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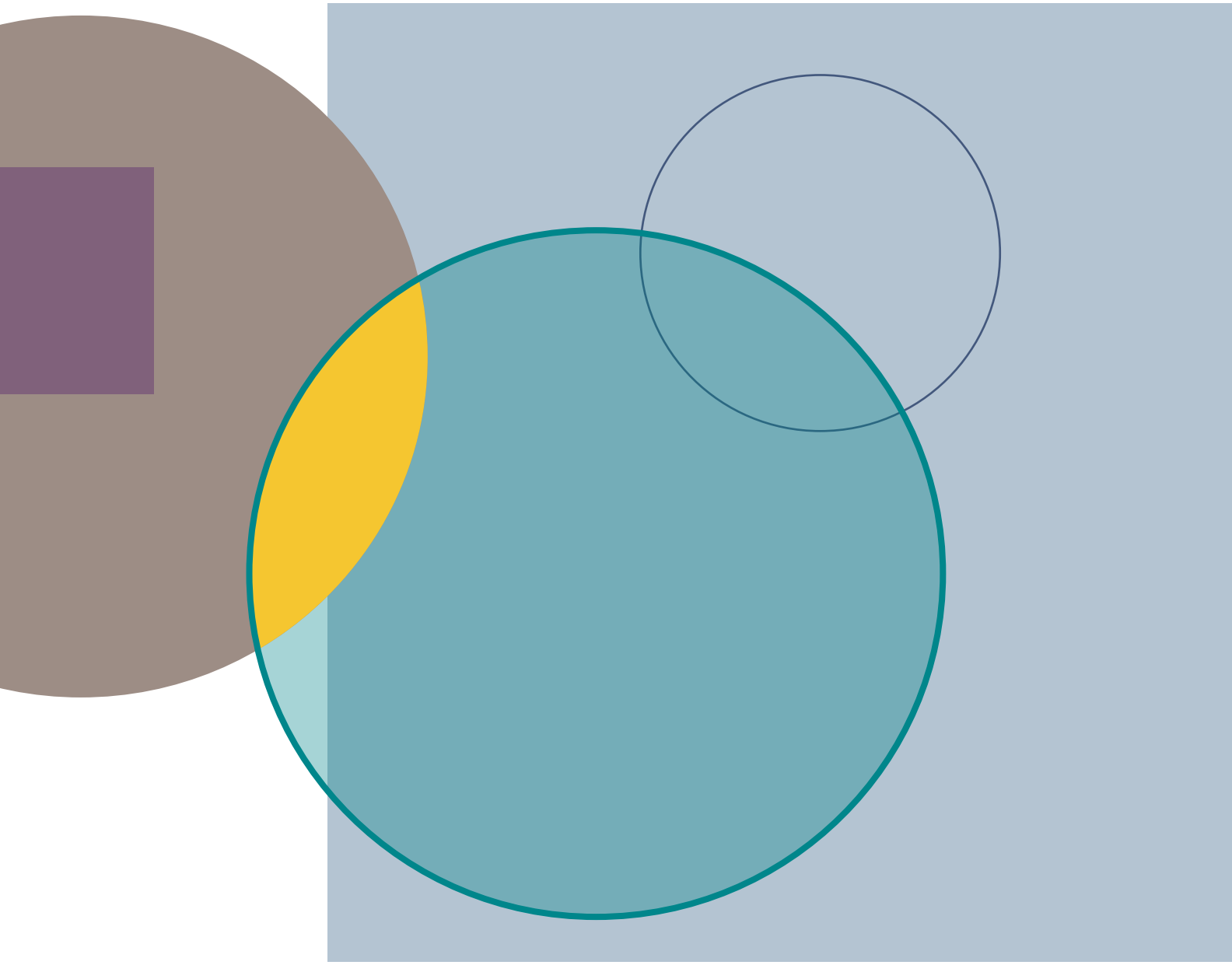

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From the President

As you read this edition of the Clarity Journal, with its many papers based on Clarity2016, you will realize what a great conference it was. Held in Wellington, New Zealand on 3–5 November 2016 and co-hosted by Write Limited, it featured a magnificent array of speakers around the theme "The Business of Clarity." Lynda Harris, Chief Executive, Write Limited and her team did a magnificent job and deserve our warm congratulations.

Hopefully reading this journal will also inspire you to attend the next Clarity conference. And what a great conference it will be. Clarity2018 will be held at the Hyatt Regency Montreal on 25–27 October 2018.

Clarity2018 is being co-hosted by Educaloi, an independent non-profit organization with a mission of informing Quebecers about their legal rights and responsibilities in everyday language. They are perfectly matched with us for co-hosting a Clarity conference. A really varied and interesting program has been developed. Full details are on the conference website clarity2018.org. I look forward to welcoming you to Montréal.

Conferences always present great opportunities for learning, networking and having fun. Reading conference papers in the journal gives you learning opportunities. However, networking and having fun are important too, and you only achieve those by turning up in person.

I am always keen to hear from you with your ideas and suggestions. Together we can make Clarity International even stronger.

Eamonn Moran QC

President
Clarity International
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Introduction

Clarity 77 and 78, and the many articles in these two issues, are testament to the quality of Clarity2016. Clarity2016 was the first time we had held one of our conferences in the southern hemisphere. By Write Limited agreeing to host the event in Wellington, New Zealand, it was exciting to know that many people would be able to come to our conference, who, due to distance, had not had the opportunity to attend before. They had the chance to share ideas, be inspired, and take the knowledge gained back to their countries and workplaces.

And what inspiration! From the opening session when retired Australia High Court Justice, the Hon. Michael Kirby spoke on clarity in legal language—to Dr Paul Wood talking about challenges and overcoming them—we were captivated.

While all the papers focused in some way on the importance of good communication, one theme that emerged from the conference is the power of plain language and clear communication to help bring about a more just society. You'll find that theme in the pages of these two journal issues, particularly in the articles by Una Jagose, Sarah McCoubrey and Cathy Basterfield. Yet the ideas on that theme are diverse—conflict, more accessible justice, and social equality.

If you didn't attend the conference, take time to read the papers and become absorbed in the theme. If you did attend, the papers in *Clarity 77 and 78* let you relive that experience.

Thanks to Lynda Harris and the fantastic team at Write Limited for making Clarity2016 possible and for guest editing these outstanding issues of *The Clarity Journal*.

Joh Kirby

Immediate Past President
Clarity

In this issue

Clarity 77 and *78* include some of the most memorable presentations from the Clarity2016 conference held in our beautiful hometown—Wellington, New Zealand.

Co-hosting Clarity2016 was BIG—but we're oh so glad we did it! And the sun shone. Hurrah!

A quick look at the Contents page reveals the depth and breadth of the Clarity2016 presentations, all contributing to the theme "The business of Clarity." We chose that theme because the pursuit of clarity is a serious business!

Setting the scene

Two keynote talks got us particularly excited. Neither of them came from a plain language expert, but both created a real buzz and pause for thought. Since they aren't included in this edition as standalone presentations, and they were so central to the theme, here's a quick recap to set the scene for reading *Clarity 77* and *78*.

Inspiration to breaking barriers of resistance

Since you're reading *The Clarity Journal* you'll probably agree that a focus on clarity creates bottom line benefits for all. Organizations save or make money, citizens have better access to government services and justice, and consumers understand their rights.

Yet knowing and explaining the benefits of plain language are often not enough to get others to embrace change. Those who openly resist, especially those who control budget or have significant influence in an organization, can become fearsome opponents. Or you may encounter passive resistance—people who say "yes" but do "no." Either way it's easy to get demoralized and disillusioned. We begin to accept that change just isn't going to happen.

Dr Paul Wood, highly respected mindset coach, motivational speaker and leadership specialist, addressed this issue head on. His keynote topic "What's your prison?" was an intriguing one. Imprisoned for a drug-related murder at the age of 18, Paul spent many years in a maximum security jail. His transformation from delinquent to doctor was nothing short of miraculous. His story was poignant and relevant. With maturity and a newfound love of literacy, Paul realized that the real prison that held him captive was his mindset, rather than his cell.

And right there was the clear message for us. Instead of settling for what can't be done, why not work out what's holding us back in being stronger, braver and more effective advocates for what we believe in? Sometimes it's our mindset that holds us captive. As A A Milne's Winnie the Pooh said, "You are braver than you believe, stronger than you seem …"

The key to breaking through

Changing our own mindset doesn't miraculously change that of others. But celebrated poet and communications coach Zane Scarborough gave us exactly what we needed—the how. And it wasn't about strategy, compelling facts, or business models. Instead, Zane gave a powerful speech about the importance of creating real trust in any relationship before you can create meaningful change.

Lynda Harris is Chief Executive of Write Limited, Wellington, New Zealand

Anne-Marie Chisnall is Deputy Chief Executive, Write Limited, Wellington, New Zealand

Accredited editor **Meredith Thatcher**, a consultant at Write Limited, helped to edit the articles in *Clarity 77* and *78*.

