

## PLAIN ENGLISH AND PROFESSIONALS

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### Introduction

English originates from the Anglo-Saxon language spoken in early medieval England. It has gone through many changes over the centuries. Today it is one of the most widely spoken and written languages in the world.<sup>2</sup> It is estimated that English is the official language in almost 60 sovereign states in the world,<sup>3</sup> and its vocabulary expands at the rate of 8,500 words per year, currently containing over 1 million words.<sup>4</sup>

Linguists continually analyse language changes. They say that language is produced by behavioural conventions and when behaviour changes so does language.<sup>5</sup> For instance, personal letters from the beginning of the 15<sup>th</sup> century show changing patterns of communication and expressions of politeness.<sup>6</sup> Phrases such as “I beg of you” or “If it please you” were common in both personal and professional communications.<sup>7</sup> Today we simply say “please”. Language change such as this one is often first observed in casual spoken language and occurs in written language some time later.<sup>8</sup> Therefore, people may have gradually ceased saying “If it please you” in everyday speech, but would continue using the expression in written communications for some time.

Modern language constantly evolves through daily usage and technological advances. The legal language, however, has not kept pace. It remains “conservative and static”.<sup>9</sup> We continue to see archaic phrases and Latin terminology in lawyer’s oral and written communications. For example, although the expression “May it please you” is redundant in everyday speech, lawyers use it every day when announcing their appearance in court.

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<sup>2</sup> Legall, Debbie. 2008. “English for lawyers”. *International Bar News*, December, p. 57.

<sup>3</sup> Wikipedia, “English language”, accessed 28 February 2015, [http://en.wikipedia.org/wiki/English\\_language](http://en.wikipedia.org/wiki/English_language).

<sup>4</sup> Wikipedia, “English language”, accessed 28 February 2015,  
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<sup>5</sup> Keyes, John M. 2001. “Plain Language and the Tower of Babel: Myth or Reality?” *Legal Ethics* 4(1), p. 15.

<sup>6</sup> Nevala, M. and Palander-Collin, M. (2005) “Letters and letter writing”. *European Journal of English Studies* 9(1) p. 3.

<sup>7</sup> *Ibid*, p. 4.

<sup>8</sup> *Ibid*, p. 4.

<sup>9</sup> Legall, p. 59.

Linguists have identified legalese as a distinctive dialect in legal documents. The use of legalese has been criticised for making the law mysterious and unintelligible to those whom it affects.<sup>10</sup> This led to the emergence of the Plain English Movement (PEM) which encourages the use of simple or ordinary language.

### What is Plain English?

Plain English is ordinary English. The PEM promotes the use of plain language in legal writing to demystify the law and make it intelligible to the public at large.<sup>11</sup> It also encourages using Plain English to help people without specialist training understand what is being said. It does not mean that lawyers must speak and write in a way that absolutely every person in society understands. It means that lawyers should speak and write in a way that makes it *easier* for people to understand.<sup>12</sup> The objective is to improve the way lawyers communicate, and not to “revolutionise” the legal system.<sup>13</sup>

Plain English discourages the use of legal jargon and Latin expressions in favour of simple terminology. For example, use:

- ‘*good faith*’ instead of ‘*bona fide*’;
- ‘*from the beginning*’ instead of ‘*ab initio*’;
- ‘*prevented*’ instead of ‘*estopped*’;
- ‘*immediately*’ instead of ‘*forthwith*’;
- ‘*if*’ instead of ‘*in the event that*’;
- ‘*no effect*’ instead of ‘*null, void and no effect*’;
- ‘*until*’ instead of ‘*until such time*’;
- ‘*to*’ instead of ‘*for the purpose of*’; and
- ‘*enough*’ instead of ‘*sufficient number*’.<sup>14</sup>

Expressions such as ‘*aforesaid*’, ‘*hereby*’, ‘*the said*’ and ‘*abovementioned*’ should not be used at all.<sup>15</sup>

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<sup>10</sup> Assy, Rabeea. 2011. “Can the Law Speak Directly to its Subjects? The Limitation of Plain Language”. *Journal of Law and Society* 38(3) p. 377.

<sup>11</sup> Ibid, p. 376.

<sup>12</sup> Keyes, p. 16.

<sup>13</sup> Keyes, p. 16.

<sup>14</sup> Nevala and Palander-Collin, p. 4.

<sup>15</sup> Nevala and Palander-Collin, p. 4.

