

Plain English Subcommittee on Laws

By George H. Hathaway

Since 1992 we have divided all legal writing into five substantive areas—laws, lawsuits, contracts, real estate, and estate planning—and have focused our committee activities around the Clarity Awards that we give in these five categories. This year we are subdividing our committee into five subcommittees, one for each of the five categories of Clarity Awards. Each subcommittee is now responsible for pro-

"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.

moting plain English and finding Clarity Award documents in its category. This article discusses the agenda of our first subcommittee—the Subcommittee on Laws.

Clarity Awards and Want List for Laws

The goal of the Subcommittee on Laws is to promote plain English, not in *educational materials* such as textbooks, articles, and seminars, but in *legal documents* written in the actual practice of law. To do this, the subcommittee finds, analyzes, and gives Clarity Awards to clearly written resolutions, statutes, executive orders, and rules.¹ See Figure 1 for a list of Clarity Awards that we have previously given, and a Want List for future awards.

Resolutions and statutes are written by about 150 representatives and senators (of whom about 25 are lawyers), and 14 lawyers in the Legal Division of the Legislative Service Bureau; rules are written by

about 10 people each in about 12 agencies, and edited by about 10 lawyers in the Legal Editing and Publications Division of the Legislative Services Bureau; and executive orders are written by the governor and the governor's legal counsel. Therefore, a total of about 300 people (about 50 of whom are lawyers) influence the style or clarity of many resolutions, statutes, executive orders, and rules in Michigan. About 99.8 percent of the members of the State Bar of Michigan have no control over the style or clarity of the laws and rules. Therefore, when we included an article by David Elliott, *Innovative Legislative Drafting*, in our January 1994 Plain English theme issue of the *Bar Journal*, 99.8 percent of our readers couldn't do anything about innovative legislative drafting even if they wanted to.

To eliminate legalese in laws, then, we must do three things. First, identify the 300 people who can influence the style in which laws are written. Second, find the people who have the interest, ability, and courage to eliminate legalese and write in

Figure 1. Clarity Awards and Want List for Laws

Laws	Clarity Awards		Want List
Type of Document	(Year) and Document	Written By	We want to find Clarity Award documents written according to Dickenson, <i>Fundamentals of Legal Drafting</i> from:
1. Resolutions	(97) 1996 H.R. 302	Rep. Willard	Michigan house and senate resolutions (about 400 a yr) published in daily house and senate journals
2. Statutes	(92) 1992 Michigan statutes (97) 1996 P.A. 193 Do Not Resuscitate Act (97) 1996 P.A. 199 Aquaculture Development Act (97) 1996 P.A. 263 Juvenile Boot Camp Act	Legal Div. of LSB Dmochowski Olivares Juroszek	Michigan statutes published about every two months in <i>Michigan Legislative Service</i> pamphlets
3. Executive Orders			Governor's executive orders (about 20 a yr) published in monthly <i>Michigan Register</i>
4. Rules	(97) R 205.1283 Conduct of (Tax Tribunal) Hearings (97) R 339.3211 (Athletics) Referees (97) R 460.3409 Protection of Utility Owned Property (97) U.S. Bureau of Land Management Rule for Leasing of Solid Minerals (97) U.S. Minerals Management Service Rule on Liability for Royalty on Leases (97) Proposed Federal Rules of Appellate Procedure	Shinkle and Kopke Elder Nelson Horan, Cheek, Allender, Aird Williams and Murawski Garner	Michigan rules published in monthly <i>Michigan Register</i>

plain English. And third, recruit them to join forces with us to work in an organized way from within the system to eliminate legalese.

Members of Subcommittee on Laws

Subcommittee members are listed in Figure 2. Joe Kimble and Diana Pratt are longtime members of the Plain English Committee who contribute technical expertise in legal writing and are the committee's liaison with the legal-writing community (legal-writing instructors and consultants) in the U.S., Canada, and Australia. But we have always realized that there is a huge gap between teaching legal writing in law school and persuading lawyers to write plain English in the actual practice of law. Therefore, over the years we have gradually added lawyers who not only have an interest in clear writing, but who are in a position to influence and control the way the legal documents are actually written.

