



How  
Dolly Cruickshank  
Changed the  
Writing Culture  
of a Law Firm

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Plain Language Association International  
Toronto Conference  
26 – 29 September 2002

## DEFINITIONS AND ACKNOWLEDGMENT

In this paper:

- 'I' means 'We'
- 'Me' means 'Us'; and
- 'My' means 'Our'

... well, most of the time anyway !

By writing in the singular, I hope I haven't given readers the impression that I am running Sparke Helmore's Precedents Department on my own. So much of the writing and ideas that have gone into this paper belong to my team mates, Debbie Coventry, Gilda Cappiello, Esther Pelser, Sharon Spiby, Tanya Murray and Kevin Meagher.

Without their inspiration, good humour and impressive skills, Sparke Helmore would never have given birth to Miss Spelt.

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# INTRODUCTION

## Then

I started a law career about thirty years ago. Looking back, I always struggled with legal writing, even though I believed I was a good creative writer. After all, my essays were published in the school magazine. An 'Aerial View' sealed my fate - I can still remember it now with little specks turning into sheep as the plane descended on a small country town airfield. A legal career was suitable for someone who could write so well but couldn't add up. Given the choice between describing the sheep and counting how many there were, the pen was mightier than the calculator.

But when it came to drafting legal documents and letters I floundered. Legal writing was a different world. Precedents saved me – someone else had done the writing and I only had to fill in the gaps. But when I was asked to draft a difficult clause and couldn't find a precedent, it wasn't the same as turning the specks into sheep. More like staring at a blank page and trying to turn a twenty-year old novice lawyer into Lord Denning.

There wasn't much help. Plain English was barely a whisper. Drafting and writing skills were not taught at law school. Knowledge of the substantive law was how you were judged. Remember a few cases and put pen to paper (hopefully with the right cases for the correct reasons) and you were soon a lawyer. Practice wasn't much different, except you didn't have to remember so many cases.

## Now

But now I view legal writing differently. Two events brought on the change. Teaching law to non-law students gave me the chance to critically reflect on the legal language. Then I started to write short stories. Teaching and writing were all about engaging your audience. It was a luxury to step outside legal practice, dabble in different interests, and then come back with a fresh approach.

I'm now funnier than I used to be as a young lawyer. I'm braver too. Standing up and talking to a classroom or audience is levelling. It takes away much of the lawyer's pomposity. I'm also older but that's not so bad because people will excuse me for being a bit dippy. Writing can make you who you want to be and where you want to go. So allow me to unravel how Dolly Cruickshank changed me, and hopefully, the writing culture of a law firm.

# TEACHING LAW TO NON-LAWYERS

## Making law straightforward and understandable

Two years ago I came to a law firm, Sparke Helmore,<sup>1</sup> after an absence from practising law for over ten years. During that time I had been mainly teaching law to non-law students in TAFE, NSW.<sup>2</sup> So I had spent ten years trying to make law straightforward and understandable. It forced me to understand and explain legal terms, concepts and principles I had never fully understood before. For example, trying to explain 'promissory estoppel' to non-law students left me with a class full of blank faces, fidgeting and clock watching. So I summonsed the help of a person who was highly respected for making the law simple:<sup>3</sup>

I would prefer to put [estoppel] in language that the ordinary man understands:

It is a principle of justice and equity. It comes to this; when a man, by his words or conduct, has led another to believe that he may safely act on the faith of them - and the other does act on them - he will not be allowed to go back on what he has said or done when it would be just or inequitable for him to do so. (Lord Denning)

But even this was too wordy (and gender specific) for students aspiring to be bank officers, accountants, fire fighters, ambulance officers and beekeepers. Lord Denning was not about to be a role model for people who would be saving lives or producing honey. So I put it in my own words:

Don't go back on a promise or the shit will hit the fan.

Their faces lit up and there was more energy in the classroom. I was speaking the language they understood. Lively debate followed. Although I didn't put a label on it at the time, I was using plain English to teach the law.

## Using plain English to teach the law

My non-law students asked many good questions - questions that law students would be too proud to ask. For example, a bewildered student asked the meaning of 'judicial activism'? At the time the media was covering the controversy over native title to indigenous lands and the argument that the High Court was creating rather than interpreting law.<sup>4</sup>

I tried to imagine the image that 'judicial activism' would convey to a person unfamiliar with legal discourse; and envisioned an unruly gaggle of judges storming the gates of Parliament in protest against the proposed abolition of their wigs and gowns. It was a concept that I took for granted but her critical reflection challenged my passive acceptance of its meaning. Her lack of exposure to legal language gave her the linguistic innocence to question the meaning of an unfamiliar legal term.

# FIRST IMPRESSIONS OF LAW FIRM'S WRITING CULTURE

## Need for plain English review

Sparke Helmore took me on as a precedents lawyer and later as precedents manager. It seemed that my earlier dependence on precedents made me a fit person for the job. Who better than I to understand the value of precedents? Except now there was another dimension - I was the one who had to ensure the precedents were well written so others could rely on them.

I brought my teacher's hat to the firm; and instead of my students, I put myself in the position of the firm's clients. After all, clients are non-lawyers too. Did the lawyers write to them in a way that was easily understandable? Were they as effective in their writing communication as their face to face contact?

I asked some of the partners for examples of junior lawyers' work needing plain English review. And I received a cross section of documents and letters including a deed of release, deed of unit trust and letter of advice. **(Attachment 'A')** Common to all of these were the ubiquitous 'shall's', 'hereinafter's', and 'duly's', and other examples of legalese, 'butchered grammar' and sentences long enough to 'choke a horse'.<sup>5</sup>

One word that stuck out in the advice letter was 'tortfeasor'. Being used to blank faces in my law classes when trying to explain the word 'tort' I wondered how easily a client would cope with 'tortfeasor'. And a young lawyer, who had been exposed to plain English at law school, wrote the letter. In my orientation sessions I asked support staff if they knew the meaning of 'tortfeasor' – not surprisingly only a few did.

## Plain English policy – perception and reality

The firm had a plain English policy but there was a discrepancy between the stated policy and some of the documents it was producing. Letters often began with 'we refer to previous correspondence' and ended with 'please do not hesitate to contact the writer' and 'we look forward to hearing from you'. Letter subject headings commenced with 're'.

At orientation sessions I asked new recruits if they knew about plain English and mostly they did. But when I showed them the letter containing 'tortfeasor' not many spotted its inappropriateness. Critical reflection about choice of archaic words was not strong. They were so used to this kind of language that it brushed over their heads.

But, unlike my law studies 30 years ago, plain English was now taught in some law schools. And in those universities where plain English wasn't taught students were at least made aware of its importance. So why were some lawyers still writing in a pretentious lengthy and complicated way?

Contemporary Australian legal texts on drafting confirmed that among lawyers, proponents of plain English were in a minority.<sup>6</sup>

Many lawyers have difficulty in accepting anything other than traditional legal terminology; the ancient sonorous language of the law embodies all they stand for.

Despite this, there was a perception that Australian lawyers were in favour of plain English and did in fact use it. In a 1994 survey by the NSW Law Society's Plain Language Committee 93% of respondents said they were in favour of plain language in legal drafting. But in surveying them as to whether they practised what they preached, only 83.2% said they actually drafted legal documents in plain language and only 85.5% said they thought they understood what was involved in plain language drafting.<sup>7</sup>

The odd 15% was fairly consistent with the proportion of Sparke Helmore documents and letters that needed plain English review. It confirmed that when they sit down to write, many lawyers forget plain English principles.<sup>8</sup>

## LAWYERS' HUMOUR

### Lawyers are funny

My challenge was to tell both newly admitted and more experienced lawyers that they could improve their writing by using plain English. And, that they could be more creative and adventurous in their writing. One of the pleasures in working with lawyers is their wit and humour - they usually love playing with words. But this is usually in their incidental office banter; over the photocopier and fax machines, at lunch and morning tea breaks, and staff drinks and other informal occasions. I wanted to encourage them to inject some of this banter into their legal writing:

'Against the assault of laughter nothing can stand.' Even tension and pomposity<sup>9</sup>.