Write Limited hosted the Clarity2016 conference.

Drawing on his work with over 150,000 troubled teens (if you can win over a bunch of "I'd rather be somewhere else" 14 year olds, you can do anything) and his time in the corporate world pitching for millions of dollars, Zane's messages were compelling. We listened.

Zane spoke about something very familiar to plain language advocates—the importance of an audience-centric approach. But that message came with a twist. "You write in an audience-centric way, but do you do the same in conversation? Do you genuinely think about how your words are going to sound, and not just what you are going to say?" Zane's guess, from his years of challenging real-world experience, was "Probably not—nobody cares about what you care about as much as you do. To bridge the gap we need to understand the barriers and constructs that stand in the way of meaningful connection." When we put ourselves in the shoes of the other person, trust, respect, and meaningful dialogue open the doors to change.

What's the key point? To appear trustworthy, we need to be trustworthy. Not rocket science; but oh so true.

Armed with the will and the way to be a bolder, more effective advocate for clear, effective communication, read on and enjoy all the contributions to *Clarity 77* and *78*.

For more inspiration from Dr Paul Wood and Zane Scarborough, jump to their presentations on YouTube:

- Dr Paul Wood: *https://www.youtube.com/watch?v=KHXV1a3Yq7w*
- Zane Scarborough: *https://www.youtube.com/watch?v=sYCnr4v27uY*

Contents

Accessible justice—plain language points the way

Una Jagose has been New Zealand's Solicitor-General since mid-February 2016. Before that she was Acting Director of the Government Communications Security Bureau (GCSB) from February 2015 to February 2016.

Before joining the GCSB, she worked as the Deputy Solicitor-General, Crown Legal Risk. She joined Crown Law as Crown Counsel in 2002, and became a team leader in the Public Law group in 2007. Before that, she was Chief Legal Advisor at the Ministry of Fisheries. Una Jagose has a wealth of experience representing the Crown in courts at all levels, and advising Ministers and public sector organizations on a range of public law and constitutional matters. She taught the public law module for the Masters in Public Policy Course at Victoria University of Wellington's School of Government from 2011 until 2014.

The title of her keynote was *An advocate for plain language*.

Solicitor-General Una Jagose QC

The rule of law, at its core, is the concept that all people are bound by and entitled to the benefit of laws—laws that are openly made, publicly available, and enforced in our courts.

The Solicitor-General and Attorney-General are charged with ensuring government is conducted according to law. I feel strongly both the privilege and the burden of the role. I hope I always will.

One central characteristic of the rule of law is that the law is accessible to the people. As the great lawyer and judge Lord Bingham famously said: "The law must be accessible, and so far as possible clear, be intelligible and predictable."[1]

The challenge for accessibility is not simply to make sure that people can access courts or tribunals. The rule of law requires something much more basic in our quest for accessibility. The constitutional framework we live in must be open, clear, and understood.

Barriers to understanding are barriers to justice

We're not doing very well in New Zealand. Reading the news (and being able to read people's comments on what's being reported in the news, although I know I shouldn't) shows a severe lack of understanding of the legal system and our constitutional framework.

Does it matter? I say it does. For accessibility to the law to be meaningful, people need to trust the institutions that deliver the law and operate according to law. Unless people trust these institutions, and do not cynically view them as corrupt or meaningless architecture of a powerful State, accessibility to the law will lack real meaning.

Language is a powerful way to make the law accessible. Language can include or exclude; it can advance or hold back progress. Lawyers have reveled in complex, hard-to-understand, old-fashioned language for far too long.

I've always been inclined to plain language. In my younger years I feared that meant a lack of real intelligence. Many of the lawyers I knew were obviously smarter than me—I couldn't understand them!

Progress not perfection

Plain language for lawyers and judges is gaining prevalence, though plenty of improvement is yet to be made.

The statute book in New Zealand is being overhauled progressively in favor of plain language.

The Acts Interpretation Act of 1924 told me as a young lawyer that:

Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit.

The same modern provision (in the Interpretation Act) is simple:

The meaning of an enactment must be ascertained from its text and in the light of its purpose.

Modern New Zealand law is carefully crafted by our expert Parliamentary counsel. You will now see examples and diagrams, headings, and other signposts to understanding the text. You will see expressions such as "notwithstanding" and "subject to" replaced with straightforward phrases. You should see less Latin.

The Legislation Act 2012 allows for Acts already made to be updated so as to improve accessibility without changing the substance of the law. A revision bill can make changes in language, format, and punctuation to achieve a clear, consistent, gender-neutral, and modern style of expression. Revision bills may also include examples, diagrams, graphics, flowcharts, readers' notes, lists of defined terms, and other similar devices to help accessibility and readability.

I want to further challenge the profession—we must embrace plain language so we can:
- advise well
- persuade courts and decision-makers to our point of view
- allow the people of New Zealand to see and know what the law is and what it means
- remain relevant.

The language of law is to persuade, advise, and determine disputes between people so that justice is done and seen to be done. If our clients cannot understand what we are telling them and need a lawyer to translate what our advice means, we are not doing our jobs right.

In my context our advice is usually for Ministers and other busy decision-makers who need a hand with how to decide, lawfully, and how to implement their policy choices. Do we really want to deliver to such people a 15-page (or worse) highly polished product that is "legal advice," replete with Latin phrases and quotations from case law?

Our function is to advise—to help a decision-maker act lawfully (or, at times, understand the risk they face in making a decision). It is neither to prove how much we know, nor prove how complex the question is. My challenge is to think about producing a flowchart, a page of bullet points, or a diagram as the product we deliver. Why not?

Quality analysis underpins concise advice

We also need to educate receivers of legal advice—they are often as bound up as we lawyers can be in what to expect from a lawyer. Recently I sent a decision-maker a one-page set of propositions as bullet points, so we could meet later that week and discuss the decision he was to make. He was quite alarmed—"Una, we need more analysis than this." So I had to convince him that I also had the 20-page analysis and a 5-page short summary to back me up!

The analysis needs to be done, of course. And we need to know the principle, the case law and the complexities of what's before us. But we don't need *you* to know all that if what you really need is advice about whether you have consulted sufficiently before making a decision, or what the extent of your powers is in a certain situation.

NOTES

1 Lord Bingham, *The Rule of Law*, sub-rule no. 1.

One thing that plain language advising does is make our profession more open to others to engage in. And as we move more and more into a technologically enabled world, non-lawyers can access the words of the law. People can often use online information systems to find out for themselves how the law applies to their situation.

The use of artificial intelligence to draft legally sound documents or to work out what law applies to your facts is on the rise. The New Zealand Law Society newsletter pointed out in 2016 that a US law firm had "hired" a robot called ROSS—an IBM product. The firm's lawyers can ask ROSS a research question in natural language (for example, "Can a bankrupt company still conduct business?") and receive an instant answer, with citations and topical readings from legislation, case law and secondary sources. ROSS will also provide updates on any relevant changes in the law.

This may seem like a dilution of our profession's mystique and special character. But to try and cling to a special language that excludes others is a professional arrogance I don't approve of.

I don't think it's time to kill all the lawyers—we lawyers need to adapt and remain relevant. People will always need lawyers who can communicate clearly and plainly. Using technology should give an edge to our work.

I don't underestimate the challenge. Analyzing the law requires precision, and we have spent an awful lot of time learning our legal disciplines. The truly smart lawyers are those who can digest that complexity, apply our legal expertise, and then explain what we mean in plain terms.

Small changes can make a big difference

We are more persuasive if we can take the reader (whether client or judge) through a well-reasoned, easy-flowing narrative. Here are seven small changes that can make a big difference.

- Use active rather than passive language. This is how we actually speak to each other—so why passive-it up when writing a legal piece? The other benefit of active writing is that it tends to put things in the right order for best comprehension.
- Use simple words even if you know complicated ones. I'm sure it's not only lawyers who love to make things sound grand by using stuffing words. Stuffing words are things like "therein," "thereafter," "subject to," "at this point in time," "notwithstanding the fact that," and "wherefore to."
- Use short sentences.
- Don't engage in parenthetical asides—use another sentence if you have to.
- Use bridges and signposts when transitioning from one thought to another, or when bringing your analysis together into a conclusion.
- Avoid Latin phrases such as *lex causae*, *obiter dictum*, *prima facie*, *stare decisis*, *autrefois acquit*, *lex loci delicti*, *per se*, *ratio decidendi*, and *ultra vires*. Yes, they all mean something, but just say what they mean!
- Review what you've written and take the time, and discipline, to reduce it into plain language. Attributed to Mark Twain, and earlier to Blaise Pascal, the excuse that "I'm sorry I wrote you such a long letter; I didn't have time to write a short one" is a common one. Like a good chicken stock, legal writing is vastly improved by putting all the quality elements in first, and then reducing and reducing what you've written.

