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## PLAIN LANGUAGE, LEGAL DOCUMENTS AND FORMS:

### BACKGROUND INFORMATION

A paper presented by

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# ABSTRACT

This paper has been divided into three sections. In the first section, the need for plain language is explained, a definition and distinctive characteristics of plain language are provided and some of the reasons for its widespread acceptance are given. The second section focuses attention on the types of documents and forms that are most frequently rewritten in plain language. Particular attention is paid to legislative involvement in plain language. The third section suggests the problems encountered by those trying to use plain language in Canada and tells what actions the Canadian Law Information Council (CLIC) is going to take to solve these problems.

The paper was prepared for the Canadian Institute for the Administration of Justice Seminar, "Legislative Drafting and Interpretation", August 19 - 21, 1987. It will be used as the basis for the discussion by the author and Roch Rioux at the section on "Plain Language Drafting".

# THE PROBLEM OF ACCESS TO THE LAW

Canada's commitment to provide access to the law must include a commitment to provide accessible legal language. Efforts to provide access to information on the law are stymied by a fundamental problem: the public does not understand the language of the law. The public believes that the traditional language of legal documents puts a barrier between them and their ability to read and understand:

* the legal documents they are asked to sign,

* the warranties and explanations of the law they need to read,

* the legal and administrative forms they must fill out, and

* the regulations and statutes they want to see.

The traditional language of the law intimidates the people it is written to serve. Legal language is perceived as hindering, not helping, the public gain access to information on their rights and responsibilities. It makes understanding, much less acting on these rights and responsibilities, far more difficult than it should be.

Some groups within the population are particularly disadvantaged by complex legal language: native persons, the poor and newcomers to Canada. In addition, the number of functional illiterates is growing, and their inability to use everyday legal documents and forms presents a major

problem for Canadian society.

Because the traditional language of the law isn't easily understandable, the public has trouble using that language to express its ideas, concerns and priorities about our laws and legal system. The public cannot fully participate in the law reform dialogue if, by its language, the law remains hidden or intimidating.

## PLAIN LANGUAGE AS A SOLUTION

The language of the law should be a bridge between the public and the law. Plain language can provide that bridge.

Plain language marries content and format to create documents that can be understood by anybody. It is an approach to writing that is more successful in helping readers understand what they're reading than is a more formal and traditional style of writing. It has been used successfully to translate technical or complex ideas in medicine, science and engineering into information accessible by all.

Applying plain language to legal writing can create a revolution in the way consumer documents, forms, regulations and even statutes are written. The objective is to create legal language that can be understood by the public so that information on the law can be communicated as effectively as possible.

The plain language approach to legal writing* creates documents that:

*   are written in language that is appropriate
    for the needs of the reader and the purpose of the
    document,

*   are designed so that important information
    can be easily located,

*   can be understood the first time they are
    read, and

*   are legally binding.

Plain language promotes both intellectual and physical access to the law and law reform. It helps people know and appreciate the message of law and it complements attempts to provide physical access to information on the law through legal aid, public legal education activities, government information services, advocacy services, and volunteer efforts.

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*For detailed explanation of plain language, see Plain Language and the Law: CLIC's Background Documents, published by CLIC in 1985, or the books and articles listed in the bibliography of this paper. New publications of note are: Legislation, Legal Rights and Plain English (Australia, 1986); Forms Design: An International Perspective (U.K., 1987) Plain English and the Law (Canada, 1986) and Plain Words for Consumers (U.K., 1984).

Writing is a process. It involves planning what to write, selecting and organizing the content, writing, reviewing and revising a draft and evaluating the product. Using a plain language approach to creating legal documents also involves using a process. It is exactly the same process, with additional guidelines to help the writer make sure that the information on the law will be clearly and easily understood. The additional guidelines recognize that the language of the law can pose special problems for the public and the traditional layout of legal documents does not help readers find or understand information.

Experienced users of the plain language approach have prepared rules or guidelines for writers of legal documents. Mellinkoff lists seven rules, Wydick has eight. Redish recommends six steps, Goldfarb and Raymond describe ten rules to follow. A Canadian drafting expert, Robert Dick, details thirty-three rules.*   The number of rules may vary but the principles stay the same from expert to expert.

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*There isn't enough space to list all of the plain language legal writing rules, much less provide a side-by-side comparison. The manuals that describe the rules are easily available and essential reading for everyone interested in legal writing (Mellinkoff, 1982, xvii; Wydick, 1985,(i-ii); Redish, 1981, 2-28; Goldfarb and Raymond, 1982 130-158; Dick, 1985, ix-xi).

What is different about plain language from the standards of good writing everyone hopes to achieve? Modern legislative drafting, contract preparation and form design techniques all call for clarity in the use of language. The difference between normal writing and plain language is that the readers' need for information always takes precedence in plain language.

For example, a booklet on small claims courts in Ontario might begin, "The Small Claims Court system is a division of the Ontario provincial court system and is properly called the Provincial Court, Civil Division." The booklet then spends three paragraphs describing the court system in Ontario.

There isn't anything wrong with learning how the courts work in Ontario. There is nothing difficult to understand about the first sentence of that booklet. There's only one thing wrong with it: nobody cares. Readers looking for information on how to sue someone don't care whether or not the the court is called "small claims" or "provincial court, civil division". The opening sentence in that brochure was written from an adminstrator's perspective.

