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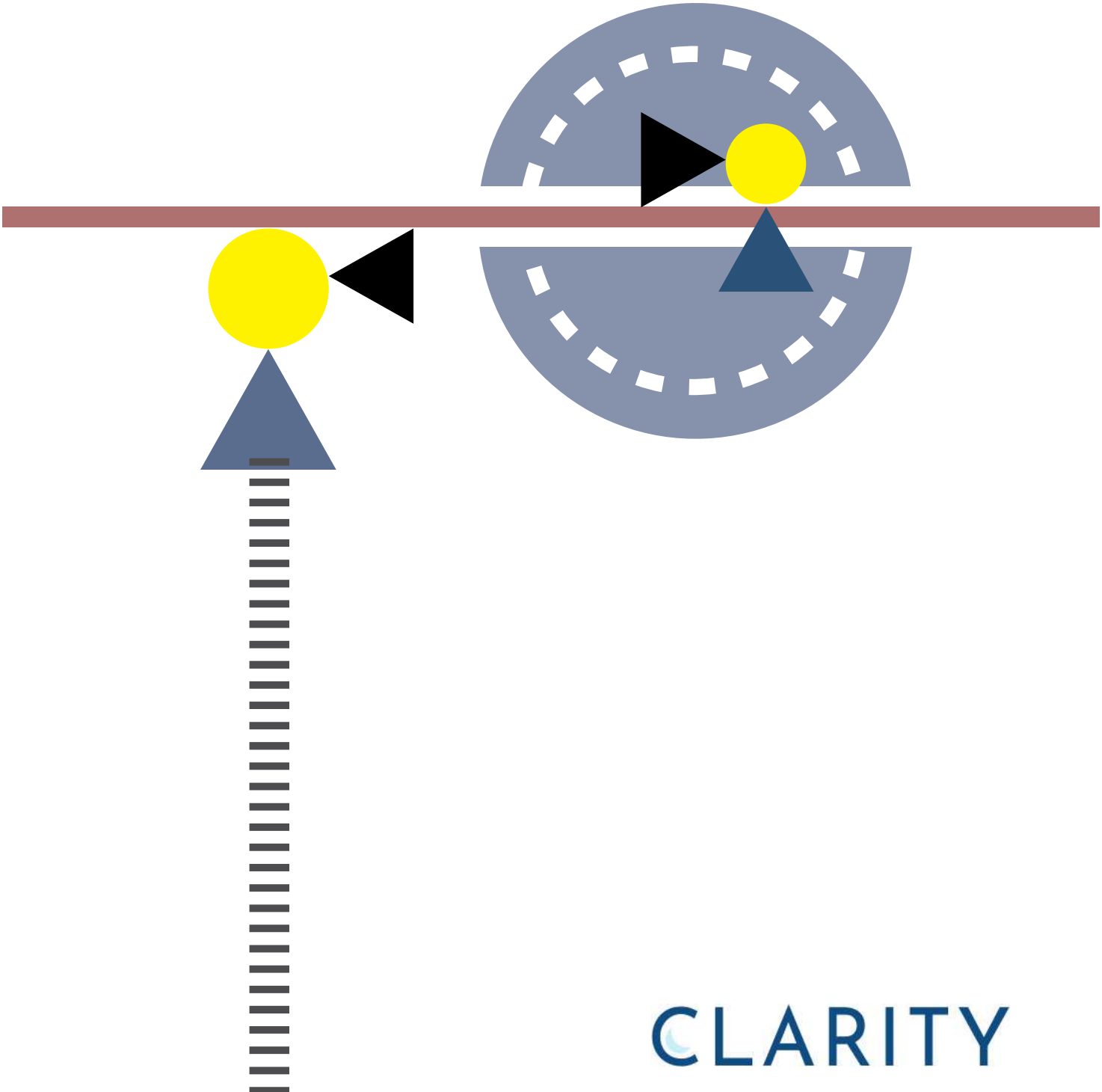

CLARITY

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Submissions
We encourage you to submit articles to be considered for publication in *Clarity*. Send submissions directly to the editor in chief at editor@clarity-international.org. Please limit submissions to no more than about 3,000 words.

In this issue – from our guest editor

Breaking legal barriers. What a phenomenal concept. One that I didn't anticipate feeling so passionately about before embarking on this guest editor role. Coming from a world of policy writing, my journey as a guest editor for *The Clarity Journal* took me on an eye-opening experience that's expanded my perspective as someone on the outside looking in.

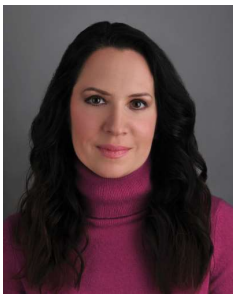
Issue No 88 shows us that legal jargon has long been a barrier, often leaving individuals feeling overwhelmed and confused when navigating the complexities of the legal system. The shift towards embracing plain language in legal communication is not just a trend but a necessity, offering a myriad of benefits that enhance accessibility, understanding, and justice.

Today you'll learn about how the Social Security Tribunal of Canada (SST) drafted the new Social Security Tribunal Rules of Procedure with Justice Canada to make these rules accessible for the broadest possible audience, most notably the vulnerable sector. We'll dive in to some fantastic interviews with our three renowned patrons: the Honourable Michael Kirby, the Right Honourable Beverly McLachlin, and the Right Honourable Sir Kenneth James Keith, who all provide inspiring tales and experiences on plain legal language and how far we've come as a community. We'll also treat our minds to the captivating writings of Ginny Reddish and Michèle Asprey, who provide us with book reviews on the most recent plain language publications. And how could we publish this issue without providing some background on the creation of the recently published International Organization for Standardization (ISO) standard? David Lipscomb shares insights in TC37/WG11's derogation request made to ISO, to address readers directly as "you". To top things off, our President, Julie Clement, shares a teaser on ISO Part 2 – it's a must read!

As I sit here, looking through this issue before we move to publishing, I'm humbled and amazed at the devotion that each person brings to the plain legal language cause. Across different countries, languages, and cultures, we have the same goal: empowering people to make informed decisions about legal matters that impact their lives. Embracing plain language in the legal realm is not just a matter of simplicity; it's a commitment to justice, understanding, and a legal system that truly serves the people it is meant to protect.

To our contributors: thank you for sharing your passion with me. With this, I wish you all happy readings!

Magalie



Magalie Rubec is a senior editor for the Royal Canadian Mounted Police, an agency of the Government of Canada in Ottawa, Ontario. She has a bachelor's degree in communications from the University of Ottawa, and has worked as a communications specialist and editor for the past 17 years for various federal government departments including Finance Canada, the Treasury Board of Canada Secretariat, and Veterans Affairs Canada. Magalie has also gained regional communications experience during her work in Edmonton, Alberta at Public Services and Procurement Canada. She is an avid learner and is currently enrolled in the Editing Certificate program at Simon Fraser University in British Columbia.

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From the editor

Several of Clarity's country representatives have stepped up to be part of the recently erected *The Clarity Journal* editorial committee. With the help of the committee, we aim to bring the journal to a higher standard.

One example of that is that *The Clarity Journal* is moving towards becoming a peer-reviewed journal. This doesn't mean that every submission will be peer reviewed; only submissions that contain research will be submitted to peers for reviewing. More on this in our next issue.

My role remains to encourage you to contribute to our future issues of *The Clarity Journal*: send a letter to the editor, submit an article for our journal, or become our next guest editor. We need your help to create meaningful content. I am happy to provide you with more details if you are interested in contributing.

Let's keep our communication going!

Merel

Merel Elsinga is a plain language writer and editor with a background in Dutch law and a post-professional lingering passion for sailing and cooking. She found Canada's beautiful West Coast during her sailing career and has lived there since 2005. She has since graduated from the Simon Fraser University editing program and established her editing business. Merel is also the executive director for the Center for Plain Language, and an active member of Editors Canada.

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From the president

Happy new year, Clarity friends and colleagues,

It was wonderful seeing some of you at PLAIN's Buenos Aires conference, especially as we celebrated Clarity's 40th anniversary. Many thanks to Mariano Vitetta, our country representative for Argentina, for hosting a beautiful party at Austral University School of Law where he is a professor.

When it feels as though we aren't making much progress day-to-day, I remind myself that legal language has improved a great deal since we began this journey. Clarity has made a difference. And *you* continue to make a difference with every effort, large or small. That is something to celebrate!

One of those efforts is in the field of legal design. If you haven't been studying legal design, I encourage you to do so. We had some wonderful discussions in Buenos Aires with Helena Haapio and others about how the fascinating field of legal design is improving legal documents around the world.

Another of your accomplishments was a first international standard for plain language. This standard is the consensus of countless experts: what plain language is and how to achieve it. Even more exciting is the work we are doing on Part 2 of the standard, which will focus on plain *legal* documents. I've written a bit more elsewhere in this issue of the journal. Take a look, and then please share your expertise when the next draft of Part 2 is ready for comments.

An ISO standard for plain legal language will create countless opportunities for those who work with legal documents. But what will that mean for our next 40 years? In the coming year, we will continue to work on strategic planning and building systems that help us promote plain legal language.

What would you like to see in Clarity's future? I'd love to see your ideas. Email me at president@clarity-international.org. And please consider working with the board and committees to achieve that vision.

Unfortunately, we've been unable to find a host for a 2024 in-person Clarity conference. But we are exploring other options. Meanwhile, have you thought about hosting your own Clarity gathering? Small or large, formal or informal . . . let me know your ideas and how Clarity can support these gatherings.

My thanks to the many people who are already helping to make Clarity all it can be, especially our remarkable board: Treasurer Joe Kimble, Editor Merel Elsinga, appointed members Annetta Cheek and Christopher Balmford, and country representatives Anush Sukiasyan (Armenia), Mariano Vitetta (Argentina), and Justyna Zandberg-Malec (Poland). Finally, a huge "Thank you!" to Stephanie Roy who has worked so hard over the past 5 years while also caring for her family and building a plain-language company in Montreal. Stephanie, thank you for all you've done. We look forward to welcoming you back to the board when the time is right for you.

With warmest regards,

Julie

Julie Clement is the president of Clarity and a member of the International Plain Language Federation and the Center for Plain Language boards. She is the Deputy Clerk at the Michigan Supreme Court and an instructor in Simon Fraser University's Plain Language Certificate program. Julie is a Distinguished Professor Emerita of the Western Michigan University Cooley Law School and served as editor in chief of *The Clarity Journal* for 14 years.

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Behind the scenes: Drafting rules of procedure in plain language

Benjamin Daigle is Senior Editor and Team Lead in the Linguistic Services unit at the Secretariat to the Social Security Tribunal of Canada (SST). After graduating with an MA in Linguistics (Research) from Leiden University, he worked in diverse language-related fields. He was a translator, a lexicographer for the Oxford English Dictionary, and a researcher on documentation projects for endangered languages. Ben's passion for languages has found a home in the Canadian government, where he's been involved in the SST's plain language efforts since 2018.

Benjamin Daigle, Robin Matte, and Michelle Normandeau, *Canada*

You should not have to be a lawyer to be able to decipher legislative texts. Legislative texts need to be easy for everyone to understand because they govern all of society. That's exactly what the Social Security Tribunal of Canada (SST)[1] had in mind when it set out to draft the new Social Security Tribunal Rules of Procedure (Rules)[2] with Justice Canada. The goal was to use plain language and a people-centred design to make the Rules accessible for the broadest possible audience. Here's how we did it.

What we did and why we did it

The SST is an independent federal administrative tribunal. It decides appeals about Employment Insurance, Canada Pension Plan, and Old Age Security benefits. Canada's social support system is built on these benefits. The people who come to the SST are among the most vulnerable in our society:

- They're seniors, people with disabilities, and people who are unemployed
- Many don't have a secondary or postsecondary education
- They don't have a legal background, and many don't have legal support
- Most are dealing with an unfamiliar issue for the first time

In recent years, the SST has focused on changing how it works and communicates to help the people it serves access justice more easily. Writing rules of procedure in plain language and designing them with these people in mind was a logical step in this work.

