

Buddhists, Running, and Plain Language in Calgary (Part One) by Christine Mowat

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Several years ago, I carefully copied an intriguing logical puzzle into my journal. The source is now lost to me, but here is the puzzle:

One morning, exactly at sunrise, a Buddhist monk began to climb a tall mountain. narrow path, no more than a foot or two wide, spiraled around the mountain to a glittering temple at the summit. The monk ascended at varying rates of speed, stopping many times along the way to rest and eat dried fruit he carried with him. He reached the temple shortly before sunset. After several days of fasting and meditation, he began his journey back along the same path, starting at sunrise and again walking at variable speeds with many pauses along the way. His average speed descending was, of course, greater than his average climbing speed. Show that there is a spot along the path that the monk will occupy on both trips at precisely the same time of day.

In the early eighties, I had used the puzzle in writing workshops to illustrate brainstorming strategies. Recently, while cleaning out my study, I came upon the puzzle again.

This time, I couldn't figure out an answer.

First I drew two pictures with stick figures on the spiral ling paths starting at the bottom and the top respectively, both with sunrises. That got me nowhere.

Then I tried mathematical formulas. If the average first day speed equals X , the average second day speed equals Y , and the length of the mountain path is 30 kilometres, is there a point Z where the monk will be at the same time each day? Aaarrgh! It was, at least for me, too difficult with algebra.

The next day I telephoned an engineer friend whose first retort, on hearing the puzzle, was that there could be no such spot on the trail. His next musings went like this: "What if on the first day the monk covered all but the last two feet in 15 minutes, sat there until just before sunset, and then finished the walk? (What kind of a mind produces this kind of thinking? I was in awe.) No, it's impossible - even counter-intuitive," he concluded.

Several days later, on an early August morning, I was out running in the ravine below my house. For variation, I often choose the different directions of a circular route, the better to see fresh views of the mountains. Suddenly, I had a mental image of a figure running one way and superimposed on that was a second image of the same figure running the other way. In both images, the figure began to run at sunrise. Of course, at some point along my ravine trail, the figure "met" her match going the other way, and "to meet" means to meet at the same time in the same place. Fortunately no one was there to hear my burst of laughter. My mind had restructured the problem.

I use this somewhat lengthy example on purpose. I believe the same kind of strenuous change in perspective is required for legal writers to move from traditional legal writing to plain language.

In this article, I will provide a case history of how one Calgary, Alberta corporation began to change its gas marketing agreements into plain language. But I will need to come back to Buddhist enlightenment to draw conclusions about successfully implementing plain language. Though the case history is a personal profile of one company's progress, it may provide directions for other groups.

A context for improving legal language in Calgary

Since 1980, I have been a writing consultant to the petroleum industry, management schools, government, and business. In the early days, law departments would send individual lawyers to general business writing workshops, and so we had several dozen lawyers over the years. One such lawyer suggested that Wordsmith Associates design a workshop specifically for legal writers. Thus began my informal Ph.D. in legal writing -- but with a specialization in plain language. It took two years to research initially and several other years of practice to refine.

The first legal writing workshop conducted with an instructor colleague was the most difficult workshop of my career. It became clear to me that, in the eyes of lawyers, only lawyers could teach legal writing. Since that workshop, I have always co-instructed with a lawyer. However, it has taken considerable time to introduce each lawyer instructor to the writing research, philosophy, pedagogy and the plain language literature which informs our programs. Peg James, past Director of the Plain Language Project of the British Columbia Continuing Education, was the first such lawyer to work with me.

Progress in Calgary was slow, in part because lawyers' time is so expensive that removing them from two full days' of work seemed counter-productive to many decision makers. As well, it was difficult to identify the appropriate person to speak to about training. Some firms have principals whose mandate is to organize continuing education; others leave it to administrative assistants or managers. A third group share the responsibility among several people, and as a marketer, I was often shuffled from one to another. The process was inordinately time-consuming.

Lawyers, whose stock in trade is words, are reluctant to consider admitting that they might benefit from writing training. In addition, our business was focussed on general business writing for professionals, and the specialized law marketing was often impractical. I depended on word of mouth. By 1993, we had had about 500 lawyers go through our workshops. All but one large Alberta government workshop were two-day 14-hour sessions with not more than 20 participants. One Calgary law firm has held three workshops, but mostly for young lawyers.

