thought.

All I had in mind by the doctrine of plain words was this: that one ought to be clear about what one means to say and then say it in a way readily intelligible to the person one says it to. I advocated it because I could not help noticing how much of what is written nowadays cannot be readily intelligible to the person addressed—if indeed intelligible at

all—and sometimes, one cannot help suspecting, not over clear to the writer himself.

I readily concede to my critics the truth that words serve diverse purposes, and that for some of them plainness is out of place. We all know that Voltaire said that words were given to us to conceal our thoughts, an opinion echoed by the character in one of Oscar Wilde's plays who said "Nowadays to be intelligible is to be found out".

That is undoubtedly one facet of the truth. But it is one that needs no preaching. The use of words in this way is only too common. It is for instance part of the stock-in-trade of politicians everywhere, especially in those totalitarian countries where the rulers are under the hard necessity of fooling all the people all the time. There, opiate language is used deliberately and scientifically as a means of destroying the power of independent thought.

You will remember that George Orwell, in his picture of 1984, imagined a new language called Newspeak, forced on the then totalitarian world, intended not only to provide a medium of expression for the world view and mental habits proper to the devotees of the conquering doctrine, but to make all other modes of thought impossible, and indeed ultimately to make articulate speech issue from the larynx without involving the higher brain centres at all.

That is one of the uses of language for which plain words are out of place. And there are others not so extreme. The late C E Montague, who knew more about the handling of words than most people, used to deprecate what he called the habit of writers to rub into their readers' minds the last item of all that they mean. A courteous writer, he said, "will have his non-lucid intervals. At times he will make us wrestle with him in the dark before he yields his full meaning."

That is all right so long as the courteous writer does it on purpose, and is writing for the sort of reader who likes that sort of thing. He may even go so far as to amuse himself with intellectual exercises such as inventing clumps of syllables with a vaguely onomatopoeic suggestion, as James Joyce and Gertrude Stein did, and Lewis Carroll before them. No reasonable advocate of the cult of plain words would quarrel with ingenious experiments of that kind. But these things are for poets and other writers who want to sound emotional overtones, the very vagueness of which adds to the titillating effect of their impact on the reader. It is not for those who use words for more humdrum purposes.

For like everything else in the modern world, language has changed, not in its structure but in its purpose. It is no longer mainly a vehicle of poetry and emotion; it is a vehicle rather of science and journalism, by the discussion of social and political problems, and of the exposition of the rights and duties of the citizens of the welfare state. The kind of writing I had in mind when I chose my title is that which has as its purpose to convey information, not to awaken emotion—that functional writing which so many have to attempt nowadays as an incident of their daily life, and so few can hope to avoid having to read.

Have you observed what a spate we have had of recent years of books denouncing the style of writing prevalent today, and purporting to teach better ways? I find it an interesting phenomenon. It is no doubt a healthy one: it reveals a widespread opinion that something is radically wrong and a praiseworthy wish to set it right. But one feature of it disquiets me. So many have rushed into the fray, and have laid about them so indiscriminatingly, that what I may call for convenience the cult of plain words is in danger of being discredited by being overdone.

One such book just published made me open my eyes very wide at the promiscuous way in which the author's lash fell on victims that seemed to me wholly innocent. He would, for instance, in his zeal for the language, banish all Latin words, even such old friends, and, as I should have thought indispensables, as *ad hoc*, *prima facie* and *sub judice*. That is indeed isolationism run mad. Other campaigners in the cause of plain words would not, it seems, ever allow any long or ugly words to be used. That again, I think, is excess of zeal.

It is of course one of the articles of the creed of plain words that of two words that express a writer's meaning equally well he must prefer the pleasant to the ugly, the short to the long, the familiar to the unusual. But it will rarely be true that two do express his meaning equally well, and if they do not he must prefer the one that conveys it better, be it never so ugly. A Cabinet Minister wrote to *The Times* a few years ago protesting against the

word "organizational" because it was so ugly. It certainly is no beauty. But if we want a word meaning 'of or pertaining to organisation' what are we to do? We have plenty of indispensable ugly words in the language.

Other crusaders again would rule out the use of any words that are not of respectable antiquity in the English language. This too can be overdone: the language is constantly being enriched by new words. I cannot help feeling that some of those who have constituted themselves defenders of our mother-tongue, from Dean Swift to Sir Alan Herbert, have shown excessive insularity in their resistance to what is new. I am not sure that I am myself wholly free from guilt: I find myself getting more tolerant as I grow older. "What is new" generally means something that reaches us from the inventive and colourful minds of the Americans. Sometimes these inventions prove most valuable acquisitions. They should not be rejected as undesirable immigrants merely because of their country of origin, but should be judged by the test of whether they fill a need.

Another way in which the campaign is misdirected is its excessive concentration on the Civil Service. That is perhaps natural enough. Officials are specially vulnerable; they write so much, and we all have to read so much of what they write. And as they generally tell us to do something we do not want to do or to refrain from doing something we do want to do, we are inclined to approach them in a critical spirit.

Mocking our officials is a national pastime of great antiquity, and arises no doubt from a commendable trait in our national character. But it can be carried too far. I do not deny that the official has a literary style of his own, but on the whole he is no worse than other people—he is better than the business man—and to concentrate the attack on him is unfair, and liable to defeat its purpose by putting his back up and making him think that the doctrine of plain words is bunk.

The subject is a delicate one, as I discovered when I first tried to preach the doctrine. I found that although some were receptive, many were not. I was indeed warned that any attempt to teach good English would be liable to arouse the same sort of resentment in some people as, let us say, a flaunting of the old school tie, as though it were an exhibition of class snobbery. That struck me as odd. The public schools no doubt inculcate many virtues, but I have not myself observed the power of lucid and correct self-expression to be conspicuous among them. Mr George Sampson has indeed gone so far as to say that "whatever is trained in the average agreeable products of the public schools, it is certainly not the mind". But that, I think, is a little unkind.

However that may be, I found it puzzling that care about correct writing should be so widely regarded as pedantry. It is an unusual phenomenon. People generally like to learn the right way to do things. Those who want to ride a horse do not think it highbrow that they should be taught the correct posture of hands and legs. Those who want to play the piano do not regard the proper fingering of scales as pedantry. That, no doubt, is because the would-be horseman and aspiring pianist are convinced that what they are being taught are, on the whole, useful aids to controlling their horses and their fingers.

There does not seem to be the same conviction that being taught the technique of good English is a necessary aid to a useful accomplishment. May it perhaps be that this is because the wrong things are taught? Or perhaps it would be fairer to put my question this way: may it be that the wrong things were taught for so long that a resistance has been created which has not yet been broken down?

The importance of grammar

What do you now teach? I confess to being discreditably ignorant about the answer to that question. Do you still teach grammar, I wonder, and if so, what sort of grammar? I have been so bewildered in trying to follow the vicissitudes that grammar seems to have been passing through that I am no longer sure even that I know the meaning of the word.

Our forefathers were untroubled by these perplexities. A hundred and fifty years or so ago, William Cobbett said that "grammar perfectly understood enables us not only to express our meaning fully and clearly but so to express it as to defy the ingenuity of man to give our words any other meaning than that which we intended to express". That is unequivocal enough. If that were true, our Parliamentary draughtsmen would only have to undergo a thorough course of grammar,

and a large part of the work of our Bench and Bar would automatically disappear.

The very name grammar school serves to remind us that grammar was long regarded as the only path to culture. But that was Latin grammar. When our mother tongue encroached on the paramountcy of the dead languages, questions began to be asked. Even at the time Cobbett was writing, Sydney Smith was fulminating about the unfortunate boy who was "suffocated by the nonsense of grammarians, overwhelmed with every species of difficulty disproportionate to his age, and driven by despair to peg-top and marbles".

Very slowly over the last hundred years, the idea seems to have gained ground that the grammar of a living language cannot be fitted into the Procrustean bed of a dead one. The old-fashioned notions of grammar became a sort of Aunt Sally for any educational reformers who had a mind to heave bricks at. The old lady stood up with remarkable resilience. It is nearly fifty years since the Board of Education themselves took a hand in the sport, and threw an outsize brick with the declaration that "there is no such thing as English grammar in the sense which used to be attached to the term".

The queer thing is that at the end of it all, we seem to have been left not with one grammar but with many. We have formal grammar as distinct from functional grammar, pure grammar as distinct from the grammar of a particular language, descriptive grammar as distinct from prescriptive grammar—distinctions I will not dwell on because I am not sure that I perfectly understand them. I must be content to quote the verdict of the departmental committee on the teaching of English in England that reported in 1921—a review of that subject which, for wisdom and thoroughness must, I think, still remain unsurpassed. They summed up what they had to say about the teaching of English in these words:

> *For the teaching of correct speech in school we should rely, first of all, on correction of mistakes when they arise; secondly on the great power of imitation; and thirdly at a later stage, though not in the earliest stage, on the teaching of the general rules to which our standard speech conforms.*

"The general rules to which our standard speech conforms". In those words, there is plenty of room for difference of interpretation. I sometimes wonder whether, in the teaching of grammar, Procrustes may not still be about. I do not know. But I do know that only a few years ago, that great authority Sir Philip Hartog said he thought that "in the teaching of the mother tongue in this country it is still on detail that attention is mainly fixed". Out of curiosity, I have dipped into one or two modern textbooks. In the first, the following passage struck my eye. The author is emphasising the importance of unity in a sentence. He says:

> *At the risk of seeming too dogmatic, I have come to the practice of laying down a rule as definite as this: that when a sentence may be resolved into a single subject with legitimate modifiers it has unity: sentences not thus reducible lack it.*

I think I see what he means, but I cannot believe that the way he puts it is really helpful to the young aspirant after clarity of expression.

In the second book I opened, I came across the advice that the best way to get a boy out of the habit of saying "I have went" is to make him remember that the second of the principal parts of a verb never forms correct compound tenses. No doubt this is the proper approach to teaching a foreign language from a book. But for a child learning his own language, may not so-called rules like these be just the sort of thing that make him think that good English is highbrow useless stuff.

The idiom of the native language comes flooding in on every side without having to be sought by curious means and docketed with odd labels. The main road to learning it must be by way of observation, practice and correction, rather than by memorising general principles into which it rarely fits and applying to it a test of logic that it consistently disregards. But it can hardly be the only way. It must be supplemented by some instruction in what for convenience we may call grammar.

Grammar without tears

I recently read a little book by the latest recruit to the ranks of those who take their pleasure in bombarding this Aunt Sally. He has armed himself with a large number of heavy and jagged bricks, and flings them with immense gusto. He is Mr Hugh Sykes Davies,

of St John's College, Cambridge, and lecturer in English at that university. The book is called *Grammar without Tears*. You may know it: if not I commend it to you warmly.

The title is misleading. Anyone who hopes to find in it a specific for an easy and painless way of learning grammar will be disappointed. He will discover that he is given the same dusty answer as Mr Punch gave to those about to marry. Mr Sykes Davies surveys the development of our language from the clumsy and tortuous synthetic beginnings of its Gothic origin, to the grace and flexibility of its present analytical structure, and argues that in this great and beneficent reform the hero is what he calls the "lowly man" and the villain is the grammarian, who has constantly tried—fortunately with small success—to drive the lowly man along defined footpaths. And so Mr Sykes Davies, following boldly where his argument leads, would have what he calls a grammatical moratorium, in which we shall all be free to disregard the rules of grammar. In this way he hopes the lowly man might carry still further the good work he has performed for so long. As he says with truth, there is still much to be done.

For instance, the lowly man has rid us of those troublesome inflexions that used to mark the difference between the subjective and objective cases in nouns, and we now rely solely on the order of the words to tell us who was the person who did it and who was the person to whom he did whatever he did do. And we find it quite enough. But the relative pronoun has stubbornly refused to follow suit, except in its neuter form. So we still have the troublesome task of remembering when to say *he* and when *him*, when *she* and when *her*, when *they* and when *them*, and—worst of all—when *who* and when *whom*. This is a puzzle that has on occasion baffled most great writers, from Shakespeare to Mr Winston Churchill.

And so with the verbs. Our verbs have dropped those absurd inflexions by when they used to denote the person who was their subject, except for the custom that still lingers of distinguishing the third person singular of the present indicative by adding an "s" to it—a custom that makes writing more difficult without, so far as I can see, serving any useful purpose. But among the verbs too there are laggards on the path to the Promised Land. There are the auxiliaries, and especially the verb *to be*, still insisting on all its comic and unnecessary variations of *am*, *art*, *is*, *are*, *was* and *were*. The lowly man still does his best.

Not long ago, I heard an old countryman say with contempt, as he watched a youth scything, "Keep her sharped, boy; keep her sharped. Her baint sharped. Could ride to London on her with a bare behind". Observe not only his vivid imagery, but his fine simplicity of diction. *Her* does duty for both subjective and objective cases. *Baint* will serve for any person of the present indicative of the verb *to be* in its negative form. How much more sensible is the old boy who says indifferently *I baint*, *he baint*, *we baint* than you or I who feel constrained to say *I am not*, *he is not*, *we are not*.

If only the grammarians could be silenced for a while, says Mr Sykes Davies, the lowly man will get on with the job, and rid our language of the few synthetic blots that still deface it. Let us shake off all inhibitions, he says, and write as the spirit moves us, and we shall improve the language no end.

I may have touched up Mr Sykes Davies' doctrine with a spot of colour, but that is it in essence. He writes with pleasant wit and urbanity, and it is not always easy for the reader to know how far his tongue is in his cheek. But if we take the doctrine at its face value, we shall see that the trouble about it is that it comes too late. The heyday of the lowly man was the three hundred years following the conquest, when the gentry spoke French and the clergy spoke Latin and only the underlings spoke English. For them it was a free-for-all. It passed slowly, and its passage was completed with universal compulsory education, the popular press, the cinema and the wireless. What chance has the lowly man against all these influences which, whatever effect they have, will certainly not encourage such pleasant simplifications as saying *her baint* for *it is not*?

If the lowly man makes his voice heard at all, it is likely to be with an American accent on the wireless and the screen, a process already going on with results that may perhaps sometimes be beneficent, but sometimes certainly are not.

Moreover, as I have said, some fundamental rules must be taught, whether you call them grammar or something else. If anyone is to be able to put sentences together intelligently, he cannot be left to rely wholly on imitation. Even Mr Sykes Davies admits this. He concedes the necessity of qualifying his grammatical moratorium by first instructing children in:

> *some knowledge of the principles of language. These will partly concern the future: they will tell him what is desirable in language … and they will be partly historical: they will be concerned with what is possible, and will not shy from the inescapable necessity of starting from nowhere else than the position we stand in at the moment, conditioned by the past.*

That, I am sure must be true, but it seems to me to lack precision as a guide to those who would like to carry it out. It is perhaps significant of the difficulty of this subject that when authorities like the departmental committee and Mr Sykes Davies, who denounce the traditional teaching of grammar, try to tell us what sort of grammar ought to be taught, their words become not quite so plain as we should like.

The arbitrary nature of red-tape rules

The essence of the difficulty seems to be this: that although it is no doubt true that the grammarians swathe the language in unnecessary red tape, yet there are certain grammatical rules which are, so to speak, a code of universal good manners that must be observed if we are not to have linguistic barbarism; and it is not always easy to draw a line between the two.