Critics of the PEM argue that there are limits to using Plain English. They say that using Plain English cannot make complex aspects of the law sufficiently intelligible to lay persons so as to enable them to utilise it effectively without legal assistance.<sup>16</sup> Using Plain English does not make a lay person a lawyer, just as increasing health awareness does not make a person their own doctor.<sup>17</sup> Indeed, replacing ‘*writ*’ with ‘*claim*’ in the *Uniform Civil Procedure Rules* does not mean that the person will understand the concept of the rule. They may still need to seek legal advice.<sup>18</sup>

Further, caution must be taken when considering replacing words or phrases which have previously been interpreted in case law, or which have a specific definition in legislation. Replacing a word may change its meaning. This can be dangerous. For example, the word ‘*injury*’ has a specific meaning in the *Workers Compensation and Rehabilitation Act 2003* (Qld)<sup>19</sup>. Being ‘*injured at work*’ should not be replaced with being ‘*hurt at work*’. Another example is the use of ‘*offer*’, ‘*acceptance*’, ‘*consideration*’, and ‘*frustration*’ in the law of contract. Changing these words may change their meaning. Lawyers should never change their language unless they wish to change its meaning.<sup>20</sup> Finally, changing ‘*ex parte*’ to ‘*without notice*’ in legislation can be inappropriate because in some instances an *ex parte* application does require notice, as in the Canadian Federal Court Rules.<sup>21</sup>

There are also some legal phrases which are considered terms of art, and which some will argue should never change. For example, ‘*forum shopping*’, ‘*piercing the corporate veil*’ and ‘*cause of action*’, refer to a legal rule, practice or concept. They lie outside their linguistic meaning and are used frequently by lawyers and the judiciary. Evidently, there will always be a “gap between the language of the law and ordinary language”.<sup>22</sup> Plain language therefore does have its limitations.<sup>23</sup>

The Honourable Michael Kirby<sup>24</sup> has been an advocate for Plain English for some time. He agreed that there are “limits on the extent to which we should change too quickly established

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<sup>16</sup> Assy, pp. 376 and 382; Keyes, p. 15; Tanner, Edwin. 2000. “The Comprehensibility of Legal Language”. *Griffith Law Review* 9(1): p. 53.

<sup>17</sup> Assy, p. 384.

<sup>18</sup> Ibid.

<sup>19</sup> Schedule 6.

<sup>20</sup> Aitken, Ken. 1998. “Plain English – flexibility”. *Law Institute Journal* 7(8), p. 50.

<sup>21</sup> Keyes, p. 16.

<sup>22</sup> Assy, p. 401.

<sup>23</sup> Ibid, p. 396.

<sup>24</sup> Past Justice of the High Court of Australia.

ways of doing things, and saying things in the law”.<sup>25</sup> He observed that “it is not always easy for lawyers to write and speak plain language”<sup>26</sup> and recalls his campaign during his service on the High Court for his colleagues to drop the expression ‘*lex loci delicti*’ in favour of ‘*the law of the place of the wrong*’. His explanation of why he failed is that, perhaps

*those who conceive of themselves as members of an expert priestly caste, prefer a dead language because it conveys the mystery of technicality. English, after all, is a very mixed up tongue. And clients may be more willing to pay more for Latin.*<sup>27</sup>

However, he also said that “it is not all that difficult to improve legal expression”.<sup>28</sup> He enacted ten principles which he says will make a lawyers’ legal language “much more direct, simple and vigorous”.<sup>29</sup> These are:

1. Begin complex statements of fact and law with a summary to let the reader know where they are going.
2. Break up long sections and paragraphs and order them in a logical sequence.
3. Pay careful attention to the layout by formatting, and use plenty of headings and subheadings.
4. Use vertical lists to convey detailed information.
5. Choose shorter sentences with no more than 20 words.
6. Have continuity between sentences by repeating some idea from the previous sentence in the new sentence, and ending the sentence with your strongest point.
7. Use the active voice instead of the passive voice.
8. Choose verbs instead of noun phrases e.g. ‘*consider*’ instead of ‘*give consideration to*’.
9. Use familiar words and banish ‘*shall*’ wherever possible.
10. Avoid unnecessary detail and words e.g. ‘*a court order*’ instead of ‘*an order of the court*’.<sup>30</sup>

<sup>25</sup> The Hon Michael Kirby. 2010. “Ten commandments for plain language in law”. *Australian Bar Review* 33(1), p. 12.