The SST's rules of procedure are a type of legislative text (laws are another type). But legislative texts typically have lengthy sentences, embedded clauses, and cryptic headings and marginal notes. If you're not a lawyer who is trained in reading legislative texts, this style of writing can be difficult to understand. The SST wanted its rules to be accessible to the widest possible audience. The goal was to help people:

- understand the appeal process
- fully participate in their appeal, with or without a professional representative
- know what to expect from the SST
- know what the SST expects of them

1 https://www.sst-tss.gc.ca/en

2 https://laws.justice.gc.ca/eng/regulations/SOR-2022-256/FullText.html

What plain language drafting looks like

The SST's Legal Services and Linguistic Services worked together to write the first draft of the Rules. We did our homework. As we wrote our first draft, we followed Justice Canada's legislative drafting guides[3] and its Guide to fostering the readability of legislative texts.[4] We found that many of Justice Canada's guidelines aligned with our plain language approach already. For example, its Guide calls for:

- "writing for the readers"
- "keeping the language as simple as possible"
- "creating a logical flow from sentence to sentence"

We interpreted these guidelines as giving us permission to use our plain language writing strategies while drafting the Rules.

> *"In recent years, the SST has focused on changing how it works and communicates to help the people it serves access justice more easily."*

We shared our first draft with people in the plain language community. We worked their feedback into a refined version. Then, we shared it with Justice Canada and started working with its drafters to rewrite it.

The SST's Legal Services and, critically, Linguistic Services worked with the Justice Canada drafters to rewrite the text in English and French at the same time. By having our English and French plain language specialists from Linguistic Services in the drafting process, we were able to make sure we followed our plain language strategies as the final draft took shape.

What plain language strategies we followed

We followed these four plain language strategies to draft the Rules:

1. Mirror experience and expectations
2. Use simple syntax
3. Use a limited vocabulary
4. Design to be accessible

We did this as much as the norms of legislative drafting would allow.

1 – Mirror experience and expectations

We aimed to mirror people's real-world experience and anticipate their expectations. This relates to the notion of iconicity in linguistics. Iconicity is about how linguistic form mirrors the real world. We wanted the form of our message (our words) to reflect our readers' real-world experience and expectations.

It's easier to understand a message when there are no surprises. So, we put the events that the Rules describe in the order people would likely experience them in their appeal. We also grouped related content by theme to keep semantically dependent concepts close together. We did this so people can easily find related and relevant information when they're looking something up in the Rules.

Robin Matte is Senior Editor and Team Lead in the Linguistic Services unit at the Secretariat to the Social Security Tribunal of Canada (SST). Robin studied translation at the University of Ottawa. He previously worked at the University of Ottawa Heart Institute where he wrote and translated primarily for older adults and people with health conditions. At the Office of the Leader of the Official Opposition, he was tasked with creating communications products for the general public. To this day in his work, he continues to strive to create clear and easy-to-understand communications products for all French Canadians.

3 https://justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/index.html

4 https://www.justice.gc.ca/eng/trans/ar-lr/rg-gl/index.html

Michelle Normandeau is General Counsel and Director of the Legal Services with the Secretariat to the Social Security Tribunal of Canada (SST). Michelle graduated from the English Common Law program (LL.B.) at the University of Ottawa in 2005. She also holds a Bachelor of Journalism (B.J.) from Carleton University. Michelle is a member of the Law Society of Ontario. She has been providing legal services to the SST since it opened its doors in 2013. Before that, she worked as legal counsel with Justice Canada.

2 – Use simple syntax

We aimed to use simple syntax (sentence structure). By "simple," we mean our sentences have the following features:

- They're short
- They each express only one idea
- They use verb-only constructions (example: "to appeal"), instead of generic verb + noun constructions (example: "to bring an appeal")
- They follow a subject-verb-object word order (the default in English and French)
- Their main components (the predicate and its arguments) are close together

We kept dependent clauses (like adverbial clauses and to-infinitive clauses) at the beginning or end of sentences. We did this to avoid embedding them between the main components and breaking the flow of the sentence.

We split long sentences into separate ones. For a complex rule, we expressed background information in a separate sentence. Then, we linked that information to the main sentence with a transition. This moves the reader from old information to new and important information.

> *"We wanted the form of our message (our words) to reflect our readers' real-world experience and expectations."*

By keeping the syntax simple like this, our readers don't have to do mental gymnastics to work out the grammatical relations in a sentence. The components of each sentence are easy to track, making our message easy to understand.

3 – Use a limited vocabulary

We aimed to use accurate, common, and consistent vocabulary.

For example, we moved away from the former regulations' phrasing of "extension of time" and "adjourn" in favour of the more common terms "more time" and "reschedule." To follow a simplified practice that the SST uses in decision writing, we referred to every level of a provision as a "section," instead of using the terms "subsection" and "paragraph."

> *"By keeping the syntax simple like this, our readers don't have to do mental gymnastics to work out the grammatical relations in a sentence."*

We explained key legal terms in a part at the beginning of the Rules dedicated to definitions, and we explained the importance of reading the definitions first. If a legal term didn't appear throughout the Rules, we explained the term in the section where readers would encounter it.

4 – Design to be accessible

We aimed to incorporate the following design features into the Rules to help people find the information they're looking for:

- descriptive signpost-like headings and marginal notes to guide readers
- an "Overview of these Rules" section to explain how the Rules are divided into parts
- a summary at the beginning of each part to show readers what the part covers
- negative space (through lists and separated rules) to avoid expressing complex rules in blocks of text

> *"To our knowledge, this is the first time a Canadian federal administrative tribunal has drafted rules of procedure in plain language."*

How this looks in practice

The Rules replaced the repealed Social Security Tribunal Regulations (Regulations).[5] Here's an example of how the new Rules compare to the Regulations:

Before **(repealed Regulations)**	**After** **(new Rules)**
Deemed originals **8** An appeal, application or other document that is filed by email, facsimile or the Tribunal's electronic filing procedure is deemed to be the original of the document and the Tribunal may provide an electronic copy of it and certify the copy as a true copy. **Electronic version** **9** If the Tribunal creates an electronic version of an appeal, application or other document that is filed at the Tribunal's address or sent by mail, the electronic version is deemed to be the original version of the document and the Tribunal may provide an electronic copy of it and certify the copy as a true copy.	**Electronic Documents** **An electronic copy is an original** **21 (1)** An electronic copy of a document is considered the original version of the document. **Making electronic copies** **(2)** The Tribunal may make an electronic copy of any document filed. **Providing an electronic copy** **(3)** The Tribunal may provide an electronic copy of any document filed. **Certifying an electronic copy as a true copy** **(4)** The Tribunal may certify an electronic copy as a true copy.

5 https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-60/20131212/P1TT3xt3.html

What all this means

To our knowledge, this is the first time a Canadian federal administrative tribunal has drafted rules of procedure in plain language. We know that some self-represented and under-represented parties won't consult a tribunal's rules, but some will. We felt that this was reason enough to design rules of procedure with those people in mind.

Check out the Rules[6] and share them with anyone interested in advancing access to justice through plain language legislative drafting. We hope that these Rules and our description of their plain language features will help others who want to draft legislative texts in a more accessible way.

6 https://laws.justice.gc.ca/eng/regulations/SOR-2022-256/FullText.html

A word of thanks

We're grateful to Justice Canada for its support with this initiative. Within the SST, this project was a team effort that spanned many months. We'd like to thank everyone who made it a reality. And we'd especially like to recognize Jennifer Constantin, Katelyn Sylvester, and Amélie Picard from the SST's Linguistic Services unit for drafting the Rules with us.

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Twitter: @SSTribunal_EN
LinkedIn: LinkedIn[7]
Website: https://www.sst-tss.gc.ca/en

7 https://www.linkedin.com/company/sstc-tssc/

Rédiger un texte de loi en langage clair et simple : on l'a fait

Benjamin Daigle, Robin Matte et Michelle Normandeau, *Canada*

Maîtriser le droit ne devrait pas être une condition pour pouvoir comprendre des textes de loi. Au contraire, ces textes devraient être faciles à comprendre pour tout le monde. Après tout, ils régissent l'ensemble de notre société. C'est exactement ce que le Tribunal de la sécurité sociale du Canada[1] (TSS) avait à l'esprit lorsqu'il a commencé à rédiger ses nouvelles Règles de procédure[2] avec Justice Canada. L'objectif était de concevoir des règles centrées sur les personnes qui utilisent nos services en utilisant un langage clair et simple et en s'adressant à une audience très large. Voici comment on s'y est pris.

Ce qu'on a choisi de faire et pourquoi

Le TSS est un tribunal administratif fédéral indépendant. Il tranche des appels relatifs aux prestations de l'assurance-emploi, du Régime de pensions du Canada et de la Sécurité de la vieillesse. Ces prestations constituent en large partie le filet social canadien. Les personnes qui utilisent les services du TSS sont parmi les plus vulnérables de notre société :

- Elles sont souvent âgées, malades ou invalides, ou en situation de chômage.
- Elles n'ont pas fait d'études secondaires ou postsecondaires.
- Elles n'ont aucune connaissance en droit et n'ont pas d'aide juridique.
- Elles font face à une situation inhabituelle.

Ces dernières années, le TSS a vraiment voulu changer sa façon de fonctionner et de communiquer afin de faciliter l'accès à la justice. Choisir d'écrire nos Règles de procédure et de les penser en fonction de ces personnes allait donc un peu de soi.

Nos règles de procédure sont un type de texte de loi (les lois en sont un autre). Généralement, les textes de loi comportent des phrases longues et complexes, des titres et des sous-titres compliqués. Pour une personne qui n'a pas de formation en droit, ça peut être très difficile à lire et à comprendre. Le TSS voulait que ses règles soient faciles à comprendre pour la plupart des gens. Le but était d'aider les gens à :

- comprendre le processus d'appel;
- participer pleinement à leur appel, avec ou sans avocat;
- savoir à quoi s'attendre du TSS;
- savoir ce que le TSS attend d'eux.

Benjamin Daigle est réviseur principal et chef d'équipe pour les Services linguistiques du Secrétariat du Tribunal de la sécurité sociale du Canada (TSS). Après avoir obtenu sa maîtrise en linguistique (recherche) de l'université de Leyde, il a travaillé dans différents domaines liés à la langue. Il a été traducteur, lexicographe pour l'Oxford English Dictionary et chercheur dans le cadre de projets de documentation des langues en péril. C'est maintenant au sein de la fonction publique fédérale canadienne que Ben continue de se passionner pour les langues, participant notamment aux efforts du TSS en langage clair et simple depuis 2018.

1 https://www.sst-tss.gc.ca/fr

2 https://laws.justice.gc.ca/fra/reglements/DORS-2022-256/TexteComplet.html

Robin Matte est réviseur principal et chef d'équipe pour les Services linguistiques du Secrétariat du Tribunal de la sécurité sociale du Canada (TSS). Il a étudié la traduction à l'Université d'Ottawa (B.A.). Il a travaillé à l'Institut de cardiologie de l'Université d'Ottawa, où son public cible était principalement des personnes plus âgées et malades. Avant cela, au Bureau du chef de l'opposition officielle, il créait des produits de communication destinés au grand public. Il poursuit aujourd'hui sa mission professionnelle de créer des produits de communication clairs et faciles à comprendre pour l'ensemble de la population franco-canadienne.

La rédaction d'un texte de loi en langage clair et simple

Les Services juridiques et les Services linguistiques du TSS ont rédigé ensemble la première ébauche des Règles. Nous avons commencé par faire nos devoirs. Nous avons consulté les guides de rédaction législative[3] et le Guide pour favoriser la lisibilité des textes législatifs[4] de Justice Canada. Nous avons constaté que les directives de Justice Canada rejoignaient largement notre approche de rédaction en langage clair et simple. Par exemple, le Guide suggère :

- de rédiger pour ses lecteurs;
- d'écrire le plus simplement possible;
- de garder une logique qui coule d'une phrase à l'autre.

> *« Ces dernières années, le TSS a vraiment voulu changer sa façon de fonctionner et de communiquer afin de faciliter l'accès à la justice. »*

Nous avons vu cela un peu comme une permission de rédiger l'ébauche des Règles en langage clair et simple.

