



Court judgments must be written more clearly, says top judge

In his Judicial Studies Board annual lecture 2011, held on 16 March 2011, Lord Neuberger, the Master of the Rolls (the judge who presides over the Court of Appeal), said:

Clarity is not just important where legislation is concerned. If the law is to be properly accessible, then the courts are under the same duty of accessibility as is placed on the legislature – above all in a common law system, where, albeit within bounds, the judiciary make and develop the law, as well as interpret it. Oscar Wilde said that truth, is ‘rarely pure and never simple’, and the same may be said of the law. But that is no excuse for judges producing judgments that are readable by few, and comprehensible by fewer still. Indeed, the increasing complexity of the law imposes a greater obligation than ever on judges to make themselves clear.

Lord Neuberger asserted that ‘clarity and accessibility in judgments is one way in which we can continue to secure open justice in the 21st century’.

Ontario Court of Appeal Judge David Watt would no doubt agree: once known for his complex legalese, Watt has transformed himself into a writer ‘more in the vein of American best-selling novelist Elmore Leonard’. The prominent judge, whose decisions read like crime novels, is causing consternation among traditionalists who favour solemn judgments.

Watt recently began a ruling overturning a domestic murder conviction as follows: ‘Early one morning in June, 2006, Melvin Flores closed the book on his relationship with Cindy MacDonald. With a butcher knife embedded in Cindy’s back. Fifty-three blunt force injuries.’ And in a murder case last year, he started: ‘Handguns and drug deals are frequent companions, but not good friends. Rip-offs happen. Shootings do too. *Caveat emptor. Caveat venditor.* People get hurt. People get killed. Sometimes, the buyer. Other times, the seller. That happened here.’

Some welcome Watt’s new style, with an anonymous Manitoba judge, for example, commenting on the Flores judgment: ‘This is another excellent piece of work by one of Canada’s finest criminal law jurists. It is must-read for all new judges in particular, and the rest of us, too. The first few pages are a tad whimsical but neither offensive nor demeaning.’

Others are less impressed. Law professor David Tanovich said: ‘He is out of control. I am frankly surprised that no one on the court – including the Chief Justice – has said anything to him. I would not be surprised if there is not a judicial council complaint if he continues.’ [Isn’t that one too many negatives for his meaning?] Tanovich accepts that ‘notoriously dry legal fields such as contract law can stand some lively writing’, but asserts that criminal law cannot: ‘This style of writing serves to sensationalize and desensitize tragic facts and serious social issues.’ Rakhi Ruparelia, also a law professor,

agrees: 'It seems as though Justice Watt was trying to titillate and entertain with his writing rather than offer a careful and appropriate consideration of the facts. While making judicial writing more accessible is a laudable pursuit, in my view, this judgment simply trivializes the murder of a woman at the hands of an abusive partner.'

Watt is not the first judge to adopt an unconventional style. Lord Denning, a fabled member of the House of Lords, was known for his bold, creatively crafted judgments.

We've written to the Judicial Studies Board to offer our services in helping judges write more clearly.

[Sources: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Speeches/mr-speech-jsb-lecture-march-2011.pdf>; and *Globe and Mail*, 10 March 2011: <http://www.theglobeandmail.com/news/national/ontario/the-judge-who-writes-like-a-paperback-novelist/article1937791/>]

Thanks to Debbi King, Daphne Perry, and Cheryl Stephens for giving us the ideas for this article.]

Deceptive design deployed in war between AVs and AVnots

On 5 May, people in the UK will vote on whether to change how they elect MPs to the House of Commons from the so-called First Past the Post system (er, where's the post?) to the Alternative Vote (AV) system.

Advocates of both systems have accused their opponents of duplicity but the No to AV campaign made its case in a way that distorts the typography of the clearly written and well-designed leaflet we helped the impartial Electoral Commission to prepare (not that we're upset or anything). In a full-page *Times* newspaper advert on 28 March, the No campaign contrasted the simplicity of the current system with the supposed complexity of AV by stripping out all the paragraph spaces, headings and diagrams that the Electoral Commission had included in the description of AV it sent to every household. This produced a 30-line, 340-word paragraph of continuous text. Little wonder a *Daily Mail* journalist called AV 'fiendishly complicated'.