All too often legal documents and administrative forms are written from the perspective of the writer's need to inform, rather than the reader's need to know. The right of the audience to inform themselves is paramount, overriding the writer's need to publish or gather information.

> **The central platform of the plain language**
> **movement is the right of the audience - the right**
> **to understand any document that confers a benefit**

or imposes an obligation. Due consideration of
audience should be a feature of all documents.
Sadly, however, much official writing largely
ignores the needs of the audience. Official
writers can forget that it is their obligation to
make their material accessible to their readers.
It is not the readers' responsibility to have to
labour to discover the meaning. Plain English has
brought the audience back into the sights of the
writer, reminding us again of the ethical
dimension of writing. Documents are not equitable
if they cannot be understood by all parties who
have to read them.

Law Reform Commission of Victoria (1986) p. 3.

Plain language is not a vocabulary exercise. It is not the simple
replacement of 'bad' words (legalisms, foreign phrases, negative words,
triplets, long words) with 'good' words (short words, common words,
positive words). Vocabulary can be a problem, but vocabulary can be
learned. If terms of art are essential to the meaning of the document,
then a term of art can be used. It is the style of legal writing more than
terms of art that confuse and intimidate.

Research has discovered that the public has more problems with the
unfamiliar organization of text in legal documents, the difficult sentence
structure and the lack of a shared context than they do with the vocabulary
of the law. Unfamiliar patterns of capitalization, punctuation, paragraph
structure and indentation combine to create barriers to understanding the

legal document.  Readers frequently can't figure out what action they are

supposed to take after reading a legal document (especially regulations)

because the writing style is devoid of actions and doesn't identify the

actors.


## CHARACTERISTICS OF PLAIN LANGUAGE

Plain language is based on the principles of clear writing as set out in

books of composition such as Strunk and White, The Elements of Style.

Plain language looks for problems people might have in trying to understand

legal language and legal documents.

Plain language uses language and layout to develop solutions to the problems.

Plain language uses ordinary speech unless there is a compelling reason not

to use it.

Plain language uses

    short sentences or, if needed, a mixture of sentence
      lengths to clearly explain an idea,

    normal punctuation, capitalization and paragraph
      structure, action verbs, the active voice and
      the present tense,

    pronouns to indicate the reader and any other
      individuals or institutions in the document.


Plain language helps the reader understand the meaning of the document

by using stories, scenarios and examples of action that must be taken, by

whom, when and for what reason.  It takes advantage of the research that

has been done to find out how people learn:  how information is processed

and what techniques can be effective in enhancing the learning process.

## USES FOR PLAIN LANGUAGE

Plain language has been applied to

* consumer contracts, residential leases and personal insurance policies

* legal and administrative forms prepared for public use

* regulations

* statutes

* bylaws

* explanations of the law and government services prepared for the public.

This section of the paper will look at the plain language experience with these documents with particular emphasis on legislative involvement in the plain language process.  This paper can only point out major developments and must leave the detailed explanation to other books and papers.  The bibliography at the end of this paper lists many excellent survey articles on plain language.  The Canadian Law Information Council has collected many other books, papers, unpublished documents and research reports on this area.  Readers interested in learning more about the subject are urged to contact CLIC.

## CONSUMER CONTRACTS

The idea of plain language has been around for a long time.*  In the past

there were attempts to mandate change, but they lacked a catalyst that

would propel the concept of plain language into the public consciousness

and encourage writers of the law to develop the skills necessary to change

their writing habits.

The catalyst in the modern history of plain language was the consumer

movement that developed in the United States in the 1960's and 1970's.

Because of the enormous increase in government regulation, the amount

of paperwork (largely forms) and the infusion of law into every aspect of

daily life, a plain language approach to writing the law was seen as the

only way to communicate essential information on the law to the public.

Of particular interest to the consumer movement were the types of contracts

signed every day by the public for goods and services.  It was strongly felt

that in a balancing act between the consumer and business, business had all

the power and the scales were unfairly tipped in its favour.  Consumers

were seen as powerless even though they had signed contracts because

their inability to understand the language of the contract meant they

couldn't stand up for their rights.

The traditional reliance on common law remedies regarding misuse or

careless use of language in contracts was seen as ineffectual and biased in

favour of big business.  Early U.S. attempts to create a more balanced

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*There are any number of excellent articles outlining the history of plain
language.  See Redish, 1986, Felsenfeld 1982/2, Foers, 1987, Eagleson 1986,
Mellinkoff, 1982, and especially Blake et al, 1986.  In addition, the
Canadian Law Information Council published an introduction to plain
language and an overview of current activities in 1986.

consumer-business relationship concentrated on increasing the amount of information available to consumers. The assumption was that with more information consumers would make better decisions and avoid some of the common preventable legal problems. By the 1970's it became clear that the problem was not just the amount of information; it was also the clarity of the information being provided to consumers.

In some countries, for example the U.K., Canada and most of Europe, the free market for goods and services was seen as the appropriate way to right the information balance between consumers and business. Goods and services sold with understandable contracts would prevail; confusing contracts would deter consumers from selecting products from companies that do not provide plain language contracts.

In the United States, a more interventionist approach was adopted by the federal government and some states. Plain language laws were passed calling for clear and concise language and easy to read formats in consumer contracts, leases and personal insurance contracts (life, home).