If a boy says to us "I done it", we shall correct him firmly: he has violated what is undoubtedly an article of the code of good manners of the language, and we shall refuse to listen in the unlikely event of his pleading that he is only carrying on the good work of the lowly man, and helping to get rid of some of the unnecessary inflexions of the verb *to do*. But if, let us say, he splits an infinitive in an essay, we shall perhaps correct him less firmly; we need not refuse to listen if he pleads that he can express himself more clearly that way; and we may be content with telling him that this is all right so long as he knows that there is a not very sensible convention that infinitives ought not to be split, and if he splits them he runs the risk of being thought an ignoramus by the purists.

Let me draw an analogy from my own schooldays, which I keep on being reminded of by my subject this evening. When I first went to a public school I was instructed in various rules of behaviour. One was that I must touch my cap to a master whenever I met one. Another was that I must not turn up the ends of my trousers: that curious privilege was reserved for the swells, and not to be arrogated by insignificant persons like me. Here again, the first precept belongs to a true code of good manners; the second was a silly and arbitrary convention: any boy of spirit could disregard it without being guilty of anything in the nature of bad manners. But it was just as well that he should be aware of the possible consequences to him of his disregard of public opinion.

I fear that both in the study of good English and in the observance of good behaviour in public schools, it is often the arbitrary conventions that assume the greatest importance. That these wrong values are prevalent among those who profess to care for the language, I have ample evidence in my own correspondence. I am disturbed to find how many people still believe that writing good English consists in observing the red-tape rules, who take a pharisaical pleasure in doing so themselves and find a smug sense of superiority in exposing those who do not.

One lady wrote that she took a dim view of my own English because I had written "different to". I had not: it was an enterprising compositor who had thus flaunted convention. But if I had, I should have felt no great sense of sin. Another correspondent accused me of splitting an infinitive because I had written "I warmly recommend". While this spirit is abroad it is not surprising that there should be also a spirit of resistance against being taught what is known as "good English".

Faults in written English today

The faults prevalent in the general run of written English today are more deep-seated than any failure to observe rules of the sort that these critics attach so much to. They are faults that make a writer fail to put across what he wants to put across, however perfect

his grammar. I have tried to analyse them in my books, and time does not allow me to go into them now. But I should like to mention very briefly two that seem to me of fundamental importance.

The first is poverty of vocabulary. I do not mean that the ordinary functional writer can be expected to have a great vocabulary. I do not see how he can. The fault is that he does not make proper use of the vocabulary he has. Instead of searching for the right word, he is content with a small stage army of stock words and clichés.

I have read somewhere a suggestion by a well-known educationalist that pupils when set to write essays ought to be supplied with a dictionary of synonyms and told to ponder carefully a number of words before choosing the one they think expresses their meaning most exactly. I think that might be a most salutary way of getting into their heads that words are delicate instruments of precision which must find their way into the right place in a reader's brain, not heavy blunt instruments to bash him on the head with. I always have a dictionary of synonyms beside me myself when I write, and was once reproved for doing it by a schoolgirl daughter who regarded it as a sort of cribbing, a comment that argued a keen but misdirected conscience.

This laziness in the choice of words is, I am sure, one of the root troubles. It is the worse because the small stage army of words generally attracts the wrong recruits—meretricious, vague and novel words.

I think the other root fault is the practice of wrapping up in abstractions ideas that ought to be expressed in terms of people and things and action. I have elsewhere suggested that it would be useful if everyone who finds that he has an abstract noun as the subject of a sentence were to regard it as a danger signal warning him to ask himself whether what he wants to say could not be expressed more directly. Then we might be saved from such monstrosities—to take what I consider my prize example—as being asked the question "was this the realisation of an anticipated liability?" when what the questioner meant was "did you expect you would have to do this?"

Let me give you an illustration of what may happen if the lure of abstract words is not firmly resisted. I have found it in a book on the problems of adolescence:

> *Reserves that are occupied in a continuous uni-directional adjustment of a disorder are no longer available for use in the ever-varying interplay of organism and environment in the spontaneity of mutual synthesis.*

That is indeed an awful warning.

Clarity of thought in a democracy

I suppose what it all boils down to in the end is clarity of thought. "Accurate writing depends on accurate thinking," said Horace in the *Ars Poetica* nearly 2,000 years ago, and many have repeated the same thing since. I believe that the question how far thought is possible without words is one about which philosophers and psychologists argue. But it must surely be true that, as the departmental committee said:

> *What a man cannot state he does not perfectly know, and, conversely, the inability to put his thoughts into words sets a boundary on his thought. … English is not merely the medium of our thought: it is the very stuff and process of it.*

Teaching boys and girls to think clearly must be at once the most important and the most difficult of a teacher's tasks. His pupils will grow up under a constitution that puts its faith in the ordinary citizen and relies on his thinking sensibly. That theory runs through the whole structure, from the jury box to the ballot box. At the same time, the modern extension of the paternal functions of government tempts the ordinary citizen to the illusion that he need not think for himself, so largely is his way of life ordered for him.

Yet on his continuing to think for himself depends the continuance of democracy as we understand it. And so, if it is true, as I think it is, that the right teaching of English is the best way of teaching clarity of thought, then exceptional responsibility and exceptional opportunity do indeed rest with those who teach their mother-tongue.

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Sir Ernest Gowers *(1880-1966) was described by the (London)* Times *as one of the greatest public servants of his day. He joined the Home Civil Service in 1903, and early in his career was "discovered" by Chancellor of the Exchequer, David Lloyd George, who appointed Gowers his Private Secretary. Gowers was then moved to the team implementing Lloyd George's National Insurance Scheme in 1912. He held many demanding and influential positions during his career, culminating in being Regional Commissioner for Civil Defence, London Region, during the Second World War. After his formal retirement, he chaired numerous inquiries, including the Royal Commission into Capital Punishment (1949-53).*

Gowers became a household name after the publication of Plain Words. *At the age of 75, he was asked by the Clarendon Press to undertake the first revision of Fowler's* Modern English Usage. *He completed it ten years later, shortly before his death in 1966.*

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She is currently Adjunct Professor in the University of Queensland, where she teaches public policy and is also involved in an oral history project for the Centre for the Government of Queensland. In 2009, Palgrave Macmillan published Ernest Cowers: Plain Words and Forgotten Deeds, *Scott's biography of her grandfather. This was the subject of a conversation session with Annette Corrigan at the seventh Plain Language Association InterNational conference in Sydney, 2009.*

Request for information

Mark Stanton exploring best and current practice for the treatment of defined terms in legal texts. Contact him at mark.stanton@andorif.co.uk for details or to contribute.

Righting the wrongs of rewriting

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Rewriting was crucial in the early days of plain English. Pretty much the only effective way to get the message across was to contrast an existing bit of writing with a plain English version. It was generally the aim to show that the existing writing could be made much clearer. Over time, however, a number of unfortunate rewriting tendencies have emerged.

Although most of my professional writing experience is as a legislative drafter, I have also had a fair bit of reading, writing and rewriting experience with contracts, wills and more general documents, so my comments do not just relate to laws.

My purpose is in no way to discourage rewriting. It is an important and valuable activity, and much remains to be done in the area. But it is a very difficult discipline that, in my experience, is more intellectually challenging than writing from scratch.

This paper only deals with "pure rewriting", by which I mean rewriting a document to make exactly the same content easier to understand. This is a subset of rewriting generally, which seeks to make a document work better. Of course, making it easier to understand is one way of making it work better, but a document can also be made to work better by tweaking or even radically changing the policy that underlies it.

If rewriting occurs as part of a reasonable policy process, tweaking or changing a document requires far more extensive consultation than would normally be needed for pure rewriting. That requires more time and resources and brings up a host of other issues.

There are three great wrongs of pure rewriting that I want to explore in this paper:

1. Rewritten documents often are not accurate translations of the originals.
2. Rewriters are often too concerned with cutting the length of documents.
3. Rewriters adopt too great a readiness to assume that the original writer was a fool.

Inaccurate translations

My greatest concern about rewriting is this first. Over the years, I have observed time and again rewritten pieces that have in one way or another ridden roughshod over the policy underlying the original document.

A number of years ago, I was at a meeting where a rewriter reported on his progress with a fairly large and complex subordinate law to a group of representatives from government agencies with an interest in the law. At one point, the rewriter stated that he had deliberately omitted several types of people from the operation of a provision because if he had included them it would have upset the neat scheme he had come up with.

Although that occurred a while ago and is the most extreme example I have seen, unfortunately I continue to see evidence that rewriters do not accord policy issues appropriate respect.

To begin rewriting the text of a document, a rewriter first needs to fully understand what the document, and each part of the document, does. That raises an interesting and very much neglected point.

Legislative drafters draft to instructions that instructors give them. The instructions tell the drafter what is wanted in a proposed law. There is a golden rule of instructing: do not present instructions in the form of a draft.

Why not? Because drafters cannot start to write until they know what the document to be written is to do. If instructions are given in a draft, the drafter must first deconstruct it to discern what was wanted. This requires an additional step, and there is a lot of room for things to go wrong. Also, drafts are the visible parts of the iceberg. Quite often there is much material below the surface.

Recently, I was given a state provision to use as the model for a provision in a national draft. I thought there was an error in the provision. The draft added a paragraph two to existing paragraphs. This gave the new inser-

tion equal status with the existing paragraphs. My understanding of the relevant policy was that the new insertion should only apply if the two existing paragraphs didn't apply, so I imposed that precondition. On presenting my draft, I was told that my understanding of the policy was correct, but that it resulted in an impractical situation that was not desired, and which could only be solved by removing the precondition. As there was nothing in the model provision to warn me, my first draft was therefore wrong.

Thus rewriting starts with a fundamental problem: it almost always starts with the golden rule of instructing being broken. But then it gets worse.

In the usual drafting situation, such as the example I have just given, there is someone available who knows what the document should do, and why. But that is often not the case when rewriting. The document being rewritten will often be years, or decades—or sometimes even centuries—old.

Thus, as a rewriter, you will often have to deconstruct a document and then have to hope that your knowledge and common sense have given you the right blueprint of the purpose and policy underlying the document.

How can we right the wrong of inaccurate translations? I have two suggestions.

First, we need to steal an idea from our medical colleagues. Doctors supposedly take an oath that includes the well-known requirement to "first, do no harm". We need to imbue those coming into rewriting with that same guiding principle: "first, do no harm—respect the policy". If you revise a document so it is easier to understand, but inadvertently change the effect of the document, you have caused harm. Your job as a rewriter is first and foremost to replicate the intended effect of the original document, no more and no less.

Second, we need to encourage rewriters to take a more measured approach to rewriting, and to become more aware of the risks. Rewriters need to be made aware that they shouldn't rewrite a document that they don't understand. They need to do whatever they need to understand it, or else they should drop the rewriting project.

But before dropping a project, rewriters should also be aware that there is often quite a bit of low-hanging fruit. This is pretty risk free. Reformatting, restructuring, inserting headings, notes, examples, line spaces, tables of contents and navigational aids, and changing fonts and font sizes can significantly improve comprehension—virtually without changing the text.

Inserting missing articles or "flow" words is also fairly low risk. An example of a "flow" word is the missing *that* that newspapers delight in dropping after verbs. It tends to get dropped in lots of legal writing as well.[1]

There are also other things a rewriter can do that are usually low risk, but that require a bit more care. Even the seemingly straightforward modernising of outdated words and phrases can be dangerous. For example, take that perennial favourite *shall*. If you are rewriting a document that has *shalls*, in most cases it will be fairly clear from the context whether you should replace it with a *must* or a *may* or an *is to*. But every once in a while, it is not so clear. In the rewrite of the U.S. Federal Rules of Civil Procedure the *shall* in the phrase "There shall be one form of action to be known as 'civil action'." ultimately had to stay put, as no agreement could be reached on what it should be replaced with.[2]

Similarly, there can be problems when you convert the passive into the active. There will be instances where you have great trouble identifying on whom you should place an obligation that was previously expressed in the passive.

Once you start reaching for the higher fruit, the level of risk increases significantly. Rewriters should not enter these realms unless they are very confident that they have a sound understanding of the original document. Anything that is not understood should not be significantly altered.

I was once rewriting long service leave provisions in a bill to a very tight deadline when I came across an ambiguous provision. My instructors could not tell me for certain which way to resolve the ambiguity within the time available, so I made no change, as a mistake one way would have reduced employee rights, while a mistake the other way would have increased employer costs. This example also illustrates that when we talk about doing no harm, *harm* can really mean harm.

An undue desire for brevity

This second wrong was particularly a problem in the early days of plain English. Cutting the length of a document was the "sexy" and obvious improvement one could point to after completing a rewriting exercise. It was easy to forget that brevity should not have been an end in itself. Reductions in length are often a happy by-product of rewriting exercises, and over time this led to some fairly skewed perceptions about rewriting.

This is an area where there can only be one master: clarity or brevity. In any attempt to achieve both at the same time, clarity will usually suffer.

To take an obvious example: where you have a series of provisions that contain a lot of repetition, it is very tempting to compress them by reducing the repetition. Doing this usually increases the complexity of the compressed provision, as it has to provide for all the non-repeated bits of all the provisions in the one provision. Sometimes that increase in complexity is not likely to cause a problem. At other times it will.

Another concern I have about an undue desire for brevity is that it tends to cause the omission of redundancies that can help readers. Yet there are two types of helpful redundancy: macro and micro redundancy.

Macro redundancy involves chunks of text, usually of the size of subclauses. The one big difference between my writing 20 years ago and my writing today is that I have learned that there is no such thing as an obvious thing. These days, I am prepared to include in my work provisions that are strictly speaking redundant, but that I have found help people to understand what's going on. These are also found in rewriting, and if one has an undue concern about length, they are obvious candidates for the knife.

For example, I recently rewrote the employment contract for my employer. In my organisation, annual salary figures have always been quoted including superannuation payments, which represent nine per cent of gross salary. This has not been the case in the public sector generally, which is where some of our new employees come from. The contract I was rewriting stated in three different places that the annual figure included superannuation. Although two of these references were clearly redundant, I retained them because they were appropriately placed and they helped make our intentions crystal clear.

When it comes to micro redundancy, I am a big advocate of including redundant words in contexts where it stops readers from having to fill in a missing word. For example, the phrase "a copy must be attached to or served with the affidavit" is easier to read if a redundant *be* verb is inserted before *served*. Similarly, I think it is better to start paragraphs in a list with the same word where possible. This gives the eyes and the mind an instant context and familiarity as they start to scan each paragraph. Relentless rewriters put those common words in the preamble.

The final concern that an undue desire for brevity causes me relates to one of my pet topics. I am very keen on the use of notes and examples.[3] However, they take up space and increase word counts, so they also tend to be a problem for those who have an undue desire for brevity.

So how do we right this wrong about undue desire for brevity? This one is pretty easy. We just need to make it clear that in rewriting, length should not be a concern. Do your best to make a document easier to read, and leave the length to the drafting gods.

Assuming predecessors were fools

The third wrong of rewriting is too great a readiness to assume that the original writer was a fool.

If you rewrite legal texts, you are sure sooner or later to come across strange things. You will be very tempted to assume there is an error. This view will often be bolstered because you have formed the view that if the original writer had had any nous, it wouldn't be necessary for you to be doing the rewriting.

I speak from my own experience when I say don't be too hasty. I very strongly recommend that rewriters take the approach that something is not an error unless there is no other explanation. Time and time again I have discovered that strange things were done very deliberately for very rational reasons. No matter how insignificant or outdated a provision in a law may appear to be, just announce that you intend to repeal it. You will be amazed at who and what comes out of the woodwork, and how quickly it happens.