Une fois l'ébauche terminée, nous avons demandé à la communauté du langage clair et simple de nous fournir des commentaires. Nous avons ensuite tenu compte des commentaires reçus pour améliorer notre texte. Enfin, nous l'avons envoyé à Justice Canada et avons travaillé avec leurs rédacteurs pour le retravailler.

Les Services juridiques et les Services linguistiques, ainsi que les rédacteurs de Justice Canada, ont retravaillé le texte en anglais et en français en même temps. Grâce aux interventions des spécialistes du langage clair et simple des Services linguistiques pendant la rédaction de l'ébauche finale, nous nous sommes assurés de maintenir le cap sur notre objectif : suivre nos stratégies de langage clair et simple.

Nos stratégies de langage clair et simple

Nous avons adopté ces quatre stratégies de rédaction :

1. Refléter l'ordre logique des choses.
2. Utiliser une syntaxe simple.
3. Utiliser un vocabulaire simple.
4. Faciliter la lecture.

Nous avons voulu nous en tenir à ces stratégies tout en respectant les limites imposées par les normes de rédaction législative.

1 – Refléter l'ordre logique des choses

Nous tenions à ce que les Règles reflètent l'ordre logique des choses et qu'elles s'alignent sur les étapes du processus d'appel. Il était important pour nous que les Règles soient fidèles à l'expérience concrète des personnes qui sont dans un processus d'appel au TSS.

3 https://justice.gc.ca/fra/pr-rp/sjc-csj/redact-legis/index.html

4 https://justice.gc.ca/fra/pr-rp/sjc-csj/redact-legis/index.html

Il est plus facile de comprendre un message lorsqu'il n'y a aucune surprise. Les étapes décrites dans les Règles suivent donc l'ordre habituel du processus d'appel. Nous avons regroupé les éléments interdépendants sous un même thème. Ainsi, les lecteurs peuvent plus facilement trouver les renseignements qu'ils cherchent dans les Règles.

> *« Il était important pour nous que les Règles soient fidèles à l'expérience concrète des personnes qui sont dans un processus d'appel au TSS. »*

2 – Utiliser une syntaxe simple

Nous avons tenté d'utiliser une syntaxe simple et de former des phrases qui :

- sont courtes;
- expriment une seule idée;
- comportent le moins de mots possibles (« Le Tribunal prolonge le délai » plutôt que « Le Tribunal accorde une prolongation du délai »)
- suivent l'ordre sujet-verbe-complément (l'ordre naturel des phrases en français et en anglais);
- ont leurs éléments essentiels situés près les uns des autres.

Nous avons éliminé les phrases longues entrecoupées par des séries de virgules afin de maintenir le rythme. Nous les avons plutôt divisées pour faire des phrases plus courtes.

Pour les éléments plus complexes, nous avons décidé de présenter le contexte dans une phrase à part. Puis, nous avons fait le lien avec cette information dans une autre phrase à l'aide de mots de transition. Ainsi, le lecteur suit une séquence logique d'informations.

En gardant une syntaxe simple, nos lecteurs n'ont pas à faire de gymnastique mentale pour comprendre les liens entre les éléments d'une phrase. Les parties de chaque phrase sont faciles à suivre, ce qui facilite la compréhension du message.

3 – Utiliser un vocabulaire simple

Nous avons utilisé un vocabulaire précis et cohérent et nous nous sommes limités à des mots simples.

> *« En gardant une syntaxe simple, nos lecteurs n'ont pas à faire de gymnastique mentale pour comprendre les liens entre les éléments d'une phrase. »*

Par exemple, nous avons décidé de remplacer certains des termes utilisés dans l'ancien règlement, préférant des mots comme « prolonger un délai » plutôt que « proroger un délai » ou encore « modifier la date d'une audience » plutôt que « ajourner une audience ». Comme les membres du TSS le font dans leurs décisions, nous utilisons le terme « article » pour faire référence à toutes les parties d'une loi, plutôt que « paragraphe », « alinéa », etc.

Michelle Normandeau est avocate générale et directrice des Services juridiques au Secrétariat du Tribunal de la sécurité sociale du Canada (TSS). Michelle a obtenu son diplôme de droit en common law (LL.B.) de l'Université d'Ottawa en 2005. Elle détient aussi un baccalauréat en journalisme (B.J.) de l'Université Carleton. Elle est membre du Barreau de l'Ontario. Elle fournit des services juridiques au sein du TSS depuis sa création en 2013. Avant cela, elle était conseillère juridique à Justice Canada.

Nous avons expliqué les termes juridiques importants au début des Règles, dans une partie consacrée aux définitions. Nous avons aussi insisté sur l'importance de lire les définitions en premier. Dans le cas où un terme juridique n'était pas utilisé tout au long des Règles, nous avons expliqué sa signification dans l'article même où le lecteur le rencontrait.

4 – Faciliter la lecture

Pour faciliter la lecture et aider les gens à trouver l'information, nous avons inclus ce qui suit dans les Règles :

- des titres et des notes marginales pour guider les lecteurs;
- une section « Aperçu des règles » pour expliquer comment les Règles sont organisées en diverses parties;
- un résumé au début de chaque partie;
- des listes et des séparations pour éviter de présenter des règles complexes dans un gros bloc de texte.

Concrètement, ça ressemble à quoi?

Les Règles ont remplacé le Règlement sur la sécurité sociale[5] (abrogé). Voici une comparaison entre le Règlement et les nouvelles Règles :

5 https://laws-lois.justice.gc.ca/fra/reglements/DORS-2013-60/20131212/P1TT3xt3.html

Avant **(Règlement abrogé)**	**Après** **(nouvelles Règles)**
Documents originaux **8** L'appel, la demande ou tout autre document déposé par courriel, télécopieur ou selon les modalités de dépôt électronique fournies par le Tribunal est réputé être la version originale et le Tribunal peut en fournir une copie électronique et certifier celle-ci comme étant une copie conforme. **Version électronique** **9** Si le Tribunal crée une version électronique de l'appel, de la demande ou de tout autre document déposé à l'adresse du Tribunal ou envoyé par courrier, la version électronique est réputée être la version originale et le Tribunal peut en fournir une copie électronique et certifier celle-ci comme étant une copie conforme.	**Documents électroniques** **Une copie électronique constitue un original** **21 (1)** La copie électronique d'un document est considérée comme étant la version originale du document. **Création d'une copie électronique** **(2)** Le Tribunal peut créer une copie électronique de tout document déposé. **Fournir une copie électronique** **(3)** Le Tribunal peut fournir une copie électronique de tout document déposé. **Copie électronique certifiée copie conforme** **(4)** Le Tribunal peut certifier une copie électronique comme étant une copie conforme.

> *À notre connaissance, c'est la première fois qu'un tribunal administratif fédéral canadien rédige ses règles de procédure en langage clair et simple.*

En conclusion

À notre connaissance, c'est la première fois qu'un tribunal administratif fédéral canadien rédige ses règles de procédure en langage clair et simple. Nous savons que ce ne sont pas toutes les parties qui consulteront nos Règles, mais certaines d'entre elles le feront. Pour nous, c'était important de concevoir nos Règles en gardant ces personnes à l'esprit.

Consultez nos Règles[6] et montrez-les à quiconque a à cœur l'accès à la justice et l'utilisation du langage clair et simple dans les textes de loi. Nous espérons que ces Règles et nos stratégies de langage clair et simple aideront celles et ceux qui voudront rédiger des textes de loi plus accessibles.

6 https://laws.justice.gc.ca/fra/reglements/DORS-2022-256/TexteComplet.html

Mot de remerciement

Nous remercions Justice Canada pour leur soutien dans ce projet. Au sein du TSS, ce projet a été un succès grâce aux efforts de beaucoup de personnes pendant plusieurs mois : merci à toutes et tous. Un remerciement tout spécial à Jennifer Constantin, Katelyn Sylvester et Amélie Picard, des Services linguistiques, qui nous ont aidés à rédiger les Règles.

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Book review

Writing for Dollars, Writing to Please Second Edition

Janice (Ginny) Redish has been a passionate evangelist for plain language and usability for more than 40 years. In hundreds of projects, Ginny helped clients bring plain language into their organizations and revise many types of documents.

Ginny is especially proud that the new International Standard definition of plain language comes from her work: "Plain language ensures readers can find what they need, understand it, and use it."

Ginny's pioneering work in plain language has brought her many awards, including most recently the Christine Mowat Plain Language Achievement Award from the Plain Language Association International, 2023.

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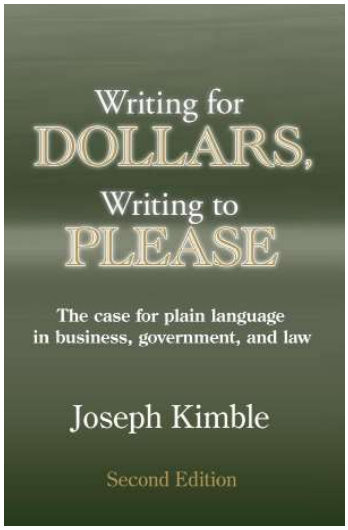

Joseph Kimble, *Writing for Dollars, Writing to Please*. Second edition. Carolina Academic Press, 2023. 219 pages. ISBN: 9781531024543.
www.cap-press.com/authors/776

Reviewed by Janice Redish, *United States*

The subtitle of *Writing for Dollars, Writing to Please* is "The case for plain language in business, government, and law." But Joe Kimble's book is much more than that. It's history, guidelines, and answers to critics, as well as more than 60 success stories that make the case for plain language.

As members of Clarity and readers of this journal, you probably know Joe Kimble and his work. For those who are new, Joe Kimble is a Distinguished Professor Emeritus at Cooley Law School, past president and long-time United States (U.S.) representative to Clarity, the very long-time editor of the column on plain language in the *Michigan Bar Journal*, and a founding director of the U.S.-based Center for Plain Language. He is also a drafting consultant on all U.S. federal court rules.

Joe has done our community a great service by collecting history and case studies from colleagues around the world for *Writing for Dollars, Writing to Please.*

Why you need this new edition

If you have relied on this book, as I have, since Joe published the first edition more than a decade ago, you know how valuable it is. You now need the new edition because of these additions:

- More historical highlights, including the very new International Standard on Plain Language
- An even broader global perspective with summaries of recent activities in five Spanish-speaking countries as well as updates on what has happened in the many countries Joe covered in the first edition
- Empirical studies from the decade since the first edition, bringing the total in Part 5: The Extraordinary Benefits to 60 numbered summaries (and actually more than 60 examples as several summaries cover more than one study)
- A new index of works and authors cited

- Up-to-date citations for the references—and because URLs may change, Joe has created permanent links for many of the references (See https://perma.cc)

What's in the book

The organization of this second edition follows the pattern of the first edition:

- Part 1: A brief personal story of Joe's journey to plain language
- Part 2: 43 guidelines for plain language in 5 categories: general, design, organization, sentences, and words
- Part 3: Answering the critics by presenting and dispelling 10 myths about plain language and what plain language advocates want
- Part 4: 50 historical highlights from the mid-20th century to today, prepared with the help of 57 contributors
- Part 5: 60 summaries of studies of writing for dollars, writing to please

> *Joe has done our community a great service by collecting history and case studies from colleagues around the world for Writing for Dollars, Writing to Please.*

How *Writing for Dollars, Writing to Please* can help you

It's always interesting to read how someone came to appreciate the need for clear communication and then became a great advocate of plain language. You can compare Joe's journey to your own.

As a plain language specialist, you may not need the guidelines, you may not believe any of the myths, you may already know much of the history. But it's all there in an easy-to-find and easy-to-use compilation for you to help your colleagues and clients.

> *If you need to show that plain language isn't a crazy, new idea, you can turn to Joe's history.*

If you hear any of these myths, you can turn to Joe's cogent responses.

If you need to show that plain language isn't a crazy, new idea, you can turn to Joe's history.

If you need proof that plain language makes a difference, you can find relevant research studies. Joe has even created a table on page 164 to help you find which success stories are most relevant to your situation.

