Plainer Legal Language — Untangling Complex Subordination and Restrictives in Acts[1]

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A brief stylistic analysis of the language of acts shows that this core genre of legal prose is significantly different from other prose forms and requires special treatment to make it more readable to the general public. Two main areas of concern (subordinations and restrictive post-modifiers) are first related and then studied to derive guidelines for improving readability without sacrificing meaning. The guidelines include methods for separating parts of requirements, changing the order of the information imparted, and using more marked structures to signal the information pattern.

Introduction

The Ten Commandments Again

THE MOVEMENT TOWARDS PLAIN LEGAL LANGUAGE has emphasized the same general topics that many teachers of effective writing have been using for decades. As an example, under "Legal Style" Block (1983) advocates the following "Techniques to Use" for effective legal writing:

1. Place words in their best order.
2. Make lists.
3. Use parallelism.
4. Choose connectors carefully.
5. Match nouns and verbs.
6. Prefer the active voice.

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7. Use concrete language.
8. Keep your sentences clear.

The pitfalls she identifies include the old topics of jargon, vague referents and problem words.

In addition, a recent report published by The Canadian Bar Association (1990) includes the following set of guidelines as "The Ten Commandments of Plain Legal Drafting":

1. Consider your reader and write with the reader's viewpoint 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:
   (1) in a logical sequence,
   (2) with informative headings, and
   (3) with a table of contents for long documents.
10. Make the document attractive and designed for easy reading.

The ten guidelines used by Redish (1979) and the thirteen discussed by Charrow and Erhardt (1986) for drafting legal documents say much the same thing. They do, however, hint at some of the underlying complexities of legal writing with their instructions to "Break up long sentences," "Untangle complex sentences" and "Untangle complex conditionals." See Appendix A for the advice from these authors.

The lists could go on, but it should be clear that those advocating plain legal writing have little more to offer than the general platitudes of "effective writing" that have been in vogue since Sir Ernest Gowers' works on plain English (1948, 1951). That is, the guidelines for producing effective legal writing are substantially the same as those for all other forms of writing. We might conclude from this that legal writing is essentially the same as the writing we find in letters, reports and other documents. Yet even a

cursory look at the genre of legislation should make us realise that such a conclusion is invalid:

(1) **7.** (4) Subsection (3) does not apply if the date of increase set out in the notice is the day before the day that is twelve months after the first effective date of the first order under this Act that increases the maximum rent for a rental unit in the residential complex by more than the guideline.[2]

(2) **95.** (2) If a party to an application is found guilty of an offence of furnishing false or misleading information under this Act or is found guilty of fraud, perjury, forgery, uttering a forged document or false pretences under the *Criminal Code* (Canada) respecting the application after an order has been made on the application, the Chief Rent Officer designated by the Director, or his or her delegate, shall reconsider the matter and may affirm, amend, rescind or replace the order and subsequent orders and notices of carry forward affected by it.

As this sort of prose is clearly substantially different from that studied by Gowers in creating his general guidelines, we would be wise to reconsider whether the similar guidelines still being advocated apply in this genre — especially as Gowers himself clearly warned against such an application of his work. The two examples above are well organized in logically-presented sentences, have no noun or synonym strings, have no unnecessary contents or words, have an appropriate style and tone, are parallel in structure and are well organized in their document. Yet they are still difficult to read.

They also have passive forms ("set out" and "affected") and a powerful negation, but these are perfectly appropriate here. The nominal groups cannot be replaced by adjectives, and we cannot use pronouns (see later discussion) or diagrams to improve readability. Also there is no over-specificity, the vocabulary is appropriate for this purpose, and the language is concrete. Yet these examples are still difficult to read.

These are only two brief examples, of course, but it would appear that many of the ten commandments advocated for plain legal writing are far

[2] Examples in this paper are taken from Bill 121 "An Act to revise the Law relating to Residential Rent Regulations", 2nd Session, 35th Legislature, Ontario 41 Elizabeth II, 1992.

from being helpful guidelines — and indeed may be inappropriate — for this genre of legal writing. While they may have some application for some other forms of legal writing (although that, too, perhaps requires re-examination), we cannot expect to rely on these generalities if we are to make acts more readable.

Some of the commandments do have their uses for this genre, however, although they are far too vague to be of real practical value. The injunctions to break up long sentences, untangle complex sentences, and untangle complex conditionals are certainly strategies worth considering. But how are we do that for this form of writing? And what legal effect might that have when we have two or more sentences under the same identified item in the act? These are the questions we must seek to answer in specific detail if we are to provide substantive advice for those seeking to make the writing of acts more readable. First we need to place the advice discussed here in a wider perspective.

Advice on Legal Drafting

Several general books are available on clear legal writing in addition to those already mentioned. Some (e.g. Ray and Ramsfield, 1987; Terputac, 1989) concentrate on specific advice about what words to use or not to use, while others (e.g. Biskind, 1971; Dickerson, 1986) give advice of a broader nature, providing details about specific types of legal documents. Wydick (1978) has also applied the "Gowers" principles to general legal writing, extending them to include tabulation; and Charrow and Erhardt (1986) also provide useful advice on clear legal drafting. Work by Danet (1980), Redish (1981), Goldfarb and Raymond (1982) and Dick (1985) also contribute to the subject. Dworsky (1992) has produced a useful "Strunk and White" style booklet for legal prose. Flesch (1979) and Millus (1983) discuss the use of readability formulas for legal writing, although there have been strong reservations regarding their use in any technical communication (e.g. Redish, 1981; Redish and Selzer, 1985).