I came across an extreme example some time ago in rewriting some industrial relations legislation. There was a subsection in an act with subject matter that had nothing to do with anything else in that section. It was written in old language and it didn't appear to have any purpose, and to me it was clearly a relic that someone had forgotten to remove. When I suggested that I should get rid of it, I was promptly informed that it was the only provision that enabled government oversight of an industry that employed tens of thousands of workers, and that its continued existence was therefore crucial.

So rewriters need to work on the assumption that nothing in a document is an error unless there is no other reasonable explanation for it after looking at all reasonably available material. Similarly, with anything that appears to be strange in the original document, you should assume that it was placed in the document deliberately and you should attempt to replicate that thing in the rewritten document unless you are pretty sure it is no longer relevant.

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Plain English has been a passion throughout Ben's professional career, and he has presented papers at various conferences, including a drafting masterclass at the Clarity and Obscurity Conference in Boulogne Sur Mer in 2005 and the Commonwealth Association of Legislative Counsel Conference 2007 in Nairobi. This paper was written for a workshop at the seventh Plain Language Association InterNational conference in Sydney, 2009.

Endnotes

1 Joseph Kimble, *Lifting the Fog of Legalese. Essays on Plain Language*. Durham, Carolina Academic Press, 2006, p. 158.

2 Joseph Kimble, "Revising Hallowed Text: The U.S. Federal Rules of Civil Procedure and Federal Rules of Evidence", paper presented at the seventh Plain Language Association InterNational conference, Sydney, 2009.

3 Ben Piper, "What, how, when and why. Making laws easier to understand by using examples and notes", paper presented at the Clarity and Obscurity Conference in Boulogne Sur Mer, 2005, available at <http://www.opc.gov.au/calc/papers.htm>.

Phil Knight retires from Clarity's committee

Submitted by Mark Adler
March 2010

Phil Knight retired from full-time legal practice at the end of December and at the same time stepped down from Clarity's committee, of which he had been a member since 1997. For some of that time he was variously editor of the journal and our Canadian representative.

After a judicial clerkship for the Manitoba Court of Appeal and on qualifying as a solicitor and barrister in 1983, Phil spent two years in private practice before moving into legal education. In the early 1990s, as director of the Plain Language Institute of British Columbia, he organised a memorable conference on plain legal language—then a novelty—which attracted a large number of Clarity members and others from around the world. He has remained a part-time educator, on the faculties of various universities, but for the last 15 years has specialised in legislative drafting as a private consultant. In that capacity he played a major role in drafting the South African constitution and has drafted constitutions and substantial legislation for many other nations. He is continuing this work part-time.

Phil's arguments, views, and suggestions are often original, though sometimes uncomfortable and occasionally robust. Recently, many of us disagreed with his strong belief that the proposed professional standard for plain language writers was misconceived in principle (because creative writing is not to be trammeled) and that Clarity should withdraw from the project. His thoughtful unorthodoxy have made him a unique and valuable member of the committee, and I will miss his challenges.

Keynote address

International trends in English style and usage

Pam Peters

Emeritus Professor
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To tackle current trends in the style and usage of international English is to take on an enormous subject. Ever-growing numbers of people are using it, either as a first or second language. And it poses a paradox: while the language is steadily diversifying around the world, people who write for a wider audience begin to need a converging international standard. This tug of war between centrifugal and centripetal forces produces a slightly different status quo in different English-speaking countries.

This paper explores the status quo on three points of style and usage in some of the major varieties of English, to see how they compare and what they suggest for convergence or divergence. I will examine each with quantitative evidence to identify the larger trends in international English. These case studies suggest that, while some aspects of usage show convergent movement, few are fully convergent yet. Other aspects of "international" English remain highly divergent.

In using the phrase "international English" with a lower case "I", I am not presupposing that there is actually a single standard variety that is the established lingua franca for the world's communication. Rather, it is a convenient way of referring collectively to the often variable elements of English usage (words and grammar) that are used in edited writing in different parts of the world.[1]

Divergence and convergence in English worldwide

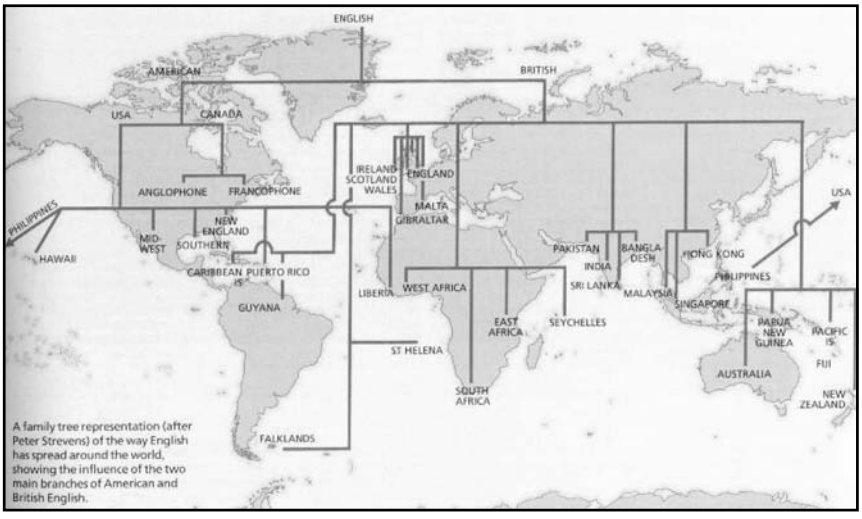
The history of English is one of a series of extensions into almost every continent. With colonial expansion, it became the language of expatriate settlers in different locations, and differently constituted speech communities helped to diversify it into new regional varieties.[2]

World English falls into two major groups:

- the set found in the United States and Canada (as well as the Philippines), dating from the seventeenth century
- the set associated with the British Commonwealth, found especially in Africa, South East Asia and Australasia, dating from the late eighteenth or early nineteenth centuries.

As Strevens's map shows, these two constitute a western and eastern set.[3]

There are of course major differences between the two sets, most obvious in pronunciation and spelling—you say tom*ay*to, we say tom*ah*to; you spell *artifact* with an *i* but we spell it with *e*. These dichotomies reflect the earlier and later phases of colonial expansion. But there are also differences among varieties within each set, reflecting the different stages of independence they have reached from the parent variety. This is the focus of recent research into post-colonial Englishes.[4]



Strevens map of world Englishes.

The independence of "settler" varieties such as Australian English and New Zealand English is now fully recognised, and "indigenised" varieties such as Singapore English and Indian English are well on their way. All varieties have distinctive features that are markers of divergence, such as:

- Australian English with its use of the suffix "o" in *arvo, smoko, garbo, muso*
- New Zealand with the idiom *sweet as* and others coined on the same basis
- Singapore English in its use of *la* as a discourse marker
- Indian English with its greater use of *-ing* forms.

Against this rapid diversification of new Englishes, there's more interest than ever in "international English"—a notional supervariety which could be used everywhere in the world. Crystal's *English as a Global Language* explores this concern and the need for convergence, and he argues that it's a natural concomitant of the divergence of regional/local Englishes.[5] People need to express their identity through the local variety, but also to have a means of communicating across dialect borders.

Many in the English-speaking world actually make use of two such alternative forms of English. They are, in fact, *bidialectal*. Maintaining alternative forms of English is especially important for those who use English as a second language (L2s) in postcolonial places such as Singapore, India and China, because of the strictly local features that their own regional varieties contain. For them, there's an incentive to adapt to L1 (first language users of English) speakers if possible, since their "third world English" may not be tolerated or understood.

It is usually less obvious to L1s that they might need to be bidialectal too. They tend to think that their own variety will do for both local and international purposes, and are not always alive to the need to adapt it for international communication.

Impact of the Internet on English worldwide

Apart from the role of L2 speakers in forging both local and international forms of English, it's arguable that the Internet will contribute to changes in usage—both divergent and convergent. The Internet exposes us to more diversity in English than ever before. At one end of the scale, with all the bloggers, Facebook contributors and personal email, we encounter very informal, idiosyncratic styles. At the other, there are the stodgy institutional postings of governments and corporations—where there is much work for the plain English community! In between there's the feisty stuff of advertising, aimed at local consumers, and often rich in regional slang.

Out of this babel of divergent voices, we might wonder what convergence could actually emerge. Yet Tom McArthur argues that the Internet could well be the matrix for a standard/international form of English because it is so obviously needed for global communication.[6] He argues that the situation is exactly like that of the print medium five centuries ago, when the melee of different spellings (seen in the Folio mss of Shakespeare) was gradually filtered out to create the more convergent forms of English associated with the modern era. A virtual international standard of English could emerge in the same way.

Convergence and divergence in the structure of language

Linguists analyse the question of convergence and divergence through the structural components of language: vocabulary, pronunciation and grammar. Peter Trudgill, for example, argues that there are signs of convergence worldwide in English vocabulary, with the major varieties (American and British) borrowing from each other, and words and idioms crossing the Atlantic in both directions.[7] So *ball-park figure* is picked up in British English, and *sticky wicket* in American. New expressions also reach Australia and New Zealand fast via electronic media.

Trudgill argues against convergence in pronunciation because the spoken norms of any variety are quite individual and probably getting more divergent. Meanwhile in grammar (syntax), he says it's impossible to say whether English is diverging or converging.

Unfortunately, Trudgill doesn't ask the same question about English spelling or morphology (structural components of words), even though these are the aspects of English which the plain language community is likely to be most interested in—being conspicuous features of written rather than spoken language.

For this reason, I will focus on three issues of written usage as my case studies. In doing so, I will use quantitative data from the Internet and from specially compiled linguistic databases (corpora) of the different varieties of English.

Case study 1: -ize/-ise

My first case study is the alternative spelling in words like *emphasize, organize, realize,* and *recognize.* This very productive verb suffix of modern English has probably been on the increase in the nineteenth and twentieth centuries. The choice between *-ize* and *-ise* seems to have been caught up in larger controversies about whether words should be spelled according to their individual history (etymology), their sound, or a common orthographic pattern.

Johnson's 1755 *Dictionary of the English Language* often argued for tying spelling to etymology, using *-ize* if the word was Greek or Latin, and *-ise* for French-derived words. The principle could be applied consistently as long as the word's source was known, but at that stage of philological scholarship, the origins of many were unclear, resulting in a mélange of spellings.

The editors of the *Oxford English Dictionary* in the nineteenth decided to standardise on *-ize* for all occurrences of the prefix. An independent assessment of this policy can be found in Fowler's discussion of the issue.[8] He presents a pragmatic argument for using *-ise* (because it presents fewer exceptions), but he accepted *-ize* as the house style of his publisher, Oxford University Press.

In the southern hemisphere, *-ise* was endorsed by the Australian Government *Style Manual* from its first edition in 1966 right through to the latest (sixth) edition of 2002.[9] And *-ise* is also enshrined in the New Zealand government style guide *Write, Edit Print*, albeit without drawing any attention to it.[10]

The relative frequency of *-ise* and *-ize* spellings in these and other major varieties of English is therefore of considerable interest, particularly for "international" English. In Table 2 below, frequency data has been extracted through the Google search engine from websites registered in Australia, New Zealand, Britain and Canada using their respective internet prefixes (.aus, .nz, .uk, .ca). The "international" frequency combines them all, along with websites from around the world, to represent global values.

In each pair of columns, the raw Google data in the first column is interpreted as a percentage in the second. Several interesting points come to light:

- Australians are by far the most frequent users of *-ise* spellings, using them in 70–80 per cent of the instances of the verbs. New Zealanders are mostly much less so, but the findings for *emphasise/emphasize* (which are close to the Australian figures) stand out from the other three.
- UK writers clearly prefer *-ize* (around 70 per cent), and in Canada the preference for *-ize* is still stronger (90 per cent). The Canadian frequency for *-ize* is like that of the United States, where it is standard. The convergence of two north American varieties is less surprising than the fact that British (UK) usage emerges as more like Canadian than

	AUS	%	NZ	%	UK	%	Cand.	%	Internat.	%
emphasise	364k	69.6	512k	68.7	1999	31.3	922k	8.8	3730k	15.4
emphasize	159k	30.4	233k	31.3	4290	68.7	9550k	91.2	20600k	84.6
organise	1750k	80.5	533k	51.9	6710	22.7	3020k	10.8	19700k	25.9
organize	424k	19.5	493k	48.1	2290	77.3	24900k	89.2	56300k	74.1
realise	1970k	80.4	928k	49.7	1200	28.2	3670k	9.4	20800k	18.6
realize	480k	19.6	939k	50.3	3050	71.8	35400k	90.6	91100k	81.4
recognise	2130k	81.4	837k	52.2	8520	27.2	3420k	11.9	16400k	18.2
recognize	488k	18.6	767k	47.8	2280	72.8	25400k	88.1	73900k	81.8

Table 1: Use of -ise and -ize.

Australian or New Zealand. The variation in spelling is thus more or less bipolar—with opposite tendencies in the antipodes versus the northern hemisphere

- The international trend of 75–85 per cent in favor of *-ize* is lower than in Canada, but the figures are of course diluted by the use of *-ise* in the antipodes.

The international trend is also marked by the use of *-ize* in the 2006 bilingual *English-Chinese Dictionary* from Fudan University Press in Shanghai. I have already noted how L2 users of English contribute to the "international" English community, and here they add their weight to the preference of the larger L1 community.

So in this case study, the trend towards *-ize* is clear in all but Australia, where the *-ise* spelling has been strongly reinforced since the 1960s by the Australian Government *Style Manual*. It stands apart from the other varieties, which are all converging on *-ize.*

Case study 2: use of -ed/-t for past inflection of verbs

The spelling of the past tense inflection has been quite variable for some verbs since early modern English. In the seventeenth century there was widespread use of *-t*, such as in *curst* or *lik't*, because of the contemporary interest in aligning the spelling of words with their sound. This practice produced a great deal of variability, against which eighteenth century British grammarians advocated regular use of the *-ed* spelling, whatever the pronunciation.

The recommendation in favour of *-ed* was taken up more strongly in America, with the support of Webster's 1828 dictionary, which was committed to "conform[ing] the orthography to established English analogies". But in early twentieth century British English, the point was still unsettled. Fowler in 1926—using citations from the *Oxford Dictionary*—believed that *-ed* "prevailed in print". However, Gowers in his 1965 revision of Fowler's *Modern English Usage* thought that the tide had turned again in favour of *-t*.[11]

Against this background of ebb and flow, the data on these verb inflections from three varieties of English (Australia, New Zealand and the UK), make interesting viewing. The data has been extracted from three of the ICE corpora belonging to the International Corpus of English. This is a network of computerised databases of texts from varieties of English round the world. All the ICE corpora consist of one million words (60 per cent from speech, 40 per cent from writing), sampled from the 1990s.