AV is, of course, the method by which David Cameron (who opposes AV) was elected leader of the Conservative party, and by which Ed Miliband (who supports AV in a wishy-washy way) was elected leader of the Labour party.

Clearly clarified: 'spot the speciousness' results

Thank you to all readers who entered our competition to spot the speciousness in the following gobbledegook, which a customer told us was required by the Office of Fair Trading (OFT):

If you use your account to make payments when you:

- do not have enough money in your account and have not agreed a planned overdraft with us, or
 - the payment takes you over the limit of your planned overdraft;
- you may have to pay bank fees as a result.

We mentioned that the text contains an error, plus a structure that's contrary to plain-language guidelines, and asked you to summarize what's wrong and rewrite the piece.

Congratulations to winner Miles Crawford, of Wellington, New Zealand, who observed that:

- the second bullet does not fit with the platform statement ('If you use your account to make payments when you the payment takes you over the limit of your planned overdraft...')
- the paragraph is a 'sandwich', in which the final phrase comes after the list. This is not clear to read, and so is better avoided.

Miles's rewrite reads as follows:

You may have to pay extra bank fees if you use your account to make payments when:

- you do not have enough money in your account and have not agreed a planned overdraft with us, or
- the payment takes you over the limit of your planned overdraft.

Miles explained why he'd added 'extra', saying: 'The existing text makes it sound like one doesn't already pay bank fees. As if!'. But we think a bank might not want to use this word for marketing reasons and because most UK personal accounts are still fee free if you avoid overdrafts and the like.

So what happened when we questioned the OFT about its 'required' wording in the so-called 'charging scenarios' that banks include in their leaflets? Here's how they replied:

I should first point out that the OFT did not mandate such wording – we have no powers to do so. In fact the OFT sat on a group which contained banks that offer Personal Current Accounts [PCAs], and it was on this group that such wording was adopted. The meeting was chaired by the British Bankers' Association [BBA], and also included representatives from consumer groups.

In order to ensure that consumers are able to compare Charging Scenarios, we think it sensible that all banks that offer PCAs use consistent wording to describe their purpose. When Charging Scenarios were introduced the ability of banks to review the Charging Scenarios and amend them if necessary was also discussed. I will therefore bring this matter to the attention of the BBA for consideration when Charging Scenarios are reviewed. This would be the appropriate time to make changes like the ones you suggest.

So it's clear that the OFT did not require this exact wording, and our customer was pleased to amend the text as follows, again making it correct – and clearer – than the original:

You may have to pay a fee if:

- you make a payment that puts your account into overdraft, and
- the overdraft is more than any planned overdraft you have agreed with us.

Miles wins a copy of Martin Cutts's *Oxford Guide to Plain English*.

A foolish move?

The Society for Editors and Proofreaders (SfEP) has launched an 'initiative to streamline punctuation rules', announced on its Facebook page:

Ask any editor or proofreader what annoys them most and 'misplaced apostrophes' will be a common response. From government departments to the humble greengrocer, it often seems that no one can get it right.

The SfEP is keen to reflect the changing use of language and punctuation, and so has decided to initiate a campaign to phase out apostrophes altogether. While it is recognised that this could cause some confusion initially, the Society feels that people would get used to it in time. And since many people are confused about apostrophes under the current system, there is a sense that we would be no worse off.

“We’re always looking for ways to improve things,” said an SfEP spokesperson. “And there’s definitely a small – though nonetheless worthwhile – environmental reason to stop using apostrophes. A great deal of ink and electricity will be saved in the printing process simply by cutting down in this way.

“In addition, the editors and proofreaders who make up our membership are frankly sick and fed up of correcting apostrophes. And there are so many more valuable activities they could be engaged in. This will have a real, measurable impact on the work–life balance of our members.”

Ever eager to utilise technology for professional purposes – as in its recent introduction of the ‘Txt a Typo’ SMS facility – the Society will be commissioning the creation of a new macro that will strip out apostrophes from any piece of text. Although there is a great deal of macro expertise within the SfEP, there are plans afoot to buy in the services of the noted American specialist, Ralf Loopi.

