

A Linguistic Insight into the Legislative Drafting of English-Speaking Jurisdictions

The Use of ‘Singular They’

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Abstract

Gender specificity in legislation started being questioned in the late 20th century, and the need to reform the way in which laws have been written for more than one-hundred years has been particularly evident in English-language jurisdictions. In the 1990s and 2000s, the adoption of a plain English style forced legislative drafters to avoid sentences of undue length, superfluous definitions, repeated words and gender specificity with the aim of achieving clarity and minimizing ambiguity.

Experts in the legal field have suggested reorganizing sentences, avoiding male pronouns, repeating the noun in place of the pronoun, replacing a nominalization with a verb form, resorting to ‘the singular they’. This article gives a linguistic insight into the use of ‘singular they’ in English, beginning with a historical background and going on to assess the impact of its use in the primary legislation issued in a selection of English-language jurisdictions (Australia, Canada, New Zealand, the UK, the US) in the last decade (2008-2018). Given the environment of legislative drafting techniques, where considerable reliance on precedent is inevitable, proposals to change legislative language may produce interesting results in different jurisdictions.

Keywords: gender neutrality, ‘singular they’, linguistic insight, legislative drafting, English-language jurisdictions.

A Introduction

Gender-neutral drafting has been the norm for some years in many jurisdictions that use the English language to draft legislation. Given the prevalence of English as lingua franca, an increasing number of English-language jurisdictions and international organizations have recently shown some instances of a drafting style much more inclined to gender neutrality. Indeed, gender specificity in legislation started being questioned in the late 20th century, and the need to reform

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the way in which laws have been written for more than one-hundred years has been particularly evident in English-language jurisdictions. In this regard, the legislative drafting policy conventionally known as the ‘masculine rule’, whereby ‘he includes she’, raised opposition in the 1970s under the pressure of feminist movements in the United States and Europe. In the 1990s and 2000s, the adoption of plain English style forced legislative drafters to basically avoid sentences of undue length, superfluous definitions, repeated words and gender specificity with the aim of achieving clarity and minimizing ambiguity.

In order to avoid gender specificity, experts in the legal field have suggested reorganizing sentences, avoiding male pronouns, repeating the noun in place of the pronoun, replacing a nominalization with a verb form, resorting to ‘the singular they’.¹ This article considers the use of ‘singular they’ in the English language, providing, first, a historical background and, then, assessing the impact of its use in the primary legislation issued in a selection of English-language jurisdictions (Australia, Canada, New Zealand, the UK, the US) in the last decade (2008-2018). Given the environment of legislative drafting techniques, where considerable reliance on precedent is inevitable, any proposal to change legislative language may produce interesting results in different jurisdictions.

B Gender and Language

Languages vary widely in terms of gender systems showing differences in the number of classes, underlying assignment rules and how and where gender is marked. According to Audring,²

gender is a grammatical feature, in a family with person, number, and case. In the languages that have grammatical gender – according to a representative typological sample, almost half of the languages in the world – it is a property that separates nouns into classes. These classes are often meaningful and often linked to biological sex, which is why many languages are said to have a ‘masculine’ and a ‘feminine’ gender. In this regard, a typical example is Italian, which has masculine words for male persons (il bambino ‘the M. little boy’) and feminine words for female persons (la bambina ‘the F. little girl’).

In everyday speech, the word ‘gender’ is usually associated with the biological and social differences between men and women. In addition, people might know that languages, such as Spanish and Italian, can have masculine and feminine words. So at first glance, it may seem that grammatical gender is a reflection of natural gender in grammar.³ The view that grammatical gender mirrors natural gender has been widespread since antiquity and is still evident in the terms masculine,

1 G.C. Thornton, *Legislative Drafting*, London, Butterworth, 1996.

2 J. Audring, ‘Gender’, *Oxford Research Encyclopedia, Linguistics*, 2016, p. 1, available at <https://oxfordre.com/linguistics/view/10.1093/acrefore/9780199384655.001.0001/acrefore-9780199384655-e-43>.

3 Audring, 2016, p. 2.

feminine, and neuter, which are used to label individual gender distinctions, especially in Indo-European languages.⁴ However, not all languages function like this. Many languages do not have grammatical gender at all.⁵ Research on gender and language has demonstrated that there exist two categories of languages: 'gender languages'⁶ and 'languages without grammatical gender'.⁷ In the case of the English language, while Old English (750-1100/1150 AD) had three gender classes, feminine, masculine and neuter, and all inanimate nouns belonged to one of the three classes, the category of 'grammatical gender' was lost by the end of the 14th century owing to the decay of inflectional endings and the disintegration of declensional classes.⁸

In their seminal work on *Gender Across Languages*, Hellinger and Bußmann⁹ observe that word-formation represents "a particularly sensitive area in which gender may be communicated". Languages have historically generated processes of derivation and compounding having an important function in the formation of gendered personal nouns. This is evident in the case of the Italian language, with the recent formation of the feminine/female term *ministra*, which derives from masculine/male *ministro* (En. *minister*), and the feminine/female *sindaca*, which derives from masculine/male *sindaco* (En. *mayor*).