In Canada, Driedger (1982) has produced a voluminous text for legal drafting, and Perrin (1990) has written a more general text on the subject. Rooke (1991) is unconvincing in the use of the "Gowers" principles as guidelines in legal contexts, as is the leaflet published by The Plain Language Institute of British Columbia (1992). Fernach (1990) has produced a general, or generally helpful guide for legal drafting in the French language in Canada, and Canada's Legal Information Centre (1990) has published a useful general

discussion and annotated bibliography. Krongold (1992) makes a compelling case for legislation to be readable; while stressing organization, referencing, word use and document design, she does include some discussion on sentence structure.

The desire to make legal writing more accessible to members of the general public was the impetus for the "Plain Language" movement, which is well summarized for the USA by Falsenfeld (1981–82) and for Canada by Fingerhut (1981–82). For a detailed account of this movement, also see Mellinkoff (1982), Hathaway (1983), Redish (1985) and Dykstra (1986); Dykstra recommends Blake et al (1986), but this unpublished work is not available.

Mellinkoff (1963) notes that there has been a paucity of linguistic analysis of acts as opposed to other forms of legal expression. In spite of the growing plain language movement in the intervening years, Tiersma (1993), in a review of anthologies on forensic linguistics and judicial language by Levi and Walker (1990) and Rieber and Stewart (1990), supports Mellinkoff's contention with the claim that "The substantive law [the legal rules themselves] have received little attention from linguists." He does note, however, the use of speech act theory (e.g. Searle, 1969) in statutory interpretation by Sinclair (1985), Solan (1990) and Miller (1990). Also Bowers (1989) provides a sound basis for legal language (including acts) from the anthropological perspective of Malinowski (1935) as developed by Halliday (1978, 1980) and others within a framework of systemic-functional grammar. In his analysis, Bowers discusses some of the complexities of compounding and multiple modifications in his chapter on sentence structure and legislative expression. Definitions and requirements in acts are also analyzed by Jordan (1994b).

Clearly, though, there is much more work to do in the linguistic analysis of legislative language. Although we might think from the weight of advice offered on legal writing that this genre is difficult to read because of word choice, that is not the greatest source of reading difficulty, as we can see from Examples 1 and 2. Redish (1979) notes, "The complexity of the sentence structure is a much greater barrier to understanding traditional legal writing than the technical vocabulary ....The real need is to untangle the long and convoluted sentences."

That is what this paper sets out to achieve. To do this, however, we need to recognize and study legal legislative writing as a distinct genre rather than simply assuming that it is like all other forms of English prose. Then we need to derive specific advice about how to make it clearer — not by trying to force the "Gowers" principles of plain writing to make them fit

this genre, but by studying the legal and linguistic needs of the genre itself. In order to follow this approach, we first need to understand the genre of legislative writing.

Legal Writing and Acts

Legal writing has evolved to meet the special need for prose which must not only be complete and unambiguous, but remain unambiguous even under hostile scrutiny by the most astute legal and linguistic minds. See Crystal and Davy's (1969) chapter on legal writing for a more detailed discussion, and Jordan (1995a) for an account of the evolution of the genre of Canadian acts that concentrates on sentence structure and complexity. While ideally legal writing should also be readable (though not necessarily at first reading), this must take second place to the legal need to convey exactly the message intended.

The general edicts for plain language — such as those included in lists of advice cited here — may have some application for general legal texts (such as legal letters, judgments, and some contracts), where it may be possible to personalize the discussion to some extent. That is, the text can tell *you* the reader what *your* rights and obligations are in a contract between two people, or what *we* the insurance company are offering *you* the insured, or what *they* the contractors must do or provide as third parties to a contract. In claims and affidavits, the general terms "plaintiff" and "defendant" are handy devices, although even these can be become unclear when the defendant counterclaims (i.e. is plaintiff by counterclaim against the plaintiff, who becomes defendant by counterclaim!). Even with such complications, the protagonists in many legal documents are specific people who are generally defined clearly at the outset of the document. There may be difficulties in avoiding the sexist pronouns "he" and "she," of course, but as we have at least 50 ways of avoiding them (Jordan and Connor, 1987), they can be overcome.

Acts, and other legal documents, are quite different, however. An act is a written statute which lays down the law on a specific topic, and it is applicable to all people involved with that topic within the jurisdiction of the act. Thus, for example, an act relating to Residential Rent Regulation in Ontario applies to all tenants and owners of rented property in Ontario —not just one or two people. Such acts are not written just about (and thus solely addressed to) tenants. They involve many different people: tenants and owners of course, but also the Registrar, rent officers, the Chief Rent

Officer, the Director, building inspectors, judges and many others including former tenants and other individuals and corporations who may be involved with a procedure required by the act. As we cannot have several versions of the same act addressed to the many people affected in different ways by it, acts cannot be written in the second person. Nor can the first person involving the province or the crown be used at all effectively as that would involve an unnecessarily complicating step (e.g. "*We require that* tenants shall ..." instead of simply "Tenants shall ..."). Thus acts, apart from definitions (see Jordan 1994b), are lists of rights, obligations and instructions which various people legislated by the act may or shall (or shall not) claim or meet under various circumstances.

