Plain Language

A Promising Tool for Quality Legislation

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Abstract

The hypothesis of this article is that plain language drafting with innovative drafting techniques can improve the quality of legislation. Further to this, the article tries to prove that quality legislation can also make the law more accessible to its general audience. With regard to quality, the article assesses plain language drafting with innovative drafting techniques using Helen Xanthaki's criteria of quality in legislation, i.e. that it should be clear, precise and unambiguous. With regard to accessibility, it is defined broadly as to include readability. I will first assess whether plain language drafting with innovative drafting techniques can meet the expectations of its general audience and second discuss whether legislation drafted in plain language with innovative techniques passes the usability tests.

Keywords: plain language, clarity, precision, accessibility, interpretation.

A   Introduction

I   Background

In the present age of information, the availability of an up-to-date, accessible and searchable online legislation database has become a must. It follows that everyone can now easily check their rights and obligations from the legislation online. They can be human resources staff from a small to medium enterprises who want to understand what impact the Pensions Act 2011 can have on the company; policy advisors from a local authority, keen to keep abreast with environmental regulations; tenants who are in dispute with their landlords and may want to commence legal proceedings in court or Law Centre volunteers who want to understand better the Matrimonial Causes Act 1973. The National Archives has conducted considerable research about users of www.legislation.gov.uk website, which is a free-to-access United Kingdom government site. It is worth noting that the website has around 2 million separate visitors per month and provides more

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than 400,000,000 page impressions per year.[1] Who are these separate visitors? In the United Kingdom, there are about 164,133 solicitors on the roll,[2] 15,726 barristers in practice[3] and about 3,694 judges.[4] The total number of legally qualified readers is only about 183,543. So although lawyers represent an important group of legislation readers, typically accessing legislation through the online or hardcopy subscription, they only represent a small percentage of readers. There is now a very large audience of non-lawyers who access the United Kingdom legislation through www.legislation.gov.uk– reading, searching, accessing, downloading legislation in a way that has never happened before. Legislative drafters have to be aware of this phenomenon and they are now facing a challenging task to communicate the law with all the interested audience in an appropriate language.

It has been suggested that such appropriate language is plain language. Plain language drafting has been discussed around the world for almost four decades since the release of the Renton Report. However, there is still no universal definition of plain language so far. It is worth noting that in a recent article in *Clarity*, the definition of plain language was proposed as:

> A communication is in plain language if it meets the needs of its audience— by using language, structure, and design so clearly and effectively that the audience has the best possible chance of readily finding what they need, understanding it, and using it.[5]

Plain language is a tool of communication, which is not confined to short sentences and simplified language. It also covers a wide range of innovative practices and techniques, including vocabulary, syntax, structure, document design and reader aids.[6]

The hypothesis of this article is that plain language drafting with innovative drafting techniques can improve the quality of legislation. Further to this, the article tries to prove that quality legislation can also make the law more accessible to its general audience. With regard to quality, the article assesses plain language drafting with innovative drafting techniques using Helen Xanthaki's criteria of quality in legislation, *i.e.* that it should be clear, precise and unambiguous.[7]

1   www.gov.uk/government/publications/central-government-websites-reporting-on-progress-2012-2013 shows 49,317,302 visits in 2012-2013; because of repeat visits to the website, this is a different measure from the number of separate users per month. In 2013-2014 there were 440,568,153 page impressions.
2   Annual Report 2014 of the Law Society, UK. Available at:www.lawsociety.org.uk (accessed 25 August 2015).
3   Statistics published by the Bar Standards Board (UK) as of 21 April 2015. Available at: https://www.barstandardsboard.org.uk (accessed 25 August 2015).
4   S. Rogers, 'White and Male: Diversity and the Judiciary', *The Guardian*, London, 28 March 2012. Available at: www.theguardian.com/news/datablog/2012/mar/28/judges-ethnic-sex-diversity-judiciary (accessed 25 August 2015).
5   A. Cheek, 'Defining Plain Language', *Clarity*, Vol. 64, November 2010.
6   R. Sullivan, 'Implications of Plain Language Drafting', *Statute Law Review*, Vol. 22, 2000, p. 145.
7   H. Xanthaki, 'On Transferability of Legislative Solutions: The Functionality Test', *in* C. Stefanou & H. Xanthaki (Eds.), *Drafting Legislation: A Modern Approach*, Ashgate, Aldershot, 2008, pp. 1-18.

With regard to accessibility, it is defined broadly as to include readability. I will first assess whether plain language drafting with innovative drafting techniques can meet the expectations of its general audience and second discuss whether legislation drafted in plain language with innovative techniques passes the usability tests.

B   The Quality of Legislation

The Renton Report commented (6.1): "Our terms of reference imply a widespread concern that much of our statute law lacks simplicity and clarity". The Renton Report identified four major problems experienced with legislation resulting in statutes lacking simplicity and clarity. First, the language of the statutes is obscure and complex, its meaning elusive and its effect uncertain. Second, statutes are often over-elaborated in their quest for certainty in the expression of the legislative intention. Third, the internal structure and sequencing of clauses within statutes is poorly arranged and often illogical. Lastly, statutes are enacted and amended in a form that makes it frequently impossible to ascertain the current state of the law with respect to a given subject.[8] A warning was given in the Report itself (1.10): "... little can be done to improve the quality of the legislation unless those concerned in the process are willing to modify some of their most cherished habits".[9] The fundamental question with which we must deal is how best to improve the quality of the large volume of legislation. Xanthaki suggested that the quality of legislation should be assessed in terms of its efficacy, effectiveness, efficiency, clarity, precision and unambiguity.[10] I will define these parameters of quality measurement in the following.

I   Efficacy, Effectiveness and Efficiency

Legislative drafters are expected to transform policies and intentions of policy makers into a final product that is legally effective, precise and easy to understand. Efficacy is the extent to which policy makers achieve their goal and the ability of legislative drafters to produce a desired or intended result. In Xanthaki's pyramid of virtues served by legislative drafters, efficacy is at the highest level of importance followed by effectiveness.[11] Effectiveness reflects the relationship between the purpose and the effects of legislation and expresses the extent to which it is capable of guiding the attitudes and behaviours of the target populations to those prescribed by the legislator.[12] Efficiency refers to the use of minimum costs for the achievement of optimum benefits of the legislative action.[13] The pursuit of efficacy is the ultimate goal for legislation.

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8   Report of the Renton Committee on the Preparation of Legislation (1975, Cmnd 6053).
9   Lord Simon, 'The Renton Report – Ten Years On', *Statute Law Review*, Vol. 6, No. 1, 1985, p. 133.
10   Xanthaki, 2008, pp. 1-18.
11   *Ibid.*, p. 14.
12   *Ibid.*, p. 17.
13   R. Poser, 'Costs Benefit Analysis: Definition, Justification, and Comments on Conference Papers', *Journal of Legal Studies*, Vol. 29, 2000, pp. 1153-1177.

II Clarity

Clarity means legislation should be readily understandable. Clarity, in legislative context, requires simplicity and precision. A law which is drafted in simple but imprecise terms will be uncertain in the scope of its application and for that reason may fail to achieve the intended legal result. A law which is drafted in precise but not simple terms may, on account of its incomprehensibility, also fail to achieve the intended result. The blind pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity.[14] Clarity makes legislation easier for the reader to understand what is being said.[15] Clarity in the language of the law enhances understanding and transparency of legislation.[16] Butt alleged traditional drafting styles, which "ooze archaic language, complex grammatical structures and sentences of excruciating length".[17] Bennion promoted simplicity, which means "to put into a form which is as clear (that is intelligible and free from elaboration) to the intended reader as is practicable".[18] Lord Simon advocated that "people who live under the rule of law are entitled to claim that the law should be intelligible".[19] Dickerson argued that "the importance of clarity to statutes needs little urging".[20] For Henry Thring, clarity or clearness depends on the proper selection of words, on their arrangement and on the construction of sentences.[21] Del Duca considered that "the goal of simplification is to say exactly the same thing as the original but in simplified understandable language".[22]

III Precision

In legislative drafting, precision requires selecting the correct words and maintaining their grammatical sense. This avoids uncertainty in the meaning of words or sentences, which in turn affects construction of statutes. In the United Kingdom, Lord Bridge of Harwich expressed the following:

> The court's traditional approach to construction, giving primacy to the ordinary, grammatical meaning of statutory language, is reflected in the parliamentary draftsman's technique of using language with the at most precision to express the legislative intent of his political masters and it remains the

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14   H. Xanthaki, *Thornton's Legislative Drafting*, 5th ed., London, Butterworths, 2013.
15   R. Dormer, 'Parliamentary Counsel at the Law Commission of the United Kingdom', Lecture, 6 November 2009, p. 1
16   P. Wahlgren, 'Legislative Techniques', *in* L.J. Wintgens (Ed.), *Legislation in Context: Essays in Legisprudence*, Aldershot, Ashgate, 2007, p. 84
17   P. Butt, 'Modern Legal Drafting', *Statute Law Review*, Vol. 23, 2002, p. 12.
18   F. Bennion, 'The Readership of Legal Texts', *Clarity*, Vol. 27, 1993, April, p. 1.
19   Lord Simon, 1985, p. 133.
20   R. Dickerson, 'The Diseases of Legislative Language', *Harvard Journal on Legislation*,Vol. 1, No. 5, 1964, p. 5.
21   H. Thring, *Practical Legislation: The Composition and Language of Arts of Parliament and Business Documents*, London, John Murray, 1902, p. 61.
22   Louis Del Duca, 'Is It Time for a Model Set of Drafting Principles', *Dickson Law Review*, Vol. 105, No. 205, p. 207.

golden rule of constructions that a statute means exactly what it says and does not mean what it does not say.[23]

The Renton Report even put precision as more important than simplicity –

the draftsman must never be forced to sacrifice certainty than simplicity, since the result may be to frustrate the legislative intention. An unfortunate subject may be driven to litigation because the meaning of an Act was obscure which could, by the way of a few extra words, have been made plain. The courts may hold, or a Government department be driven to conclude, that the Act which was intended to mean one thing does not mean that thing, but something else.[24]

In other words, precision means legislation should have exact and precise boundaries.[25]

IV Unambiguity

Unambiguity refers to words and phrases without ambiguity. The words of a statute should be clear, explicit and unequivocal. Where words have more than one meaning or can be interpreted in more than one way, the statute is said to be ambiguous. Legislation is unambiguous if it can only have one meaning. The law should only admit one meaning.[26] Whenever a statutory word or phrase contains more than one meaning or more than one interpretation, the problem of ambiguity becomes significant. Ambiguity undermines the validity and effectiveness of the law.

C Plain Language Drafting with Innovative Techniques

Having defined the criteria of quality legislation, I will now discuss the four functions of plain language and how this can help achieve quality in legislation.

I Functions of Plain Language

1 Complex Concept Expressed in Simple Language

According to J.C. Redish, plain English means writing that is straightforward and that reads as if it were spoken. It means writing that is unadorned with archaic, multi-syllabic words and majestic turns of phrase that even educated readers cannot understand. Plain English is clear, direct and simple; but good plain English

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23 *Associated Newspapers Ltd v. Wilson* [1995] 2 WLR 354, at 362 HL.
24 Report of the Renton Committee on the Preparation of Legislation,1975, para. 11.5.
25 R. Cormacain, 'Prerogative Legislation as the Paradigm of Bad Law-Making: the Chagos Islands', *Commonwealth Law Bulletin*, Vol. 39, No. 3, 2013, p. 492.
26 Cormacain, 2013, p. 493.

has both clarity and grace.[27] The terms Plain English and Plain Language are used interchangeably. Eagleson said plain language is "clear, straightforward expression, using only as many words as are necessary". It is a language that avoids obscurity, inflated vocabulary and convoluted sentence structure. It is not baby talk, nor is it a simplified version of the English language.[28] Watson-Brown considered plain language is another device for legislative drafters to create intelligible legislation.[29] Tanner thought plain language techniques make legislation more intelligible.[30] Mowat proposed a "massive rewriting of old laws and a consistent commitment to plain language drafting of new legislation".[31] Turnbull made specific recommendations on plain language techniques to improve the quality of a draft.[32] The question is: how can we make the legislation more intelligible? Advocates of plain language drafting suggested the following drafting principles:

a) Use Simple Words

The first technique is to use words that are more intelligible to readers such that it is not necessary for readers of average intelligence to look the words up from a dictionary. They substitute complicated words with a simpler or shorter word. They also attempt to use expressions and a phraseology that can bring legal texts closer to ordinary citizens, but not at the expense of creating uncertainty or ambiguity, as this would ultimately be even more detrimental to "those citizens in whose defence the text may have been written".[33] The plain language approach would be to use a simpler synonym, e.g. substituting "effluxion of time" with "passage of time" or "expiry of time". Table 1 contains a list of words that are suggested to be replaced by the plainer equivalents.[34]

Some words, such as "fair" and "reasonable", are examples of "penumbra of uncertainty". The interpretation of this kind of terms is usually left to others, and disagreement between parties may lead to expensive litigation.[35] Although it may be impossible for legislative drafters to list all the circumstances in which the provision is to operate, however, to achieve precision and unambiguity, words such as "fair" or "reasonable" should be rewritten in simple language in orderto provide more guidance as to how such terms should be interpreted.

27   J.C. Redish, 'The Plain English Movement', *in* S. Greenbaum (Ed.), *The English Language Today*, Oxford, Pergamon Press, 1985, p. 126.
28   R. Eagleson, *Writing in Plain English*, Canberra, Australian Government Publishing Service, 1990.
29   A. Watson-Brown, 'Defining "Plain English" as an Aid to Legal Drafting', *Statute Law Review*, Vol. 30, 2009, p. 85.
30   E. Tanner, 'Legislation to Communicate: Trends in Drafting Commonwealth Legislation', *Sydney Law Review*, Vol. 24, 2002, p. 529.
31   C. Mowat, *A Plain Language Handbook for Legal Writers*, Calgary, Carswell, 1998, p. 79.
32   M. Turnbull, 'Clear Legislative Drafting: New Approaches in Australia', *Statute Law Review*, Vol. 11, 1990, p. 161.
33   C. Williams, 'Legal English and Plain Language: An Introduction', *ESP Across Cultures*, No. 1, 2004, p. 123.
34   New Zealand Parliamentary Counsel Office's In-House Drafting Manual, PCO's In-House Drafting Manual, (New Zealand, 2009), at para. 3.55.
35   D. Berry, 'Legislative Drafting: Could Our Statutes Be Simpler?', *Statute Law Review*, Vol. 8, No. 2, 1987, pp. 92-103.

Table 1   **Examples of Plainer Equivalents**

Fancy	Plain	Fancy	Plain
Appoint	decide/fix	assist	help
Attempt	try	balance	rest
Confer	give	data	information
Deceased	dead	effected	made/done
Endeavour	try	expiration	end
Facilitate	help	furnish	give/state/show
Grant	give	initiate	begin/start
Location	place	mitigate	lessen
Obtain	get	permit	let/allow
Prior	earlier	prior to	before
Purchase	buy	quantum	amount
Request	ask	retain	keep
Subsequent	later	subsequent to	after
substitute(d)	replace(ment)	sufficient	enough
Tender	offer	utilize	use
Vendor	seller		

b) Avoid Archaic Language

The second technique is to avoid archaic language. The most obvious drafting error is the use of archaic language. "Hereinafter", "therein", "whereas", "wherein", "thereof", "thereat", "hereby" and similar words are classic targets for plain language movement. In legislative drafting context, they add no meaning to the legislation. Those words are strangers to the users. It is meaningless to read those words without reference to the whole sentence. They are also of no value for readers searching the online legislation database. No one will put those words in the search engine. Archaic language is therefore superfluous.[36] To achieve clarity, archaic language should be removed from the legislation.

c) Avoid Writing Legalese

The third technique is to avoid writing legalese. "Legalese" is the unnecessarily complex expression of ideas and the use of jargon. It uses Latin terms where English will do: sub suo periculo instead of "at his own risk".[37] It uses word-pairings of English, Latin or French terms where one English word will do.[38] For instance, terms such as "use and enjoyment" should be avoided where "enjoyment" alone will suffice, because "enjoyment", in the legal context, already connotes the "use"

36   R. Cormacain, 'A Plain Language Case Study: Business Tenancies (Northern Ireland) Order 1996', *The Loophole*, March 2012, p. 38.
37   Centre for Plain Language, 'Verses Latinum', *New South Wales Law Society Journal*, Vol. 32, April 1994, p. 22.
38   P. Butt, *Modern Legal Drafting: A Guide to Using Clearer Language*, 3rd ed., New York, Cambridge University Press, 2013, pp. 26-31.

of something.[39] Table 2 contains a list of words that are suggested to be replaced by a word or two.