## STATUS OF PLAIN LANGUAGE LAWS

As of July 1, 1987 nine states have passed plain language laws.* Generally these laws apply to residential leases and consumer contracts for goods and

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*CLIC surveyed the status of plain language legislation, regulations and resolutions in June 1987. Detailed information on each state's legislation/regulations is available from CLIC. This information will be updated regularly and information on current Canadian activity added.

States with plain language laws include: New York (1977), Connecticut and Maine (1979), New Jersey and Hawaii (1980), Minnesota and West Virginia (1981), Montana (1985 amended 1987), and Oregon (1987). The state of South Carolina passed a resolution regarding plain language in 1979. Sometimes South Carolina is included in the total of states with plain language laws.

services that fall within a specific dollar amount.  $25,000 and $50,000 are the most frequently cited numbers.  In some states life, health or home insurance are covered; in other states these are excluded.  (See the discussion on insurance later in this paper).

Typical wording of the statutes calls for

> ... plain and clear English which can be readily understood by the public - Maine
>
> 5 Me. Rev. Statutes Annotated 8002 9 (1986 Suppl.)

> .. every consumer contract shall be written in a clear and coherent manner using words with common and everyday meanings and shall be appropriately divided and captioned by its various sections ...  - Minnesota
>
> 325G.29  Minnesota Plain Language Contract Act

The states' statutes can be put into two categories.  A minority of statutes call for objective tests to determine appropriateness of the contract or lease.   The majority of statutes call for subjective tests that provide general guidelines, but do not count number of words in a sentence or number of sentences in a paragraph in determining the appropriateness of the contract.

> ... Specific guidelines and a readability formula may appear to be objective and to ease the burden of drafters, but they do not ensure comprehensibility and cannot be used as rewriting guides ...   The general approach, on the other hand, gives business a few loose guidelines.
>
> Plain words for Consumers  (1984, 34)

Opposition to these laws was originally based on three points:

* The statute would cause unnecessary litigation and clog the courts,
* The costs of compliance would be large and impose unfair burdens on small businesses in particular,
* Contracts and leases are so complex they must stay in traditional legal language.

The litigation has failed to materialize. The cost of compliance has become a standard business expense. As for the argument about traditional legal language, that argument will probably continue into the twenty-second century.

Current opposition to plain language laws concentrates on criticizing the objective test standard as unworkable. Harold Lloyd's article in the <u>Law Library Journal</u>, "Plain Language Statutes: Plain Good Sense or Plain Nonsense?", is characteristic of those who feel these statutes are unworkable and unwarranted. He does, however, feel plain language statutes might be an impetus to the better drafting of statutes and regulations.

> Although private law subjective plain language statutes would not suffer from the unique problems that plague statutes which simply focus upon words <u>simpliciter</u>, such statutes, of course, would be subject to the

market force, economic experimentation, and
transcendency objections discussed _supra_ and,
for these reasons, would prove unacceptable.
However, in one area of public law,
subjective plain language statutes might be
welcome: requiring legislation and rule
making to be clear and effective.

Lloyd, p. 694


## UNIFORM PLAIN LANGUAGE LAW

In the United States a uniform plain language law has been proposed and is
currently being considered. The proposal for a "Uniform Consumer Clear
Information Act" states:

The purpose of this act is to assure that
individuals who contract with professionals
respecting goods, services or money will be more
adequately informed of the rights and duties fixed
by the forms they sign.

The supplier ... shall provide an agreement that
is sufficiently clear using, so far as
practicable, words with common meanings; is
appropriately divided into sections and paragraphs
and captioned by headings; and uses 10-point or
larger type, with at least one point of leading
between lines, and ink that contrasts sufficiently
with the paper.

A needed technical term may be used whenever there

is no satisfactory clear substitute.

In determining whether an agreement complies with

<the act> a court shall take into account such

specific deficiencies as

* ambiguity

* unwarranted vagueness

* synonyms or other redundancies

* double negatives

* exceptions to exceptions

* exceptions expressed in smaller type

* over-use of nominalizations where equivalent

  verbs are available

* over-use of the passive voice

* unnecessarily long sentences

* awkward arrangement

Draft Uniform Consumer Clear Information Act,
supplied to the author by George Hathaway,
Counsel, Detroit Edison and Chair of the
Michigan Bar Association's Plain Language
Committee

The basic fine proposed by this act is $50.00 plus damages and lawyers'

fees.

Reed Dickerson, Indiana University, is a recognized expert in legal

drafting.  His support for the uniform law is based on the growing problems

faced by companies attempting to meet different standards and tests of

plain language as more state legislatures pass plain language statutes.

> Mandating it <plain language> by statute should be
> confined to so-called "consumer" instruments, such
> as leases, warranties, and insurance policies.
> Elsewhere simplification must make its peace with
> the exigencies of substance ... Because these
> laws (plain language statutes) differ widely in
> their requirements, they create undesirable
> difficulties for companies operating in more than
> one state.
>
> Letter from Reed Dickerson, March 6, 1987

The debate over the usefulness of statutes requiring plain language
contracts is not finished. A number of U.S. states are considering passing
such legislation. The National Consumer Council of the U.K. strongly
advocates the passage of such legislation. In Canada only one province has
had a bill on plain language contracts introduced. An M.P.P. in Ontario
introduced a private members bill; it did not pass.