Acts are the very basis of law, and every effort must be made to ensure that, while meeting their essential legal needs, they are as accessible as possible to those whose lives are significantly affected by them. Acts relating to renting and rent regulations are prime examples. Literally millions of people are affected by the provisions of these acts, yet many of the items in these acts are extremely difficult to read — even after detailed study. Thus a recent act dealing with residential rent regulation has been chosen as the basis for this study. Specific linguistic areas contributing to poor readability in this act have been chosen as the basis for this study. From these we will derive guidelines of special relevance for the improvement of readability in this genre. This paper concentrates on perhaps the most intractable problems in making acts more readable: complex subordinations and restrictive clauses.

Basic Sentence Structures in Acts

As noted earlier by Redish, reading comprehension in much legal writing is caused by complexity in sentence structure rather than by technical vocabulary. The often horrendously complex sentences we find in acts (see Examples 1 and 2) are the result of additions to quite basic patterns of sentence structure, and it is informative to understand these basic patterns before we embark on an analysis of these additional complications. We have long been aware of the basic structures of English sentences (Fries, 1952), and Hornby (1976) has identified 25 verb patterns with variations. Unfortunately no such analysis for legal writing has yet been presented as a basis for understanding the prevalent sentence structures of acts. We can, however, recognize the basic patterns and the use of actives, passives and intransitives as the central structures around which the complexities are built.

Sentence structures in acts generally follow the main need to say what specified people may or shall do under certain conditions. This is typically expressed in the active voice:

(3) **37.** (3) If a *landlord* who has received an *inspector's* work order is not satisfied with its terms, the *landlord* may, within fifteen days of the giving of the order, apply to the *Chief Rent Officer* for a review of the work order.

This example shows the need for discussion in the third person, as three different types of people are mentioned in this item. The basic structure is the main clause "The landlord may apply ... for a review of the work order." and around this are added the main condition as the initial subordinate clause, the time restriction, and the person the landlord has to apply to. Two active forms ("has received" and "apply") are used here, together with the non-transitive "is."

The passive voice is also found in main clauses of statements and is extremely common in post-modifying -ed clauses. An example of each is included in:

(4) **13.** (4) An application under this section *shall be made* at least ninety days before the effective date of the first intended rent increase *referred* to in the application.

This item has no subordinate clauses, and its complexity is entirely due to the long noun phrase "the effective date ... application," which contains the restrictive post-modifying -ed clause "referred to in the publication." All -ed clauses are tenseless passives, and this one is also agentless. The main clause of this item is also in the passive voice ("shall be made"), and again this is agentless. The addition of the agent could have raised problems as "by the landlord" might be construed as being unnecessarily restrictive: we might have to use "by the landlord or the landlord's agent" or "by or on behalf of the landlord" to include other possibilities — and even then we would have to include *all* possibilities. By saying less, the agentless passive actually means more, as it allows wider options. The active voice, of course, would have to include all possible options for the agent to have the same broad legal effect as the agentless passive; for this reason the active would be ill-advised in such sentences.

The difficulty of inclusivity of the agent is seen in the following example, which includes active-passive combinations in a complex sentence:

(5) **55.** A landlord who *makes* an application *shall,* within ten days of filing it, *give* a copy of the application to any person who *is* directly *affected* by the issues *raised* in it.

In this example, the active voice is used within the first relative clause ("who makes an application") and for the main verb ("shall give"), whereas the final relative clause contains a present passive ("is ... affected") including another passive -ed form ("raised") as part of the inanimate agent. Almost all post-modifying -ed clauses in acts are non-restrictive.

The active voice only works adequately in acts when the agent (as subject of the sentence) is fully defined in a legal sense by that subject. Does the sentence of Example 5 also apply if the landlord's agent or solicitor does the filing on behalf of the landlord? Probably — though we might wonder whether the passive is not legally more correct: "Whenever an application is made, a copy must be given within ten days to any person directly affected by the issues raised in it." The general guideline proscribing use of the passive voice is clearly one which should not be accepted without reservation for the genre of acts and other related legal genres. A sadly typical injunction to this effect (in the passive voice of course) is:

Passive Undesirable

(2) Restraint should be exercised in the use of the passive voice. (Uniform Law Conference Drafting Committee, 1992)

Occasionally descriptive items about the act, or parts of it, or various instruments or actions relating to the act are also included:

(6) **37.** An application under subsection (3) *operates* as a stay of the inspector's work order unless a rent officer *orders* otherwise.

Here we have a clearly defensible use of the active voice, as presumably only the rent officer has the authority to affect the operation of the application in this way. For this, the agentless passive "... unless a contradictory order is ordered" would have been too broad, perhaps implying that the landlord or tenant could issue such an order. The main structure of this item is to provide descriptive information about a legal instrument within the act, and the non-transitive form "operates" is used to accomplish this.

These, then, are the basic sentence patterns around which extremely complex rights, options, instructions, requirements and descriptions are

woven to create the various statements of the act. We will now seek to derive ways by which even the most complex statements can be made more readable without making any substantive changes to the information imparted. In some cases, as perhaps for Example 5, we might even be able to suggest some clarification of the legal message — as well as making it more readable.

Untangling Subordinations

Charrow and Erhardt's Guideline 4 is to "Untangle Complex Conditionals" and this section now provides detailed analysis as to how we can do that. The discussion here is broader than the conditionals Charrow and Erhardt mention. Although conditionals are by far the most common form of subordination in acts, other types do occur, and the readability of these too can be improved in similar ways.