The totals for *-ed* and *-t* at the bottom of the table show the overall regional trends better than the individual verbs. The Australian

	ICE-AUS	ICE-NZ	ICE-GB	Totals	(% each pair)
burned	6	8	8	22	(33.3%)
burnt	18	19	7	44	(66.6%)
leaned	4	3	10	17	(73.9%)
leant	2	2	2	6	(26.1%)
learned	21	36	35	92	(48.2%)
learnt	35	28	36	99	(51.8%)
spelled	3	4	1	8	(17.8%)
spelt	21	15	1	37	(82.2%)
spilled	1	7	3	11	(50%)
spilt	2	3	6	11	(50%)
TOTALS *-ed*	**35 (31%)**	**58 (46.4%)**	**57 (52.3%)**	**150**	**(43.2%)**
TOTALS *-t*	**78 (69%)**	**67 (53.5%)**	**52 (47.7%)**	**197**	**(56.8%)**

Table 2: Use of -ed and -t for past inflections of verbs.

data shows a strong preference for *-t* rather than *-ed*, with *-t* found in more than two-thirds of all occurrences of the five verbs. The results for New Zealand and the UK are close to 50:50 in each case, with New Zealand slightly more for *-t* and Great Britain slightly less so.

Thus British English emerges at the end of twentieth century as slightly more in favour of regular *-ed*, a reverse of Gowers's assessment of the situation just after World War Two. The ICE-GB data put it just faintly on the path towards American English. According to research by Hundt, Hay and Gordon (also based on a corpus of written English from the 1990s), *-ed* is found more than 90 per cent of the time in America.[12] But British English still has a long way to go, and Australia again seems to be going in the opposite direction.

Small wonder then that our Chinese reference for L2 preferences in orthography offers quite a mix of spellings for this verb inflection. In fact, it offers both spellings for all of them, with *-ed* listed first for *lean* and *learn*, and *-t* first for *burn, spell* and *spill.* The data for individual verbs also shows considerable variation from verb to verb in the three varieties analysed. This variation at the level of the individual word hampers convergence on a single pattern for the suffix (though it is evident in American English), and there's no clear international trend.

Case study 3: Use of the mandative subjunctive

The mandative subjunctive is a special form of the English verb which directs someone to do something, as does the verb italicised in the following sentence:

> They insisted that a parent *come* with the child

The second verb is unusual in having no *-s* inflection to agree with its singular subject. Use of the mandative subjunctive varies with the variety of English, and in British English there's a tendency to paraphrase it away, either using a modal paraphrase:

> They insisted that a parent *should come* with the child

or by using the ordinary indicative form:

> They insisted that a parent *came* with the child.

The low level of mandative use in twentieth century British English may have something to do with the fact that Fowler talked it down, on the grounds that the average writer didn't know how to use it properly and would therefore be well advised to avoid it.

Elsewhere, several corpus-based studies show the use of the mandative seems to have continued unabated throughout the twentieth century—most notably in American English. It has also been maintained in Australian English, as shown in usage surveys conducted through the magazine *Australian Style* in 1993.[13]

To compare the current use of the mandative subjunctive, let's again review relevant data from ICE corpora dating from the 1990s and 2000s, from L1 varieties of English in Australia, New Zealand and Great Britain, along with a trio of L2 varieties from Singapore, India and the Philippines.

Table 3 shows the frequency of mandative subjunctive (MS) after selected verbs, such as *demand, insist, move, propose, recommend* and *suggest,* compared with that of modal paraphrases (formulated especially with *should* but also *must, have to, would, could, can, might, may).*

MS in	ICE-AUS	ICE-NZ	ICE-GB	ICE-SING	ICE-IND	ICE-PHIL*
spoken	23 (36.8)	16 (25.6)	6 (9.6)	25 (40)	11 (17.6)	30 (48)
written	17 (42.5)	47 (117.5)	11 (27.5)	24 (60)	10 (25)	23 (57.5)
Total: MS	**40**	**63**	**17**	**49**	**21**	**53**
Modal paraphrases	11	16	28	16	14	19

Table 3: Frequency of the mandative subjunctive.

The numbers shown in brackets are normalisations of the usage of mandative subjunctives (MS) per one million words. These equalise the frequencies from spoken and written data, which are based respectively on databases of 600,000 and 400,000 words. Data on the mandative subjunctive in ICE-PHIL comes from Schneider.[14] The line with the bold figures presents the raw totals for occurrences of the mandative subjunctive (MS) in equivalent amounts of data from the six varieties of English, and the range is very wide.

Among the settler varieties of English on the lefthand side, Australia and especially New Zealand emerge as much stronger maintainers than Great Britain. In fact, it is the New Zealand writers who are the keenest users of the mandative, as is clear from the normalised figures in brackets. Among the indigenised varieties on the right hand side, it's clear that the mandative is also regularly used in English produced in Singapore and the Philippines. So the mandative is maintained in both L2 and L1 varieties. Note also that for each of these four varieties, the frequency of modal paraphrases is quite low.

The opposite tendency can be seen in the data from British English, which presents lower use of mandatives than of modal paraphrases. The mandative subjunctive is also clearly disfavoured in the ICE-IND data from the 1990s, as it was in Britain during the first half of twentieth century.[15] Perhaps Fowler's negative comments helped to depress use of the mandative in both Great Britain and India. The ICE-IND figure for modal paraphrases is also rather low, unlike that of ICE-GB. However, the ICE-IND data presented the widest range of modal paraphrases, as well as others formulated with "please" that are not included in the figure.[16]

So the ICE data shows opposite trends among six varieties of English, with British English and Indian English oriented away from using the mandative, and the others all making preferential use of it. On this point of usage, Australian and New Zealand use of the mandative is closer to the international norm than British English.

Conclusions

The results of our three case studies in spelling, morphology and grammar highlight regional divergences in world English against more general patterns that may be regarded as international trends.

- Case 1 showed general convergence towards *-ize* spelling, with Australian English as the chief exception.
- Case 3 showed general convergence on maintaining the mandative subjunctive, with British English as the chief exception.

In each case, the exceptional variety seems to be influenced by prescriptive local style or usage guides.

But with Case 2, the choice between the *-ed* and *-t* suffix for certain verbs is still in the balance internationally: American English prefers *-ed*, Australian English *-t*, and British and New Zealand English are both close to the mid-point at 50:50. The picture here is still one of divergence rather than convergence.

As to whether there are global forces contributing to international convergence, we might perhaps argue that the trend towards *-ize* owes something to the streamlining effects of the Internet, coupled with the fact that it is widely used as either the only spelling or the alternative.[17] But there are hemispheric differences all in the cases we have examined, and divergences within the sets of L1 and L2 Englishes, which demonstrate the continuing importance of regional norms. Few aspects of "international" English are fully convergent yet.

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Pam is the author of the Cambridge Guide to English Usage *(2004) and the* Cambridge Guide to Australian English Usage *(2007), and contributed six chapters to the Australian government's* Style manual *(6th ed John Wiley 2002). Her most recent (2009) publication is* Comparative Studies of Australian and New

Zealand English, *coauthored with Peter Collins and Adam Smith, and published by John Benjamins (Amsterdam).*

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Laws set the framework for plain language in South Africa[1]

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This paper discusses how laws set the framework for plain language in South Africa and whether this is a good thing for our country. I will look at the governing definition for plain language in South Africa and consider whether it is feasible in the local context.

The story of Mr Mothle and his son-in-law's debt

But before I get there, I am going to introduce you to a man called Mr Mothle. Mr Mothle was an unsophisticated man, a family man, a farmer. In 1950, he had the misfortune of being involved in a court case about a debt his son-in-law owed and which Mr Motlhe had guaranteed some years before. The plaintiff (a businessman) sued Mr Mothle directly, based on the guarantee contract he had signed. English was not Mr Mothle's home language, yet the contract was in English. Well, mainly in English, with a smattering of Latin—for accuracy, certainty and precision, of course! Incidentally, Mr Mothle's home language was not Latin either.

In court, Mr Mothle attempted to raise the defence that the businessman must first proceed against the son-in-law to recover the debt. However, Mr Mothle had given up the right to raise this defence. When? When he signed the contract. Clause 5 reads:

> *I renounce all benefits from the exceptions of* excussionis et divisionis, non causa debiti *and* non numeratae pecunia.

Mr Mothle told the court that he had not read the contract. He had signed it in the office of the plaintiff's attorney and that gentleman had been kind enough to tell him what the contract contained. This argument did not hold sway with the court, which ruled:

> *It is a sound principle of law that a man, when he signs a contract, is taken to be bound by the ordinary meaning and effect of the words which appear over his signature.*

Mr Mothle then told that court that even if he had read the contract, he would not have known the meaning of the clause. The court still did not come to his aid. It held that the obligation to find out what the words meant was on him:

> *The parties to a contract are as a rule bound by the terms to which, in unequivocal terms, they expressed their assent… the mere fact that one of the parties did not, through his own ignorance or mistake, appreciate the full import of the agreement he made, is no ground for setting the contract aside.*

Entrenched principles of contract law in South Africa

This approach follows a well-known principle called sanctity of contract. It is not unique to South Africa and I am sure it is followed in many countries. It flows from another principle called freedom of contract, where each party is free to negotiate the terms of a contract that binds them. However, it presupposes an equality in bargaining power between those parties. While this may have once been true, the growth of the corporate sector means it is no longer so. If anyone hired a car when they arrived in Sydney for the PLAIN 2009 conference, you would know the difficulties of changing the conditions of the hire company's standard contract. You take the car on their terms or you leave it.

In South Africa, freedom of contract was even further eroded during the apartheid years. Discriminatory legislation made it impossible for the weaker party to exercise this freedom. Over time, the "free space" where parties could decide on their own terms narrowed. We know it did not exist for Mr Mothle. We know that Mr Mothle would have had trouble getting access to proper legal advice to help him enter the contract freely. We

know that there would have been but a handful of lawyers at that time who may have spoken Mr Mothle's home language.

South Africa's new laws herald change

Enter a new era of protectionist legislation in South Africa. In his opening address at a 1995 seminar called "Plain language, the law and the right to information", the then Minister for Justice, Mr Dullah Omar, spoke about the transformation of justice. He outlined several key principles as being important to achieve that transformation: access to justice, participation and empowerment. He called for "plain, simple and understandable language" in the country's laws, in court judgments, in consumer documents, and in radio and television broadcasts. He referred to plain language as "democratising language". He held a strong belief that "people have a right to understand the laws that govern them, to understand court proceedings in matters that affect them, to understand what government is doing in their name."

Since then, the policy—and lawmakers—in South Africa have had their hands full with writing laws that will bring about the transformation Justice Omar spoke of. Some of those laws are:

Access to Information Act

Bill of Rights

Companies Act

Constitution of the Republic of South Africa

Consumer Protection Act

Long-term insurance Act

National Credit Act

Short-term insurance Act

The stated purpose of these laws is to redress the imbalances of the past. Among the numerous protectionist provisions, the laws require information to be given to consumers in plain language. In several of these, the right to information in plain language is stated as a fundamental right that may not be contracted out of. This means that a business cannot merely insert a clause in an agreement to the effect that the consumers declare that they understand the information.

The National Credit Act goes even further. It requires credit providers to assess whether the borrower truly understands and appreciates the risks and obligations under the contract. Businesses are, therefore, required to develop fair and objective evaluative mechanisms to assess this understanding.

For plain language advocates around the world, having so many plain language laws may sound like winning the first, second and third prize all at once. Part of the reason is that, in South Africa, law as the tool for change is the only way to expedite remedies for the inequities of the past. We didn't have a culture embedded in the rule of law where unwritten constitutions govern how people behave. We didn't have a history of respect for human rights—a general morality based on seeing others as equals. We didn't have a process for lobbying for change.

But while we are pleased that government has taken the issue seriously enough to make laws about it, there are concerns. The legislative process appears to have been more dogmatic than consultative, more based in theory than on practice, and international legislative drafters unfamiliar with South African common law were imported to help local drafters. Although these drafters were highly conscientious, it means that our complex linguistic background has been ignored. In turn, this means implementation of the laws will be difficult.

The definition for plain language in South Africa

Let's have a look at the definition for plain language given by these acts. The wording changes slightly in each Act but it is substantially the same, so I will show the definition from the Consumer Protection Act. Unfortunately, the definition of "plain language" itself is not in plain language, but rather in a 136-word sentence:

> *For the purposes of this Act, a notice, document or visual representation is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the notice, document or visual representation is intended, with average literacy skills and minimal experience as a consumer of the relevant goods or services, could be expected to understand the content, significance and import of the notice, document or visual representation without undue effort, having regard to—*

a) the context, comprehensiveness and consistency of the notice, document or visual representation;

b) the organisation, form and style of the notice, document or visual representation;

c) the vocabulary, usage and sentence structure of the notice, document or visual representation; and

d) the use of any illustrations, examples, headings or other aids to reading and understanding.[2]

I'd like to unpack this definition a little by breaking it into two parts. The first tells us that the document must be able to be understood. The second is a list of some plain-language principles. This gives us a strong framework to build on, but there are pros and cons. I will deal first with some of the issues related to the first part.

The definition introduces us to the notion of a real reader

The definition tells us that the information must be able to be understood by an ordinary consumer of the class of persons for whom it is intended—that we must write with the consumer (the reader) in mind. If a document is to be presented to consumers, we must write it in a way that they can understand. This is the most important shift from the way business and legal documents are traditionally written.

Readers of "average literacy" must understand the document

This is a thorny issue in South Africa. In 2005, the United Nations found that 82 per cent of South Africans were "functionally literate". The UN defines "functional literacy" as a level of reading and writing sufficient for everyday life but not for completely autonomous activity. So "functional literacy" is probably not enough to understand most business and legal documents.

What's more, when we consider literacy, we need to consider literacy in different languages. There are eleven official languages in South Africa. If a document is provided only in English and the consumer can only read Sesotho, will the consumer still be of "average literacy"? This part of our definition ignores the multilingual and multicultural environment we live in—plain English is not plain language in South Africa. If this issue is not addressed, the law may in fact be unenforceable.

The consumer has minimal experience

The consumer that must understand is defined as having "minimal experience as a consumer of the relevant goods or services". This point is clear: we must write with the first-time borrower, the first-time investor, the first-time user of the relevant products or services in mind. This could give South African companies much scope for taking an educative role in daily commerce which, in turn, may help to balance the negotiating power.

The consumer must see the importance of understanding

Having covered the nature of the consumer, the next few lines talk about the nature of their reading and understanding. We are told that not only must consumers understand what the document says, but also why the document is significant to *them* and how the document applies to *them*. So, for example, a borrower must understand the consequences of not keeping up instalment payments under a credit agreement.

The consumer must understand, without undue effort

What's more, the consumer must understand all this "without undue effort". For example, if a consumer (like our Mr Mothle) needs to consult a lawyer to understand the loan agreement and how his part in it would work, then his understanding may well be considered to be with "undue effort" and the document would not be in plain language.

Already the opening definition of plain language raises plenty of practical issues in the reality of a multilingual South Africa. Now let's look at the list of principles or techniques that companies need to have regard to.

Context, comprehensiveness and consistency

A consumer document must consider the consumer's situation in the transaction. For a loan agreement, the lender would have to ensure that the borrower was in a position to make good on the loan.

The document must also offer comprehensive information. It cannot leave out any facts that are important. In this way, the plain-language obligation clearly extends beyond how the document is written to what content needs to be in that document.

Although it is not clear what consistency refers to, one interpretation would be to ensure that terminology is consistent throughout the document. For example, Mr Mothle could not interchangeably be referred to as the surety, the guarantor, the co-principal debtor, and so on.

Organisation

This sub clause is about how the document is structured. We expect this refers to the usual plain language guidelines for organising information: grouping related information, placing information more important to the reader at the start of the document, and so on. An example is the quote required for a credit application. This must show, among other things, the total cost of the credit (principal debt, initiation fees, administration fees, interest and taxes) at the front of the document in a prominent place.