At the end of each month Sparke Helmore practice groups alternate in hosting drinks. The themes, such as 'A Night at the Movies', 'The Wild Wild West' and 'Fiesta Mejicana' are usually humorous and creative. One practice group superimposed the faces of senior partners on the bodies of the Village People (**Attachment 'B'**). The humour and creativity in producing these themes is a great way to defuse tension and put daily challenges of legal practice into perspective.<sup>10</sup>

### Humour is 'in-house'

But the humour and creativity is mainly 'in house' and not shared with clients, at least in written communication. It seems that when it comes to writing, the lawyers put on another mantle and the Village People are back in the closet:

But when lawyers write, they do so without thinking about who and why. They put their fingers to the keyboard or they pick up a dictaphone, and a-way they go. Usually the lawyer's 'work voice' kicks in and takes over.<sup>11</sup>

Perceived image accounts for the lawyer's work voice kicking in- sounding like a lawyer can make them feel like a lawyer<sup>12</sup>. Being humorous is not part of this image. And it's easier to use old styles than invent new ones, especially when time is short and it seems safer to stick to the old than risk adopting the new<sup>13</sup>.

## CREATIVE WRITING

### Lawyers are creative

Creativity can help lawyers sound and feel less like lawyers. Although creativity is usually absent from their legal writing, it's not necessarily missing from their personalities:

Lawyers aren't always perceived as being creative people, yet I have met many who are. They play musical instruments, they dance, paint, write, sing or act. Many are brilliant after-dinner speakers. Perhaps there is some creative energy inside them that is dying to escape? If so, why not let it out?<sup>14</sup>

Stephen King has written best selling novels on crime, mystery and the occult. These themes are far removed from legal discourse. But his book on the art of writing has much to offer legal writers. In fact it was favourably reviewed in the NSW Law Society Journal.<sup>15</sup> His message that 'good writing is often about letting go of fear and affectation'<sup>16</sup> is timely for lawyers.

Writing creatively will help lawyers get into the minds, interests and backgrounds of their readers. And creativity can make legal communication interesting and lively:

We need a modern Denning with great experience and skills of communication, to rise above the chorus of publicised opprobrium. And to explain that the element of creativity properly harnessed and well directed, is not a weakness in the common law system. It is a mighty strength.<sup>17</sup>

### 'Queens Park'

I don't profess to be a modern Denning but I have dabbled in creative writing - treading the waters softly and just getting my toes wet at first. After years of legal writing they are muddy waters. The veneer of legal formality is hard to break. But it was a writers' pitching competition that converted me to plain English. The publicity for Sydney Writers Week announced a pitching competition, asking for outlines of stories suitable for publication as novels, movies or plays. I came up with a story called 'Queens Park' and made the finals. (Attachment 'C')

The difficult part was pitching the story to an audience and panel of literary experts – in five minutes. My story, about the lives of a group of residents in an inner city block of units, was complicated. They went to bed one night in a suburb called Bondi Junction and woke up the next morning in another called Queens Park. Five minutes is a short time to describe the effect of the word 'queen' on different people, as well as the joys and miseries of communal living.

## Plain English helped shorten the pitch

A friend, experienced in plain English, helped me shorten the pitch. She, a non-lawyer, helped me realise that my writing was unnecessarily long and complicated. I had to swallow my pride - like most solicitors I don't take kindly to criticism of my writing. But she made me realise that without plain English I could never tell it in five minutes. I had the ideas and the humour but it took me too long to state them. I was the casualty of thirty years of legal study and practice:

Somehow along the way to becoming a lawyer, most lawyers develop their work voice and they use that voice for nearly everything they write – no matter how inappropriate the work voice is to the audience and purpose of the document.<sup>18</sup>

## Lawyers are storytellers

My story telling, after plain English review, was lively, humorous and, most importantly, short! Admittedly, it's not so easy (or appropriate at times) for lawyers to inject humour and creativity in legal writing. But it does allow them to speak to their readers in a lively and engaging tone. And lawyers do not realise how good they are at storytelling. They are crafting narratives all the time, especially in court or even sitting around the negotiating table or mediating.<sup>19</sup>

In fact, many modern academics have urged lawyers to use the storytelling technique to give voice to their legal discourse. They urge them to think about how their language operates.<sup>20</sup> Their language is bound up with power and the more it is used as a means to exercise that power the less appropriate it will be to the audience's needs. Instead, storytelling allows lawyers to deliver informative, engaging and understandable narratives.

# THE CRAFT OF WRITING

## Craft to be learned

The audience reacted well to my pitch - at least they laughed in the right places. The judges must have also liked it as they awarded me third place. It confirmed that, regardless of many years of legal writing, the complexities of legal language hadn't 'deadened my writing' and 'drained me of creativity'.<sup>21</sup>

The pitching competition also helped me realise that I could change my writing style by treating it as a craft to be learned. Since the competition I've been studying the craft of writing. I've been to plain English and creative writing courses; and seen the light with short sentences, familiar words, present tense and active voice. Books on grammar and writing have been helpful, but none of them more so than Stephen King's 'On Writing':

I think timid writers like (passive verbs) for the same reason timid lovers like passive partners. The passive voice is safe. There is no troublesome action to contend with; the subject just has to close its eyes and think of England, to paraphrase Queen Victoria. I think unsure writers also feel the passive voice somehow lends their work authority, perhaps even a quality of majesty. If you find instruction manuals and lawyers' torts majestic, I guess it does.<sup>22</sup>

### 'Ingrained' writing practices

But it still surprises me how, without thinking about it, I still write with the passive voice, nominalisation and too many unnecessary words. Young and not so young Sparke Helmore lawyers, even with the benefit of plain English study, do the same. It's understandable because most of the case law, legislation and texts they read are written in traditional legal language, which encapsulates all of these unsavoury features.

Once familiar with legal language, they tend to use it without being aware of it.<sup>23</sup>

Even recent editions of legal texts such as Turner's *Australian Commercial Law* tediously use 'he or she' when the singular 'they' would be neater.<sup>24</sup> Lawyers find it hard to break traditional grammatical rules but it helps to point out that the singular 'they' has the backing of legal authority. For example, the Australian Corporations Law Simplification Program adopted the singular 'they' for its rewrite of the Corporations Law.<sup>25</sup> And there's no stronger inducement to get lawyers to change their writing than to prove there's a noteworthy precedent for it.