The organization of Part 5: The Extraordinary Benefits explains the book's title:

- Writing for Dollars—how plain language can save money (and time)
- Writing to Please—that most people prefer plain language (including several studies with judges, lawyers, law clerks, and law students, as well as many studies with the general public)

And for yourself, you can use the very extensive footnotes with myriad references for your own further education. These include not only the older resources that were in the first edition, but also newer publications like the history of plain language in the United States by Karen Schriver (page 94) and the international study of preference for plain language by Christopher Trudeau (page 172), both published in 2017.

If you want a book for yourself (or a client or colleague) to learn more about plain language as it applies to law, lawyers, documents in general, or writing for the web, peruse the section on publications in Part 4. Joe's explanations of the books he includes will help you choose ones that are most relevant for your needs.

This is Joe Kimble's great service to all of us

At the beginning of the history section (page 45), Joe writes: "Nobody has tried to assemble a collection quite like this." That's true of both Part 4 on the history and Part 5 on the benefits. Nobody had done this until Joe Kimble did it.

Meet our patron

The Honourable Michael Kirby AC CMG*

Magalie Rubec, *Canada*

Q. You are known as a patron of Clarity International and proud supporter of the plain language movement. I suppose my first question is, therefore, how did you become involved with plain legal language?

A. In 1975, I was appointed a judge and expected my career to be in industrial relations law. However, shortly after my appointment, I was invited to become the first chairman of the Australian Law Reform Commission (ALRC). That Commission was established in 1973, but began its work in 1975, to reform, simplify and codify federal law in Australia. Our constitutional arrangements are similar to those of the United States, with powers distributed between the Federal Parliament and the States. Over time, the decisions of the High Court of Australia have tended to increase federal power. As Chairman of the ALRC, my task was to simplify the law and make it more understandable. This led me to the world of clarity and plain language.

One of the first commissioners appointed to the ALRC was Professor David St. L. Kelly, who was interested in improving the expression of the law. He contacted Professor Vernon Countryman from Harvard Law School, who had advocated simplification of bankruptcy law in the United States. We had discussions with Professor Countryman by telephone conference. He taught us some rules for simplifying the law. Professor Kelly was appointed to lead a reference for the ALRC on simplification of Bankruptcy Law in Australia. We worked with Professor Countryman to fulfill our duty. From there, I collaborated with other scholars, such as Professor Joseph Kimble (USA) and Professor Peter Butt (Australia), to promote the merits of simplification of legal expression. This issue has always interested me. I will be speaking about it soon at an upcoming conference in Sydney. Many people, even some lawyers, are interested in this.

The Honourable Michael Kirby is a retired justice of the High Court of Australia. He served 1996-2009. Previously, he was president of the Court of Appeal of New South Wales and chairman of the Australian Law Reform Commission. Mr. Kirby has been a patron of Clarity International over the past decade. He has also participated in many international activities for the United Nations, Commonwealth Secretariat, and the Organisation for Economic Co-operation and Development.

**Companion of the order of Australia, Companion of the order of St Michael and St George*

Q. I'm curious to know whether plain language was taught or used during your legal studies at the University of Sydney.

A. I never learned about plain language in law school. In fact, I didn't learn about a lot of subjects, such as First Nations people, the disadvantages of women in the law, racial discrimination in the law, the adjustment of the law, LGBTQI areas of the law, and more. These topics were considered irrelevant in the Australian legal system. Even plain language and clear expression were not seen as important to the law by many lawyers and legislative drafters. There was no real push for simplification from within the legal system, including in the judiciary, the academic world and law reform agencies. However, with the support of Professor

Kelly and my colleagues in the ALRC, we started educating the Australian legal system on this subject. This process is still ongoing.

Q. Tying into this, I read about the Hamlyn Lectures (a series of public lectures in England, Scotland, Wales and Northern Ireland given annually on a legal topic) that you delivered on the subject of judicial activism in 2003. I'd like to know what role plain language has in preparing for these types of engagements.

A. I would like to say that I have a well-developed theory of plain language and that I am a good student of renowned scholars like Professor Countryman, Professor Kelly, Professor Kimble, and others. However, that is not the case. I'm a busy lawyer and judge, now arbitrator, and I didn't have much time to think about a simpler mode of expression. Nevertheless, many people, including Sir Anthony Mason, one of Australia's greatest judges who was the Chief Justice of Australia in the 1980s and 90s, have complimented me by saying: "If you want to understand what a case is really about, you should start with Justice Kirby's opinion." Sir Anthony Mason is a great judge who is still alive at 99. I'm having lunch with him next week. I often disagreed with my colleagues on the High Court of Australia, but I always wrote clearly. When I visit law schools, students often express admiration of my reasoning. When I ask them why, they say it's because it is simple, clear, and easy to understand.

"If you want to understand what a case is really *about, you should start with Justice Kirby's opinion."*

If there was a theory behind my writing, it was one I learned from those who were advocating plain language in legal expression. This theory comes from the history of the English language, which is a combination of the Germanic language of the Saxons and Angles and the French language brought by the clerks who came to England with the Norman Conquest. This marriage of languages greatly enriched our language, but it also created ambiguity. As the English tried to reconcile the Anglo-French words from the Conquest with the words of the original inhabitants, they developed a language of great subtlety. This is why the English language is so rich for poetry and literature. But it can be ambiguous for legal expression. I believe that my language is clear because I speak and write in the Germanic language, which is more comfortable for English speakers in everyday conversation. The language of the kitchen, for example, is Germanic. On the other hand, more formal expression tends to use the Anglo-French linguistic stream. Canada is a great example of how two linguistic streams can coexist, with French and English versions of every concept. When I realized that this linguistic interrelationship was the source of the problem for clear expression, I resolved to use the language of the kitchen as much as possible: with short sentences and Germanic-rooted words. I believe that adopting these two fundamental rules would benefit clear expression. I have always naturally expressed myself this way. Even before I knew about Clarity or plain language.

Q. I read that you were appointed by the United Nations Human Rights Council to lead an inquiry into human rights abuses in North Korea on which you reported in February 2014. I'd like to hear more about this. Was clear expression a factor in preparing for this inquiry?

A. The difference between the French governmental system and the Anglo-Saxon legal system was clear to me from the very beginning of my involvement in the United Nations inquiry into North Korea. The French influence came from the Napoleonic system of government, which was more efficient but less transparent. On the other hand, the Anglo-Saxon tradition of government was more transparent, but sometimes less efficient. Personally, I leaned towards a more transparent inquiry by the United Nations, usually conducted by a Special Rapporteur or a Commission of Inquiry.

When it came to conducting a human rights inquiry for the United Nations, they initially followed the francophone tradition. This was because, at the time the United Nations was established, that was the tradition that was introduced into the bureaucracy of the organization. As a result, inquiries into human rights were conducted behind closed doors, with witnesses giving information in secret. This approach was cost-effective and efficient. But it didn't always address the audience which needed to be convinced and encouraged to change their ways.

I believe that my language is clear because I speak and write in the Germanic language, which is more comfortable for English speakers in everyday conversation.

From the very beginning, both in my work at the ALRC and in my role at the United Nations, I emphasized the importance of transparency and openness, including public hearings. I believed that witnesses should have the opportunity to give oral testimony, which would be made available online, translated if necessary, and presented in a simple, clear, and direct manner. And that's exactly what we did. In our inquiry, we relied on oral testimonies from individuals from North Korea who had managed to escape to South Korea. Unfortunately, North Korea did not allow the United Nations Commission of Inquiry to enter their country. That was not surprising, considering they had never allowed United Nations human rights investigators to enter before. In response to this secrecy, we believed that the best way to counter it was to act with complete transparency. And that's exactly what we did.

This commitment to transparency was another example of the clash between the francophone culture and the anglophone culture. The anglophone culture is evident in the common law system of advocacy, while the francophone culture is evident in the inquisitorial system of advocacy. From the user's perspective, the inquisitorial system is often cheaper because matters are dealt with in closed-door meetings and often through written documents, rather than through public oral dialogue, which is a characteristic of the English trial system and takes up more time.

It was interesting to me that, right from the start of our inquiry, we encountered this challenge in dealing with North Korea. My two colleagues on the Commission of Inquiry, Marzuki Darusman and Sonja Biserko, both came from civil law countries. Marzuki Darusman was from Indonesia, which originally had the Dutch legal system. Sonja Biserko was from Serbia, which originally had the French-German legal system. Despite their backgrounds, they agreed with me that the antidote to the secrecy of North Korea was openness. Therefore, we conducted public hearings and engaged with the media, academic community, and the public. We made sure to put the information online and provided translations and written texts of the testimonies, so that they would be accessible and understood by the audience we were addressing.

Q. I'd like to know more about a title that was accorded to you: the "Great Dissenter". This title leads me to believe that you were often at odds with your colleagues over how something was written or said. What are your thoughts on this?

A. The truth is, in my earlier judicial roles, I was not known as the "Great Dissenter". However, when I was appointed to the multi-member High Court, I had the opportunity to express my opinions in my own way and in my own language. In terms of the conservative-liberal spectrum that exists in every country in high-level courts, I expressed my own dissenting views. In the High Court of Australia, overall, my level of dissent was not unusual. But it was higher when considering cases that had been granted special leave and therefore, generally, involved legitimate differences. This was possibly an outcome of the criticism the Court faced after the important Mabo case,[1] which upheld the rights of First Nations' people to recognition of their own lands. Conservative politicians responded by appointing more conservative judges to the Court. As a result, I often found myself on the liberal end of the spectrum, sometimes alone. There is nothing to be ashamed of in this. It is explained in the Hamlyn Lectures that judges have "leeways" for making choices when resolving high-level legal questions. This is common in all common law legal systems. But in Australia, we have been more open to acknowledging this fact. That is why I became known as the so-called "Great Dissenter". It is worth noting that many great dissents eventually become binding rules of the Court, although it may take time for this to happen. It is important for clarity to explain dissenting views in simple language, avoiding the passive voice and Latin expressions, and using short sentences and words rooted in Germanic languages. This is the approach I have taken in my academic, legal, and judicial life.

1 Mabo v Queensland [No.2] (1992) 175 Commonwealth Law Reports, 1.

From the very beginning, both in my work at the ALRC and in my role at the United Nations, I emphasized the importance of transparency and openness, including public hearings.

Q. Knowing this, how would you teach plain language to someone who wants to learn clear expression?

A. There are a few simple rules that can be taught to promote plain language. First, provide summaries and use headings, sub-headings, graphs, illustrations, and outlines to make the text more accessible.[2] Second, use plenty of full stops (periods) and opt for shorter sentences, as they are usually clearer. Third, avoid using the passive voice and instead use active verbs. Fourth, eliminate unfamiliar words and choose simpler alternatives. Fifth, choose concrete expressions over abstract ones and use Anglo-Saxon words instead of Romance language equivalents. Sixth, aim to write in a conversational style, as if the ideas were being expressed orally.

2 Forge v Australian Securities and Investments Commission (2006) 228 Commonwealth Law Reports 45.

When providing instructions, it is helpful to include examples of well-known cases that demonstrate the importance of plain language. Explaining the evidence of ambiguity and using clear examples can help win support for plain language. It is worth noting that most lawyers prefer simple and clear text, including in legal documents, that is written with these rules in mind.

Q. Do you think plain language is rightly supported in the legal world?

A. Many leaders in the legal profession, especially in Australia, ostensibly dismiss the idea of using plain language. They argue that using verbose legalese is more efficient in using technical terms, and allows for use of familiar expressions. However, some judicial and statutory language is unnecessarily complex. By following a few simple rules, clarity can be enhanced. When I was a beginner in the law, I was surprised that highly intelligent colleagues resisted plain language and mocked the plain language movement. Yet several lawyers have told me that they find my judicial reasons easier to understand. Students have also expressed their preference for my reasons because they are clearer. However, as they progress in their careers, they sometimes become convinced that professionalism requires obscurity.

Q. In your opinion, what is the biggest achievement of plain legal language?

A. The fact that plain English has managed to survive despite criticism and traditionalist approaches is itself a significant accomplishment. However, unless law schools start embracing the teaching of simple rules for plain language, things will basically remain unchanged. Understandability can be achieved with minimal effort. Some of the prominent advocates for plain language make their point by presenting texts in both traditional writing style and plain English versions. This comparison highlights the essence of the controversy. When a lawyer expresses themselves clearly, it often indicates a clear understanding of the relevant applicable law as well as conceptual thinking.