If you're tempted to complain about the society's stance, we'd suggest you don't overlook when it's dated: 1 April!

[Source: <http://www.facebook.com/notes/society-for-editors-and-proofreaders-sfep/society-calls-for-apostrophe-ban/206868016007932>]

Plain-language conference in Sweden

The three-day smorgasbord of plain-language discussion and fish delicacies that is the forthcoming Plain Language InterNational (PLAIN) conference 2011 will be held in Stockholm, Sweden from 9–11 June.

Our research director Martin Cutts will be one of hundreds of participants expected to travel from all over the globe for the event. He'll be speaking in a panel discussion on definitions of plain language, and also giving a talk called ‘Complaining about bad writing: does it achieve anything except make me feel better?’ in which – as the title rather suggests – he looks at whether complaining about bad writing achieves anything except making him feel better. Martin gives this foretaste of his talk:

Every new day brings a fresh, steaming pile of dreadful writing. It's unavoidable, assaulting your senses whenever you use public- and private-sector services. My talk will show what happens when you complain to the people responsible: sometimes they ignore you as a madman, sometimes they send a poignantly illiterate reply, and sometimes they commission you to rewrite a stack of dodgy documents. I'll also show how one complaint about a badly written sign led to the people of Buxton, Derbyshire saving large amounts of money in parking fines.

The Stockholm conference is an important milestone in the development of the plain-language world, as members of the International Plain Language Working Group will lead a discussion on its recently published options paper, *Strengthening plain language: public benefit and professional practice*.

Find out more about the conference, and watch the program unfold, at <http://www.plain2011.com/>.

Linguistic link: One Minute Swedish

And if you'd like to learn some basic Swedish, you may like to try Radio Lingua Network's One Minute Swedish course. Lots of other languages are available in the same series, from Catalan to Zulu. The 'One Minute' label isn't entirely accurate – but with 10 lessons of 2–3 minutes each, it's still a quick and easy way to prepare for business trips or holidays abroad.

For the Swedish version, see <http://radiolingua.com/category/shows/one-minute-swedish/>.

[Thanks to Diane Macgregor for telling us about Radio Lingua's courses.]

Plain English for the non-native speaker

The next Clarity breakfast will take place in London on Thursday 16 June. The session looks at the experiences of lawyers whose first language is not English. Jane Clifton, a trainer with 27 years' experience of international English training, will share her experience and introduce a discussion asking:

- What's the quickest, cheapest, easiest way for a non-native speaker to achieve appropriate, professional written English?
- How does plain English help (or hinder) that aim?
- What are the most effective ways to teach plain English as a second language?
- What difficulties do lawyers experience in communicating with English native speakers?

To reserve a place, please email daphne.perry@clarifynow.co.uk. There is no charge to attend and guests are welcome, though non-members are asked to join Clarity (<http://www.clarity-international.net/>) if they come again.

Language matters more and more

The British Academy has launched a position statement, *Language matters more and more*. The academy is concerned about the falling number of students studying languages at school or university. Given the connections between language learning at all levels, language research, teacher training, and wider intercultural understandings, the academy believes the decline is damaging the whole education system. The latest position statement follows a related report, *Language matters*, published in 2009.

Language matters more and more recommends how the higher-education sector can encourage young people to study languages, so building the UK's ability to meet national and international challenges. At the launch event, Baroness Jean Coussins (Chair of the All Party Parliamentary Group for Modern Languages) mentioned the following 'symptoms of the sickness':

- Over 70% of UK employers are unhappy with the foreign language skills of school leavers or graduates and are forced increasingly to recruit from overseas to meet their needs.
- Only 7 of the 308 successful candidates in this year's competitive recruitment drive for EU jobs in Brussels – which require working knowledge of a second language – were British.
- Meetings in Brussels as well as at the United Nations apparently have to be cancelled frequently because of a shortage of English native speakers in the interpreting service.

It will be interesting to see to what extent the new English Baccalaureate (awarded to students who achieve GCSEs in English, Maths, 2 sciences, a foreign language, and History or Geography) improves the number of young people studying languages after age 14.