Table 2   Examples of Words Which Can Be Simplified

Instead of	Use
by means of	by
by virtue of	by, under
in the event that	if
subsequent to	after
prior to	before
for the period of	for
by reason of	because of
in order to	to
set forth in	in
during the term of	during

Writing in legalese is vastly different from writing in plain language, which is communication in an idiomatic style – words and expressions that are natural to a native speaker. It avoids jargon and long sentences. It expresses ideas on its own; it does not embed one idea in another. Plain language will not remove all legal ambiguities. But it can avoid unnecessary ambiguity that leads even experienced judges and counsels to have no idea what they are reading. In other words, as much as possible, plain language restricts doubt to the state of the law itself, not to how it is expressed.[40] Legalese is the opposite of plain language. Legalese contributes nothing towards easy comprehension by readers. Legalese should be abandoned with a view to achieving clarity and precision. Below is a "before-and-after" example of Companies Ordinance Rewrite in Hong Kong (Table 3).

Table 3   A 'Before-and-After' Example of Companies Ordinance Rewrite in Hong Kong – Avoid Writing Legalese

Old Companies Ordinance Cap. 32	New Companies Ordinance Cap. 622
Section 71 Certificate to be evidence of title A certificate, under the common seal of the company or the seal kept by the company under section 73A, specifying any shares held by any member, shall be *prima facie* evidence of the title of the member to the shares.	Section 137 Share certificate to be proof of title in the absence of contrary evidence *In the absence of evidence to the contrary*, a certificate issued by a company specifying any shares held by a member in the company is proof of the member's title to the shares.

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39   Butt, 2013, pp. 29-30.
40   D. Coshott, Living in the Past – The Critics of Plain Language, *European Journal of Law Reform*, Vol. 16, 2014, p. 541.

d) Use Short Sentences

The fourth technique is to use short sentences. To understand a long sentence the reader may need to re-read it several times and mentally divide it into digestible smaller sentences. Legislative drafters should generally save the reader the trouble by dividing it up for him.[41] The Renton Report quoted an extreme example:

> For the purpose of this Part of the Schedule a person over pensionable age, not being an insured person, shall be treated as an employed person if he would be an insured person were he under pensionable age and would be an employed person were he an insured person.[42]

Provision written in this kind of manner shouldnot fulfil the criteria of quality legislation.

e) Use Positive Statements

The fifth technique is to prefer positive statements to negative ones as positive statements are in general easier to understand, more direct and more straightforward.[43]

f) Use Active Voice

The sixth technique is to prefer the active voice to the passive. Readers generally find it easier to understand. Another factor is that the passive tends to conceal. There is no automatic rule that everything should be expressed in the active rather than the passive voice. The golden rule is that you need to think about each case on its merits.[44]

g) Use Definitions

Definitions do not just help to define complex concepts, but they can also make sentences shorter.[45] The location of definitions gave us a good deal of thought. Traditionally, in Australia, definitions have always appeared at the beginning of a Bill. On the other hand, advocates of plain language have argued that definitions at the beginning of the Bill create a hurdle for readers before they get to the substantive parts of the Bill, so they should be placed at the end. Definitions should be arranged in alphabetical order. In the new Companies Ordinance of Hong Kong, the general interpretation provisions have been placed at the beginning of the Part and exceptions to general rules have been placed together within the same Division or Subdivision. The defined term is now in bold italics to serve an eye-catching effect (Table 4).

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41 G. Bowman, 'The Art of Legislative Drafting', *European Journal of Law Reform*, Vol. 7, No. 1/2, 2005, pp. 3-17.
42 Lord Simon, 1985, p. 133.
43 Bowman, 2005, pp. 3-17.
44 *Ibid*.
45 Turnbull, 1990, p. 161.

Table 4   *'Before-and-After' Example of Companies Ordinance Rewrite in Hong Kong – Use of Definitions*

Old Companies Ordinance Cap. 32	New Companies Ordinance Cap. 622
Section 2: Interpretation In this Ordinance, unless the context otherwise requires- "accounts" includes a company's group accounts, whether prepared in the form of accounts or not;	Section 2: Interpretation In this Ordinance – [...] ***Companies Register*** means the records kept under section 27;

Putting definitions at the beginning of the Bill has two distinct advantages. First, attention is drawn to them, and second, they are very easy to find.[46] Definition can help achieve clarity, precision and unambiguity.

2   Better Organization for Easy Navigation

It is easy to get access to legislation through the internet. One can access the law via computer or even smartphones. Some jurisdictions even develop mobile apps for access to legislation. It is therefore common for all walks of life to search the provisions from the legislation database. Given the large volume of legislation, it is common that a user who searches the relevant legislation cannot remember the large volume of legislation. In practice, when people look for a piece of legislation, they will go to legislation database website. If they know the name of the Act, they can type in the name of the Act or the chapter number of the Act in the search function of the website. Then the contents of the Act will be displayed. Some readers may screen through the section headings and look for the specific provision. I argue that plain language is a tool that can enhance the navigability of legislation and make it easier for readers to find a specific legislation.

a)   Document Design

Legislative drafters are the designer of the legislation. Advocates of plain language suggest the use of numbered list. The text of a statute should be broken up and arranged in a way that facilitates easier reading and quicker scanning. White space should be used in margins, between sections, and around headings and other special items. Try to use between 50 and 70 characters a line. Use at least 10 to 12 font size for text. Use highlighting techniques such as boldface, italics and bullet points. Indentations can be used to make the text look tidy and hence much easier to read and understand. Terms that are defined elsewhere in the Act are identified with an asterisk, which in turn refers the reader to a footnote where the definition can be found. All these techniques facilitate effective communication with the readers of the legislation.

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46   *Ibid.*

Table 5   A 'Before-and-After' Example of Companies Ordinance Rewrite in Hong Kong – Use of Headings

Before Old Companies Ordinance, Cap. 32	After New Companies Ordinance, Cap. 622
Section 121 Keeping of books of accounts	Section 374 Where accounting records to be kept Section 377 How long accounting records to be preserved

b)   Purpose Clauses
Advocates of plain language suggest that the overall topic of a written text should be specified at the beginning such that the text will be easier to understand.[47] If one has an overall picture of the whole proposition in mind, it is easier to see the significance of the parts and the way they relate to each other and it is easier for readers to concentrate on the details.[48] Purpose clauses are an example of excellent topic specifiers. It is a statement of intent that is usually placed at the beginning of a part or section. It gives a good overview of the general purposes of the text. It is particularly useful when some of the sections are difficult to understand due to their complexity.

c)   Headings
Section headings are another example of good topic specifiers.[49] It gives a concise indication of the contents of the section to which it refers. Good section headings should inform the reader of the subject matter of a section and make the table of provisions a more effective outline of the contents of an Act. Their greatest value is that a reader has only to glance quickly through such headings or notes in order to understand the framework and the scope of an Act. They also enable readers to direct their attention quickly to the portion of an Act which they are looking for. Like a sign-post, a section heading must be brief and to the point, and it must be pointing where it says it is pointing. A section heading is not necessarily a complete grammatical sentence, and often a verb is not necessary.

Some legislative drafters choose to draft section headings in the form of a question as a means of directing the reader to the issue to be addressed by the provision. See Table 5 comparing the old and new Companies Ordinance of Hong Kong.

Good use of questions as section headings can make the legislation more accessible and user-friendly. It is a very effective tool when the question can predict

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47   J.D. Bransford & M.K. Johnson, 'Contextual Prerequisites for Understanding: Some Investigations of Comprehension and Recall', *Journal of Verbal Learning and Verbal Behaviour*, Vol. 11, 1972, pp. 717-726.
48   Turnbull, 1990, p. 161.
49   *Ibid.*

what commonly comes to the mind of a reader. It helps a reader to locate a relevant section more easily and understand the message that particular section is intended to convey. It can be seen as a positive step in the pursuit of plain language with a view to improving the quality of legislation.