Q. Would you like to share any final thoughts on plain language as it relates to the law and legal writings?

A. The English language is a combination of words and images from its Saxon origins and the language used by the clerks to the early Norman Kings. An example of this is the use of the word “will” (from Germanic origins) or “testament” (from Norman French). This mixture often results in multiple words for similar ideas, which contributes to the nuanced power of the English literature, oratory, and poetry. However, it can also lead to uncertainty and ambiguity, especially in areas where precision is often important, such as the law.

It is important for clarity to explain dissenting views in simple language, avoiding the passive voice and Latin expressions, and using short sentences and words rooted in Germanic languages.

For native English speakers (about 10% of the world’s population), the language spoken in everyday life is the Germanic language of the Anglo-Saxons, which is direct and clear. On the other hand, many professions use the Romance language of the Anglo-French clerks for written communication, which tends to be more formal. Both traditions have their role in the work of lawyers. During oral arguments before judges and juries, the language used by judges and advocates is often more informal, resembling the language spoken in everyday life. However, in modern English, many professionals switch to the formal language of the Norman Conquest, in the hope of securing greater precision.

Understanding the dual sources of our language allows us to reconcile clarity of expression with the formality required in certain contexts. By explaining this historical

lesson to law students, advocates, judges and citizens using multiple examples, we can gain more supporters for the international plain language movement. Appreciating the Germanic roots of our language tends to resonate with our innate cognitive preferences, which we learn from childhood. The Anglo-Saxons may ultimately prevail in their ongoing battle with the Norman Conquest.

To learn more about the Honourable Michael Kirby, I invite you to visit his personal webpage,[3] which showcases his areas of interest and international work and accolades.

3 https://www.michaelkirby.com.au/

An international standard for plain *legal* documents

Julie Clement, JD, *United States*

Julie Clement is the president of Clarity and a member of the International Plain Language Federation and the Center for Plain Language boards. She is the Deputy Clerk at the Michigan Supreme Court and an instructor in Simon Fraser University's Plain Language Certificate program. Julie is a Distinguished Professor Emerita of the Western Michigan University Cooley Law School and served as editor in chief of *The Clarity Journal* for 14 years.

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In January 2023, the International Organization for Standardization (ISO) approved a proposal to begin work on the first addition to the first international standard for plain language (ISO 24495-1, Plain Language—Part 1: Governing principles and guidelines). Part 1 was published in June 2023—a major accomplishment for our field! By then, we had already begun work on Part 2, focused on plain legal documents.

ISO requires strict confidentiality about the specific work we are doing in the drafting committee and in the larger ISO working group (Technical Committee 37/ Working Group 11, or TC37/WG11). So most of the information shared here reflects conversations within our own plain language community—formal and informal conversations amongst experts. Many of these people have been appointed as experts to WG11 by their national standards bodies. Thus, the process ensures that experts—like you—reach consensus on the best way[1] of creating plain legal documents.

You can read about the process of creating an ISO standard on the International Plain Language Federation's website.[2] You can also read the abstract and follow the progress of Part 2 at this page.[3] The abstract will change as we develop the standard.

Why do we need a standard focused on legal documents?

Clarity members have promoted plain legal documents for decades. But we also know the challenges:

- The legal profession is reluctant to embrace plain language, even when faced with proof that legal concepts can succeed:
  - without sacrificing technical and often nuanced legal meaning,
  - without increasing legal risks, and
  - while probably decreasing the likelihood of litigation.
- Traditional legal communication often makes it difficult—if not impossible—to achieve our ethical obligation to provide access to justice.
- Many legal professionals continue to write solely for their own professional colleagues, despite knowing that legal documents often have multiple, widely diverse audiences.
- Many legal professionals have not yet realized that plain language documents don't merely benefit readers; they make strong business sense for lawyers, organizations, and public institutions. They also improve the legal profession in other ways, for example by improving public trust in courts and other parts of legal systems.

An ISO standard for plain legal documents will be a strong tool to overcome those obstacles and better promote plain legal language.

1 https://www.iso.org/benefits-of-standards.html

2 https://www.IPLFederation.org/

3 https://www.iso.org/standard/85774.html?browse=tc

But what should such a standard include? You need look no further than the past 40 years of Clarity newsletters and journals to find the answer. Clarity has published extensively about creating plain legal documents—how to work with specialized technical language, how to comply with legislation that purports to require legalese, how to evaluate readers' needs, and much more. If you don't have the time to read all of those issues again, take another look at Clarity 79,[4] *Toward International Standards for Plain Language*.

4 https://www.clarity-international.org/wp-content/uploads/2020/06/Clarity_79.pdf

The plain language community expects Part 2 of the standard to include focused guidance on how to ensure legal documents are in plain language despite the unique challenges . . . just as Clarity has done for 40 years.

How can the standard help legal professionals?

Legal professionals who have ignored our pleas thus far will likely also ignore Part 1 of the plain-language standard because it does not focus on legal documents. But a standard written specifically *for plain legal documents* is much more difficult to ignore. Likewise, for legal professionals who misunderstand what plain language is (despite our attempts to convince them otherwise), an ISO standard will carry great weight.

Many legal professionals are already familiar with the ISO world. Perhaps those professionals represent clients in manufacturing, construction, technology, health, and other industries that must comply with regulations and other legal requirements adopted from ISO standards. Perhaps they preside over court cases where they must interpret those legal requirements. Perhaps they have even drafted many of those ISO-based legal requirements.

> *"...a standard written specifically for plain legal documents is much more difficult to ignore."*

They likely already understand the rigorous process behind creating an ISO standard. They understand that an ISO standard represents global consensus on the best way to do something. So we believe they will respect an ISO standard that supports plain language and explains how to achieve it in legal documents.

We will continue to work toward a published ISO standard that *definitively* establishes the best way to create plain, reliable legal documents.

How can you contribute your expertise?

As discussed, ISO uses a consensus model to create standards. But who contributes to that consensus? At present, more than 100 individuals have been appointed by their national standards bodies or liaison organizations to work on plain language standards. Clarity is a liaison organization to that working group, which means that our hundreds of members may comment on drafts as they are developed. The working group includes six other liaison organizations: the Center for Plain Language, PLAIN, the International Institute for Information Design, the European Commission, the European Parliament, and World Commerce & Contracting Association (WorldCC). Their members, too, are among the experts who may comment on Part 2.

One way to contribute directly to the process is to find out whether your country's national standards body may appoint experts to ISO Technical Committee 37, which develops standards for language and terminology, including the plain language standard. If your country's national standards body is a participating member, you may be able to join that body and ask to be appointed to TC37 and to WG11.

Alternatively, watch for emails from Clarity about opportunities to comment on a draft of Part 2. Then review the draft carefully and add your comments. Working Group 11 will consider and respond to every comment it receives.

The fight over “you” in the ISO plain language standard

David Lipscomb, *United States*

David Lipscomb is Associate Teaching Professor at Georgetown University in Washington DC, where he teaches first-year writing, professional writing, and cybersecurity communications. He has also taught at Wake Forest University and Columbia University, where he earned his PhD. Outside academe, his career includes a 12-year stint running a small communication consulting firm, where he worked with the American Red Cross, Kellogg, Veterans Affairs, and dozens of other organizations. Currently, David serves on the Board of the Center For Plain Language and an International Plain Language Federation task group that is exploring how to draft an international plain language standard for organizations—a follow-up to the recently published ISO 24495-1, which he also helped draft.

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Last summer, a long-term dream of Clarity International members and likeminded souls around the world came true: ISO published a Plain Language Standard, ISO 24495-1.[1] How it happened is a rich story. Somehow, dozens of plain language experts from around the world got the job done, overcoming language barriers, time zones, entrenched traditions, and a byzantine bureaucracy. Today, I want to focus on a relatively minor subplot: our ill-fated attempt to gain ISO’s permission to address our readers directly as “you.”

> *The subplot begins with a piece of wisdom that’s fundamental to most of our community: A plain language document should address readers directly using ‘you.’*

The subplot begins with a piece of wisdom that’s fundamental to most of our community: A plain language document should address readers directly using “you.” Addressing readers directly not only engages them but also makes it easier for them to picture instructions from their own perspective, enhancing understanding and usability. So when Christopher Balmford convened an international working group of experts to create the plain language standard (known as Working Group 11 of Technical Committee 37, or WG11/TC37), we all agreed that we should make addressing readers directly a core guideline. We also agreed that we should follow this guideline ourselves, addressing the Standard’s readers directly as “you.”

Unfortunately, ISO’s House Style[2] forbids personal pronouns in standards. “Use an impersonal tone,” the House Style commands. “Avoid ‘I’, ‘we’, ‘you’, and other personal pronouns.” We also quickly learned that the only possible way around this rule was to request a derogation, which is a rare kind of exemption in the ISO world. So we wrote our derogation request, launching it on a year-long bureaucratic odyssey. As it wound its way through the ISO bureaucracy—from WG11 to TC37, then up to the Central Secretariat, and finally to the Technical Management Board—our humble request acquired impenetrable layers of responses, counter-responses, cross references, and committee tags. And all for naught, as it turned out.

Why was our request rejected? We were told that using “you” would create inaccuracies and a “dangerous ambiguity,” but we never could nail down why or how it would do these things. The explanation we heard most frequently was simply that using “you” gave a document a personal tone that was “not appropriate” for technical documents. Anyone working in plain language has heard this explanation, one that equates impersonal with serious and credible. It’s not supported by evidence. In a way, that’s good news for those of us clinging to the possibility that ISO might allow us to use “you” when we revise the Standard in a couple of years.

1 https://www.iso.org/standard/78907.html

2 https://www.iso.org/ISO-house-style.html

Until then, I hope we can bolster our own arguments in favor of "you." In that spirit, I'd like to make public two excerpts from our ISO derogation request (TC 37 N-1102).

Excerpt 1. Research showing that using "you" increases engagement and comprehension

a) Early readability research

Readability pioneer Rudolf Flesch considered personal pronouns, especially "you," so indispensable that he included them in his first readability formula in the early 1940s. When he revised his famous formula in 1948, he divided it into two components: reading ease (average sentence length and average word length) and human interest, which heavily weighted personal pronouns. While his testing showed that human interest had a smaller effect on comprehension than reading ease, he insisted it was indispensable to overall readability. He stated that "human interest will also increase the reader's attention and his motivation for continued reading."[3] Over time, however, users of his formula focused increasingly on the "reading ease" formula alone.

3 Flesch, Rudolf. "A New Readability Yardstick." *Journal of Applied Psychology*. 1948, Vol.32 (3), p.221-233.

But Flesch continued to believe personal pronouns, especially "you," were crucial to readability. In 1979, he devoted a chapter of How to Write Plain English to the second-person pronoun. Titled "The Indispensable 'You,'" the chapter includes a series of before-and-after examples showing how "you" improves readability. Evidently, four decades of studying readability had only confirmed his earlier convictions. He concluded, "I consider the 'you' style as absolutely indispensable for Plain English… [and] the pronoun 'you' is just as important for readability as it ever was."[4]

4 Flesch, Rudolf. *How to Write Plain English*. Barnes and Noble. 1981.

b) Plain language research

Since the 1970s, researchers in the field of plain language have studied the impacts of revising passages using plain language techniques. Measurement approaches have included increases in reader engagement, comprehension, recall, and use, as well as savings in organizational time and money.

Researchers have rarely considered the effect of addressing the reader as "you" in isolation from other plain language characteristics. However, using "you" has been crucial to the plain language rewrites that have been studied.

As early as 1981, the Document Design Center's "Guidelines for Document Designers" instructed authors to "use personal pronouns." The guidelines stated that "if readers can relate passages to something they are familiar with, or something that is personally meaningful, readers understand and remember these passages better."[5]

5 Felker, D.B., Pickering, F., Charrow, V., Holland, V.M., and Redish, G. *Guidelines for Document Designers*. American Institutes for Research, Document Design Project. 1981.

