

CIAJ Drafting Workshop

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Applying “reader expectation theory” to legislative texts

Earl Evaniew and Lynn Douglas

Reader expectations – sentence structure

- **sentence structure**
 - readers must understand the structure of a sentence before they can understand its meaning
 - to understand the structure they must know what the subject, verb and complement are
 - if we insert lengthy clauses before the subject, the reader does not know where the sentence is going
 - embedded clauses between the subject and verb or the two parts of a verb phrase disrupt the logical flow of the sentence
 - also it is harder to understand complex modifiers if you don't know yet what they modify

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Reader expectations – word order

- **word order**
 - Readers tend to expect word-order that follows the usual pattern of
subject - verb - object - adverbial
The Minister may issue a licence if the form is complete.
 - a different word order requires more time to comprehend the sentence structure

A licence, if the form is complete, the Minister may issue.
object - adverbial - subject - verb

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Reader expectations – context

- **context**
 - it is the first thing readers need when they start reading a sentence
 - readers form context by answering 2 questions:
 - who or what is this sentence going to be about or whose story is this?
 - how does this sentence link backward to the sentence or sentences before it?

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Reader expectations – stress positions

- **stress positions**
 - stress positions are where readers expect to find the most significant information in a sentence
 - stress positions occur just before a syntactical closure point
 - in other words, just before a semi-colon, colon or period
 - in legislative texts, they also occur at the end of each paragraph, subparagraph, clause or subclause

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Legislative texts and reader expectations

- several features often found in legislative sentences result in sentences that are more difficult to read and understand:
 - sentences tend to be complex or compound-complex
 - subjects are often separated from verbs
 - auxiliary and main verbs are often split
 - subordinate clauses are often placed before the main clause
 - sentences contain more than one complex idea
 - often a result of numerous modifying clauses and phrases
 - sentences have an unnatural word order
 - often to avoid ambiguity
 - but which often results in an overuse of commas
- let's look at some examples

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Example 1

(1) Except where livestock is accompanied with a livestock permit or horse permit issued in accordance with this Act and the regulations or, where a domestic cervid has just been imported into, or is about to be exported from, the province, with a permit under section 58 or 59, as the case may be, of the Wildlife Act, no livestock may be transported or driven within the province unless the livestock is accompanied with a livestock manifest completed in accordance with the regulations.

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What makes this sentence difficult to read and understand?

- 2 qualifying clauses at the start of the sentence
- 7 commas
- main subject and verb not found until 7th and 8th lines of text

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One alternative to example 1

(1) Subject to subsection (2), no livestock may be transported or driven within the province unless the livestock is accompanied with a livestock manifest completed in accordance with the regulations.

- (2) Subsection (1) does not apply to
 - (a) livestock that is accompanied with a livestock permit or horse permit issued in accordance with this Act and the regulations, or
 - (b) a domestic cervid that has just been imported into, or is about to be exported from, the province, with a permit under section 58 or 59 of the Wildlife Act.

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Meeting reader expectations

- put the main subject and verb (“no livestock may be transported”) in the first line of text
- divided text into subsections and paragraphs so that each important piece of information is closer to a stress position
- put the exceptions together
- deleted phrase “as the case may be”

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Example 2

33.1 (1) If an administrator, employer or other person has omitted to do any thing under this Act that is required to be done by them or on their part, or contravenes a direction of the Superintendent or a provision of this Act or the regulations, the Superintendent may, in addition to any other action that the Superintendent may take, apply to the Federal Court for an order requiring the administrator, employer or other person to cease the contravention or do any thing that is required to be done, and on such application the Federal Court may so order and make any other order it thinks fit.

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What makes this sentence difficult to read and understand?

- a long qualifying clause at the start of the sentence that does not give the context readers expect
- a different subject and action in each of the independent clauses
- the primary and auxiliary verbs in the first independent clause are separated by a subordinate phrase
- important information is not at stress positions

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One alternative to example 2

33.1 (1) The Superintendent may apply to the Federal Court for an order requiring an administrator, employer or other person to cease any contravention of the Act, the regulations or a direction of the Superintendent or to do any thing that is required to be done under the Act by them or on their part. The Superintendent may make an application in addition to any other action that the Superintendent may take.

(2) The Federal Court may make the order and any other order it thinks fit.

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Meeting reader expectations

- removed the “if” clause – not necessary for context
- put the subject (“whose story is it”), verb and object near the beginning of the sentence and near each other.
- put the subordinate clause as a separate sentence to give it its own stress position
- broke out the new subject, the Federal Court into its own subsection – so stress position for the Superintendent’s application does not get lost in subsection (1)

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Example 3

(1) No resolution, bylaw, proceeding or action of any kind of an inter-municipal library board may be held invalid or set aside for the reason that the election to the council of a municipality that is a party to the inter-municipal agreement respecting that board of a person who acted as a member of the board has been judged invalid.

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What makes this sentence difficult to read and understand?