Similarly, 'pursuant to' is so ingrained in their vocabularies that there is an outcry against any suggestion of replacing it with 'under'. I confidently indicate that Asprey describes 'pursuant to' as one of the hallmarks of legalese and that 'under' is an acceptable substitution for 'pursuant to'. And if they're not happy with that then they're flying in the face of the policy of the First Parliamentary Counsel of Australia which uses 'under' rather than 'pursuant to'. (*Collector of Customs v Brian Lawlor* (1979) 24 ALR 307).<sup>26</sup>

And then there are the modern bureaucratic buzz words. I bite my tongue every time someone says 'proactive' and smile questionably. 'Proactive' is reaching the status of some of the archaic and Latin words - the ones lawyers often use meaninglessly and without having to think too much. By now most people at Sparke Helmore know I don't like 'proactive'. 'Well, what would you use?' they ask. And usually I hesitate because I'm not sure so I reply 'Say what you really mean.' And often it's something like 'Get off your arse and do it'. And, reminded of Stephen King's way with words, I tell them it's acceptable provided they substitute 'backside' for 'arse':

Make yourself a solemn promise right now that you'll never use emolument when you mean tip and you'll never say 'John stopped long enough to perform an act of excretion'; when you mean 'John stopped long enough to take a shit'. If you believe your audience would consider 'take a shit' offensive or inappropriate, feel free to say 'John stopped long enough to move his bowels'.<sup>27</sup>

## Include rather than exclude the reader

It takes courage to be adventurous and go outside the comfort zone of usual legal discourse. Consider this extract from a USA law firm's home page.<sup>28</sup>

Powers Phillips is somewhat peculiar in that six of its lawyers are, to put it most politely, uppity women, who through various shenanigans and underhanded schemes control the firm. However, this has not resulted in undue hardship on the male lawyers who are generously allowed a five-minute coffee break every other day (so long as they continue to ponder client matters and continue billing accordingly).

At first I wondered whether this was a real firm or someone sending up legal firms? And then I read the disclaimer:

### **Important Notice: How to tell if you are a complete idiot**

This homepage is intended to be a joke. Other parts of the website are also intended to be jokes. However, as a public service to enable our readers to determine whether or not they are complete idiots, we have also included a bunch of boring, serious material without a joke in sight.

If you can tell the difference, you are not a complete idiot. Just to show we are not completely heartless, we will give you a little hint to help you with this test; if your eyes start to glaze over, it's the serious, boring stuff. Good luck.

And the more I thought about it, I wondered whether it wasn't doing the right thing. It was speaking to the readers in a style that they would identify with - it included rather than excluded them.

## READERSHIP

### Engage the reader

Most readers would prefer reading the Power Phillips home page than one that tries to market a law firm in a serious tone - it's like the choice between reading a Scott Turow novel and High Court judgment. Also, the home page's self-deprecating style of humour is appealing. Words like 'uppity', 'shenanigans', 'gaze over' and 'idiot' get the message across effectively, without being offensive or patronising. They engage the reader in the writer's good humour. A traditional approach would be to use 'safer' words - those readers would expect from a law firm (dare I say 'legalese'). But studies have shown that:

... people will do almost anything to avoid reading legalese.<sup>29</sup>

So why not surprise them with the unexpected? The Power Phillips discourse is closer to colloquial language and the way people speak with one another. Some people say that everything a person writes is a conversation they have with their readers. So it's important to draw the reader into what they have to say and

'...trim and edit and polish it until it sings'.<sup>30</sup>

Lawyers don't have to sing but they should probably try reading their prose aloud to see whether they'd actually say it the way they've written it.<sup>31</sup> Putting the reader into the writing with a natural spoken style gives the reader the sense that the writer is talking directly to them:

To the legal reader, few things are more pleasing than the sense that a writer is talking directly to you. It's so unusual that it can be genuinely refreshing.<sup>32</sup>

## Many people don't like reading

Even when lawyers do pay attention to their writing skills they often ignore the reading skills of their audience. But writing and reading skills are intertwined. Teaching law to non-law students helped me realise many people don't like reading, especially large slabs of text.

Research published in 1995 indicated that 20 percent of adult Australians had difficulties in reading and extracting verbatim information from a newspaper article.<sup>33</sup> The Survey of Aspects of Literacy conducted by the Australian Bureau of Statistics in 1996 found that almost half of Australians aged 15-71 (6.2 million) had 'poor' or 'very poor' prose literary skills.<sup>34</sup>

## Lawyers' literary arrogance

Lawyers, blessed with good literacy, tend to forget that others aren't so keen on reading. Richard Beasley in his satirical novel about a large Sydney law firm captures lawyers' literary arrogance:<sup>35</sup>

Despite his high intellect and long career at the Bar, Giles Taffy had somehow never managed to learn even the most rudimentary rules of politeness when speaking to an inferior intellect. Inferior intellects comprised at least everyone who was not a High Court or Appeal Court judge. Many of them fell within the definition. Talking to him was like talking to Edward De Bono, but with Liam Gallagher's personality.

I learned about the Giles Taffy's of the legal world very early in my career. During my articles I arranged for my master solicitor to act for my mother on a house purchase. He told me to take it home and ask her to read the contract for sale. I dutifully obeyed his instructions and sat proudly while he interviewed my mother as she pulled the contract out of her handbag:

'Have you read it?'

'No! That's what I'm paying you to do.'

My mother was not the kind of person to let the power imbalance of legal discourse beat her. My master solicitor might have been my master for a short while but there was no way he was going to be master of a trained nurse who knew what power was all about. My mother, bless her departed soul, reckoned that compared with her university-educated son she was uneducated. Yet I can't remember one single night when she wasn't reading a book and could hold her own in any discussion on politics and world affairs.

## Language as power

For lawyers the message is clear - don't be superior to non-lawyers by using legal language as a power trip. To communicate with their readers they should:

...place themselves in the position of the reader, investigating in what order the reader requires the information, through what language it can be most clearly and precisely communicated, and through what format the reader will gain most efficient access.<sup>36</sup>

The contract my mother was asked to read some thirty years ago was the standard draft contract used by NSW lawyers in conveyancing transactions. It has since been redrafted in plain English, but I still doubt whether she would have been enticed to read it, unless Scott Turow or John Grisham had a hand in its drafting.

## DOLLY CRUICKSHANK/ EMILY POST/ MISS SPELT

### Collective conscience of writing etiquette

So what does Dolly Cruickshank have to do with changing Sparke Helmore's writing culture? Dolly is the principal character of my novel in progress 'Queens Park'. She, the secretary of an apartment building's body corporate, dictates the rules of communal living etiquette - when to flush the toilet; when and when not to play music; how to wrap the disused newspapers; and not to slam doors or make love during certain hours. Every apartment building has its Dolly Cruickshank. She is the collective conscience of appropriate behaviour. Every time a resident comes home drunk and makes a large clatter trying to fit the key in the door, they will probably ask themselves 'Now what would Dolly say?'

Dolly reminded me of another woman who made a lifelong practice of dictating the way in which people should behave publicly and privately. While in 2000 Dolly dictated the etiquette of behaviour and manners for a small block of units in Sydney, Emily Post in the 1920s dictated those for 'people of position the world over' on topics such as 'What Makes a Young

Girl a Ballroom Success', 'Personality of a Handshake', 'When a Gentleman Takes off his Hat' and 'The Bow of a Woman of Charm'.

For Emily a 'show girl's' vulgar slang was scarcely worse than 'the attempted elegance of which those unused to good society imagined to be evidence of cultivation'.<sup>37</sup> It seems that Emily was a champion of plain English long before the term was conceived.

'Tintinnabulary summons' means bell, and 'Bovine continuation' meaning the cow's tail are more amusing than offensive, but they illustrate the theory of bad style that is pretentious.<sup>38</sup>

The fictitious Dolly and the real Emily became role models for Miss Spelt. **(Attachment 'D')** Miss Spelt became the muse for Sparke Helmore's writing etiquette. I couldn't 'employ' Miss Grammar as she was already gainfully employed in the USA.<sup>39</sup> So Miss Spelt became the Firm's in-house grammar, spelling and plain English guru.

