

Page 237

What is Plain English?

So asked the Honourable Mr Justice Crabbe in his article 'The Legislative Sentence' (1989) Stat. LR vol. 10(2). After a series of quotations of doubtful relevance he dismisses the question with . . . 'so much for plain English'.

A pity, because most of what he urges in his article is exactly what those who promote plain English drafting also advocate. If legislative counsel were not quite so sensitive they would welcome the plain English movement as nothing more than an extension of what good drafters have always tried to do — communicate what they write as clearly and precisely as they can.

Nothing is gained by slinging quotations around in support of one argument or the other. That's like using Maxwell — you can find a quote to support virtually any proposition. Better to examine with care the suggestions made by anyone interested in written communication. And communication is the key.

The idea that legislation should communicate Parliament's message is by no means a new thought. Thring and Ilbert both wrote about drafting for layfolk. Thornton spends considerable time in his book writing about it. And look at Bennion's brilliant texts. Legislative counsel are far in advance of most lawyers in clarity in their writing. But many legislative counsel seem unable to accept criticism or the thought that anyone else can help improve their writing. That is a real mental block and until they overcome it little improvement in legislative drafting, and so communication, will result.

Once legislative counsel open their minds to ideas from other professions expert in communicating with words we will see a leap forward in legislative drafting. If they listen they will hear their client departments, legislators, the judiciary, and the public calling for it.

Research into how readers understand written texts is still in its infancy but much that is already known can be used by legislative counsel to improve communication. The call for plain language is no more than a call for legislative counsel to continuously monitor and improve their writings and so their communication. The mental block for most legislative counsel is that once they have got a section 'right' they stop thinking. If the section expresses precisely the legislative instruction what more is there to do? Nothing in the minds of most — it is for others to figure out what the precisely drafted section actually means.

Page 238

Legislative counsel must also be students of writing. We must go outside our offices and look beyond our profession. We must test our concepts and assumptions of how our products are used and interpreted. We must use that information to improve ourselves and our training. And we must keep on doing it. The legislative counsel who is truly concerned with communication does not stop at precision (in itself a misleading word). Having got the section 'right' the drafter who is also concerned with clarity asks how it can be rewritten to communicate what it says better. Would it help if

- the section was in a better place in the draft (a well organised draft can often eliminate confusing cross references)?
- the section were written as a formula?

- an example were incorporated to explain it?
- the section were turned around so as to express the main thought first instead of an exception?
- the section were reorganised to eliminate internal cross references?

All these techniques have been used intermittently by innovative legislative counsel for years. What we need is more of the same kind of innovative thinking (although only a lawyer would see these as 'innovative').

And what about a broader look at the statute book? What 'little' things could be done to improve communication? What about

- a different format for legislation. The New Zealand Law Commission, Alberta, and the Victoria Law Commission in Australia are all experimenting. About time too, because the format that has evolved in legislation did so without the benefit of the knowledge of things that affect readability today;
- improving page and type colour, line length, typestyle and page design. All 'little' things that together can improve communication;
- computer programs that can help standardize drafting, establish precedent banks and help get the job done better;
- indices, tables of contents, questions to section headings. All designed to help the reader — all designed to improve communication;
- a follow up test to see whether our drafts really do communicate-in the way we anticipate. How do we know if our communication works if we never follow up? If we don't know our successes and failures how can we expect to improve?
- Bennion's call for a keeper of the statute book to improve access to statute law as a whole, or a series of keepers linked through Commonwealth contacts;
- and, yes, all the things the Honourable Mr Justice Crabbe suggested — short sentences, paragraphing, and use of the simple present tense instead of the false imperative ('shall' is the bane of the legal profession!).

So much to be done but few are writing about doing it; or cooperating with others to do it. If legislative counsel joined forces with the advocates for plain

Page 239

language, together resources might be found, projects started, and real progress made in improving statute law with all its consequent benefits.

What Mr Justice Crabbe advocates is no more nor less than good clear writing. Some have taken to calling that—plain English.

Yours truly,
D. C. Elliott
Edmonton,
CANADA