With the passage of the first Plain Language legislation in the Commonwealth, the Alberta Financial Consumers Act, a persistent obstacle, lawyers' lack of knowledge about Plain Language, began to be overcome. About the same time, the Canadian Bar Association and Canadian Bankers' Associations published their report on Plain Language, the Decline and Fall of Gobbledygook. All of its recommendations were subsequently adopted.

Plain language: a corporate case history

In May, 1992 Wordsmith was asked to conduct an Improving Legal Writing Workshop for the Legal Department of Western Gas Marketing Limited(WGM)* . From the outset, this workshop had all the earmarks of success. The workshop was not only company-initiated but had senior management support - one Vice-President even took the two-day workshop himself. Douglas McLean, Senior Manager, Legal, and Diane Pettie, Manager, Legal Services, (the former now General Counsel & Corporate Secretary) were knowledgeable and enthusiastic about plain language and the prospects for a workshop-assisted process.

We retained most of the elements of Wordsmith's usual program, with one significant exception: we used their documents as work-in-progress materials for the workshop. WGM's objective was to gain help in transforming a number of standardized documents into plain language. Thus, the motivation was extremely high.

The heterogeneous composition of the workshop was interesting, too. Paralegals as well as lawyers from Calgary, Houston and Toronto offices were invited to attend. This ensured that different levels of employees involved in working with the documents all made an investment in the plain language transformations. I believe it is crucial that key writers and decision makers attend the plain language training sessions. An outsider cannot identify the right mix.

Our objectives as instructors did not include producing final documents. We wanted participants to "buy into" the philosophy of plain language, to gain the necessary tools to continue the work on their own, to have practice in both individual and collaborative group processes, and to participate in an individual conference on their own writing styles with one of the instructors.

The workshop

Although the workshop is designed to familiarize participants with the history and practice of plain language, the prime focus is on writing. Short presentations extended by group discussions are interspersed with a series of writing activities completed in groups, pairs or individually. Lecture format is not used.

Participants receive a 140-page manual, Improving Legal Writing, written and desk-topped following the writing principles the program espouses. A Glossary of Legal Terms, a CLARITY deskminder, and a business journal complete the workshop materials. Because WGM provided me with so many materials beforehand, I was able to create a number of "before" and "after" transparencies.

Hands-on plain language

Our writing activities began with groups of four choosing documents they were interested in rewriting. Sections were allocated, and individuals worked on their own segments. In the evening, participants worked through two or three drafts and brought copies to class next day. The period of peer review was lively, exhilarating and frustrating. As so often happens in plain language "translating", ambiguities are uncovered and arguments arise about what is meant or should be meant.

Participants, however, were pleased with their new-found skills and they had shrunk, recast, clarified, deleted from, added to and redesigned their segments in the peer review groups. They frequently disagreed about how much or how little they could change. Even the paralegals, who were more timid

than the lawyers about tampering with the encrusted legalese, began to feel some sense of empowerment and investment in the documents.

At the end of the workshop, the groups put their favourite showpieces on a transparency, and presented them to all of us. The group was pleased with the bold changes. We ended on a high note with participants realizing that the work was just a beginning.

Plain language "knitting groups"

After the workshop, WGM kept in touch. Diane Pettie reported that they had set up "knitting groups" to continue rewriting. Three months after the workshop, they sent me what they hoped was the last draft of their Canadian Industrial Sales Agreement. The Toronto office had actually begun rewriting the contract before the workshop. Several workshop participants, with others from Toronto, continued this rewriting, and held a series of conference calls to discuss changes.

The writing specialist's role

The role of outside writing consultants is always precarious: on the one hand, we are seen as more objective because we are outside specialists, and on the other hand, less knowledgeable because we are not "in the know" from the inside. As writing specialists, though, we often carry more weight when the matters are seen to be merely language issues. It is, however, often impossible to separate style from substance in the plain language translation process.