Form and style

It will be interesting to see how form and style are to be interpreted. In fact, it is unclear why "style" is included at all.

Vocabulary, usage and sentence structure

We expect that these are the traditional parts of plain language expression, including short sentences, plain words, active voice, strong verbs, bullet points, and so on.

Illustrations, examples, headings or other aids to reading and understanding

Again, this is about what is said rather than how it is said. We are told to use illustrations and examples. This is a leap forward from traditional legal drafting, where these aspects are usually excluded from interpretation.

Are the plain language laws feasible in South Africa?

Although this definition gives a strong framework for helping consumers to make informed choices about the products and services they want and need, I have four concerns about its feasibility in South Africa.

Linguistic complexity

I have already touched on the difficulties of implementing plain language in a multilingual and functionally illiterate society. The lack of research in this area may limit its enforceability.

Regulatory burden

In the past 15 years, businesses have been required to comply with a multitude of laws, regulations and codes of practice. The financial load is heavy. Consumer watchdogs are concerned that these costs will be passed on to the consumer and defeat the overarching purpose of remedying the injustices of the past.

Unsophisticated assessment tools

A Consumer Commission will have the power to publish guidelines for methods of assessing whether a document meets the plain language requirements. We hope that there will be proper research and consultation before any detailed guidelines are set. At the very least, we would expect those guidelines to include a reference to testing the document with the intended readers. Readability formulas alone will not be sufficiently effective, especially if there is no research on reading and literacy levels.

Enforceability

There are several ways for consumers to enforce their rights under the Consumer Protection Act. They can, for example, refer the dispute for alternative dispute resolution, to an industry ombudsman, to the Consumer Commission and (as a last resort) to the Consumer Tribunal. Administrative fines can be levied against providers who do not comply, and the amounts are not insignificant: 10 per cent of annual turnover in the preceding year of business (capped at one million rand). These routes to justice are intended to avoid cumbersome and costly court cases. However, only the courts have the authority to intervene in disputes over terminology, and only the courts are empowered to set aside or change contract wording in favour of the consumer.

Our hopes for South Africa

We are cautiously optimistic for the future of plain language in South Africa. Handled conscientiously, it can help ordinary citizens like our Mr Mothle. If he had been presented with a plain language guarantee setting out his obligations under the contract, he might have refused to sign it. Or he might have asked for terms more acceptable to him. If his son-in-law had been presented with a plain language loan agreement, he may have understood the consequences of missing an instalment. The

businessman may not have been left out of pocket. Costly litigation was the result of impenetrable legalese.

We would like to see government and business embrace the spirit of the transformative legislative agenda. Plain language initiatives driven only by compliance run the risk of implementing superficial, objective criteria which do not necessarily give information that truly helps the consumer to make informed decisions.

Rather, we hope that government and business implement the plain language provisions with a sincere desire to empower, educate and enlighten consumers. We believe they may find many profitable and coincidental benefits in doing so.

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Candice has consulted with many blue-chip companies, locally and abroad. Among her clients are Ernst & Young, Deutsche Bank, Discovery, and the South African Law Reform Commission. She wrote the plain-language chapter of the Government Communicators' Handbook. She regularly holds seminars for the Corporate Lawyers' Association of South Africa.

She read for the BA LLB degrees at the University of the Witwatersrand and was admitted as an attorney of the High Court of South Africa in 1997.

Endnotes

[1] This is an expanded version of the plenary paper I gave at the seventh Plain Language Association InterNational conference in Sydney, 15-18 October 2009. Thank you to PLAIN and to the Plain English Foundation in Australia, whose support made it possible for me to attend.

[2] Section 22, Consumer Protection Act.

Assessing the usability of credit card disclosures

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Usability Consultant

This paper outlines a usability evaluation of credit card disclosure materials, which found that consumers have a great deal of trouble understanding them. Our concern when designing the study was to make sure that we used multiple methods so we could make a convincing case to government policy makers.

We chose three readability formulas, an expert review using plain language guidelines, and a 12-person usability test. We found that the results of each method supported the findings of the others and that—based on feedback from the client—the similar outcomes of the multiple methods did produce a stronger argument for the validity of the findings than a single method alone would have.

Our study, along with several others commissioned by the United States Congress, resulted in new legislation that bans deceptive practices and requires documents be presented in plain language.

The problem with disclosures

Disclosures are the documents you get from a credit card issuer that explain the terms of the card, such as the interest rate, fees, and so on. For this study, we tested two kinds of disclosures:

- solicitation letters: the one-page documents you get in the mail to convince you to apply for a card
- cardmember agreements: the lengthy documents you get when you receive a card to explain the terms in detail.

Credit card terms used to be simple: they assessed an annual fee and applied a single interest rate to purchases. Now the products are much more complex. Annual fees are not as common, but multiple fees and interest rates are applied depending on how you use the card, such as for purchases, balance transfers, cash advances, or during introductory rates. And these interest rates can change based on certain "triggers". You might assume your interest rate would go up if you make a late payment or go over your credit limit. You might not expect that making a late payment to another creditor, like your power or mortgage company, could also make your interest rate go higher.

The United States Congress was noticing problems with consumer credit—like record numbers of personal bankruptcies and credit card debt—and wanted to know if the disclosure documents were to blame for any of it. The Government Accountability Office, Congress's research agency, conducted five different studies to find out how effectively pricing practices are disclosed to cardholders and to suggest revisions to disclosures that better inform consumers of now-common penalty rates and fees.[1] A usability evaluation of current disclosures was one of these five studies.

The study

The credit card disclosure study examined how easily consumers find information in the documents and whether they understand what they find. The budget for the study would have allowed for a moderately sized usability test, but devoting the entire budget to a single method using a small number of participants might have undermined the results. Government studies often rely on surveys involving large numbers of participants to ensure statistical significance, so we felt that there might be some initial resistance to basing findings solely on a 12- or 16-person study.

So instead of using a single method, we used three:

- readability formulas
- expert review using plain language guidelines
- usability test.

	Strengths	Weaknesses
Readability formulas	Quantitative data	Only counts what can be counted
	Quick and cheap	Doesn't tell you what to do if the grade level result is too high
Plain language guidelines	Predicts problems and gives guidelines for improvement	Doesn't guarantee users *will* have problems
	Relatively cheap	
Usability test	Shows how people actually use an interface	Not quick and not cheap
	Can provide quantitative and qualitative data	Small sample size can be a hard sell

Table 1: The strengths and weaknesses of evaluation methods.

Each of these methods has its strengths and weaknesses, as Table 1 summarises.

Readability formulas are simple to apply and produce an easily understood metric—a prediction of the grade level required to understand the material. But they only measure what can be counted, like the number of syllables and words in a sample. They ignore important characteristics of a document that make it usable, like audience-appropriate content and logical organisation.

In an expert review, a reviewer takes a recognised set of industry best practices and evaluates how well a document complies with them. Expert reviews are useful for predicting where and why users encounter difficulties, but do not necessarily mean that they will.

Usability testing is an excellent method for finding out how well people are able to use an interface and where they have problems, but the small sample sizes used and the qualitative data produced can be a hard sell to a government agency familiar with research that produces large sets of quantitative data.

By using three different methods to assess the documents, we sought to minimise any weaknesses in an individual method while reinforcing the findings of the other methods.

1. Readability analysis

The client asked us to use readability formulas to predict the grade level needed to understand the documents. They were particularly interested in the estimated reading levels of sections that would have the greatest impact on the amount people owe. Realising that it would be easy to misuse the formulas or misinterpret the results, we designed this part of the study to reveal not only the difficulty of the text, but also the advantages and drawbacks of relying on readability formulas to do so. Here's what we did.

Used multiple formulas

To demonstrate that different formulas produce different results for the same sample of text, we decided to use three formulas:

- **Flesch Grade Level:** One of the most widely used formulas, the Flesch was originally designed to assess materials for upper elementary and secondary school children. According to its author, it predicts the grade level required to understand 75 per cent of the material.[2]
- **FOG:** Widely used in the health care and insurance industries for general business publications, the FOG (Frequency of Gobbledygook) was developed specifically for adults. It predicts the grade level required to understand 90 per cent of the material.[3]
- **SMOG:** The SMOG (Simplified Measure of Gobbledygook) predicts the grade level required for 100 per cent comprehension.[4]

All three formulas express readability in terms of the estimated grade level needed to understand the text.

Prepared the text

Because of the number of samples analysed and the number of formulas used, we decided not to apply the formulas by hand. Instead,

we used Readability Calculations software, which allowed us to choose which of several formulas to apply to a sample of text.

The client supplied us with hard copies of the eight disclosure documents, as well as scans using optical character recognition (OCR) to convert the pictures of the documents into text that we could analyse. We checked the output of the OCR scan against the original and made corrections where needed.

We discovered that scanning a document and converting it into text produces some formatting issues that will affect the results of readability formula applications. For example, the OCR scan of a PDF document will insert a ¶ or "hard return" at the end of every line break. (You can see these by selecting "show all non-printing characters" in Microsoft Word.) Many readability formula applications, including the one we used, interpret hard returns as indicating the end of a sentence. That means the following sample of text will be interpreted as six sentences, not three. Because most readability formulas use sentence length as one of the factors determining readability, this sample will have a lower grade level result than it should.

> If a merchant fails to provide your purchase to your satisfaction and you ¶
> request a credit to your Account, we will investigate the dispute. If we ¶
> resolve the dispute in your favor, we will issue a credit to your Account and ¶
> you will be deemed to have assigned to us your claim against the merchant ¶
> and/or any third party for the credited amount. Upon our request, you ¶
> agree to provide us with written evidence of such assignment. ¶

Here are the other edits we made to the text samples before they were run through the Readability Analyzer software:

- deleted all trailing periods (changing *U.S. dollars* to *United States dollars*. Otherwise, the software counts every period with a space after it as the end of a sentence.)
- deleted all bullet points and converted them to sentences
- removed addresses, phone numbers and URLs.

Analysed specific sections

When we analysed the entire text of the cardmember agreements, we found that most were written at an 11th to 13th grade level.

Because the client was interested in the estimated reading level needed to understand the sections that affect how much you owe—annual per centage rate, fees, finance charge calculation, minimum payments, payment allocation, grace periods and changes to the agreement—we analysed these sections separately. Most of the readability formulas require between a 100- and 300-word sample for accurate results, but it was not always possible to provide a sample of adequate size.

When we analysed specific sections that dealt with how much you owe, the estimated grade levels needed to understand the material were much higher: 14th, 21st—even 32nd grade level.

These figures may seem reasonable until you consider that nearly half of the intended audience for these documents reads at or below an 8th-grade level.

Explained how readability formulas work

Because the client specifically asked us to conduct a readability analysis using formulas, we spent a fair amount of effort in the final report explaining how formulas work, what their results mean, and what they don't tell you. To illustrate that readability formulas do not take the meaning of sentences or words into account when estimating the grade level needed to understand them, we used the following examples:

Cardmember agreements	Flesch grade	FOG	SMOG	Average grade	# of words	# of syllables	# of sentences
Issuer #1	9.7	12	11.6	11.1	7458	11725	433
Issuer #2	10.9	13.4	12.3	12.2	6939	10609	320
Issuer #3	10.9	13.3	12.3	12.2	6918	10799	334
Issuer #4	12.3	14.9	13.5	13.6	11606	18571	500

Table 2: Readability formula results of card member agreements.

Finance charge calculation	Flesch grade	FOG	SMOG	Average grade	# of words	# of syllables	# of sentences
Issuer #1	11.5	13	11.9	12.1	194	307	9
Issuer #2	14.3	15.9	13.9	14.7	425	677	15
Issuer #3	14.3	15.8	13.4	14.5	397	634	14
Issuer #4	22.5	24.3	18.5	21.8	94	157	2

Table 3: Readability results for sections on how finance charges are calculated.

The quick brown fox jumps over the lazy dog.

Jumps the dog quick lazy the brown fox over.

Dxr owcn kothv ert oghe qazui pelju mps foy.

Despite the second sentence making no sense, and the third sentence containing no real words, the Flesch formula estimates a 2nd grade reading level for all three sentences. That's because these sentences contain the same number of three-, four- and five-letter words.

Based on the results of the readability analysis, we would expect consumers—especially those with lower levels of education—to have difficulty reading and understanding the disclosures. The sections dealing with issues that affect how much you owe are written at an even higher level, which could be cause for concern.

2. Expert review

In the expert review, we examined the documents to see if they adhered to generally accepted industry guidelines and best practices. The guidelines we used were from the *Plain English Handbook: How to Create Clear SEC Disclosure Documents* developed by the Securities and Exchange Commission.[5] The handbook contains the following guidelines:

Organisation

Present the big picture before the details

Use headings and subheadings to break into manageable sections

Group related information together to eliminate repetition

Write to the audience's level of sophistication

Content

Keep words, sentences and paragraphs short and simple

Use the active voice

Omit unnecessary details

Design

Establish a hierarchy

Choose a legible type size

Emphasise text sparingly

Use left justified, ragged right text

Use tables and bulleted lists to simplify presentation

In the report, we listed the guidelines, and then used examples from the disclosures to illustrate where they adhered to and where they violated them. Following is an example of the issues we found in the Periodic Finance Charge Calculation section of one disclosure. The text was:

Assessing the text against the guidelines reveals:

- The big picture (two-cycle billing means you get charged interest on balances you've already paid off) is not presented first (or, arguably, at all).
- While there is a heading provided for this section, it's difficult to find. It's styled the same as much of the subsequent text.
- The beginnings of paragraphs are not easy to find.
- While most sentences use the active voice, some still use passive.
- There is no hierarchy presented here besides the decision to emphasise "Periodic FINANCE CHARGES" repeatedly.
- Many of the sentences are so long and complex that their meaning is lost.
- While text is emphasised sparingly, the same phrase is emphasised every time it appears.
- When text is fully justified, the spacing between the words is different from line to line, causing the eye to stop and constantly readjust. This makes the text look imposing and hard to read.

Periodic Finance Charge Calculation—Two-Cycle Average Daily Balance Method (Including New Purchases) for Purchases and Average Daily Balance Method (Including New Transactions) for Other Transactions: We calculate **Periodic FINANCE CHARGES** separately for each feature such as Purchases, Overdraft Advances, Cash Advances, Balance Transfers, Convenience Checks or promotional balances. We figure the **Periodic FINANCE CHARGES** by applying the applicable Daily Periodic Rate shown in the Table of Interest Charges to each feature's daily balance for each day of the current billing cycle. In addition, for Purchases, we apply the Daily Periodic Rate to the daily balance for each day of the previous billing cycle adjusted as described below.

To get the daily balance for each day of the current billing cycle, we take the beginning balance for each feature, add any new transactions or other debits (including fees and other charges), subtract any payments or credits, and make other adjustments. Transactions are added as of the later of the transaction date or the beginning of the billing cycle in which they are posted to your Account (except that Convenience Checks are added as of the date accepted by the payee). Fees are added either on the date of a related transaction or the last day of the billing cycle. This gives us that day's daily balance. A credit balance is treated as a balance of zero. We multiply the daily balance by the applicable Daily Periodic Rate, as stated in the Table of Interest Charges, to get your **Periodic FINANCE CHARGES** for that day. We then add these **Periodic FINANCE CHARGES** to your daily balance to get the beginning balance for the next day. For Purchases, we do the same thing for each day of the previous cycle to get the daily balance of Purchases for the previous billing cycle. However, the daily balance for previous billing cycle Purchases is considered to be zero for each day of the previous billing cycle if a **Periodic FINANCE CHARGE** was already imposed on Purchases itemized on your previous statement or you paid your New Balance on your previous statement in full by the payment due date.