Gender systems may rely on other semantic distinctions or may be related to formal properties of the noun. It usually has the affix, which carries the lexical gender formation in agreement, that is, the behaviour of associated words. For instance, in Italian

the masculine gender of the noun *bambino* matches its meaning as well as its form – the noun ends in *-o* and inflects like a regular – *-o* class noun – but the true indicator of gender is the form of the article. This can be seen in words

- 4 Many languages show a match between natural and grammatical gender. Across the world examples are Tamil in India, Dizi in Ethiopia, Diyari in Southern Australia (now extinct), and Bagvalal in the Caucasus. In these languages, nouns denoting male persons are masculine, and nouns denoting female persons are feminine. For more details, see G.G. Corbett, 'Sex-based and Non-Sex-based Gender Systems', in M.S. Dryer & M. Haspelmath (eds.), *The World Atlas of Language Structures Online*, Leipzig, Max Planck Institute for Evolutionary Anthropology, 2013, available at: <http://wals.info/chapter/31>.
- 5 It is interesting to know that "of those that do, some disregard the difference between male and female and assign all words for humans or for living beings to the same class. Yet other languages have a special 'vegetable' gender for plants, a gender for foodstuffs, a gender for large or important things, a gender for liquids or abstracts, and many more. Such patterns remind us that the word gender (Greek: γένος) originally meant 'kind' rather than 'sex'. While the split into male and female is the most common semantic base of gender systems, it is by no means the only option" (Audring, 2016, pp. 2-3).
- 6 Such as Arabic, Czech, Danish, Dutch, French, German, Greek, Hebrew, Hindi, Icelandic, Italian, Norwegian, Polish, Romanian, Russian, Serbian/Croatian/Bosnian, Spanish, Swedish and Welsh. See G.G. Corbett, *Gender*, Cambridge, Cambridge University Press, 1991; M. Hellinger & H. Bußmann, *Gender Across Languages*, Amsterdam and Philadelphia, John Benjamins, 2001.
- 7 G.G. Corbett, 'Gender and Noun Classes', in T. Shopen (Ed.), *Language Typology and Syntactic Description* (2nd ed.), Cambridge, Cambridge University Press, 2007, pp. 241-279.
- 8 A. Curzan, *Gender Shifts in the History of English*, Cambridge, Cambridge University Press, 2003.
- 9 2001, p. 11.

like *la mano* ‘the F. hand’, which is feminine despite its final *-o*, and *il soprano* ‘the M. soprano’, which is masculine, although it usually refers to a woman.¹⁰

Notwithstanding an ongoing debate over the cross-linguistic analysis of gender, scholars working in the field of gender and language¹¹ have generally agreed on the identification of four categories of gender, namely ‘grammatical’, ‘lexical’, ‘referential’ and ‘social gender’. These categories will not be considered for the purpose of the present analysis.¹² It suffices to say that ‘social gender’ plays a crucial role in English since it refers to the semantic bias of an otherwise unspecified noun towards one or the other gender, such as *nurse* and *teacher*, denoting stereotypically female persons, and *surgeon* and *professor* male ones. In this regard, traditional practice in English has prescribed the choice of *he* in neutral contexts even for general human nouns such as *pedestrian* or *consumer*, the so-called ‘masculine rule’.¹³

C The ‘Masculine Rule’: Some Observations

For more than 150 years English-language jurisdictions had drafted legislative texts based on the rule that the norm of humanity is male. By the 1970s the ‘masculine rule’ started to be contested in the United States and Europe, and calls

10 Audring, 2016, p. 1.

11 M.R. Schulz & R. Muriel, ‘The Semantic Derogation of Woman’, in B. Thorne & N. Henley (eds.), *Language and Sex*, Rowley, MA, Newbury, 1975, pp. 64-75; J.H. Greenberg, ‘How Does a Language Acquire Gender Markers?’, in J.H. Greenberg, C.A. Ferguson & E.A. Moravcsik (eds.), *Universals of Human Language*, Vol. 3, *Word Structure*, Stanford, CA, Stanford University Press, 1978, pp. 47-82; C. Kramarac, M. Schulz & W.M. O’Barr (eds.), *Language and Power*, London, Sage, 1984; D. Tannen, ‘Gender Differences in Topical Coherence’, *Discourse Processes*, No. 13, 1990, pp. 73-90; Corbett, 1991; J. Holmes, ‘Language and Gender’, *Language Teaching*, Vol. 24, No. 4, 1991, pp. 207-220; V.L. Bergvall, J.M. Bing & A.F. Freed (eds.), *Rethinking Language and Gender Research: Theory and Practice*, London, Longman, 1996; B. Unterbeck, M. Rissanen, T. Nevalainen & M. Saari, *Gender in Grammar and Cognition: I: Approaches to Gender. II: Manifestations of Gender*, Berlin and New York, Mouton de Gruyter, 2000; J. Sunderland, *Language and Gender. An Advanced Resource Book*, London and New York, Routledge, 2006; J.L. Prewitt-Freilino, T.A. Caswell & E.K. Laakso (eds.), ‘The Gendering of Language: A Comparison of Gender Equality in Countries with Gendered, Natural Gender, and Genderless Languages?’, *Sex Roles*, No. 66, 2012, pp. 268-281; S. Sato, A. Öttl, U. Gabriel & P.M. Gyax, ‘Assessing the Impact of Gender Grammaticization on Thought: A Psychological and Psycholinguistic Perspective’, *Osnabrücker Beiträge zur Sprachtheorie*, No. 90, 2017, pp. 117-135.