## U. K. LAW

In the U.K. the National Consumer Council has been a leading force in the
development of plain language legal documents and forms. In conjunction
with the Plain English Campaign they have prepared sample documents and
undertaken a national plain language public awareness program. The U.K.
is regarded as being a well-spring of information on plain language and
alive with exciting plain language activities.

The National Consumer Council now advocates the adoption of a plain
language law for consumer contracts. They no longer feel that market
forces will encourage voluntary compliance with plain language principles.

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The great strength of a plain language law along
the moderate lines we have proposed would be its
catalyst effect. Legislation would, at the very
least, overcome inertia and make firms and traders
review their documents. For those now reluctant
to be the only ones to attempt change, it would
guarantee universal coverage, with all contracts
simultaneously adopting a new approach. The
unspecific test of acceptability we propose -
'clear and readily understandable language',
'words with common and everyday meanings' - would
keep to a minimum  the effort required of
businesses, being easy to comply with while at the
same time promoting a basic acceptable standard.

National Consumer Council, 1984, p. 43

A Plain Language Act for this country would go a
long way to bring plain English into consumer and
housing contracts. Its strength would lie in its
largely declaratory nature, with a deliberately
low level of actual enforcement. As a law, it
would declare a standard. Most businesses would
seek to meet the standard, but would not be
slavishly bound by detailed rules and regulations.
They would not be hounded or pressured into
getting everything just right. Nor would they be
penalized when they had made genuine efforts to
comply. The law  would act as a definite prod and

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encouragement, but it would not amount to any

sort of unacceptable imposition.

National Consumer Council, 1984, p. 48


## IMPACT OF PLAIN LANGUAGE ON CONTRACTS

What has been the effect of preparing consumer contracts and leases in
plain language?  The activities listed below are symptomatic of the
widespread acceptance of plain language consumer contracts in many
many countries.

*   Banks and insurance companies have accepted the
    idea of plain language and currently prepare their
    consumer information in that style.  Citibank is
    generally regarded as being the catalyst for much
    of the U.S. plain language activity.  Most U.S.
    banks, and many in Canada and the U.K.,  now try
    to use plain language principles as their writing
    standard.  Ninety-five percent of all U.S.
    insurance companies use plain language.  Companies
    doing business in multiple jurisdictions are faced
    with often conflicting plain language standards.

*   Contracts for other consumer goods, such as cars
    and appliances, are written in plain language.
    Especially in the U.S., the list of
    companies using plain language consultants to
    prepare rewritten contracts and related
    consumer information reads like a who's who of the

largest consumer and public utility companies.

*    Leases in plain language have proven to be very
     popular with tenants and even landlords.  In
     Canada two examples of plain language residential
     leases are the standard Quebec residential lease
     and the new CLIC plain language lease.  CLIC's
     lease was done as a demonstration project with
     Toronto's municipal housing authority, Cityhome.

## INSURANCE

Regulations governing the personal insurance contract exist in 32 U.S.
states and the District of Columbia.  These regulations require that the
policy meet specific readability standards based on the National
Association of Insurance Companies model.  Canada doesn't regulate plain
language in insurance contracts.  However, many companies do use plain
language in their contracts and forms.

## FORMS

Although "access to justice" provides the cornerstone for the plain
language movement, the cement has turned out to be the enormous savings in
time and money created by a switch to plain language forms.

Plain language forms save money.  Here are examples from Robert Eagleson's
1985 survey of cost savings due to the use of a plain language approach to
rewrite legal documents and forms.

*   In the U.K., the Department of Health and Social
    Security introduced plain language application
    forms for legal aid in 1984.  It cost the
    Department about $50,055 to develop and test the
    forms, but they saved $2,917,290 in staff time
    every year.

*   The Department of Defense (U.K.) receives 750,000
    claims for travelling expenses per year from its
    civilian employees.  By rewriting the form into
    plain language, the error rate was cut by 50%, the
    time needed to fill it out was reduced by 10% and
    the time needed to process it by 15%.  Preparing
    the plain language form cost $23,265 but it saved
    about $778,320 per year.

*   Insurance companies in Australia have found that
    it takes less time to train new staff if the forms
    they process are written in plain language.  The
    advice given clients is more accurate and
     junior staff interrupt senior staff with questions
    less frequently.

In Canada two major plain language form revisions stand out as examples of
what can be done.

*   Quebec has a plain language tax form created by
    Revenue Quebec in 1982 and in use since then.  The
    entire package of tax information and forms was

redesigned and tested by Revenue Quebec and the
communication consultation firm they hired. The
tax form is easy to use and has proven to be easy
to administer.

* Ontario is creating a plain language drivers and
  vehicles registration form. This form, filled out
  by three million people over the course of a year,
  will be revised by the Ministry and tested in the
  summer/fall of 1987. The Ministry has adopted a
  plain language approach for all of its new public-
  use forms and plans to revise its old forms to
  meet their plain language standards.

## RESEARCH

The leading centres for plain language form design are the U.K. and the
U.S. Privately and publicly funded plain language research agencies are
exploring how and why the public has trouble with forms and are learning
the best methods to solve those problems.