To get your total **Periodic FINANCE CHARGE** for a billing cycle, we add all of the daily **Periodic FINANCE CHARGES** for all features. If you multiply the Average Daily Balance for each feature by the applicable Daily Periodic Rate and the number of days in the applicable billing cycle(s) and add the results together, the total will equal the **Periodic FINANCE CHARGES** for the billing cycle, except for minor variations due to rounding. To determine an Average Daily Balance, we add your daily balances and divide by the number of the days in the applicable billing cycle(s).

If we have promotional rate offers in effect, we will separately identify them on the front of your statement and separately disclose the balances to which the promotional rates or terms apply. These separate balances and the related Finance Charges will be calculated in the same manner as described above.

Section describing finance charge calculations.

- This section is describing a step-by-step process. A bulleted list or graphic demonstrating the process would have made the steps easier to follow.
- Based on the expert review results, we expected users to have trouble locating the information they seek. The small type size, lack of tables and bullets, long sentences and jargon would make it harder to correctly interpret the information they do find.

3. Usability test

During the usability test sessions, representative users were asked to find information and complete certain tasks using two disclosure documents: a solicitation letter and a cardmember agreement. We documented task success, recorded the time it took participants to find the information or arrive at an answer, and asked for their feedback.

Participants

We recruited two groups of six participants—a low-income, low-education group and a high-education, high-income group—to get a good mix of people who currently have at least one credit card. The 12-person study was a standard size for a usability test, but much smaller than the large-scale surveys that government agencies are used to.

The reason that small sample sizes are acceptable in usability testing has to do with the purpose of the test. Where a survey is used to predict user behaviour, the aim of a usability test is to find out how well an interface works for the people who will use it. Small sample sizes of five to eight participants are generally acknowledged as sufficient to reveal major problems in an interface.[6]

Designing the moderator's guide

We wanted to see whether people could use the documents to find information and interpret what they found correctly. But because we were using eight different documents, we needed an easy way to tell instantly whether the participant had done it correctly based on the document they used. So the moderator's guide—which usually lists the tasks to be covered during the session and space to take notes on what the participant does and says—included an "answer key", so the moderator could see what the right answer was for each question or task:

Outcomes

In the final report, we included metrics like time on task and task success. We also included our observations of how the participants used these documents and the comments they made.

Most of the participants had trouble finding information and correctly interpreting it once they found it. For example, seven out of 12 participants were able to locate information about finance charges in a cardmember agreement. But when asked to define what "two-cycle average daily balance computation method" signified, no one could do it. No one even tried to guess.

There was one concept that the disclosures communicated very successfully: the fact that credit card issuers can change the terms of the cardmember agreement "at any time for any reason". That wording appeared repeatedly in the disclosures. It's the one thing nearly all participants learned from reading the documents.

The problem with this success, though, was that participants were rather dismissive of the information in the disclosure documents. Regardless of what the document says—their thinking went—the terms could change at any time for any reason, so why bother finding out what those terms are? They were also not curious about what actions (by themselves or others)

IE:	What is the highest rate you can pay on this card?	**Issuer 1**: 30.49%
		Issuer 2: 24.99%
		Issuer 3: 30.24%
		Issuer 4: Prime+10.99% (16.99%)
IF:	What is that rate called?	**Issuer 1**: Penalty APR
		Issuer 2: Late Payment APR
		Issuer 3: Default APR
		Issuer 4: Default Rate

Table 4: Answer key from the moderator's guide.

could trigger a change because, as they kept pointing out, the terms could change at any time for any reason.

The Credit CARD Act of 2009

Last year, following our report and several others, Congress passed the Credit Card Accountability Responsibility and Disclosure Act, which bans practices that the Federal Reserve deemed "unfair" and "deceptive."

Many card issuers applied payments to maximise the interest they were able to charge—like paying off your 0% interest introductory rate
balances before high-interest ones—as long as they disclosed what they were doing. Due to the new law, they have to apply your payment to the balances with the highest interest rate first.

In a practice called "double-cycle billing", consumers could be charged interest on purchases they had already paid off. The new law now prohibits card issuers from doing so.

And "universal default"—the practice of increasing card users' interest rates based on their payment records with unrelated accounts—is also banned.

There is also wording in the law that requires contract terms to be in "plain language in plain sight", including information about the consequences of financial decisions. For example, companies now have to tell you on your monthly bill how long it would take to pay off your existing balance if you pay only the minimum due.

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Readability research that Angela has been involved with includes projects for the US National Library of Medicine, National Institutes of Justice, and Pfizer. She was the lead usability researcher on the credit card disclosure study for UserWorks/Information International Associates.

Endnotes

[1] Government Accountability Office Report, *Credit Cards Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers*, available at <http://www.gao.gov/new.items/d06929.pdf>.

[2] Rudolph Flesch, *The Art of Readable Writing*, New York, Harper & Row, 1949.

[3] Robert Gunning, *The Technique of Clear Writing*, New York, McGraw-Hill, 1952.

[4] H. McLaughlin, "SMOG Grading: A New Readability Formula." *Journal of Reading*, Vol 12 (8), 1969, pp. 639-46.

[5] Securities Exchange Commission, *A Plain English Handbook: How to Create Clear SEC Disclosure Documents*, <http://www.sec.gov/news/extra/handbook.htm>.

[6] Jacob Nielsen and T. Landauer, "A mathematical model of the finding of usability problems", Proceedings of ACM INTERCHI '93 Conference, pp. 206-213, <http://www.useit.com/alertbox/20000319.html>.

Developing plain language multilingual information about the law

Caroline Lindberg

Staff Lawyer, CLEO

CLEO (Community Legal Education Ontario/ Éducation juridique communautaire Ontario) is a publicly funded legal clinic based in the Canadian province of Ontario. Our staff includes lawyers and editors with plain language skills. We develop materials and projects for people with low incomes, and other disadvantaged groups, including people with literacy challenges, vulnerable workers, and immigrants and refugees. By providing practical information about the law as simply and clearly as possible, we help people understand and exercise their legal rights.[1]

We recently undertook a project to produce plain language text and audio materials in six languages in addition to Canada's official languages, English and French. The project's key goals were to address some critical legal information needs of under-served communities and to learn more about better practices for producing easy-to-understand legal information for a multilingual audience.

Background

CLEO publications are developed in English, and then translated into French. But given the linguistic diversity of our population, there are many people who cannot use these materials. To come up with a strategy to serve some of these communities, we began with research. One of our goals was to identify appropriate target languages for pilot projects. We considered a variety of factors: the numbers of people within particular linguistic communities in Ontario; the prevalence of low income within those communities; and the degree of establishment.

In the end, we selected Arabic, Chinese, Spanish, Somali, Tamil and Urdu as languages in which to produce some short text and audio pieces based on plain language texts that we would develop in English. The materials would focus on crucial points that would be unlikely to change over time; inform people of legal rights or obligations which they should investigate further; and include a toll-free number to call. Callers would receive service in their own language and be given further information and referral for legal help.

We have produced materials on eight topics in eight languages (English and French plus the six project languages) all available on our web site as text pieces in PDF and audio recordings in MP3 format. The text pieces are designed as two pages in letter size so that community agencies can easily download, print and copy them.

Collaboration with the community

One of the key principles that emerged from our research was the importance of collaboration with the linguistic communities to ensure that our materials would be culturally appropriate and responsive to their needs.[2] We began by forming an advisory group—a network of ten community advisors drawn from agencies representing each target language, as well as agencies serving a variety of language groups. We had at least one member for each of the six languages. Some agencies served only one linguistic community. Some served several communities from one region of the world. Others served multiple linguistic communities. There were three legal clinics in the group: a health centre, several settlement agencies and the umbrella organisation that represents agencies serving immigrants in Ontario.

A critical aspect of the advisory group's role was to help us select topics and develop the materials in English. We relied on the group to provide a critical and direct link to the six language communities—to advise us on the legal information needs they faced and on how materials meeting those needs could best reach their communities.

There were two meetings on topic selection, resulting in a consensus on the first six topics. Two additional topics relating to tenants' rights were deferred for development because there were significant legislative changes pending.

At these meetings, group members realised that, while there were common areas of concern and need, there were also differences. As a result, there might be a need for compromise. For example, a topic that was considered low priority for the Spanish-speaking community was a high priority for several (if not all) other communities. But we did not need to convince the agency serving Spanish-speaking communities that we should address this topic—others did that for us.

The next couple of meetings were spent focusing on content. These were difficult but important meetings. The advisory group members were reflecting the extensive needs in their communities, but our resources would not enable us to address all those needs. We worked at keeping the focus on identifying primary audience and key messages for each topic.

Through these meetings, another important aspect of the advisory group role became clear. In dealing with content that might be controversial in some communities, we needed to know that we had support from people who belonged to those communities and could credibly defend the decisions we made. For example, same-sex marriages in Canada have the same legal status as marriages between people of the opposite sex. We need to reflect that fact when we talk about couples and spouses.

For this project, all the translated texts also had to fit into the same format. For each language, we had an estimate of how the length of the text would compare to the English. We knew that, with the exception of Chinese, translation would make the text longer, sometimes by up to 30 per cent. We knew that we had to keep the English text short enough to ensure that the translated texts would fit into the two-page format.

Once we had finalised our English texts, we hired a designer to work with the non-Roman alphabets, since we did not have the expertise or the software in-house. Involving her before we sent the texts off for translation was important because she provided the specific instructions for translators about the software and the fonts to use.[3]

Translations

Our experience producing high quality translations in French contributed to our awareness of how challenging it would be to produce good translations in other languages. Our French translators are highly trained and specialise in translation of legal information, and we have in-house skills in reading French. Our multilingual work involved languages that are not official languages in Canada and are spoken by newcomers from all over the world who come from cultures with widely divergent legal systems.

Some of our intended readers were from cultures in which some of the concepts basic to Canadian society and Canadian law may be unfamiliar or difficult for newcomers to reconcile with cultural or religious values in their countries of origin. Examples that come to mind include the presumption of innocence for criminally accused, the authority of the state to intervene to protect and even apprehend children, and the right to spousal and child support regardless of marital status—not to mention same-sex marriage.

In hiring translators, we had to decide whether to work with an agency that would provide translators for each language or directly with individual translators. In our experience, each approach has advantages and disadvantages. If you expect to work in particular languages on an ongoing basis, it may be worth your while to find individual translators with whom you can develop working relationships. Translators will be more open to feedback if they know that you respect their work, and they will be more comfortable with asking questions if anything you've given them is not clear. If you are asking others to recommend translators, it is best to clearly articulate your criteria. Someone who was pleased with a particular translator may have had different priorities. It is important to us that translators understand that we are striving for plain language. We also need to maintain legal accuracy in the translated text and we look for a willingness to discuss suggestions for change arising from review.

Using an agency can have some advantages in a multilingual project. You can make one agreement, and deal with one agency contact who will co-ordinate the work of the individual translators. We are currently working with an agency that translated multilingual

materials on family law for women. Before hiring them, we asked our community advisors to look at those materials and comment on the translations. If you don't have samples of work from the agency or translator that you are considering, you might want to give them a sample text that you can evaluate before you hire them for a big project.

When you do enter into an agreement with an agency or a translator, you might want to specify your expectations if they go beyond standard translation practices, such as avoiding colloquial or regional dialect, and not editing the text. We explained the purpose of the documents and the intended audience. We asked the translators to try to keep the translated text at the same reading level as the English text, and to retain certain words in English in square brackets beside the translated text to give readers the "official" word in English as well as in translation. This can be useful, for example, when the text refers to specialised tribunals such as the Immigration and Refugee Board. We asked that translators raise questions for us if they were not sure about the precise meaning of our text.

Although we did get some questions from individual translators, we never received any questions from translators working through an agency. Perhaps the agency translators did not find the pay sufficient to justify the additional time, or perhaps they were concerned that the agency contact might think their English skills were lacking, or perhaps there was no effective mechanism at the agency for communicating questions to us.

One idea we have not yet tried is to have the translator partner with a community advisor who can act as a resource. Front-line workers usually know whether the language used will be understandable to their clients. For example, newcomers often learn the English terms for institutions or social programs in Canada and may never have heard or may not even understand translations of the terms if they did not encounter such institutions or programs in their own country. Sometimes they may be familiar with an acronym where the full name of a program is not commonly used.

Review of translations

The purpose of having the translations reviewed was to help us get as close as we could to our goal: providing accurate legal information through understandable translations that reflect the way people in our intended audience normally speak in their language. We used "community review" to get feedback on how the translated text came across to the reader, and "accuracy review" for feedback on how well the translated text reflected the meaning of the English text, particularly its significance for legal rights.

Community review

For community review, we relied very much on our advisory group members. One method we used was to meet with small groups of people from the community who reviewed the translations with the advisory group member present to help us understand their concerns and to filter some of the feedback for us.

This was a costly and time-consuming process and it was the advisory group members who made it work. Consequently, for the more recent materials, we modified the process. We asked our advisory group members to:

- consult with a few people (colleagues or community members), not necessarily in a group setting, to collect the input for us
- keep in mind the need to ensure representation from different sectors of the community, such as region or age
- answer specific questions, such as whether the translated texts flowed well, whether the words and phrases were commonly used and understood, whether there was anything culturally inappropriate or offensive in the language used, and how they would rate the quality of the translation overall.

This modified process has provided us with useful input and has been easier to carry out.

The community review has been an important step. In some cases it has led to the addition of content. For example, our piece on criminal charges and immigration status said that if you are charged with an offence, you have the right to a trial. We meant this to be reassuring to people by implying the possibility that you might not be found guilty. But when we tested the translated text, newcomers from China were alarmed by the reference to a trial. As a result, we added a brief explanation about the criminal process in Canada.

In the piece on child protection, we had said that the child protection authorities might intervene if a parent does not stop other people, including other family members, from doing things that could harm their child. Feedback on the Somali translation was that community members did not read "other family members" as including a spouse, so we added the words "husband and wife" to the text.

Rather than make these changes simply for the communities where the changes were clearly needed, we changed the English text and all translations. We did this for two reasons: we thought that the clarification might be helpful for all linguistic communities, and we wanted community workers to know what the text said even if they did not understand the language of translation.

In a few cases, feedback from community review was so extensive that we decided to get new translations rather than revise the existing ones.

Accuracy review

We've also used various methods for accuracy review. We have not found a "one-size-fits-all" approach, and there is no method that is without flaws.

Often, we have asked a lawyer fluent in the language of the translation as well as English to compare the translation with the English text. Unlike practitioners who review our English texts for legal accuracy, the lawyers reviewing translations do not need expertise in the subject matter, since we are not asking them to comment on the content. But we expect that lawyers, following the instructions we give them, will be sensitive to ways in which the translation might not reflect the meaning of the English text. For example, if the English text says "you may be able to" we want to be sure the translation doesn't say "you will be able to".

We've also tried having our advisory group members do the accuracy check. We've tried to make it easy by giving them the English text with the translation set up beside it in table format to facilitate comparison of chunks of text. This may not be the most effective way to use their expertise, but our experience suggests that they tend to focus more on whether the translated text reads well.

