

# A Crash Course in Plain Language Legal Drafting

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## The Laws of Plain Language Legal Drafting

- 1 Use 1<sup>st</sup> and 2<sup>nd</sup> person or simple names.  
Use “they” as singular pronoun.
- 2 Write in the active voice.
- 3 Don't use nouns made from verbs.
- 4 Organize short, concise sentences.
- 5 Use positive words and constructions.
- 6 Choose words that suit your reader.
- 7 Don't use *shall*: use *may*, *will* or *must*.

### 1 Use 1<sup>st</sup> or 2<sup>nd</sup> person pronouns or simple names for participants.

1<sup>st</sup> person: I or we  
2<sup>nd</sup> person: you

Define “you” and “we” if necessary.

3<sup>rd</sup> person: they  
Smith, James, Henderson  
Renter, Owner, Manager  
Bank, Borrower, Guarantor

- For value received, the undersigned hereby promises to pay...  
To repay my loan, I promise to pay...
- The statement for professional services enclosed herewith is, in all likelihood, somewhat in excess of normal expectations. In the circumstances, it is appropriate to take this opportunity to provide an explanation of the causes therefor.  
  
The bill I am sending you with this letter is probably higher than you expected, and I would like to explain why.
- This is to acknowledge your letter of recent date, the contents of which have been duly noted. In the third paragraph thereof, it states...

I have considered your letter of June 13. You say, in your third paragraph,...

**1(a)** Accept the use of “they” as a singular pronoun where no reasonable alternative exists.

... will provide education to help each child realize their potential...

### **Be certain that the antecedent for the pronoun is obvious.**

#### *Examples of alternatives*

##### **...from the BC Commercial Arbitration Act**

On an application under subsection (4), the arbitrator may amend the award if the arbitrator considers that the amendment will clarify it. *[Repeats the noun]*

Before an arbitration hearing commences, the arbitrator may, on the application of a party, order another party to produce any documents that the arbitrator considers are relevant to the arbitration. *[Repeats the noun]*

##### **...from the BC Interpretation Act**

A person reaches a particular age expressed in years at the start of the relevant anniversary of *his or her* date of birth.

## **2 Use active voice instead of passive. Who is supposed to do what to or for whom?**

Passive voice focuses on the object receiving the action rather than on the subject carrying out the action. It can make the identity of the actor ambiguous.

- When a complaint against you has been received, a file will be opened...

When your client has filed a complaint against you, the Competency Department will open a file ...

### **Passive voice:**

- Identify the Noun and Verb Phrases.
- Classify the Main Verb as Linking or Action: Action Verbs describe an action of the mind or body. Linking Verbs are forms of verb *to be*.
- Locate the Real Subject of the Sentence: Find the stem or root of the verb. Ask “Who performs this action?” Bring Performer to front of Sentence.

#### **❖ *Passive voice verb***

<b>Object</b>	<b>Acted Upon</b>	<b>by (unnamed actor)</b>
Lawyer	was suspended	[by a Discipline Committee? by the Benchers?]

#### **❖ *Active voice/Legislative sentence***

<b>Actor</b>	<b>Acts Upon</b>	<b>Object</b>
The Committee	suspended	the lawyer.

- If this note is secured by a motor vehicle, boat or aircraft, property insurance on the collateral is required.

If a motor vehicle, boat, or aircraft secures this note, the borrower must maintain property insurance on the collateral.

### 3 Don't use nouns made from verbs: turn them back into verbs.

Nominalizations [derived nouns] replace personal nouns plus verbs removing the participants and the action. They act like passive verbs – needing no subject. Change to active verbs.

- The refusal of ...  
If you refuse ...
- The failure to ...  
If you fail to ...
- Prior to the completion of ...  
Before you complete ...
- Consideration of this matter should include...  
Please consider...
- An application may submitted by mail if...  
You may apply by mail if...
- Upon written request by the individual...  
When you ask in writing...

### Cosmic detachment comes from ignoring Laws 1-2-3

There were in excess of 300 lost employee days.  
Our lost employee days were in excess of 300.  
Lost employee days exceeded 300.