3   Innovations as Aids to Interpretation

New drafting practices are designed to improve the text without compromising or affecting its accuracy, meaning or legal effect. Plain language drafters pursue innovative ways to improve legislative drafting.[50]

There are non-graphic aids to interpretation and graphic aids to interpretation.

a)   Non-graphic Aids to Interpretation

Non-graphic aids to interpretation include a range of aids aimed at giving readers better understanding of the purpose, structure or operation of a piece of legislation before asking them to focus on the detailed provisions. These include reader's guides, objects, provisions, summaries, outlines and theme statements. Some aids could help readers understand a particular provision, such as notes explaining the origins of a provision, or the interrelationship between the provision and another part of the legislation, examples identifying cases intended to be covered by a provision, or worked examples showing how a provision would operate in a particular situation.

i.   Examples

The value of using examples is now being increasingly recognized. Examples are often included as a part of an Act but they also may be presented as explanatory notes not forming part of it. An easily understood example can provide an insight that is less easily communicated in a complex and technical provision.

Sullivan criticizes that if legislative drafters use examples to illustrate the application of one or more legislative rules to a particular fact pattern. Examples of this sort are costly to prepare and costly to monitor and maintain. Whoever prepares them must fully understand the legislation and the context in which it will operate and must have sufficient imagination to see the ramifications of each example. Preparation is only the beginning. So long as the legislation remains in force, the examples must be monitored. Even minor amendments of a provision may require adjustments to several examples. Similarly, changes in the operational context of the legislation may affect the import of an example. Someone has to assess the impact of any changes and prepare appropriate revisions. In all this work, there is significant risk of oversight and mistakes.[51]

Although there are drawbacks of using examples to facilitate communication, I argue that examples are particularly useful in transforming difficult material to

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50   H. Penford QC, 'When Words Aren't Enough: Graphics and Other Innovations in Legislative Drafting', available at: www.opc.gov.au (accessed on 18 August 2015).

51   R. Sullivan, 'The Promise of Plain Language Drafting', *McGill Law Journal*, Vol. 47, 2001, pp. 97-128.

terms that are relevant to and easily understood by non-legally qualified users.[52] The purpose of including examples is not to add precision, but to help the readers grasp the meaning and purposes of the text.[53] The legislative message can be conveyed to the readers in a more effective manner.

ii.   Explanatory Notes

We may also put explanatory notes here and there to draw readers' attention to important definitions or other matter. However, this must only be done sparingly in order to avoid interrupting the text.[54] In New Zealand, examples and notes are written in different font size and font style. Readers can easily distinguish between the legislation and examples/notes. See Section 69E of the Employment Relations Act 2000 (New Zealand):

> **69E Examples of contracting in, contracting out, and subsequent contracting**
>
> 1   This section contains examples of contracting in, contracting out, and subsequent contracting.
> 2   Whether, in the following examples, an employee has the right to elect to transfer to a new employer depends on whether—
>   a   section69F applies to the employee; and
>   b   the new employer is an exempt employer.
> 3   This subsection sets out examples of contracting in.
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>
> **Example A**
> A rest home carries on business in the age-related residential care sector. Instead of providing food catering services through its employees, it enters into an agreement with an independent contractor to provide those services.
> The agreement under which the independent contractor provides those services to the rest home expires or is terminated.
> The rest home then uses its employees or engages further employees to provide those services.
> Employees of the independent contractor to whom section 69F applies may elect to transfer to the rest home.
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> **Example B**
> The circumstances in this example are the same as in example A except that the independent contractor engages a subcontractor to provide food catering services to the rest home.

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52   Xanthaki, 2013, p. 188.
53   Turnbull, 1990, p. 161.
54   *Ibid.*

As a result of the agreement between the rest home and the independent contractor expiring or being terminated, the agreement between the independent contractor and the subcontractor expires or is terminated. Employees of the subcontractor to whom section 69F applies may elect to transfer to the rest home.

Note

In both example A and example B, it does not matter whether the rest home's or the independent contractor's employees originally provided the food catering services or whether the work was contracted out or subcontracted at the outset.

In example A and example B, the persons relate to the definition of contracting in as follows:

– the rest home is person A:
– the independent contractor is person B.

b) Graphic Aids to Interpretation

Graphic aids to interpretation refer to methods of representing the information you are trying to convey using visual instead of, or in addition to, verbal information. The layout of the information on the page, possibly combined with non-verbal material, in itself, conveys information. The information might be provided in addition to the information conveyed by any relevant text. Legislation need not be restricted to words.[55]

i   Tables

Tables present complicated data in a more understandable form. Tables are effective when the data to be presented is made up of similar kinds of components, and those components are linked in the same way.[56]

ii   Diagrams and Flow Charts

Diagrams and flow charts are regarded as visual aids. The structural patterns and groupings of words in a sentence are of considerable value in clarifying structure and revealing ambiguities. When legislative drafters feel doubt as to the structure of a sentence or part of a sentence, the little time spent on illustration by means of diagrams almost certainly assists.[57] Flow charts can be a useful device in developing a logical structure during the development stage of a draft.[58] In New Zealand, a general overview of the disclosure regime under the Criminal Disclosure Act 2008 is set out in diagrammatic form as in Figure 1.
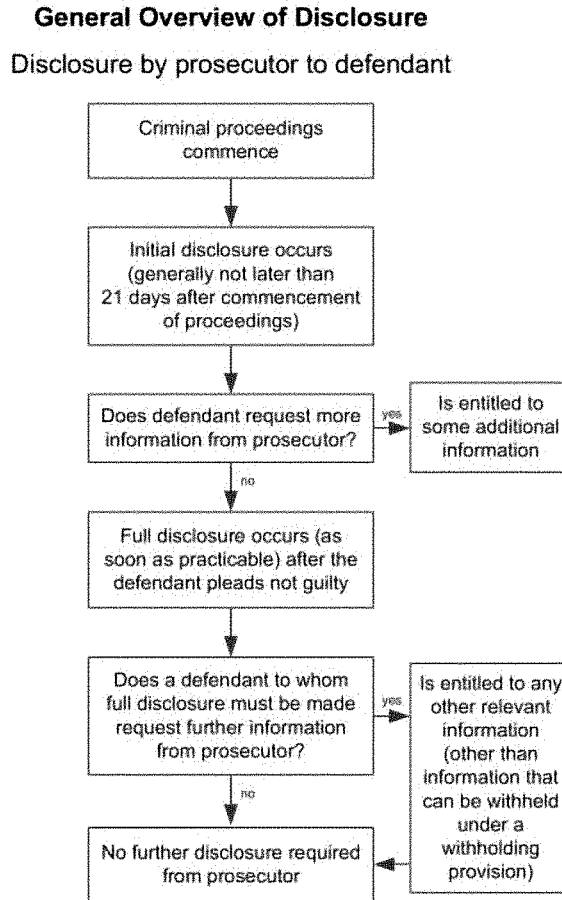
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55   Xanthaki, 2013, p. 189.
56   New Zealand Parliamentary Counsel Office's In-House Drafting Manual. Available at: www.pco.parliament.govt.nz/clear-drafting#otherdraftingtools (accessed 16 August 2015).
57   Xanthaki, 2013, p. 23.
58   *Ibid.*

Figure 1   *Extract of the General Overview of Disclosure*

General Overview of Disclosure

Disclosure by prosecutor to defendant

The disadvantage of using graphics is that if text appears within a graphic, it cannot be found by searching in the legislation database and readers have to study the Act for the operation details of the disclosure regime. However, its advantage is that readers can quickly grasp an idea on the disclosure procedure. The diagram is easy to read and easy to follow.

iii   Acronyms and Abbreviations

Acronyms (with appropriate definitions) may be used to avoid frequent repetition of lengthy expressions.[59]

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59   Turnbull, 1990, p. 161.

iv   Algebraic Formulae

Plain language drafters can also use numbers and symbols.[60] See Regulation 35 of the Merchant Shipping (Safety) (Passenger Ship Construction) (Ships Built Before 1 September 1984) Regulations (Hong Kong), which states the formulae for calculating the internal diameter of main and branch bilge suction pipes in the ship:

$$d_m = 25 + [1.68 \ (L(B + D))\frac{1}{2}]$$
$$d_b = 25 + [2.15 \ (I(B + D))\frac{1}{2}]$$

where d_m = internal diameter of the main bilge suction pipes in millimetres

d_b =internal diameter of the branch bilge suction pipes in millimetres

L = length of ship in metres

B = breadth of ship in metres

D = moulded depth of ship at bulkhead deck in metres

I = length of compartment in metres.