The Connection Between Conditionals and Restrictive Clauses

In this analysis, we will concentrate on how we might improve the clarity and precision of statements in containing first complex subordinations and then complex noun phrases. Many of the ways of paraphrasing complex noun phrases, including the connection between conditionals and noun phrases, are identified in Jordan (1993, 1994a); a more theoretical explanation of the cohesion within and between noun phrases is offered in Jordan (1995b). Although conditionals and complex noun phrases are totally separate syntactic strategies, there is a semantic connection between them which we can sometimes use to improve the readability of a statement. The following item is a little hard to follow:

(7) **131.** The production by a person prosecuting a person for an offence under this Act of a certificate, statement or document that appears to have been filed with or delivered to the Ministry by or on behalf of the person charged with the offence shall be received as evidence that the certificate, statement or document was so filed or delivered.

There is only one simple clause here, which is essentially the non-transitive "The production of a certificate is evidence of its filing." It is the complexity of the noun phrases which makes it difficult to understand. As the subject of this sentence fills the first 43 words, we might seek to make the statement more readable by using an "if"-conditional clause:

> If a person prosecuting a person for an offence under this Act produces a certificate, statement or document that appears to have been filed with, or delivered to, the Ministry by, or on behalf of, the person charged with the offence, then that presentation shall be received as evidence that the certificate, statement or document was so filed or delivered.

Although this paraphrase is no shorter, the division of the sentence into a subordinate clause and a main clause makes it easier to follow than the original, which only has one simple clause. Note how the agentive and agentless passives in the original have been converted into an active ("produces"), an agentive passive ("have been filed ... by"), and an agentless passive ("shall be received").

> **Guideline 1: Try converting complex noun phrases into conditionals or other subordinate clauses.**

Using Two Sentences

The rewritten version offered above is still not as readable as it could be, even though the "or" options are separated by commas as recommended in Jordan (1994b). We might consider the advice of Redish (1979) to "Break up long sentences," although we may not be able to follow the advice of Charrow and Erhardt (1986) and the Canadian Bar Association's ten commandments (1990) to "Write short sentences." On the question of how short is a short sentence, Krongold (1992) notes that "What counts is not so much the number of words in a sentence, but how easily we get from the beginning to the end while understanding everything in between."

This is easy to advise — but not so easy to do. Clearly the sentence separation should occur at the boundary between the two clauses, and we have to make sure the meaning is not altered by the change to two sentences. Here is a suggestion for the paraphrase version of Example 7:

> Assume that a person prosecuting a person for an offence under this act produces a certificate, statement or document that appears to have been filed with, or delivered to, the Ministry by, or on behalf of, the person charged with the offence. If that occurs, that presentation shall be received as evidence that the certificate, statement or document was so filed or delivered.

This paraphrase appears to be much easier to understand than the original version or the first paraphrase because we can first understand the condition and then grasp the implications of that condition — as two separate yet connected concepts.

However, the use of the strategy of using "Assume" followed by "If so" or equivalent could be a contentious one in the very conservative genre of acts and other forms of legal writing. This is because it is a striking — though I contend not unwarranted — departure from traditional practice. The strategy does provide a workable solution to a particularly stubborn syntactic problem, although further analysis of similar techniques in other genres replete with assumptions (e.g. economic forecasts, computer programs) may reveal possible dangers with the strategy. The computer use of **IFF** (meaning if and only if) or the broader "If and when" may be needed in some cases, although the use of "If" is arguably no less specific than the connection by subject-verb cohesion (as in the original) or by subordinate and main clause (as in the first paraphrase offered). Thus it seems likely that the "Assume" strategy actually provides us with choices we do not have with the other inter-sentential connective devices, and that the strategy might give us the opportunity to communicate additional subtleties as a result of those choices.

Even the basic suggestion that we split a single statement into two separate sentences could be contentious in this genre, whereas no such problem exists in most other genres. Traditionally in acts, each statement (or item) is numbered separately for cross reference purposes, and also almost always consists of a single sentence. The difficulties that this approach presents for definitions of an act within one huge mega-sentence are addressed in Jordan (1994b). The ways by which these difficulties are overcome in definitions in the French language using several sentences for the same definitions are also noted there. Nevertheless, we must expect some opposition to the splitting of a numbered item in an act into two or more sentences. For Example 7, we could label the two sentences as **131.** (1) and **131.** (2), of course, but that seems inadvisable as it is the two sentences together that constitute the total intended meaning. That is, the "Assume" sentence of the second paraphrase may be grammatically independent of the following sentence, but it is semantically complementary — and semantically indivisible — from it. There seems no logical reason for insisting that the grammatical concept of sentence and the legal concept of "item" or "statement" should always coincide. The separate sentences help readers to

understand what is intended, but the two sentences together are required to make up a semi-readable legal statement, which should be separately numbered.

Guideline 2: If desirable, convert complex sentences containing separate clauses into two separate sentences within the same legal numbering.

Using Three (or More) Sentences

Once we accept that each legal statement in acts need not consist of only one sentence, we can find examples where the statement can be made more readable by using three sentences — or perhaps even more. Where, for example, there is a conditional statement before *and* after the main clause, the possibility of using three sentences could be considered:

(8) **17.** (3) If there is a finding that the tenant of the rental unit consented to the application for the advance determination, consent of the tenant to the application under this section is not required for the capital expenditures that are the subject of the advance determination, even if there is a different tenant at the time of the application under this section.