## In-house writers

I was glad to discover that some USA law firms were attempting to reform their legal writers by retaining writers-in-residence to run in-house training programs on writing, and to provide publishing advice and editing help. Although some writers in residence were lawyers, many weren't. Instead they were former journalists or communication experts who offered an 'unencumbered view of the writing itself.'<sup>40</sup>

I don't profess to be a professional writer - although I am flattered that my profile for this conference states I have written a novel. (Well, I have written a novel - its' just that it hasn't been published). And Sparke Helmore wasn't ready to employ a writer but I had already put pen to paper so they did get a writer of sorts.

But the employment of in-house writers in USA firms confirmed that I was on the right track - that law is a profession of language and writing an important skill for lawyers. Hundreds of recently surveyed USA lawyers ranked 'oral and written communications' as the most important skills for practising law - even more important than substantive legal knowledge.<sup>41</sup> Why should it be any different for Australian lawyers? And there was no denying that Australians could write fiction well. The USA might boast its Steinbeck, Fitzgerald and Hemingway but Australia too has its White, Stead, Carey and maybe one day ... Miles.

But until then, I can indulge my enthusiasm for creative writing as well as employ Miss Spelt. No longer fearful of correcting lawyers for bad grammar or writing, I can hide behind Miss Spelt's skirt.

# LEGALEASE BULLETINS

## Educating with entertainment

Miss Spelt has made a big impression where the Precedents Manager would have been relegated to the status of an extra in the nightclub scenes of 'Ally McBeal'. Fortnightly bulletins on topics such as 'Archaic Words' 'Email Etiquette' and 'Punctuation' are published with Miss Spelt's imprimatur. The bulletins are punchy and informative as well as allowing readers a short break from the daily grind.

Based on evaluations and informal feedback, most people read and enjoy the bulletins (about three-quarters of approx. 500 staff). Lawyers have begun to notice the precedents department – quite an achievement given the low profile of precedents departments in most law firms. Partners report that young lawyers are debating whether to insert a comma or capitalise a noun. Staff, scrolling through their emails are about to delete yet another one, until their attention is caught by the unexpected (**Attachment 'E'**) Titillated by the humour, or perhaps the chance of winning a prize, they open the attachment and are entertained by Miss Spelt's wisdom.

## Mr Qwerty joins the team

I became so worried about the pressure on Miss Spelt that I asked my team to come up with a companion- someone who could concentrate on formatting and other presentation issues, leaving Miss Spelt to deal with writing and plain English. We now have Mr Qwerty on the team. (**Attachment 'F'**) Mr Qwerty provides the masculine bold side to Miss Spelt's sensitive but firm assertiveness. He reinforces awareness in formal aspects of document presentation such as white space, highlighting and font size that make reading easier. Less experienced word processors now know what 'qwerty' stands for.<sup>42</sup> As well as entertainment it's all about education.

## Raising awareness

Lawyers and support staff ask themselves 'What would Miss Spelt or Mr Qwerty say about this?' It's the awareness that counts. Gradual induction to plain English and other communication issues is creating a culture of good writing consciousness. Fear of unnecessary time and anal retentiveness over the correctness of grammar and punctuation is dispelled by the importance of presentation of the Firm's writing to the outside world.

## Literary 'luddites'

Not all the comments about the bulletins and plain English are favourable. (**Attachment 'G'**) There are a few literary 'luddites' - those who think the principles are fine but still write to clients in the traditional way because

they believe they expect it. One lawyer informed me that using 'borrower' and 'lender' instead of 'mortgagor' and 'mortgagee' was subversive. Another accused me of 'dumbing down' the richness of the English language and that the 'legal precept of stare decisis has a gravitas beyond simplifying language'. I told him that I needed both an ordinary and legal dictionary to understand what he meant. Donning my teachers' hat I asked him to pretend that I was a non-law person, namely a client, and explain what he meant - in plain English. I'm still waiting for an answer.

## 'Pep' talks

Miss Spelt hasn't done it alone. Her knight in shining plain English armour, Chris Balmford came to the rescue.<sup>43</sup> If the literary luddites couldn't be swayed by Miss Spelt, Chris, a well known plain English consultant to Australian law firms, helped drive the momentum by giving 'pep' talks to all the Firm's offices. His first impressions of each office was the friendly, bright and perhaps somewhat unconventional atmosphere. Instead of Dickensian dark wood and dusty legal tomes, there were bright light, sunlight and warmth.

But when it came to writing Chris encouraged the lawyers to question whether they presented a similar warmth and friendliness in their documents and letters. So they're now letting the sunshine into their writing as well as through the windows. And they are now as careful about the impression of their writing as their dressing style. The 'voice of the brand' in Sparke Helmore writing is beginning to live up to its visual presentation.<sup>44</sup>

## EMAIL

### Email improves legal writing

Email communication has improved legal discourse. Lawyers should not fear its apparent informality – it's extending the language's stylistic range in interesting and motivating ways.<sup>45</sup> Like plain English it should result in an enhanced understanding and accessibility rather than a 'dumbing down' of legal language.

Messages go out more quickly than it takes to dial a telephone number. Lawyers may be involved in a conversation by way of email comprising a dozen, or so, responses within a single hour.<sup>46</sup> Those who type with two fingers can send messages with deplorable spelling mistakes. And even when they remember to use the Spell and Grammar Checker there's the chance of referring to a judge who is well versed in 'constipation' rather than the 'constitution'. Even the NSW Director of Public Prosecutions has been criticised for sending to the victim in a sexual assault case an email that was not spell checked and contained numerous grammatical errors.<sup>47</sup>

## Personalises legal writing

But other than spelling and grammar mistakes, email is changing the way lawyers write – for the better. Because it's closer to a telephone conversation than a letter they tend to write the way they speak. And people better understand text if it is written the way it is spoken. For example, 'it's' and 'there's' are preferable to 'it is' and 'there is'.  
(Attachment 'H')

Writing email messages also makes lawyers personalise their writing.<sup>48</sup> They usually do not say in their everyday conversations 'please do not hesitate to contact me if you have further queries.' They might say 'give me a call if you're not sure.' And stiff sentence openers such as 'Similarly', 'However', 'Consequently' and 'Inasmuch' are being replaced by more conversational ones such as 'And', 'But' and 'So'.

And the more lawyers write emails like this, the more easily they will slip into this style in conventional 'snail mail' letter writing. Recently, I was glad to receive an email from a lawyer with the salutation: 'G'day Tim'. Hopefully I'll soon be receiving them with openers and closures such as 'Coosee' and 'hooroo' (colloquial Australian ways of saying 'hello' and 'goodbye'). These words, once considered slang are now in Australian dictionaries. So why not use them when appropriate? They give more flavour than the insincere 'Dear' 'Regards' or 'Best wishes'.

## WRITING TOOLBOXES

### Whatever happened to grammar?

One of the biggest complaints by Sparke Helmore partners about junior lawyers' writing is their lack of attention to detail and incorrect grammar:

...lawyers can achieve success in school and in some areas of practice without learning how to write well.<sup>49</sup>

Many young lawyers haven't been taught grammar at school (or even if they have they've conveniently forgotten it). Teaching grammar in Australian schools for the past 20 years was discouraged because it might hurt the feelings of lower socio-economic groups if they were criticised for the way they spoke. Accordingly, primary and secondary students were educated with the laissez – faire attitude that all that matters is to get the message across. That's all very well but some young lawyers write letters that read like the literary equivalents of Jackson Pollack paintings.