Mathematical formulae, followed by explanations of what each symbol represents, are easier to comprehend than provisions that contain descriptions of a mathematical process.

4   *Removing Gender-Bias Legislation*

Gender-neutral language refers to "a language which includes both sexes and treats women and men equally".[61] Gender-neutral language avoids using male terms to represent women.[62] Gender-neutral language is said to have gained momentum when legal professionals, experts and policymakers recognized that drafting in masculine contributes to perpetuation of a society in which men and women see women as lesser beings.[63] Legislation is gender neutral if it formally and substantively applies equally to both genders.[64] The use of language with a gender-bias is outdated and might even be viewed as discriminatory. Many consider that the use of gender-specific language reinforces gender stereotypes. A gender-inclusive policy recognizes that the language of law needs to be sensitive to the beliefs and attitudes of the readers. There is also a wider aim; it improves

60   *Ibid.*
61   K. Kabba, 'Gender-Neutral Language: An Essential Language Tool to Serve Precision, Clarity and Unambiguity', *Commonwealth Law Bulletin*, Vol. 37, No. 3, 2011, p. 429.
62   S. Petersson, 'Gender-Neutral Drafting: Recent Commonwealth Developments', *Statute Law Review*, Vol. 20, No. 1, 1999, p. 53.
63   Editorial, 'Gender Neutrality in the House of Lords (and Ladies)', *Statute Law Review*, Vol. 35, No. 1, 2014, pp. v-vii.
64   Cormacain, 2013, p. 496.

Table 6   ***Examples of Gender-Neutral Terms That Are Commonly Used to Describe Occupations or Different Classes of Persons***

Instead of	Consider
ambulance man	ambulance officer
chairman	chairperson, presiding officer
fireman	firefighter
postman	postal worker, postal officer
salesman/salesgirl, shop-assistant, sales assistant, sales staff	salesperson
spokesman	spokesperson
sportsman	athlete
steward/stewardess	flight attendant, cabin crew
workman	worker

comprehensibility.[65] In 2007 Jack Straw made the following statement in Parliament:[66]

> For many years the drafting of primary legislation has relied on section 6 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. Many believe that this practice tends to reinforce historic gender stereotypes and presents an obstacle to clearer understanding for those unfamiliar with the convention.
>
> I have worked with colleagues in Government to secure agreement that it would be right, where practicable, to avoid this practice in future and, accordingly, Parliamentary Counsel has been asked to adopt gender-neutral drafting... so far as it is practicable, at no more than a reasonable cost to brevity or intelligibility....

There are many techniques to achieve gender-neutrality. For example, the following gender-neutral terms are commonly used to describe occupations or different classes of persons (Table 6).[67]

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65   C. Williams, 'The End of the "Masculine Rule"? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland', *Statute Law Review*, Vol. 29, 2008, pp. 139-153.

66   J. Kessler QC, 'Public and Private Drafting – Objectives, Problems, Styles and Approaches'. Conference on Statute Law Society and Clarity, Institute of Advanced Legal Studies,London, 15 October 2012. Available at: www.statutelawsociety.co.uk/wp-content/uploads/2014/01/JKessler_notes.pdf (accessed 23 August 2015).

67   Law Drafting Division, *Drafting Legislation in Hong Kong: A Guide to Styles and Practices (Hong Kong, 2012), at para. 9.3.16.*

Suffice it that gender neutrality is now becoming the standard of drafting practice with a view to achieving precision and unambiguity.

II Is Plain Language the Answer?

I will now evaluate the level of quality that plain language can achieve with reference to the four functions set out in Section C.

1 Complex Concept Expressed in Simple Language

Efficacy, effectiveness and efficiency are the three criteria for evaluation of the quality of legislation.[68] Efficacy is at the top of the Xanthaki's pyramid, which means that efficacy should be the top priority of legislative drafters. Mader defines efficacy as the extent to which legislators achieve their policy objectives.[69] An effective legislation is therefore linked to clear and coherent policy objectives.[70] The major purposes of legislation are to establish and delimit the law and to communicate the law from the law-making authority to society and in particular to the persons affected by it.[71] The primary duty of legislative drafters is to give effect the policy of the sponsors of the law and achieve as much certainty as they reasonably can.[72] It is very common that legislative drafters encounter sophisticated policies and there are so many detailed rules, exceptions and qualifications. In such circumstances, in the legislative drafting context, whether policy objectives are communicated to the persons affected by it clearly and effectively depends on the means of communication adopted. Legislative drafting is a form of written communication. The purpose of language is to communicate. If legislative drafters draft the statute correctly, then the meaning of words should represent what the promoter of the Bill meant to say.[73] In reality, words can have different meanings and so it can be difficult for the legislative drafters to accurately convey the meanings intended by the promoter. Plain language strives to express complex concepts in simple language by using simple words, avoid archaic language and legalese, using shorter sentences, positive statements, active voice and definitions. Unnecessary complex language and redundant words are taken out from the legislation. I submit that plain language is completely satisfactory as a tool to improve the quality of legislation as it helps the pursuit of efficacy.

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68 L. Mader, 'Evaluating the Effect: A Contribution to the Quality of Legislation', *Statute Law Review*, Vol. 22, 2001, pp. 119-131, at p. 126.

69 Mader, 2001, p. 126.

70 Office of the Parliamentary Counsel of UK, 'When Laws Become Too Complex – A Review into the Causes of Complex Legislation' (March 2013), available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/187015/GoodLaw_report_8April_AP.pdf (accessed 15 August 2015).

71 G.C. Thornton, *Legislative Drafting*, 4th ed., London, Butterworths, 1996, p. 47.

72 I. Turnbull QC, 'Legislative Drafting in Plain Language and Statements of General Principle', *Statute Law Review*, Vol. 18, No. 1, 1997, pp. 21-31.

73 *Black-Clawson International Ltd v. Papierwerke Waldhof-Aschaffenburg* AG [1975] 1AC 591, at 645.

2 Better Organization for Easy Navigation

The quality of legislation is commonly attached to effectiveness rather than effi-cacy.[74] Effectiveness is ranked as the second highest level of quality that legisla-tive drafters pursue in the Xanthaki's pyramid. Mader considers effectiveness as the extent to which the observable attitudes and behaviours of the target popula-tion correspond to the attitudes and behaviours prescribed by the legislator.[75] Xanthaki suggested that effectiveness seems to reflect the relationship between the effects produced by legislation and the purpose of the statute passed.[76] In reality, people do not read legislation for leisure. They will only read legislation when they want to find out what the law is on a particular matter or when they want to solve a legal problem. If they cannot find the information quickly or if they cannot understand what they find, they complain. Plain language requires clear form and layout for the legislation. The document design and the use of pur-pose clauses, headings and sub-headings and numbered list is a key step of achieving effective communication. Architects always know, before they start to design, whether they are creating a house, hospital, office tower or hotel. They ask who is going to use the building and what those people are going to use it for. The architect's goal is to design a building that is suited for its intended user. Just like an architect, legislative drafter's goal is to create a document that is suited for its intended reader.

The present situation is that most of the intended readers are non-legally qualified people. If they cannot find or understand the legislation, they will not even get to find out whether the legislation is clear, precise and unambiguous. Legislation with clear structure and user-friendly document design can help them find a specific legislation easily. Chapters and other related parts of a legislation should be subdivided further in order to ensure that their content is understand-able and clear. The most important issues are set out at the beginning and basic principles should be explained before comprehensive detail is provided. The pol-icy objectives can then be presented in an organized and logical manner.