As differing opinions on the changes arose, my role was to offer an outside view and suggestions on the final draft. Because text decisions always rest with the writer, I offer suggestions in a tentative or question format, rather than a heavy-handed "If I were you" style. Here are several examples of suggestions:

- I believe both sentences say the same thing. Choose one?
- Substitute "must" for "will" to reflect the mandatory nature?
- Here's a possible rewrite of Clause XX. This version changes the order to reflect the reader's interests, creates shorter sentences, and is written in the active voice for directness.

Over the year and a half since WGM began to "plain" their documents (as Diane Pettie coined it), they are weaning themselves from outside help. They have produced 15 plain language documents now, all but four on their own.

The challenges to legal writers of "plained" documents summon another stage of enlightenment. Plain language, based on the seminal principle of writing for all the document's readers, inspired the Western Gas writers to adopt a new vision of legal writing. Their main goal was to write clear contracts for their customer readers. With the understanding and good will of their customers in hand, the courts and other lawyers are less likely to ever have to read the text.

For legal writers committed to excellence in writing, there are many spiral ling mountain marathons ahead.

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Buddhists, Running, and Plain Language in Calgary (Part Two)

by Christine Mowat

Originally published in **Michigan Bar Journal**, August issue, 1994.

1. **Format changes**

Perhaps the most dramatic and immediately noticeable change was adding a title page and table of contents for quick document recognition and ease of use. The drafters also moved the brief five-term definitions section to the end where they served as a reference. Most significant was the move of the exhibits to the beginning where they quickly provide key information - for example, incorporating type of service, delivery point, price, term, and date and signature blanks. This new placement provides quicker information retrieval for regular and first-time readers, and allows for efficient signing of the exhibits.

2. **Shrinkage**

Compressing and restructuring text often reduced sections by 50% as shown below:

BEFORE

Nominations (23 words)

If no new nomination is made pursuant to Section 5.1, Supplier shall be entitled to rely on the last nomination received from the Customer.

Billings and Payments (42 words)

On or before the tenth(10th) day of each month, Supplier shall present to Customer an invoice showing the daily and total deliveries to Customer during the preceding month, the amount due and information sufficient to explain and support the amount due.

Force Majeure (55 words)

Without limiting the generality of the foregoing, strikes, lockouts or other industrial disturbances shall be events of force majeure for the purposes of this Agreement, and the settlement of these matters shall be entirely within the discretion of the party directly affected. In no event shall force majeure mean the inability to meet financial obligations.

AFTER

(12 words)

A nomination will remain in effect until replaced by a new nomination.

(22 words)

On or before the 10th day of each month, Western Gas will invoice Industrial Customer for deliveries made during the preceding month.

(29 words)

For the purposes of this Agreement, force majeure will also include strikes, lockouts, or other labour disputes, but will exclude the inability of either party to meet financial obligations.

3. **Segmentation**

When a writer shrinks the word mass and then itemizes as well, the readability is increased even more:

BEFORE

(65-word sentence)

Further, Supplier may, upon two days notice by telephone and telecopier, suspend deliveries until such time as the amount due, including interest, is paid, provided that Supplier shall not have the right to suspend deliveries prior to five days after the date payment was due, and further provided that this right to suspend shall be in addition to any and all other remedies available to Supplier.

AFTER

(49 words for all 3 segments)

Western Gas may, in addition to any other available remedies, suspend deliveries until the amount due is paid, provided that:

- (a) Western Gas has, by telephone or telecopier, given Industrial Customer 2 days' notice of the suspension, and
- (b) the suspension will not commence earlier than 5 days after the due date.

4. **Deletion**

Sometimes the rewriting discussions result in wholesale deletion of text segments. "Why do we need that anyway?" is a refrain of pure joy to the writing specialist's ear. Here's another illustration:

BEFORE

14. Term

14.1 This Agreement will be effective as of from the date first written above. However the obligations of Supplier and Customer to deliver and receive shall, subject to Section 2.1, be effective for the term of the Pricing Period.

14.2 This Agreement shall remain in effect until the end of the latest Pricing Period.

AFTER

14. Effective Date

This agreement shall be effective the date first noted on the first page.