### Developing writing toolboxes

Thankfully grammar is now being taught again in Australian schools. But that's too late for a whole generation who missed out on it. And while it's presumptuous for me to start teaching grammar to twenty and thirty year old university graduates, I can help them to develop their writing

toolboxes. For this I was inspired by Stephen King's analogy of his grandfather's carpenter's toolbox – something he carried around with him in case he needed a tool for the unexpected.<sup>50</sup>

I want to suggest that to write to your best abilities, it behooves you to construct your own toolbox and then build up enough muscle so you can carry it with you. Then, instead of looking at a hard job and getting discouraged, you will perhaps seize the correct tool and get immediately to work.

## Filling up writing toolboxes

I encourage Sparke Helmore lawyers to develop their writing muscle with writing accessories such as using the active voice, present tense and correct punctuation and avoiding nominalization, archaic words and long sentences. I'm attempting to add to their writing toolboxes by:

- publishing regular LegalEase and PRECious tips bulletins;
- holding orientation for new recruits and refresher sessions on plain English/Firm styles;
- arranging pep talks and workshops by plain English experts such as Chris Balmford;
- holding workshops on grammar and letter writing for professional and support staff;
- encouraging people to attend external seminars on plain English; and
- ensuring every office library has copies and the staff is made aware they hold copies of my top four references.<sup>51</sup>

Included in my top four references is Stephen King's 'On Writing'. His writing style sets a good example for all writers. And instead of boring discussion on grammar rules and writing tips he explains them in passages like this:

One of the really bad things you can do to your writing is to dress up the vocabulary, looking for long words because you're maybe a little ashamed of your short ones. This is like dressing up your household pet in evening clothes.<sup>52</sup>

If only lawyers would write more like that! When I see some of this style in Sparke Helmore writing I will know that their writing muscle, rather than their lawyers voices, is kicking in.

## CONCLUSION

### Support from the top

There is a long way to go for plain English drafting and good writing skills in Sparke Helmore. But the seeds have been sown. With a little help from Miss Spelt, creativity and humour are wearing down legalese and pompous writing. I don't apologise for the triteness of Miss Spelt and her bouquets for good and brickbats for bad drafting. Hopefully she is demystifying the law and helping Sparke Helmore lawyers critically reflect on the presentation and content of their written communication; and realise when they write, they are trying to communicate their messages to non-lawyers.

I'm also fortunate Sparke Helmore partners support plain English.

Support from the firms' top helps embed writing training into the firm's culture.<sup>53</sup>

### The joys of writing

They've allowed me to indulge my sense of humour and creativity in spreading the joys of writing. What better way than by entertaining staff with lively and engaging writing. Miss Spelt allows me to do that. And what better place to do it than in a law firm where the partners are happy for the staff to dress them up as the Village People. Pity they can't sing and dance – but I'll concentrate on their writing.



## Extracts from 'Letter to claims officer'

We refer to previous correspondence in relation to the above matter and would ask that this report be read in conjunction with our previous progress report dated 31 May 2000.

The principles of apportionment discussed by the Court of Appeal in *Daniels v AWA Limited* (1995) 37NSWLR 438, would suggest that even if there was a duty and it was breached, in the circumstances of the case, where a finding of contributory negligence was made on the basis of intoxication, there is no available finding against a tortfeasor referable to the same cause.

Whilst it appears that the Claimant continues to makes some improvement, it is questionable whether he will reenter the workforce in any meaningful capacity or whether he has the capacity of living independently in the long term.

## Extract from 'Deed of Release and Discharge'

In consideration of the person described in the First Schedule (hereinafter called the 'Insurer') as insurer for the person described in the Second Schedule (hereinafter called the 'Insured') paying to the person described in the Third Schedule (hereinafter called the 'Releasor') the sum of money referred to in the Fourth Schedule (hereinafter called the 'settlement monies') paid in full and final satisfaction and discharge of any claims whatsoever which the Releasor, or any person on behalf of the Releasor, may have arising as a result of or in any way connected with the matter (as defined in the Seventh Schedule) the Releasor hereby:

1. Releases discharges and forever holds harmless the Insurer and the Insured and each of them (hereinafter jointly and each of them severally...)



Attachment 'B'





## Queens Park

So why the title 'Queens Park'?

The word 'Queen' means different things to different people. Staunch monarchists will be glad to have the name as part of their suburb. Republicans, while quietly relishing the increased property values will be ideologically opposed to any connection with royalty?

And it's the diverse reaction to a name that brings out the history and life stories of the residents who live in this block of units just across the road from Centennial Park. None of them moved to 'Queens Park'. They were contently living in Bondi Junction when the Geographic Names Board decided to change its name. They went to bed one night in Bondi Junction and woke up the next morning in Queens Park. You know that feeling after a one night stand!

Anyone who's lived in a block of units will know what it's like living with people with whom you have no choice. Well, you're not exactly living with them. But your lives become intertwined. Especially, if like our six Queens Park residents, you're living in one of those buildings of a certain age. You know - the ones where you hear the toilets flush, the doors creak, the snores and coughs and everyone else's bad taste in music. Before you know it, a sign will appear 'In consideration of fellow residents please restrain from farting between the hours of 9.00 p.m. and 7.00 a.m.'

And there's always one person who's the moral conscience and arbiter of good taste and propriety. In this story, it's Mrs Cruickshank, widow and retired manager of David Jones button counter.

The other residents represent the whole gamut - hetero, homo, bi, transsexual and asexual, talented, pedestrian, Aussie, Jewish, Italian and Eurasian and so on. Through Mrs Cruickshank's eyes they're not worthy of the Queens imprimatur.

The sharp discordant twangs from Harold Solomon's violin grate on her nerves. He may be a famous concert performer but that doesn't give him the right to impose his music on other people, especially when they suffer from migraine.

Anthony Carpenter, our immaculately groomed and aspiring young lawyer, has earned her respect however. He considerately pops out to Centennial Park loos rather than flushing the toilet at home late at night. Ever ready to hand out his business card, Anthony often returns with a new client.

And then we have Ronald Cheong, quiet living, successful dentist but attracts nothing but disdain from Mrs Cruickshank because he has the temerity to fly the Eureka flag, symbol of his gold-digging ancestors.

Mrs Cruickshank takes comfort from the presence of Linda Peterson, a career woman not unlike a younger version of herself. But there the similarity ends because Mrs Cruickshank would never entertain her dinner guests in a grass skirt and a whaletooth necklace dangling between her breasts.



## ***Queens Park cont.***

Thank God for Mr and Mrs Davidson, respectable and devoted couple downstairs. Mrs Cruickshank admits that poor Beverley is a bit plain, horsy even, but she's never hesitated to lend those broad shoulders and strong arms on clean-up days - her deep voice most effective in shooing away charity collectors.

You may laugh at the lives of these people. But isn't there a bit of us in all of them? How much of our lives are spent in living a falsehood? We think there is safety in the camouflage we create to meet what we believe to be other people's expectations. But - in the words of another literary pitcher, Will Shakespeare, 'To thine ownself be true and it must follow as the night the day that thou canst be false to any other man'.

These words were not lost on our Mrs Cruikshank who after one too many champagnes at the annual general meeting, and inviting the young ones to call her "Dolly", confessed that the true love of her life was in fact Vera Jarmaine, manager of linen in David Jones.

In conclusion I would like you to consider the complexities of life for our Queens Park residents. They are really no different to those of the residents of another literary Park two centuries ago. As you all know, Jane Austen's 'Mansfield Park' has only endured as a classic because its heroine Fanny Price remained true to herself. In this Queens Park story, I hope that readers will take Dolly Cruikshank into their hearts as a 21st century version of Fanny Price.