Advocates of plain language suggest methods of visual presentation that could help readers use the statute book more effectively, and with less effort. As such, I submit that plain language is completely satisfactory as a tool to improve the quality of legislation as it helps the pursuit of the second highest level of qual-ity, effectiveness.

3 Innovations as Aids to Interpretation

In Xanthaki's pyramid, efficiency embraces clarity, precision and unambiguity. Evaluating the efficiency means considering its costs[77] (namely direct financial costs of implementation and compliance with legal norms; non-material factors;

74　H. Schaffer, 'Evaluation and Assessment of Legal Effects Procedures: Towards A More Rational and Responsible Lawmaking Process', *Statute Law Review*, Vol. 22, 2001, pp. 132-133.
75　Mader, 2001, p. 126.
76　Xanthaki, 2013, p. 6.
77　L. De Alessi, 'Efficiency Criteria for Optimal Laws: Objective Standards or Value Judgements?, *Constitutional Political Economy*, Vol. 3, No. 3, 1992, pp. 321-342.

and all negative effects of the legislation)[78] and the extent to which its goal have been achieved.[79] Delnoy drew the link between efficacy and quality in legislation in his definition of efficacy as the achievement of the least degree of litigation as a result of laws passed.[80] I argue that innovative techniques such as examples, explanatory notes, tables, diagrams, flow charts, formulae and other graphic tools can help make legislation more understandable to non-legally qualified readers. They also provide information that could help readers to interpret the text. Statutory interpretation is an expensive litigation. One of the legislative drafter's main goals is to ensure that the cause for statutory interpretation are kept minimal,[81] failing which will impose an enormous financial burden on all levels of society. As such, adopting innovative drafting practice can bring substantial savings of time and costs. Plain language with innovative drafting techniques is completely satisfactory as a tool to improve the quality of legislation as it helps the pursuit of the third level of quality, efficiency.

4 Removing Gender-Bias Legislation

Plain language and gender-neutral language form the foundation of Xanthaki's pyramid. Using masculine gender to include the feminine can present an obstacle to clearer understanding for those unfamiliar with this drafting policy. It is questionable whether in modern society anyone believes that "he" functions as a generic pronoun to include "she". Some common law jurisdictions (e.g. Australia, Canada, New Zealand, Ireland) have pursued a gender-neutral drafting policy for several years. Other jurisdictions (e.g. England,[82] Scotland and Wales) are now increasingly practising gender-neutral drafting. Thus, plain language is completely satisfactory as a tool to improve the quality of legislation.

5 Plain Language Is the Answer

While legislative drafters should endeavour to convey the intentions of the legislators and ensure there are no ambiguities and misunderstandings in the words and expressions that have been chosen,[83] drafting is always an art that requires a delicate balance between concepts such as precision and simplicity. That said, the plain language presents considerable advantages. As discussed before, first, plain language serves as the drafter's tool to achieve clarity in expressing legislative

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78 G. Regner, 'The View of the Practical Swedish Law-Maker', in U. Karpen & P. Delnoy (Eds.), Contributions to the Methodology of the Creation of Written Law, Baden-Baden, Nomos, 1996, pp. 75-76.

79 Mader, 2001, p. 126.

80 P. Delnoy, The Role of Legislative Drafters in Determining the Content of Norms, Ottawa, The International Cooperation Group, Department of Justice of Canada 2005. Available at: www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/norm/index.html (accessed 28 August 2015).

81 E. Majambere, 'Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting', Commonwealth Law Bulletin, Vol. 37, No. 3, 2011, p. 425.

82 Williams, 2008, pp. 139-153.

83 Q.C. Moran, 'Legislative Drafting, Plain English and the Courts', Clarity, Vol. 52, No. 43, 1999, p. 54.

intent.[84] Second, the plain language movement exposes errors in drafting: in attempting to simplify the text, drafters identify errors of syntax or errors in the choice of words.[85] Third, plain language serves efficiency in that it ensures that legal texts are easier and faster to read.[86] Queries and complexities are therefore reduced. Fourth, plain language contributes to clarity and therefore serves effectiveness in drafting.[87] Last but not least, improving the quality of legislation serves to uphold democracy and the rule of law.[88] My first hypothesis is proved.

D   Improving Accessibility

I   Why Is Accessibility Important?

Accessibility of legislation refers to the ability of the users not only to have direct physical access to the legislation but also to understand what it says such that it is usable for its potential users with the widest possible range of abilities within the widest possible range of situations. It is important for many reasons. First, access to law is a fundamental component of the resolve to uphold the rule of law. "The acceptance of the rule of law as a constitutional principle" requires that a citizen, before committing himself to any course of action, should be able to know in advance what the legal consequences that will flow from it are.[89] Second, it is elementary fairness that people are told of the rules they are expected to obey.[90] It is important to bear in mind our statutes should be framed in such a way as to be clearly comprehensible to those affected by them. It is an aspect of the Rule of Law. People who live under the Rule of Law are entitled to claim that that law shall be intelligible. The people of a society whose regulations are incomprehensible live with the Rule of Lottery, not of Law.[91] Third, it grants democratic legitimacy to law.[92] Finally, in practical terms, it increases the chance of a law being obeyed. Greenberg says that "it is of enormous importance that laws are made accessible to the public as soon as possible".[93] In recognition of the importance of ensuring accessibility of the law, the UK Government launched the Good Law Project, which "is an appeal to everyone interested in the making and publishing of law to come together with a shared objective of making legislation work well for the users of today and tomorrow". It is also said that the digital age makes this "an exciting time for re-thinking how legislation can be made easier to users". In this sense, the law is drafted to meet the needs of its users and it is important that drafters should respond to their expectations.

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84   E. Turatsinze, 'The Pursuit of Clarity, Precision and Ambiguity in Drafting Retrospective Legislation', *European Journal of Law Reform*, Vol. 15, No. 3, 2013, p. 214.
85   Xanthaki, 2008, pp. 1-18.
86   R. Wydick, *Plain English for Lawyers*, Durham, NC, Carolina Academics Press, 1998, pp. 9-24.
87   Xanthaki, 2008, pp. 1-18.
88   Sullivan, 2001, p. 97.
89   *Black Clawson v. Papierwerke Waldhof* [1975] AC 591, 638.
90   Cormacain, 2013, p. 500.
91   Lord Simon, 1985, p. 133.
92   Cormacain, 2013, p. 501.
93   D. Greenberg, *Craies on Legislation*, 9th ed., London, Sweet and Maxwell, 2008, p. 374.

II   Who Read the Legislation?

It is not the purpose of this article to consider whether legislation should be written for judges and lawyers or for the public because the likely audience for a specific law depends on the context. However, it cannot be emphasized enough that drafters must accept that legislation is intended to be read and should understand how the audience will use the document. Minor improvements to the language can bring substantial savings of time and costs. If the drafter and the audience are not members of the same speech community and do not share the same, or substantially the same, culture, there would be a real possibility of failing the communication.[94] Therefore, identifying the audience is the very first step of improving the accessibility of the legislation.

Duncan Berry, who has done considerable research on audience identification, illustrated this approach. He wrote:[95]

> Audience is a broad concept. In order to understand audiences, legislative counsel must first ascertain who will read their legislation and how they will use it.... [R]eaders may vary widely, so it is necessary to identify the specific characteristics of the various audiences in order to make the legislation accessible to readers. Similarly, legislative [counsel] must identify how their audiences will use the legislation.
>
> ...
>
> Legislative counsel can identify [their] audience if they think of all who will potentially read the legislation or whose activities it will control. When those audiences have been identified, the legislation's relationship to its readers should be considered. An audience may be friendly, that is, share interests similar to the policy formulators, or hostile, that is, have interests that conflict or potentially conflict with those of the policy formulators.

The education and experience of the audience is also relevant. Duncan Berry said:

> Audience analysis should include a comparison of the author and the audience and an assessment of their respective knowledge, values and beliefs about the subject matter. A comparative analysis can put legislative counsel in a more informed position to make visual and verbal decisions that may bridge the gap between themselves and their audience.