<sup>26</sup> *Ibid*, p. 10.

<sup>27</sup> *Ibid*, p. 12.

<sup>28</sup> *Ibid*, p. 14.

<sup>29</sup> *Ibid*, p. 14.

<sup>30</sup> *Ibid*, p. 14.

These suggestions are promoted by other advocates of Plain English.<sup>31</sup> They argue that using Plain English is necessary to avoid extreme formality and pretentiousness.<sup>32</sup> For example, compare the following two letters:

<p><i>Letter 1:</i></p> <p><i>Dear Mr Smith,</i></p> <p><i>We refer to your letter of even date and confirm your instructions to commence proceedings forthwith.</i></p> <p><i>In that regard please find enclosed a draft application and affidavit of yourself. Please peruse the documents carefully and advise us of any amendments that need to be made.</i></p> <p><i>As soon as we receive your confirmation that the draft documents are to your satisfaction we will file the application in court.</i></p> <p><i>We also request that you return the executed client agreement at your earliest convenience and deposit the sum of \$1,000 into our trust account.</i></p> <p><i>In the interim, if you have any queries, please do not hesitate to contact us.</i></p>	<p><i>Letter 2:</i></p> <p><i>Dear Mr Smith,</i></p> <p><i>I have received your letter where you ask me to take your matter to court immediately.</i></p> <p><i>I enclose the draft court documents. Please let me know if there is anything in the documents that you would like me to change.</i></p> <p><i>I will then file the documents in court.</i></p> <p><i>Please send the signed client agreement to me when you can and deposit \$1,000 in the firm's trust account.</i></p> <p><i>If you have any questions please contact me.</i></p>
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Some will consider that the first letter contains too much formality and will prefer the second because it is plain and direct. Others will prefer the first letter because it is eloquent and precise. Plain English advocates encourage lawyers to depart from the conventional style adopted in the first letter, and to use the style adopted in the second.<sup>33</sup>

### **Benefits of using Plain English**

<sup>31</sup>Thomas, Gary. 2008. "Letter writing". *BRIEF* 35(3), p. 28; Watson-Brown, Anthony. 2009. "Defining 'Plain English' as an Aid to Legal Drafting". *Statue Law Review* 30(2), p. 91; Keyes, p. 16; Assy, p. 379.

<sup>32</sup> Thomas, p. 28.

<sup>33</sup> Ibid.

There are many benefits of using Plain English. Ethical issues arise from using language that is unintelligible to clients.<sup>34</sup> Clients who do not understand the lawyer's advice are more likely to say "my lawyer never told me that" or "I never knew that". In fact, the client may have been properly advised, but did not understand what was being communicated. To them, therefore, the lawyer failed in their duty. A common complaint received by law societies is that the lawyer failed to communicate adequately with their clients.<sup>35</sup> Using Plain English reduces such ethical dilemmas and complaints.

Using Plain English also strengthens the lawyer-client relationship. Clients appreciate receiving simple and logical explanations and instructions. This is cost effective because they require less detailed explanations and will contact their lawyer less frequently. Using language that clients understand ultimately results in higher client satisfaction.

Hesitant lawyers can start using Plain English with clients in oral communications first before adopting it in written communications. They may start by writing simple instructions, in the same way that clients speak when with the lawyer.<sup>36</sup> Once comfortable with using Plain English with their clients, lawyers can start using Plain English in all of their communications. It is inevitable that some clients will require more Plain English, and others less. Assessing client sophistication will help the practitioner to determine how much Plain English to use with their clients.

### **Assessing client sophistication**

Lawyers have an ethical duty to the court and to their clients to ensure that the client's interests are promoted and protected at all times. This includes ensuring that a client not only has legal capacity to give instructions, but ensuring that they understand the advice given.<sup>37</sup> This is in line with the client-centred approach that many firms are adopting.<sup>38</sup> Firms promise to offer quality services, to exceed client expectations, and to provide legal services in a cost-effective and accessible manner.

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<sup>34</sup> Austen et al. 2001. "Plain English – an Ethical Issue?" *Legal Ethics* 4(1), p. 5.

<sup>35</sup> Lauchland Kay A. and Le Brun, Marlene J. 1996. *Legal Interviewing: Theory, Tactics and Techniques*. Butterworths. p. 40.

<sup>36</sup> Watson-Brown, p. 93

<sup>37</sup> The Law Society of New South Wales (2009) *When a client's capacity is in doubt: A Practical Guide for Solicitors*, p. 1; Lauchland and Le Brun, p. 39.

