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Bryan Schwartz deplores the way that convoluted legalese is used ad nauseam

PEOPLE hate legalese. A 1991 survey of British Columbia residents found that most people feel angry and frustrated when reading legal documents. Many doubt it is worth even trying to figure them out. Lawyers are identified as the worst culprits. People believe that documents drafted by lawyers are the most important kind, yet the hardest to comprehend. There is widespread disbelief that lawyers even try to write well.

Throughout the common law world - which includes England, nine Canadian provinces, the United States and Australia - there is a burgeoning "plain English movement." Its aim is to produce legal communication that is clear and simple. Some major corporations have already replaced their legalese forms with plain English translations. Look at your latest car rental agreement; it may actually be comprehensible. Several U.S. states have passed laws that require the use of plain English in consumer contracts generally. The B.C. government has just established a Plain Language Institute, which will sponsor both research and training. There is a huge amount of work to be done.

Some of the features of legalese, including the use of exotic and redundant terms, have origins that are ancient. Latin was widely used in important documents and books, and legalese still includes terms such as *ab initio*. After the Norman Conquest, the English legal system also had to absorb many terms derived from French. To avoid misunderstandings, legal drafters would sometimes use an ordinary English term, and then add its French or Latin equivalent, e.g. "last will and testament." The use of pairs and triplets seems to have become a more general feature of legalese. Brian Mulroney's legal training may account for his fondness for paired expressions.

The use of big words, long sentences and complicated syntax are other features of legalese. It may be that some lawyers use complex language in order to impress. Pretentious writing may be more common in fields like law and the social sciences, where practitioners may be insecure about how sophisticated their discipline really is. Legalese may also result from a misguided sense of decorum. You don't show up in court wearing a plaid shirt, corduroy pants and Wallabees, and when you're preparing a serious legal document, you should use a language whose formality befits the occasion - shouldn't you? But it is a false dignity that must be maintained through obscurity. Plain English need not be unduly folksy. If a document needs to project solemnity, clarity and economy of expression can be a help.

Only a few legal terms are worth retaining on the grounds that they have well-tested and precise meanings. A lengthy and complex legalese document is more likely to produce varying interpretations than a short and simple one. Practical experience with plain English consumer contracts has already shown that they do not produce more litigation. The use of legalese can be self-perpetuating. We are used to seeing legalese, so we sometimes think that attempts at legal communication can't be "for real"

unless they are suitably recondite. As the plain English movement advances, however, we will come to see clarity and conciseness as hallmarks of legal training and competence.

Even the Income Tax Act could be rendered understandable. The drafters would have to do several things that currently aren't done because . . . they just "aren't done." Statutes almost never include formulas, examples and explanations; but they could. The Income Tax Act could be made more user friendly by providing algebraic formulas and concrete illustrations; it currently presents everything in the form of abstract verbal convolutions. The act could also explain its specific objectives as it went along; rules are always easier to understand and interpret if you know their underlying aim. As a bonus for the public, perhaps the act could be updated regularly to include an estimate of the cost of each tax break to the public treasury.

While drafting talent varies, anyone can be taught the basic techniques of plain English drafting. Among them: use everyday words. Identify people by name or pronouns (Bill and Ted, you and I) rather than abstract expressions ("party of this-or-that part"). Use the active voice. Keep sentences short. Organize documents around headings and subheadings. Plain English (or French) drafting should be taught systematically throughout Canadian law schools. Doing translations from legalese can be exhilarating. It matches the sense of liberation you get during spring cleanup, when you take some clutter you've been saving just in case you really needed it, put it in a garbage bag, and finally toss it out.

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