**Timothy Miles**  
Sent by: Timothy Miles  
06/09/2002 12:25 PM

To: Everyone  
cc:  
Subject: SH plain English policy-How to take the pain out of plain with "Legal Ease"

You are hereby welcomed to the inaugural first bulletin referred to as "Legal-Ease". Hereinafter in the following weeks you will receive regular edification on the intricacies and finer points of plain English language drafting, particularly as they are relevant to the practice of law. I humbly request your indulgence and attentive reading for this extremely important and crucial aspect of the firm's contribution to the legal fraternity and community in its quest for plain legal language.

**Phew!** Please don't write like this. All I really wanted to say was:

**"This is the first edition of "Legal-Ease", the Precedents Department's bulletin on plain English."**

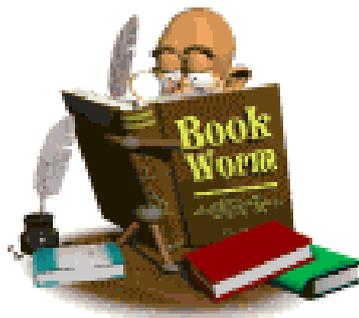
See the attached document to take the pain out of plain.

  
LEGALEASE - ARCHAIC PHRASES.DRF

Tim

Sydney

# Legal



# Ease

Bulletin No 1 – 13 July 2001

"Legal Ease" is a regular message from Miss Spelt of the Precedents Department with tips on Plain English. Plain English puts the reader first. It means organising information and writing clearly so that your readers understand your message.

Miss  Spelt's

## Hot Tip - Avoid archaic words and phrases

Some words and phrases may have been appropriate several hundred years ago but try and use words that are familiar to today's readers

### DO NOT USE

Aforesaid  
Hereafter  
Herein  
Hereof  
Notwithstanding  
Prior to  
Pursuant to  
Thenceforth  
Therein  
Whatsoever  
Whereof  
With respect to

### ALTERNATIVES

*Omit*  
After (and state date or time)  
In this agreement  
Of it  
Despite, even if  
Before  
Under, according to  
Afterwards, from then on  
In it  
*Omit*  
Of it  
About

**WARNING** - Miss Spelt will do random checks on all Sparke Helmore documents. You will be on the receiving end of her red pen if she finds the slightest trace of these legal "fossils" in your writing.



Call Tim Miles on ext 2508 or email TXM with your enquiries or comments



**Timothy Miles**  
Sent by: Timothy Miles  
06/09/2002 12:27 PM  
Subject: Precedents Department- Legal Ease Bulletin no 3- Gender- Neutral Language

To: Everyone  
cc:

**Short story: How Miss Spelt decided to get rid of the "man"**

Miss Spelt was enjoying a Sunday morning swim at **Manly** beach when **Manfred Manson**, a **manly** lifesaver, bellowed over the loudspeaker

" **Man**-eater".

Because Miss Spelt was well educated and knew she wasn't a man she thought she had nothing to worry about. Sharks only ate men. Another **Manly** lifesaver, **Mandy Mandrake**, well trained in plain English, realised Miss Spelt's mistake, **manned** a **man**-sized surfboard and rescued her.

"Don't **man**handle me!" Miss Spelt protested in an indignant **manner** as **Mandy maneuvered** her safely to the shore " I'm a woman and sharks only eat men"

"Well I'm a woman too and believe me sharks are well aware of the anti-discrimination laws. They eat women as well as men."

"But your costume says you're a **Manly** lifesaver and that was a very **manful** act . I won't be **manipulated** by deceitful costumes"

"**Man oh man!** Get with it woman. It wouldn't be sharks they'd be worried about if **Manfred** yelled out "predator".

The moral of the story is that you can take the man out of words but not out of your lives. Miss Spelt has written to the Geographic Names Board and it is anticipated that Gary Flowers will soon be living in **Womanly**.

Women and men read on:

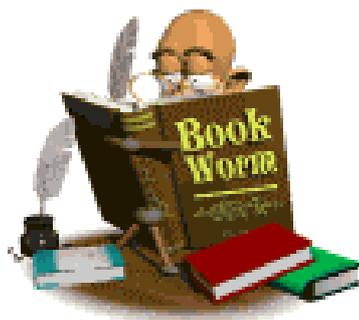


**There are two words that contain "man" which have not been bolded in black. Prize to the first person who identifies these words.**

Tim



# Legal



# Ease

Bulletin No 3 – 13 August 2001



## Miss

## Spelt's

### Hot Tip – Avoid Sexist Language

Sexist expressions have been part of our language for so long that often we use them without thinking. Most instances of sexist language denigrate women rather than men, either by excluding them or by depicting them as subordinate or inferior to men. The following are examples of sexist language:

#### 1 Compounds using the word “man”

Try and replace words containing the word “man” with alternative words:

<b>avoid</b>	<b>use instead</b>
mansize	big, huge, large
mankind	people, humanity, the human race
manmade	artificial, manufactured
manpower	human resources, staffing, labour
chairman	chairperson, the chair, convenor
spokesman	spokesperson
workman	employee, worker
policeman	police officer



Use common sense. Some words cannot be adapted without an alternative that does not read well. The following sound ridiculous:

“access hole” or “utility hole” for “manhole”

“one-up personship” for “one-upmanship”

“personhandle” for “manhandle”

## 2 Female occupational titles

Avoid using occupational titles that refer exclusively to women:

Avoid	Use Instead
cleaning lady	cleaner
housewife	homemaker
maiden name	birth name
sister	charge nurse, registered nurse
actress	actor
manageress	manager
directress	director
proprietress	proprietor
salesgirl	shop assistant



If you're not happy with "homemaker" (after vacuuming, dusting, washing and drinking several gin and tonics most people would rather be home-breakers) try "domestic technologist".

## 3 Gender Qualifiers

Qualifiers such as *woman* dentist, *lady* doctor, and *female* bricklayer make it sound as if women are oddities in these occupations.

**True story.** A young boy came home to tell his mother that his doctor could not be a real doctor because she was a woman. That boy now goes to see a dentist, tennis coach, language instructor, music teacher and eye specialist all of whom are women. And just imagine!- his father is a nurse.

## 4 Don't use " he" or " him" when the gender could be female or male.

Instead of:

The manager should appoint his staff

Use:

- The manager should appoint his or her staff
- The manager should appoint their staff

In a lengthy document the use of "he" or "she" instead of "he" can become tiresome. The use of the singular plural " they" is acceptable even though it might grate with some language purists. Consider rearranging the sentence:

- Staff should be appointed by the manager
- The manager should appoint the staff



Don't make a joke out of gender- neutral language. The fool who suggested "horshit" as a compound of "he", "she" and/or "it" has been chastised by Miss Spelt.

**Warning:**

Don't refer to women as "tricks". If anyone should be called "tricks" it's the men who use sexist language to take advantage of women. So all of you will drafters (as distinct from draftsmen) please avoid the - trix in "testatrix" and "executrix" and use "testator" and "executor" instead.

**Next message:** How to greet a transsexual person in your salutations!

**Acknowledgements:**

Aitken JK, *Piesse's The Elements of Drafting*, 9th ed, Law Book Company, Sydney, 1995

Asprey MM *Plain Language for Lawyers*, 2nd ed Federation Press, Sydney, 1999

Huges B, (ed) *The Penguin Working Words* Penguin, Maryborough, 1995

Meehan M and Tulloch G, *Grammar for Lawyers*, Butterworths, Sydney, 2001



Call Tim Miles on ext 2508 or email TXM with your enquiries or comments



**Timothy Miles**  
Sent by: Timothy Miles  
01/07/2002 11:00 AM

To: Everyone  
cc:  
Subject: PRECIOUS TIP no 15- Don't sign-off until you've met Mr Owerty

Dear all

This week Mr Owerty joins our team. While Miss Spell's feminine charm has inspired you with the joys of Plain English, Mr Owerty's masculine boldness will motivate you to use Word and precedents with confidence.