This is not a terribly difficult item to understand. However, many tenants affected by this provision still might find it challenging. Using the same principle of splitting the sentence at the boundaries of the subordinate clauses, we can rewrite this requirement as:

> Assume there is a finding that the tenant of the rental unit consented to the application for the advance determination. If this occurs, consent of the tenant to the application is not required for the capital expenditures that are the subject of the determination. This applies even if there is a different tenant at the time of the application.

Another possible point of contention is raised here: the referential meaning of the pro-sentence substitutes "this" and "that." Few people would question the referent for "that" in the two-sentence paraphrase of Example 7 as being all the previous sentence. We would know this not only by the clear signalling of "Assume" followed by "If," but also from the numbering system which would prevent the referent reaching back any farther than

information within that numbered statement — see referent control of "this" and "that" by "hypothetical and real" and orthographic means in Jordan (1978). The referential meaning of the second "this" in the paraphrase for Example 8, however, does not have the same orthographic referent control, as there are two earlier sentences in the same legal statement. Nevertheless, there appears to be no legal distinction — in this example at least —depending on whether "this" substitutes for only the preceding sentence, or both preceding sentences. In cases where such a distinction may become vital, additional referent clarity may be needed, for example, "This consequence ..." or "This assumption and consequence ..."

Guideline 3: Use three or more sentences for a single legal statement if that aids understanding without changing the legal meaning. Again use a single number for all sentences and ensure that inter-sentential connections are clear.

The subordinator can be of types other than conditionals. In the following example, we see how coincident time is involved at the start of the statement, and purpose at the end. Again separate sentences are used to separate the clauses and thus to make the writing clearer:

(9) **36.** (3) Upon receiving a complaint respecting a residential complex or a rental unit in it, the Director shall cause an inspector to make whatever inspection the Director considers necessary to determine whether the landlord has complied with the prescribed maintenance standard.

A paraphrase of this statement using three sentences is:

Assume that the Director receives a complaint respecting a residential complex or a unit in it. When this happens, the Director shall immediately cause an inspector to make whatever inspections the Director considers necessary. The purpose of these inspections will be to determine whether the landlord has complied with the prescribed maintenance standard.

The first two sentences are linked by the substitute clause "When this happens" to indicate coincident time between them. The second two sentences are connected in a different way: the referent (the noun phrase "whatever inspections the Director considers necessary") is re-entered by the partial repetition "these inspections" within the larger noun phrase "The purpose of these inspections." The lexical item "purpose" is one of the

"vocabulary 3" words discussed by Winter (1977) as identifying the relationships between clauses and sentences, and its use here signifies the relationship between the preceding noun phrase and the final sentence. The original version indicates this same relationship with the to-infinitive "to determine," a relationship sometimes indicated by "in order to" instead of just the infinitive. See Jordan (1995c) for a recent discussion of the use of to-infinitive groups as clauses and restrictive post-modifiers.

As the purpose of the director causing the inspector to make the inspections and the purpose of the inspections themselves are legally the same, no ambiguity arises as a result of the paraphrase offered. As with the earlier discussion about "If and when," we again have greater choice in our anaphoric devices when we use separate sentences rather than clauses within a complex sentence. In some instances substantive changes could be created by these options, and we would have to make a clear and deliberate choice to clarify the meaning. Traditionally the use of anaphoric devices such as "this" and the substitute clauses (e.g. "This is done") have been eschewed for any form of formal prose. This matter needs careful assessment when creating separate sentences in acts and other legal genres.

Using Separate Sentences and Lists

As noted elsewhere (e.g. Parham, 1967; Jordan, 1994b), placing statements in clearly labelled lists helps readers of legal documents to understand the complexities involved. Block (1983) includes this as one of the ten principles of clear legal drafting. Simple lists do not violate any of the traditional principles of legal statements, and they can often help readers to understand the message. Here is a rather simple example, which can be made more readable by the use of separate sentences and a list:

(10) **72.** (1) The rent officer may consider any relevant information obtained by him or her in addition to the evidence given by the parties, provided that he or she first informs the parties of the additional information and gives them an opportunity to refute it.

The awkward avoidance of sexist pronouns is caused, first by the (probably unnecessary and overly restrictive) use of the agentive passive and then by the use of pronouns rather than repetition. The main points here are that we can split the statement into two sentences, and that we can then mark the last two items as a list to improve readability. At the same time we can tidy up the awkward avoidance of sexist pronouns:

> The rent officer may consider any relevant information obtained in addition to the evidence given by the parties. Whenever this is done, the rent officer must first:
> (a) inform the parties of the additional information, and
> (b) give them an opportunity to refute it.

The separate sentences allow us to use repetition instead of the substitutes "he or she" (which are still sexist as the male form comes first!). This is also made possible by the use of the passive substitute clause "this is done" rather than the active form "the rent officer does this." The clausal indicator "Whenever" (meaning "Every time this happens") signals the intended meaning here rather than the simple coincident time indicator "When."