12 For an in-depth analysis on gender categories see G.A. Pennisi, ‘Gender Neutrality in Legislative Drafting Techniques. Where Conventionality in English Language Meets Creativity in a Diachronic Perspective’, in V. Bonsignori, G. Cappelli & E. Mattiello (eds.), *Worlds of Words: Complexity, Creativity, and Conventionality in English Language, Literature and Culture*, Pisa, Pisa University Press, 2019, pp. 347-360.

13 C. Stefanou & H. Xanthaki (Eds.), *Drafting Legislation. A Modern Approach*, London and New York, Routledge, 2008; C. Williams, ‘Legal English and Plain Language. An Update’, *ESP Across Cultures*, No. 8, 2011, pp. 139-151.

were made to change such a 'sexist language'.¹⁴ By the 1990s other social groups, such as the gay community, became aware of the need for gender-neutral drafting. It is evident that in itself the instruction by which words importing the masculine gender shall be deemed and taken to include females, the so-called masculine rule,¹⁵ establishes a convention that is merely linguistic. For many years the UK drafting of primary legislation has relied on Section 6 of the Interpretation Act 1978:

Interpretation and construction

Section 6 Gender and number

In any Act, unless the contrary intention appears, –

- a words importing the masculine gender include the feminine;
- b words importing the feminine gender include the masculine;
- c words in the singular include the plural and words in the plural include the singular.¹⁶

From a purely linguistic point of view, it does not necessarily involve a form of gender bias and/or sexual discrimination. However, one should consider the historical reasons that contributed to the establishment of this rule and determined the choice of the masculine to be used as an epicene for masculine and feminine. As Williams observes (2008: 139),

with the burgeoning of the feminist movement in the western world during the latter half of the 20th century, the question of drafting legislative texts according to principles of gender neutrality emerged as part of a more general policy which aimed at removing the socio-economic differences resulting from long-stinging discrimination against women.¹⁷

Gender-neutral language, also called non-sexist, gender-inclusive, or non-gender-specific language,¹⁸ refers to language that includes words or expressions that cannot be taken to refer to one gender only (*Oxford English Dictionary*). Non-sexist language campaigns have been under way for a few decades now, especially focusing on gender-specific terms (but also pronouns), which in turn are parallel to women's liberation movements, to the increasing attention given to LGBTQ¹⁹ rights and relevant societal changes. However, it should be noted that gender-

14 K. Plaster & M. Polinsky, 'Features in Categorization, or a New Look at an Old Problem', in A. Kibort & G.G. Corbett (Eds.), *Features: Perspectives on a Key Notion in Linguistics*, Oxford, Oxford University Press, 2010, pp. 109-142.

15 S. Petersson, 'Gender-Neutral Drafting: Recent Commonwealth Developments', *Statue Law Review*, Vol. 20, No. 1, 1999, pp. 1-55.

16 <https://www.legislation.gov.uk/ukpga/1978/30/contents/enacted>.

17 Williams, 2011, p. 139.

18 UNESCO – *Priority Gender Equality Guidelines*, 2011.

19 *Oxford English Dictionary* defines LGBTQ an abbreviation for lesbian, gay, bisexual, transgender, and queer (or questioning), viz. the LGBTQ community.

neutral drafting does not necessarily produce legislation that is an effective tool against gender-inequality. As Maclean observes, ways of doing relations (*i.e.* at work, personal sphere, etc.) are embedded with ways of 'doing gender'.²⁰ In other words, the apparent differences between sexes not only entail distinct expectations of what women and men should do and how they should behave in social situations, but are also used to legitimize a gender hierarchy that subordinates women, any other gender belonging to the LGBTQ community and what they do.²¹ Doing gender is a social, interactive act, done relationally to the specific historical and sociocultural context, and embedded with the language that represents and recreates that context itself.²² Gender-neutral drafting can set the stage for, and favour, the effectiveness of legislation in combating gender-inequality. Eventually, the adoption of non-sexist language in legislation may help reinforce or consolidate such changes.

D Reforming Language: Avoiding Asymmetric Usage in English

The traditional assumption that 'he included she' had been the norm in many jurisdictions and obviously reflected women's status in society, prejudices against them in an essentially male-centred society and the generally shared expectations of sexual roles. Many alternatives have been suggested to replace asymmetric or sexist usage in English. One form such protest has taken is the development of numerous guidelines for gender-neutral language.²³

In reformed usage, the principle of neutralization has the highest priority in English, in contrast to German (as well as in Italy), where female visibility is the basic characteristic of gender-fair usage. Neutralization means the avoidance of false generics, especially usages of generic man, as in *mankind*, *salesman* or *chairman*. Gender-inclusive wording can also be achieved by avoiding gender-marked

20 V. Mclean, 'Is Gender-Neutral Drafting an Effective Tool Against Gender Inequality Within the Legal System?', *Common Law Bulletin*, Vol. 39, No. 3, 2013, pp. 443-454.

21 C. Connell, 'Doing, Undoing, or Redoing Gender? Learning from the Workplace Experiences of Transpeople', *Gender and Society*, Vol. 24, No. 1, pp. 31-55.

22 S. Ehrlich & R. King (Eds.), 'Gender-based Language Reform and the Social Construction of Meaning', *Discourse and Society*, Vol. 3, No. 2, 1992, pp. 151-166.