5. **Legalese Meltdown**

You probably noticed that the ubiquitous, imprecise, and royal-sounding shall has been dethroned in these samples. In its place, the writers substituted either must, will, is or may, depending on the context. Gone, too, is the formality and archaism of the WITNESSES THAT, the WHEREAS and NOW, THEREFORE, in consideration of recitals syntax. An earlier draft had already eradicated the hereby and hereinbefore type of language. Finally, the signature section has been streamlined:

BEFORE

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

[FULL LEGAL CORPORATE NAME]

[WESTERN GAS MARKETING LIMITED]

AFTER

Signed: _____

Industrial Customer Ltd.:

Western Gas Marketing Limited

6. Visuals

Just as I needed to *see* a new way of looking at the Buddhist mountain problem, readers and writers of legal text need help in *seeing* their way through complex text. In the last document I consulted on, a Temporary Excess Volumes Gas Release, we came upon an interesting example of the need for graphical literacy in the definitions section.

In other plain language WGM documents, definitions had been placed in a tabular format, and this practice usually works well. In the example here, the column format exacerbated the problem of understanding a complex formula. You don't have to read it all in order to see the difference!

BEFORE

TEV GAS

is gas dedicated to TransCanada under the Contracts and released under this Release by TransCanada as Temporary Excess Volumes Gas, and is the volume of gas that is the lesser of:

a) the volume that is the difference calculated when:

(1) the sum of the Annual Delivery Quantities under the Producer Contracts for the immediately preceding contract year,

is subtracted from

(2) the sum of the Allocation Reference Quantities under the Producer Contracts for the immediately preceding contract year, and

b) the volume that is the difference calculated when:

(1) the sum of the nominations of TransCanada under the Producer Contracts for the immediately preceding contract year,

is subtracted from

(2) the product that is calculated by multiplying (i) the minimum daily quantity under the Producer Contracts for the immediately preceding contract year, by (ii) the number of days of delivery specified under the Producer Contracts.

AFTER

TEV Gas is Temporary Excess Volumes Gas released by this Agreement from the gas dedicated to TransCanada under the Contracts. TEV is the smaller volume of gas of a) and b) below:

a) the volume left when

the sum of the Annual
Delivery Quantities
under the Producer
Contracts for the
preceding year

is subtracted from

the sum of the
Allocation Reference
Quantities under the
Producer Contracts for
the preceding year

b) the volume left when

the total of
TransCanada's
nominations under the
Producer Contracts for
the preceding year

is subtracted from

the amount calculated
by multiplying the
minimum daily
quantity under the
Producer Contracts for
the preceding contract
year by the number of
delivery days specified
under the Producer
Contracts.

Clearly, plain language has as much to do with *revising* - literally *seeing again* - as it does with paring down words and pruning off deadwood legalese. In the visuals example above, it is easier to understand the complex choices when they are laid out horizontally rather than vertically.

The challenges to legal writers of "plained" documents summon another stage of enlightenment. Plain language, based on the seminal principle of writing for all the document's readers inspired the WGM writers to adopt a new vision of legal writing. Their primary focus was to write clear contracts for their customer readers. With the understanding and good will of their customers in hand, the courts and other lawyers are less likely to ever have to read the text.

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POSTSCRIPT

Western Gas Marketing Limited report that they have had no complaints about their plain language contracts from customers. Early comments included one from a customer who said he loved the drafting so much he planned on borrowing some of it for future agreements at his company. Another customer called to compliment WGM on how easy it was to read a complex series of amending agreements. She said she really liked the plain language. Appendix A which follows is a questionnaire answered by four WGM plain language aficionados, all lawyers. Corporate legal departments or law firms considering training in plain language legal writing may find their observations of help.

WGM's Annual Review 1992 informed readers about their new approach in this manner:

Goodbye Legalese, Hello Plain Language

Findings of a 1991 survey indicated that customers and producers wanted simpler contracts, and that's what the Legal group delivered. In 1992, Western Gas became one of the first energy companies to replace legal jargon with plain language. The Canadian Industrial Sales Agreement was one of the first to be transformed. Working closely with marketing staff, the Legal group reduced the complexity of the contract by half, as measured by the Fog Index. The Fog Index is a measure of the number of years of education required to understand a written passage. Parts of the old contract measured between 25 and 32, while the new form stands at about 11. In 1993, the group plans to continue converting all standard form contracts into plain language.