As a result of Sir Derek Rayner's study (1981-82) on government
forms in the U.K., every government department is now required to report
annually on what steps they have taken to eliminate unnecessary paperwork
for the public and to provide their forms in understandable language.
Other results of the process Rayner started are forms revision research and
design departments created in many ministries and a wholesale rewriting of
administrative forms by government departments. The Rayner report was
initiated by Prime Minister Thatcher, and plain language has continued to

receive her wholehearted support.

As an example of the worldwide use of plain language forms, the Inland Revenue recently published a fascinating study of tax forms around the world. The study was the result of a Civil Service Travelling Fellowship given to J. M. Foers of the department. His study compares the plain language forms design experience in many countries and reviews the current state of the research into forms design.

Plain language forms have become good business. Cost savings, increased productivity and heightened customer satisfaction have led companies to invest money in redoing their forms as well as their contracts. Now, public service companies - gas, telephone, electricity - have begun to see the advantages of plain language. Government departments with heavy reliance on forms for user contact are considering redoing their forms in plain language.*

* There are excellent summaries of current plain language form activities by government and business in Eagleson (1986), Foers (1987), Eagleson (1985) and in every edition of the Document Design Center's Simply Stated.

## REGULATIONS

President Carter's orders that

> ... regulations should be as simple and
>
> clear as possible
>
> U.S. Executive Order 12044, 23 March 1978

> ... (government forms) should be as short as
>
> possible and should elicit information in a
>
> simple straightforward fashion
>
> U.S. Executive Order 12174, 30 November 1979

paved the way for a widespread regulatory reform program in the United States. Even though President Reagan shifted the emphasis from a consumer's perspective to a business orientation ("get rid of paperwork"), the impetus for change prevailed and plain language has become an accepted standard for consumer-oriented regulation writing.

It is an accepted standard but one that is not widely practised.

Regulations, whether in the U.S., the U.K., Australia, or even Canada, are hard for the public to understand. The account by Rudolf Flesch about his work creating plain language regulations is illuminating. It provides example after example of consumer-oriented regulations that were impossible to understand until redesigned in plain language. Flesch's reliance on the readability formula he created as the guideline for producing plain language documents has been widely criticized. Even though his method might not be really useful in creating plain language regulations, the story of his struggle is well worth reading.

Only the U.S. has relied as heavily on legislated action to improve the understandability of its regulations. Canada and other Commonwealth countries have generally relied on the gradual improvement of legal writing standards to improve regulations. However, in some jurisdictions Freedom of Information legislation requires information to be "clear and understandable". Perhaps this will prove to be the impetus needed to focus more attention on the need to review and revise regulations to make them more clear. Those regulations that need to be read by the public ought to be prepared in plain language.

## STATUTES

It is tempting to set out the arguments, pro and con, about the application of plain language principles to legislation as a series of side by side quotes. They could be lined up as if they were soldiers marching down the page. The pro quotes arrayed to the left; the con, to the right. There they would be, point and counterpoint, shot and answering volley: each side intent upon the rightness of their position and, I fear, deaf to the logic of the other.

For every statement that plain language can be applied to preparing legislation, there is an opposing statement that argues against. The quotes are usually passionate, and evidence of the strong emotions and the opposing views of the world, language and legal process held by authors on both sides.

| PRO | CON |
|---|---|
| To date, much of the effort in plain English has been directed to redrafting general commercial and administrative documents which have wide distribution in the community, such as insurance policies, residential leases, tax returns, and claim forms for social service benefits... | It is often observed that legislation should be readily intelligible not only to the lawyer, but also the layman. That may be the ideal. Regrettably it is also a pipe dream for all but the most simple of matters. Complicated matters are neither easily understood nor explained. And it is not only experts that have to deal with complicated matters. Average house-holders and housewives are confronted with but cannot be expected to master the intricacies of the law governing their tenancies any more than the workings of their television sets. The sooner such fanciful notions are abandoned the quicker we should be able to get on with the business of achieving such a measure of simplicity and intelligibility as is attainable. |
| More and more, however, the need has been felt to tackle legislative documents, not just for their own deficiencies but also because they wield such an influence on other official writing. Not only do they sometimes dictate the words that have to be used, but as a result of their status, public servants are tempted to imitate their style of language. While there have been some endeavors at improving legislation elsewhere, none matches this systematic investigation of the problem by the Victorian Government through its plain English reference. To this extent the reference is in advance of developments elsewhere. It has already attracted interest and support from overseas. | |
| | Nazareth, p. 5 |
| Law Reform Commission of Victoria, p. 3 | |

The proponents of plain language would argue that plain language must be applied to statutes because:

 * The statutes are used by the public and as

   the end users, and the base upon which all

   government rests, their needs for

   understandable language should be paramount.

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*   The statutes are quoted, and certainly made
    reference to, in regulations, contracts,
    forms and other important documents.  By
    clarifying the statutes' language, the
    language of these other documents can be
    clarified more easily.

The proponents of the status quo would argue that the status quo must
be maintained because

*   The need for precision and accuracy in writing
    legislation is so great it makes simplification
    of the language impossible.

*   Convention, judicial review and acceptance of
    traditional language and document format make
    changing the language or format of legislation
    inadvisable.

*   Statutes must be consistent.  If the old
    statute doesn't use plain language, then the
    new amendment can't either.