You can read more – including the full position statement and transcript of the launch event – at <http://www.britac.ac.uk/policy/Language-matters-more-and-more.cfm>.

Readers prefer edited news

Research by Wayne State University has shown that readers prefer news stories on websites to be professionally edited, yet the rush to be first online often means this doesn't happen.

Assistant professor Fred Vultee, formerly a newspaper editor, presented the research results at the conference of the American Copy Editors Society (ACES), which commissioned and collaborated on the research. Vultee measured 66 readers' assessments of 4 edited and 4 unedited articles, which they rated on professionalism, grammar and organization. The study found that readers:

- notice grammar errors and find them troubling and distracting
- see errors of consistency, for example a name spelled 2 ways, or 'p.m.' and 'pm'
- notice writing that is garbled and confusing, and when words are misspelled or misused
- can tell edited from unedited stories in significant ways.

The study shows that 'readers care about what copy editors do, and copy editors can tell managers that their jobs are therefore critical to their organizations'. Vultee's research continues, and will look at whether readers would stop visiting a website altogether because of poor editing.

For more information, see <http://www.aces2011.org/aces-news/17/aces-sponsored-research-study-says-yes/>. You can also visit Vultee's blog, Headsup, which shares 'thorts and comments about editing and the deskly arts', at <http://www.headsuptheblog.blogspot.com/>.

Blinking well lost in translation

As the holiday season starts, reader Dave Skinner opens our new season of foreign funnies:

Here in Belgium, multilingual instructions are everywhere and usually very good. At our local supermarket they have just introduced a self-scan scheme with explanations in French, Dutch, English or German. However good your other languages though, it is still most fun to use the English version. After you have done all the preliminaries and are about to head over to the bank of machines, you get the final instruction: "Now use the blinking terminal".

And James Fisher sent us 3 pictures of menu choices at a restaurant in Portugal. Here's the first; we'll serve up the other 2 in May and June.

SERVIÇO A LISTA		
Bacalhau á Moda da Casa	Cod in the Way of the House	10,00€
Bacalhau á Braga	Braga 'S Cod	10,00€
Filetes de Pescada	Kingklip Fillet	6,00€
Espetada de Marisco	Stukof Sellfish	8,50€
Atum á moda da Casa	Tuna in the Way of the House	7,00€
Bife á Moda da Casa	Normal Steak on Plate	9,00€
Prego em Prato Normal	I Steak in the Way of the House	7,00€
Posta a Mirandesa	Mirandesa's Chunk of Meat	9,00€
Costeleta Grelhada	Grilled Pork Chops	6,90€
Fêvera Grilhada	Grilled Flank Steak	5,90€
Bife de Peru Grilhado	Grilled Turkey	7,00€
Alheira de Caça		5,00€

SERVIÇO DE SNACK

Not that native-speaker English is necessarily any better, of course, as this howler spotted by James on www.catflap.co.uk illustrates:

All complaints will be dealt in a, Fair, Confidential and effective manor.

Of course, the spellchecker would have missed that one. But there are times when – as mentioned in *Pikestaff* 47 – it causes even more havoc by suggesting silly alternatives to misspelt words, which the writer may inadvertently accept. Here's a prime example of 'the Curse of the Spellchecker', sent in by Peter Neill:

I once ate at a pub in Devon which advertised its Vegetable Lasagne as containing "Thinly Sliced Aborigines" – not exactly vegetarian!

If you've any example of foreign funnies, do send them in to pikestaff@clearest.co.uk.

Back issues

You can see back issues of *Pikestaff* on our website (click on 'Newsletter'). Here you'll also find a table that summarizes each month's content.

Tell a friend

If you think friends or colleagues would enjoy *Pikestaff*, please feel free to forward the newsletter (or any part of it) to them.

Spread the word

We're happy for you to use any of our articles to promote plain language, provided you acknowledge *Pikestaff* as the source.

Rolling the credits

Pikestaff is written by Sarah Carr and edited by Martin Cutts.
Published by Plain Language Commission (clearest.co.uk Ltd).
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