Whenever the initial subordinate clause has two or more co-ordinated parts, we can often re-arrange the list to place the conditions at the end of the sentence. This technique and related discussion is included in Krongold (1992). Although listing before the main clause may also prove a useful strategy, readers of English are less comfortable with this technique than with the list at the end of a sentence. Sometimes lists occur both before and after the main clause; for these we may have to place a list of conditions in front of the main clause. Here is such an example, one which may take several readings before the reader recognizes the structure of the initial subordinate clause:

> (11) **111.** (9) If a notice was given under section 59 of the *Residential Rent Regulation Act* respecting a rental unit in a residential complex before the day this subsection is proclaimed in force, no application or Minister's motion was made under section 60 of that Act before that day and the deeming set out in section 60 (3) of that Act has not occurred before that day, ... [A list of three main clauses follows.]

As readers would naturally expect that the main clause starts immediately after the comma, it takes some thought (and time) before realizing that there are three co-ordinated items of subordination in the initial clause. A more marked list would be clearer:

> If
> (i) a notice is given under section 59 of ...,
> (ii) no application ... before that day, and

(iii) the deeming ... has not occurred before that day, then

(a) ....

As we are used to lists at the end of the sentence, a list at the start like this might appear rather odd. It is much clearer than the original, however, and it also allows those following this provision to check off the conditions more easily and with less chance of error.

In this example, we have a list at the start as well as the end of the sentence. For such sentences, we could label two sets in different ways as shown above, using (a), (b), (c), etc. for the usual listing at the end and (i), (ii), and (iii), etc. for the few lists placed at the start of a sentence. Alternatively, we might decide to use the "Assume" strategy for the first list, followed by "If all these occur ..." and the list of consequences.

Guideline 4: List the separate items of a subordinate clause if that makes them clearer. Place the list at the end of the sentence if possible; if not, use different lettering to identify each condition distinctly.

The use of a separate sentence instead of an initial list is often a good idea anyway. It becomes even more useful when there is a logical connection between the items of the list. We see, in the next example, that there is a cause-effect relation between the two items of the initial list:

(12) **28.** (9) If an order under this section is effective as of a date before the date it is made and if, as a result, a tenant has paid rent in excess of that permitted by the order, section 30 applies to that excess rent and the rent officer's order under this section may contain any terms that could be made in an order under that section as if an application under that section had been made and joined with the application under section 23.

There are two parts in the subordinate clause and two in the co-ordinated main clauses. A suggested improvement is:

Assume that:

(a) an order under this section is effective as of a date before the date it is made and, as a result,

(b) a tenant has paid rent in excess of that permitted by the order.

> When this occurs, section 30 applies to that excess rent. This means that the rent officer's order under this section may contain terms that could be made in an order under that section as if an application under that section had been made and joined with the application under section 23.

The initial list is made clearer in the "Assume" sentence, and the cause-effect relationship between the two items of the list is still signalled by "as a result." Note that "as a result" (also "however," "therefore," and other connectors) are no less "vague" in their referential power than the pro-forms "this" and "that." In fact the two systems have clear counterparts (e.g. "however" = "in spite of this"). So the earlier discussion about the anaphoric connection between clauses applies here too.

The reason for the change from "and" to "This means" is less clear. The original might give the impression that there are two independent consequences co-ordinated by "and." However, there is a logical connection between the application of Section 30 and the information in the final sentence of the paraphrase. For this reason the paraphrase is a clearer statement of this connection than the original wording. "This," of course, re-enters the preceding main clause; any attempt to "clarify" this clear connection would probably cause confusion or ambiguity.

Guideline 5: Where appropriate, use lists in separate sentences instead of pre- and/or post-subordination.

Removing Clause-Relational Confusions

Problems occur where it is not clear what the subordinate clause is referring to. Often the meaning can only be determined after careful reading, as in:

> (13) **104.** (4) A landlord who is required to file a statement of rent information shall file additional statements for all rental units to which this Act subsequently applies or which subsequently become rented within six months of the day of the first filing and thereafter every six months until a statement has been filed for all rental units in the residential complex.

The adverbial clause "within six months of the day of the last filing" appears to modify the immediately preceding topic, i.e. rental units which

have subsequently been rented. However, the whole context of this statement seems to indicate that it is the filing of the additional statements that has to be done within six months of the day of the first filing. We can make this meaning clear by using a separate sentence and repeating the main clause to which the clause in question should have been subordinated:

> A landlord who is required to file a statement of rent information shall file additional statements for all rental units (a) to which this Act subsequently applies, or (b) which subsequently become rented. The landlord shall file these additional statements within six months of the date of the first filing and thereafter every six months until a statement has been filed for all rental units in the residential complex.

The listing of the two items within the same line provides some division of the items of the list without the use of separate lines as used for the more complex earlier lists.

> **Guideline 6: Make sure that all post-subordinate clauses apply to appropriate parts of the statement. If necessary separate the subordinate clause into another sentence to clarify the connection.**

Subordination with Co-ordination and Lists

When post-subordinate clauses occur with co-ordination (with "and" or "or"), it may not always be clear whether they apply to one or more parts of the co-ordination. We may need to change the position of the subordinate clause to ensure the correct meaning. Confusion and possibly real ambiguity occur in:

(14) **15.** (1) The landlord may base an application on eligible capital expenditure that the landlord has incurred respecting the residential complex or one more rental units in it if the work was completed on or after the 6th day of June 1991.

Does the final "if" subordinate clause apply just to the "one or more units in it" or also to the whole residential unit? A comma after "complex" might lead us to conclude the former, but probably not definitively so. For that meaning, we should use a separate sentence. Assuming the other meaning, we can make the statement clearer by creating two clear conditions:

If
(a) work has been done for eligible capital expenditures the landlord has incurred respecting the residential complex or one or more units within it, and
(b) the work was completed on or after the 6th day of June, 1991,
then the landlord may base an application on those expenditures.