*Active and with a stated actor:* Employees missed more than 300 days of work.

### 4 Organize sentences to be concise; keep sentences short.

Move qualifiers, provisos, or exceptions to the end of the sentence or to separate sentences.

Avoid wordiness. State the action then list the conditions. Don't try to cover all the possibilities.

- Subject to the terms and limitations set out in these Provisions should you become Totally or Partially Disabled while your Insurance is in force, we will pay you monthly, in arrears, the benefits set out in this Part.

We will pay benefits to you monthly, in arrears, subject to the provisions of this policy.

Keep to the natural subject-verb-object order.

*Intervening phrase separates subject-verb-object:*

**The decision** of Ontario Attorney-General Howard Hampton to prefer an indictment against police Constable Brian Rapson on a charge of attempted murder, after a judge, in a full and open hearing, found an entire absence of evidence on which to base such a charge, **is utterly reprehensible.**

If different requirements have different conditions, set out a table:

<u>Type of applicant</u>	<u>Who must sign</u>
Partnership	One of the partners
Corporation	Officer
Association	Member who is an officer

## 5 Rewrite negatives as positives. Avoid layered negatives.

*Prefixes* un- in- mis- il-

*Words* none, unless, until, fail, exempted, unlawful, invalid, void  
 limitation prohibition unless until absent  
 ambiguous avoid contrary delinquent deny  
 doubt except forbid lack minimum  
 no less than no more than no smaller than sanction transgression

*Concepts* testimonial privilege negligence legally blind  
 constructive (possession, etc.) *volenti non fit injuria*

Isolate exceptions and conditions.

- Don't do any more than is necessary. *Instead:* Do only that which is necessary.
- This policy shall not be valid unless countersigned by our authorized representative.  
This policy becomes valid when countersigned by our authorized representative.
- Should you fail to receive a billing notice within five days of a premium due date, you should nevertheless make a conditional payment to the RIA within the Days of Grace not less than the amount of premium that you were billed on the preceding premium due date.

You must send your premium payment within 31 days of its due date. If you have not received our bill at least five days before the due date, you must send us a conditional payment equal to the last premium you paid.

## 6 Carefully choose words that suit your reader.

Avoid legal jargon.

Use only necessary technical terms.

Speak in the polite language you would use to express yourself at the dinner table.

*Robert Benson's definition:*

A genuine, technical, term of art has an uncontroversial core meaning that cannot be conveyed succinctly in any other way.

## Proven problem words in lawyers' bills

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paralegal	litigation
entitled	parties
legal fees	interim application
disbursements	examination for discovery
substantial disbursements	order
deliveries	damages
registry searches	settlement
out-of-pocket	appeal
enforcing	conflict of interest
contingent fee	diverge
conduct of a lawsuit	heirs, executors, legal representatives, and
issuance of a writ	successors

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## 7 Don't use *shall*: use *may* or *must*.

Use "must" to impose a duty.

Interp. Act: "must" is to be construed as imperative

Interp. Act: "shall" is to be construed as imperative

Use "may" to confer a power or a right, or to indicate that there is a choice.

Interp. Act: "may" is to be construed as permissive and empowering

Use "will" to express future action.

Interp. Act: "will" ... as defined in the Wills Act

### What are the meanings here?

The architect shall make changes to the drawings before May 10, 1997.

The architect must make changes to the drawings before May 10, 1997.

The architect will make changes to the drawings before May 10, 1997.

The architect may make changes to the drawings before May 10, 1997.

## Organizing information

### Serve the Reader

- Tell your reader what to expect.
- Organize from the reader's perspective.
- Present ideas and information in an order that is logical for the reader.
- If different requirements apply to different users, organize separate sections for each user.

## Be Obvious

- Make the organization easy-to-follow and intuitive.
- Make the organization apparent visually by using indents and lists.
- Make transitions between ideas and concepts plain and obvious.
- Organize the discussion around 3-5 major concepts – reconceptualize when necessary.
- Put the topics in an order that suits your audience and purpose.