23 *E.g.* from the McGraw-Hill Guidelines of 1972 to the UNESCO Guidelines of 1999.

terms for female referents, especially derivations ending with the suffix *-ess* or *-ette*, as in the case of *authoress* and *majorette*.²⁴

Another way towards a more gender-neutral language is the avoidance of stereotyping when talking about men and women. In this regard, Frankson provides some guidelines for 'gender-sensitive language' and suggests

to avoid stereotyped assumptions about the roles of men and women. For example, the sentence 'Research scientists often neglect their wives and children', assumes that women are not research scientists, whereas a simple change – 'Research scientists often neglect their families', acknowledges that women as well as men are research scientists; similarly, 'Transport will be provided for delegates and their wives', assumes all delegates are men whereas, 'Transport will be provided for delegates and their spouses', correctly recognizes women as well as men in the role of delegate.²⁵

The avoidance of marked forms (*i.e. female doctors*), where no parallel male forms would be used, might be seen as a subordinate strategy of neutralization including the visibility of potential female referents, when the strategy of pronominal splitting *he or she/she or he* is employed, as in *patient*. At the same time, this example illustrates symmetric usage, which should be observed whenever specification of referential gender is required, as in *female* and *male athletes*.²⁶

A gender-neutral alternative might be the use of 'singular they' as in 'a lawyer must listen to their clients'. 'Singular they' becomes the pronoun to replace *he and she* in cases where the gender of the antecedent (the word the pronoun refers to) is unknown, irrelevant, or non-binary. As the *Oxford English Dictionary, The definitive record of the English Language*²⁷ acknowledges, this usage has an eminent origin tracing 'singular they' back to 1375, where it appears in the medieval romance

24 In this regard, it is interesting to report what the *Oxford English Dictionary* says about the suffixes *-ess* and *-ette* in the English language. "The suffix *-ess* has been used since the Middle Ages to form nouns denoting female persons, using a neutral or a male form as the base (as *hostess* and *actress* from *host* and *actor*, for example). Despite the apparent equivalence between the male and female pairs of forms, they are rarely equivalent in terms of actual use and connotation in modern English (consider the differences in meaning and use between *manager* and *manageress* or *poet* and *poetess*). In the late 20th century, as the role of women in society changed, some of these feminine forms became problematic and were seen as old-fashioned, sexist, and patronizing (*e.g. poetess, authoress, editress*). The 'male' form is increasingly being used as the 'neutral' form, where the gender of the person concerned is simply unspecified" (www.lexico.com/en/definition/-ess). In the case *-ette*, "the use of *-ette* as a feminine suffix for forming new words is relatively recent: it was first recorded in the word *suffragette* at the beginning of the 20th century and has since been used to form only a handful of well-established words, including *usherette* and *drum majorette*, for example. In the modern context, where the tendency is to use words which are neutral in gender, the suffix *-ette* is not very productive and new words formed using it tend to be restricted to the deliberately flippant or humorous, as, for example, *ladette* and *punkette*" (<https://www.lexico.com/en/definition/-ette>).

25 J.R. Frankson, *Gender Management System Series. A Quick Guide to Gender Mainstreaming in Information and Communication*, United Kingdom, Commonwealth Secretariat, 2000, p. 33.

26 A. Pawles, *Women Changing Language*, London and New York, Longman, 1998.

27 [public.oed.com/blog/a-brief-history-of-singular-they/acknowledges us](http://public.oed.com/blog/a-brief-history-of-singular-they/acknowledges-us).

William and the Werewolf.²⁸ Towards the end of the 20th century, language authorities began to approve the form of 'singular they'. Not only does the *New Oxford Dictionary of English*²⁹ accept the form and use 'singular they' in the definitions, but the *New Oxford American Dictionary*³⁰ also calls "singular they generally accepted with indefinites, and now common but less widely accepted with definite nouns, particularly in formal contexts".

However, it is no surprise that 'singular they' has found some resistance. *Fowler's Dictionary of Modern English Usage* openly considers it an error³¹, and the *Chicago Manual of Style* still rejects 'singular they' for formal writing. Yet Burchfield in the 2009 edition of the *New Fowler's Dictionary of Modern English Usage* points out that "such constructions are hardly noticed any more or are not felt to lie in a prohibited zone", although he defines them as non-grammatical, seeing their rise as a response to linguistic needs that could not otherwise be met:

All such 'non-grammatical' constructions arise either because the notion of plurality resides in many of the indefinite pronouns or because of the absence in English of a common-gender third person singular pronoun (as distinct from his used to mean 'his or her' or the clumsy use of his or her itself).³²

Garner considers 'singular they' a form of "noun-pronoun disagreement", justified by the fact that indefinite pronouns, although singular, "carry an idea of plurality".³³ As to the question of why this usage is becoming so popular, he says that "it is the most convenient solution to the single biggest problem in sexist language – the generic masculine pronoun".³⁴ Then, he suggests that "where noun-pronoun disagreement can be avoided, avoid it. Where it can't be avoided, resort to it cautiously because some people may doubt your literacy".³⁵

Notwithstanding some fierce opposition, 'they' used as a gender-neutral singular pronoun was appointed '2015 word of the year' by the *American Dialect Society*. The society recognized 'singular they' "for its emerging use as a pronoun to