The same principle applies to lists, as a subordinate clause may not clearly apply to only one or to all items in the lists. We see this in:

(15) **105.** (2) The statement of rent information shall contain a certificate signed by the landlord stating that the information contained in the statement, including any attachments to it, is true, correct and complete to the best of the landlord's knowledge and belief.

Is the final clause ("to the best ... belief") only intended to apply to the last item — or to all three? Assuming the latter, we can make the meaning clear by moving the subordinate clause to the front of the list so that it applies to all parts of the list. We can also use two sentences to make the statement clearer:

The statement of rent information shall contain a certificate signed by the landlord. The statement shall state that the information contained in the statement (including any attachments to it) is, to the best of the landlord's knowledge and belief, true, correct and complete.

Parentheses are used instead of two of the commas here to avoid confusion with the other commas (see Jordan, 1994b, for related discussion).

Guideline 7: When post-subordinate clauses occur with co-ordination or lists, place then where they apply to the intended part or parts of the statement, and make other necessary changes.

Untangling Restrictive Post-Modifiers

The second major topic discussed here involves poor readability or confusion caused by complex noun phrases. Recent work explains many of the complexities found in the restrictive post modifiers of mature written English (Jordan, 1993), and the corollary of paraphrasing them into simpler forms for plain language use is outlined in Jordan (1994a). We have already

seen how we might convert complex noun phrases into subordinate clauses (Guideline 1). This section applies all this understanding of complex noun phrases to principles we can use to make legislation more readable.

Using a Separate Sentence

As with subordinations, it is sometimes possible to clarify the writing by creating a separate sentence. The following statement is rather long and difficult to read.

(16) **22.** (22) Subject to subsection (14), after a landlord has filed a notice of intent and a rent officer has made the determination under subsection (3), the rent officer shall issue a notice of carry forward to the landlord and to all the tenants setting out the maximum rent for each rental unit and the date the maximum rent takes effect.

Complex noun phrases can be perceived as containing condensed (or "rank-shifted") clauses as restrictive -ed, -ing, relative or verbless clauses (Jordan, 1995b). We can use this understanding to "expand" them into separate clauses or sentences (see van Dijk, 1973) to slow down the information rate of the communication and thus make the statement easier to understand. Example 15 is made more readable by creating a sentence for the restrictive -ing clause:

> Subject to subsection (14), after a landlord has filed a notice of intent and a rent officer has made the determination under subsection (3), the rent officer shall issue a notice of carry forward to the landlord and to all tenants. This notice shall set out the maximum rent for each rental unit and the date the maximum rent takes effect.

Guideline 8: For a long complex noun phrase at the end of the statement, try splitting it at an inner-clause boundary to create a new sentence.

Although the cohesion within complex noun phrases at the end of a sentence is relatively easy to explain and to paraphrase, the theoretical principles become much more difficult for noun phrases that start the sentence or are embedded within it (Jordan, 1995b). These are considerable difficulties in first understanding and then paraphrasing such noun phrases, as we see in:

(17) **28.** (4) If the effective date of the first rent increase set out in a previous order under this Act or the *Residential Regulations Act* that determined the maximum rent for a rental unit was after the day on which an order under this section would be effective for that rental unit under subsection (2), no order granting relief shall be made under this section.

There are two huge noun phrases here: "the effective date ... a rental unit" and "the day on which ... under subsection (2)." The statement can be made more readable by turning the first one of these into a separate sentence:

> The first rent increase may have been set out under this Act or the *Residential Regulations Act* to determine the maximum rent for a rental unit. If this is so, and if the effective date of this first rent increase was after the day on which an order under this subsection would be effective for that rental unit under subsection (2), then no order granting relief shall be made under this section.

The use of "may have been" here is equivalent to the "Assume" strategy used earlier and is a sentential way of communicating a condition. We saw earlier (see Example 7 and related analysis) that there is a semantic connection between conditionals and restrictive clauses, and thus complex noun phrases. Thus, we can convert the first large noun phrase into a subordinate conditional clause. Although two such clauses of this length would be unwieldy at the start of the sentence, they would be quite acceptable *after* the main clause (Krongold, 1992):

> No order granting relief shall be made under this section if:
> (a) the first rent increase has been set out under this Act or the *Residential Regulations Act* to determine the maximum rent for a rental unit, and
> (b) the effective date of this first rent increase was after the day on which an order under this section would be effective for that rental unit under subsection (2).

Guideline 9: For a long noun phrase at the start or in the middle of a sentence, convert it into a separate sentence or a subordinate clause and re-arrange the information as necessary.

Changing the Order of Restrictive Clauses

When there are two or more post-modifications in a complex noun phrase, the question may arise as to their order. We see the problem in:

(18) **108.** (1) If the Registrar is satisfied that information about a residential complex that a landlord has filed with the registrar is incorrect or incomplete, the Registrar may by notice require the landlord to file a new or amended statement.

This statement includes a prepositional clause ("about ... complex") followed by a relative clause ("that ... registrar"). Difficulty occurs because the relative pronoun "that" re-enters the whole of the larger noun phrase ("information about a residential complex") into the text rather than the more immediate noun phrase ("residential complex"). Clearly the landlord has not filed a residential complex, yet it sounds that way. We can improve the readability by placing the prepositional clause later:

> If the Registrar is satisfied that information a landlord has filed about a residential complex is incorrect, the Registrar may by notice require the landlord to file a new or amended statement.