Finally, what follows is a questionnaire answered by four Western Gas lawyers. These are some of their comments:

1. *How and when did you first learn about plain language? What was your reaction to it then? What is your reaction now?*

[Two respondents first learned about plain language in university, one from reading Canadian Bar Association publications, and another from hearing of efforts to convert insurance policies and real estate forms to plain language]

I was intrigued by plain language. I thought this might offer the prospect of making our contracts easier to understand and more accessible to employees and customers. One of my concerns is that by being overly cautious and trying to cover all the possibilities in their drafting, lawyers often create ambiguity by using complicated language. My hopes are now being realized Our contracts are well received by customers and our employees can understand them. This results in better turn-around of documents. Fewer clarifications and explanations are required.

My reaction to it then was Dick and Jane. I believed that court interpretations on "tried and true" wording were better protection than writing something new so clearly that no one would need to go to court for an interpretation. My reaction now is the opposite. I now believe that the clear expression of parties' intentions in agreements is very important to minimize disputes and simplify administration costs.

My reaction to it then was it was a fluff course. Although writing in plain language can initially be difficult and time consuming, it becomes more natural with continued use Now it's frustrating to have to read documents written by other lawyers(or by lay-people writing legal documents) that are not in plain language. It takes so much longer to read and fully understand.

My reaction to it then is the same as now - positive.

2. *What role does plain language play in your own writing at work?*

I make an effort to use plain language in all my writing. Old habits die hard. I often go through several revisions before I end up with a piece of clear concise writing. The revisions take time,

but are worth the effort. I received a number of comments about how effective some of my memos were. A couple of comments suggested the memos were surprisingly clear coming from a lawyer.

When I sit down to write any memorandum, Quick Mail, letter, or formal agreement, I try to write clearly and concisely and to avoid the use of big words when simpler words can be substituted.

I try to write all my letters, agreements and memorandum in plain language. I try to write all documents in plain language. Since the Wordsmith Workshop, I demand more of myself when I write a document. Increasingly, I am using grammar checkers and proofreaders to rate most documents.

3. *How has the plain language workshop generally affected writing in your department? If there have been types of responses, please categorize. For example, who or how many among the group use plain language consistently, conscientiously and effectively? What number do not?*

The workshop brought our Vice President on side. While terrible at using plain language himself, he allowed me to proceed to convert existing contracts into plain language. We formed a Plain Language Committee of two lawyers and two paralegals to convert the contacts. The members of the committee are the most effective users of plain language. Some of the members of the department find [using] plain language difficult. As an example, I discovered clerical staff sending plain language contracts out with covering letters written in archaic legal language. I encourage lawyers and paralegals to use simple, clear, and concise [writing.]

After the plain language workshop, a group of us conscientiously [wrote]in a more plain manner. . . . Some of the others from the seminar do not seem to be using the training and have retained the old presentation styles and legalistic approach.

Approximately 1/3 of the people make a conscious effort to write in plain language; 1/3 will not make the effort or believe that they write in plain language anyway; the other 1/3 still do not understand how to write in plain language.

4. *Your company has now produced 15 plain language customer precedents. Do you have a means of tracking customer reactions to both plain and unplain customer documents?*

Conversion of other forms of agreements continues. We do not have a formal mechanism for collecting customer reactions to our plain language contracts. I have requested staff to make note of any comments received. We have produced several sales agreements, purchase amendments, an assignment precedent and correspondence forms. We continue to work on additional agreements, transmittal letters and internal correspondence It would be a major undertaking to track customer reactions to all our agreements . . .

We have received favourable comments from several of our producers. In fact, one producer asked whether they could adopt our standard form contract, (with modifications to suit their business needs).

Of the reactions, most are positive. One comment in particular comes from a fellow at Imperial Oil. He loved the drafting of a particular document so much he wants to use parts of it for their

future proforma agreements. [A] common concern is how the documents will be interpreted in court With the plain language assignment agreement, we sent copies to certain customers to get feedback. As a result, the document will likely be changed to incorporate some customer ideas.

5. *From your perspective, what steps did the process of translating these precedents into plain language entail? Is this the best method?*

The committee converts the documents. One person takes the first cut at the conversion. The rest of the committee then review the draft. The draft is then discussed and debated. This iterative process continues until a final form is agreed on. Some drafts are subsequently reviewed by an outside plain language expert. The process build internal expertise. It is a slow process and it might be faster to use more outside expertise. there are tradeoffs because outside experts in plain language generally lack the expertise in our business that employees have.