28 In the 18th century, grammarians began warning that singular *they* was an error because a plural pronoun cannot take a singular antecedent. They clearly forgot that singular *you* was a plural pronoun that had become singular as well. *You* functioned as a polite singular for centuries, but in the 17th century singular *you* replaced *thou*, *thee* and *thy*, except for some dialect use. That change met with some resistance. In 1660, George Fox, the founder of Quakerism, wrote a whole book labeling anyone who used singular *you* an idiot or a fool. And 18th-century grammarians like Robert Lowth and Lindley Murray regularly tested students on *thou* as singular, *you* as plural, despite the fact that students used singular *you* when their teachers were not looking, and teachers used singular *you* when their students were not looking. Anyone who said *thou* and *thee* was seen as a fool and an idiot, or a Quaker, or at least hopelessly out of date (*Oxford English Dictionary*).

29 1998.

30 Third Edition, 2010.

31 1926/2000, p. 648.

32 J. Burchfield, *Fowler's Dictionary of Modern English Usage*, Oxford, Oxford University Press, 2009, p. 779.

33 A.B. Garner, *Garner's Modern American Usage*, New York, Oxford University Press, 2009.

34 Garner, 2009, pp. 736-737.

35 *Ibid.*, p. 736.

refer to a known person, often as a conscious choice by a person rejecting the traditional gender binary of he and she”.³⁶ And, in 2017 ‘singular they’ made its way into two of the main stylebooks in academia and journalism³⁷ and has been acknowledged by the *American Psychological Association (APA)* stylebook.³⁸

E Gender-Neutral Drafting in English-Language Jurisdictions

Among the English-language jurisdictions included in the present analysis, Australia and New Zealand were the first to introduce legislative drafting guidance for gender-neutral language in 1980s, followed by Canada, which adopted the first official policy on gender-neutral language in the early 1990s. The government of the United States intervened in 2009, whereas Acts of the Westminster Parliament continued relying on the interpretation provision and used *he*, *him* and *his* with the intention of including reference to males and female until 2007.

Overall, the legislative drafting manuals issued in the selected English-language jurisdictions suggest the following devices as standard techniques to avoid gender specificity:

- repetition
- omission (mostly pronouns, possessives, etc.)
- reorganization (rephrasing sentences to avoid the need for pronouns, etc., passive voice, relative pronouns; dividing propositions into a number of shorter sentences; avoiding subordinate clauses; using impersonal/plural nouns, etc.)
- ‘alternative pronouns’
 - her or she, s/he, she or he*
 - they singular*
 - they plural*
- avoiding nouns that might appear to assume a man rather than a woman will do a particular job or perform a particular role (*chair* is now used in primary legislation as a substitute for *chairman*)
- avoiding the feminine form of a particular occupation (*author/authoress*)
- using gender-specific nouns and pronouns where provisions can apply only to persons of a particular gender (where a provision applies only to men or women, such as maternity pay for women)
- references to specific individuals (*Her Majesty*)

For the purpose of the present investigation, the techniques of ‘repetition’, ‘omission’ and ‘rephrasing’ will not be considered.³⁹ The following analysis will concentrate on the impact of ‘singular they’ as an alternative pronoun in the primary leg-

36 www.americandialect.org/2015-word-of-the-year-is-singular-they.

37 M. Perlman, 2017, available at: https://www.cjr.org/language_corner/stylebooks-single-they-ap-chicago-gender-neutral.php and the *Chicago Manual of Style* 17th edition (<http://cmosschoptalk.com/2017/04/03/chicago-style-for-the-singular-they/>).

38 <https://apastyle.apa.org>.

39 For an in-depth analysis of these gender-neutral drafting indications in English-language jurisdictions see Pennisi, 2019 (cited in footnote 12).

islation issued in Australia, Canada, New Zealand, the UK and the US in 2008, 2013 and 2018, respectively.

I 'Singular They'

Among the gender-neutral drafting indications recommended by English-speaking jurisdictions and analysed in the present study, 'singular they' is one standard technique proposed to avoid gender specificity, albeit with some variations. It is, therefore, interesting to see briefly the indications provided by each of the selected English-language jurisdictions concerning the use of 'singular they'.

a) The Department of Justice of the Government of Canada provides a webpage in the Legistics section of its website⁴⁰ to introduce 'singular they' and to give some background information about it ('In Practice', 'Examples'), its meaning in 'Dictionaries' and other useful information, though brief, about 'Other Jurisdictions' ('Ontario' and 'Australia'). As we read in the 'Introduction',

The use of the singular 'they' is becoming more common not only in spoken but in written English and can prove to be useful to legislative counsel in a legislative context to eliminate gender-specific language and heavy or awkward repetition of nouns.

Immediately after, some warnings are inserted in the 'Recommendations'

- 1 Consider using the third-person pronouns 'they', 'their', 'them', 'themselves' or 'theirs' to refer to a singular indefinite noun, to avoid the unnatural language that results from repeating the noun.
- 2 Do not use 'they' to refer to a definite singular noun.
- 3 Ensure that the pronoun's antecedent is clear.

Then, under the 'Background' caption, a number of indefinite and definite nouns are listed to describe when 'singular they' has to be used or, rather, would be better to avoid completely.