In this version, the relative clause has been converted into a verbless (or null-indicating relative) clause ("a landlord ... complex") to avoid the awkwardness of the two "that's" so close together.

> **Guideline 10: Remove any awkwardness or ambiguity in complex noun phrases by changing the order or type of the restrictive clauses.**

Conclusions

Clearly the traditional commandments have limited application in helping us create more readable acts and probably other legal documents too. Word order, the active voice, concrete language, simple word choice, "logical" order, noun strings, graphics, personal pronouns, using the positive, unnecessary words and parallel structure have little relevance to the main issues of how we make acceptably-written legal statements easier to understand. Such guidelines may have some application as general platitudes in helping poor writers produce a reasonable level of proficiency.

However we need to go further, and be more specific in our instruction, to make real differences in the readability of many current legal statements.

One difficulty with the ten commandments and others is that they are often presented *as* commandments rather than simply general guidelines to be used intelligently by discerning writers and editors. The teaching of "rules" of effective writing has been an easy way for some teachers to present the subject, avoiding real issues of language use and the profound differences in style due to genre differences. Such practice has become commonplace in our profession, and computer programs compound the problem by incorporating the rules into the advice they provide – again totally independent of genre or style. This prescriptive "rule-following" approach has been criticized by Steinberg (1986) and Huckin et al. (1986). Redish and Rosen (1991), however, present guidelines only as suggestions for perceptive and intelligent application, not as rules; and it is in this light that the guidelines in this analysis are offered.

A further difficulty with the commandments or guidelines offered for legal writing is that they may be misleading or even inappropriate for the genre of legislation — and perhaps other legal genres too. The Canadian Bar Association's commandment "Use the active voice." (1990) and the denouncement of the passive voice by the Uniform Law Conference (1992) provide an example of this. Throughout the analysis presented here, we saw many examples of effective communication using the passive voice, and indeed there were many instances where the passive was legally or linguistically more appropriate. In addition, the passive has been used frequently throughout this paper as a powerful ancillary strategy for improving the readability or clarity of a statement. We really must get beyond the childlike application of the old, simple concepts in our search for the real principles of effective and readable writing.

Legal written English has come a long way during this century in making the law and related legal documents more accessible to those affected by them. In the last few decades in particular, we have seen noticeable improvements in referencing, clarity and gender-neutral language. These have resulted in legislation which is now more accessible and acceptable to the intelligent patient reader. The guidelines presented here and in Jordan (1994b) should be seen as a necessary linguistic initiative in the movement towards further substantial improvements in the readability of acts.

The approach adopted here, however, has its limitations. The claims for improvements in readability of the paraphrases offered have only been

validated through personal assessment, presentation at a Learned conference, subsequent discussions and the scrutiny of scholarly readers. We now need to obtain the assessments of actual readers and users of the acts, and the lawyers, registrars, directors, inspectors, judges, and others who have to use the acts as the basis for their work. Such assessments must be based on the prime need for legal precision as well as the need for readability.

We also have a difficult task in the education of those who draft and approve legislation. The simplistic prescriptive rules that bedevil our profession have taken such a strong hold because teachers and students have been unwilling or unable to first question them and then derive instruction more appropriate to the practice of expert writers and editors. To make use of the guidelines offered here, writers need to able to understand and manipulate subordinate clauses, lists, complex noun phrases, restrictive post-modifications and other related structures of English. Although none of this is terribly difficult, it is not taught in schools or in most courses in effective communication, and this needs to be remedied. That is, those who write (and write about) legislation need to develop a sound grasp of the principles of the English language they are using or discussing.

Finally we must recognize that there is a practical limit to the level of readability we will be able to obtain as, in all legal genres, accuracy, clarity and completeness must take precedence over readability. Many of the paraphrases offered here are still very complex and not perhaps as readable as we would ideally like. However hard we try, many definitions and requirements in acts will remain difficult to interpret at first reading, and many may need considerable thought to work out exactly what is being stated. The law is not an easy subject, and legal interpretation and argument will remain an intellectually demanding pursuit for all who practice it or become involved in it. Perhaps the best we can hope for is that the laws of the land are so written as to give everyone a reasonable opportunity to understand the requirements on their own.

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Appendix A

Lists Of Advice For Making Legal Writing More Readable

The guidelines advocated by Redish (1979) are:

1. Drop unnecessary contents.
2. Organize your material.
3. Cross out unnecessary words.
4. Don't use two words when one will do.
5. Replace difficult terms with common words your readers are likely to know.
6. Break up long sentences.
7. Put the ideas in each sentence in a logical order.
8. Untangle complex sentences.
9. Consider using personal pronouns if you want to write directly to consumers.
10. Use graphics to help clarify the message.

The chapter by Charow and Erhardt (1986) on "Writing Clearly" discusses and provides examples of thirteen guidelines:

1. Write short sentences.
2. Put the parts of each sentence in a logical order.
3. Avoid intrusive phrases and clauses.
4. Untangle complex conditionals.
5. Use verb clauses and adjectives instead of nominalizations.
7. In general, use the positive.
8. Use parallel structure.
9. Choose vocabulary with care.
10. Avoid noun strings.
12. Eliminate redundancy and extraneous words; avoid over specificity.
13. Use an appropriate style.