We have given our accuracy reviewers very specific instructions. Here is an example:

> *These materials are written in plain language. As they describe legal rights and responsibilities, each word is carefully and purposefully chosen to reflect the current state of the law. Please focus your review on ensuring the legal meaning of the materials has not been inadvertently altered in the translation process. This could happen in several ways, for example:*
>
> - *conditional verbs such as "could" or "may" might be translated as "should" or "shall"*
> - *qualifiers such as "usually" or "often" may be left out.*

Another option for accuracy check is an oral read-back. We have used this when we already had some reason to be concerned about the quality of the translation, due to feedback from community review or difficulty obtaining the kind of community review we needed.

In the oral read-back, the lawyer who prepared the text ("the writer") meets with someone who is a fluent speaker of the language of the translation. That person ("the reader") does an oral read-back into English. The writer is familiar with any pitfalls or sections of particular concern in the text and can probe those areas, as well as seek immediate clarification from the reader of any issues arising during the read-back.

Through this dialogue, we can uncover problems with the translation. The reader need not have legal training, might be a community worker or a translator, and should, ideally, be a competent writer in the language of translation and able to make immediate changes to the text. We have used this approach when we suspected that there were problems with the translation and we needed to know whether to work on revisions or start over with a new translation.

We've also tried two different approaches to the weight we give to reviewers' comments. When we began this work, we asked that translators make the changes suggested by our reviewers. For translations produced more recently, we have communicated feedback to the translators but asked them to make the final decisions. We are not in a position to resolve disputes over wording in other languages and, in the end, while we respect and value the input of our reviewers, we have opted to have the professional translators take final responsibility.

Early results

In an early evaluation of this project, community members rated the overall clarity of the materials very highly for five of the six languages, and the evaluator found that the collaborative aspects of the process were extremely important to the success of the project—particularly the involvement of the advisory group.[4] To view our multilingual materials please visit our web site at <www.cleo.on.ca> and look for "Your rights. Your language."[5]

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Caroline Lindberg *is a lawyer who has worked at CLEO (Community Legal Education Ontario/Éducation juridique communautaire Ontario) for almost fifteen years. CLEO is a Canadian not-for-profit organisation specialising in public legal education to increase access to justice. CLEO develops materials and projects that provide low-income and disadvantaged people in Ontario with the plain language legal information they need to understand and exercise their legal rights.*

Caroline's work at CLEO has included developing clear language publications on the rights of people on social assistance, refugee claimants, and people without status. She has played a lead role in projects aimed at multilingual communities, including development of text and audio materials in eight languages and resources on legal topics for teachers working with non-native English speakers. In 2005, Caroline made a presentation on CLEO's approach to public legal education at a conference in Beijing. This paper is based on a presentation to the seventh Plain Language Association InterNational conference in Sydney, 15-17 October 2009.

Caroline speaks English, French, Spanish, and Swedish.

Endnotes

1 To find out more about our work, visit www.cleo.on.ca

2 This research resulted in the Linguistic Access Report (August 2005) by Yedida Zalik. The Executive Summary is available at <http://www.cleo.on.ca/english/reports.htm>. Yedida was instrumental in carrying forward the project work.

3 For more on typesetting multilingual projects, see Alexandra Hickey's PowerPoint, presented in October 2008 at the conference "Learn, Grow, Connect – Practicing community legal education in a diverse Ontario". You can find it under the heading "Doing effective public legal education for racialized and non-official language communities" at <http://www.cleonet.ca/conference/materials>.

4 If you are interested in the evaluation report, please contact me at lindberc@lao.on.ca.

5 Thanks to Julie Mathews and Lisa Cirillo for comments on a draft version of this article, and to Lisa for ongoing co-ordination of this work. Thanks also to PLAIN and the Plain English Foundation for financial support to attend the 2009 Sydney conference.

Scenes from *Raising the Standard*, October 2009

"Raising the Standard" was the title of the seventh biennial conference of the Plain Language Association InterNational (PLAIN) held in Sydney, Australia in October 2009. See more conference photos on pages 62-64.

Susan Kleimann *(USA) presenting at the government industry seminar.*

Closing Address

Plain concord: Clarity's ten commandments[1]

The Honorable Michael Kirby AC CMG

Patron of Clarity International
Past Justice of the High Court of Australia

Opening lawyers' minds to plain language

It is not always easy for lawyers to write and speak plain language. For many of us, we need to be rescued from our "heretofore", "whereas" and "party of the first part". Desirably, the process has to start early in our lives. We have to learn in our childhood the beauty and elegance of simple expression. By the time we get to law school (and certainly when we ascend to a judicial bench or the professorial seat) it may be too late.

In my upbringing, I was fortunate in the choice of my parents. Both of them had great comprehension and verbal skills, which they deployed and communicated to their children. My father was, and is, a fine storyteller. From him, I learned the importance of clear speaking. From my mother, clear writing. And it was copperplate in those days.

Learning how to tell a story is quite important for communication in life. For a life in the law, it is essential. Every case that comes before a court is a story of sorts. Our bookshelves are full of the human tales of greed, lust, envy, cruelty and love. The greatest of judges have a gift in telling the law's stories in a brilliant way. Lord Denning was probably the greatest legal storyteller in my lifetime. Who else would start a judicial opinion with the immortal words: "It was bluebell time in Kent"?

Learning the great classics of the English language is also important for plain expression. In my day, people like me learned from the *King James Bible* and *The Book of Common Prayer*. The beauty of Thomas Cranmer's language in the latter has always stayed with me. My partner tells me that he is fed up with hearing me declaim its words in the bathroom.

I grew up in Concord, then a western suburb of Sydney. Now, it is fashionably "inner west". As an infant, I attended St. Andrew's Anglican Church just across Parramatta Road in Strathfield. Actually, I would often pretend that I lived in "Strathfield", because it was a far more fashionable suburb than Concord. However, every Sunday, I would learn from the second Collect for Peace that Concord had a special place in God's love:

> *Oh God, who art the author of peace and lover of concord. Whose service is perfect freedom. Defend us ... in the same through thy mighty power. That we, surely trusting in thy defence, may not fear the power of any adversary. Through the might of Jesus Christ Our Lord. Amen.*[2]

The beauty and simplicity of this language burst into my brain like rays of sunlight. It is still there. Sixty years later, I still search for this capacity of plain speaking. And it was always comforting to know that the Almighty is paying particular attention to us who came from Concord.

My training in the law was fairly orthodox, except for the instruction I received in jurisprudence and in international law from Professor Julius Stone. It was he who taught the law students at the University of Sydney Law School in the 1950s about the judicial choices that exist; about the considerations of principle and policy that influence their outcomes; and about the duty of judges and other lawyers to be transparent about such considerations. And to explain them simply so that all citizens would understand.[3]

My most specific instruction in plain language, however, came after university. It was as well that it did. For in those days, even more than today, there was little or no instruction at university in plain speaking, drafting and writing. Nevertheless, it was a fine university scholar who gave me the instruction.

I refer to Professor David St. L. Kelly. He was the first full-time Commissioner of the Australian Law Reform Commission, apart from myself. In 1975, I had taken up appointment as the inaugural Chairman of that Commission (as the office was then called). David came to us from Adelaide. Like an Old Testament prophet, he was constantly full of fire and brimstone.

David Kelly taught me two very important lessons that have stuck with me throughout my career as an appellate judge. The first was the importance of conceptual thinking. The defect of the common law is that it tends to stumble from case to case. It is a highly pragmatic system. But it often lacks concepts and readily discernible principles. David Kelly taught me, in law reform, to search for those principles. That search continued throughout my judicial life.

His second lesson was about the importance of plain language. I do not know whether he had a deep knowledge of that subject before he came to the Law Reform Commission. However, he was soon put in charge of two projects, each of which attracted his interest to plain language. The first was a project on debt recovery.[4] Because we were dealing with often disadvantaged people, complex forms and contracts were commonly a source of legal and other problems for them. The need for clear expression in legal documents was specially apparent.

It became more so in the project to reform the law of insurance contracts. The report on that subject analysed hundreds of such contracts. It concluded that there was a need for clearer expression, for standard plain language contracts, and for fairer principles of law.[5]

In undertaking these projects, David Kelly made contact with a legal scholar in the United States, Professor Vernon Countryman. He was an early expert in the "plain English" movement, as it was then described. I remember a lengthy telephone consultation with him, in the United States, when Professor Countryman elaborated the fairly simple rules that could be followed in expressing legal concepts and documents in clearer language. By the time my service in the Law Reform Commission concluded in 1984, I was a convert.

It was at about this time that two great Australian scholars entered the field of plain expression. I refer to Associate Professor Robert Eagleson and Professor Peter Butt. The former was not a lawyer at all, being an expert in linguistics. The latter was one of the finest lawyers in the land. His chosen area of discipline has been land law. This is not a topic for the faint-hearted. He threw himself into dialogue with Robert Eagleson. Between them, they initiated the plain movement in Australia. They link us to the world Clarity movement. They are doyens of plain language in this country. Rightly, they are honoured for their outstanding contributions, devotion and persistence.

I am here to honour such brilliant Australian scholars. But also the scholars from other lands who are joined in this common enterprise. There are, of course, limits on the extent to which we should change too quickly established ways of doing things, and saying things, in the law. Some legal expressions in the Latin language, for example, are still commonly used. Yet, because very few students, and thus lawyers, now study Latin at school, a switch to English language equivalents is essential.

My one-man campaign, during my service on the High Court, to get my colleagues to drop *lex loci delicti* failed.[6] However, the time will come when even Australian judges will substitute the simple English words "the law of the place of the wrong". What is so hard about that? Perhaps the answer is that those who conceive of themselves as members of an expert priestly caste prefer a dead language because it conveys the mystery of technicality. English, after all, is a very mixed-up tongue. And clients may be more willing to pay more for Latin.

Complex ideas are sometimes inescapable in law. Taxation legislation and statutes of limitations are prime examples of complexity. Yet simpler expressions can often be secured by analysing more closely the concepts that are at stake. It was not a coincidence that David Kelly's legal obsessions were conceptualisation and plain expression. The two are intimately connected.

Plain stories from my past

The earliest contribution of mine to this subject dates from March 1982, when I was under the spell of David Kelly. In an address to a luncheon of the Constitutional Association of Australia, I described "the monumental task

of simplifying the law".[7] The reference was to the statutory obligation of the Australian Law Reform Commission to "reform, modernise and simplify" federal laws. Not long after, in another speech to the Australia Britain Society at the Plain English Speaking Awards at the Sydney Opera House in August 1993, I gave an aria on "Plain English and the Power of a Wink and a Sniff".[8] The reference in the title was to the capacity to communicate in many ways, including by body movements and facial expressions.[9] Yet most legal communication is made in words, and hence the attention paid to them.

Rummaging through speeches I have given over the past thirty years, I found a number on plain writing of the law. The earliest was on "Plain Legal Language", attributing wisdom to Professor John Lindsey, another American expert on the topic. This was given in 1990.[10]

In July 1998, I gave a talk, later published, on "Speaking to the Modern Jury: New Challenges for Judges and Advocates".[11] I explained that the jury of the 1990s was more than likely made up with a sprinkling of jurors from Generation X. Now, jurors from Generation Y and later generations have joined their ranks. The different capacities and inclinations of those raised on electronic communications to listen to a talking head for hours obviously affects the way in which judges and advocates must today speak to such a group of individuals.

In 2006, I was interviewed by Kathryn O'Brien on judicial attitudes to plain language and the law.[12] I had to confess to her the resistance to plain language in judicial ranks. Not to put too fine a point on it, some judges are positively hostile to the endeavours of the plain language movement to support clearer statutory expression and simpler judicial communication. My interrogation followed the publication in 2006 of my very favourable review of the excellent book by Professor Joe Kimble, *Lifting the Fog of Legalese*.[13]

These and other efforts on my part show, at the very least, a long-standing commitment to the plain movement. For this, I have been rewarded with appointment as a patron of Clarity, the global body committed to simpler and clearer expression in legal language.

It is not all that difficult to improve the simplicity of legal expression. Long ago, Professor Kimble gave a number of very simple rules that all of us can follow. During my judicial years, I certainly tried:

- Complex statements of facts and law should begin with a summary to let the reader know where he or she will be travelling.
- Short sentences and shorter words should replace long ones.
- The passive voice should generally be banished and replaced with active voice. This assumes that lawyers of today have learned what "active" and "passive" voice means. But it can be explained.
- Words of connection should be at the beginning of sentences. Words of emphasis should generally be at the end.
- Where there is a choice, the shorter word (ordinarily from a Germanic root) should be preferred to the longer word (ordinarily from the French language of the Norman Conqueror).
- Sexist and obviously ambiguous language should be removed.
- Vagueness is sometimes necessary in legal drafting. However, ambiguity should generally be tackled head on.
- Those old potboilers "whereas", "hereinunder", "cognisant", and "requisite" should be deleted.
- Layout is a technique of communication that matters. It can assist human understanding. As can headings and sub-headings.
- In legal texts that will cross borders, it will generally be necessary to be especially careful in the use of words. Our former Prime Minister Keating found this when he used the word "recalcitrant" to describe the attitudes of the then Prime Minister of Malaysia. Seemingly, the word had a more pejorative meaning in Malay than in the English language.

If we all observed these simple rules in our legal communications, how much clearer would our voices be. One of the reasons students feel attracted to my reasons in the High Court of Australia, they tell me, is that I followed the Kimble commandments. I also used layout and white space to guide the eye. Even so great a judge as Sir Owen Dixon sometimes wrote in uninterrupted prose. Just take a look at the reasons published in the Communist Party case.[14] Great prose. But frequently obscure and hard to keep in one's mind. Likewise, the use of graphs, tables, photographs,

charts and maps can often improve the clarity of judicial, statutory and other expressions.[15]

These are not hard rules to follow. They should be taught to every law student. But are they taught? The answer is a resounding no. Are they embraced by the judiciary of this country? The answer is, not wholly. I find it significant that no judge in the entire hierarchy of the judicature of Australia has attended the PLAIN 2009 conference. But I am here. And will continue to support the endeavours of David Kelly, Robert Eagleson, Peter Butt and all of you present.

Clarity International could strike a blow for plain expression by propounding the foregoing Ten Clarity Commandments. If they alone were observed by increasing numbers of lawyers worldwide, the result would be a marked improvement in written and oral legal expression.

New challenges and a noble cause

I conclude with words of thanks and praise for those who participate in the plain language movement. Do not be discouraged. The movement continues to gather force. We must press on with the effort to include in every law course and every legal practice course education in clear expression. It is not very hard, but it needs instruction. Above all, it needs examples and good illustrations. All of us must contribute to this endeavour.

With each new generation of lawyers, there are fresh challenges to plain language. Because the English language changes over time, according to usage (and no learned committee of experts dictates the permissible course that it will be allowed to take), a never-ending stream of new words and expressions enters the language. Some of these present new challenges to the aims of plain language, including in legal expressions.

Take, for example, the rapid introduction of computer language with words like website, webmaster, download, upload, hard copy, and tweet—all adapted from earlier generic words. Take also the abbreviated spelling of words in new text, designed for use in texting as in the social networks such as Twitter. Examples include the use of "b4" for "before" and "cu" for "see you". Will these changes become standard and accepted in legal language? Stranger things have happened. Only time and the market place of mass practice will answer this question.