Consider using the third-person pronouns 'they', 'their', 'them', 'themselves' or 'theirs' to refer to a singular indefinite noun, to avoid the unnatural language that results from repeating the noun. Examples of singular indefinite nouns are:

- anyone/anybody
- no one/nobody
- everyone/everybody
- person
- every applicant
- any officer
- every judge
- manufacturer
- officer
- taxpayer

40 <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/toc-tdm.asp>.

Do not use ‘they’ to refer to a definite singular noun. Examples of definite nouns are:

- Minister
- Commissioner
- Solicitor General
- Chief Electoral Officer
- Receiver General
- Attorney General.⁴¹

Then, it is specified that when the use of ‘singular they’ in a sentence is ambiguous, the use of the pronoun is not advised, and it would be desirable to repeat the noun, to replace it with *he or she* or rewrite the sentence to avoid the use of the pronouns altogether, as in the example provided below:

‘When an applicant notifies the other residents, *they* must lodge a section 12 notice within 14 days’ could safely rewrite as ‘When notifying the other residents, an applicant must lodge a section 12 notice within 14 days’, and so avoiding any ambiguity about who (‘an applicant’ or ‘other residents’) must lodge a section within the period of time allowed.

b) In the case of New Zealand, Chapter 3 of the Parliamentary Counsel Office (PCO)’s in-house Drafting Manual sets out the principles of clear drafting. In the *Guidelines for clear drafting – Write: to communicate with your reader*, the caption ‘Sentences’ includes, under the heading ‘Always use gender-neutral language’, indications on ‘singular they’.⁴² More specifically, subsection 3.70A and 3.70B, respectively, indicate when to use the technique and the reason for using it.

3.70A. [...] If you are using this technique, be careful to avoid ambiguity – this is most likely if a clause refers to 2 or more persons and it is not immediately clear which person the ‘their’ is referring to or if the ‘their’ is requiring collective rather than individual action.

3.70B Drafters should use the technique of ‘he or she’ sparingly. This technique still uses gender-specific expressions and so is not gender neutral as now understood. It is particularly important to be gender neutral if the legislation applies widely to individual members of the public. It is also important to avoid this technique if the ‘person’ could be a body corporate. This technique is still appropriate (and the most pragmatic option) if you are only doing targeted amendments to the existing legislation (so as to ensure consistency). The ongoing use of this technique will be reviewed in 2019.

Interestingly enough, the New Zealand POC’s Drafting Manual lists the exceptions to the use of ‘singular they’, with the eventual recommendation to first dis-

41 *Ibid.*

42 www.pco.govt.nz/clear-drafting#dm3.70A. Subsections 3.69-3.74.

cuss the matter with the team manager since any change in legislation towards a more gender-neutral language might have implications for all existing Acts.

3.72 If you are amending legislation that contains gender-specific language, draft amendments using gender-neutral language in the same way as if you were starting from scratch, except that –

- if the legislation currently uses ‘he or she’ throughout, generally you should not use ‘they’ for the amendments unless you are also amending the existing specific pronoun references to make the legislation consistent;
- generally do not amend the existing gender-specific language throughout the legislation unless it can be done within the confines of the amendment that you are instructed to do or it can be done easily (e.g., by amending 1 or 2 additional provisions), or unless you are expressly instructed to do so.⁴³

c) In 1995, a Simplification Task Force, set up by the Commonwealth Attorney-General’s Department of the Commonwealth of Australia to examine various drafting issues as part of its Corporations Law Simplification Program, produced a paper entitled *A singular use of THEY*.⁴⁴ Proposed new subsection 242(5) in Schedule 6 of the First Bill, for instance, reads:

A person is entitled to have an alternative address included in notices under subsections (1), (2) and (8) if:
(a) *their* name, but not their residential address, is on an electoral roll [...].

In the First and Draft Second Corporate Law Simplification Bills,⁴⁵ ‘singular they’ has been used to refer to an indefinite noun, rather than the traditional legal *he* or *he or she*.

d) The US House of Representatives started going gender neutral in 2009 when the then Speaker of the House, Nancy Pelosi, introduced *HR5*, a resolution rewriting the standing rules of the 111th Congress to eliminate generic masculine pronouns and any other linguistic remnants of this former ‘masculine rule’.⁴⁶ The House till then had operated under the old Rule XXIX, which stated that “‘the masculine gender include[s] the feminine’, will start operating under the new rule, and that phrase will be replaced by ‘one gender include[s] the other’ – which

43 *Ibid.*

44 More details on this issue at www.editorscanberra.org/a-singular-use-of-they/.

45 <https://www.legislation.gov.au/Details/C2004A04965>. See R. Levy, M. O’Brien, S. Rice, P. Ridge & M. Thornton, *New Directions for Law in Australia: Essays in Contemporary Law Reform*, Australia, Australian National University Press, 2017.