Those are the arguments for doing something - either changing the
language or keeping it the same. Most of the authors engaged in this
debate spend their time rebutting the arguments of the opposite side.  And
everyone uses examples to prove their points.  It is tempting to classify
these as the "Yes, you can - No, you can't arguments".  They are referred to
in this paper as the traditionalists and the innovators, since all other
names are not borne out by a study of the literature.  The sides are not

neatly polarized along a lawyer - non-lawyer, drafter - non-drafter axis.

The argument looks something like this:

| Traditionalists | Innovators |
|---|---|
| The courts insist we use this language. | No they don't. Most language isn't defined by law or judicial review, you just think it is. |
| The real users of statutes are lawyers or judges. They understand traditional legal language. | Don't be so sure of that. The public reads statutes all of the time. Furthermore, they're the ones that are paying for the statutes. They ought to be able to read them. |
| There isn't time. Bills are drafted in a hurry. | Most bills are drafted in a hurry, but statutes are not. There is always a lengthy hearings and revision process in which they can be changed. |
| Most laws have troublesome exceptions and other provisions that make simplistic language impossible. | They can still be worked on so they are more clear. |
| Tradition demands detail and allows for ambiguity of purpose in legislation. Governments and legislators expect it. | True, but these traditions can be changed. |
| Radical changes in the style of language would require attitudinal, constitutional, and procedural changes at all levels in society. | True. |

## REVISION ACTIVITIES

A number of jurisdictions are involved in plain language statute revision

programs.  In Australia the Attorney General of the State of Victoria

announced that from 1985 on, Victorian statutes would be simplified.  He

recommended the Law Reform Commission of Victoria undertake a sweeping

study of the statutes and make specific recommendations for future plain

language drafting.  The Commission hired Dr. Robert Eagleson, an authority

on language. Dr. Eagleson and his staff are thoroughly investigating the

situation regarding plain language worldwide, contacting drafters and plain

language professionals and preparing detailed examinations of why and how

plain language can improve the comprehensibility of the statutes by

everyone who uses them, public and lawyer alike.

The work of the Commission is presented in a discussion paper Legislation,

Legal Rights and Plain English (Melbourne, 1986).  The Commission has also

made available unpublished working papers and reports that provide detailed

guidelines for plain language drafting of statutes, forms and public legal

education materials.  Their final report is expected in 1987.

In the United States, Minnesota has set up a Statute Revision Office

and is working on rewriting their statutes and preparing their current

bills in plain language.  A team of lawyers and a language consultant use a

detailed drafting manual to revise 10 to 15 chapters of the Statutes of

Minnesota every year, as well as to prepare bills for introduction in the

legislature.  They are also working on preparing administrative rules in

plain language.

In New Zealand the Law Reform Commission has been newly created to review

and revise both current legislation and the statutes in plain language.

The Commission was just created in 1985 it and has only been operating

since December 1986.  They are so new they have yet to decide precisely how

they will operate in cooperation with the parliamentary counsel.  Their

mandate is to "advise the Minister of Justice on ways to make the law as

understandable and accessible as possible and simplify the expression and content of the law as much as is practicable."

Montgomery County, Virginia is writing their municipal by-laws in plain language. Other jurisdictions in the U.S. are also using plain language communication techniques.

In Canada a bill was introduced in 1986 by Brian Lee, MLA (Calgary Buffalo) calling for the creation of a committee to review all bills which had passed second reading in the Legislative Assembly of Alberta. The review committee would consist of representatives of the general public, and experts in English and legal drafting. The bill did not pass.

In his paper, "The Interaction of Language and the Legal Process," (unpublished 1986) Norman Larsen makes a number of practical, easy-to-apply suggestions to reformat and rewrite the statutes of Manitoba. He was at that time the director of the Validation Project for the Ministry of the Attorney General, given responsibility for creating the new French-English revision of the statutes. He suggests that far from being

> ...an unnecessary and onerous task <it is> a once-in-
> a-lifetime opportunity to review the entire
> process, including all the legislation, and to
> improve it.
>
> Larsen p. 2

He goes on to suggest that a few statutes of obvious public interest such as landlord-tenant and highway traffic, be redone in plain language. It is, in his opinion, more important to get the 'big demand statutes' into plain language rather than trying to systematically redo all of the

statutes.

Most parliamentary counsel and legislative drafting sections have adopted modern drafting style which is a great improvement on the older drafting style with its convoluted expressions and antiquated language. While not exactly "plain language", drafting and drafters are concerned with public access and have made attempts to provide the public with more understandable statutes and bills.

## OBSERVATIONS

It isn't the purpose of this paper to settle the debate between the plain language innovators and the drafting traditionalists by declaring a winner. I doubt if there are winners or losers in this debate. It isn't even the purpose of this paper to outline in any detail all the arguments of either side. There are many detailed examinations of the topic listed in the bibliography and readers are urged to consult them.

There is room in this paper to make a few observations.

* If traditionalism and plain language stand at
  the ends of the spectrum, surely there is great
  room for clarification to occupy the middle
  ground. With the exception of the religious texts
  of this world, works of great literary merit and
  your favourite children's story, almost every
  piece of writing can be improved, even statutes.

*   The civil law tradition offers drafters of
    legislation a different perspective and one that
    would benefit Canadian drafters in particular.
    The debate between plain language innovators and
    drafting traditionalists could profit by the
    intercession of the civilian's approach to writing
    the law.  The need to create common law statutes
    in French might offer Canadians an opportunity to
    develop the "clarified" approach to drafting -- a
    pleasing compromise between the two ends of the
    drafting spectrum.