"Researchers have rarely considered the effect of addressing the reader as 'you' in isolation from other plain language characteristics. However, using 'you' has been crucial to the plain language rewrites that have been studied."

Top researchers from the Center then applied their guidelines to marine radio rules written by the United States Federal Communication Commission. Their revisions replaced impersonal rules with rules that addressed readers directly. For example, they replaced, "Ship station logs shall be fully completed" with "You must keep a radio log" and "You must make the following entries in your radio log." In testing with users, comprehension was more than 50% higher among those who read the revised rules.[6]

6 Redish, G., Felker, D.B., Rose, A.M., "Evaluating the Effects of Document Design Principles." Information Design Journal, Volume 2, Issue 3-4, Jan 1981, p. 236 – 243. https://www.jbe-platform.com/content/journals/1569979x/2/3-4

In 1983, Linda Flower, John Hayes, and Heidi Swarts determined that readers of government regulations needed to see themselves in the text.

> *"Professor Joseph Kimble recounts dozens of cases in which plain language revisions saved organizations time and money and almost all involved addressing the reader directly as 'you.'"*

They stated, "[Regulations] are designed to regulate the actions of the reader, but it is difficult for the reader to identify his or her own role as agent when the prose doesn't." The researchers proposed a "scenario principle" for functional documents, such as regulations: human agents should take the important actions. They illustrated the principle by revising existing regulations to include "you" as the agent of the action.[7]

7 Flower, L., Hayes, J.R., Swarts, H., "Revising functional Documents: the Scenario Principle" in Paul Anderson et al. New Essays in Technical and Scientific Communication. Taylor & Francis. 1983.

The positive effect of using the second person isn't limited to government regulations and rules. In *Writing for Dollars, Writing to Please*, Professor Joseph Kimble recounts dozens of cases in which plain language revisions saved organizations time and money and almost all involved addressing the reader directly as "you." For example, when Allen-Bradley discovered that its computer manuals were one of the top two reasons customers purchased its programmable computers, the company created plain English style guides for its writers and vendors. The company illustrated its first guideline, "Address the reader directly," with these two versions:

Original

It is suggested that the wire should be connected to the terminal by the engineer when the switch-box assembly is completed.

Revised

We suggest that you connect the wire to the terminal when you finish assembling the switch box.

The result of these guidelines? Calls to Allen-Bradley's phone center fell from 50 per day to 2 per month.[8]

8 Kimble, J. *Writing for Dollars, Writing to Please: The Case for Plain Language in Business, Government, and Law*. Carolina Academic Press. 2014. P. 126.

One study that isolated the effect of the second-person found that professional computer programmers significantly preferred it to the third-person in computer documentation. There was also a small positive effect on comprehension (statistically insignificant). The authors concluded the following:

Technical writers should also use second person sentence construction to improve the usability of documentation. We contend that these stylistic devices do increase comprehension without antagonizing the subject-matter expert.[9]

c) Cognitive psychology research

In cognitive psychology, studies of personal pronouns have been helping to uncover how and with what effect readers create mental simulations as they read (also known as "embodied simulations"). Several recent studies have compared the effects when participants read sentences and passages featuring either "you" (second-person) or third-person perspectives ("he," "they," "the," "an").

For example, in a neuroimaging study that focused on fictional narratives, Fields and Kuperberg found that sentences written with "you" as either the subject or object increased emotional responses in brain scans.[10] Another study examined the relative vividness of mental simulations created by readers when reading fictional passages from different narrative perspectives. The authors concluded that passages using the second-person perspective were better at enabling readers to comprehend and recall spatial relationships.[11]

Cognitive psychology research is still in the early stages of exploring the effects of the second-person pronoun, and not every study shows significant positive results.[12] Still, the current direction of study results suggests that second-person pronouns are better at prompting readers to take the perspective of the agent of the action, with positive effects on engagement.

d) Multimedia learning research

Outside the field of plain language, perhaps the strongest evidence for the usefulness of "you" comes from multimedia learning. Dozens of multimedia learning studies in the last two decades have examined the "personalization effect," which includes addressing learners directly as "you."

The field's most respected scholar, Richard E. Mayer, is perhaps the most consistent advocate of using "you" in instructional multimedia material.[13] In the 3rd edition of his bestselling textbook, *Multimedia Learning*, Mayer offers an extensive review of the research supporting personalization. He concluded that 13 of 15 studies demonstrate that students learn better when information is presented in the second person ("you"). In the 5 studies in which the participants read text, the median effect was about the same (.95). These results were statistically highly significant. Mayer concludes that "people learn more deeply when words are presented in a conversational style rather than a formal style."[14]

Researchers have used eye-tracking to show that "people engage in more focused processing of personalized learning material than formal learning material."[15] Eye-tracking refers to electronically tracking a reader's eye movements and gaze patterns. Finally, the research on the personalization effect has shown that it works in multiple languages, including English, Turkish,[16] German,[17] and Chinese.[18]

9 Soderston, C. and German, C. "Toward Bridging the Gap Between Theory and Practice: Analogy and Person in Technical Communication." *Journal of Business and Technical Communication*, 1988-01, Vol.2 (1), p.78-102.

10 Fields, E. C., & Kuperberg, G. R. "It's All About You: An ERP study of emotion and self-relevance in discourse." NeuroImage, 62, 2012. 562–574.

11 Brunyé, T. T., Ditman, T., Mahoney, C. R., & Taylor, H. A. "Better you than I: Perspectives and emotion simulation during narrative comprehension." Journal of Cognitive Psychology, 23, 2011. 659–666.

12 For example, a recent study that asked participants to self-report how much they identified with the acting agent's perspective showed no significant difference between first- and second-person narration. See Macrae, A. "You and I, Past and Present. Cognitive Processing of Perspective." *DIEGESIS. Interdisciplinary E-Journal for Narrative Research*. 5.1 (2016). 64-80.

13 Mayer is cited in the recently published ISO 29140: Information technology for learning, education and training — Nomadicity and mobile technologies. https://www.iso.org/standard/78310.html

14 Mayer, R. E. *Multimedia Learning* (3rd ed.). Cambridge, New York: Cambridge University Press. 2020.

15 Zander, S., Reichelt, M., Wetzel, S., Kammerer, F., & Bertel, S. Does personalisation promote learners' attention? An eye-tracking study. Frontline Learning Research, 3, 2015. pp.1–13.

16 Kartal, G. (2010). Does language matter in multimedia learning? Personalization principle revisited. *Journal of Educational Psychology*, 102, 615–624.

Excerpt 2. Response to ISO's criticism that the second person would make ISO standards less formal and, therefore, less authoritative

By asking for a derogation to use the second person, WG11 is not in any way asking ISO to weaken its commitment to objectivity and authoritative best practices.

We recognize that avoiding personal pronouns is a long-standing ISO convention. It reflects a common 20th-century view that technical and scientific writing should be as objective and impersonal as scientific truth itself. Indeed, in the 20th century, an "impersonal style" almost always meant using the passive voice, not just avoiding personal pronouns. Central to the impersonal style was the idea that the writing kept the focus on objective truth, not human agents. One 1981 style guide framed the view succinctly:

> *Since science is concerned primarily with the objective and the impersonal, the passive point of view, though devoid of human interest and color, is ordinarily proper for accounts of scientific processes.*[19]

In contrast to this view, in the last few decades, style guides, academic journals, and other prominent authorities have increasingly embraced the active voice, just as ISO itself has, as noted in section b) above. Also, like many other language authorities, ISO has embraced the imperative as one way to achieve the active voice. In the House Style,[20] ISO models how to use the imperative to revise a passive voice requirement into an active voice requirement:

- *"Each test sample obtained in accordance with A.4.1 shall be weighed to the nearest 0,1 g and the different defects shall be separated into the bowls."*
- *"Weigh, to the nearest 0,1 g, each of the test samples obtained in accordance with A.4.1. Separate the different defects into the bowls."*

> *"...in the last few decades, style guides, academic journals, and other prominent authorities have increasingly embraced the active voice, just as ISO itself has[.]"*

In fact, the imperative mood (a type of command or directive in which "you" is omitted but is understood to be the subject) is the dominant sentence pattern throughout the new House Style. By using the implied second person in the imperative mood, ISO is already advocating that standards address readers directly. And the imperative mood works well in standards that specify requirements. It does not make them informal, nor does the imperative mood make ISO standards less authoritative.

While the imperative works well in ISO standards that specify requirements, ISO limits its use. In ISO usage, imperatives signal required actions. Standards for guidance cannot use imperatives without introducing them with the modal verb "should," which then signals they are recommendations. This means that every recommendation must include "should." And since the modal verb "should" always requires a named subject, standards for guidance either must use the passive voice or must name who should follow the recommendation. In practice, this has meant that in the small

17 Reichelt, M., Kammerer, F., Niegemann, H., & Zander, S. (2014). Talk to me personally: Personalization of language style in computer-based learning. Computers in Human Behavior, 35, 199–210; and Schrader, C., Reichelt, M., & Zander, S. (2018). The effect of the personalization principle on multimedia learning: The role of student individual interests as a predictor. Educational Technology, Research, and Development, 66, 1387–1397. https://doi.org/10.1007/s11423-018-9588-8

18 Lin, L., Ginns, P., Wang, T., & Zhang, P. (2020). Using a pedagogical agent to deliver conversational style instruction: What benefits can you obtain? *Computers in Education*, 143, 1-11.

19 Jones, W. P., and Keene, M. L. Writing Scientific Papers and Reports (8th ed.). Dubuque, Iowa: W. C. Brown: 1981. p. 157.

20 ISO. House Style. Retrieved 1/1/2021. https://www.iso.org/ISO-house-style.html

sample of ISO standards for guidance that the Drafting Committee examined, there are many recommendations in the passive voice.

It would be possible to avoid the passive voice by naming the user who should follow the recommendation. But doing so would not only make a document repetitive but also prevent it from directly addressing the reader. For example, if the draft standard were to use "author" wherever it currently uses "you," then it would repeat "author" dozens of times. More importantly, the standard would place its users at a distance. By asking for a derogation to use the second person, WG11 hopes both to produce a standard that models its own guidance and to comply with the House Style guidance to use direct, active verbs.

> *"Establishing authority does not require an impersonal style anymore."*

We acknowledge that using the second person explicitly does give a document a more personal tone than using the implied second person of the imperative. But doing so does not undercut authority. As part of the shift to active voice, most prominent academic journals and academic presses now accept or encourage using personal pronouns. In 2012, Helen Sword surveyed 66 of the most prominent peer-reviewed journals in English across 10 disciplines: medicine, evolutionary biology, computer science, higher education, psychology, anthropology, law, philosophy, history, and literary studies. Only 1 of the 66 (a history journal) expressly forbids personal pronouns. Sword and her team also read 50 articles (published between 2006 to 2008) in each of these 10 disciplines. They discovered that a majority of articles in every discipline but one used personal pronouns (the exception was history, at 40%). In 7 of 10 disciplines, the percentage was greater than 80%. In medicine, where seriousness and authority are paramount, 92% of articles used personal pronouns.[21]

While Sword did not search explicitly for the second-person pronoun in her survey of academic writing, she notes that "you" is particularly common in philosophy and the mathematical sciences. "One simple way to establish a bond with readers," Sword counsels, "is to employ the second-person pronoun you."[22] What's most important from Sword's research is that she shows conclusively that personal pronouns are now widely accepted in the most prominent peer-reviewed journals. These journals must maintain a serious, authoritative tone as they describe studies that must be precise and replicable.

Establishing authority does not require an impersonal style anymore. The authority of the standard depends rather on the willingness of people to follow its guidance. This in turn depends on how useful and user-friendly the standard is. Addressing the reader directly makes the standard more engaging and easier to use.

21 Sword, H. *Stylistic Academic Writing*. Harvard University Press, 2012. Sword analyzes her survey in chapter 2, and she includes an appendix detailing her methodology, as well as all journal studies. For example, in medicine, she surveyed *Annals of Internal Medicine*, *Internal Medicine Journal*, *Journal of the American Medicine Association*, the *Lancet*, and the *New England Journal of Medicine*.