<sup>38</sup> Lauchland and Le Brun, p. 29.

A person does not have to lack capacity to lack comprehension of the advice their lawyer is giving. There are other factors which can affect a person's level of understanding of legal advice. For example, clients from a non English speaking background may be particularly disadvantaged. A lack of proficiency in the English language can have an impact on their understanding and lead to misinterpretation of the advice.<sup>39</sup> Further, language is closely linked to culture.<sup>40</sup> In most cultures head nodding indicates acceptance, agreement and acknowledgement. In other cultures it is only a sign of respect.<sup>41</sup> Clients from low socioeconomic backgrounds or those with learning difficulties may have poor literacy skills and may be embarrassed to tell their lawyer.

When assessing a client's level of understanding, look for warning signs or red flags. For example, the client has difficulty finding words or expressing themselves, repeats or rephrases the same question several times, or is unable to express in their own words the advice given.<sup>42</sup> Good communication skills such as listening, body language and appropriate questioning will also assist in making this assessment.<sup>43</sup> Listening allows the client to keep talking and will show their level of sophistication, for example, by the vocabulary they use. Body language, such as nodding, may indicate understanding. A vague look may indicate confusion. Asking open-ended questions rather than questions that require a 'yes' or a 'no' answer, and avoiding asking leading questions which suggest the answer, will also assist.<sup>44</sup>

When the lawyer determines that the client is less sophisticated then more Plain English should be used in both oral and written communications. Some clients, however, will be more sophisticated, and less Plain English will be required. These may include professional and technical clients in specialised fields.

### **Dealing with professional and technical clients**

Some clients are sophisticated and well informed in the law. Using technical legal terms with them may therefore be appropriate.<sup>45</sup> In fact, "specialist language is often more efficient than

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<sup>39</sup> Legall, p. 58.

<sup>40</sup> Ibid, p. 59.

<sup>41</sup> Wikipedia, "*Nod (gesture)*". Accessed 1 March 2015. [http://en.wikipedia.org/wiki/Nod\\_\(gesture\)](http://en.wikipedia.org/wiki/Nod_(gesture)).

<sup>42</sup> The Law Society of New South Wales, pp. 14-17.

<sup>43</sup> Lauchland and Le Brun, p. 47.

<sup>44</sup> The Law Society of New South Wales, p. 5.

<sup>45</sup> Lauchland and Le Brun, p. 58.

everyday language for communicating technical material”<sup>46</sup> and saves time on explaining otherwise complex concepts.<sup>47</sup>

There may, of course, be circumstances where the client is more sophisticated than the lawyer. For example, a neurosurgeon or a hydraulics engineer may have prepared expert reports containing complex concepts or terminology. The lawyer must be able to understand complex evidence in their client’s matter. Lawyers practicing in specialised fields quickly become experts in those fields. Terminology specific to those areas then becomes second nature. For example, a lawyer specialising in personal injury law will be familiar with medical terms and will use them when communicating with medical experts. However, simple words would be used with most clients. For instance, the lawyer will use ‘phalanges’ or ‘metacarpals’ with the medical expert, but ‘fingers’ with the client.

When a lawyer has difficulty understanding terminology used by an expert, a shadow expert may assist. A shadow expert will advise the lawyer and explain complex or technical evidence. A shadow expert may also suggest other evidence the lawyer should obtain, or guide on the line of questioning counsel should take in examination in chief or cross examination. The shadow expert does not become a witness and should not provide their own reports to prevent them becoming discoverable.

### **Letter writing skills for lawyers**

In addition to using Plain English in their correspondence, there are other letter writing skills lawyers can develop. Correspondence bearing the signature of a lawyer has the potential to build or hurt their professional reputation.<sup>48</sup> When letters are easily understood by the client, address all of their issues, provide the needed advice, and are written in a professional manner, they demonstrate the lawyer’s competence. However, letters that contain errors, show a disregard to the client or their legal problem, and fail to address the pertinent issues demonstrate incompetence and affect the lawyer’s credibility. Becoming skilled at drafting letters should be a priority for all lawyers.

The types of letters lawyers draft vary greatly. Lawyers write letters to clients, to other lawyers, to barristers, to medical experts, to professionals, to judge’s associates, to

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<sup>46</sup> Austen et al. p. 5.

