

Plain language: gone underground?

by Christine Mowat

Originally published for **Law Now**, Legal Resource Centre,
University of Alberta, 1995-1996.

Has plain language disappeared or just gone underground?

To many of us who watched its past meteoric performances in the Alberta media and government with Dennis Anderson as its most visible proponent, it may now seem to have been merely the flavour of the month.

Last year, money dried up for the B.C. Plain Language Institute. The former Alberta Consumer and Corporate Affairs Plain Language initiatives and courses have all but disappeared. The Continuing Legal Education Society of B.C. Plain Language Project was not renewed. Several years ago, the Canadian Bar Association's Plain Language Centre at Canadian Legal Information Centre (Toronto) closed down. Its extensive plain language archives passed to the federal Department of Multiculturalism, now Canadian Heritage.

Yet *CLARITY*, the international plain language magazine published out of England, has just published its 32nd edition. With a motto of "a movement to simplify legal English", and a patron, Lord Justice Staughton, the current issue shows how plain language is faring around the world.

Hopeful times for plain language

Joe Kimble, this *CLARITY*'s American editor, writes: "These are hopeful times for the plain language movement." An Australian author, Michele Asprey, substantiates that claim. Her report on a New South Wales Law Society survey found that 93% of survey respondents favour plain language in legal drafting. A remarkable 80.5% said they want to learn more about plain language drafting. Only 14.2% of respondents said they had any plain language training before they becoming solicitors. Survey comments highlight misconceptions the Australian lawyers have about plain language in legal drafting. (*CLARITY* 32)

(The most famous survey² on lawyers' and judges' preferences between traditional and plain language legal writing styles had been completed in 1987 in Michigan, U.S.A. Its results showed that 80% of the lawyers and 85% of the judges preferred passages written in plain language. The study has been replicated in three other states as well, with similar results³. It's certainly time for a Canadian survey!)

Answering the critics

A scholarly analysis, *Answering the Critics of Plain Language*, summarizes 14 studies to illustrate that plain language improves readers' comprehension. The documents studied include jury instructions, medical consent forms, legislation, an insurance policy, a mortgage, and a tax form.

Poor legislative drafting in B.C.

A Canadian article⁴ expresses regret over the inadequate drafting of B.C.'s "first plain language law" in

its *Motor Dealing Leasing Regulation*. (Alberta's first was the Financial Consumers Act in 1991.) Philip Knight chastises the B.C. ministry as author of the regulation for refusing:

to do the very thing they are requiring of others. [The legislation] delivers an implied message that the ministry isn't very committed to the principle behind their own plain language rule. And that message, intended or not, invites contempt for the law.

The B.C. legislation allows contracts in a tiny 8-point type, and requires a writing style which "is easily understood *by a reasonable person*". The italicized phrase, Knight argues, is ambiguous, and does not meet or explain the criteria for determining "easily understood". Those criteria would ensure that the reader could find, interpret, comprehend and apply information for appropriate purposes.

Plain language is alive and well, and living abroad, too

CLARITY also reports on these issues:

- how law firms in Australia use plain language expertise as a distinguishing feature to market. Phillip Fox is training every lawyer in the firm to draft in plain language.
- the Plain English Campaign's Third International Conference in Washington, D.C. in October, 1994
- the "Writer-in-Residence": a new position in large American law firms
- plain language projects from Australia, Canada, England, Europe, United States
- a December 1994 commendation in the British House of Lords on *CLARITY*'s submission to the Hansard Society Commission on the Legislative Process. The submission, promoting purpose clauses in legislation, was written by an Edmonton plain language lawyer, David Elliott. Lord Brompton claimed "The delightfully written Memorandum . . . was so well written that I think it should be published as a separate paper."
- Book reviews on plain language texts

Michigan Bar's Plain English Committee review

In January 1995, a two-year review of legal writings in Michigan concluded :

- (i) that Governor's executive orders and legislative honorary resolutions contained the worst examples of legalese.
- (ii) that insurance policies were among the better written documents, and
- (iii) most contracts, wills, trusts, and other estate planning documents were still badly written.

Plain language needs catalysts and support

The plain language movement urgently needs more knowledgeable proponents, teachers, researchers, plain language institutes and centres. We need more sharing of outstanding plain language models. We need law schools to develop comprehensive plain language writing courses as a compulsory segment of legal training. And is it a dream to hope for extensive rewriting of the most commonly used and most poorly written pieces of legislation?

Has plain language gone underground? Or disappeared? I think not.

But readers of legal drafting should expect and demand more readily understandable and clearly designed documents by 2000.

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

1 Michele Asprey, *It's Official: New South Wales Solicitors Favour Plain Language*, **CLARITY**, No. 32, March 1993

2 Steve Harrington & Joseph Kimble, *Survey: Plain English Wins Every Which Way*, 66 **Michigan Bar Journal** 1024 (1987)

3 Joseph Kimble & Joseph A. Prokop, *Strike Three for Legalese*, 69 **Michigan Bar Journal** 418 (1990)

4 Philip Knight, *Comments on a New Plain Language Law*, **CLARITY**, No 32, March 1995, pp. 22-28

5 George H. Hathaway, *A Summary of Our Review of Legal Writing*, **Michigan Bar Journal**, January 1995, pp 50-52