Recent judgments written for people to understand

I mean no disrespect to judges also to urge them to use plain language. Excellent examples already exist, which should serve as a lesson to us lawyers too.

A recent example from the Ontario Court of Justice in 2015 was *R v Armitage* 2015 ONCJ. (The Gladue principle of sentencing recognizes particular circumstances facing Aboriginal people, and the sentencing court must take account of all reasonable alternatives to imprisonment.)

NAKATSURU J:

[1] …Jesse Armitage is a troubled man of Aboriginal heritage who was sentenced by me a number of months ago. At the time I gave my decision, I said that I would draft and release a written decision. This is that decision.

[2] Before I get to this, I would like to make two short comments. First of all, I want to say something about the style of this decision. For those who have read some of my past judgments, the reader may notice a change. For Jesse Armitage, I have tried to say what I wanted to say in very plain language. I believe that this is very important for judges to do in every decision. However, judges often do not do a good job of this. I would describe myself as one of the worst sinners. As lawyers first and then judges, we get used to using words that are long and complicated. This only muddies the message we are trying to say. That message is very important when it comes to passing a sentence on an offender. That the message is clear is even more important in the Gladue courtroom.

[3] I say this because in the Gladue court at Old City Hall, accused persons who share a proud history of the first people who lived in this nation, not only have a right to be heard, but they also have a right to fully understand. Their voices are heard by the judges. And they must also know that we have heard them. I believe that the accused persons who have been in this court have had good experiences in this. This is something that they have come to appreciate. This is something they have a right to expect.

[4] I know that all accused, whether they have any Aboriginal blood or not, should have this right. Judges struggle to make sure they do. However, when judges write their decisions, they are writing for different readers, different audiences. Judges write not only for the parties before them. Judges write to other readers of the law. Lawyers. Other judges. The community.

[5] In this case, I am writing for Jesse Armitage.

And last year, in the Liverpool Family Court, Mr Justice Peter Jackson delivered a judgment about custody of four children in a British family, then aged 12, 10, 3 years old, and 10-months old. This judgment is as short as possible so that the mother and the older children could follow it. After simply narrating the facts—of the family in domestic difficulty, the children living with foster carers and the adults having various stints in prison for theft and violent offending—the judge set out the law:[2]

Children can't be taken away from their parents unless social services prove to a judge that it would be harmful for them to live at home. If children are taken away, judges will always try to return them if that is safe.

Another thing is that children are not taken away from their parents simply because the parents have lied about something. Even if they do tell lies they can still be good enough parents.

People can tell lies about some things and still tell the truth about other things.

Also, children are not taken away because parents are rude or difficult or because they have strange views, even if those views offend people. The only reason to take children away is because they need protecting from harm.

2 *Lancashire County Council v M & Ors* (Rev 1) [2016] EWFC 9 (4 February 2016).

In this case, I haven't met the children, but I have been told good things about them by their mum and their dads, and also by their teachers and by their social worker K and their Guardian M. I know that the children are loved and have been well looked after in many ways. Everyone says that the mother deserves praise for that, and praise also goes to Mr B and to Mr A when they deserve it.

And so on the judgment goes, in this simple, straightforward way, to the determination of the children's custody arrangements. In both these cases I am sure the judgment writing took considerably longer than might have been the case if the judges were only writing for other lawyers, and leaving the translating to them. The more we see judges take up the challenge of plain language judgments, the more we will see them hold us lawyers to account for the same.

This is how the 16th century Chancery Court of England dealt with a long, complex document in *Mylard v Weldon*.[3] Mr Mylard filed a 120-page document to present his case to the court. The judge thought that 16 pages would have been enough. He was imprisoned and fined £10. But, that wasn't enough of a punishment for filing a long and complicated document. The judge ordered a hole be cut in the offending document, that Mylard's head be poked through the hole, and that he be paraded around the courts of Westminster "bareheaded and barefaced," with the document hanging "written side outward." He was then sent to prison until he paid the £10 fine.

In 2008 the then Supreme Court of Ireland judge Mr Justice Nicholas Kearns wrote an article in the *Irish Times* on his thoughts about judgment writing. He was advocating the use of language and ideas that people could understand: "When writing a judgment, I see no reason why references to current events or popular culture should be seen as taboo…". He pointed to a US survey conducted to find out which popular culture artists are most often cited in courts. Bob Dylan was the clear winner. Apparently "you don't need a weatherman to know which way the wind blows" has become standard fare in Californian appellate court decisions when they decide whether expert evidence is required.

Mr Justice Kearns went on to say:

The primary functions of a judgment are threefold. In the first instance it serves to provide a resolution to the dispute raised in the proceedings before the court, where the losing party is for the judge a primary focus of concern. The judgment must set out a clearly reasoned basis for its conclusion. Secondly, the judgment establishes a binding precedent of legal authority which provides guidance for judges, the legal profession and legal scholarship generally as to how the law is to be interpreted and applied in particular circumstances. Thirdly, it also serves a communicative function which should be of benefit to society as a whole, representing as it does the transparent and openly democratic functioning of our legal system.

Accessible law makes for a better society

This third element of accessibility is sometimes forgotten. We need to remember the law of judges does three things: it determines the dispute between parties; develops the common law; and shows clearly to citizens how the open legal system works—what the law is and why it matters.

My ambition is that we move society to a point where people do know about the constitutional framework that we are all governed by. People will know how the law affects them, what their rights are, and how to hold governments and others to account. Using plain language to let people into the once-closed shop of lawyering is a powerful way to achieve this ambition. A society with empowered citizens will demand access to justice. That's a society I want to be part of building.

3 *Mylward v Weldon* [1595] EWHC Ch 1 (15 February 1595).

Plain language writ large: "Macrosimplifying" for company-wide clarity

By Charlene Haykel

Note: Anyone who wishes to reproduce this article, including the Macrosimplification Process diagram, should first get permission from both Clarity and LanguageLine Solutions or Charlene Haykel.

Technology has created a monster. Now, who's going to tame it, and how? For this communications consultant, the answer lay in a client's colossal printing bill. Her "aha" moment led to a systemic process that boosts efficiency, cuts costs and helps companies connect with *everyone*, especially the hard-to-reach.

Technology has been both a boon and a bane for large corporations. On the one hand, it enables them to generate more information for more people than ever before. On the other, it has created a monster they cannot easily tame.

There is just too much information coming at customers from too many sources today. And no one seems to be in charge of it.

- Chief Information Officers have the name, but not the game—they manage *technologies*, not the information their hardware and software systems move.
- Marketers create promotional content, but keep their distance from the fine print that freely flows *after-the-sale*—like bills, forms, notices, letters, and disclosures.
- Lawyers and compliance cops—sometimes one and the same—exert strong sway over the quality and volume of many company documents. But their goal is to make them *compliant with the rules*, not lean and clear to customers and end-users.

The questions

This fragmented and selective approach to corporate oversight of information has, essentially, gutted it. While senior managers can see some of the data inundation taking place and even appreciate its deleterious effects on customers, they lack the standing or the tools to stop it.

It's not surprising, then that, in my years of working with Fortune 1000 companies, I have seldom encountered a company whose managers could readily answer one or more of the following questions:

- Do you know how much information has been created, stored and distributed by all corporate entities in your company over the last calendar year?
- Do you know how much of this information your company has retained? Where it resides? When and how it will be purged and by whom?
- Do you know how much of this information is common to some or all departments? How much can be repurposed for other applications?
- Do you know how much of the information your company has created is core to its mission, your customers' needs, or the controller's bottom line?

The light bulb

For half of my career in marketing communications, it had never occurred to me to ask these questions. Then, a couple of decades ago, when I was working with branding colleagues to help a client implement a new corporate identity, I had a stunning "aha" moment. Our client was struggling with the enormous task of

Charlene Haykel is a writer and strategist with 25 years' experience in the marketing subspecialty known as "simplified communications." The latter is a set of disciplines focused on simplifying complex information for lay audiences. In 1997, Haykel developed a methodology for applying simplification techniques to large cross-enterprise communication systems. Macrosimplification builds leaner, more effective communications around core content.

In 2016, she joined her practice with LanguageLine Solutions, the largest language services company of its kind in the world. She directs their newest service, LanguageLine ClaritySM.

Haykel earned an MA in journalism from the University of North Carolina at Chapel Hill.

reproducing every single piece of paper—reprogramming every pixel—to ensure that their new corporate name and logo would replace the old in every published communication after the new brand's launch.

As I observed the cost and the angst involved in this task, a light bulb went off!

"That's an awful lot of paper and printing!"

"How does our client know which of their communications are *worth* reprinting?

"*Do* they know or are they simply making a colossal bet on a weak assumption?"

In that small, reflective moment, the big idea of Macrosimplification® was born.

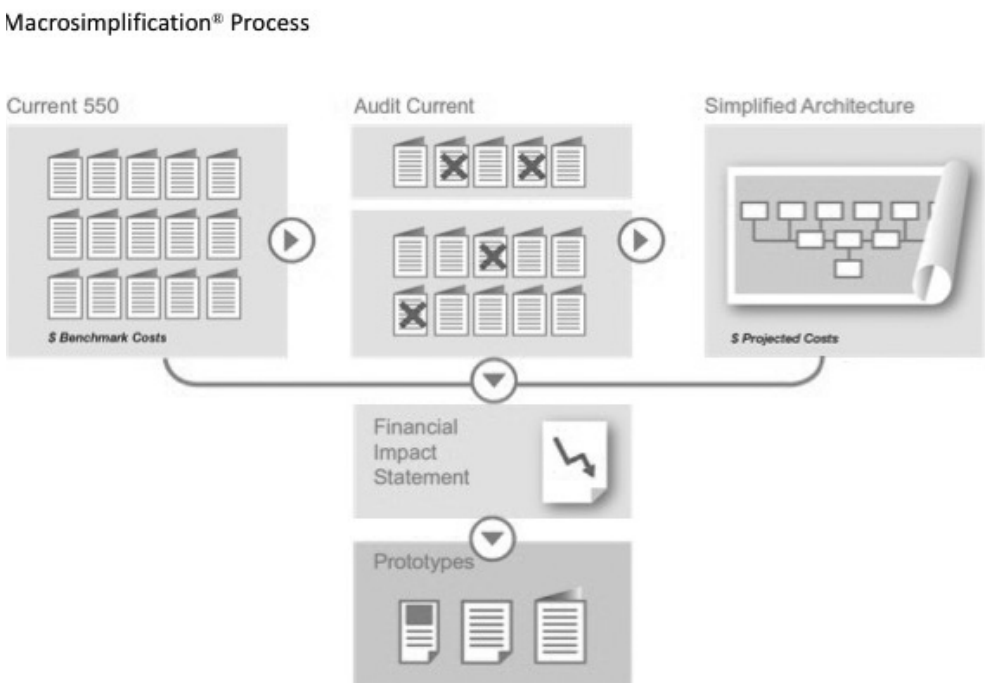
Macrosimplification® is a process that offers companies a prescribed methodology for getting their arms around the massive amount of information they produce every year. I developed and trademarked it because I saw the possibility of extending the principles and techniques of "micro" simplification—the clarification of one document at a time—to solve the intractable and costly problem of chaotic information bombardment in companies today. I had to wonder if, by extending simplification sensibilities and tactics across an organization, we could help that organization streamline and simplify entire communication systems—all forms (for example, all correspondence, all bills, statements, collateral)—rather than simply one document at a time?

The Macrosimplification® process told me "yes."

The process

Significantly, Macrosimplification® audits and inventories the information a company has created across product and division lines; it rationalizes and purges that information down to core content. Then it restyles that essential content in plain language and graphic simplicity.

Macrosimplification's® ultimate goal is to right-size corporate communications and create clear, comprehensible digital and print communications for every type of content and audience.



But how exactly does Macrosimplification® work? After auditing and purging corporate content in one or more communication systems, the process leads clients to identify and organize it within an intentional, rational architecture—a publishing plan, if you will—for digital and print communications. A media and format is prescribed for every information category and audience within the architecture.

Once the architecture is in place, Macrosimplification® practitioners translate the core content within it into *plain, understandable language* and present the new copy in *simplified layouts and designs* that are highly navigable and easy to use for any audience.

The benefits

Besides achieving extraordinary clarity, Macrosimplification® achieves other important corporate goals:

- Macrosimplification® reduces the volume of content created and retained by companies, leading to a substantial reduction in their costs for many communication processes or related services: translation, printing, storage, distribution and customer service.
- Macrosimplification® ensures that all corporate messaging is clear, regardless of the native language or educational background of any audience: this meets a company's desire to effectively reach as well as "reach out to" Limited English-Proficient (LEP) and limited-literacy audiences. Accomplishing this is especially significant in light of the increasingly diverse ethnicities, languages and educational backgrounds of American consumers.
- Macrosimplification® makes it easier and cheaper to adapt all communications, in any language, into the modalities required by the visually impaired, such as Braille, large-print type and audio recordings. This achievement is especially resonant in light of the aging population whose vision impairment will be an ever greater concern to the companies organized to serve them.

Reduced information volume, lower page counts, streamlined processes, fewer calls to service centers and intermediaries, smarter and more coordinated use of technologies—these factors contribute to cost savings of 20%–30% from most Macrosimplification® initiatives. It's the bottom-line benefit of Macrosimplification®, and the last word.

If you aspire to simplify … six tips!

1. You will do your company and your customers an enormous favor by streamlining the information you publish on products and services. When customers get exactly the information they need and nothing more, it's an experience they're likely to remember and want to repeat.
2. To give customers exactly what they need—no more, no less—you must become the patron saint of scarcity. Think "scarce," "few," "less." Less but optimum product information. Less but useful data on the company. Less but clear and essential information about services—and you'll accomplish more, more, more!
3. Excessive information is burdensome, confusing, a time guzzler, and a clear sign of poor company manners. It disrespects the customer's time and emotional bandwidth; it disregards the customers' unfamiliarity with jargon and insider catchphrases; it widens the distance between company and customer.
4. When it comes to complexity, sales and service materials are just the tip of the iceberg. Almost always, they're the outward manifestation of costly, complex processes. One of the greatest gains companies achieve when they simplify their paperwork is the uptick in process efficiency that inevitably follows.

5. With growing calls for language access by the government authorities, language simplification is no longer just a "nice-to-have." Having successfully simplified hundreds of disclosure documents, including mutual fund prospectuses, credit card member agreements and health exchange notices, I know that attorneys and compliance officers will more than tolerate plain language documents. They will embrace them as long as their requirements for legal sufficiency are respected and maintained.
6. With their information assets in disarray, most companies cannot take full advantage of available technologies to create, sort, and deliver information most efficiently. That's why Macrosimplification® always includes a review of available print, print-on-demand, and digital technologies, and makes recommendations for the most efficient mix that will meet a company's communication and efficiency goals.

You can't manage what you don't measure

John Ballingall and Judy Knighton

When you're a regulatory body in an active market, achieving your goals requires delivering reports to government, market participants, and consumers. New Zealand's Electricity Authority (Authority) needs its reports to be clear, accurate, logical, and effective.

In this article, we outline how the Authority designed and implemented a review process, using external expertise, to inform improvements in its reports. The article is drawn from a co-presentation given by the Authority, the New Zealand Institute of Economic Research (NZIER) and Write Limited (Write) at the Clarity2016 conference in Wellington.

When getting it wrong is not an option

The Authority operates in a complex environment characterized by significant regulatory decisions that affect numerous—and frequently litigious—stakeholders. These decisions affect households' power bills and firms' profits, and there are always winners and losers from regulatory change. The Authority is no stranger to controversy.

In 2013, the Authority began a project to improve the quality of its analysis and writing, using two external expert organizations to review and evaluate a selection of reports each year. NZIER studied the reports with its expertise in legislative and economic analysis. Write measured the quality of the writing.

The twin studies are now in their fifth year, complementing one another and helping to build a culture of quality in the organization.

NZIER's focus on economic logic and regulatory quality

The issues that the Authority deals with are technically and economically challenging. Reports also have to fulfil numerous legal requirements. The Authority places a premium on staff developing written reports to stakeholders that are analytically rigorous and clearly communicated.

NZIER and the Authority jointly developed a regulatory quality assessment tool that scores each written report against criteria as a series of questions:

- Does the paper meet the Authority's mandated legal and regulatory requirements, as required by its Foundation documents?
- Is the paper's cost-benefit analysis logical and robust?
- Is the paper shaped around its users' needs?

Each criterion had several sub-criteria, against which NZIER scored the paper as met, partially met, or did not meet (numerically, 1/0.5/0). NZIER used these scores, along with some professional judgment, to rate each paper on a 5-point Likert scale from "Poor" through to "Very good." NZIER provided extensive feedback on each paper. An overview report at the end of the year recommended priority work-ons for the coming year.

John Ballingall has been Deputy Chief Executive of the New Zealand Institute of Economic Research (NZIER) since November 2008. He previously worked for NZIER between 2001 and 2005, and managed the Economic Analysis team at the Ministry of Foreign Affairs and Trade from 2005 to 2008.

John advises a wide range of clients on regulatory and policy issues related to trade, agriculture, water allocation, infrastructure, tourism and transport. He also works with government agencies to improve the quality of their policy advice.

Judy Knighton is a consultant with Write Limited, Wellington, New Zealand. Judy's passion is making sure that documents meet the needs of their readers—and working with organizations to help them see how reader-friendly documents benefit the bottom line.

Judy is the lead assessor for Write on the writing quality project at the Electricity Authority, and has been part of the project from the beginning.

Judy holds a Masters in Communication, and is accredited in public relations through the Public Relations Institute of New Zealand. As a writer and editor for a broad range of government and private-sector organizations, she has applied her clear writing skills to topics as diverse as insurance, climate change, income tax, genetics, finance, local government, and health.

The Authority set itself an ambitious initial target in 2013/14 of having at least six out of eight papers scored as "Very good" and all of them scored as "Good" or better. NZIER ended up reviewing six papers, rating three as "Very good", two as "Good" and one as "Average". In 2014/15, all the papers scored "Good" or "Very good," and in 2015/16 all papers scored "Very good"—apart from one hotly debated "Average" paper!

The NZIER assessment tool and process was refined after each year to make sure we focused our attention on the Authority's emerging priorities. NZIER reviewers found their understanding of the context of each paper, and the Authority writers' subsequent acceptance of their feedback, was enhanced by more face-to-face discussions before, during and after each assessment.

Write developed a writing quality measurement tool

The Authority began the writing quality part of the project with an ambitious target and a commitment to accountability. The Authority and Write worked together to develop a measurement tool, and the results are published in the Authority's annual report. Reports can achieve one of five overall rankings, from "Very poor" to "Very good."

From the start, the Authority has published its goal in its annual Statement of Performance Expectations (a public accountability document): eight reports reviewed a year, with all to achieve at least a "Good" ranking, and six a "Very good" ranking.

The measurement tool is rigorous so that different reviewers can achieve comparable results over many different reports, and scores are weighted to give due importance to each of the many factors that go into making up an excellent report.

In every year except the first, the Authority has achieved its target, and the top scores continue to improve.

Write's experienced reviewers use a series of questions to establish the scores and therefore the ratings. These questions cover four areas:

- how clearly and logically the report states the problem or issue
- whether all relevant information is provided, including (as appropriate) the results of investigation, analysis, options and consultation and regulatory assessment
- whether conclusions are unambiguous and based on the evidence
- how clear and appropriate the language of the report is for the intended audience.

From the 2015/2016 year, Write measured the "Very good" reports in a second review, against the 13 elements of the "Electricity Authority Plain English Standard," checking the writers' compliance with that Standard.

The quality report quite properly focuses on how well the writing meets legislative responsibilities, but places less emphasis on factors that help to make reports easy to read. If the paper scores highly, an extra Write document review redresses the balance. That review provides guidance to help the Authority's writers improve their skills at making reports easy to read and easy to understand.

All five reports measured in 2015/2016 complied, or almost complied, with 9 of the 13 elements.

Measuring quality leads to better conversations

Both the Write and NZIER assessment tools aimed to quantify the attributes of a high-quality report. Both organizations found a gradual shift, over time, in attitudes from Authority staff towards these reviews.

At first, some saw the reviews as an unwelcome additional compliance task; and writers were somewhat wary of what was being reported. But as they became more comfortable with the process, and the tools were refined across years, they could see improvements in their papers and valued the independent feedback provided.

Quality writing has gradually become part of the daily conversation at the Authority, and Write and NZIER are pleased to have been part of this change.

Snapshots from the conference

Welcoming conference delegates
Joh Kirby, President, Clarity International
Welcome to the 2016 conference

Welcoming conference delegates
Lynda Harris, CEO, Write Limited
Country Host of 2016 conference, Wellington, New Zealand

Anne-Marie Chisnall, Deputy CEO, Write Limited
Lynda Harris, CEO, Write Limited thanking the sponsors

President, Clarity International with country hosts

Group in front of the Plain English Foundation poster

Andrew Pegler in front of the Andrew Pegler Media posters

Te Roopu Kapa Haka o Te Kura Waenga o Horokiwi (Newlands Intermediate Kapa Haka).
Performers from a local intermediate school (ages 10–13) entertaining the guests at the "This is New Zealand" social evening.
Kapa haka is the Māori term for performing arts (kapa = form a line; haka = dance)

Appreciating the kapa haka performance

Communicating at the "This is New Zealand" social evening

Why we're in Wellington: Clarity International—our association that promotes plain legal language

Pen clearly at the ready on day 1 of the conference

Charlene Haykel in front of the Macrosimplification® poster

Katherine Spivey in front of the Clarity2016 poster

Group in front of the Victoria Law Foundation sponsorship poster

Enjoying the New Zealand themed catering at the "This is New Zealand" social evening

Puzzling over the New Zealand-themed Kiwiana quiz

Enjoying the "This is New Zealand" social evening

Consumers need plain language more than ever—but it's time to rethink its role

Caitlin Whiteman
Before founding her plain English consultancy, Elemental Communications, Caitlin Whiteman worked across consumer policy, research and communications in Australia's competitive and fast-moving energy industry. Within the consumer sector and, later, for the Energy & Water Ombudsman (Victoria), she was deeply involved in regulatory reform processes and consumer education initiatives, focusing on issues like financial hardship, door-to-door selling, pricing and switching.

These experiences convinced Caitlin of the importance of plain language—both for empowering consumers and for influencing industry and government.

With an academic background in social research and political theory, Caitlin is interested in understanding the big ideas that shape policy, business and everyday life.

By Caitlin Whiteman

The modern plain language movement was born of the consumer rights movement of the 1970s. Today, consumers operate in a world of complexity far beyond anything that could have been imagined 40 years ago. To navigate this marketplace, it seems that consumers need plain language more than ever. But to get the most benefit from plain language, we'll need to update our understanding of its interaction with consumer behavior.

One movement births another

The modern plain language movement emerged as part of a wider consumer rights movement. In many accounts, the story opens with a plain English promissory note debuted by Citibank in 1975. Two years earlier, in 1973, Citibank had been the subject of damning 400-page report by Nader's Raiders, an investigative group led by one of history's most famous consumer advocates, Ralph Nader. In the wake of this bad PR, Citibank employee Duncan MacDonald suggested that the bank engage a consumer advocate to help it "clean house." Citibank brought in Bess Myerson, another prominent activist of the time.

Among other reforms, Myerson and MacDonald collaborated on a plain English revision of Citibank's long, complex and deceptive promissory note. This revolutionary text was released to great fanfare, garnering media coverage and praise from consumer activists. The move also paid off commercially, winning Citibank new customers and reducing the number of legal actions associated with its consumer loan contract. The success of Citibank's plain English experiment helped to inspire state and federal US regulations mandating plain English information disclosures for consumers.[1]

Plain language and the information paradigm

Plain language was a natural fit for the consumer rights movement because the two share a focus on information. Consumer welfare—the principal goal of consumer policy—has always been understood through the lens of an "information paradigm" derived from the basic assumptions of classical economics. In a perfect market, according to this theory, rational consumers make consistent decisions in their own interests, maximizing their welfare while improving market functioning by putting pressure on suppliers to lower prices and improve services. The information paradigm highlights the critical role of information in this scenario: it is the basis upon which consumers make their welfare-maximizing decisions.

This understanding of the world led naturally to a focus on the problem of information asymmetry—that is, the fact that sellers usually know far more about their products and services than consumers do. Rectifying this asymmetry has been the analytical basis for traditional consumer law and policy,[2] and, as a result, some of the most important tools of consumer policy have concerned sellers' disclosure of information to consumers. Over time, this emphasis has produced a consumer legal system "saturated" with information duties,[3] including mandatory disclosure

regulations, standard contract terms, and rules about when and how information must be provided.

Yet even in the 1970s, it was often acknowledged that merely disclosing information was not enough to improve consumer decision-making and, through it, consumer welfare. Many commentators understood intuitively that too much information could be as harmful, or even more harmful, than not enough of it. And so plain language—with its promise of actually *communicating* information, rather than merely disclosing it—came into play. With the advent of the plain language movement, consumer law came to include requirements that disclosures be made in plain language.

Plain language advocates explicitly couched their calls for such legislation within the analytical framework of the information paradigm, arguing that plain language would contribute to consumer welfare by increasing consumers' understanding of the agreements they were making, and therefore improving the quality of their decisions. For example, in 1981 Carl Felsenfeld, law professor and then-Vice President of Citibank, wrote that the ultimate goal of plain language was to "change consumer behavior," acknowledging that if plain language contracts produced the same consumer behavior as less comprehensible contracts, "one cannot be sure that the game has been worth the candle."[4]

The growing consumer challenge

Much has changed in the marketplace since Felsenfeld identified better decision-making as the object of plain language in the consumer sphere. As markets have colonized new domains, the scale of the challenge has grown. In developed countries, major industries including telecommunications, energy, financial services and transport have been opened to competition and deregulated. Competition is also working its way further into the human services, with sectors like education, health, aged care and disability services increasingly marketized. As markets expand, more of our day-to-day lives are subsumed in the consumer role.

At the same time that markets have spread, they have also grown more complex. Most obviously, products and services have proliferated. To offer just one example, a 2010 study by the UK Office of Fair Trading found that one internet comparison site was comparing more than 800,000 different phone tariffs,[5] which is a lot to get your head around. As products and services have increased in number, they have also become increasingly sophisticated and complex. On top of this, the pace of change has accelerated: new technologies, products and services hit the market and become obsolete more quickly than in the past. And finally, traditional boundaries are blurring. The line between products and services is becoming less distinct, while previously separate industries are converging. All of this manifests in phenomena such as bundling, which can make it impossible to compare apples with apples.

In sum, where people were previously accustomed to receiving or buying straightforward services, often from government agencies or regulated monopolies, today—and increasingly—they choose from among a wide range of competing firms, each offering a multitude of complex products and services with different pricing, terms and conditions. Making welfare-maximizing decisions in this environment is a formidable task, demanding careful analysis of complex, voluminous and often unfamiliar information.

Plain language to the rescue?

This growing complexity would seem to bolster the case for plain language. If Citibank's customers needed easy-to-understand information in 1975, they most certainly need it now. But just as markets have evolved, so too has our understanding of how consumers process information and make decisions within those markets. In

NOTES

1 MacDonald has written an entertaining account of these events. See D A MacDonald. 2015. 'How Miss America Changed Citibank' American Banker, at https://www.americanbanker.com/opinion/how-miss-america-changed-citibank-part-i

2 G K Hadfield, R Howse, & M J Trebilcock. (1998). 'Information-based principles for rethinking consumer protection policy' Journal of Consumer Policy 21: 134.

3 H W Micklitz, L A Reisch, & K Hagen. (2011). 'An introduction to the special issue on behavioural economics, consumer policy and the law' Journal of Consumer Policy 34: 272.

4 C Felsenfeld. (1981–82). 'The Plain English Movement in the United States' Canadian Business Law Journal, p. 420.

5 UK Office of Fair Trading cited in H C Gamper. (2012). 'How can internet comparison sites work optimally for consumers?' Journal of Consumer Policy 35: 333.

light of what we now know about consumer behavior and the cognitive psychology of plain language, our early and somewhat simplistic assumptions about the benefits of plain language can be replaced with a more nuanced understanding of its role.

THE LIMITATIONS OF DISCLOSURE

Thirty-five years ago, plain language critic David Cohen struck out at the central assumption underpinning calls for more plain language contracts: the idea "that consumers will not only receive a plain English document, but that they will also receive and process the information contained in the document and use it in the transactional process."[6] Cohen argued that the conceptual complexity of contractual information; the difficulty of inter-contract comparisons; and the fact that contracts are typically presented after the consumer has made a decision all meant that plain English contracts—while they may well be easier to understand—had little hope of changing consumer behavior.

Today, Cohen would be able to point to decades of behavioral economics research to support his claims. Behavioral economics is the relatively new branch of economics that uses the techniques of cognitive psychology to study how real-world behavior deviates from the classical economic assumptions of rational choice. Popular books like *Freakonomics* and *Nudge* have brought behavioral economics to the masses, while key figures in the discipline have been appointed to influential policy positions in the UK and US governments.

The findings of behavioral economics have seriously undermined the information paradigm and the notion that disclosure (at least as typically practiced) is a particularly effective way of improving consumer decision-making and welfare. While people have been questioning the effectiveness of disclosure for quite some time, behavioral economics has shown—with high-quality empirical evidence and a convincing account of the underlying psychological mechanisms—just how limited human information processing and decision-making really is in consumer contexts.

We now have ample evidence that consumers are not motivated to read general contract terms before signing agreements, having already psychologically committed to purchase by the time this information is provided. If they do read disclosures, their processing capacity is quite quickly overpowered by information overload. In interpreting contracts, they are affected by a range of biases, like over-optimism and self-serving bias, which lead them to wrongly interpret agreements as favorable, making decisions that don't maximize their welfare. And most of these problems—although not all and perhaps not to the same extent—can also apply to disclosures in plain language.

PLAIN LANGUAGE AS A SOURCE OF BIAS

In fact, the latest research in behavioral economics draws our attention to the intriguing likelihood that, in some circumstances, plain language *itself* might be a source of unhelpful bias in consumer decision-making. Cognitive psychologists have quite convincingly shown that many of the positive effects of plain language are the result not of improved comprehension but of a mental shortcut or cognitive bias known as "processing fluency." Readers of plain language documents are apt to make all kinds of positive judgments about a text, its content and its author, believing them to be more credible, more likeable, fairer and so on. The subconscious mechanism underlying this effect, researchers believe, is that the *experience* of easy reading is used as a clue or mental shortcut for making a range of essentially unrelated judgments.

6 D S Cohen (1981–82) 'Comment on the plain English movement' Canadian Business Law Journal, p. 436.

While this unfair advantage is a great selling point for plain language consultants, it's also easy to see how it might be exploited to the detriment of consumers. One Dutch study, published in 2016, examined this intersection between plain language and consumer behavior.[7] Experiment participants were given a car insurance contract, either in its original complex wording or its plain language revision. Both were real-life documents and the terms of both were the same. The participants were asked to imagine a particular claims scenario, and to say how much of the claimed damage they thought the insurer would accept. The researchers found that even though the contract terms didn't provide a clear answer to the question, participants who read the plain language version interpreted the terms more favorably, and expected more of the damage to be compensated.

This finding suggests that plain language might build consumer trust and liking *independent* of whether it improves understanding and of how suitable a product or service really is for a consumer's circumstances. It hints at the disturbing possibility that some plain language documents, instead of enabling better consumer decision-making, might bias it in ways that decrease rather than enhance welfare, for example, by convincing them that an insurance policy is more favorable than it actually is. Writing a document in plain language "doesn't make its contents true, reasonable, ethical, fair, or in any other way worth reading"[8]—but it might make it look that way.[9]

A new focus for plain language: consumer education

But all is not lost for consumers and plain language. For all the acknowledged limitations of disclosure, few would argue that it can or should be discarded. Today, armed with an improved understanding of consumer decision-making behavior, we can think more practically and creatively about how and when information might be presented to enhance consumer decisions.

Efforts to make disclosure more effective show some promising developments. The Insurance Council of Australia, for example, recently concluded an in-depth review of the evidence on disclosure effectiveness, and committed to commissioning research to trial new and innovative disclosure tools and techniques.[10] In the United States, Dr Susan Kleimann's work on financial privacy notices illustrates the benefits of a research-based approach to developing disclosures that consumers will "pay attention to, understand and use in their decision making."[11]

While such efforts should continue, I also think that plain language practitioners would do well to focus more of their attention on the groundwork of helping consumers to make sense of and navigate the 21st century maze of markets. Imparting this kind of general navigation ability is largely the realm of consumer education, which is typically undertaken by governments and consumer organizations rather than individual firms. While these bodies usually appreciate the importance of plain language, they don't always have the skills internally to put it into practice.

From my observation within the consumer movement and from the outside as a plain language consultant, I see four key tasks where the plain language mindset and technical skills are greatly needed.

7 W H Van Boom, P Desmet, & M Van Dam. (2016). '"If it's easy to read, it's easy to claim"—The effect of the readability of insurance contracts on consumer expectations and conflict behaviour', Journal of Consumer Policy 39: 187–197.

8 M Cutts. (2013). Oxford Guide to Plain English, Oxford: Oxford University Press, p. xiii.

9 Accounts of the early days of the modern plain English movement sometimes gloss over the fact that while rewriting Citibank's promissory note in plain English, MacDonald and Myerson also stripped out a host of unfair contract terms, improving it substantively as well as cosmetically. Ideally all plain language contracts would get a similar treatment!

10 Insurance Council of Australia. (2015). Too Long; Didn't Read: Enhancing General Insurance Disclosure—Report of the Effective Disclosure Taskforce to Insurance Council Board, p. 33.

11 L Garrison, M Hastak, J M Hogarth, S Kleimann, & and A S Levy. (2012). 'Designing evidence-based disclosures: A case study of financial privacy notices' The Journal of Consumer Affairs 46(2): 204–234.

1. ORIENTING

Firstly, plain language practitioners can help consumers to orient themselves. Consumers need help to get their bearings in complex markets, particularly new ones. They need a map that helps them to make sense of the whole, rather than only a detailed description of one part of the terrain. To develop this map, we need to go beyond plain words and draw on our more sophisticated conceptual skills to structure information effectively.

Implementing education campaigns that include this orienting knowledge can also be difficult politically. When funding consumer education initiatives, governments are often keen to sell a particular policy change rather than help consumers to place it in context. A few years ago I worked with an organization that was engaged by government to run a consumer education program to explain a major change in electricity pricing policy to vulnerable, low-income consumers. The reform itself was complex: it had an obscure economic rationale; it manifested in a messy, complicated set of rules; and no one knew how the reform would actually play out in practice.

The funding for the consumer education program came from the communications budget associated with the policy change, so government wanted to limit the campaign to that specific reform. But we knew that consumers couldn't understand a complex pricing issue before grasping the basics of how the energy system worked. We had to push hard for a campaign that included this orienting background.