## Structure

- Make sure you have a self-explanatory title, an obvious introduction, a structured body and a summary conclusion.
- Remember the document will be used for reference. Provide access tools.
- A series of procedures or duties should be set out in chronological order. Set a logical pattern for topic development and stick to the sequence.
- Use short paragraphs (less than five lines of text) organized by topic.
- Use parallel forms of grammar for equivalent ideas.
- Break lists down to fewer than 7 related items – reconceptualize if necessary.

## Ways of organizing information:

### Alphabet

Culturally agreed/learned system  
Extensive, diverse information

### Category/Classification

Kind/Type  
Concepts  
Similar Importance/Priority

### Time/Chronology

History  
Duration/Length  
Frequent/Infrequent

### Comparisons

Location/Perspective

Diverse

Distributed

Grouped

Partisan

Continuum

Magnitude

Priority

Assigns value or weight

Comparisons

Lay-out, design, and typography can be obstructions or aids to communication.

Here are some basic pointers for making your documents legible:

- Use normal, standard punctuation.
- Use minimal capitalization.
- Use 10 or 12 point type height.
- Use at least 1.25 line spacing.
- Provide adequate margins for note-taking.
- Use a ragged right margin rather than justification.

## Headings

Make your main headings stand out from the text but keep them legible.

- Use bold type or set headings into margin (hanging indents).
- Use a different style for each level of heading.
- Don't combine bolding with underlining or italics.
- Don't center headings or titles.

Use "hanging indents" to provide more white-space as a framework for information and to show categories and hierarchies. This is a hanging indent:

### **Service of documents**

#### *Service by facsimile*

Documents may be served by facsimile between the hours of 9:00 a.m. and 4:30 p.m. only.

## **The Ten Commandments for Plain Language Drafting**

*From The Decline and Fall of Gobbledegook, 1991 The Canadian Bar Assoc./Canadian Bankers' Assoc.*

1. Consider your reader and write with that reader's point of view in mind.
2. Write short sentences.
3. Say what you have to say, and no more.
4. Use the active voice.
5. Use simple, "everyday" words.
6. Use words consistently.
7. Avoid strings of synonyms.
8. Avoid unnecessary formality.
9. Organize your text:
  - in a logical sequence,
  - with informative headings, and
  - with a table of contents for long documents.
10. Make the document attractive and designed for easy reading.

## Lists

### 1. Composite:

aforementioned  
 aforesaid  
 foregoing  
 forthwith  
 furthermore  
 hereafter  
 hereby  
 herein  
 hereinafter  
 hereinbefore  
 hereof  
 hereon  
 hereto  
 hereunder  
 inasmuch as  
 insofar as  
 notwithstanding  
 thereby  
 therefore  
 therein  
 thereinbefore  
 thereafter  
 whereas  
 whereupon

### Try this simpler word or phrase:

these  
 already described  
 this; these; or, to give up; waive; abandon  
 immediately, as soon as possible, by  
 also  
 after; afterwards  
 [not needed]  
 in this agreement, in this clause  
 below, in this agreement  
 above, in this agreement  
 of this agreement  
 on this day  
 to this agreement  
 under this agreement  
 because  
 to the extent  
 despite  
 by; by the [document]  
 fore it, of it, so; as a result  
 in; in the [document]  
 before; previously  
 after; afterwards  
 while  
 at; after; then; when

### 2. Compound:

adequate number of  
 as a consequence of  
 as from  
 as a means of  
 as prescribed by  
 at that particular time  
 at that point in time  
 at the time  
 at the present time  
 at the time when  
 by means of  
 by virtue of  
 compared with  
 does not operate to  
 due to the fact that  
 duly incorporated  
 during such time as  
 for a period of  
 for the duration of  
 for the reason that  
 in accordance with