<sup>47</sup> Rodney, Peter. 2001. “Plain English and the Law”. *Legal Ethics*: 4(1), p. 18.

<sup>48</sup> Thomas, p. 28.

government agencies, and to various organisations. In some areas of law there are standards letters that are frequently written. For example:

- conveyance lawyers draft letters with respect to the sale or purchase of property and may need to include advices about stamp duty;
- personal injury lawyers often write letters to medical specialists seeking a medico-legal report;
- insurance lawyers often draft letters that must provide advices about the terms and conditions of an insurance policy;
- property lawyers may have precedent letters advising about standard building contracts;
- commercial lawyers may draft letters advising on the client's prospect of obtaining an injunction;
- family lawyers may need to advise clients with children's issues about the relevant legislation that governs who the children live with; and
- estate lawyers draft wills and advices about estate planning.

Lawyers with a heavy workload or limited experience may rely on the use of precedents. When using precedents a lawyer should not assume that every letter written by another lawyer is a good letter. Proper consideration must be given to their client's individual circumstances. Failing to amend a precedent letter accordingly may seem like a simple oversight, but may result in incorrect advice being given to the client. Further, precedent correspondence referring to specific parts of legislation should be reviewed regularly ensuring that it is consistent with any amendments to that legislation.

Lawyers may follow the following guidelines when writing letters to avoid potential problems:

- determine the purpose of the letter;
- consider what the client needs to know;
- use language that the client will understand;
- consider whether anything in the letter could be misinterpreted by the client;
- think about anyone else seeing the letter and what impression they might get;
- avoid a careless attitude and check for spelling and grammatical errors; and
- use short sentences, paragraphs, and subheadings.<sup>49</sup>

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<sup>49</sup> Thomas, pp. 29-30.

When determining how much detail to include in a letter, consider the type of the client. Some clients will need more detail, just as some clients need more Plain English. A client who has questioned or doubted the advice given by the lawyer may need to be provided with more detail than a client who was satisfied.

Lawyers are often advised to review a letter they had just written by imagining that it was being read out in open court. The lawyer is then encouraged to think about whether there is anything in the letter that would embarrass them or question their professionalism and competence. Viewing it from that point of view may highlight whether any amendments should be made.

Every letter is written with a purpose. Most letters are a response to a previous letter. Many are a cause for a new one.<sup>50</sup> Lawyers writing final letters could use this opportunity to invite future instructions. For example, it may advise the client of the other services that the firm provides, such as wills and powers of attorney, or conveyance. When done in a tactful manner, it will encourage the client to provide further instructions, or recommend the lawyer to their friends and family. A letter may therefore be used to promote the lawyers services. Another way lawyers may promote their services is by writing a copy.

### **Copywriting skills for lawyers**

A copywriter is a person who writes the text for advertising material to promote a business or a product. A copywriter may use headings, images, graphs, or quotes in the copy. The copy may be in the form of a brochure, pamphlet, catalogue, newspaper advertisement, an online advertisement, or a website. Copywriting plays an important role in a lawyer's career.

Copywriting is not generally taught in law schools. It may be taught in business or marketing degrees. Hence, larger law firms employ marketing consultants or managers, and more recently branding consultants, to design the right logo or text to attract the right clientele for that firm. Boutique law practices may lack the resources to engage such a consultant and may rely on their staff and their own personal experiences in marketing. Some lawyers may only consider marketing themselves when in search of a new position and may generally only do so by updating their resume and approaching recruitment firms who then do all the marketing on their behalf.

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<sup>50</sup> Nevala and Palander-Collin, p. 2.

There have been significant changes in the way that law firms advertise. For example, obtaining the best position in the hard copy yellow pages was sought after not too long ago. Now, most firms utilise their websites and the internet for marketing. There have also been other changes in the legal profession. The Queensland Law Society Annual Report 2013-2014 noted that:

*“Changes in legal service providers and products, and how services are delivered and billed, has opened the door to different practice structures. There is growth in boutique firms, usually defined as ‘micro’ practices of 2-5 solicitors, which specialise in specific areas of law for example, intellectual property, taxation, agribusiness or planning and environment. ... Legal practitioners are realising they need to differentiate their technical strengths from ‘bread and butter’ legal services. This year we saw former large law firm partners open Brisbane boutiques, some of whom ventured into a new type of practice.”<sup>51</sup>*

Many experienced lawyers and some boutique firms rarely advertise as their clients come from referrals. However, junior lawyers will not have that referral basis, and lawyers who venture out on their own may be restricted by a restraint of practice clause in their contracts. They may have no option but to market themselves to compete with established law firms. One way to do that is to write a good copy.