- subject of subordinate clause (“election”) separated from its verb (“judged invalid”) by 3 lines of text
- modifier (“of a person”) separated from the noun it modifies (“election”)

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One alternative to example 3

(1) No resolution, bylaw, proceeding or action of an inter-municipal library board may be held invalid or set aside only for the reason that

- (a) the election of a person to the council of a municipality that is a party to the inter-municipal agreement respecting that board has been judged invalid, and
- (b) the person referred to in clause (a) acted as a member of that board.

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Meeting reader expectations

- divided text into paragraphs so that each important piece of information is closer to a stress position
- clause (b) linked back to clause (a)

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Example 4

13. (2) Unless the court orders otherwise, the trustee shall, after being discharged, send to the latest known address of the debtor, bankrupt or officer of the bankrupt corporation, a written notice, unless there is a written waiver giving up the right to be notified, that they or their representative may, within the 30 days following the sending of the notice, take back any of the debtor's or bankrupt's books, records and documents to which subsection (1) does not apply.

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What makes this sentence difficult to read and understand?

- a good example of breaking up the main elements of the sentence with modifying phrases and clauses
 - “unless the court orders otherwise” before the subject
 - “after being discharged” between the auxiliary and main verb
 - “unless there is a written waiver” in the middle of the complement
 - “within 30 days following the sending of the notice” between the auxiliary and main verb in the complement

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One alternative to example 4

13. (2) After being discharged, the trustee shall send a written notice to the debtor, bankrupt or officer of the bankrupt corporation informing them that they or their representative may take back any of the debtor's or bankrupt's books, records and documents to which subsection (1) does not apply within the 30 days following the sending of the notice.

(3) However, the notice is not required to be sent if the court orders otherwise or there is a written waiver giving up the right to be notified.

(4) The notice shall be sent to the latest known address of the debtor, bankrupt or officer of the bankrupt.

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Meeting reader expectations

- avoided separating the subject, verb and complement with modifying clauses
- put the exceptions together
- broke the text into subsections so that each important piece of information is closer to a stress position

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Example 5

(1) For the purposes of conducting a practice visit, any or all of the members of the competence committee may, in order to ensure that continuing competence requirements are met, at any reasonable time and on having given notice, enter and inspect any place where the regulated member provides professional services.

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What makes this sentence difficult to read and understand?

- sentence begins with a modifying phrase
- auxiliary verb (“may”) and main verbs (“enter and inspect”) separated by 3 phrases

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One alternative to example 5

(1) For the purposes of conducting a practice visit, one or more members of the competence committee may, in order to ensure that continuing competence requirements are met, enter and inspect any place where a regulated member provides professional services.

(2) Members may enter and inspect under subsection (1) only at a reasonable time and on notice having been given to the regulated member.

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Meeting reader expectations

- divided text into 2 subsections so that each important piece of information is closer to a stress position
- auxiliary verb (“may”) and main verbs (“enter and inspect”) separated by only one phrase

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Example 6

19. Where a person who handles, offers for transport or transports dangerous goods destined for Canada, or for any place outside Canada through Canada, is not resident in Canada or has their chief place of business or head office in a place outside Canada, that person, if required by the regulations to do so, shall file with the Minister the name of a person who resides in Canada or has their chief place of business or head office in Canada and who is willing to act as an agent, together with proof of such willingness, and on such filing that person is deemed to be the person handling, offering for transport or transporting for the purposes of this Act.

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What makes this sentence difficult to read and understand?

- a lot of ideas crammed into one sentence
- good example of important information getting lost in the detail because it is not close to a stress position

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One alternative to example 6

19. (1) A person who handles, offers for transport or transports dangerous goods shall file with the Minister the name of a qualified agent in Canada if

(a) the person is not resident in Canada or has their chief place of business or head office in a place outside Canada;

(b) the goods are destined for Canada, or for any place outside Canada but passing through Canada; and the regulations require the person to file the name of an agent.

(2) A person is qualified to be an agent in Canada if

(a) the person resides in Canada or has a chief place of business or head office in Canada; and

(b) the person is willing to act as an agent and proof of their willingness is filed with the Minister.

(3) The person whose name is filed is deemed for the purposes of this Act to be the person who handles, offers for transport or transports the dangerous goods.

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Meeting reader expectations

- broke out the three rules of conduct into three subsections so that each had its own stress position
- broke out the important information in subsections (1) and (2) into paragraphs, again to give each point its own stress position

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Reader expectations – summary

- to write sentences that meet reader expectations:
 - pay particular attention to word order in every sentence
 - give the context for a longer sentence at the beginning of the sentence
 - link the sentence back to the previous sentence
 - start sentences with familiar information; then move on to new information
 - make it clear who or what the sentence is about
 - limit the separation between the subject and verb
 - limit the separation between an auxiliary and primary verb
 - put the information that you most want to emphasize in the stress position
 - just before a semi-colon, colon or period or at the end of each paragraph, subparagraph, clause, etc.