22 Sword, 44.

Meet our patron

The Rt. Hon. Ms. Beverley McLachlin PC CC*

The Rt. Hon. Ms. Beverley McLachlin, Patron of Clarity International.

**Member of the Canadian Privy Council and Companion of the Order of Canada*

Merel Elsinga, *Canada*

We are fortunate that we can call the longest-serving (2000–2017) Chief Justice of the Supreme Court of Canada one of our patrons. Justice McLachlin was also the first woman to be appointed as Chief Justice of Supreme Court. She has had a remarkable legal career during which she worked as a lawyer, a teacher, and a judge. In 2018, justice McLachlin became a Companion of the Order of Canada, the highest honour within the Order. She is still active as a non-permanent judge, serving a second term on the Hong Kong Court of Final Appeal.

Justice McLachlin has also authored a memoir: *Truth be Told, The Story of My Life and My Fight for Equality*. She has also written several novels featuring a criminal defense lawyer protagonist, Jilly Truitt, who could have been Ms. McLachlin in an alternate life. Justice McLachlin was happy to be interviewed for *The Clarity Journal*.

Q. Was plain language part of the dialogue of the Supreme Court when you were appointed as a justice in 1989?

A. Long before people were talking about plain language, and maybe because of my background in philosophy and journalism, I always believed the duty of the judge was to write as clearly as possible so that the parties and the public—everyone who had access to the decision—could understand what your reasons are. I had made a practice of that myself. So when the plain language movement came along during my early years as a Supreme Court justice and people started talking about plain judgment writing, I was very enthusiastic about it. Certainly in the last decade of the 1900s it became quite a thing in Canada.

Q. Were your fellow judges on board with plain judgment writing?

A. Most judges were on board with that. However, when I first became a judge in 1980–81, one judge thought he was helpful with his advice when he said: "The way not to get appealed is to just fudge it up so they can't really know what you said." I listened to that and decided that's not the kind of judge I wanted to be, so I politely went my own way on that one.

I had such a warm response from the beginning for my efforts to try to make reasons clear. It manifested something that people like—apart from maybe a few judges who were worried about appeals.

Q. In general, how receptive are the courts in Canada about accepting plain legal language in the courts?

A. I think everybody thinks plain legal language is a good thing now. We have judicial education courses and they're well-subscribed. I think,

reading the judgments now, they're very well-written. It's a great, great improvement. I think there is a general recognition of how to organize your reasons and how to set out the points clearly to produce effective, easy to read judgments.

In the last year when I was Chief Justice, we started publishing brief explanations of decisions in plain language on our website.[1] I think it's a good thing. My successor, Justice Richard Wagner, has kept up that tradition.

1 https://www.scc-csc.ca/case-dossier/cb/index-eng.aspx

Q. Some lawyers still don't want to change their antiquated contracts with the argument that it's been tried and tested. Is that a fair argument?

A. Particularly in property law, lawyers use a lot of antiquated words. I understand the argument that "we know what this particularly antiquated phrase means so we should use it so we avoid any argument about what we mean", but I think that is very much a minority view. We have to demystify the formal phrases that are used by lawyers. Those formulations are not the law; it's a way of drafting orders.

I always believed the duty of the judge was to write as clearly as possible so that the parties and the public—everyone who had access to the decision—could understand what your reasons are.

Basic to our jurisprudence, the primary goal is to find the intent of the parties and look at the language. But you can also look at the context and surrounding elements. However, the basic thing you must do is to ask: "What was the intention?" and interpret that. Lawyers know that whatever words they use, the court is going to say: "What was the intention?" Often, using these time-honoured phrases muddles things up more than it makes them clear.

I think in a lot of sectors, including consumer contracts, people are being forced to use plain language. So I think that plain language is a big movement in contract drafting, too. The best lawyers can do it; we should try to push plain consumer contracts more. Contract language is still not where it should be; it is often too tortuous and difficult to understand.

People are trying to draft contracts in plain words. I deal with a lot of contracts in international arbitration and dispute resolution, and I think the contracts are getting better. There is no reason why they shouldn't be in plain language.

Q. Have you experienced any progress for the plain legal language movement?

A. Yes, it's come a long way in judgment writing. And, as I mentioned before, I have witnessed that consumer contracts are improving. The courts are playing a role in this too, because they are striking down opaque disclaimers or waivers that people had to sign online to get their product. The courts are saying: "If you want to prevent yourself from being sued, you have to put it in language that everybody can understand." The United States has really been leading in this, and I hope we get more traction like that in Canada, but there is a world of difference between the quality of judgment writing when I started practicing law and the quality we have now.

Q. One of the pillars of plain language is that people can find what they need—access. In your speech at the Empire Club in 2007 you said: "Without access to justice, we have no rights." Did you experience any government support for your quest to access for all?

A. There's been work on a lot of fronts and the Canadian government has contributed to supporting non-government organizations (NGOs) and other groups that are working to provide better access to justice for people. A

We have to demystify the formal phrases that are used by lawyers. Those formulations are not the law; it's a way of drafting orders.

phrase that is popular now is people-centered justice. The idea is that you provide ways to assist people who have serious legal problems with the help they need. You find ways to get that help by providing lawyers, helping people to find a place to go where they can access help, or by providing whatever it is they need.

Free legal advice organized by university programs is one of these ways, and legal clinics another. There are many NGO groups who are involved in different aspects, trying to provide people-centered justice. This came about because of people speaking out about the need for access to justice, which resonated with a lot of people, and hence with the politicians.

Also, each Canadian province or territory has its own pro bono (providing legal services for free, or for a minimal fee) system. The most common model of pro bono work takes place through law firms that support certain cases and provide lawyers for certain cases and issues. Sometimes institutions provide lawyers or legal help to individuals. There is also a legal aid model in all provinces and territories, which pays lawyers for representation out of public funds.

I think the amount of pro bono work is rising. When I started practicing in the 1960s, law firms recognized informally that they had to help and give legal services. Often junior lawyers were tasked with this work. Then it seemed to die down in the 70s because there was a move to billable hours. There didn't seem to be a way for lawyers and law firms to offer pro bono services. But with the rise of the access to justice movement, the law firms decided that they had to do better. So they found ways of allowing lawyers in their firms to represent people for free. This was very good for both the people needing help and for lawyers, because often younger lawyers could get a very interesting case which they would handle themselves and it would give them experience as well. It's worked out quite well. It's probably not nearly at a level of what it should be, but it is a help.

There's been work on a lot of fronts and the Canadian government has contributed to supporting non-government organizations (NGOs) and other groups that are working to provide better access to justice for people.

Q. Sometimes you sent signals to the legislators to redo their homework. Can you share an example with us?

A. There are many cases where we would strike down a law under the Canadian Charter of Rights and Freedoms.[1] The Charter is a constitutional document that was the centrepiece of the 1982 Constitution Act which changed Canada from a parliamentary democracy to a constitutional democracy. This meant that, since the Charter came into effect, all laws and government action would have to comply with the Charter. The courts had to determine whether a disputed law or government action complied. The rewrite wasn't so much necessary for lack of clear language; mostly it was a matter of missing provisions where the original text of the law under certain circumstances went against the rights and freedoms that were constitutionalized with the arrival of the Charter.

1 https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/

As a court, it wasn't our role to draft a new law, but we would give guidance to the legislator on how a new law would hold up in court. One such case was Seaboyer.[2] The regime that the criminal code had established had a defect, in that it didn't allow for a full defence in certain circumstances. So we said the law was not consistent with the Charter, which meant it would fail. But we said: "This is how you can do it properly", and I set out guidelines for how the Criminal Code would comply. The legislature did follow up on the court's suggestion, and that became the law.

2 R. v. Seaboyer, [1991] 2 S.C.R. 577.

The courts and the legislatures are in a symbiotic relationship to a certain extent. There is a word for that in Canadian jurisprudence, which is called dialogue between the courts and the legislatures. It is not a real conversation between the two, but it's a metaphorical conversation where one institution makes a suggestion and the other institution takes it up.

Q. If we want a broader application of plain legal language in the legal profession, who should initiate this?

A. I don't think it's either-or. I think everybody should be involved in it: judges, prosecutors and attorneys, and legislators.

Q. What has been your biggest achievement for plain legal language?

A. I think it's just writing my judgments in as clear a way as possible. I'm often surprised when I'm told by students—even today—who are reading decisions I may have written 10 or 20 years ago. They really love the way I wrote the decision; they can understand it, it's clear. That's the biggest compliment they could ever give me. I didn't always succeed, but in a lot of judgments I did succeed in writing clearly and effectively in a way that people are really impressed by it and find it easy to access.

I didn't always succeed, but in a lot of judgments I did succeed in writing clearly and effectively in a way that people are really impressed by it and find it easy to access.

Q. Have you come across any unexpected benefit of plain legal language?

A. It's not unexpected, but sometimes members of the public who aren't legally trained or journalists read judgments. They have no trouble understanding complex legal matters, and I'm always gratified when that is the case.

Q. Do you have a plain legal language motto?

A. I don't have a motto; I think plain language is in itself a motto. You need to write in a simple way that is accessible to a wide variety of people. Yes, I have said: "If we cannot understand our rights, we have no rights" but I wouldn't say that's a motto. There are two aspects to it: understanding your rights and enforcing your rights. The ability to articulate these in simple words that you can understand is basic to both.

Plain legal language is so important, and I am so pleased that there have been so many advances in using plain language to express legal concepts. We have some distance to go, particularly in areas of contract law, but we have come a long way and I am very pleased about that.

Q. Can we expect any more Jilly Truitt novels from you?

A. Yes; my next Jilly Truitt book, *Proof*, will be published this year.

Book review

The Impact of Plain Language on Legal English in the United Kingdom

Dr Michèle Asprey
Michèle Asprey BA, LLB (UNSW), PhD (Sydney) is an Australian lawyer, writer and film historian. She is the author of *Plain Language for Lawyers* (Annandale: The Federation Press, 2010). Its 5th edition is coming in 2024.

Michèle practised commercial law in major Australian law firms during the 1970s and 80s, acquiring expertise in plain language writing while helping develop a new precedents (forms) system for one of them. In 1991 Michèle wrote *Plain Language for Lawyers* and later became a plain language writing consultant. She is a former editor-in-chief of *The Clarity Journal*.

In 2022, Michèle was awarded a PhD by the University of Sydney for her thesis "Postwar British Cinema and the Death Penalty: Filmmakers, Social Change and Legal Reform."

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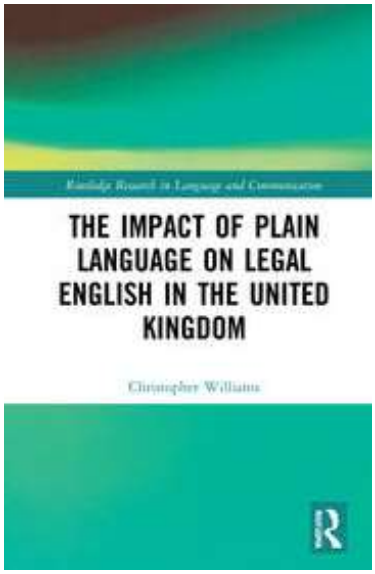

Christopher Williams, *The Impact of Plain Language on Legal English in the United Kingdom*. New York, NY and Abingdon, Oxon: Routledge, 2022. Pages xi + 206. ISBN 9780367457297 (hardback).

Reviewed by Dr Michèle Asprey, *Australia*

People working with plain language often stress the importance of testing: checking to find out if the techniques they use to simplify documents work and really help readers to read and use those documents. Here is the first book I am aware of which sets out to measure, over time, the impact of "plain language" on legal writing on a large scale—in this case, in the United Kingdom. I deliberately used inverted commas for the term "plain language" for reasons I outline shortly.

The author, Christopher Williams, is not a lawyer. He is a linguist and an academic, whose career has involved teaching English in Italy. For many years before his retirement, he taught English in the Law Department of the University of Foggia in Italy, developing over the years a fascination with legal English. This book reflects that fascination. Williams has also been the Italian representative of the Clarity organisation for more than 15 years.