Writing a good copy involves creating “clear, easily understood messages that target a defined audience”.<sup>52</sup> A lawyer’s copy should encourage or motivate a potential client to contact them and then to retain them. For a lawyer seeking new opportunities the copy should convince or persuade a potential employer to hire them. Copywriting may be used in many different ways. Therefore, lawyers must first determine the purpose of their copy. For example:

- to design and launch their own website;
- to commence writing a legal blog;
- to launch their firm’s newsletter or legal updater;
- to develop a LinkedIn professional profile;
- to create their firm’s or an individual (professional) Facebook page;

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<sup>51</sup> p. 77.

<sup>52</sup> Shaw, Mark. 2012. *Copywriting*. 2nd ed. Laurence King Publishing. ProQuest ebrary. Accessed 20 February 2015, p. 12.

- to create a Twitter or other social networking account as a professional;
- to publish articles in a local newspaper such as the Messenger;
- to distribute a short pamphlet or brochure in their area; or
- to hold a workshop or seminar for the public.

All of these provide an opportunity for the lawyer to market themselves and their practice. The use of a logo, a title, an image and the manner in which a lawyer describes their services and invites clients to contact them should be well thought out. Consider these suggestions:

1. Think about the audience:
  - (a) the type of clients to be attracted e.g. small businesses or larger companies, small or large family law matters, clients charged with minor or serious crimes, or a broader audience;<sup>53</sup>
  - (b) build a profile of the audience e.g. their demographic, their personal situation and their needs;
  - (c) the type of firm to be approached for employment e.g. top tier international law firm or small suburban practice, the area of law desired; and
  - (d) use the language of the audience to appeal to their thinking.<sup>54</sup>
  
2. Have a strategy in mind:
  - (a) either place the most important information first e.g. “the what” followed by “the why”, or organising those ideas into a narrative;<sup>55</sup>
  - (b) emphasise the benefits and not the features of the services e.g. why the clients need the lawyer and how they will benefit, and not the services the lawyer provides (the “so what” or “what’s in it for me”);<sup>56</sup> or
  - (c) structure by promising, delivering, and inviting e.g. arouse their interest by the subject, tell them something they didn’t know and how they will benefit from the service, and invite them to make contact; and
  - (d) support the message by evidence e.g. testimonials from former clients or colleagues.<sup>57</sup>

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<sup>53</sup> Grayden, Ralph and Sorensen, Emma. 2009. *Write like a pro*. Law Society of New South Wales. <http://www.lawsociety.com.au/ForSolicitors/CareerHub/EssentialSkills/CareerSkills/Articles/Writelikeapro/index.htm>. Accessed 20 February 2015.

<sup>54</sup> Grayden and Sorensen; Shaw, p. 13.

<sup>55</sup> Grayden and Sorensen.

<sup>56</sup> Shaw, p. 15.

<sup>57</sup> *Ibid*, pp. 16 and 27.

### 3. Structure and content:

- (a) if the copy is an advertisement it should be short and to the point;
- (b) if the copy is an article it should be informative and relevant;
- (c) consider the layout of the copy on the page e.g. how it looks and feels;
- (d) the most important point or a single compelling message should stand out;
- (e) avoid long sentences and legal jargon;
- (f) consider using bullet points, headings, and images; and
- (g) engage the reader and call to action by using action words such as “improve”, “succeed”, “solve” to motivate potential clients, and “represented”, “demonstrated”, “advised” to impress potential employers.<sup>58</sup>

Consider examples of similar copies to use as a guide.<sup>59</sup> There are countless examples of websites, social networking site pages, newsletters and advertisements created by other lawyers. They tailor to the needs of the firm, and have a personal touch that highlights their values or their personality. Remember that copywriting is not about copying what others have done, but about communicating who the individual lawyer is and what they have to offer in an original way.<sup>60</sup> Reflecting on what others have done may inspire a lawyer to create their own copy in a way that highlights their skills and attracts the type of clientele that is suited for that lawyer.

A lawyer should allow their personality and imagination to shine through in their copy, in a way that it cannot in a commercial advertisement.<sup>61</sup> Focusing on things or aspects of their work that sets them apart from other lawyers or firms will grab the audience’s attention. Finally, a lawyer should continually evaluate their copy. If the first efforts have not brought the results that were anticipated, the copy should be reviewed.