    Much more needs to be learned by the  common law
    world about the civil law  approach to drafting.
    This topic should be a priority on drafting's list
    of potential research topics.*

*   To call on drafters to drastically change the way
    the law is written, without at the same time
    working toward changing the minds of the
    judiciary, legislators, government officials, the
    legal profession and the public is not only
    unfair, it won't work.  Our laws, and the way our
    laws are written, are a function of our society:
    both must reexamine their goals in order to create
    a climate for access to the law to be a reality.

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* Nazareth (1986) lists a number of useful sources for those interested in
comparing the two drafting styles.  His article comments on the work of
Dale and Renton in particular.

\*  Just because you can write a sentence doesn't mean
you can write a good novel. Just because you went
to law school doesn't mean you can write good
contracts, leases and statutes. Not enough
attention is given to "writing the law" in law
schools or in continuing legal education programs.
Lawyers are not trained to recognize and deal with
writing problems. They receive no information on
why and how people have problems understanding the
language and format of the law. Communication
skills must receive higher priority in the law
school or bar admission curricula and special
courses on the preparation of legal documents must
be provided.

## PROBLEMS

Canadians who want to use plain language to prepare legal documents
and administrative forms are faced with problems.

* **It's hard to find out how to apply the plain
    language approach to your own writing process.**

    > Many excellent manuals provide 'rules'
    > for using plain language, but nobody
    > really tells  you how to do it.  Do you
    > simply change tenses, take out archaic
    > words and latin phrases, use short
    > sentences and let it go at that?
    > Or, is using the plain language process
    > for writing something more than that?

* **It's hard to figure out what kind of problems
    the public has comprehending legal language
    and using legal forms.**

    > Unless you're a professional adult
    > educator, or someone who spends all of
    > your time helping others fill out forms,
    > it's difficult to figure out what kind of
    > problems the public will have  with the
    > document you're creating.  Most research
    > studies on the public's use of legal

documents are themselves filled with
technical terms and require substantial
knowledge of educational learning
theories.

* It's hard to figure out when you've done enough:  when the
document you're preparing is really in plain language.

Readability tests are roundly
criticized  as inaccurate measures to
figure out if a document can be
understood.  Are there other objective
tests that can be used? Are subjective
tests the only measuring stick
available to determine when the language
is plain enough?

* It's hard to find someone to teach you how to use the plain
language approach.

Most documents and forms that cross your
desk are not in plain language.  If you
don't see plain language very often, how
can you learn to prepare plain language
documents?  By practising, obviously, but
practising under the direction of
someone who is experienced and is a good
teacher.  You must learn to apply the
plain language process by yourself.
Courses, workshops, seminars on plain

language are few and far between.  While
plain language might be mentioned in
legal writing courses in law school, the
weight of accumulated non-plain language
treatises and the accepted legal
writing style guarantee that most law
students don't get much plain language
writing exposure or experience.

*    It's hard to design a major project for drafting
plain language documents.

Without a good idea of how much
time it will take, how much money
it will cost, who has to be involved and
whether or not to use consultants - it's
hard  to suggest that your firm rewrite
all of its consumer forms.

*    It's hard to use the plain language approach without
precedents.

Precedents for plain language use would
make the 'selling' job for plain
language easier.  With examples of
similar documents in hand, it's easier
to redo yours.  With a good idea how the
courts have treated plain language
documents, it's easier to make sure
yours meet the courts' standards.  With

information about the success of other

firms that have begun plain language

projects, it's easier to convince your

colleagues to start your own plain

language project.


## CLIC'S SOLUTION

CLIC is going to solve these problems. We have designed a major project to

help Canadians learn about plain language and to teach them how to use it.

We will also investigate the availability of Canadian fee-for-service plain

language services and the advisability of CLIC's preparing documents in

plain language on a fee-for-service basis for business and governments.


## CLIC'S ENDORSEMENT

The Canadian Law Information Council endorses the principles of plain

language and its application to legal documents and administrative forms.

In a resolution unanimously passed by the Council at its May 1986 meeting,

CLIC adopted the promotion of plain language as a priority and directed the

staff to prepare a plan for future activities.

> **The Canadian Law Information Council
> recognizes that much more needs to be done by
> governments and others to assist Canadians to
> learn about their laws, the legal system and
> legal documentation through the use of plain,
> clear and understandable language.**
>
> **The Council believes, as part of its mandate,
> that it should become more involved in
> promoting the use of plainer language in the
> law.**

The composition of the Council makes its wholehearted support a significant vote of Canadian confidence in plain language. The Council consists of representatives from a wide spectrum of the legal profession. Every law society sends a representative and there are additional representatives from the Canadian Bar Association, law schools, law libraries, law deans and the Uniform Law Conference. CLIC's government and law book publisher members guarantee that CLIC is the forum for the producers and users of information on the law to meet and discuss how to improve access to legal information.

The Council understands the need for a plain language partnership to exist between the public and private sectors with the legal profession leading the way. Plain language documents and forms must be widely available from governments, business and the courts.

It is clear to CLIC that Canada needs a plain language catalyst, an organization to spark interest and promote increased activity in plain language. We need an organization to act as the communication link, training resource and coordinator of public and private sector plain language activities.