Some contemporary use of language agitates writers who pride themselves on clear and elegant prose. Books are now being written aimed at stopping this development in its tracks. Attempts to debase the English language with a new generation of clichés and politically correct expressions. Don Watson, an Australian master of clear and powerful political speech, has written a new text targeted at his special hates in this respect, such as "homeland security", "mission statement", "factual matrix", "medical termination", or "a range of foci".[16] Just when the proponents of plain language thought they had the objects of their reforming zeal in sight, fresh challenges have presented for the attention of the next generation of disciples.

At stake in the plain movement is not just the theoretical objective of improving the understanding of the law by lawyers. It is the noble objective of making the law speak with a clearer voice to the people who are bound by the law. This is an idea central to the notion of democratic governance. It is a concept that gives a moral dimension to the plain language movement and to the worldwide mission of Clarity International.

Michael Kirby *was, until February 2009, one of the seven Justices of the High Court of Australia. He was also Australia's longest serving judge. Before his appointment to the High Court of Australia in 1996, Michael served on the Australian Conciliation & Arbitration Commission; the Federal Court of Australia; the NSW Court of Appeal (as President) and the Solomon Islands Court of Appeal (as President). He has written an awful lot of judgments. Which is better than a lot of awful judgments.*

In addition to his judicial posts in Australia, Michael Kirby served as inaugural Chairman of the Australian Law Reform Commission (1975-84), in which post he gave strong support to the plain language movement. He has held many international positions including as President of the International Commission of Jurists; Special Representative of the Secretary General for Human Rights in Cambodia; and (currently) on the UNAIDS Reference Panel on HIV and human rights.

For a decade, Michael Kirby has served as a patron of Clarity International.

Endnotes

[1] This closing address was presented as the after dinner speech of the seventh Plain Language Association InterNational Conference in Sydney, Australia on 17 October 2009. It is also being published in the *Australian Bar Review.*

[2] "Service of Morning Prayer", *The Book of Common Prayer*, London, Eyre and Spottiswoode, 1558, (1951), p. 54.

[3] Julius Stone, *Social Dimensions of Law and Justice*, Sydney, Maitland, 1966, p. 649.

[4] Australian Law Reform Commission, *Insolvency: The Regular Payment of Debts*, AGPS, Canberra, ALRC 6, 1977, 52-53 [118].

[5] Australian Law Reform Commission, *Insurance Contracts*, AGPS, Canberra, ALRC 20, 36 [58].

[6] *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503 at 563 [157]; cf at 539 [84]; 544 [103].

[7] M.D. Kirby, "The Monumental Task of Simplifying the Law", unpublished, Constitutional Association of Australia, 15 March 1982 (Kirby Speeches 314).

[8] M.D. Kirby, "Plain English and the Power of a Wink and a Sniff", unpublished, Australia-Britain Society, 19 August 1983 (Kirby Speeches 450).

[9] Cf. *Levy v. Victoria* (1997) 189 CLR 579 at 637-638.

[10] M.D. Kirby, "Is Law Properly Written? Plain Legal Language", *ALJ* 1990 (Kirby Speeches 1091).

[11] M.D. Kirby, "Delivering Justice in a Democracy. The Jury of the Future", (1998) 17 *Australian Bar Review* 113.

[12] M.D. Kirby, "Judicial Attitudes to Plain Language and the Law", Interview 1 November 2006 (Kirby Speeches 2143).

[13] M.D. Kirby, Review of J. Kimble *Lifting the Fog on Legalese: Essays on Plain Language*, Durham, Carolina Academic Press, 2006, published in (2006) 80 *Australian Law Journal* 623.

[14] *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1.

[15] See for example the use of tables and graphs in *Forge v Australian Securities and Investment Commission* (2006) 228 CLR 45 at 97-109 [135]-[154].

[16] Don Watson, *Bendable Learnings. The Wisdom of Modern Management*, Sydney, Knopf, 2009.

More Scenes from *Raising the Standard*, October 2009

Christopher Balmford *(Australia)*, Bill Lutz *(USA)*, Christine Mowat *(Canada) and* Bob Sendt *(Australia) presenting the finance industry seminar.*

Joe Kimble *(USA)*, Wessel Visser *(the Netherlands) and* Martin Cutts *(UK) at the legal industry seminar*

More scenes from *Raising the Standard*, October 2009

Part of an interactive workshop on form design presented by Francien Malecki *(the Netherlands)*, Susan Kleimann *and* Kristin Kleimann *(USA).*

Anki Mattson *and* Helena Englund *Hjalmarsson (Sweden), organisers for the PLAIN 2011 conference in Stockholm.*

Peta Spear, Peter Butt, Michael Kirby, Bill Lutz, Neil James, Christine Mowat *and* Robert Eagleson *at the PLAIN 2009 dinner.*

Closing address speaker Michael Kirby *with PLAIN award winners* Peter Butt *(Australia)*, Christine Mowat *(Canada) and* Robert Eagleson *(Australia).*

Candice Burt *(South Africa)*, Cheryl Stephens *(Canada) and* Frances Gordon *(South Africa) at the PLAIN 2009 dinner.*

Clarity *editor* Julie Clement *with former Supreme Court Justice* Michael Kirby.

More scenes from *Raising the Standard*, October 2009

Members of the International Plain Language Working Group: Neil James *(Australia)*, Annetta Cheek *(USA)*, Lynda Harris *(New Zealand)*, Christine Mowat *(Canada)*, Eomann Moran *(Hong Kong)*, Helena Englund Hjalmarsson *(Sweden)*, Sandra Fisher-Martins *(Portugal)*, Frances Gordon *(South Africa) and* Carlos Valdovinos *(Mexico)*.

MC 'Jussey Vot Der Hecke' *at the official opening of PLAIN 2009 with conference co-convenor* Neil James, *NSW Premier* Nathan Rees, *PLAIN President* Bill Lutz *and ASTC President* Bede Sunter.

Aboriginal Elder Uncle Max *conducting a smoking ceremony at the welcome reception for PLAIN 2009.*

Member news

Clarity's Patrons honoured

Clarity is privileged to have three Patrons—in alphabetical order, **Sir Kenneth Keith** (New Zealand), **The Hon Michael Kirby** (Australia), and **Sir Christopher Staughton** (UK). All three are distinguished jurists, of international standing. Intriguingly, all three are Benchers of the Inner Temple.

Before our non-UK readers reach for the latest Dan Brown blockbuster to decipher the meaning of this strange sobriquet, let me tell you that the Inner Temple is one of the four English "Inns of Court". All barristers who wish to appear before English courts must belong to one of the Inns of Court. The other Inns are Middle Temple, Gray's Inn and Lincoln's Inn.

To be elected to the senior rank of "Bencher" is a great honour, reserved for those with an outstanding record of service to the law and the community. That all three Clarity patrons should be elected to as Benchers of the same Inn is remarkable. Clearly, the Inner Temple sees the importance of Clarity.

Submitted by Peter Butt, Sydney, Australia

Awards

Joe Kimble received the Association of American Law Schools 2010 award "to an individual who has made a significant lifetime contribution to the field of legal writing and research.

Brian Garner has won the 2009 Burton Law Book of the Year Award for *Making your Case: the art of persuading judges*, which he wrote with US Supreme Court Justice Antonin Scalia.

Peter Butt (past president of Clarity), **Christine Mowat** (Clarity member and past president of PLAIN), and **Robert Eagleson** (Clarity committee member) were honored at PLAIN's 2009 international conference in Sydney. Photos of the recipients and their awards are on page 33.

Committee

Richard Woof and **Phil Knight** both resigned from the committee in November after many years of service. Richard was a partner at Debenham & Co in London who had pioneered plain language deeds before becoming a founder member of Clarity. Read more about Richard on page 18.

Phil is a plain language lawyer based in Vancouver, specialising in drafting national constitutions. He retires this month but will continue to do some consultancy. Read more about Phil on page 33.

Breakfast meetings

The February breakfast meeting in London had a record 40+ people. The next is on 20 May, with **Peter Butt** as speaker. That meeting will focus on plain language success in Australia. As usual, the meeting will be held in the City Marketing Suite at the Guildhall. There is no charge, and guests are welcome, though we do ask non-members to join Clarity if they come a second time.

Please email daphne.perry@clarifynow.co.uk to reserve a place.

Hong Kong Clarity members held a breakfast meeting in March at the premises of the Department of Justice, where they discussed a range of issues relating to clear legal writing in both the Chinese and English languages. They also agreed to write a series of articles relating to legal writing with a view to having them published in the official journal of the Law Society of Hong Kong. Another meeting is planned for 9 July 2010 at 8:30 at the offices of the Department of Justice. Anyone interested in attending should contact Eamonn Moran at eamonnmoran@doj.gov.hk.

Book release

Michèle Asprey has released the 4th edition of her book, *Plain Language for Lawyers*. Ordering information is on page 45. Congratulations, Michèle.

Message from the President

The plain-language world is changing

Here are 4 things that make me think our plain-language world is changing:

1. Clarity is about to hold its 4th international conference (see http://www.clarity2010.com). That's 4th. Ten years ago we had held none;
2. PLAIN (http://plainlanguagenetwork.org/) held its hugely successful conference in Sydney in 2009—it's 7th conference;
3. an initiative of the Center for Plain Language (http://www.centerforplainlanguage.org/) has—after a huge effort over several years—led to the US House of Representatives passing a Plain Language Act (HR 946), which, assuming the Senate also passes the bill, will require the US federal government to write documents in simple, easy-to-understand language; and
4. each of those 3 organisations, Clarity, PLAIN, and the Center have combined to form an International Plain Language Working Group which is producing an Options Paper *Professionalising plain language* (see the introduction to this issue on p3). The paper discusses systems for setting standards for plain-language documents and systems for accrediting plain-language practitioners. It also considers a range of related topics—namely: a definition of "plain language", more research on what makes communications clear, more advocacy for plain language, and an international plain-language institution.

The expanding and combined activities of the 3 major plain-language organisations suggest that we—as plain-language advocates and practitioners—are getting somewhere. Plain language is increasingly mainstream.

Clarity to needs to change

As the plain-language world develops, Clarity needs to respond. Two initiatives are under way:

Online membership system

Clarity has moved to an online payment and membership management system. From now on, you maintain your address details, renew your membership and pay your dues etc. online. (In the UK you can still pay by standing order, and in Canada and the US by check.) Also new members join, and pay, online. A huge thank you—again—to Cindy Hurst for moving our existing database to the online system and getting us "good to go". It was a big job.

The new system will make life much easier for our country representatives—enabling them to put their Clarity efforts into plain-language activities rather than administration.

Please go to http://www.clarity.shuttlepod.org/ and follow the steps to pay your dues for 2010. They are now due. Thank you.

Clarity uses 100% of dues to design, print, and mail the journal. We can no longer send the journal to non-payers.

"Incorporating" Clarity

Representatives of the Clarity Committee are preparing a draft set of by-laws for the Committee to consider as part of considering incorporating Clarity. Working out which order to do things in is tricky. At this stage, we see forming a view on "who elects who to do what" as the best place to start. More on this as it develops.

Our 4th international Conference—Lisbon, Portugal 12-14 October 2010

Clarity's 4th international conference is in Lisbon, Portugal in October this year. Clarity is co-hosting the conference with Português Claro—which is Clarity Committee member Sandra Fisher-Martins' plain-language consultancy, see http://portuguesclaro.pt/

Our conference sponsors are:

- the International Institute for Information Design (IIID), see http://www.iiid.net/
- Ordem dos Advogados (Portuguese Bar Association), see http://www.oa.pt/
- Faculdade de Direito da Universidade Nova de Lisboa (Faculty of Law at the NOVA (New) University of Lisbon), see http://www.fd.unl.pt/

At the conferences sessions will be translated to and from Portuguese and English.

For more information on the conference theme and for dates for submitting papers, see http://www.clarity2010.com/home.html

Lastly thanks, again, to Neil James and his Plain English Foundation for so generously contributing to the costs of this bumper issue of the Journal.

Do come to Lisbon. Do please renew your Clarity membership at http://www.clarity.shuttlepod.org/

Christopher Balmford

President of Clarity

Raising the standard

The Plain English Foundation was delighted to host the seventh biennial Plain Language Association InterNational (PLAIN) conference.

When: Thursday 15 October to Saturday 17 October 2009.

Where: Four Points by Sheraton, Darling Harbour, Sydney, Australia.

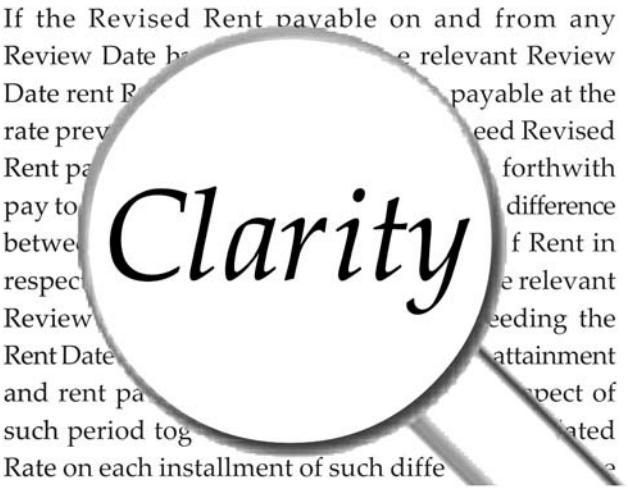
Who: Government, industry and plain language practitioners from Australia and around the world.

Why: To learn how plain language is improving services and saving money in government, industry, the law, medicine, engineering and finance.

For papers, video, and photos visit the conference web page: http://www.plainenglishfoundation.com/tabid/3276/Default.aspx

Members by country

Argentina	3	Gilbralter	1	Nigeria	10
Australia	83	Hong Kong	16	Peru	1
Austria	1	India	8	Philippines	1
Bahamas	2	Ireland	4	Portugal	4
Bangladesh	6	Isle of Man	1	Singapore	6
Belgium	8	Israel	4	Slovak Republic	2
Brazil	1	Italy	6	South Africa	160
British Virgin Islands	1	Jamaica	1	Spain	3
British West Indies	3	Japan	7	St. Lucia	1
Canada	59	Jersey	1	Sweden	23
Cayman Islands	1	Kenya	1	Switzerland	1
Chile	4	Lesotho	2	Thailand	1
Cote d'Ivore	1	Malaysia	2	Trinidad and Tobago	4
Denmark	3	Mexico	6	United Kingdom	131
Finland	8	Mozambique	1	USA	214
France	2	Netherlands	7	Zimbabwe	1
Germany	1	New Zealand	22		
				Total	**841**



Membership application form

Please complete this form, print it, and post it to us.

For the address for your country, please see www.clarity-international.net/membership/wheretosend.htm.

Your details will be kept on computer; please tell us if you object. By completing this form, you consent to your details being given to other members or interested non-members (although not for mailing lists), unless you tell us you object.

Membership in name of individual	
Title	
Given name	
Family name	
Firm	
Position in firm	
Professional qualifications	
Occupation (if different)	

or

Membership in name of an organisation	
Name of organisation	
Nature of organisation	
Contact name	

All members, whether individual or organisation	
Home or business	
Address	
DX	
Email	
Telephone	
Specialist fields	

Standing order form for members wishing to pay by this method from a UK bank account	
To	Bank plc
Branch address	
Sort code	– –
Account name	
Account number	

Please pay to Clarity's account 0248707 at the Cranbrook branch of Lloyds TSB (sort code 30-92-36) quoting Clarity's reference _____ [we will insert this] £20 immediately, and £20 each 2 January starting _____ [please insert next year if you join before 1 Sep, otherwise the year after.]

Signature:	Date: