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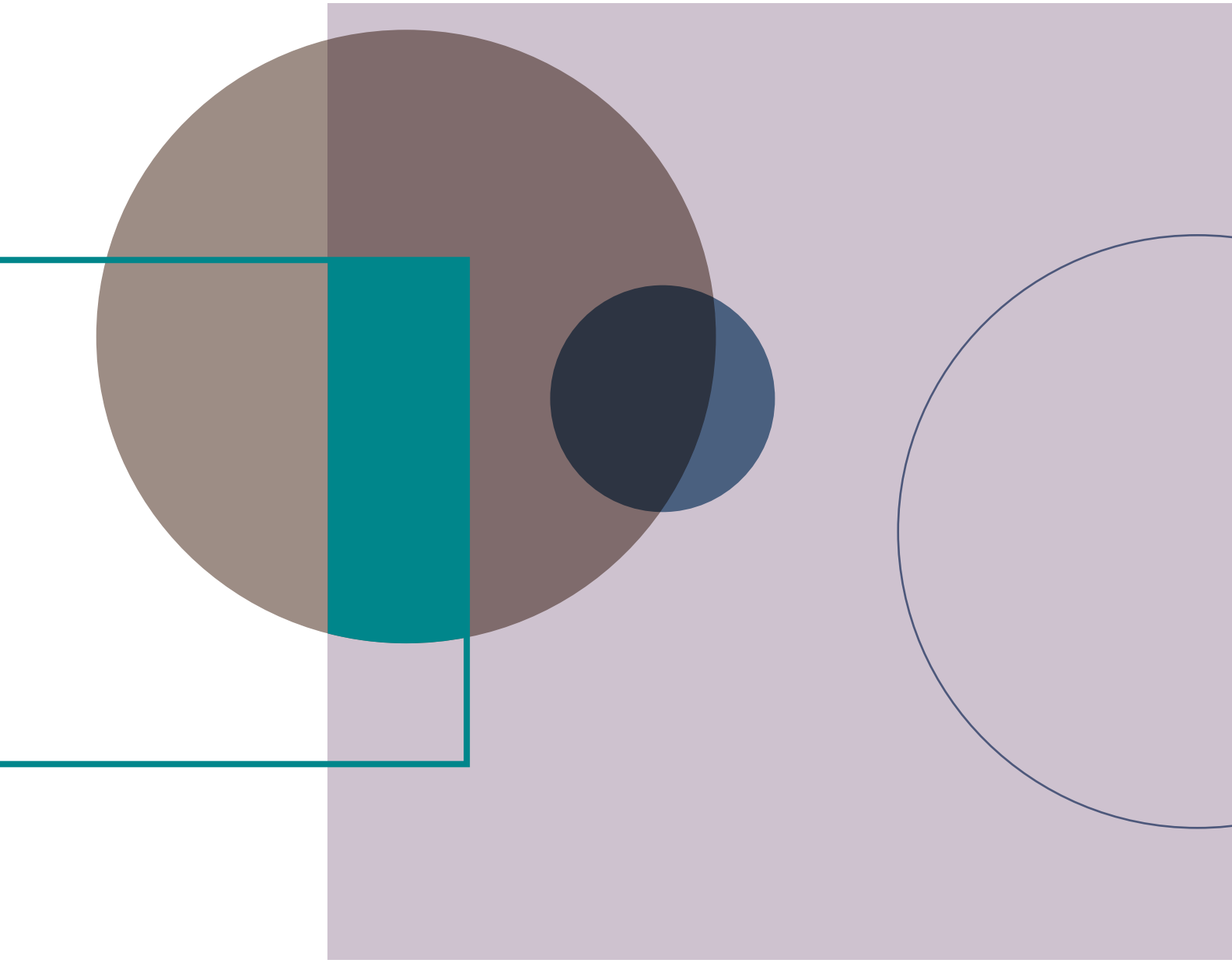

clarity

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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

Sharing control of conflict: a proposal for transformation through plain language

Sarah McCoubrey is a lawyer and an educator based in Toronto, Canada, and the founder of CALI-BRATE providing expertise as a strategist on access to justice issues. Sarah works with small and large organizations in the legal and community sectors to bridge the gaps in understanding, participation and expectation between the justice system and its users. Her focus on collaborative approaches and systems change has led to involvement in complex problem-solving and new ways of engaging the public in justice reform.

Sarah has over 20 years of experience as a staff member, a volunteer, and a board member in the access to justice, legal and non-profit community. She has been active in access to justice projects internationally, nationally and locally. She received her law degree from UVic, and her Masters of Education at the Ontario Institute for Studies in Education. Sarah was in private practice at Shibley Righton, LLP, focusing on education law and the legal issues facing the school system.

By Sarah McCoubrey

Advocates of plain language focus on people's understanding of legal, health, financial and other complex issues. Definitions of clear legal writing focus emphasize the *reader* and, implicit in that, a relationship with the *writer*. The writer is the expert who gets to decide what the reader needs to know, and controls the information people have access to. Instead of just trying to make legal information and options easy to understand, we could use plain language to give back the fundamental control over conflicts. This proposal imagines using clear language to reshape society.

The legal profession has long held itself out as a profession committed to serving the public good. Expectations of *pro bono* work, important social justice advocacy, and support for legal and institutional reform are celebrated, instilled in law schools, and profiled on lawyers' websites. Yet, in spite of these laudable efforts, as lawyers we could do one fundamental act to transform people's lives: we could return control of their conflicts.

Conflict in daily life

Living, as I do, in a big, multicultural, dynamic city, I am surrounded by people with different ideas about how to live. My neighbors, co-workers, fellow voters, and taxpayers have dramatically different assumptions about the *right* way to live, whether because of how we make our living, the kinds of families we have, the independent or collective ways we make decisions, our faiths, or our politics. We don't just disagree when we are in a formal legal conflict. We also disagree on the time we go to sleep, the price to pay for a service, the amount of noise that is acceptable, the speed we drive at, the maintenance of our yards, the kind of books we read, how we prepare our food, and what we should wear. In fact, we have more points of potential conflict with the people who share the subway or the sidewalk than we have points of connection. Conflict with other people is a predictable part of daily life. Despite this reality, most people disassociate from conflict. People ignore or hide from issues and lack the basic comfort to have constructive conversations about all of those differences.[1]

The disassociation of people from their conflicts results from a range of factors. The history of lawyers and common law decisions is premised on having an expert advocate available to argue your case in court. As we see more and more self-representation, as well as an increasing engagement of people in complex decisions such as healthcare and financial decisions, the expectations of direct understanding and ability to manage a legal issue are changing. However, the system is still structured for experts interpreting case law and legislation that requires specialized training to understand.

Acknowledging the legal aspect of everyday life and building legal capability to deal with early aspects of conflict has been a recent push of governments, non-profits and plain language proponents. These efforts often focus on the substantive areas

or procedural types of legal conflicts that we often see in the legal system, not on the ways people describe conflict in their lives.

A truly transformative approach to conflict would be to change the way people talk about conflict, with language at the heart of that transformation. What if, instead of just trying to make legal information and options easy to understand, we used plain language—language that people understand and which puts them at the center of their own disputes—to give back fundamental control over conflicts?[2]

As social life has become more diverse and more complex, people build up homogenous enclaves within diverse communities. It's possible to spend much of your time with people who share your values. People can live, work and socialize with others who share experiences and values. This reinforces a belief that everyone shares our views, which can make opposing perspectives a surprise or even a threat to our values.

We've learned to separate conflict from our sense of self and the way we interact in the world. When a conflict does arise, we're out of the habit of discussing it or asking for help. People ignore their mail, avoid a difficult person or hope that a conflict will go away, rather than seek assistance. In contrast to how people approach health problems, another area of predicable, manageable issues, most people do not have a preventive relationship with a legal professional. They do not know the basic language or systems for dispute resolution in the same way they know about the basic components of their health. And, most significantly, many people have a debilitating level of shame or embarrassment when asking for help on legal issues.[3] Many people see a discrepancy between their self-image as a good, kind, reasonable person and the conflicts in their lives. This discrepancy creates anxiety.

Accepting that conflict is normal, that not all issues need resolving, and that the existence of conflict (or the difficulty in resolving it) is not a measure of a person's competence or worth, would transform the way people interact with others and with the legal system. There is room to both manage the minor conflicts through healthy dialogue and to know how and when to ask for help on legal conflicts to take advantage of cheaper, simpler or calmer avenues of resolution.

So what can lawyers do?

Lawyers can learn from the transformation of the relationship between patient and doctor to see the potential of new relationship with clients. Patients expect to understand their health options, know that their actions can prevent or create health issues, and know how to find health information from a range of sources—some reliable; others not. The relationship with a doctor is no longer premised on the blind deference to authority, but on trust, built and maintained through a patient-centered practice model.[4]

The financial sector has also seen a shift in its relationship with clients because of a change in the service expectations. People expect to understand financial options, manage their money and be in control of each step, on their own time, on the device they choose. People make basic financial decisions, but also know when they need expert help.

The legal context has elements of both examples—the crisis-based nature of healthcare, with options for preventive avoidance of legal conflict, combined with the service expectations, the complexity and the uncertainty of the financial sector. I expect to understand how my body works or where my money is. And yet, in comparison, a simple disagreement about paying what is owed, the upkeep of a rental apartment, or the payment of a cell phone bill, can give people such fear that they avoid their legal issues, ignore notices and resent the need for help.

She spent 10 years as the Ontario Justice Education Network's Executive Director, combining her interests in law and education.

The title of her keynote was *Can plain language change our approach to conflict?*

NOTES

1 Canadian Bar Association, Equal Justice: Rebalancing the Scales, November 2013, pp. 15–20. Retrieved November 2016 from www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf

2 J Furlong. (2009). "This is not the end of lawyers... but...", 12 News and Views on Civil Justice Reform 6. Retrieved November 2016 from http://cfcj-fcjc.org/sites/default/files/docs/2009/newsviews12-en.pdf

3 Canadian Bar Association, Equal Justice: Rebalancing the Scales, November 2013, p. 50. Retrieved November 2016 from www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf

4 L M Brown, 'Preventive Law and Public Relations: Improving the Legal Health of America', American Bar Association Journal 39(7), July 1953: 557.

Lawyers are in a position to transform this dynamic. The way we talk about legal problems can return control by giving people the language, skills and confidence to re-center conflicts in their own lives.

Consider the basic language of a civil legal dispute: *plaintiff*s and *respondent*s make *application*s and *claim*s, looking for *remedie*s, *disposition*s, *costs award*s. These terms focus on the paper, the forms, and the orders that start and end the legal conflict. Contrast this with ways people talk about dealing with each other. We *look someone in the eye* or rely on a *handshake*. We describe our interactions with the people at the center. In the legal system's description of conflict, it is hard for most people to see themselves and their interests anywhere in the process.

The exclusion of the individual can be even more extreme as the file progresses. The lawyer's tools of expertise, interpretation, and strategy are tools to be applied to their client's problem. The conflict, the decisions and the results remain theirs. Yet even our casual language reveals the sense of ownership and control that lawyers assert over people's conflicts: it becomes the lawyer's file, win or loss. When someone arrives at a lawyer's office with a civil matter, they often hand over relevant documents, agree to a retainer and wait patiently for updates, notification of court dates or calls to attend a lawyer's office to be informed of the strategy or next step. In between these moments, all of which are instigated by the lawyers or the court, the person wonders what is happening.[5] People are often told not to engage with anyone else involved in the dispute and to let their lawyer speak for them. This sound legal advice does not address the ongoing emotional, practical and relational impact of conflicts. People do not stop worrying about their conflicts just because an expert is working on it. Yet we give people very little assistance on how to manage the impact of the conflict on the rest of their life while the formal resolution process is under way.

What if we apply plain language expertise to re-center the individual to the middle of the issue and use language that connects to the immediate and ongoing steps that the individual will have to take while their legal conflict progresses? What if the language we used when we helped people with an existing legal conflict helped them to understand their role, their options and their ability to anticipate and prevent the next conflict? Or helped them to accept the conflict? What if it started to shift how people talk to each other?

Sharing control of a legal issue

If we, as a profession and as a system, saw our role as transforming how people understand conflict, as well as assisting with the specific legal conflict that brought a client to the office, we could start by sharing control of the conflict. We could position the legal understanding of the issues as just one of the ways of approaching the issue. We could share more of what we know about the process, the length of time, the possible results, and the limits of legal remedies. We could discuss the range of consequences that matter to the person—the priority they put on different aspects of the issue. Is the emotional resolution or the financial resolution most important? How often will people interact with each other? What else is happening in their lives? We could discuss a realistic assessment of the toll of the legal process on a client's mental health, sense of security, finances or loved ones. We could talk about when to start the legal process. Perhaps a legal resolution should wait until someone has stabilized a health or employment issue. Perhaps other supports could be put in place first. These conversations would be client-centered, not legally-centered, and would leave room for other kinds of professional or personal expertise to be factored into decisions.

5 Canadian Forum on Civil Justice. (2016). Everyday Legal Problems and the Cost of Justice in Canada: Overview Report; retrieved November 2016 from www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf.; The Action Group on Access to Justice.(2016). Architects of Justice surveying data, 2015–16.

Moving from a reactive approach to client's problems to a preventive legal practice model requires lawyers to shift the way they are involved in people's lives.[6] The professional inclination may be to identify a legal issue and find analytical options for advancing individual interests. However, human problems are messy. In addition to rights or entitlements, conflicts are full of people with short-term or long-term relationships, expectations of the future, and demands on people's time and attention. In the face of the complexity of the conflict and the impact it might have on these relationships, the legal remedy may not be the highest priority. Framing the issue as a legal problem and asserting control of its resolution may not respond to the part of the conflict that matters most or matters first.

Once a conflict has been framed as a legal dispute, both the options and the remedies are primarily legal, no matter the client's priority. Clear information about the advantages and disadvantages of a legal approach to a conflict is necessary before someone can make an informed choice about the road ahead.

Every time a lawyer talks to a client is an opportunity to ask about their legal health. Just as doctors inquire offhandedly about someone's sleep patterns or their cholesterol, a lawyer can ask about a client's will or their understanding of their employment contract. Promoting legal health by encouraging ongoing, preventive discussions about common legal issues cultivates the trusting relationship and eliminates some of the shame of needing legal help or intimidation in asking for help.

Listening to how people describe their legal issues, especially how they describe them to someone in their own life, reveals the terms, the interests, and the emphasis they put on the conflict. Lawyers work hard for their clients, employing all their expertise and experience to each issue; yet they may not be responding to the priorities of each client. When the diligent, well-intentioned work is mismatched to how someone understands the conflict, clients will become dissatisfied, complain about legal services, and be frustrated with the legal system.

Having new conversations

Law is a profession that aims for certainty and values precision. That aim often stops us from engaging in the broader culture change around conflict. Admitting that transformation is needed, and joining in the reform efforts as they are being made, is part of building the trust that the legal system cares about and can produce meaningful results for people.

Participating in this transformation in the client–lawyer relationship, and in the understanding of conflict within society, may open up possibilities to work with other professionals involved in people's lives, conflicts and well-being. By using the language of human-centered conflict, with practical, plain language options, realistic information about the possible results and clear estimates of timeframes, lawyers can share control with clients—both in the response to a crisis and in the planning for managing future conflicts. It will also shift the public view of the lawyer to that of a trusted professional with our best interests in mind, who can help, over a lifetime, when situations are more difficult than we can manage on our own.

6 Canadian Bar Association. (2015). Promoting Preventive Legal Health: A Took Kit for Lawyers. Retrieved November 2016 from www.cba.org/CBAMediaLibrary/cba_na/PDFs/CBA%20Equal%20Justice/Preventive-Health-Toolkit-eng.pdf

140 characters of pure business gold

Cleo Iggy (Igglesden) is founder of Happy Moose Health (www.happy-moosehealth.com) and The Recovery Minder (www.therecoveryminder.com). Both businesses work mostly in New Zealand. At the time of the Clarity2016 conference, Cleo was Office Manager at Write Limited, a plain language consultancy in Wellington, New Zealand.

Cleo has continued to do some work in the communications world, working with a few organizations that want to reach a younger audience, and create sales using more modern sales methods. Her catchcry is still "no one cares." Cleo would love to hear from you, and is available for speaking gigs. So get in touch.

By Cleo Iggy

This paper is an edited version of the presentation that Cleo gave at the Clarity Conference, Wellington, November 2016. She co-presented the session with Victoria Rea.

Social Media. I love it. You might hate it. But there's no denying it's useful. Your best bet is to treat social media like one big experiment, because nobody really knows what's going on!

Social media can bring you clients, give you a platform for your opinions, and bring you connections all over the world. It's pretty insane when you think about it!

But when there are some 140 million posts a day, how is your organization meant to compete?

We've got five points to help get you started.

Watch the tone

Tone is the impression your social media post makes on your reader.

Post length, word choice and use of pronouns will all change the tone of your post. Before you post, give yourself a moment to decide on what type of impression you want to make. Generally, you can use a more casual tone on social media than on other platforms.

Keep things polite at all times—there's always someone ready to screenshot your reply!

Break it up, baby

Less is more!

We're busy humans, and shorter posts (with pictures) consistently out-perform longer posts. If you do want to create a long post with a lot of information, perhaps try a blog post and then link to it in your Facebook or Instagram post.

This sounds easy, but as many of us Plain Language people know, it's actually really hard!

Make use of free stuff

We live in a visual world—it's not uncommon for small businesses to have a dedicated brand and design manager. So when you're doing it yourself it can feel a bit overwhelming. Luckily, so many tools are available to make your social media journey easier!

Pexels, and Unsplash are photography websites with photos you can use for free: *www.pexels.com* and *www.unsplash.com*

Canva is the best free design software I've used: *www.canva.com*

Buffer lets you schedule and organize your posts: *www.buffer.com*

Coschedule has an awesome headline analyzer that will predict how many clicks your post will get: *www.coschedule.com/headline-analyzer*

UNUM and Mosaico are great apps for getting your instagram sorted. You can find them in the app store. Just search for them by name.

Keep posts consistent

If you want to grow your social media, you want to post every day.

Yes, every day.

Yes that's a lot of work and I know it's hard. The occasional break won't matter. But, to really engage your followers, you need to keep showing up for them.

Have someone at your organization (preferably someone who is cool, and has good taste) tick off anything that goes out. That way you'll keep a cohesive voice and look.

Balance visual and text

As Write Limited states: "A social media post in plain language is one that the intended reader can easily read, understand, and act on."

Words need just as much love as visuals. Before posting, run your eyes over your post. Is it confusing? Could you say what you want to say more easily?

Always keep in mind this gem of a question: "How do we want our customers to feel when they interact with us?"

There we go! Five "tried and true" tips.

Three steps towards creating a culture of writing excellence at your workplace

Morag MacTaggart's consultancy *The Writers House* in Dunedin, New Zealand has mentored and run courses for workplace writers from all spheres. With over 20 years' experience teaching English, Morag brings to her workshops a deep knowledge of the English language coupled with an extensive understanding of knowledge acquisition.

By Morag MacTaggart

Between the conception
And the creation
Between the emotion
And the response
Falls the shadow.

T S Elliot (1925)

So you've decided to tackle the frustrating and inefficient writing practices at your workplace. Well done! You already understand that poor writing costs. But as T S Elliot tells us, desiring a new state of being is only the first step. To achieve our desired state we must act. Read on for three practices you can start to implement today to make a lasting writing culture change at your workplace.

Step 1

Show the way. Lead the change you want to see every day—mentor, reinforce, and evaluate. Provide explicit direction: your writers need to know exactly what you want. Can they provide you with the answers to the following questions?

1. Who is my target audience? What do they need to know? What might they already know? What information will they respond to best?
2. What are my goals? Am I informing? Persuading? Directing?

Provide constructive feedback: "I lost meaning in this section because your sentences do not have a clear subject and an active verb pattern." Or, "the final summary of your report has been written in the passive voice; please change to the active." Or, "paragraph X is unnecessary for this particular audience." Provide quality exemplars and regularly share examples of good writing. Make it clear that writing and reading is relationship driven. Challenge your writers to improve and sustain the relationships they have with their readers by creating respectful, supportive text. Make it clear that readers use strategies to decipher text and make meaning. Therefore, writers must use strategies to infuse their text with meaning for readers.

Step 2

Take your time. Building a new skill happens slowly; your writers will need space to review, evaluate, and reflect. Create communities of practice; pair weaker writers with stronger writers. Give weaker writers opportunities to observe the thinking and actions of stronger writers. Encourage weaker writers to emulate their stronger colleagues. Make time for writers to peer review each other's writing. Opportunities that allow for reflection and evaluation will deepen a writer's understanding of effective writing and reinforce their use of effective writing strategies. If you feel you are hitting a brick wall with a particular writer on your team, ask yourself: "Is it will or skill?" Very poor writers may have literacy and/or learning disabilities. Try to put in place scaffolds of support. You could provide non-judgmental writing buddies to help

with revising and proofreading. Provide editing services or one-on-one coaching, or invest in IT solutions; many excellent speech-to-text apps are available online.

Step 3

Create opportunities for change; our actions will always speak louder than our words.

Provide training opportunities, but make sure you know your writers' needs first. Ensure any instruction will meet the specific needs of your writers: one size does not fit all. After a block of training, you will need to follow up with mini clinics, one-on-one coaching opportunities and team peer-review sessions. Your writers will need multiple opportunities to reinforce their new skills and behaviors before they become automatic. Keep in mind that learning a new skill is risky; there's always the chance we might fail.

Give your writers opportunities to embed, trial, and take risks without fear of ridicule. You could provide fortnightly, monthly or quarterly writing clinics. Highlight for your team that all effective writers have strategies that support them through their writing process. Effective writers define their audience, organize their ideas, gather information, research, analyze, draft, revise and edit. You could create a quarterly newsletter or email that shares examples of quality writing at your workplace. Be sure to include writing tips and strategies and circulate online links to teaching and coaching websites.

Finally, remember that all of us love to be acknowledged when we do something right. Find ways to highlight those writers who have moved significantly along their path to better writing. Make sure you celebrate your writers' successes.

Snapshots from the conference

Seeking simplicity from the technical
Jo Stewart presenting a session on "Labours of Hercules: Improving technical writing at the Australian Taxation Office"

Putting people first
Meghan Codd-Walker and Deanna Lorianni presenting a session on "People-first language: Creating clarity for people with disabilities"

Crafting accessible employment agreements
Megan Lane presenting a session on "Design thinking to create plain English employment agreements"

Building trust in insurance and banking contracts
Andrew Pegler presenting a session on "Beyond all reasonable doubt: The marketing advantages of plain English insurance and banking contracts"

Clearing the snowdrift from law-making
Sissel C Motzfeldt (L) and Ragnhild Samuelsberg (R) presenting "With a little help from my friends: Politicians, laws and rock and roll—changing the Norwegian law-making process"

Guiding the next generation of jurists to think clearly and write plainly
Marie-Claire Belleau presenting "The necessity of plain language for the 'New Jurist'"

Two minds are better than one: a duo at the gala evening

From Norway to New Zealand
Three intrepid travelers proving distance is no barrier to communication

Befitting the proceedings

A quartet of clear thinkers

Trio at the gala evening

Another trio

Enthusiastic bunch at the gala evening

Celebrating the People's Choice winners of the Plain English Awards 2016. Campbell Maud designed and sculpted the steel and bronze trophy.

Listening to the MC at the gala evening

Enjoying the gala evening on 5 November 2016

Setting the stage for the gala evening

Held at the conference's gala evening on 5 November 2016, the Plain English Awards celebrated New Zealand's clearest communicators.

Access to written information: a social equity, social justice issue

Cathy Basterfield is a Speech Pathologist with 29 years experience working with people with Complex Communication Needs. Cathy runs Access Easy English, a specialist business writing documents for people with non-functional or limited literacy. In 2011 Cathy was awarded a Victorian Government study scholarship to investigate accreditation and universal standards internationally, for people with limited literacy.

Cathy is an internationally acknowledged expert in the area of developing documents for people with limited literacy, the language, the techniques, the images and format to use. She presents both nationally and internationally about Easy English. Her business provides training, consultancy and translation services to Easy English.

Cathy has previously been involved in establishing Australian quality benchmarks, resource development and the development and adherence to in-house standards for Easy English.

By Cathy Basterfield

Overview

Participation, inclusion and rights are intrinsic to the way we interact with our world. Developing information in Plain Language is one way to ensure more people can access, participate and know how to be part of their community, and know their rights and responsibilities.

Reading information about government services, your rights, information about common laws, health information and access to corporate businesses should not become a reading test. Yet for people who don't have functional literacy, these tasks become just that.

Many just don't engage at all. Information needs to be simpler.

We must engage with consumers—real consumers. This paper draws attention to the many people who are marginalized, and why they need Easy English.

Background

The Universal Declaration of Human Rights, 1948[1] enabled more people in the community to become more aware of the needs of the individual in many different circumstances about their rights, but also their responsibilities to themselves, their own community and the wider community.

In 2006, The United Nations Convention on the Rights of Persons with Disabilities[2] was ratified.

This Convention lists, among other areas, Article 5, *Equality and non-discrimination*, and then further identifies women and children with disabilities—two further marginalized groups within an already marginalized group. Article 9, *Accessibility*, and Article 21, *Freedom of expression and opinion, and access to information*, recognize the importance of information being easy to access, in the way a person understands it, in the way the person can meaningfully use it, in the same timeframe as the rest of the community. When written information is only available in complex or plain language, a significant number of people in our community are unable to follow these Articles in the Convention.

Many other articles in the Convention remind the reader of the importance of people having access to written information in their daily life, as it relates to their legal entity, legal rights and responsibilities. Other examples include Article 10, *Right to Life* (and the decisions that implies); Article 12, *Equal recognition before the law*; Article 19, *Living independently and being included in the community*; Articles 25 (*health*), 26 (*habilitation and rehabilitation*), 27 (*work and employment*) and 30 (*participation in cultural life, recreation, leisure and sport*); Article 28, *Adequate standard of living and social protection*; and Article 29, *Participation in political and public life*.

Literacy

Communities today are assumed to be highly literate, due to factors such as access to education, quality health, and the recognized value in our societies of the educational journey that children undertake. Therefore, when a person does not attain a functional level of literacy skills, we might think they only represent a minority of those living in our community. However, repeated research in this space, driven by Statistics Canada in partnership with the Organisation for Economic Co-operation and Development (OECD), has shown time and again these assumptions are incorrect.

The Programme for the International Assessment of Adult Competencies (PIACC) from 2013[3] is the most recent iteration of this data. The data concluded that significantly high percentages (and raw numbers) of people in all our communities lack the range of literacy skills to undertake a range of day-to-day reading tasks in a meaningful manner. For example, 44% of the adult Australian population (50% of the US, 44% of Canadian and UK adult populations) has literacy that does not meet the demands of a range of current day-to-day activities. In 2016, the New Zealand data was one of a number of other countries added to the data, at 43% of the adult population.[4] This suggests that many individuals are still not able to use the information written for the public, even when it is in Plain Language.

Any one person could be someone in this data. In Australia, the percentage represents 7.3 million adults; in the United States, it represents 100 million adults. These people do not necessarily have a recognized or identified disability. They are literally the "man or woman" in the street. The person could be someone who comes to the counter and says, "I left my glasses at home" or "I don't have time to read it now, I will get back to you about this." However, the person can also be someone who is marginalized, such as a person:

- with an intellectual disability
- with a poor educational outcome
- who lives in a low-income household
- in the Deaf community
- with an acquired disability (including stroke, head injury or dementia)
- in an indigenous population
- who is elderly
- who is a migrant or refugee
- who is unwell or stressed.

Research for these populations of people suggest many are more likely to be poor, have no job, be more unwell, and have more contact with the police and the courts.

Legal literacy

A number of countries have developed definitions of "legal literacy" that are useful for this discussion.

A question that can be asked is does legal literacy relate to legal capability? A number of researchers have looked at this question in great detail. I encourage you to read further on this, as it relates to the people we write for in the legal context. McDonald et al. (2014)[5] asked "Why do people take no action?" Reasons such as "didn't know what to do," "would be too stressful," and "cost too much" were all reasons cited. These then create an effect of doing less, at a later time, when the issue is more complex. So, in fact, issues such as complexity and stress are borne out. The authors suggest a more "holistic approach to … further access to justice."[6]

NOTES

1 United Nations. Universal Declaration of Human Rights. Retrieved November 2016 from www.un.org/en/universal-declaration-human-rights

2 United Nations. Conventions on the Rights of Persons with Disabilities. Retrieved November 2016 from https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html

3 Programme for the International Assessment of Adult Competencies, OECD. Survey of Adult Skills. Retrieved November 2016 from www.oecd.org/skills/piaac

4 Ministry of Education and Ministry of Business Innovation and Employment. (2016). Survey of Adult Skills (PIAAC) Skills in New Zealand and around the world, Wellington, New Zealand.

5 Universal Declaration of Human Rights. Retrieved November 2016 from www.un.org/en/universal-declaration-human-rights

6 Hugh M. McDonald and Julie People. (2014). Legal capability and inaction for legal problems: knowledge, stress and cost, Law and Justice Foundation No. 41. Retrieved November 2016 from http://www.lawfoundation.net.au/ljf/site/templates/UpdatingJustice/$file/UJ_41_Legal_capability_and_inaction_for_legal_problems_FINAL.pdf

An Australia-Wide Survey: Legal need in Australia (2012)[7] identified:

- "Legal problems are widespread throughout society;
- Can have a dramatic adverse impacts on many aspects of daily life;
- Access to justice must aim to enable **all** citizens to make effective use of the law."

Legal information, written in Plain Language, is one step in that direction. However, for the many people identified earlier in this discussion who do not have a range of literacy skills for a range of day-to-day reading tasks, this is not enough.

The American Bar Association has developed a definition of Legal Awareness[8] in two parts.

These are (1) the ability to make critical judgments about the substance of the law and the legal process; and (2) knowledge of the available legal resources and also how to use the legal system.

These aspects require the lay person in the community to be able to access a range of legal information meaningful to them, know about their rights and potential breaches of the law, and therefore be sufficiently informed to decide whether to consider pursuing a legal matter. Then the person needs know where or how to get resources to determine the legal journey, and how to use the legal process in a meaningful way. This ranges from access to police, and the role of solicitors and barristers and the courts, to understanding rights and responsibilities about, for example, privacy, confidentiality and neighborhood disputes. To be effective in this space, a person's legal literacy needs to meet their needs.

The Canadian Bar Association has described "legal awareness"[9] and "legal literacy" in another way, suggesting the need for a person to understand words used in a legal context, to draw conclusions from the information, and then to use those conclusions to take action.

The literature recognizes that use and need for legal information in our communities is increasing. The literature explains that all legal information must be available to the person who needs it—from the lawyers and judges to the relatively uninformed lay person whose contact with the legal system is minimal. This availability has been described as a continuum approach to information. As in all parts of society, as people are being asked to be more autonomous and self-directed in managing their increasingly complex lives, it is essential that the public has appropriate written materials available to them so they can make meaningful choices and decisions.

To that end, the 2016 Victorian Government Access to Justice Report is timely in its aims. The state government's stated aim of the Access to Justice Review was to "improve access to justice for Victorians with an everyday legal problem or dispute, and ensuring the most disadvantaged and vulnerable in our community receive the support they need when engaging with the law and the justice system."[10] The report clearly sets out a number of recommendations about Access to Information, including making Easy English available for public use. Specific areas identified to help achieve this are:

- entry points into the legal system
- how to increase the understanding of community members about how they can get help with everyday legal issues
- how to support self-represented litigants.

As in many endeavors, quality and consistent development of Easy English is required to ensure the best possible outcomes for consumers.

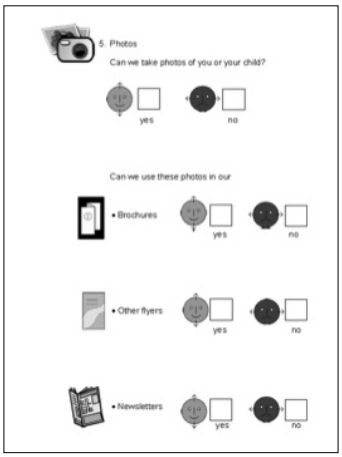
7 McDonald and People. (2014). Legal capability and inaction for legal problems: knowledge, stress and cost, p. 1.

8 Law and Justice Foundation. (2012). Legal Australia-Wide Survey: Legal need in Australia. Retrieved November 2016 from www.lawfoundation.net.au/ljf/app/&id=1DAA9FBD6F6B-3513CA257B5F00168DFA Accessed November 2016

9 See American Bar Association: www.americanbar.org

10 See Canadian Bar Association: www.cba.org

Below are some excerpts of examples of Easy English work in Australia, focusing on legal information. These examples remind us that legal information occurs in a wide variety of contexts, which the person with limited literacy has the right to access and understand in a way that is meaningful to them.



Excerpt from a consent form. "Can we use your photo?" Note: Every place where the person's photo could be used is asked about.

Excerpt from a New South Wales new law in 2013. One of four training books to help consumers understand the new law.

Excerpt from a fact sheet about Family Violence. The sheet is about the rights and steps a person can take to stay safe.

Consent[11]

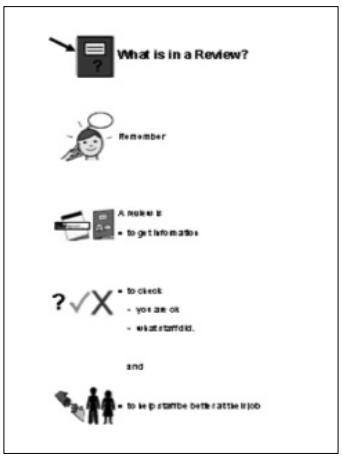
Where else do we all have to consent? How much do we understand of the consent forms we are asked to complete and sign?

Laws[12]

What laws would you like to understand better? What are the benefits for the public better understanding many everyday laws or changes to those laws?

Information for the public[13]

Many public documents are written in a more complex manner than the person with limited literacy can read, understand and use meaningfully for themselves.



Excerpt from a Government procedure

Excerpt from a research project, assisting with changes to the law

Excerpt from a letter to a Member of Parliament

11 'Access to Justice', Department of Justice and Regulation, Victoria State Government, Australia, p. 53. Accessed 1 November 2016 from https://engage.vic.gov.au/application/files/3314/8601/7221/Access_to_Justice_Review_-_Report_and_recommendations_Volume_1.PDF

12 Project completed by Access Easy English and Ability Options, 2015.

13 Project completed by Access Easy English and NSW Council for Intellectual Disability, 2014.

Further examples include:
- Explanation of Intervention Order—used by court officials
- Legal Aid New South Wales—Police Powers: www.legalaid.nsw.gov.au/resources

(Search Words: Easy English)

Policies and Procedures[14]

All departments have procedures about the order of tasks and how to follow processes.

What procedures do you need to be able to read, understand and follow?

Research[15]

Information gathered from the community, and which assists law makers and policy writers, is invariably developed into an academic report. Participants rarely hear anything further about the research in which they participated. What motivation would someone have to participate again if they are never able to read about the outcomes of previous research in which they have participated?

Engaging with the political process[16]

What elements of the political process do you read about, understand and act upon?

Everyone has the right to engage with the political process. Voting is one part of this process. Understanding candidate information and writing letters to our Members of Parliament are other ways to engage in this process.

Written information in the legal context is a critical way that members of society engage with others. With governments and agencies encouraging people to be more autonomous, it has become more critical to include all members of society. As writers, we must not ignore the hidden, and often most vulnerable, people living in our communities. Plain Language is important to take legal information from complex legality to a level that any educated person can read, understand and use meaningfully. Yet Easy English is equally important to increase meaningful engagement by the large numbers of vulnerable people living in all our communities.

14 Project completed by Access Easy English and Integrated Family Violence Network, 2016.

15 See Department of Human Services, Victoria State Government, Australia. Retrieved November 2016 from www.dhs.vic.gov.au/__data/assets/word_doc/0004/920695/quality-of-support-review-guideline-easy-english-09-2015.doc&sa=U&ved=0ahUKEwjOppL07ILKAhXkMKYKHeNTAKoQFggEMAA&client=internal-uds-cse&usg=AFQjCNE-6KsxU7ZRsxHGcyATkT33LyS8NQ

16 Women with Disabilities Victoria. Voices Against Violence: Paper Seven: Summary Report and Recommendation in Easy English. Retrieved November 2016 from www.wdv.org.au/documents/Voices%20Agaisnt%20Violence%20Paper%20Seven%20Easy%20English%20Summary%20%28PDF%203MB%29.pdf

17 Project completed by Access Easy English and National Disability Service, 2014.

Accessibility or bamboozlement? The case for clarity in modern legislation

By Dr Stuart J McLaren and Associate Professor Wyatt Page

Introduction

Many new legal terms appeared in the recently enacted Health and Safety at Work Act 2015, in New Zealand. In its early history, this law has been subject to far more speculation, rumor and misinterpretation than most other pieces of recently enacted legislation.

A number of new legal terms introduced with the Act appear unnecessary, complicated and even contradictory. Has this served to bamboozle the public (without legal training) rather than making this wide-reaching law, accessible to all?

The Health and Safety at Work Act 2015 introduced a legal framework in the following order of legal priority:

1. Principal legislation

   The principal Act, the Health and Safety at Work Act 2015, sits at the top and was made by full resolution of the House of Representatives.

2. Subordinate legislation, introduced and empowered by the Act:

   (a) Regulations ("legislative instruments")

   This includes provision to make Regulations. The Act also designates these as disallowable instruments that are subject to parliamentary review.

   (b) Safe work instruments

   The Act introduces these new instruments or legal tools, but, as no safe work instruments have been promulgated to date, we're unsure what type and form these instruments will take. They can only have legal effect to the extent that legislation refers to them. They are deemed disallowable instruments, but not legislative instruments.

3. Approved codes of practice

   These codes are neither legislative instruments nor disallowable instruments and are not subject to Parliamentary review. Approval rests with the relevant Minister. As a consequence, they have no legal effect and do not confer rights or obligations. As good practice codes, they are admissible in court, but only as evidence of compliance with a duty or obligation under the Act.

Delegated legislation

Much of the subordinate legislation enacted each year is delegated to other bodies and not directly made by Parliament. These include council proclamations, bylaws, notices and, most importantly, sets of regulations. They are referred to as "delegated legislation," which Parliament has the right to review and then to allow or disallow (veto).[1]

Dr Stuart J McLaren is a Senior Lecturer in Environmental Health in the School of Public Health at Massey University in Wellington, New Zealand. He has a long history in the field of environmental health specializing in the public health aspects of noise, water and waste treatment, and housing. The courses he teaches involve substantial components of legislation, standards, codes of practice and guidelines. His interest in clarity has resulted from having to comprehend and teach unnecessarily complicated and contradictory legal concepts that only increase the difficulties in understanding for the public.

Dr Wyatt Page is the Associate Professor of Acoustics and Human Health in the School of Public Health at Massey University, Wellington, New Zealand. He heads up the research platform

"Noise and its effects on Human Health," is active in acoustics and sound consultancy, and is part of the Environmental Health team that contributes the undergraduate Bachelor of Health Sciences program. He is also the principal editor of the *New Zealand Acoustics Journal*. Current research interests are diverse, and include immersive sound; environmental, occupational and recreational noise exposure; acoustics of teaching spaces; and technology for hyper-instruments.

With the increasing amount of delegated legislation created to meet the needs of the modern world, the Regulations Review Committee of Parliament was established in 1985 to have oversight of all delegated legislation. The principal role of the committee is to examine all regulations (including drafts), investigate complaints about how these are used, and to draw Parliament's attention to any contentious issues.[2]

Legislative instruments and Regulations

Regulations have been defined by various statues over time in New Zealand and are widely understood as a legal requirement, even if the process by which regulations are made is not widely understood. The current definition of regulations exists in the Interpretation Act 1999.[3]

The Legislation Act 2012 introduced and defined *legislative instruments*. Despite the very large number of current regulations presently in force, the Act did not define *regulations*. By comparing the definitions of both legislative instruments and regulations in the separate legislation, we can conclude that *regulations* and *legislative instruments* meant the same thing. This was later clarified and confirmed by an amendment to the definition of regulations in the Interpretation Act 1999.[4]

The reason why the Legislation Act 2012 does not refer to regulations is unclear. A public law thesis[5] suggested that the term *regulations* was intended to be revoked from all legislation. However, law makers and policymakers subsequently realized that without an existing legal definition all existing *sets of regulations* would have to be amended to *legislative instruments*. Rather than individually amend a great many sets of regulations, Parliament retained the definition of regulations in the Interpretation Act 1999. After the enactment of Legislation Act 2012, the definition of regulations in the Interpretation Act 1999 was amended.

In the Health and Safety at Work Act 2015,[6] these two terms have never been properly integrated. So the term *regulations* has continued to be used alongside *legislative instruments*. There is little indication in the Act, apart from a small clue in a schedule to the Act, that regulations and legislative instruments are essentially the same thing. This is confusing for anyone from a non-legal background.

Disallowable instruments

Disallowable instruments were first defined by the Regulations (Disallowance) Act 1989, but this ceased to be in force in 2013. They were then defined in the Legislation Act 2012.[7] *Disallowance* is a term with a similar meeting to *veto*, which has its roots in the early legal history of New Zealand. The Governor had the right to disallow or veto any locally made legislation that he considered was not in the interests of the Crown or Great Britain.[8]

The New Zealand Legislation Act 2012 focused on delegated legislation (delegated to a specialist body) and defined what instruments are disallowable. This included *legislative instruments*; something that is made disallowable (such as the new *safe work instruments*); and an instrument with significant legal effects (which creates, alters or removes rights or obligations and alters the content of the law applying to the public).

The House of Representatives wanted increased scrutiny of, and control of, "subordinate" legislation, especially regulations. This included the provision to disallow these instruments in part or in their entirety. Such legislation is laid before the House of Representatives. If not disallowed within 12 to 15 days, the legislation is considered adopted.[9]

NOTES

1 R Malone, T Miller, & L Archer. 2013. Regulations Review Committee Digest: Chapter 2—Regulations. D Knight (Ed). Retrieved from www.victoria.ac.nz/law/centres/nzcpl/publications/regulations-review-committee-digest/publications/RRC-Digest-5th-ed-Final-W1.pdf; and D McGee. 2010. Parliamentary practice in New Zealand (updated) Chapter 29 – Delegated legislation. Retrieved from www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/document/00HOOOCP-PNZ_291/chapter-29-delegated-legislation

2 Malone, Miller, & Archer. 2013. Regulations Review Committee Digest.

3 R Carter, J McHerron, & R Malone. 2013. Subordinate Legislation in New Zealand. Auckland: LexisNexis NZ Ltd.

4 Malone, Miller, & Archer. 2013. Regulations Review Committee Digest.

A number of motions have sought to disallow contentious regulations. The first and only successful disallowance of regulations was for road-user charges in New Zealand, which occurred in February 2013. Disallowance occurred on the grounds that these regulations proposed an unexpected or unusual use of powers that were deemed more appropriate in an Act of Parliament.[10] There is a general reluctance to use disallowance in the current Mixed Member Proportional (MMP) electoral environment, as it is seen as heavy handed. Instead, the New Zealand Regulations Review Committee is willing to draw special attention to the House of Representatives any regulations that may be contentious, rather than rely on disallowance.[11]

Disallowance is a contradictory term because all disallowable instruments that become law are, in fact, allowed to proceed. It appears that law makers didn't give much thought to making legislation accessible and understandable to the public, especially those directly affected by it. The use of disallowance only serves to bamboozle the wider public and make the understanding of the law beyond their reach. Instead, why not use *reviewed regulations*, where they are subject to the review of Parliament, and which include the provision to allow or disallow in whole or in part? It is a commonsense description of the process that the public is likely to easily understand.

Pertinent questions and comments

Why was it necessary to introduce *legislative instruments* when *regulations* is a term already reasonably understood? If any other legislative instrument is a special case, such as an ordinance or proclamation, then this term can be used in the title. Good examples of this in New Zealand are the National Environment Standards, made under the Resource Management Act 1991 (the all-encompassing planning and environmental law of New Zealand). National Environmental Standards are sets of regulations within the principal Act, and a description of the standard and legal effect, all embedded in the title. An example of a national environmental standard in New Zealand is the Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007.[12]

All legislative instruments (regulations) in New Zealand are disallowable instruments except for some special categories, but those categories are unclear.

What is wrong with having regulations or (other instruments of law), which are reviewed (or similar) by the House of Representatives and either allowed to proceed or disallowed?

All disallowable instruments to date have been allowed in New Zealand. If disallowed, they would have ceased to exist. This is hardly plain or clear language! Only one (recent) motion for disallowance has passed in New Zealand, as other ways have been found to address concerns. Perhaps this makes the disallowance procedure far less potent in practice than intended!

Ignorance of the law is generally no excuse, even if widely offered as the reason. But likewise, drafters of legislation have an inherent duty to ensure those affected by those laws can get reasonable access to them and understand them.

5 Malone, Miller, & Archer. 2013. Regulations Review Committee Digest.

6 Health and Safety at Work Act 2015. Retrieved from www.worksafe.govt.nz/worksafe/hswa

7 Legislation Act 2012. Retrieved from www.legislation.govt.nz/act/public/2012/0119/latest/DLM2997666.html

8 Carter, McHerron, & Malone. 2013. Subordinate Legislation in New Zealand.

9 Malone, Miller, & Archer. 2013. Regulations Review Committee Digest.

10 Parliamentary law milestone: first automatic disallowance of regulations. 2013. Retrieved from www.parliament.nz/en/get-involved/features-pre-2016/document/50NZPHomeNews201303011/parliamentary-law-milestone-first-automatic-disallowance

11 Malone, Miller, & Archer. 2013. Regulations Review Committee Digest.

12 Resource Management (National Environmental Standard for Sources of Human Drinking Water) Regulations 2007. Retrieved from www.legislation.govt.nz/regulation/public/2007/0396/latest/DLM1106901.html?search=ta_regulation_R_rc%40rinf%40rnif_an%40bn%40rn_25_a&p=3

Plain laws: what if there was a revolution and no one knew about it?

Ben Piper
From 1985 to 2006 Ben Piper worked as a legislative drafter in the Office of the Chief Parliamentary Counsel, Victoria, Australia. From 2006 to 2013 he worked at the National Transport Commission (Australia) as the Commission's chief legislative drafter, but also as a lawyer and policymaker. Since late 2013, Ben has tried to live a life devoted to dissipation. A serial attender of Clarity conferences, he has also been a serial presenter.

By Ben Piper

This paper is an edited version of the presentation that Ben Piper gave to the Clarity Conference, Wellington, November 2016.

Introduction

On 7 May 1985, the Attorney-General of Victoria,[1] Jim Kennan, delivered a Ministerial Statement titled "Plain English Legislation" in the Victorian Parliament.[2] He declared, "It is the policy of the present Government that legislation be drafted as clearly as possible."[3]

To give effect to that policy, he announced a series of measures.

One of those measures became known around the world:

I have suggested to the Victoria Law Foundation that it takes on as its next project a study into plain English, which will include legislative drafting …

While that measure resulted in reports in 1987 and 1990 by the Law Reform Commission of Victoria on the use of plain English in laws, it had little effect on the writing of laws in Victoria.

However, a number of the other measures announced by Kennan resulted in Victorian laws being written in fairly plain language from early 1986. And, by the late 1990s, most other Australian jurisdictions were also writing their laws in fairly plain language.

In a lecture given in 2001, Justice Hayne of the Australian High Court, Australia's highest court, stated, in relation to the drafting of laws in Australia: "Plain English drafting is now the norm."[4]

Today many English-speaking countries draft their laws in fairly plain language.

Yet this state of affairs is almost unknown in general plain-language circles. For instance, in Professor Joe Kimble's 40 historical highlights of plain language published in 2012, the writing of laws in plain language is not mentioned, even though highlight number 37 is the Victorian Law Reform Commission's reports of 1987 and 1990.[5]

And I defy anyone to find in any edition of *Clarity* before this edition any reference to the fact that laws are being drafted plainly as a matter of course.

What if there was a revolution, and no one knew about it?

The good old days

Over time, there have been many complaints about the lack of plainness in the writing of laws. There was much to complain about. Many laws were written in the way that legal documents generally were written, and that generally represented the antithesis of plainness.

However, it is little known that there have always been some drafters and drafting offices that have written laws more plainly than the prevailing legal style of writing.

In this regard, I refer to "A Comparative Study of Legal Jargon in Australian Statutes"[6] by Clarity member Duncan Berry. He identified about 80 of what he called examples of "legalese." The examples included archaic words, Latin words, doublets and "legalistic" phrases. He then took samples of laws from 7 Australian jurisdictions over 3 time periods (the late 1940s (primarily); 1991–1992; and 2006–2012), and counted the number of instances in which he found legalese. He then derived a rate of instances of legalese for every 1,000 words in his samples. By combining these results, he then derived an average use of legalese for every 1,000 words in each of the jurisdictions.

With respect to laws before 1950, he found that the average use of legalese for every 1,000 words across all 7 jurisdictions was 15.34. The worst jurisdiction (Queensland) had an average of 24.30, and the best (the Commonwealth) had an average of 9.14. By way of comparison, a clause in a precedent will (being taught to recent Victorian law graduates in 2015) has a score of 62.15.[7]

With respect to the 1991–1992 statutes, he found that the Australian average was 1.78, and for the 2006–2012 statutes the average was 0.65.

These averages suggest that Australian law writing has been considerably plainer than Australian legal writing generally for quite a while. And the reduction from the 15.34 average for the late 1940s to 1.78, and then to 0.65, is pretty strong evidence that significant change has occurred in Australian law writing from a plain language perspective over the last 60 years.

Before the 1980s, the only formal requirement anywhere that laws be written in plain language occurred in the United States. In 1978[8] President Carter signed an executive order requiring federal regulations to be written in clear and simple English. President Reagan revoked this order in 1981.

So that was the state of play when Attorney-General Kennan stood up to deliver his Ministerial Statement in the Victorian Parliament.

Kennanization

So what measures led to plainer laws in Victoria?

First, Kennan announced:

Parliamentary Counsel has been instructed to adopt a new format for the drafting of Bills. This format will apply to Bills introduced from the next session of Parliament onwards. I have referred to the format as the process of Kennanization.[9]

The new format consisted of a list of 10 numbered changes to existing drafting practice ("rules").

After listing these rules, he continued:

What needs to happen now is to have a process whereby Parliamentary Counsel draft Bills and legislation officers draft subordinate legislation from the outset in plain English.

…

In the next twelve months it is my intention to ensure that one or more plain English expert is appointed to work in the office of the Parliamentary Counsel as part of the Parliamentary Counsel's team working on legislation. This will ensure that in a

NOTES

1 Victoria is one of the 8 States and Territories of Australia.

2 (Victoria) Parliamentary Debates (LC) Vol. 377 at pp. 432–447.

3 Ministerial Statement, Plain English Legislation, Associations (Incorporation) Amendment Bill, 7 May 1985, p. 434. Retrieved from https://www.victorialawfoundation.org.au/sites/default/files/resources/Jim%20Kennan%20AG%20Ministerial%20Statement%201985.pdf

4 "Lessons from the Rear-View Mirror," Leo Cussen lecture, Melbourne, 31/10/2001

5 J Kimble. (2012). Writing for dollars, writing to please: the case for plain language in business, government and law. Durham, NC: Carolina Academic Press.

6 This was delivered at the Commonwealth Association of Legislative Counsel Conference in Cape Town in 2013, and has been published in The Loophole, December 2014, at p. 3.

7 My presentation at the 2016 conference in Wellington started with this clause on a PowerPoint slide.

8 Executive Order No. 12044, 43 Fed. Reg. 12661 (1978).

9 Ministerial Statement, Plain English Legislation, Associations (Incorporation) Amendment Bill, 7 May 1985, p. 435. Retrieved from https://www.victorialawfoundation.org.au/sites/default/files/resources/Jim%20Kennan%20AG%20Ministerial%20Statement%201985.pdf

collaborative way the art of plain English writing is developed in the drafting of legislation.[10]

Kennanization in practice

Almost all of the Kennanization rules were implemented by the start of 1986.

However, nothing in the rules was particularly momentous. Complying with them wouldn't necessarily have led to a significant improvement in the plainness of Victoria's laws. Something else had to happen.

And it did. How do I know? Because I was there!

I joined the Victorian drafting office as a drafter in late September 1985.

Professor Robert Eagleson was appointed as the "one or more plain English expert" in 1985, and he began working with the drafters in the office in early 1986.

Throughout the early part of 1986 Eagleson had fairly regular meetings with the drafters in the office. In these meetings he:

- discussed deficiencies in various example legal documents that he provided
- gave us various exercises to do–the exercises were then discussed
- gave us his views on various drafting practices
- raised for discussion topics that later appeared in the Law Reform Commission of Victoria's "Plain English and the Law" report (1987) that I believe he largely wrote
- worked with us to produce an Office drafting manual
- made books from his personal plain English library available to us.

Although not all of Eagleson's ideas were readily accepted by the drafters, and in fact there was some quite lively disagreement at the meetings with some of those ideas, many of the ideas were adopted.

When many of the ideas appeared in the "Plain English and the Law" report in 1987, Victorian drafters didn't need to consider them because we were already actively using them.[11]

So, by mid-1986, if not earlier, Victorian drafters were drafting Bills "from the outset in plain English", where "plain English" meant a style based on recommendations by Eagleson.

The drafting style I was using when I left the Victorian drafting office in 2006 was the style I started using in 1986. I was very happy to take up most of Eagleson's ideas.

Of course, I haven't achieved perfection in either drafting or plain language drafting. Even so, I don't think that any law that I have drafted since early 1986 could be significantly improved from a plain language point of view and still retain its effectiveness as a law that implements the policy it was supposed to give effect to.[12]

Plain laws become infectious

By the late 1980s New South Wales and the Commonwealth were well along the way to writing their laws plainly as well.[13] Queensland soon followed. The smaller Australian jurisdictions took a bit longer to come on board, but all now have plain language policies.

A number of Canadian jurisdictions also adopted plain language law policies in or by the 1990s, as did New Zealand. I think that all Canadian jurisdictions are on board now. The United Kingdom took a bit longer to join the party (and there was a bit of kicking and screaming in the process), but by the early to mid-2000s it was firmly on board, as was Hong Kong. Singapore is currently in the midst of a multi-year process to "plain language" its laws.

10 Ministerial Statement, Plain English Legislation, Associations (Incorporation) Amendment Bill, 7 May 1985, p. 437.

11 However I believe the reports may have been influential in some other Australian jurisdictions and in Canada.

12 If anyone wants to test that assertion, I am happy to provide the necessary information to make that testing possible.

13 As previously mentioned, the Commonwealth in the mid-1980s already wrote pretty plainly, and it had used devices such as worked examples for some time by then. I believe that it dates its formal adoption of plain language to 1986.

I might mention that some jurisdictions, in adopting plain language policies, went to great lengths, and expense, to seek expert advice on plain language. In particular, the Commonwealth of Australia and the United Kingdom spent large amounts obtaining plain language knowledge and advice on tax and corporate law projects.

Well, almost

As of 2016, a number of English-speaking countries still did not write their laws in plain language. The most obvious one is the United States. The legislative drafting process in the United States differs significantly from that of countries that are, or were, part of the British Commonwealth. A much wider range of players is involved in drafting laws in the United States, and it is not unusual for politicians themselves to draft bits of laws.[14] This contrasts with the Commonwealth countries, where a central government office is usually responsible for legislative drafting. There are usually only a small number of drafters, and this makes it much easier to direct, or to get the agreement of, drafters to draft in plain language.

Unfortunately, most Caribbean countries are also not yet writing their laws in plain language, even though many of them are Commonwealth countries. The reason is unclear.

How plain is plain?

What do I mean when I say that many countries produce plain laws?

I certainly don't want to give the impression that every one of those countries produces state-of-the-art plain laws.

Each country is different. And, of course, there is no definitive test for whether something is plain or not. But that's another topic.

It would be helpful to look at Victoria. What has changed since 1985?

Well, pretty much everything.

To look at this more closely, it will be useful to focus on what I consider to be the three major areas of a document: presentation, micro content and macro content.

Presentation

If you compare a typical Victorian Act written in 1985 with one written in 1991, you will see in the 1991 Act:

- shorter line lengths (characters in each line)
- larger font sizes (from 10 pt to 12 pt)
- more space between lines, and between units
- changes in heading styles
- less clutter (in particular, the removal of the header line).

Unfortunately not much has changed since 1991. In my opinion, that was not because the 1991 format had reached perfection. In fact there is still lots to criticize with that format. But the 1991 format is still a significant improvement.

14 Of course there is light on the horizon with respect to regulations in the United States in the wake of the Plain Writing Act of 2010 and Executive Order, "E.O. 13563—Improving Regulation and Regulatory Review." issued by President Obama on 18 January 2011.

Micro content

This involves things like:

- sentence length and structure
- whether the text uses archaic words or sentence structures
- how well units of the text relate to each other
- how easy the sentences are to understand
- the usefulness of section headings
- whether the text has unnecessary jargon, abbreviations, technical terms or long words
- whether some text is redundant
- whether the text has excessive cross-referencing
- whether the text has internal reader aids such as notes and examples
- how numbers are depicted
- whether formulas and tables are used; and, if so, how well they link to the text.