Please welcome Mr Owerty by reading his bulletin on the new letter sign-off clause.



PRECIOUS TIP 15 - 1 JULY 2002\_#8305521.DRF

Regards  
Tim

Tim Miles  
Precedents Manager  
Sparke Helmore  
Tel: (02) 9260 2508  
Fax: (02) 9373 3599

Please visit our website at:



Bulletin No 15 - 1 July 2002

## NEW LETTER SIGN-OFF CLAUSE AND CONSEQUENT CHANGES TO THE RUN/REDO FORM



Have you noticed that when you select a letter precedent from the FileNew menu, the sign-off clause has changed?

### Old Run|Redo Form:

Pg 1 | Pg 2

Solicitor Name: <input type="text"/>	Address: <input type="text"/>
Solicitor's title eg Senior Associate <input type="text"/>	<input type="text"/>
SH Matter No: <input type="text"/>	Salutation <input type="text"/>
Their Ref: <input type="text"/>	Special Instructions: <input type="text"/>
Direct Ph No: eg (02) 9373 2666 <input type="text"/>	<input type="checkbox"/> Enclosures
Solicitor's email initials eg abc <input type="text"/>	c.c. <input type="text"/>
Addressee Name: <input type="text"/>	Pg 2 Heading <input type="text"/>

OK Cancel

### New Run|Redo Form:

Pg 1

Will a supervising practitioner be signing this letter? <input type="text"/>	Their ref. <input type="text"/>	Special Instructions <input type="text"/>
Author's name <input type="text"/>	Author's direct phone no. <input type="text"/>	Subject heading <input type="text"/>
Author's title e.g. Solicitor <input type="text"/>	Author's email initials e.g. abc <input type="text"/>	<input type="checkbox"/> Enclosure
Supervising practitioner's name <input type="text"/>	Addressee's name <input type="text"/>	<input type="text"/>
Supervising practitioner's title e.g. Partner <input type="text"/>	Address <input type="text"/>	c.c. <input type="text"/>
SH matter no. <input type="text"/>	Salutation <input type="text"/>	Pg 2 heading <input type="text"/>

OK Cancel

You now have two options for the sign-off clause in a precedent letter. This is to accommodate the new **firm policy** for signing letters, issued by email on 4 June 2002 – document no. 8121211.



## REMEMBER

You must answer the first question in the new RunRedo form for the new sign-off clause to work -

***“Will a supervising practitioner be signing this letter?”***

1. If the answer is **yes**

*Once you have completed all of the fields in the RunRedo form, the author’s contact details will appear below the supervising practitioner’s name and title.*

Pg 1

Will a supervising practitioner be signing this letter?

yes

no

Yours faithfully

Wilma Flinstone  
Partner

Contact: Pebbles Flinstone  
Solicitor  
(02) 9290 1234  
pxf@sparke.com.au

2. If the answer is **no**

*Once you have completed all of the fields in the RunRedo form, the author’s contact information will appear directly below their name and title.*

Pg 1

Will a supervising practitioner be signing this letter?

yes

no

Yours faithfully

George Jetson  
Senior Associate  
(02) 9290 1234  
gxj@sparke.com.au



## REMI NDER

Oh no! I forgot to answer the question box that makes the sign-off clause work.

Don't worry – you get a second chance! A reminder will appear before you can finish the Run/Redo form (shown below).



## WARNING

Some of the precedent letters may still contain 'contact' paragraphs such as:

- If you have any queries please do not hesitate to contact Barney Rubble on the '**above**' number; or
- If you have any queries please do not hesitate to contact Barney Rubble on '**(02) 9373 1234**'.

As contact details are now contained in the sign-off clause, paragraphs like these need to be rephrased. We suggest:

- If you have any queries please contact us.

However, if someone (e.g. a secretary) whose details do not appear in the sign-off clause is to be contacted, we suggest:

- If you have any queries, please contact Betty Rubble, secretary, on (02) 9373 1234.



Our department is progressively making these amendments to all precedent letters BUT should you find an incorrect contact paragraph, please call or email us with the precedent number to ensure that it is included in our 'to do' list.

Email "Prec" or phone Tim (ext 2508), Debbie (ext 2435), Sharon (ext 2509), Gilda (ext 2507), Esther (ext 1497), Erin (ext 1446) or Tanya (ext 2660) with your enquiries or suggestions.

-----



To: Timothy Miles/SYD/SPARKE@SPARKE  
cc:

Subject: Re: More information on plain English

Tim

I am interested in your view on the comment that plain English may fall victim to a "dumbing down" of the richness and variety of expression of the English language. In a multi-cultural society, is Australia heading down the path of least resistance as the US has done, where grammar and the variation and gradation of meaning in English is abandoned to accommodate people whose first language is not English by simplifying language. English has fine variations in meaning, whereas a number of other languages have less words that encompass the range of meanings in different English words - I know, because I speak at least two other languages apart from English, and read for a BA involving three languages including English.

The legal precept of *stare decisis* has a *gravitas* beyond simplifying language. Introducing new phrases or terms can mean new judicial uncertainty, whereas there is certainty in existing judicial determinations of many words and phrases that at first may seem clear and unambiguous but are not so in practice. Language develops, and the courts recognise that as much as recognising the changes in society. Clear, precise and unambiguous drafting is not as easy as it may sound, but that is a use of language, not the language itself. Perhaps it would be preferable to focus/concentrate on or target the drafting and context rather than the actual words in the language - for example, there is a fine difference in meaning between "notwithstanding", "despite" and "regardless" depending on the context.

Examples abound. Your view?

Rads



**Timothy Miles**  
Sent by: Timothy Miles  
20/07/2001 04:10 PM

To: SYD/SPARKE@SPARKE  
cc:  
Subject: Re: More information on plain English

Thanks for your comments on plain English. My views:

- I agree that clear, precise and unambiguous drafting is not easy. In fact it is harder than using complex language. It usually takes several drafts to reduce a document to simpler language. But the first draft is usually the easier one with more words and phrases than are necessary. It takes time and effort to redraft in simpler terms but it is at these later stages that you have a chance to try and understand how the message will appear to the reader.
- Commercial documents that you prepare for your practice group are highly complex. I don't envy your task and I appreciate that there are many fine distinctions that have to be made. The messages that I have been sending out are for all staff including administrative staff. A great deal of our communication is with clients and other staff. Plain English is important for communication and to a lesser extent even your complex commercial documents are a means of communication. Do your clients understand what words like "stare decisis", "gravitas" and "precept" mean? I would need both an ordinary and legal dictionary to find out what these terms mean.
- I don't agree that plain English has been adopted to make it simpler for people whose first language is not English. English is hard enough for those whose first and only language is English. Legalese has made law inaccessible to non lawyers. The government, judiciary and legal profession have recognised this. Some lawyers argue that it is the concepts and not the language which make it difficult for non lawyers. This may be true but I don't agree that this is an argument for not simplifying the language.
- Australia is not the only country heading down the same path with plain English as the USA. Other countries include Canada, the United Kingdom, Sweden, Denmark, South Africa, India and New Zealand.
- I am aware that certain members of the judiciary argue that plain language detracts from the intricacies and refinement of the language. In my opinion these just add to the disenfranchisement of law from the public. I'm all for greater access to law and improving the image of its members to the public. In any case, legal language can be very "in-house" and appreciated for its refinement only by those lawyers who can understand it.
- Plain English does not necessarily mean it is dull and simple. For me it is often better language. It's all about communication and getting the message across. It's also not just about words. It's about setting out documents in ways that are easy to read and presenting the information in logical and meaningful order.