A survey conducted in the United Kingdom by the National Archives in 2012 revealed that there are two to three million individual users who access the legislation database every month. It is clear that most of those users are not lawyers but include a wide range of people who have often reached legislation database by a simple internet search. These are: first, the individuals who comprise the legislature; second, the persons whose duty is to administer the law; third, the mem-

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94   Xanthaki, 2013, p. 5.
95   D. Berry, 'Audience Analysis in the Legislative Drafting Process', *The Loophole: Commonwealth Association of Legislative Counsel*, p. 61 at p. 62.

bers of that section of society which is to be regulated by the law; fourth, the members of the judiciary who may have the final duty of interpreting the law.[96]

III Expectations of the Audience

Sadly, the legislation.gov.uk user study found that the comprehension level of legislative texts by both legally qualified and non-legally qualified users was generally quite low and that all users found it challenging to read legislation and demonstrate their understanding of it. To address this issue, we have to first understand the expectations of the audience of the law.

1 Government

A government expects legislation to achieve policy (or political) objectives. They may require either considerable detail to control delivery, or "principle" or enabling legislation to allow flexibility in policy implementation at a later stage.[97] A government expects the laws to be written in clearer and more readily understandable language as it can increase the likelihood that people would comply with the legislation.[98] The Organisation for Economic Cooperation and Development has recently adopted a recommendation that its member countries should make clear legislation part of their formal policies.[99] A government would also be concerned about public response to legislation, the inherent intricacy of the legislative process and the potential obstacles to its enactment.[100] A government would also prefer bills to get approved in a short time with few amendments, a guarantee of immediate certainty of results and a positive response from the public.[101]

2 Parliamentarians

Parliamentarians expect legislation to be fit for purpose, *e.g.* properly prepared, and with clear policy objectives. They expect legislation to be drafted in a way that is intelligible and supported by explanatory material that provides more technical details.[102] They expect the government to have a policy that requires regulatory texts to be drafted using plain language.[103] They are concerned about "principle legislation", which they are not certain of how the government will implement. They are also concerned about bills that contain obscure and unsubstantiated technical details.[104] Parliamentarians put the priority over the structure of the

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96   Xanthaki, 2013, p. 5.
97   Office of the Parliamentary Counsel of UK, 2013.
98   House of Commons: – Public Administration Committee. Bad Language: The Use and Abuse of Official Language. Available at:www.publications/parliament.uk (accessed 14 August 2015).
99   OECD.Recommendation of the Council on Regulatory Policy and Governance, 22 March 2012. Available at www.oecd.org/governance/regulatory-policy/2012-recommendation.htm (accessed 21 August 2015).
100 Office of the Parliamentary Counsel of UK, 2013, p. 21.
101 *Ibid.*
102 *Ibid.*
103 OECD Recommendation of the Council on Regulatory Policy and Governance, 2012.
104 Office of the Parliamentary Counsel of UK, 2013, p. 21.

bills, which can reflect the intricate parliamentary scrutiny and amendment procedures.[105]

3 The Judiciary

Judges expect objectives of legislation (and intentions of legislators) to be clear and unambiguous. They also expect definitive and coherent commencement orders.[106] Judges expect provisions to be written in plain language that allow for flexible interpretation.

In the United Kingdom, Lord Denning said:

> It comes to this, that language ought to be simple and clear. There ought to be not long but short sentences. There should be a few commas and semicolons in sentences. There should be simple words. There should not be too much detail. One of the troubles is that with the best of motives the draftsmen try to think of every contingency....It is impossible to think of everything that will happen in the future. All this ought to be in simple language expressing principles. There is no need to go into all this detail. The courts should then allowed to deal with it, as I am sure they have in the past.[107]

The Judiciary is concerned about the possible difficulties in interpreting legislation and the unexpected consequences that implementation may produce.[108] Having legislation drafted for posterity that does not limit their ability to apply the law to circumstances that were unforeseeable by legislators is the Judiciary's top priority.[109]

4 Stakeholders and Others

Stakeholders and other members of the public expect legislation to be handy, easy to understand, and with clearly defined objectives and identifiable implications for them, their organization or their community.[110] If possible, they may prefer to bypass the lawyers and read the statute themselves so as to find out the information that can solve their legal problems. At the same time, they are concerned about the burdens that new legislation can cause them and nervous about overlooking changes and their implications.[111] The priority of the stakeholders and other members of the public is legislation that is simple, accessible, easily to comply with and not unnecessarily burdensome.[112]

To sum up, these four groups of audience may have different concerns and agendas when they look at the legislation. However, their expectations have three

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105 *Ibid.*
106 *Ibid.*
107 United Kingdom, Parliamentary Debates, House of Lords, 15 December 1982, col. 617.
108 Office of the Parliamentary Counsel of UK, 2013, p. 21.
109 *Ibid.*
110 *Ibid.*
111 *Ibid.*
112 *Ibid.*

common grounds. First, they expect that they can easily and quickly find what they need from the legislation. Second, they expect that they can understand the legislation in the way it is expected to be interpreted. Third, they expect that they can act appropriately on that understanding.

IV   Does Plain Language Help?

I submit that using plain language with innovative features is a proper response to the needs of the audience.

1   Expectation No. 1 – Find What They Need Easily and Quickly

In order for the audience to find what they need quickly, it is important to have a clear hierarchy of headings and spaces. The statute book should look good in terms of layout and design. The information should be well-organized and easy to navigate through headings and sub-headings. Related provisions should be located in designated parts and divisions. The principles of plain language drafting are well in line with this purpose.

2   Expectation No. 2 – Understand the Legislation the Way It Is Expected to Be Interpreted

In order for the audience to understand the law the way it is intended to be interpreted, clarity, precision and unambiguity are of essence. The purpose of the legislation should be obviously and clearly stated at the beginning. The essential technical terms should be defined. Where appropriate, complicated concepts should be explained with the aid of examples, diagrams or tables. This is what plain language is all about.

3   Expectation No. 3 – Act Appropriately on That Understanding

This expectation should be met if expectations 1 and 2 are both met.

V   Assessment of Plain Language by Means of Usability Tests

Usability tests can be used to assess whether people who use the documents can find what they need and can understand what they find. Thus, they may be employed to assess whether plain language with the use of innovative techniques can help improve accessibility of legislation. Two kinds of commonly used usability tests are the readability formulae and reader-focused evaluation.

1   Readability Formulae

a)   Dale and Chall's Readability Formula

Many definitions of "readability" exist in the literature. Dale and Chall identified three aspects of the reading process: comprehension, fluency (reading speed) and interest.[113] They defined readability as: the sum total (including interactions) of all those elements within a given piece of printed material that affects success.

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113   G. Richardson & D. Smith, 'The Readability of Australia's Goods and Services Tax Legislation: An Empirical Investigation', *Federal Law Review*, Vol. 30, 2002, p. 475.

The success is the extent to which the readers understand it, the speed at which they read it, and the degree with which they find it interesting.[114] The Dale–Chall readability formula computes a raw score, called the Reading Grade Score (RGS), which rates text on a United States grade-school level based on the average sentence length and the number of unfamiliar words, using the list of 3,000 words commonly known by 4th grade students.

The formula for the Reading Grade Score is:

RGS = (0.1579 × DS) + (0.0496 × ASL) + 3.6365

RGS	Reading Grade Score
DS	Dale Score, or % of words not on Dale–Chall list of 3000 common words
ASL	average sentence length (the number of words divided by the number of sentences)

This formula is not the most popular, although some experts consider it the most accurate, since it is based on a list of specific words.[115]

b)   The Flesch Reading Ease Test

In the Flesch reading-ease test, higher scores indicate material that is easier to read; lower numbers mark passages that are more difficult to read. The formula for the Flesch reading-ease score (FRES) test is:

$$206.835 - 1.015 \left(\frac{\text{total words}}{\text{total sentences}} \right) - 84.6 \left(\frac{\text{total syllables}}{\text{total words}} \right).$$

Scores can be interpreted as shown in the following table. A score of 60 or higher would be considered plain language. Other scores are not labelled, though a one-syllable sentence would score the maximum 121.