In December 1979, State Representative Nick Ciaramitaro of Roseville introduced two bills into the state Legislature. One bill required plain English in insurance contracts, and the other bill required plain English in consumer contracts.² In 1990 he succeeded in passing the bill that requires plain English in insurance contracts (1990 PA 305, MCL 500.2236, MSA 24.12236 effective January 1, 1992). And he is still trying to pass the bill that requires plain English in consumer contracts. State Representative Karen Willard of Fairhaven, a former legal-writing instructor at University of Detroit-Mercy Law School, has succeeded in publishing a resolution in the house journal that did not begin with the unnecessary legalese *Whereas*.³ Carol Cousineau, director of the Legal Division of the Legislative Service Bureau, is the head of the group of lawyers who help the legislators write Michigan statutes. Roger Peters, director of the Legal Editing and Publications Division of the Legislative Service Bureau, is the head of the group of lawyers who edit the rules that are written by the 12 agencies of state government. And Mike Zimmer, director of the Governor's Office of Regulatory Reform, is our liaison with the executive office. With this subcommittee, we hope to bridge the gap between the *educational materials* on plain English at Wayne State and Thomas Cooley Law Schools and *resolutions, statutes, execu-*

Figure 2. Members of Subcommittee on Laws

Joseph Kimble	Legal Writing Teacher at Thomas Cooley Law School, and Editor of Plain Language Column from 1987 to present
Diana Pratt	Legal Writing Teacher at Wayne State Law School
Rep. Nick Ciaramitaro	Michigan House of Representatives
Rep. Karen Willard	Michigan House of Representatives
Mary Kay Scullion	Clerk of the Michigan House of Representatives
Carol Cousineau	Director of Legal Division of Legislative Service Bureau
Roger Peters	Director of Legal Editing and Publications Division of Legislative Service Bureau
Mike Zimmer	Director of Office of Regulatory Reform of the Governor's Office

utive orders, and rules written in the Michigan state government. The State Capitol building is only two blocks away from Cooley Law School. But the psychological distance in style and clarity has always been much farther. We think we can help to bridge the gap between the educational material and the actual documents—the Michigan laws and rules.

Michigan Activities

One of the activities of this subcommittee is a continuous review of administrative rules, coordinated by Peters and Kimble, and performed by an intern who works part-time for the Plain English Committee. Sample elements of this review are (1) select a current monthly *Michigan Register*, (2) count the number of rules that are published in the register, (3) count the number of agencies that have written the rules, (4) analyze the clarity of writing in the rules and recommend well-written rules for Clarity Awards, (5) identify the major differences between the well-written and the less well-written rules, (6) see if there is any significant difference in words per sentence between the well-written rules and the less well-written rules, and (7) see if there is any significant difference in the percentage of sentences with passive-voice verbs between the well-written and the less well-written rules.

Federal Activities

Starting this year we will be coordinating our activities with plain-English advocates in the U.S. Department of Interior. This department has encouraged clear writing for many years,⁴ and is now leading the way toward writing user-friendly federal rules. Cecelia Williams, Annetta Cheek,

and legal-writing consultant Dr. Tom Murawski (of the Murawski Group, Inc. of Colorado Springs, Colorado) have recently written federal rules that we recognized with Clarity Awards.⁵ We will also coordinate our activities with Jean Logan of the National Performance Review.

Other States

Bryan Garner, a legal-writing author and consultant from Dallas, Texas, gives his LawProse, Inc. seminars on legal writing to thousands of lawyers in the United States each year. We are interested in obtaining clearly written resolutions, statutes, executive orders, and rules that are the direct or indirect result of Garner's seminars. (In future columns we will discuss our other four subcommittees that will also be interested in legal documents that were influenced by Garner's seminars.)