In summary, I'm all for plain English

Cheers  
Tim



To: Timothy Miles/SYD/SPARKE@SPARKE  
cc:

Subject: Re: Legal-Ease Bulletin no 5- Active Voice 

Tim

This is subversive stuff!

Borrower and Lender has no implication or indication at all of a specific form of security in contrast to the decidedly different m'gee and m'gor which determine a specific kind of security over real property. It is a bit irresponsible to suggest willy-nilly changes without taking these sorts of differences into account, don't you think?

Rads



**Timothy Miles**

Sent by: Timothy Miles

19/09/2001 05:08 PM

To:

cc:

Subject: Re: Legal-Ease Bulletin no 5- Active Voice 

—  
Could you please explain (in plain English!) what you mean. Regard me as someone who knows nothing about mortgages.

Subversively

Tim



 **Timothy Miles**  
Sent by: Timothy Miles  
14/03/2002 08:57 AM

To: Everyone  
cc:  
Subject: LegalEase bulletin no 14- Email Etiquette (Tone)

Dear Emilers

Miss Spelt's previous bulletin on the etiquette of email salutations and signatures had a bigger response than Emily Post's tips on "rising to meet a lady", "drinking tea in a bachelor's apartment" and "managing your chicken bones at the dinner table".

A number of people have asked Miss Spelt about the appropriateness of email to convey emotion (eg infatuation with or hatred for their boss). It's easier to vent our hidden feelings in an email than personally confront the object of our desire or anger. But what happens when you've sent the email in a moment of misguided judgment? (usually after one of those long lunches) It's too late to retrieve your message when the flowers, chocolates or dismissal notice have arrived on your desk.

So please read this crucial bulletin on email etiquette and learn how to write emails with the appropriate tone.

  
LEGALEASE NO 14 - EMAIL ETIQUETTE - TONE\_#7446411.DRF

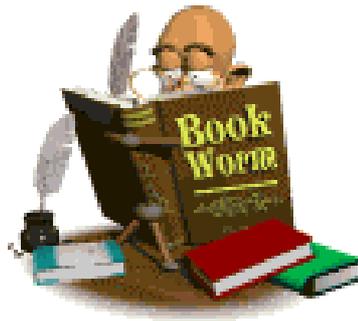
Yours genteelly

Tim Miles  
Precedents Manager  
Sparke Helmore  
Tel: (02) 9260 2508  
Fax: (02) 9373 3599

Please visit our website at  
<http://www.sparke.com.au>

Sydney

# Legal



# Ease

Bulletin No 14 – 13 March 2002

Miss  Spelt's

Hot Tip - Email Etiquette - Tone

Don't be misled by the apparent informality of email - once you've clicked on the send button your email is a permanent record of what you have written. To be efficient with email you need to write well. In this bulletin Miss Spelt provides some further guidelines on email etiquette including how to write with the appropriate tone.

## 1 Write in conversational language



Write the way you speak using simple words and short sentences. This is natural and faster. It's easier to read words and phrases if they are written the way they are spoken. For instance, we usually say "it's", or "there's" instead of "it is" or "there is". It's acceptable to use these abbreviations in email messages. Pompous words and phrases like "it has come to my attention"; "please do not hesitate"; "please note that"; "I would remind you that"; or "with due respect" sound dated in normal correspondence and even more so in email communication.

Email business messages should be treated with the same level of formality as written business correspondence. It's fine to be chatty and informal with personal messages but business messages should be more formal. For example: cliches and colloquialisms may sound appropriate in a personal messages but not so in a business letter.

**Personal:** "I'd bend over backwards to give you a hand but I'm as sick as a dog so I'll have to give it the flick - Ok for tomorrow?"

**Business:** "I'd like to assist you but I'm not feeling well. Is it acceptable to you if we postpone the meeting until tomorrow?"



It's easy to inadvertently include cliches and colloquialisms in your business emails. Read your message before sending it and replace informal expressions with more formal ones.

## 2 Never respond to email messages when you're angry



Unlike a heated verbal exchange, angry words in an email message remain to be mulled over, read by others and possibly used against you. Messages sent in the heat of the moment generally only exacerbate the situation and are usually regretted later. Wait until you have simmered down before clicking on the send button. Or put your inflammatory message in your draft folder. Then go and take a cold shower, have a massage, picture a beautiful idyllic scene, eat that “forbidden” chocolate and then review the situation. Pick up the phone, dial the number of the person you were about to harangue and imagine that they have transformed into the most beautiful, loving, and kind person in the whole world (probably your spouse, significant other, pet cat -or all three)

## 3 Don't hide behind email



It can be tempting to use email instead of facing people when you have something difficult or unpleasant to say. For example the person who sits right next to you and continually “borrows” your stapler or hums ABBA songs. When you're in this situation go and talk to them- they're probably unaware that their inadvertent use of your stapler or humming is causing you a nervous breakdown. They'll probably surprise you with your minor irritations – “Well! You keep taking my biro and I hate that poster of Kylie Minogue.” And then you remember that they never admired your photo of “ Fifi” or thanked you for sharing your Valentine's Day chocolates – it goes on and on. Imagine saying all of this in an email exchange. It's so easy to get caught up in the “flame” war. Just go and tell them that they're giving you the proverbial and you'll end up having a good laugh at each other's pettiness - (Disclaimer - no liability accepted if it doesn't work).

## 4 Don't shout –avoid using all Uppercase



### ALL CAPS IS CONSIDERED SHOUTING

In online communication uppercase indicates shouting. But that's not the only reason to avoid uppercase - UPPERCASE is harder to read than lower or title case.

### SO DON'T USE ALL UPPERCASE!

(Editor - not really shouting but having a meltdown)

## 5 Be careful when using humour and avoid sarcasm



Text is unable to depict your tone. Email messages don't have voice inflections, tone or hand gestures to give the reader hints about their true meaning. Without face to face communication, your comments may be misinterpreted. This can lead to misunderstandings, especially as people tend to dash off replies without taking the care they do with a letter.

For example:

Thanks for joining me for lunch. I enjoyed watching you drink four bottles of wine to my one glass. It's blown my budget for the whole year but it was worth it to see your face end up in the dessert. By the way - where did you

get that tasteful tie? I loved those Disney characters but couldn't tell Donald Duck from Mickey Mouse after you'd spilled your lunch all over them.

You wait for the humorous reply but it doesn't come. Now what's happened to that client? They seemed to have had a sense of humour at lunch. But what was missing from your email that was present at lunch?

*Your warm smile, gentle wink, raucous laugh, fluttering eyelashes and nudge on the back.*

You can try emoticons or other abbreviations such as:

; ) : ) :(  
(Just kidding!)  
(Joking!)  
LOL (laugh out loud)

But it's best not to use humour at all, especially if you don't know the difference between sarcasm and irony.

**Warning:**



When you compose an email, read it over before sending it and ask yourself what your reaction would be if you received it. If you have written it in anger or on the spur of the moment then give it some time before clicking on the send button. Especially, don't use email to start or end a steamy love affair. Remember that once it's sent it can be saved, printed and passed on to people whom you never intended to read it.

**Next Bulletin:**

Further tips on Email Etiquette - Style

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Call Tim Miles on ext 2508 or email [TXM](#) with your enquiries or comments

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How Dolly Cruikshank Changed the Writing Culture of a Law Firm

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