46 <https://www.congress.gov/bill/111th-congress/house-bill/5/text> and <https://www.congress.gov/bill/111th-congress/house-resolution/5>.

suggests that the feminine includes the masculine and the masculine, the feminine".⁴⁷ These are some examples of the House's new drafting rules.⁴⁸

- *he* will be replaced by *he or she*, or by a neutral expression (i.e., *conduct himself* becomes *behave*)
- *his expenses* becomes *the expenses of such individual*
- *chairman / chairmanship* becomes *chair*
- *his designee* becomes *a designee*
- *the President submits his budget* becomes *the submission of the budget by the President*.⁴⁹

Interestingly enough, the *HR5* provides no indication on the use of 'singular they' as a technique to avoid gender-specific language.

e) From 1850 until 2007, Acts of the Westminster Parliament had relied on the general interpretation provision and used *he*, *him* and *his* with the intention of including reference to males and females. In 2007, Jack Straw, the then Chair of Modernization of the House of Commons Committee, Leader of the House of Commons and Lord Privy Seal, publicly stated:⁵⁰

For many years the drafting of primary legislation has relied on Section 6 of the Interpretation Act 1978, under which words referring to the masculine gender include the feminine. In practice this means that male pronouns are used on their own in contexts where a reference to women and men is intended, and also that words such as *chairman* are used for offices capable of being held by either gender. [...]

From the beginning of next Session, Government Bills will take a form which achieves gender-neutral drafting so far as it is practicable, at no more than a reasonable cost to brevity or intelligibility. [...]

Most recently, subsection 2.1 of the Office of Parliamentary Council's drafting guidance 2018 gives some recommendations on gender-neutral writing in primary legislation:

2.1 GENDER NEUTRALITY

Office practice

2.1.1 It is government policy that primary legislation should be drafted in a gender-neutral way, so far as it is practicable to do so.

2.1.2 Gender neutrality applies not only when drafting free-standing text in a Bill but also when inserting text into older Acts which are not gender-neutral. This is unlikely to cause difficulties. However, in very limited circumstances, exceptions may be made when amending an older Act where it might be confus-

47 *Ibid.*

48 More details on this issue at <https://blogs.illinois.edu/view/25>.

49 As D. Baron interestingly comments on it, "[T]he House anticipates the day when the president will be a woman (an event which can also lead to a nominalized passive)" at <https://blogs.illinois.edu/view/25>.

50 Hansard source (Citation: HC Deb, 8 March 2007, c146WS).

ing to be gender-neutral. If you think you need to make an exception, consult your team leader.

What does gender-neutral drafting require?

2.1.3 In practice, gender-neutral drafting means two things

- avoiding gender-specific pronouns (such as 'he') for a person who is not necessarily of that gender;
- avoiding nouns that might appear to assume that a person of a particular gender will do a particular job or perform a particular role (e.g. 'chairman').

In this regard, it is interesting to consider the indications given by the Office of Parliamentary Council's drafting guidance 2018 on the use of 'singular they':

2.1.16 They (singular). In common parlance, 'they' is often used in relation to a singular antecedent which could refer to a person of either sex.

2.1.17 Whether this popular usage is correct or not is perhaps a matter of dispute. OED (2nd ed, 1989) records the usage without comment; SOED (5th ed, 2002) notes 'considered an error by some'. It is certainly well-precedented in respectable literature over several centuries. In the debate on gender-neutral drafting in the House of Lords in 2013 a number of peers expressed concern about the use of 'they' as a singular pronoun.

2.1.18 It may be that 'they' as a singular pronoun seems more natural in some contexts (for example, where the antecedent is 'any person' or 'a person') than in others.

2.1.19 They (plural). It may be possible to turn the noun into a plural noun and then to use 'they' (relying on section 6(c) of the Interpretation Act 1978). [...].

Then, a final, yet significant, recommendation is provided:

2.1.20 Take care to ensure that the plural does not create an ambiguity that would be avoided if the singular were used.

Given its usefulness for gender neutrality, there are reasons to believe 'singular they' will eventually make its way into legislation in the English-speaking jurisdictions analysed. Yet there is still a dispute, particularly in the UK, about whether it is grammatically correct.⁵¹ Whatever one may wish to say about the correct grammatical usage, it is certainly true that in vernacular conversation 'singular they' is used in this way quite frequently.⁵²

51 D. Greenberg, 'Gender Neutrality in the House of Lords (and Ladies)', *Statute Law Review*, Vol. 35, No. 1, 2014, pp. v-vii.

52 *New Oxford American Dictionary*.

II Comparison of Corpora

The analysis has been conducted on a corpus including Public General Acts passed in 2008, 2013 and 2018 in the UK,⁵³ Canada,⁵⁴ New Zealand,⁵⁵ Australia⁵⁶ and the US⁵⁷ for a total number of 15,906,803 tokens, with a focus on the use of ‘singular they’ and the relative clauses (*i.e. them* – third-person plural used as the object of a verb or preposition to refer to one person previously mentioned or easily identified, and *their* – used with an indefinite third-person singular antecedent).⁵⁸ The quantitative analysis of the corpora provides interesting results (Table I) in terms of keywords⁵⁹ produced by using WordSmith Tools (Scott 2015).⁶⁰ Below, Tables 1, 2 and 3 show the results of the Public General Acts passed, respectively, in 2008, 2013 and 2018 in the UK, Canada, New Zealand, Australia and the US.

