

## Lawyers, Write Plainly, Please

By H D Rao

When you find your writing ‘encrusted by the barnacles of jargon’<sup>1</sup>, do not rejoice at acquiring the brainy mementos.<sup>2</sup>

Cluttered writing pervades the profession—in simple letters to clients, in contracts, and in briefs filed in court. No law says you should litter legal writing with *whereas*, *hereby*, *hereinafter*, *said* (and its blown-up cousins, *aforsaid* and *aforementioned*), and the like. Such ‘junk antiques of the legal vocabulary’<sup>3</sup> add nothing to the meaning. The only reason for using them is to affect a legalistic style—a style better interred than exhumed.<sup>4</sup>

*Whereas* seems to function as a harrumph—a kind of ritual throat clearance—to get the document under way.<sup>5</sup> Lawyers appear to love *hereby* almost more than life itself.<sup>6</sup> *I hereby declare* means nothing more than *I declare*. The tradition of tagging *said* to people’s names—the said Arthur Jones—is simply an archaic way of wasting paper.<sup>7</sup>

Lawyers feel that plain words sort ill with the dignity of their profession. Wordiness is what they worship. A sample: ‘My client *is desirous of purchasing the immovable property being the site situated in...*’<sup>8</sup>. Stripped of wordiness, it means ‘my client wants to buy the site in...’ How crisp and direct the plain English is!

In April 1984, the National Consumer Council in UK launched a savage attack on legal draftsmanship. It published guidelines on writing legal documents, specifically for lawyers. The Council claimed that lawyers have an almost universal reputation for mystifying their work. The wordy, repetitive phrases of today’s legal documents still conjure up ‘a musty Dickensian image and make them unintelligible to most non-lawyers.’<sup>9</sup> Strong criticism, some of it quite justified. But will the profession respond?

When Martin Cutts of the Plain Language Commission protested to the UK Government’s law writers about the obscurity of the statutes, they challenged him to rewrite one. Cutts took up the challenge, redesigned and rewrote the 1992 Timeshare Act, an important piece of consumer law, into plain language. The Plain Language Commission tested it with 90 senior law students. Nine out of 10 preferred the plain version to the real Act. Performance also improved: when answering one key question, 94 per cent got the correct result when working with the rewritten version, while only 48 per cent did so with the real act.<sup>11</sup>

Legal English is notorious for its long sentences, because lawyers cram all qualifications, conditions and exceptions into a single sentence to avoid loopholes. The client will turn to you and say: ‘What does it mean?’ The trouble lies with our method of drafting. The principal object of the draftsman is to achieve certainty - a laudable object in itself. But in pursuit of it, he loses sight of the equally important object - clarity. The draftsman - or draftswoman - has conceived certainty: but has brought forth obscurity; sometimes even absurdity.<sup>12</sup>

In the past 20 years, the plain English movement has become an internationally recognized school of thought. *Clarity*<sup>13</sup>, the international movement to simplify legal language, devotes itself to promote clearer, more readily understandable drafting of legal documents. It has members all over the world, including India.<sup>14</sup> *Scribes* of the US is a national society of judges, lawyers, law professors, legal publishers, legal writers, and legal editors who are dedicated to improving the clarity of legal writing across the profession.

In the UK, the Law Society’s standard conveyancing documents are ‘plain Englished.’ The National Conference of Commissioners on Uniform State Laws says: ‘The essentials of good bill drafting are accuracy, brevity, clarity and simplicity. Choose words that are plain and commonly understood. Use language that conveys the intended meaning to every reader. Omit unnecessary words.’

<sup>1</sup> Continental Oil Co; v Bonanza Corp., 677 F.2d 455,460(5<sup>th</sup> circa1982)

<sup>2</sup> Bryan A Garner, An Approach to Legal Style: Twenty Tips for the Legal Writer, p11

<sup>3</sup> David Mellinkoff in his superb book *Legal Writing: Sense and Nonsense*

<sup>4</sup> Bryan A Garner, *ibid*

<sup>5</sup> Martin Cutts, Making Sense of English in the Law, Chambers 1992, p.241

<sup>6</sup> Jefferson Bates, Writing with Precision,, Acropolis, 1978, 2<sup>nd</sup> edn, p.100

<sup>7</sup> Martin Cutts, p .201, *ibid*

<sup>8</sup> A public notice in Deccan Herald (italics mine)

<sup>9</sup> Plain English for Lawyers, p. 4; (1984) 81LS Gaz 2131, quoted in Barnsley’s Conveyancing Law and Practice, Third Edition, 1988, pp.452,453

<sup>10</sup> Plain English for Lawyers, p. 4; (1984) 81LS Gaz 2131, quoted in Barnsley’s Conveyancing Law and Practice, Third Edition, 1988, pp.452,453

<sup>11</sup> Martin Cutts, The Plain English Guide, OUP, 1999, p7

<sup>12</sup> Lord Denning. The Discipline of Law, Butterworths, Chapter 2. The interpretation of statutes.

<sup>13</sup> www.clarity-international.net

<sup>14</sup> in India, contact Sandeep Dave at sandeepdave@hotmail.com

The Supreme Court of Canada in *Smith v. Co-operators General Insurance Co.* imposed a “plain language” requirement for “*straightforward and clear language, directed towards an unsophisticated person.*”<sup>6</sup> (emphasis added)

Lawyers abroad have banished blunderbuss phrases and they freely use plain English in legal documents with no damage to legal meaning. Plain English movement has caught on in the US, UK, Australia, Canada and other countries. Why then should we resist its entry into our country?

Dare to be different. Challenge conventions. Break out of the musty mould of Victorian style. Breathe the freshness of changes happening in legal writing. Write *plainly*. Discover –the clarity—and the power of plain English.

---

<sup>6</sup> 2002 SCC 30

<sup>7</sup> Martin Cutts, p236, *ibid*

<sup>8</sup> Martin Cutts, p.236, i