

# Buddhists, Running, and Plain Language in Calgary (Part Two)

By Christine Mowat

**B**elow are examples of changes in the Gas Supply Agreement used by Western Gas Marketing Limited, in Calgary. The process of producing it was described in last month's column.

These two columns are two more in our series on the market value of plain language.

—JK

## Format Changes (see Figure 1)

Perhaps the most dramatic and immediately noticeable change was adding a title page and table of contents for quick document recognition and ease of use. The drafters also moved the brief five-term definitions section to the end, where it serves as a reference. Most significant was moving the exhibits to the beginning, where they quickly provide key information—for example, incorporating type of service, delivery point, price, term, and date and signature blanks.

## Shrinkage

Compressing and restructuring text often reduced sections by 50%.

### BEFORE

#### Nominations (23 words)

If no new nomination is made pursuant to Section 5.1, Supplier shall be entitled to rely on the last nomination received from the Customer.

### AFTER

(12 words)

A nomination will remain in effect until replaced by a new nomination.

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar's Plain English Committee. The assistant editor is George Hathaway, chair of the Committee. The Committee seeks to improve the clarity of legal writing and the public opinion of lawyers by eliminating legalese. Want to contribute a plain English article? Contact Prof. Kimble at Thomas Cooley Law School, P.O. Box 13038, Lansing, MI 48901.

### BEFORE

#### Billings and Payments (42 words)

On or before the tenth (10th) day of each month, Supplier shall present to Customer an invoice showing the daily and total deliveries to Customer during the preceding month, the amount due and information sufficient to explain and support the amount due.

### AFTER

(22 words)

On or before the 10th day of each month, Western Gas will invoice Industrial Customer for deliveries made during the preceding month.

### BEFORE

#### Force Majeure (55 words)

Without limiting the generality of the foregoing, strikes, lockouts, or other industrial disturbances shall be events of force majeure for the purposes of this Agreement, and the settlement of these matters shall be entirely within the discretion of the party directly affected. In no event shall force majeure mean the inability to meet financial obligations.

### AFTER

(29 words)

For the purposes of this Agreement, force majeure will also include strikes, lockouts or other labour disputes, but will exclude the inability of either party to meet financial obligations.

## Tabulation

When a writer shrinks the word mass and uses a list as well, the readability is increased even more:

### BEFORE

(65-word sentence)

Further, Supplier may, upon two days notice by telephone and telecopier, suspend deliveries until such time as the amount due, including interest, is paid, provided that Supplier shall not have the right to suspend deliveries prior to five days after the date payment was due, and further provided that this right to suspend shall be in addition to any and all other remedies available to Supplier.

### AFTER

(49 words)

Western Gas may, in addition to any other available remedies, suspend deliveries until the amount due is paid, provided that:

(a) Western Gas has, by telephone or telecopier, given Industrial Customer 2 days' notice of the suspension, and

(b) the suspension will not commence earlier than 5 days after the due date.

## Deletion

Sometimes the rewriting results in wholesale deletion of text. "Why do we need that anyway?" is a refrain of pure joy to the writing specialist's ear.

### BEFORE

#### 14. Term

14.1 This agreement shall be effective as of from the date first written above. However the obligations of Supplier and Customer to deliver and receive shall, subject to Section 2.1, be effective for the term of the Pricing Period.

14.2 This Agreement shall remain in effect until the end of the latest Pricing Period.

### AFTER

#### 14. Effective Date

This Agreement will be effective the date first noted on the first page.

## Legalese Meltdown

You probably noticed that the ubiquitous, imprecise, and royal-sounding *shall* has been dethroned in these samples. In its place, the writers substituted either *must*, *will*, *is*, or *may*, depending on the context. Gone, too, from the recitals is the archaism and twisted syntax of *WITNESSES THAT*, *WHEREAS*, and *NOW*, *THEREFORE*, *in consideration of*. An earlier draft had already eradicated the *hereby* and *hereinbefore* language. Finally, the signature section has been streamlined:

**BEFORE**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

<FULL LEGAL CORPORATE NAME>

<WESTERN GAS MARKETING LIMITED>

**AFTER**

Signed: \_\_\_\_\_

Industrial Customer Ltd.

Western Gas Marketing Limited

**Visuals**

Just as I needed to see a new way of looking at the Buddhist mountain problem (last month's column), readers and writers of legal text need help in seeing their way through complex text. In the last document I consulted on, a Temporary Excess Volumes Gas Release, we came upon an interesting example of the need for graphic literacy in the definitions section.

In other plain-language Western Gas Marketing documents, definitions had been placed in a tabular format, and this practice usually works well. In the example in Figure 2, the column format exacerbated the problem of understanding a complex formula. You don't have to read it all in order to see the difference!