Further, Canada needs to explore and develop plain language communication methods. As experience in other jurisdictions has clearly indicated, the development and application of appropriate plain language communication techniques requires an organization to first create an awareness of plain language and to then create the tools to make it work.

## WHY CLIC?

CLIC is not only the logical organization to fill these gaps, it is
the perfect organization to do so.

CLIC's mandate is to improve access to information on the law.  Plain
language has proven to be an effective way to improve the public's access
to the law because it helps them understand the language of the law.

CLIC can provide the forum the plain language movement needs in
Canada.  Its consultative approach to uncovering and studying legal
information problems, as well as its cooperative approach to problem
solving, can advance the use and impact of plain language.  CLIC's network
of experienced people and wide representation from users and producers of
legal information can help plain language develop a Canadian context.

CLIC has a proven track record in taking new information delivery
concepts and developing them to their fullest.  CLIC's experience in Public
Legal Education and indexing Canadian statutes has provided it with a
wealth of information on the public's need for information and the problems
encountered searching for information.  Furthermore, CLIC can help the plain
language movement learn about the public's legal information problems.

# WHAT WILL CLIC DO?

CLIC will create a Canadian centre for plain language activities.
Approved in principle by the Council in 1986, the CLIC plain language
program has two goals:

* To create an awareness of plain language among the
  public and those who prepare legal documents and
  administrative forms, and

* To provide the tools, information, advice,
  training and research needed to use plain
  language.

The plain language program will be a special project within CLIC
with a group of advisors drawn from the legal profession, the public,
business, government and law schools.  It will draw upon the plain language
resources already developed by CLIC and those CLIC will need to create in
order to provide a full range of communication, training and research
services.

The priorities for the CLIC plain language program are to work on consumer-
oriented legal documents and administrative forms.  These widely used
documents must be made easier to use and easier to understand.  It goes
without saying that explanations of the law and government services for the
public must be available in plain language.  CLIC will focus its attention,
at least initially, on preparing

* training materials and "how to" workshops to teach
  those who prepare legal documents and
  administrative forms how to use plain language;

* information services and a comprehensive resource
  collection of plain language samples, instruction
  manuals and descriptions of  current plain
  language activities to let people use the
  experience of others in solving their own
  communication problems;

* an investigation of the availability of current
  plain language consultation services and the
  feasibility of creating a CLIC plain language
  contract agency

## TRAINING

In order to make sure our plain language program meets the needs of those
who prepare legal documents, CLIC will undertake an extensive analysis of
how lawyers are trained to write, what types of instruction would be most
helpful,  and when in the legal education process it would be most
appropriate to provide plain language instructional modules, or full
courses, for use in law schools and continuing legal education programs.

We will be doing needs assessments on the training needs of government
officials and producers of public legal education materials in order to
create "how to" workshops on writing and form design to meet their needs.

CLIC is prepared to invest the time and energy needed to undertake a
substantial research phase prior to designing "how to" courses or creating
instructional guides.  Training, if it's ever to be used six weeks after
the course is given, must solve real life problems.  In  plain language
terms, CLIC needs to find solutions to the common writing problems that

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occur every day.  We will be calling on those who face these problems to
help us find solutions.  Professors of law, government form designers,
lawyers and public legal educators from both common and civil law
jurisdictions will be asked to help us in our research and to assist in the
development and testing of 'how to' courses.

## SAMPLES AND INFORMATION SERVICES

When the Bank of Nova Scotia and the Royal Insurance Company were
redrafting their consumer contracts, they worked in isolation.  Neither was
aware of the other's work even though they were in the same city, in fact,
within a few blocks of one another.  That was 1978-1979.  It's 1987 and
isolation is still a problem.

Those who have decided to use plain language want and can learn from
each other's experience.

*    Seeing how someone else designed a tax form can
     help you redesign yours.

*    Seeing a plain language residential lease and
     hearing about the process that was used to create
     it, can shrink your four-page single spaced lease
     to a more manageable size.

A comprehensive bank of samples of plain language legal documents and
administrative forms is urgently required.  Being able to use other
people's documents to guide you through the plain language drafting
process will save time and money and will increase the likelihood that your
new plain language document will be a success.

CLIC will survey the existing plain language samples and determine where there are gaps. New samples of documents and forms will be created to fill these gaps and to add to our knowledge of how the plain language process works. It is essential that CLIC develop sufficient expertise to help the public and private sectors accurately predict what staff resources, time and money will be required to initiate a plain language re-do of their documents and forms.

Another solution to the problem of isolation will be the communication tools CLIC will create to put people in touch with others interested in plain language. Newsletters and a database of information on current activities, publications and conferences will connect people with plain language interests and experience.

CLIC will be able to maintain a comprehensive view of the plain language experience in Canada and monitor the areas that need plain language attention. Calling on the expertise of the CLIC plain language advisory board and experts in the field, CLIC will be able to effectively target its research efforts and produce practical recommendations for future action.

## CONSULTATION SERVICES

Ever since CLIC started researching plain language, the Council has been asked to undertake fee-for-service projects. We will respond to this growing need by investigating the possibility of providing a range of plain language consultation services. CLIC will consider establishing an agency that will be able to tackle small or large plain language redesign/rewrite projects, as well as creating plain language forms and documents from scratch.

CLIC will also be able to help governments and business assess their need for plain language documents and provide guidance on selecting communication consultants and how best to introduce plain language documents to their users/clients.

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