THE SECOND AMENDMENT Solution

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Canada and Australia

This year we want to begin an analysis of plain English in laws (resolutions, statutes, executive orders, and rules) in Michigan, other states, the federal government, Canada and its major provinces, and Australia, and its major states. We will do this in the following way by sampling documents. First see Figure 3, a comparison of the population of the U.S., Canada, and Australia. (We may also do this later by number of lawyers.)

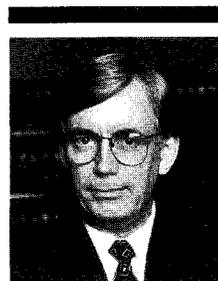
Figure 3. Comparison of Population (in Millions) of U.S., Canada, and Australia

U.S.A.264
Canada30
Australia18

Because the population of the U.S. is so much greater than the population of Canada and Australia, it's easier to see comparative differences in the largest states and provinces. Therefore, see Figure 4 for the relative populations of the two largest American states, the two largest English-speaking Canadian provinces, and the two largest Australian states. (Note that California has the same population as Canada, and New York has the same population as Australia.)

Figure 4. Comparison of Population (in Millions) of Largest States and Provinces

California30
New York18
Ontario11
B.C.4
N.S.W.6
Victoria5



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States and Provinces

If we choose the two largest states and provinces in each of the three countries, we will have a sample size that is 18 percent of the U.S., 50 percent of Canada, and 61 percent of Australia. Furthermore, if we identify the publications that contain new statutes and rules in each of these states and provinces, we can sample them to determine the level of clarity of statutes and rules in that state or province.

Alternatively, we may be able to skip the task of identifying the publications if we can sample statutes and rules by finding them on the Internet.

In either case, by focusing on actual statutes and rules, we do two things. First, we take the spotlight off educational material such as textbooks, articles, and seminars, and we focus it firmly on legal documents written in the actual practice of law. Second, we begin a process that we will repeat for other types of legal documents to objectively determine the clarity of legal documents in a specific country, state, or province.

Conclusion

We have developed an agenda to bridge the gap between educational materials and actual legal documents. Key elements of this agenda are:

1) *Divide and Analyze.* Divide legal writing into five substantive areas—laws, lawsuits, contracts, real estate, and estate planning—and then separately analyze the documents in each area. This is important because different groups of people write the documents in each of the five different areas.

2) *Find and Recruit.* Find and recruit members who not only have an interest in clear writing, but also can review documents that they automatically see in their regular jobs for Clarity Awards, or can control the way specific legal documents are written.

3) *Select and Compare.* Select and compare the largest states and provinces in which to sample the clarity of the five categories of legal writing.

4) *Identify and Sample.* Identify the appropriate publication in each state or province (or use the Internet) to sample the clarity of legal writing in that state or province. ■

Footnotes

1. *A Summary of Our Review of Legal Writing*, 74 Mich B J 50 (January 1995); *Plain English: A Charter for Clear Writing (Part Two)*, 71 Mich B J 1190, 1192 (November 1992); *Legalese List for Laws*, 74 Mich B J 194 (February 1995); *Resolutions*, 74 Mich B J 695 (July 1995); *Executive Orders*, 74 Mich B J 938 (September 1995); *Summary of Laws, Rules, and Lawsuit Papers (Part One)*, 72 Mich B J 932 (September 1993); *Plain English in Laws and Rules*, 72 Mich B J 566 (June 1993).
2. Ciaramitaro, *Plain English in Consumer Contracts*, *Plain English in Insurance Contracts*, 62 Mich B J 959, 961 (November 1983); *The Plain English Bills... Ten Years Later*, 73 Mich B J 34 (January 1994).
3. Ciaramitaro also succeeded with 1988 House Resolution 691.
4. O'Hayre, *Gobbledygook Has Gotta Go*, U.S. Department of the Interior, Bureau of Land Management, Stock No. 024-11-00002-0 (1978).
5. *Plain English in Department of Interior Rules*, 76 Mich B J 196 (January 1997).

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