Clearly, plain language has as much to do with revising—literally seeing again—as it does with paring down words and pruning off deadwood legalese. In the visuals example, it is easier to understand the complex choices when they are laid out horizontally rather than vertically.

**Postscript**

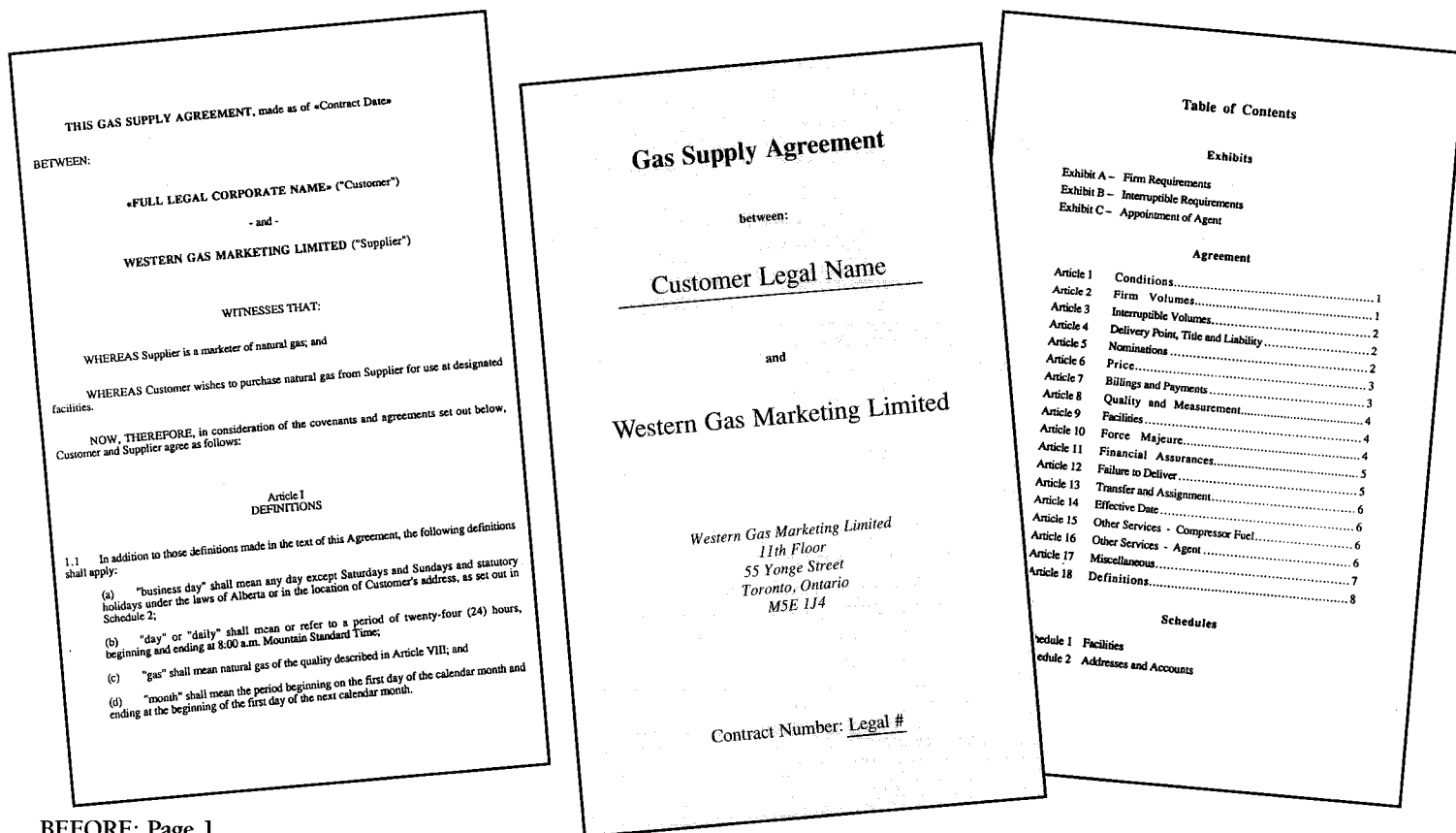
Western Gas Marketing report that they have had no complaints and many compliments from customers about the plain language contracts. The company's Annual Review 1992 informed readers about the new approach in this manner:

**Goodbye Legalese, Hello Plain Language**

Findings of a 1991 survey indicated that customers and producers wanted simpler contracts, and that's what the Legal Group delivered. In 1992, Western Gas became one of the first energy companies to replace legal jargon with plain language.