## Conclusion

Lawyers act for various clients. Some are more sophisticated than others. Some come from ethnic or low socioeconomic backgrounds and have limited literacy skills. They may require more Plain English than other clients. Using Plain English in their oral and written communications with these clients will improve the lawyer’s relationships with them. Using simple terms and explaining complex legal concepts will minimise complaints and negligence

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<sup>58</sup> Grayden and Sorensen; Shaw, pp. 22, 35 and 131.

<sup>59</sup> Grayden and Sorensen; Shaw, p. 27.

<sup>60</sup> Shaw, p. 10.

<sup>61</sup> Ibid, p. 11.

claims. Although some professional and technical clients in specialised fields understand legal terms and jargon, lawyers are encouraged to use Plain English in all of their communications.

Advocates of Plain English will argue that using simple terms with all clients will build the lawyer's reputation. Indeed, the Hon Michael Kirby refers to the "beauty and elegance of simple expression".<sup>62</sup> Simple expressions should not only be used by lawyers in their communications, but when writing their copies. Copywriting is a necessary skill for lawyers. Changes in legal service providers and products mean that lawyers must adapt to compete in the current market. Writing copies which will appeal to their audience and grab their attention will help the lawyer attract the clientele they want.

Whether writing letters or copies, and whether dealing with simple or technical clients, lawyers must be professional, courteous and credible. This will build their clientele, their reputation as individual lawyers, and the reputation of the profession as a whole.

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<sup>62</sup> The Hon Michael Kirby, p. 10.

## References

Aitken, Ken. 1998. "Plain English – flexibility". *Law Institute Journal* 7(8): 50.

Assy, Rabeea. 2011. "Can the Law Speak Directly to its Subjects? The Limitation of Plain Language". *Journal of Law and Society* 38(3): 376-404.

Austen Lesley, Gilbert Bryony and Mitchell Robert. 2001. "Plain English – an Ethical Issue?" *Legal Ethics* 4(1): 5-7.

Grayden, Ralph and Sorenses, Emma. 2009. "Write like a pro". Law Society of New South Wales.

<http://www.lawsociety.com.au/ForSolicitors/CareerHub/EssentialSkills/CareerSkills/Articles/Writelikeapro/index.htm>. Accessed 20 February 2015.

Keyes, John M. 2001. "Plain Language and the Tower of Babel: Myth or Reality?" *Legal Ethics* 4(1): 15-17.

Lauchland, Kay A. and Le Brun, Marlene J. 1996. *Legal Interviewing: Theory, Tactics and Techniques*. Butterworths.

Legall, Debbie. 2008. "English for lawyers". *International Bar News*, December: 57-59.

Nevala, Minna and Palander-Collin, Minna. 2005. "Letters and letter writing". *European Journal of English Studies*, 9(1): 1-7.

Rodney, Peter. 2001. "Plain English and the Law". *Legal Ethics*: 4(1): 18-19.

Shaw, Mark. 2012. *Copywriting*. 2nd ed. Laurence King Publishing. ProQuest ebrary. Accessed 20 February 2015.

Tanner, Edwin. 2000. "The Comprehensibility of Legal Language". *Griffith Law Review* 9(1): 52-72.

The Hon Michael Kirby. 2010. "Ten commandments for plain language in law". *Australian Bar Review* 33(1): 10-15.

The Law Society of New South Wales. 2009. *When a client's capacity is in doubt: A Practical Guide for Solicitors*.

Thomas, Gary. 2008. "Letter writing". *BRIEF* 35(3): 28-30.

Watson-Brown, Anthony. 2009. "Defining 'Plain English' as an Aid to Legal Drafting". *Statue Law Review* 30(2): 85-96.

Wikipedia, "English language", accessed 28 February 2015,  
[http://en.wikipedia.org/wiki/English\\_language](http://en.wikipedia.org/wiki/English_language).

Wikipedia, "English language", accessed 28 February 2015,  
[http://en.wikipedia.org/wiki/English\\_language#Number\\_of\\_words\\_in\\_English](http://en.wikipedia.org/wiki/English_language#Number_of_words_in_English).

Wikipedia, "*Nod (gesture)*". Accessed 1 March 2015.  
[http://en.wikipedia.org/wiki/Nod\\_\(gesture\)](http://en.wikipedia.org/wiki/Nod_(gesture)).