2. CONNECTING

The second key task is to connect this information to consumers' actual concerns. Unless consumers can see why information is relevant to things they care about, they have little reason to engage with it—no matter how simply it is expressed. Fortunately, the plain language practitioners' mindset of radical reader empathy motivates us to craft documents that connect consumer information to consumers' interests and goals.

Often, connecting with consumers means disconnecting from the policy rationale that made sense to bureaucrats. And since they're usually holding the purse-strings, this can be a delicate task. It means giving strategic communications advice, rather than limiting ourselves to the technical work of translating facts into plain language.

I recently worked on plain language consumer materials explaining competition reforms in Australia's aged care sector. For policymakers, a natural way to explain and justify these reforms was to invoke choice, emphasizing the decisions that would now fall within the consumer's control.

But this probably wouldn't have gone down well with the audience. The weight of market and consumer research tells us that older people aren't very motivated to exercise consumer choice: across a range of markets and for many reasons, they tend to shop around less than younger people. On top of this, the growth of brokerage and similar consulting services in Australia's aged care market was a clear sign that older people were finding all the new choices they had to make overwhelming and confusing, rather than empowering. Instead of falling back on the policy discourse, I had to speak with on-the-ground service workers to find out what aged care consumers really valued, and how that related to the policy change.

3. FILTERING

The third key task is to filter the noise from the signal. The French Enlightenment philosopher Denis Diderot observed more than two centuries ago that, with continual growth in the number of books, a time would come when learning from books would be no easier than learning from the direct study of the whole universe. While we haven't quite reached that point, many observers do think that humanity is on the cusp of a transition from linear to exponential growth in knowledge. As information proliferates, the functions of sorting, filtering and transforming it into a usable form become more critical.

In the consumer realm, the hard limits on how much people can and will take in mean that we can't fully explain complex markets, products and services. Some details simply need to be left out. Plain language practitioners can help with the tasks of sorting the most from the least useful facts, and using document design to foreground the most critical information. Working with experts who understand a given market, we can push for information that gives consumers practical advice on the easiest ways to make better decisions (in the language of behavioral economics, to satisfice well), rather than developing documents that overwhelm with detail in a futile effort to promote perfect decision-making.

4. COMPARING

Finally, and perhaps most importantly, plain language can help with the task of comparison. The overwhelming complexity of modern markets makes comparing products and services immensely difficult. In many cases, a rational calculation—if it's possible at all—means applying complex algorithms to huge sets of product or service data. Governments and others have worked on digital tools that support comparison and decision-making. These enormously complex tools again need input from plain language practitioners and other user-experience professionals if they are to be intuitive and usable at the front end.

The world in the 21st century is incredibly complicated and cognitively demanding, and consumers are more in need of decision-making help than ever. This means that the skills of cutting through noise with simplicity and relevance have never been more important. But to have the biggest impact, we need to have a realistic picture of what plain language can achieve, and direct our skills to where they're needed most.

Beyond all reasonable doubt: the brand advantages of plain English contracts

Andrew Pegler is an award-winning plain English editor and writer who formed Andrew Pegler Media in Phraran, Victoria, Australia (www.andrewpeglermedia.com.au) in 2000 in the belief that everyone should have access to easy-to-understand, concise information. He calls this "plain English," and is a loud and proud enemy of gobbledegook, officialese, legalese, and bureaucratese. His plain English clients include the Australian Prime Minister's Department, CGU Insurance, Sustainability Victoria, National Australia Bank, and Rio Tinto.

Andrew is an accomplished speaker and plain English trainer. His lively presentations are enjoyed by governments, corporations, and academic institutions. He appears on Australian radio and television as a commentator on current affairs, writes opinion for Melbourne's *The Age* newspaper and has written two works of fiction. He has been a speechwriter for Victorian premiers and ministers, and was editor of the *Monash Business Review* for three years. He also wrote and taught an introduction to advertising course at Monash University.

By Andrew Pegler

When we meet a stranger, we ask ourselves one fundamental question: "Are you friend or foe?" Everything we do follows from that decision. The same goes for what we read. When language is obscure, it promotes doubt. Doubt leads to hesitation and fear of engagement. In other words, if you're selling something or offering a service, don't open the relationship in a way that creates suspicion.

An act of God?

Rightly or wrongly, the public regard the insurance, banking, legal and financial services industries with suspicion. This is the result of many years of—in the view of some—obfuscatory product contracts that lead to misunderstandings or misplaced expectations. The impact of these essays in obfuscation was highlighted after the 2010–2011 floods in Queensland, Australia, which covered an area the size of Germany. A flood is known in our business as "an act of God." Legal obscurantists call it a *force majeure*.

Swathes of devastated home owners had their claims rejected due to the fine print in their product contract. That fine print distinguished between what was an "act of God" (a flash flood), a riverine flood (a river that broke its banks) or an "act of Mammon" (blocked stormwater drains). The consequences of this lack of clarity caused a huge uproar across the nation, inflicting a trust deficit on the insurance industry that it's still reeling from.

The same problem faced many victims of Australia's "Black Saturday" bushfires in 2009. Houses on one side of the street were covered by insurance; houses on the other were not. The devil lay in the fine print.

Then we have banking contracts that impose unexpected penalties, fees or risks that might see your house being sold from under you. Or what many perceive as the "hidden costs" of putting your life savings in a managed fund.

Lack of clarity creates a vacuum, and into this void steps mistrust and wariness. Banks, insurance companies and financial planners now realize that if they wish to conduct business in a way that benefits everyone, they must be more transparent in how they provide services. So they spend multiple millions on advertising, attempting to reassure the public that they are worthy of trust. Specific examples are that:

- you can trust them with your life savings
- you can trust them to help when a 100km gust knocks a tree through your roof
- you can trust them to get you the best yield for your retirement nest egg with minimum risk.

However, spending millions to amplify the message that an organization is trustworthy is unlikely to commit that organization to genuine change and, unsurprisingly, the public has become more circumspect.

The precarious relationship between suspicion and trust

For the public to feel confident, nothing must make them suspicious. Trust is fleeting. Very fleeting. And the relationship between suspicion and trust is highly precarious. In fact, suspicion hangs like the sword of Damocles over trust.

Indulge me.

One day a bloke called Damocles exclaimed to his king that he was truly fortunate to enjoy such power and authority and be surrounded by such opulence. The king offered to switch places with Damocles, and Damocles quickly accepted.

But there was a kicker. As Damocles sat in the king's throne surrounded by luxury and power, he saw that the king had arranged for a huge sword to hang above him. It was attached to the roof by a single horse's hair. Damocles soon wanted out, finally realizing that with great fortune and power comes great danger.

This myth shows the perilous nature of things. Like the sword of Damocles, suspicion is constantly hanging over trust—ready at any moment to put trust to death. Suspicion is trust's kryptonite. Its nemesis. Its Lex Luther. A precarious relationship indeed.

Yet without doubt, trust is about the most valuable brand asset any bank, insurer, law firm or financial planner can own.

Enter plain English

Large investment by organizations in advertising their trustworthiness is not working. Why would it? People need something tangible to truly feel comfortable depending on their service providers. One of the best ways to create real trust is by using plain English. Free from embellishments, obfuscations and artifice, plain English can play a unique role in building trust in your brand; eliminating the mortal threat posed by suspicion.

Does anyone really think Joe/Joanne public knows that *force majeure* means unavoidable events? Other old-fashioned words such as "aforementioned" and "thereto" are also traditionally used in legal drafting. They can, and should, be avoided.

I think Elvis put it best in his 1969 song, "Suspicious Minds:"

We can't go on together
With suspicious minds (suspicious minds)
And we can't build our dreams
On suspicious minds.

Brands should talk to their audience in ways they understand and can act upon with confidence. This is called plain English. Put simply—or, dare I say it, "plainly"—plain English is writing something in a way that gives someone a good chance of understanding it at the first reading. And in the way that you want them to. It's clear, direct writing, using as few words as you need; avoiding ambiguity, verbiage and complex sentences. In other words, plain English is short, simple and human. Insurers, bankers, financial service providers and lawyers who recognize the advantages of plain English are on the front foot in differentiating themselves from competitors.

The matter of ethics also comes into play. It is a fundamental requirement that a legal contract is easily understood—not only by the lawyers who have prepared it, but by those who will be bound by its terms. The use of unclear or overly "fancy" language just leads to confusion about exactly what the parties' obligations are. In

some cases, this uncertainty leads to court proceedings—which lead in turn to even more complicated language!

Right now, any company that uses plain English in its products has a jump on its competitors as, surprisingly, few are using it this way. The opportunity to shore up the elusive and highly valued brand asset of trust is very real. The marketing case for plain English is self-evident. Plain English will go a long way towards putting everyone beyond all reasonable doubt. Beyond the brand dangers of consumer suspicion.

Let me demonstrate the above approach with three examples of my company's recent work.