Table 1 Public General Acts 2008

| 2008 | UK 1,215,002 tokens | Canada 1,123,507 tokens | New Zealand 649,348 tokens | Australia 1,107,475 tokens | US 1,194,012 tokens |
|----------------------|---------------------------|-------------------------------|----------------------------------|----------------------------------|---------------------------|
| <i>singular they</i> | 305 0.05% | 92 <0.01% | 63 <0.01% | 192 0.01% | 91 <0.01% |
| <i>them</i> | 114 0.01% | 75 <0.01% | 41 <0.01% | 115 <0.01% | 35 <0.01% |
| <i>their</i> | 98 <0.01% | 43 <0.01% | 85 <0.01% | 93 <0.01% | 22 <0.01% |

Table 2 Public General Acts 2013

| 2013 | UK 1,207,457 tokens | Canada 1,092,776 tokens | New Zealand 902,006 tokens | Australia 1,093,045 tokens | US 1,122,015 tokens |
|----------------------|---------------------------|-------------------------------|----------------------------------|----------------------------------|---------------------------|
| <i>singular they</i> | 293 0.02% | 109 0.01% | 23 <0.01% | 102 0.01% | 46 <0.01% |
| <i>them</i> | 104 0.01% | 81 0.01% | 14 <0.01% | 81 <0.01% | 21 <0.01% |
| <i>their</i> | 85 <0.01% | 52 <0.01% | 12 <0.01% | 43 <0.01% | 18 <0.01% |

53 www.legislation.gov.uk.

54 www.gazette.gc.ca/gazette/home-accueil-eng.php.

55 www.legislation.govt.nz/.

56 www.legislation.gov.au/.

57 www.congress.gov/.

58 For an in-depth comparison among the pre-existing corpora of legislation passed in 2000, 2005 and 2010 in each of these English-speaking jurisdictions, *see* Pennisi 2019 (cited in footnote 12).

59 The selected items have been retrieved by means of automated interrogation routines.

60 WordSmith Tools is an integrated suite of programs for looking at how words behave in texts. It is possible to use the tools to find out how words are used in texts (M. Scott, *WordSmith Tool Manual*, Stroud, Gloucestershire UK, Lexical Analysis Software Ltd, 2015).

Table 3 *Public General Acts 2018*

| 2018 | UK 1,120,432 tokens | Canada 1,062,776 tokens | New Zealand 815,725 tokens | Australia 1,089,223 tokens | US 1,112,004 tokens |
|----------------------|------------------------------------|--|---|---|------------------------------------|
| <i>singular they</i> | 102 0.02% | 182 0.01% | 22 <0.01% | 93 <0.01% | 36 <0.01% |
| <i>them</i> | 94 <0.01% | 85 <0.01% | 11 <0.01% | 75 <0.01% | 20 <0.01% |
| <i>their</i> | 78 <0.01% | 74 <0.01% | 9 <0.01% | 53 <0.01% | 14 <0.01% |

Comparison of the selected words ('singular they', *them*, *their*) in the sub-corpora (Tables 1, 2 and 3) produced keywords, usually frequent words in one sub-corpus when compared with the others. Interestingly enough, when comparing Table 3 results with a pre-existing corpora of legislation passed in 2008 (Table 1) and 2013 (Table 2) in the selected English-speaking jurisdictions, data shows that with the sole exception of Canada, recourse to 'singular they', and to the relative clauses (*i.e.* *them* and *their*) is not often made as frequencies have been on the decrease (Table 3).⁶¹

Overall, the analysis of data suggests that procedures involving more radical restructuring of the sentence have been preferred, including the recourse to the other techniques for gender-neutral drafting, such as passive voice, omission and repetition.⁶²

F Conclusions

Starting from the important distinction between 'gender languages' and 'languages without grammatical gender', an outlook on the current evaluation given to 'singular they' by eminent scholars in the field of English grammar has provided the theoretical frame on which the impact of 'singular they' in the primary legislation issued in a selection of English-language jurisdictions (Australia, Canada, New Zealand, the UK and the US) in the last decade (2008-2018) has been assessed. Given the environment of legislative drafting techniques, where considerable reliance on precedent is inevitable, any proposal to change legislative language may produce interesting results in different jurisdictions. In this regard, the selected English-speaking jurisdictions have shown a cautious recourse to the 'singular they' in primary legislation issued in the last decade.

As a matter of fact, tendencies of variation and change in the area of personal reference have already taken place. In some languages (*e.g.* English, German, French, Dutch, Spanish and Italian) such tendencies have been supported by language planning measures, including the publication of recommendations and guidelines, while for other languages an awareness of gendered asymmetries is only at the beginning of a development in both academia and the media. To a

61 A substantial stable frequency of *person* and *everyone* has been observed in the UK, Canada, New Zealand and the US sub-corpora, with a slight increase in Australia. For more details, see Pennisi 2019 (cited in footnote 12).

62 *Ibid.*

large extent, the emergence of public discourse on language and gender depends on the sociopolitical background, in particular the state of women's and other sexual minority group movements in the country concerned. Language as a tool of social practice may serve referential functions (*e.g.* the exchange of information); further, it has social-cultural meanings that reflect social hierarchies and mechanisms of identification, and it contributes to the construction and communication of gender. Legislative drafting guidelines for non-discriminatory language identify areas of conventional language use as sexist and offer alternatives aiming at a gender-fair and/or symmetric representation of individuals. As an instrument of language planning, gender-neutral drafting may positively reinforce tendencies of linguistic change, "so far as it is practicable, at no more than a reasonable cost to brevity or intelligibility",⁶³ and may hopefully contribute to such a goal by means of explicit and clear indications.

63 J. Straw, HC Deb, 8 March 2007, c146WS.