
The Case For Plain Language Legislation

by Ian Waddell, MP

In April 1992 the author introduced a Private Members' Bill in the House of Commons to promote the use of plain language in federal statutes, statutory instruments and regulations. Like most Private Members' Bills it is unlikely to be adopted but this article outlines some of the reasons why such legislation is needed.

The introduction of my Plain Language Bill aroused extraordinary interest from the media and amongst the public. Right away the CBC radio program *As It Happens* invited me to discuss the bill. The first question caught me off-guard as host Michael Enright quoted back to me part of a complicated clause in my own bill. Indeed, one paragraph of the Plain Language Acts reads:

"Subject to Section 10, every person or entity authorized by an Act of Parliament to issue, make, or establish statutory instruments or to make regulations shall refer a proposed instrument or statutory or regulation which instrument or regulation is required to be published pursuant to the *Statutory Instruments Act*, to the Language Review Committee before it is made."

Next morning on *Canada A.M.*, host Pamela Wallin put the same question. This time I simply pleaded guilty and pointed out that I too was part of a system that has become all too complicated and has forgotten how to use plain, simple English or French.

What do we mean by Plain Language? Brian Garner, in *The Elements of Legal Style*, defines it as the idiomatic and grammatical use of language that most effectively presents ideas to the reader. More simply put, people



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say, make it "plain and simple". They complain about legalese. David C. Elliot in his own very imaginative *Plain Language Act*, under which he would even fine people for using gobbledygook (hereinbefore costs \$200.00!) says legal documents must be written in as understandable language as the subject matter allows and be designed in a way that helps readers understand the document.

Who can forget the scene from an old Marx Brothers movie when Groucho and Chico literally hopped through a contract, poking fun at the writing style known as 'legalese':

It says, "the-uh-the first part of the party of the first part, should be known in their contract as the first part of the party in the first part, should be known in this contract - look. Why should we quarrel about a thing like this? We'll take it right out, eh?"

They proceed to discard most of the contract.

People can readily recognize what plain language is not. In response to my Bill, I asked for and received input from the public including examples of unplain language. One woman from Salmon Arm, B.C. wrote and pointed out that the Lord's Prayer contains 56 words, the Ten Commandments 297, the American Declaration of Independence 300, and a Common Market Directive on the export of eggs, a whopping 26,911. She forgot, however, to include the *Canadian Income Tax Act*. This was the most common example sent in by supporters of my Bill.

I quoted in the House of Commons from Section 119 of the *Income Tax Act*, Part 1, which deals with 'averaging' for farmers and fishermen. Try reading it without getting blue in the face. It takes two pages of legalese to deal with the simple situation of a farmer or a fisherman whose income may vary from year to year and, therefore, as a matter of tax fairness, can average it for tax purposes over a four year period.

"Where an individual's chief source of income has been farming or fishing for a taxation year (in this section referred to as the 'year of averaging') and the 4 immediately preceding years for which he has filed returns of income as required by this Part (in this section referred to as the 'preceding years'), if the individual, on or before the day on or before which he was required to file a return of his income for the year of averaging, or on or before the day on or before which he would have been required to file such a return if any tax had been payable by him for the year of averaging, files with the Minister an election in prescribed form, the tax payable under this Part for the year of averaging is an amount determined by the following rules:"

a)ascertain the amount, if any, remaining after deducting from the income for each year of the averaging period (which in this section, means the year of averaging and the preceding years) all deductions permitted for that

year by Division C, except the deductions permitted by section 109 or 110.4 or any amount in respect of a loss for the 3 years immediately following the year of averaging or any amount in respect of a loss deducted under this paragraph from income for a preceding taxation year in the averaging period;

This goes on for another page and one-half and could only be read by a fisherman with a certified general accountant's qualifications.

A letter writer from Mississauga, Ontario pointed out that the 1984 General Tax Guide was a simple booklet but the latest Guide, which they enclosed, was "one of the biggest and probably costliest pieces of gobbledygook produced by the government. It weighs just over half a pound and costs \$1.90 for postage alone."

It is a principle of our system that ignorance of the law is no excuse for breaking it. So it follows that if people are to be responsible, they should be able to understand the law. Legislators should be required to say what they mean and the public should be able to clearly understand the full intent of government action without help from a dozen lawyers.