The Canadian Industrial Sales Agreement was one of the first to be transformed. Working closely with marketing staff, the Legal Group reduced the complexity of the contract by half, as measured by the Fog Index. The Fog Index is a measure of the number of years of education required to understand a written passage. Parts of the old contract measured between 25 and 32, while the new form stands at about 11. In 1993, the group

Figure 1—Format Changes



BEFORE: Page 1  
(no title page or table of contents)

AFTER: (title page and table of contents)

Figure 2—Visuals

**BEFORE**

**TEV GAS** is gas dedicated to TransCanada under the Contracts and released under this Release by TransCanada as Temporary Excess Gas, and is the volume of gas  
**Volumes** that is the lesser of:

- a) the volume that is the difference calculated when:
  - (1) the sum of the Annual Delivery Quantities under the Producer Contracts for the immediately preceding contract year,

is subtracted from

- (2) the sum of the Allocation Reference Quantities under the Producer Contracts for the immediately preceding contract year, and

- b) the volume that is the difference calculated when:

- (1) the sum of the nominations of TransCanada under the Producer Contracts for the immediately preceding contract year,

is subtracted from

- (2) the product that is calculated by multiplying (i) the minimum daily quantity under the Producer Contracts for the immediately preceding contract year, by (ii) the number of days of delivery specified under the Producer Contracts.

**AFTER**

**TEV Gas** is Temporary Excess Volumes Gas released by this Agreement from the gas dedicated to TransCanada under the Contracts. TEV is the smaller volume of gas of a) and b) below:

- a) the volume left when

the sum of the Annual Delivery Quantities under the Producer Contracts for the preceding year

is subtracted from

the sum of the Allocation Reference Quantities under the Producer Contracts for the preceding year

- b) the volume left when

the total of TransCanada's nominations under the Producer Contracts for the preceding year

is subtracted from

the amount calculated by multiplying the minimum daily quantity under the Producer Contracts for the preceding contract year by the number of delivery days specified under the Producer Contracts.

plans to continue converting all standard form contracts into plain language.

Finally, what follows is a questionnaire answered by four Western Gas lawyers. These are some of their comments:

**1. How and when did you first learn about plain language? What was your reaction to it then? What is your reaction now?**

*My reaction to it then was Dick and Jane. I believed that court interpretations on "tried and true" wording were better protection than rewriting something so clearly that no one would need to go to court for an interpretation. My reaction now is the opposite. I now believe that the clear expression of parties' intentions in agreements is very important to*

*minimize disputes and simplify administrative costs.*

*My reaction to it then was that it was a fluff course. Although writing in plain language can initially be difficult and time consuming, it becomes more natural with continued use. . . . Now it's frustrating to have to read documents written by other lawyers (or by lay-people writing legal documents) that are not in plain language. It takes so much longer to read and fully understand.*

**2. What role does plain language play in your own writing at work?**

*I make an effort to use plain language in all my writing. Old habits die hard. I often go through several revisions before I end up with a piece of clear, concise writing. The revisions*

*take time, but are worth the effort. I received a number of comments about how effective some of my memos were. A couple of comments suggested that the memos were surprisingly clear coming from a lawyer.*

**3. How has the plain language workshop generally affected writing in your department? If there have been types of responses, please categorize. For example, who or how many among the group use plain language consistently, conscientiously, and effectively? What number do not?**

*Approximately 1/3 of the people make a conscious effort to write in plain language; 1/3 will not make the effort or believe that they write in plain language anyway; the other 1/3 still do not understand how to write in plain language.*

**4. Your company has now produced 15 plain language customer precedents. Do you have a means of tracking customer reactions to both plain and unplain customer documents?**

*We do not have a formal mechanism for collecting customer reactions to our plain language contracts. I have requested staff to make note of any comments received.*

*Of the reactions, most are positive. One comment in particular comes from a fellow at Imperial Oil. He loved the drafting of a particular document so much he wants to use parts of it for their future pro forma agreements. [A] common concern is how the documents will be interpreted in court. . . . With the plain language assignment agreement, we sent copies to certain customers to get feedback. As a result, the document will likely be changed to incorporate some customer ideas.*

**5. From your perspective, what steps did the process of translating these precedents into plain language entail? Is this the best method?**

*The committee converts the documents. One person takes the first cut at the conversion. The rest of the committee then review the draft. The draft is then discussed and debated. This iterative process continues until a final form is agreed on. Some drafts are subsequently reviewed by an outside plain language expert. The process builds internal expertise.*

**6. Have you met any resistance to plain language in the company? If so, could you describe what barriers you perceive prevent your group from developing plain language to its full extent?**

*Yes, we have met resistance to adopting plain language. The resistance stems from lack of understanding, a resistance to change, a belief that complexity is a mark of intelligence, and general laziness. We're doing*

what we can to meet the resistance and are basically forging ahead despite it.