THREE EXAMPLES OF PLAIN ENGLISH

Before: We agree to provide the Cover described in this Policy upon full payment of the gross premium as stated in the Schedule. If full payment of the gross premium as stated in the Schedule is not made, there is no Cover. Therefore the individual applying for the Cover is not covered.

After: Once you've paid the gross premium in the Schedule you're covered.

Before: We refer to your Group Salary Continuance (GSC) Plan claim. We wish to advise you of the following important information that relates to you. We note, as per the policy document, that your claim has been finalized. Please take this as your claim being finalized.

After: Congratulations. We've finalized your Group Salary Continuance (GSC) Plan claim.

Before: Please take this communication as confirmation that we have received your request to cancel your policy and confirm that your policy has now been cancelled.

After: As requested, we've cancelled your policy.

Companies have the ability to speak more plainly, to be more accessible to customers and, ultimately, to build the all-important sense of trust in their brand.

Speaking with elegance may not be within the power of us all; but simplicity and straightforwardness are. This is why brands should try to write as people speak—that is, in a plain, straightforward way. In plain English.

So, don't miss this valuable opportunity. As Thomas Edison once observed, "Opportunity is missed by most people because it is dressed in overalls and looks like work."

Blog post about the conference: 10 rules to writing clear legal language

By Meredith Thatcher

Meredith Thatcher, consultant at Write Limited, wrote this blog post posted to the Write website on 30 November 2016: https://write.co.nz/10-rules-to-writing-clear-legal-language/

Why is English so complex?

The Honourable Michael Kirby gave some explanations for why the English language is so complex. One explanation is its dual nature. As Kirby notes:

The basic explanation is the dual character of the English language. We speak as our Anglo-Saxon ancestors did—in a Germanic tongue. But we write as the clerks to the Norman Kings wrote—in a Franco-Latin way. This difference between the "language of the kitchen" and the language of the office or courthouse lies at the heart of the often needless complexity of official English.

Then he explored efforts to inject greater clarity into the notoriously troublesome area of legal prose. Examples include legislative texts and the language of judicial reasons.

What 10 rules can lawyers use to write simply and clearly?

Kirby believes that getting lawyers to write simply and clearly involves observing 10 rules.

1. Begin complex documents with a summary.
2. Use plenty of full stops.
3. Pay attention to layout and headings. Use lots of subheadings and white space.
4. Use vertical lists to separate important points.
5. Start the second sentence with a reprise of the end of the first sentence. Use sentences of short-to-medium length.
6. Use linking words.
7. Prefer the active voice to the passive voice.
8. Use verb phrases rather than noun phrases.
9. Prefer Germanic "words of the kitchen" to French "words of the court."
10. Delete unnecessary words.

Kirby believes these 10 rules should be taught in legal offices, in lecture rooms at law schools, and in government departments.

The challenge to write legal language clearly is urgent and important. After all, as Kirby notes, we don't want to be "stuck for centuries with obscure precedents immortalised by computer technology."

The blog post is about the session that the **Honourable Michael Kirby AC CMG**, of New South Wales, Australia presented to the 2016 Clarity International conference on 4 November 2016.

Kirby, one of the conference's keynote speakers, is the Patron of Clarity International. He was a Justice of the High Court of Australia between 1996 and 2009, President of the NSW Court of Appeal between 1984 and 1996, a Judge of the Federal Court of Australia in 1983 and 1984, Chairman Of the Australian Law Reform Commission between 1975 and 1984, and a Fellow of the New Zealand Legal Research Foundation in 1984.

The title of his keynote was *Clarity in legal language in English: Is it possible?*

Review of *Legal Usage: A Modern Style Guide*, by Peter Butt

Joseph Kimble,
Joseph Kimble is a distinguished professor emeritus at WMU–Cooley Law School. He now provides seminars for legal and business organizations. (See kimblewritingseminars.com.) He has written two books—Lifting the Fog of Legalese and Writing for Dollars, Writing to Please—along with many articles. He is senior editor of The Scribes Journal of Legal Writing and the longtime editor of the "Plain Language" column in the Michigan Bar Journal. Since 1999, he has been a drafting consultant on all U.S. federal court rules. He has received several national and international awards, including a 2007 award from PLAIN for his leadership in the field.
And he is a former president of Clarity.

By Joseph Kimble

In a word, this book is superb. In additional words, it is thoroughly researched, impressive in the range of sources cited, eminently practical, clearly written, and (yes) great fun to read.

Peter Butt, an emeritus professor of law at the University of Sydney, is probably the leading Australian authority on land law. And he just happens to be a leading international authority on drafting, having written *Modern Legal Drafting* (now in its third edition). He's also — full disclosure — a friend.

The book covers three broad areas: (1) legal concepts (such as ambiguity, definitions, and terms of art); (2) practical usage (such as cross-referencing, document design, and punctuation); and (3) words and phrases (by the hundreds). Throughout, the reader is drawn in by the clean, open design and the informative, well-differentiated headings and subheadings. The book is a visual delight, full of charts, lists, bullets, and side-by-side before-and-after examples.

In his Preface, Professor Butt makes no bones about his writing and drafting preferences:

> *My usage recommendations unashamedly endorse plain English — not to dumb down communication but to elevate it, not to discourage elegance but to enhance it, not to deaden writing but to enliven it.*

So it is that the book repeatedly offers plain-language alternatives to archaic or confusing terms: not *give, devise, and bequeath*, but *give*; not *joint and several*, but *together and separately* or *together and individually*. Yet the author is careful: after distinguishing between *rescind* and *terminate*, he cautions that using the word *end* "may sacrifice precision."

The breadth of international scholarship — in cases, books, and journals — is exceptional. He draws on sources throughout the English-speaking world, although (as he acknowledges) he rarely cites U.S. cases. So why should U.S. lawyers get the book? Because I'm betting that nearly all the usage advice applies to U.S. lawyers as well. Certainly that's true for the advice on drafting style.

Many of the entries are followed by juicy suggestions for "Further Reading." (Or, as the author would punctuate it according to British style, 'juicy suggestions for "Further Reading".') And plain-language advocates will be pleased that those suggestions often include articles in *The Clarity Journal, The Scribes Journal of Legal Writing, The Loophole* (from the Commonwealth Association of Legislative Counsel), and the Plain Language column in the *Michigan Bar Journal*.

Among the book's special pleasures are the mini-essays on drafting. For instance, here are the headings and subheadings for the entry "Recitals":

Nature of recitals

Terminology of recitals

Whereas

Recital 'of/to' this agreement

Definitions in recitals

Uses of recitals

To provide an easy way into the document

To help interpret the document

To set up an estoppel

To pass title by 'feeding the estoppel'

To obtain statutory presumption of truth of statement

To preserve a party's rights

To facilitate the implication of terms

Abuses of recitals

Recitals containing substantive obligations

Recitals and notice

Recitals and supplemental instruments

This entry covers four pages. It should give you an idea of the wealth of information and advice that the book contains.

Another mini-essay, under the entry "Document Organisation," is one of several that emphasize the importance of attending not just to sentences and words in drafting, but also to how the ideas are organized:

Order of Provisions

Front-loaded structure: key concepts before subsidiary concepts

Example: front-loaded structure

Topic-based structure: material organized by subject area

Example: topic-based structure

Chronological structure: mirror the steps in the transaction

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Usefulness

Grouping topics in table

[with extended side-by-side comparison]

And to get an idea of the crisp, lively writing style, consider these few examples:

- (under **cease and desist**): "A lawyer's pairing, meaning no more than 'stop'."
- (under **CONTRACTIONS**): "Contractions can be used in legal documents, as in normal prose, as long as they do not create ambiguity. The only barrier to their use is the legal drafter's ingrained reluctance to appear conversational."
- (under **shall/must**): "*Shall* has had its day."

A footnote to the last example: despite the author's opposition to *shall*, in the "Further Reading" after the entry, he cites 19 sources under three headings — "On *shall* generally"; "On abolishing *shall* completely"; and "On retaining *shall* for actions that carry consequences for a breach." Professor Butt consistently shows judgment, recognizes possible exceptions and distinctions, and acknowledges contrary arguments. He is a thoughtful, knowledgeable arbiter.

As any reviewer might, I have a quibble or two. For my taste, a few too many sentences start with *However*. Also, I'm not a fan of the tendency in Commonwealth drafting — reflected in some of the examples — to make each clause (or subpart) a single sentence, although Professor Butt acknowledges that there is no "rule" requiring it. But these are minor quibbles indeed.

Legal Usage is a work of remarkable scholarship, judicious in its recommendations and compellingly readable. Buy it, enjoy it, and learn from it.

The aim of Clarity — the organization — is "the use of good, clear language by the legal profession." With that in mind, what path would you like to see the journal take? Do you have an article you would like published? Can you recommend authors or potential guest editors? No organization or publication can survive for long if its members (or readers) are not gaining something of value. How can Clarity help you? Please contact editor-in-chief Julie Clement at *clementj@cooley.edu* with your suggestions and other comments.

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Plain Language in Modern Times

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