Also in his Foreword, Williams explains that in this book, he has tried to provide data about legal language "in three different areas of written legal discourse that have not been explored before in quite the same way or with the same amount of detail." These three areas are legislative drafting (Chapter 3), court judgments (Chapter 4) and online contractual terms and conditions (Chapter 5). His aim is to examine each of these areas in two time periods: as they were in 1970, and as they were 50 years later, in 2020. To do this, he assembles text in what he calls various "corpora." These, as he explains at the beginning of chapter 3, represent "collections of linguistic data, either compiled as written texts or as transcriptions of recorded speech … which are stored and processed electronically and used for statistical analysis, checking occurrences or other uses of language." In each of these chapters, he meticulously explains how and why the corpora were compiled and how they have been used and, in some cases, tailored to fit the purpose. For example, for reasons he explains in detail, court judgments were confined to those of the Courts of Appeal of England and Wales. This all represents a huge amount of work, which I know took Williams several years.

Of the remaining chapters, Chapter 1 is aimed at putting plain language in a wider context than it usually appears, and it contains some fascinating linguistic details. Chapter 2 gives a short history of plain language in the United Kingdom. And Chapter 6 attempts to imagine the future of plain language in the law. Each of the book's chapters is meticulously referenced and footnoted.

This is not the first time an academic has studied and written about the impact of plain language in the law using textual analysis on a large scale. Three academics at the Massachusetts Institute of Technology (MIT) have been studying United States legal language in recent years and have published several papers, including one in 2022 titled "So Much for Plain Language: An Analysis of the Accessibility of United States Federal Laws (1951-2009)."[1] That study used "a large-scale longitudinal corpus analysis" (of around 225 million words) to "compare every law passed by congress between 1951 to [sic] 2009 … with a comparably sized sample of English texts from four different genres published during the same time period." The authors conclude that "top-down efforts to simplify legal language have thus far remained largely ineffectual."[2] Happily, for proponents of plain language in legal writing, there are questionable aspects of that study, too numerous to mention here, which make that conclusion definitely arguable. As a result of his research, I am sure Williams would also challenge that conclusion—at least as far as the United Kingdom is concerned.

1 E Martinez, F Mollica, and E Gibson, "So Much for Plain Language: An Analysis of the Accessibility of United States Federal Laws (1951-2009)," in J Culbertson, A Perfors, H Rabagliati & V Ramenzoni (Eds), *Proceedings of the 44th Annual Conference of the Cognitive Science Society. Vol. 44, Proceedings of the Annual Meeting of the Cognitive Science Society, Vol. 44, Cognitive Science Society, Pp. 297-303, 44th Annual Meeting of the Cognitive Science Society, Toronto, Canada*, 27/07/22. 44 (July 27, 2022).

2 Both quotes from the same work, abstract, p 297.

At the beginning of Chapter 6, Williams summarises his findings and concludes that the improvements in legislative drafting are the "most striking" of the three areas he studied. He finds that the Courts of Appeal of England and Wales seem "relatively indifferent" to plain language in their court judgments (though there are exceptions). But he sees "encouraging signs" in the online terms and conditions which he examined, indicating that legalese is on its way out and that these terms are becoming more "user-friendly and engaging." All in all, he finds that plain language has had a measurable impact on legal language in the United Kingdom, which differs depending on the type of writing involved. This is good news for plain language practitioners and advocates.

> My own view is that plain language should be viewed, not as a prescribed standard to live up to, but as a continuum: a goal always to be pursued but possibly never reached.

However, I do have one or two problems with Williams's approach. One of the more important of these is the way he has examined the various corpora for signs of "plain language" (I repeat the inverted commas I used earlier). Williams selects various "features" of plain language for each of the three types of legal language examined, and they differ slightly for each type. For example, to examine the language of legislation, he chooses sentence length, unfamiliar "pro-forms" (such as the words *aforesaid*, *the said* or *the foregoing*), unfamiliar "pronominal adverbs" (such as *hereby*, *thereof* and *wherein*), gender-neutral language, the ratio of passive to active voice, and the frequency of the modal auxiliary *shall*.[3] The decision to measure sentence length itself raises questions. Williams recognises that not all full stops mark the end of a sentence, and accounts for full stops signifying abbreviations (such as "c." for "chapter"). But he does not really account for the other significant methods of breaking up and punctuating legislation, such as subsections which function helpfully as lists to make long sections easier to read and use.

3 Readers might be aware of my personal interest in eliminating the word *shall* in all its forms.

For his examination of court judgments, one of his criteria caused me some concern: "length of judgment." Williams writes: "As a general rule, the criterion of 'the shorter the better' clearly makes sense." He does admit that there might be cases where judges "deem it essential to provide exhaustive arguments to support their verdict" (page 103). Still, he adopts the criterion nevertheless. But, in practice, many cases are more complicated than others, and some in which the facts and legal analysis are crucial to discuss at length. Justice demands that a proper explanation should be given, even if lengthy.

Williams also uses length as one of his criteria for measuring the "plain language" of online terms and conditions. But a complicated contract requires more terms than a simple one. A lawyer would never leave a client unprotected simply for the sake of "concision." My view has always been that counting words is a poor measure of plain language in the law.

The book is lively and well-written in plain language, which is quite an achievement, given the amount of technical detail Williams has to communicate.

Readers of *The Clarity Journal* would be aware of the definition of "plain language" recently adopted by the International Plain Language Federation and published in 2023 by the International Organization for Standardization (ISO) as the first part of a Plain Language Standard (ISO Standard 24495-1:2023). That definition is:

> A communication is in plain language if its wording, structure, and design are so clear that the intended readers can easily find what they need, understand what they find, and use that information.

The conflict between this and Williams's criteria is apparent. My own view is that plain language should be viewed, not as a prescribed standard to live up to, but as a continuum: a goal always to be pursued but possibly never reached.

Whether you favour the ISO standard or my incremental approach, the way to measure whether something is in "plain language" is not just in the form of the material itself, but in the way that the user is able to use it. Perhaps plain language may only really be judged through the eye of the beholder, as it were. Nevertheless, Williams's book will prompt valuable discussion of all of these issues.

There are also a few oddities and anomalies in the book. For example, Williams sometimes cites cases unconventionally. On page 105, Williams cites "Dalgarno, R. v." (should be "R. v. Dalgarno") and "Greenfield & Ors., R. v. I." (should be "R. v. Greenfield & Ors."), with the stray "I." seemingly being a straight line inserted before the media-neutral citation [2020] EWCA Crim 459. This problem occurs several more times throughout the text. Normally, one would expect this to be corrected in the editing process. And there is an odd assumption made on page 166. When discussing the contraction *'ll* (as in *we'll* or *you'll*) in the context of online contractual terms and conditions, Williams writes: "But as we can see in the examples above, drafters tend to use the contraction in contexts where there is no hint of legal obligation." But those examples clearly do impose legal obligations. They are promises to do something, and would be legally enforceable. Once again, the words *shall* and *will* cause confusion between a mere prediction and a legal obligation.

However, given the immense scholarship involved in this brave attempt to measure the success of plain legal language in the United Kingdom, most of my criticisms are mere quibbles. The book is lively and well-written in plain language, which is quite an achievement, given the amount of technical detail Williams has to communicate.

Generally, the book gives a fascinating snapshot of the progress made by plain language in the law in the United Kingdom from 1970 to 2020. Although it may seem that plain language is making slow progress—particularly in court judgments and online contract terms and conditions, plain language practitioners should take great heart from Williams's findings. I have always measured the progress of plain language in the law in geological time, picturing water slowly dripping onto a stone. On Williams's evidence, that stone might be about to crack.

I have always measured the progress of plain language in the law in geological time, picturing water slowly dripping onto a stone.

Meet our patron

The Right Honourable Sir Kenneth James Keith ONZ KBE*

The Right Honourable Sir Kenneth James Keith is a member of, or adviser to, various law reform agencies, including the New Zealand Law Commission and the International Law Commission. He has also been a judge of South Pacific and New Zealand courts and the International Court of Justice. Sir Kenneth Keith is also a drafter of statutes and treaties.

**Order of New Zealand and Knight Commander of the Most Excellent Order of the British Empire*

Magalie Rubec, *Canada*

Q. Can you tell us about the first time you heard of plain language; what drew you to this concept?

A. I can't be sure, but I could read before I was at primary school and it is likely that the early teaching there emphasized plain writing.

Q. I noted that you were the first New Zealander to be elected to the International Court of Justice (ICJ) from 2006 to 2015. What role did plain language have when providing your advisory services within the Court?

A. I tried in all my time at the ICJ to state the facts and the law as plainly as possible. That endeavor was as part of a Court of 15 or more, and that large membership presented real challenges.

Q. In the 1988 Queen's Birthday Honours,[1] you were appointed a Knight Commander of the Order of the British Empire[2] for your services to law reform and legal education. Did plain language have its place in law reform and legal education in the late 80s?

A. Early in my teaching life, I used George Orwell's Politics and the English Language (1946). It begins with extracts from great writers writing badly. It then has a great list of rules—write in the active voice, avoid clichés, use short words … the sixth of which is break any of the foregoing if that makes sense!

By the time of the knighthood, the Law Commission had produced several reports beginning with Imperial Legislation in Force in New Zealand, in which our draft Bill was two pages compared to 20 in the Parliamentary Counsel Office draft, a draft Interpretation Bill, which was much shorter than the Acts Interpretation Act 1924 it was designed to replace, and other matters with a legislative character. In 1987, I also helped prepare the Legislation Guidelines: Principles of Process and Content, issued by the Legislation Advisory Committee and endorsed by the New Zealand Cabinet.

I tried in all my time at the International Court of Justice to state the facts and the law as plainly as possible.

George Tanner, who became Chief Parliamentary Counsel, liked to refer to a tripod consisting of a new Interpretation Act, clearer drafting, and a new format. That was demonstrated in Clarity No 52, which you mention.

1 https://en.wikipedia.org/wiki/1988_Birthday_Honours_(New_Zealand)

2 https://en.wikipedia.org/wiki/Knight_Commander_of_the_Order_of_the_British_Empire

Q. My research shows that you were a member of the New Zealand legal team in the Nuclear Test cases before the International Court of Justice in 1973, 1974, and 1995. Was it difficult to use plain language in such technical and sensitive documents?

A. We spoke directly to the facts and the law, and supplied information to the Court about, for instance, the impact of atomic radiation from French testing deposited in New Zealand and the territories for which it was then responsible.

Q. In your "Kirby Lecture in International Law 2019: New Zealand, Australia, and International Human Rights: 1919–2019," you mention that you and Mr. Kirby have known each other over 40 years. Have you both discussed the differences in the plain language movement in New Zealand and Australia? Would you say that New Zealand is ahead of Australia in this context?

A. My answer is to the contrary. In a very valuable seminar in 1978, the New Zealand Law Commission had great help, especially from the Victoria Law Reform Commission with the work that it was doing on plain language.

I anticipated that users of the statute book would not notice the changes that had been made in terms of formatting, style, and clarity. I was right.

Q. In issue 52 of The Clarity Journal (2004), you talk about some key changes in legislative drafting styles that occurred as a result of increasing accessibility by the Law Commission and the Parliamentary Counsel Office in New Zealand. Have there been additional changes made since then that are noteworthy, other than New Zealand's 2023 Plain Language Act?

A. In addition to the 2023 Plain Language Act, I would add the rewrite of the Income Tax Act in which I was involved. It was enacted in 1994. The new proposal used the alpha numeric format, had shorter sentences than the earlier one, used the positive tense (not the passive), used "must" instead of "shall" for the imperative, and removed archaic terms such as "hereinbefore".

Q. What, to you, has been the most unexpected effect of plain language?

A. I anticipated that users of the statute book would not notice the changes that had been made in terms of formatting, style, and clarity. I was right.

Q. What do you consider your biggest contribution to plain legal language?

A. In addition to my work at the Law Commission, as a judge in New Zealand, I was involved in setting up a judgment writing course. We imported some very good ideas from the US, Canada, and Australia. One of the critical features was to include very good short story writers in the teaching team. A major result was the much better writing of judgments. They were crisper, shorter, and more focused on the essence of the issues which had to be resolved.

The Clarity Journal

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next issue

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