Score	Notes
90.0–100.0	Easily understandable by an average 11-year-old student
60.0–70.0	Easily understandable by 13- to 15-year-old students
0.0–30.0	Best understood by college graduates

Studies have shown that readability formulae do not validly or reliably predict how intelligible documents are to their readers. Thus, readability formulae should not be relied on to produce a simplification of legislation. At best, such formulae

114 E. Dale & J.S. Chall, 'A Formula for Predicting Readability', *Education Research Bulletin*, Vol. 27, 1948, p. 11, at p. 27.
115 Cheek, 2010, p. 7.

merely indicate the size of the problem.[116] Due to the complexity of legislation and variability amongst different pieces of law, I agree that there is practical difficulty in applying these formulae to assess the usability of legislation.

2 Reader-Focused Evaluation

As compared with readability formulae, reader-focused testing is a more vivid method to evaluate the quality of legislation. The research literature strongly suggests that reader-focused methods yield useful results. By collecting information about a piece of legislation from the representatives of the various audiences who have read the legislation, the legislative drafters can find out the problems. Having found out the problems those audiences have, the legislative drafters can address the problems to achieve quality legislation.[117] Notably, the governments around the world as shown below have carried out reader-focused evaluation, which showed unequivocally that plain language and innovative techniques can improve the accessibility of legislation.

a) The United Kingdom

The Office of Parliamentary Counsel and legislation.gov.uk have recently conducted a reader-focused research to explore how to make legislation better and how to present it in a more effective way. Thousands of users of legislation.gov.uk took part in an online study, telephone interviews and one-to-one lab testing. It was said to be the first research of this kind undertaken by the government in an attempt to discover the best way of drafting legislation to help people comprehend the law. Participants were shown a short provision drafted in plain language; shown alternative version(s)of the provision drafted in different style(s) and asked to express a preference for one style and to say why they preferred it. Users were then shown sections of legislation, and asked simple questions to check if their understanding of it accurately reflected the law. One of the conclusions of this research is that the use of plain language can help people understand the law more easily. The use of plain language passed the usability test in the United Kingdom.

b) Australia

Australia is a pioneer of experimenting a range of innovative drafting techniques to improve the usability of legislation. The Office of Parliamentary Counsel Office in Australia carried out a survey to test a list of innovative techniques of drafting. Generally, the innovations that were tested received very favourable feedback. Those rated particularly well were the new format for legislation, the use of commencement provisions, the use of notes, the use of tagging of concepts, the use of tables and the use of subsection headings. The use of second person (i.e. the drafting in form of "You are liable for tax if…") rated very poorly. The use of asterisks to identify defined terms, use of diagrams and method statements did not rate particularly well. The survey found a high degree of awareness of many of the

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116 Berry, 1987, p. 101.
117 D. Berry, 'Techniques for Evaluating Draft Legislation', *The Loophole*, March 1997.

new plain language innovations and furthermore a high degree of acceptance of them amongst the Judges, Magistrates, Solicitors and Barristers.[118] The plain language with innovative techniques again passed the usability test in Australia.

c) Singapore

Recently, Singapore carried out a project called PLUS or "Plain Laws Understandable by Singaporeans" (PLUS) to improve accessibility to and modernize the text and design of the Singapore statute book. The object of the PLUS project is to ensure that the laws of Singapore remain drafted and presented in a manner which is clear, readable and more easily understood by the people to whom the laws apply. The first phrase of the PLUS project is an online public survey to better understand the needs, preferences and expectations of the users of the Singapore's legislation. The survey covers different aspects of legislative drafting and presentation of legislation. These include use of language, aids to understanding, amending language and the layout and design of the published and online legislation.[119] The survey results revealed that there were differences between the moderate, infrequent and frequent legislation users. The majority of the frequent legislation users felt that the use of graphics and flow charts makes the legislative text appear amateurish and less legalistic as compared to the moderate and infrequent legislation users.[120] Moderate and infrequent legislation users preferred gender-neutral drafting. Regarding font choice, the majority preferred Times New Roman while some preferred Arial. Overall, the findings of the Singapore PLUS survey 2013 are that to modernize the legislative drafting practise and improve the readability of the laws, the most common suggestions from the frequent legislation users were using plain language for legislation, using shorter sentences, punctuations and bullet points, and using graphic organizers, illustrations and case studies.[121] Plain language drafting with innovative techniques again passed the usability test in Singapore.

E   Arguments against Plain Language

As indicated in Section D, under V, there has been considerable research conducted on the attitudes of legislation users about the use of plain language. The overwhelming response has been favourable. Is plain language without critics? Coshott argued that plain language will reduce people's reliance on lawyers and plain language is not sufficiently certain and will lead to litigation.[122] Pistor and Xu said

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118 Office of Parliamentary Counsel, Results of the 2010 Legislation Users Survey (May 2010).
119 Media Statement of Attorney-General's Chambers, Singapore (8 November 2013). Available at: https://sso.agc.gov.sg/Media/file/agc-media-statement_llrd-plus-online-survey_8-nov-2013.pdf? 92513 (accessed 28 August 2015).
120 Media Statement of Attorney-General's Chambers, 2013, pp. 141-145.
121 Report on PLUS Project 2013 published by the Attorney-General's Chamber, Legislation and Law Reform Division, Singapore.Available at: https://www.agc.gov.sg/our-roles/drafter-of-laws/plain-laws-understandable-by-singaporeans (accessed 28 August 2015).
122 Coshott, 2014, p. 541.

the law is not easy to understand no matter how clearly it is expressed.[123] These arguments are very weak. First, it is now "commercially essential" for lawyers to communicate with their client in understandable language.[124] Some argued that complex concepts can never be expressed in simple language as precision will be lost. To express it plainly requires knowledge and understanding of the law. Even if people understand the law, they still need lawyers to represent them in courts. Plain language will not make lawyers lose their job. Second, if the law is expressed clearly, it should be easy to understand. What people don't understand is how to apply the law into practice. As such, it should be borne in mind that the legislation does not merely belong to the legal profession and the use of plain language with innovative techniques does help to improve the quality of legislation whose ultimate goal is to help people understand the intent of the legislators. I submit that the benefits of using plain language with innovative techniques are overwhelming whereas the arguments of the opponents are hardly convincing.

F   Conclusions

Legislation is an integral part of our life and affects all of us. In the technologically advanced twenty-first century with high-speed broadband internet and wireless cellular communications, legislation is being searched for, read and used by a wide range of people. It is against this global backdrop that plain language drafting with innovative techniques has been discussed in this article. Legislative drafting is "the art of converting legislative proposals into legally sound and effective law".[125] Legislative drafters must know who will use the legislation, and what the legislation is meant to achieve. Plain language is a tool for pursuing efficacy, effectiveness and efficiency. To help readers understand the purpose of the law is a sufficiently strong reason for writing in plain language.[126] Although each piece of legislation requires different drafting techniques, plain language should be a common pursuit. It is also expected that once a drafter has discovered the techniques that facilitate direct communication with the general public, they should use these techniques to establish new conventions and a new format and style. Francis Bennion has named legislative drafters as "keepers of the statute book". In other words, that keeper is a custodian, preserver and protector of the law.[127] The statute book is not static. As communication technologies are going to change, the audience will develop new expectations on the legislation, and drafting will

123 K. Pistor & C. Xu, 'Incomplete of Law', *New York University Journal of International Law and Politics*, Vol. 35, No. 4, 2003, p. 993.
124 L. Harris, 'What Does Plain English Have to Offer Lawyers?', *Write: Information with Clarity*, Vol. 8, November 2013.
125 Law Drafting Division, Department of Justice, 'How Legislation is Made in Hong Kong', 2012, Hong Kong. Available at: www.doj.gov.hk (accessed 15 August 2015).
126 C. Stephens, M. Black & J. Redish, 'Plain Language in Plain English – Identify the Purposes of the Document', *Clarity*, Vol. 63, May 2010.
127 J. Erasmus, 'Keepers of the Statute Book: Lessons from the Space-Time Continuum', *The Loophole*, January 2010.

have to change and evolve in tandem.[128] While striving for accessibility, legislative drafters must continue to strive for precision and legal effectiveness. The well-recognized difficulty of conveying meaning with precision by the use of written words is still there.[129] In my view, if effective communication is the goal, the use of plain language and innovative drafting techniques should prevail.

128 Sullivan, 2001, p. 97.
129 E. Moran QC, 'Legislative Drafting, Plain English and the Courts', *Clarity*, Vol. 43, May 1999.