### Simpler:

enough  
 because of  
 on; from  
 to  
 under  
 then  
 then  
 when  
 now  
 when  
 by  
 by, under  
 than  
 does not  
 due to, since, because  
 included; incorporated  
 while  
 for  
 during  
 since, because, for  
 by, under

in an effort to	to
in case of	if
in many cases	often
in order to	to
in relation to	about, concerning, towards
in respect of	for; about; to; of
in some instances	sometimes
in the course of	in, while, during
in the event that	if
in the interest of	for
in the majority of instances	usually; often
in the nature of	like, similar to; about
in the near future	soon
in the State of	in [name state]
is able to	can
is authorised	may
is binding upon	binds
it is the duty of [x]	[x] must
may at all times;	
may at any time	may
no later than	by
notwithstanding the fact that	even if, despite
on behalf of	for
period of time	time
pertaining to	about, of, on
prior to	before
provided that	if
pursuant to	under, by, following
read and construed as	read
relating to	about, on
subject to	if, as long as
subsequent to	after
such other	another
sufficient number of	enough
the case at bar	this case
the instant case	this case
the manner in which	how
the said	the; that; those
the same	[use preposition or pronoun]
to make payment	to pay
until such time as	until
whether or not	whether
wholly or partially	in whole; wholly; in part; partially
with a view to	to; to try to
with reference to	about, concerning
with regard to	about, for, on
with respect to	on, about, for
with the exception of	except for, excepting
without prejudice	not meant to be used as evidence
<b>3. Archaic or legalism:</b>	<i>Try this:</i>
absolute and unfettered discretion	[may]
accordingly	so, as a result
annexed	attached
antecedent	previous

any security or any part thereof	all or part of a security
applicable	should apply; which applies
approximately	about
assistance	help; aid; support
attempt	try
attributable to	due; because of
beneficial	useful; helpful <i>[not for beneficial ownership]</i>
cease	stop; end
commence	begin; start
compensate	pay; repay; to make up for; offset
consequently	so; as a result
considerable	important; much; significant
correspondence	letter
contiguous to	next to
deemed	considered as, [X] is ...
demise	rent; death; lease; convey
determined	decided
divers	several, various
effectuate	carry out; do
elucidate	expand upon; make clear; clarify
estate or interest	interest
execution	signing/signature; completion
expedite	speed-up; hurry; quicken
expiration	end
facilitate	help; ease; make easier
frequently	often
from time to time	[may]
he was aware of the fact	he knew that
inform	tell
indicate	show; suggest; prove
inquire	ask; question
instrument	document
jointly and severally	together and separately
last will and testament	will
obtain	get
of the one/other part	[nothing is needed]
parameters	limits; guidelines; boundaries
proviso	condition
recognizance	agreement; promise; bail
retain	keep
severally	separately
subsequently	afterwards; next; later
such	that; this; or, other pronoun
terminate	end; finish
transmit	send
utilize	use
visualize	see

*4. Not English:*

ab initio  
arguendo  
carte blanche  
cestui que trust

*Try English:*

from the beginning  
for the sake of (or during the course of) argument  
unconditional authority, full discretion  
beneficiary

circa	about
de facto	in reality; in effect; actual; existing but unofficial
ex post facto	after the event, retrospectively
in pari passu	equally; without preference; in equal
in toto	completely, as a whole, entirely
instantanter	instantly
inter alia	among other things/people
ipso facto	by the fact itself, therefore
mutatis mutandi	varied according to the circumstances; the necessary changes being made; with things changed that must be
per	each
per annum	by the year, yearly
prima facie	at first appearance, on the face of it, at face value
precis	summary, outline
prima facie case	a case to answer
post hoc	after this
pro	for; in favour of
pro rata	in proportion to; according to a certain rate
pro tem	for the time being, temporarily
vice versa	conversely, the order reversed, the other way around
vide	see

*5. Repetition*

*Find a substitute, chose one or use*

all and singular	
all and every	
any and all	
bind and obligate	
cancel, annul, and set aside	
covenant and agree	agree
do and perform	
give, devise and bequeath	give
liens and encumbrances	
made and entered into	made
null and void	no legal effect
pay, satisfy, and discharge	
possession, custody, and control	
remise, release, and	
forever quitclaim	release
rest, residue and remainder	rest; all other property
right, title and interest	interest
signed, sealed and delivered	signed by [name] and taking effect on [date]
transfer and assign	give; sell
uncontroverted and uncontradicted	