[The committee reviews the plain language precedent, to]ensure continuity of meaning, and appropriate presentation, as well as that the connotation, context and flavour of the meaning have been retainedThe debate that ensues at this stage makes for a better product [We feel that the] time investment is worthwhile.

6. *Have you met any resistance to plain language in the company? If so, could you describe what barriers you perceive prevent your group from developing plain language to its full extent?*

Yes, we have met resistance to adopting plain language. The resistance stems from lack of understanding, a resistance to change, a belief that complexity is a mark of intelligence, and general laziness. We're doing what we can to meet the resistance and are basically forging ahead despite it.

One of the barriers is overcoming the habits that people have developed over years of writing in the old style, and the comfort they feel in using it. There is also a certain amount of "showing off" in using an extensive vocabulary and in using industry technical jargon. These barriers can be overcome by education. Some people still feel that the large print looks like Dick and Jane, that right justified margins are "more professional", and that plain language generally is less professional [than the historical styles].

Some people are concerned that if we do not use legal words, agreements may not be as binding. Some people refer to plain language as easy talk, [and as] perhaps being unprofessional in not using big words.

7. *In your view, what factors most helped those individuals who have developed strong interest and skills in plain language?*

The most important factor has been that Diane and I have driven the initiative and made it happen. We have made plain language conversions part of our staff objectives. A pride in authoring plain language agreements is now emerging among the staff involved in the conversion process. Customer reactions to the new agreements helps create company pride.

The satisfaction of seeing a long convoluted legal clause emerge as a clear statement of the parties' intentions is a strong motivating factor to using plain language in agreements. Positive

customer responses, which are starting to trickle in, also motivate us. Rewriting the agreements and my own letters requires me to think the concepts through more clearly and ensures that they have been expressed so that others can understand them.

The factors that have helped individuals develop interest and skill in plain language are commitment by management and the Wordsmith course.

8. *What encouragement have you had to continue the plain language process in the company?*

The company's public recognition of the plain language Industrial Sales Agreement as one of the major accomplishments of last year's quality initiatives has encouraged us. Positive customer feedback has also been a factor.

The most encouragement comes from the people that request agreements from me. They can't get over [the fact] that they can actually understand the agreement.

[Two respondents mentioned encouragement from the Vice President, although acknowledging that he does not use plain language himself. Respondents also mentioned encouragement from each other.]

9. *How have you advertised your successes with plain language documents?*

Our 1992 Annual Review and the TransCanada 1992 Annual Report mentioned our initiative. I have mixed feelings about making a fuss about what we're doing. I prefer to proceed to convert all the agreements and get them into circulation If we tout the plain language documents as new, they are liable to attract more opposition than if we simply start using them.

We have advertised a few of our plain language documents in company newsletters I could see us using our covering letter for the agreements to introduce the document to customers - it might be more personal that way.

[Three respondents gave a presentation to the Calgary Plain Language Section of the Canadian Bar Association in December, 1993.]

10. *What else could be done to encourage more effective implementation of plain language in your group?*

Good customer feedback would pave the way for greater internal acceptance.

Establish half-day sessions where we separate into groups and work on plaining certain documents and letters. Departmental plain language standards could be developed so that letters and certain types of agreements must pass these standards before being sent to customers.

[Three respondents felt it might be necessary to have a refresher course as well as to train new members of the department.]

11. *Was the recognition of the need for plain language internally motivated or customer driven? Is it now motivated by the same source?*

The original motivation was internal, but it dove-tailed nicely with our customer-focused service quality initiative. We use the customer focus to lend credibility to the initiative.

Initially, the motivation was internally driven. We devised the strategy in response to comments made in our survey of customers conducted in 1990. . . . Now, with positive customer comments, the motivation is customer driven and will continue to be so.

Thanks to Doug McLean, Diane Pettie, Karen Michalko and Drew Gromnicki—the four responders to the questionnaire.

Christine Mowat, President of Wordsmith Associates in Edmonton, Alberta, is a plain language writer, trainer, and consultant.