Indeed we know that there are 4 million Canadians who have the skills to read materials only when they are simply-worded and well laid out. Another 2.9 million Canadians have difficulties no matter how simple and well laid out materials are. If we want to foster respect for and knowledge of the law and our democratic institutions, we have to make the workings of our government directly accessible to as many people as possible. So, we have people who do not read and write well and we have excellent readers who are, nevertheless, confronted by archaic and convoluted language. In a society where information is power, our aim must be to promote people's ability to be informed.

It is not surprising that in Canada there is a growing movement for plain language. My own Province of British Columbia has a Plain Language Institute funded by the Provincial Attorney-General and the Law Foundation of B.C. There was a conference on plain language held this year in Toronto. There is a private newsletter, *Rapport* edited by Cheryl M. Stephens, which updates recent developments and reviews books and articles. For example, Ms. Stephens asked the various officers of legislative drafters whether they had a lexicon of English equivalents for Latin phrases. She gives

examples of phrases like *per diem* (daily or for each day) and *prima facie* (apparent). There are centres in other parts of the world. The Plain Language Centre of Australia offers seminars to introduce plain language to lawyers (a good start) and is redrafting mortgage documents for financial institutions.

The Yukon has enacted a plain language law. Recently, the Province of B.C. did the same – the object is to make laws easier to read and gender neutral and to begin the process of redrafting statutes.

Alberta has a law requiring financial documents to be in plain forms in response to demands from investors. As well, Alberta's *Hansard* of August 21, 1986, records the speech of a Mr. Jonson: "Mr. Speaker, the purpose of Bill 204 is to put in place a review procedure designed to endeavour to ensure that provincial legislation is as understandable and direct as possible." (p. 1250) My own Bill follows that same thrust.

In the Canadian House of Commons any bill, including Government bills are tabled for first reading and printed. Then they get second reading which is approval in principal. At this stage they are referred to a Legislative Committee which calls witnesses and examines the bill, clause by clause. At this stage my Plain Language Bill intervenes in the process. A Committee called the Language Review Committee consisting of three members from each political party represented in the House of Commons is appointed by the Speaker of the House at the beginning of each session of Parliament. The Speaker also appoints the Chair. Therefore, there is in place a group of legislators ready to serve. When a bill passes second reading in the House it is immediately referred to the Language Review Committee. Also, every person or entity which is authorized by an Act of Parliament to make a statutory instrument is required to refer the instrument to the Committee. The bill and the statutory instrument thus get examined for plain language and recommendations for changes in drafting are made *before* the bill passes committee or before the statutory instrument is officially enacted. Note that the politicians and not the officials are examining specifically the wording of the bills and the mandate is simply plain language.

I do concede a huge exemption by allowing the Government House Leader or the maker of the statutory instrument to exempt them from the process. Frankly, this is a sweetener to get the Government to agree to my

Bill, which is, after all, a new untried process in a very conservative system. Besides, I am confident that after the people get used to the process, the Government will find it has nothing to fear and will not use the exemption.

Under the reformed rules of the Canadian House of Commons which attempt to give more power to private members, my Bill could become the law of Canada. To do that, of course, it would have to win a mini-loto; that is, a draw to be chosen as a possible votable measure. Even if drawn, I would have to convince a committee of MPs that it was sufficiently important to be voted on.

I am not worried. There is nothing that can in the end stop a good idea. I was in the Canadian House in 1979 when Freedom of Information was being debated and it was clear that it was only a matter of time before this initiative of MP Gerald Baldwin would eventually become law.

The same is true for plain language. Just this year the federal and provincial ministers of Consumer and Corporate Affairs met and released a *Statement on Plain Language* to promote plain language in consumer contracts on the basis that "businesses providing clear information to consumers will be the ones to develop loyal and satisfied customers, that business efficiency will increase, that plain language makes it easier to train staff and reduces consumer complaints." As well, I noted that a private Member, Ms. Catherine Callbeck on November 27, 1991 introduced an amendment to a financial bill requiring a company to use plain language in all contracts relating to financial institutions. It did not pass, but plain language got wide support in the House when Members debated her amendment.

Napoleon once said of the Constitution he drafted that he wanted every peasant in every village in France to be able to read the document and understand what it meant. A modern democratic society demands the meaningful participation of individual citizens. Citizens want government to be more open and more accountable. Plain language will help to achieve these goals.

Clearly there is a growing movement for reform. We will have to find ways of shifting attitudes or rewarding government and private sector officials for being clearer. We will also get better drafted and more comprehensive plain language bills, of which mine is only a beginning. Plain language is an idea whose time has come. 