

Buddhists, Running, and Plain Language in Calgary (Part One)

By Christine Mowat

Several years ago, I carefully copied an intriguing logical puzzle into my journal.

One morning, exactly at sunrise, a Buddhist monk began to climb a tall mountain. A narrow path, no more than a foot or two wide, spiralled around the mountain to a glittering temple at the summit. The monk ascended at varying rates of speed, stopping many times along the way to rest and eat dried fruit he carried with him. He reached the temple shortly before sunset. After several days of fasting and meditation, he began his journey back along the same path, starting at sunrise and again walking at variable speeds with many pauses along the way. His average speed descending was, of course, greater than his average climbing speed. Show that there is a spot along the path that the monk will occupy on both trips at precisely the same time of day.

Recently, while cleaning out my study, I came upon the puzzle again. This time, I couldn't figure out an answer.

First I drew two pictures with stick figures on the spiralling paths starting at the bottom and the top respectively, both with sunrises. That got me nowhere.

Then I tried mathematical formulas. If the average first-day speed equals X, etc., etc. Aaarrrgh! It was, at least for me, too difficult with algebra.

The next day, I telephoned an engineer friend whose musings went like this: "What if on the first day the monk covered all but

the last two feet in 15 minutes, sat there until just before sunset, and then finished the walk? (What kind of a mind produces this kind of thinking? I was in awe.) No, it's impossible—there's no such spot," he concluded.

Several days later, on an early August morning, I was out running in the ravine below my house. For variation, I often choose the different directions of a circular route, the better to see fresh views of the mountains. Suddenly, I had a mental image of a figure running one way, and superimposed on that was a second image of the same figure running the other way. In both images, the figure began to run at sunrise. Of course, at some point along my ravine trail, the figure "met" her match going the other way, and "to meet" means to meet at the same time in the same place. Fortunately, no one was there to hear my burst of laughter. My mind had restructured the problem.

I use this somewhat lengthy example on purpose. I believe the same kind of strenuous change in perspective is required for legal writers to move from traditional legal writing to plain language.

A Context for Improving Legal Language in Calgary

Since 1980, I have been a writing consultant to the petroleum industry, management schools, government, and business. In the early days, law departments would send individual lawyers to general business-writing workshops, so we had several dozen lawyers over the years. One lawyer suggested that Wordsmith Associates design a workshop specifically for legal writers. Thus began my informal Ph.D. in legal writing—but with a specialization in plain language. It took two years to research initially and several more years to refine through practice.

Progress in Calgary was slow at first. Lawyers are reluctant to admit that they

might benefit from training in writing, and even more reluctant to give up two full days of work. Also, it was difficult to identify the right person to speak to about training in each firm.

But with the passage of the first plain language legislation in the Commonwealth, the Alberta *Financial Consumers Act*, we began to overcome a persistent obstacle—lawyers' lack of knowledge about plain language. About the same time, the Canadian Bar Association and Canadian Bankers' Association published their report on plain language, *The Decline and Fall of Gobbledygook*. All of its recommendations were later adopted.

By 1994, we had had about 600 lawyers go through our workshops. All but one workshop were two-day, 14-hour sessions with not more than 20 participants. One Calgary law firm has held four workshops, but mostly for young lawyers.

Plain Language: A Corporate Case History

In May 1992, Wordsmith was asked to conduct an "Improving Legal Writing Workshop" for the Legal Department of Western Gas Marketing Limited. Western Gas is a leading marketer, and the largest aggregator, of Alberta natural gas in North America. In 1992, Western Gas ranked as the largest exporter of Canadian gas to the United States.

From the outset, this workshop had all the earmarks of success. The workshop was not only company-initiated but had senior-management support—one Vice-President even took the two-day workshop himself. Douglas McLean, Senior Manager, Legal, and Diane Pettie, Manager, Legal Services, were knowledgeable and enthusiastic about plain language.

We kept most of Wordsmith's usual program, with one significant exception: we used the company's documents as work-in-progress materials for the workshop. Thus, the motivation was extremely high.

"Plain Language" is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the State Bar Plain English Committee. 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.

The heterogeneous composition of the workshop was interesting, too. Paralegals, as well as lawyers from the Calgary, Houston, and Toronto offices, were invited to attend. This ensured that different levels of employees all made an investment in the plain language transformations.

Our goals as instructors did not include producing final documents. We wanted participants to buy into the philosophy of plain language, to gain the skill needed to continue the work on their own, to have practice in both individual and group processes, and to have an individual conference on their own writing styles with one of the instructors.

The Workshop

The workshop takes the form of short presentations extended by group discussions, interspersed with a series of writing activities completed in groups or pairs, or individually. Lecture format is not used.

Participants receive a 140-page manual, *Improving Legal Writing*, written and desk-topped following the writing principles that the program espouses. Because Western Gas provided me with so many materials beforehand, I was able to create a number of before-and-after transparencies.

Hands-On Plain Language

Our writing activities began with groups of four choosing documents they were interested in rewriting. Sections were allocated, and individuals worked on their own segments. In the evening, participants worked through two or three drafts and brought copies to class the next day. The peer review was lively, exhilarating, and frustrating. As so often happens in plain language "translating," ambiguities were

uncovered and arguments arose about what was meant or should be meant.

Participants were generally pleased with their new-found skills; they had shrunk, recast, clarified, deleted from, added to, and redesigned their segments in the peer review groups. They often disagreed about how much they could change. Even the paralegals, who were more timid than the lawyers about tampering with the encrusted legalese, began to feel some sense of empowerment and of investment in the documents.

At the end of the workshop, the groups put their favorite showpieces on a transparency and presented them to all of us. The group was pleased with the bold changes. We ended on a high note, with participants realizing that the work was just a beginning.

Plain Language "Knitting Groups"

After the workshop, Western Gas kept in touch. Diane Pettie reported that they had set up "knitting groups" to continue rewriting. Three months after the workshop, they sent me what they hoped was the last draft of their Canadian Industrial Sales Agreement. The Toronto office had actually begun rewriting the contract before the workshop. Several workshop participants, with others from Toronto, continued this rewriting and held a series of conference calls to discuss changes.

The Writing Specialist's Role

The role of outside writing consultants is always precarious: on the one hand, we are seen as more objective because we are outside specialists, and on the other hand, less knowledgeable because we are not "in the know" from the inside. As writing specialists, though, we often carry more weight on "mere" language issues. It is, however, often impossible to separate style from substance when translating into plain language.

As differing opinions on the changes arose, my role was to offer an outside view and suggestions on the final draft. Because text decisions always rest with the writer, I offer suggestions in a tentative or question format, rather than a heavy-handed "If I were you" style. For instance:

- I believe both sentences say the same thing. Choose one?
- Substitute "must" for "will" to reflect the mandatory nature?

● Here's a possible rewrite of Clause XX. This version changes the order to reflect the reader's interests, creates shorter sentences, and is written in the active voice for directness.

Over the year and a half since Western Gas began to "plain" their documents (as Diane Pettie coined it), they have been weaning themselves from outside help. They have produced 15 plain language documents now, all but four on their own.

The challenges to legal writers of "plained" documents summon another stage of enlightenment. Plain language, based on the seminal principle of writing for all the document's readers, inspired the Western Gas writers to adopt a new vision of legal writing. Their main goal was to write clear contracts for their customer readers. With the understanding and good will of their customers in hand, the courts and other lawyers are less likely to ever have to read the text.

For legal writers committed to excellence in writing, there are many spiralling mountain marathons ahead. ■

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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.