In Victoria all of these aspects of micro content have improved considerably since 1985. Some have improved as a result of the Kennanization rules, but most are Eagleson-inspired changes.

The most important changes have to do with the way that sentences are constructed, and these changes highlight how it is possible to express complex legal policy relatively plainly.

Macro content

This involves things like how well the document seems to be constructed; how easy it is to navigate (at the very basic level, does it have a table of contents?); whether the different parts of the document are placed in a logical order; whether the document has external reader aids, such as explanations of the internal material in a broader context.

In Victoria, all laws now have a table of contents.[15] Generally speaking, Victorian laws now have their provisions in a logical order. However, Victoria has yet to fully embrace external reader aids.

Part of that failure was based on observing the practice of the Commonwealth of Australia. With some of the larger Commonwealth laws it is not unusual to have 90–100 pages of external reader aids to get through before the law starts. That's quite a bit of reading!

In summary

So, since 1985 in Victoria there has been a considerable improvement in the presentation of its laws, a big improvement in matters of micro content, and some significant improvements in matters of macro content.

With respect to other jurisdictions, certainly in Australia, you will find similar results. Indeed, some jurisdictions, such as the Commonwealth, as already mentioned, have gone a lot further than Victoria in the macro content area.

I also refer you to the Commonwealth's *Plain Language Drafting Manual*, first published in 1993.[16] That manual describes in great detail the micro content issues that the Commonwealth laws now address.

Internationally, it's a similar story.

As an aside, we were told at the Commonwealth Association of Legislative Counsel Conference held in Edinburgh in 2016 that the English statute book no longer includes the word "shall".

15 Pre-Kennanization Victorian laws only had a list of Part headings to assist with document navigation.

16 The Manual is available at the Australian Government's Office of Parliamentary Counsel website: www.opc.gov.au

World's best kept secret?

The improvement that has occurred in the writing of laws over the last 30 years seems to be one of the world's best kept secrets. As mentioned in the introduction, it is not widely known in plain language circles.

For instance, take books about plain language. Only one Australian-authored plain language book recognized early that laws were being written plainly.[17] In books authored elsewhere, while there has been ample recognition of both the Kennan Ministerial Statement and the Law Reform Commission of Victoria's "Plain English and the Law" report (1987), there has been almost no recognition of plain laws until recently.

And I note that it is still not unusual to see exchanges on the Internet along the lines of: plain language is not suitable in the legal sphere because that sphere contains so many concepts that cannot be expressed plainly.

17 M Asprey. (1991). Plain Language for Lawyers. Annandale, NSW: The Federation Press, p. 36.

Those in the know

Of course, some people do know plain laws exist. Drafters are obviously one such group. Judges are another. Comments have been made by judges for quite some time recognizing that attempts have been made to write laws in Australia more plainly. Many of the comments are not complimentary.

In this respect I should note that the change from old-style writing to a plainer style of writing was not without its teething problems, and some of the early efforts would now be seen as being clumsy or inelegant. Some of those examples made it to high levels of the Australian courts.

A number of academics, or quasi-academics, have also written about plain laws. In the two most prominent cases that I am aware of, both of them were ex-drafters. Jeffrey Barnes of La Trobe University has written a number of articles exploring aspects of plain laws. The late Frances Bennion also often wrote about plain laws. It is fair to say that he was not a fan of plain laws.

Why ignorance matters

The failure to recognize the existence of plain laws is very unfortunate, because plain language should be a much easier "sell" in a world where there is extensive evidence that complicated documents such as laws can be written plainly.

Therefore, a massive opportunity to further the cause of plain language generally over the last two to three decades has been missed.

Conclusion

If the writing of laws can be substantially improved from a plain language perspective, as has occurred, then so can the writing of every other document.

Blog post about the conference: Ploughing legal snowdrifts to make snowballs roll

Sissel C Motzfeldt is a senior adviser at the Agency for Public Management and eGovernment. Sissel manages the "Clear language in laws and regulations" project. She previously managed the Plain Language project in Norway's civil service. Her experience in central government includes communication advisor, communication manager, and strategy developer. Her other skills include lecturer, consultant, and project manager.

Ragnhild I Samuelsberg is a specialist director in the Norwegian Ministry of Children and Equality, where she's building a plain language culture. Ragnhild has extensive experience as a professional communicator and lecturer outside government, and has been an anchor for a TV program, an editor, and a journalist.

By Meredith Thatcher

Meredith Thatcher, consultant at Write Limited, wrote this blog post posted to the Write website on 1 December 2016: https://write.co.nz/ploughing-legal-snowdrifts-to-make-snowballs-roll/

The blog post is about the session that Sissel Motzfeldt and Ragnhild Samuelsberg presented to the 2016 Clarity International conference on 5 November 2016. The title of their session was "With a little help from my friends: Politicians, laws and rock and roll—changing the Norwegian law-making process."

Sissel Motzfeldt and Ragnhild Samuelsberg are "two unorthodox bureaucrats" on "a mission to fight the fog" of legalese in Norway. At Clarity2016, they presented a funny and memorable session on ploughing the legal snowdrift in the Norwegian law-making process. As they explain:

Norwegian citizens have too long tacitly accepted legalese — a language that prevents understanding and participation. In our experience, the process of changing the language in laws can be compared to the long winters in Norway. The process is hard, snowy and slippery, but also fun and filled with speed and excitement. In short, as is said in Norway, "we have made snowballs roll."

What snowballs did they need to move?

When Sissel and Ragnhild started their Clear Law Project, a number of snowballs blocked their path. These included:

- a lack of clear will from politicians and management in law-related businesses
- a lack of time and resources (the law is ongoing and they had little time to do the work)
- people who used legal terms and technical terms as a form of identity
- culture and tradition (people were reluctant to change)
- the mindset of lawyers (lawyers had a particular way of thinking and inherent biases)
- a perspective that the project wasn't important
- the structure and entrenched nature of the law-making process.

How did they make the snowballs roll?

Sissel and Ragnhild needed a strategy. First they needed to change the mindset of the lawyers. So they held a series of "clarity workshops" at which attendees raised the troublesome issue of legal precision versus clarity. Can you discard or rewrite pieces of law without losing the legal meaning?

The next step was to look at the law-making process. The presenters knew they needed "power behind the words." This meant getting the politicians on board with the project. The process had four steps.

1. BUILD THE CASE FOR CHANGE

Use surveys, reports, figures, and tables to build a base of data. For example, they gathered feedback about Norway's Civil Code.

- The laws are too complicated. They are like a patchwork quilt.

- There's a lack of plain language training and guidelines on the Civil Code for government and the legal profession.
- We often have too little time to redraft into plain language legal documents that refer to the Civil Code.
- We face too much political pressure against changing laws (including the Civil Code). Rather, they want to add to them or patch them.
- Drafts of legal texts are never user tested.

2. BUILD AWARENESS

Use seminars, conferences, courses, workshops, and meetings with management and other people in power to build awareness of plain language and how to use it in updating laws.

3. DEVELOP MODEL LAWS

Take a current law that's badly written. Edit it into a law to use as a model for other laws. User-test the current and edited law. Do a language analysis of the law.

4. CHANGE THE EDUCATIONAL SYSTEM

Take a whole-of-system approach by getting academics in business schools and law schools on board. Students can then learn how to write clearly from the start as they learn the process of drafting legislation.

How do you make the law speak for everyone?

Ask the question: How does the law speak to me? Then consider these aspects as you write your legal text.

- Stay positive and open to all viewpoints.
- Use clear writing to add energy to your message.
- Use a simple font that crosses boundaries, cultures, and languages.
- Use words that are easy for others to understand, re-send and re-use.
- Write clear, easy documents to make the meaning more accessible and transparent.

For example, Sissel and Ragnhild decided that children needed to understand laws that affected them. So the Adoption Act was rewritten using language that a child could understand. This rewrite includes brief explanations of legal terms after they first appear.

How will they keep the snowballs rolling?

Sissel and Ragnhild already see positive changes. These include:

- clearer language in legal training
- the forthcoming release of four model laws
- more legislators advising that laws will be written in plain language
- growing dedication to the task of achieving plain legal language
- growing support of government ministers.

Now the Clear Law Project is a solid base to get all parts of the legal system working towards plain language. And to keep that effort going.

As Sissel and Ragnhild unrolled the project, sometimes they hit a snowdrift. But they've ploughed through. In the end, it's all about persistency, persuasion, and transformation.

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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