7. In your view, what factors most helped those individuals who have developed strong interest and skills in plain language?

The most important factor has been that Diane and I have driven the initiative and made it happen. We have made plain language conversions part of our staff objectives. A pride in authoring plain language agreements is now emerging among the staff involved in the conversion process. Customer reactions to the new agreements help create company pride.

8. How have you advertised your successes with plain language documents?

Our 1992 Annual Review and the Trans-Canada 1992 Annual Report mentioned our initiative. I have mixed feelings about making a fuss about what we're doing. I prefer to proceed to convert all the agreements and get them into circulation.... If we tout the plain language documents as new, they are liable to attract more opposition than if we simply start using them.

(Three respondents gave a presentation to the Calgary Plain Language Section of the Canadian Bar Association in December, 1993.)

9. Was the recognition of the need for plain language internally motivated or customer driven? Is it now motivated by the same source?

The original motivation was internal, but it dove-tailed nicely with our customer-focused service initiative. We use the customer focus to lend credibility to the initiative.

At first, the motivation was internally driven. We devised the strategy in response to comments made in our survey of customers conducted in 1990.... Now, with positive customer comments, the motivation is customer driven and will continue to be so.

Thanks to Doug McLean, Diane Pettie, Karen Michalko, and Drew Gromnicki—the four responders to the questionnaire. ■



Christine Mowat has been the president and owner of Wordsmith Associates since 1980. Eight Wordsmith instructors conduct plain language workshops in Calgary, Edmonton, and Vancouver. Plain language projects have included municipal bylaws,

leases, joint venture agreements, and, most recently, an Alberta mortgage. Ms. Mowat has had many papers and articles published, and is currently working on a book about plain language.

## INTEREST RATES FOR MONEY JUDGMENTS

### FOR COMPLAINTS FILED BEFORE JUNE 1, 1980

[See MCL 600.6013(2) & (3)]

- Judgments Based on a Written Instrument

If a written instrument has an interest rate over 6% per year, the rate specified (if legal when the instrument was signed) in the instrument shall be charged from the date of filing the complaint until date of satisfaction of judgment.

However, the interest rate after the date judgment is entered shall not exceed:

- 1) 7% per year compounded annually for any period of time between date judgment is entered and date of satisfaction of judgment which elapses before June 1, 1980.
- 2) 13% per year compounded annually for any period of time between date judgment is entered and date of satisfaction of judgment which elapses after May 31, 1980.

- Other Money Judgments

From date of complaint to June 1, 1980—6% per year simple interest. On or after June 1, 1980 to date of satisfaction—12% per year compounded annually.

### FOR COMPLAINTS FILED ON OR AFTER JUNE 1, 1980

BUT BEFORE JANUARY 1, 1987

[MCL 600.6013(4)]

- Judgments Based on a Written Instrument

12% per year compounded annually unless instrument had a higher legal rate. However, after the date judgment is entered, the rate shall not exceed 13% per year compounded annually.

- Other Money Judgments

12% per year compounded annually from date of filing complaint to the date of satisfaction of the judgment.

### FOR COMPLAINTS FILED ON OR AFTER JANUARY 1, 1987

[MCL 600.6013(5) & (6)]

- Judgments Based on a Written Instrument

12% per year compounded annually unless instrument had a higher legal rate. However, after the date judgment is entered, the rate shall not exceed 13% per year compounded annually.

- Other Money Judgments

Interest rate shown below calculated at six-month intervals from the date of filing the complaint compounded annually.

Effective Date	Average Certified by State Treasurer	Statutory 1%	Interest Rate
January 1, 1987	6.66%	1%	7.66%
July 1, 1987	7.50%	1%	8.50%
January 1, 1988	8.39%	1%	9.39%
July 1, 1988	8.21%	1%	9.21%
January 1, 1989	9.005%	1%	10.005%
July 1, 1989	9.105%	1%	10.105%
January 1, 1990	8.015%	1%	9.015%
July 1, 1990	8.535%	1%	9.535%
January 1, 1991	8.26%	1%	9.26%
July 1, 1991	7.715%	1%	8.715%
January 1, 1992	7.002%	1%	8.002%
July 1, 1992	6.68%	1%	7.68%
January 1, 1993	5.797%	1%	6.797%
July 1, 1993	5.313%	1%	6.313%
January 1, 1994	5.025%	1%	6.025%
July 1, 1994	6.128%	1%	7.128%