

Writing Instruction

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Opening Comments

Writing Instruction

Part I – The Basics

The Purposes Of Legal Writing

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- **Efficient information transfer
from writer to reader**

The Purposes Of Legal Writing

- **Efficient information transfer from writer to reader**
- **Empowerment of the reader to deal with the information**

The Purposes Of Legal Writing

- **Efficient information transfer from writer to reader**
- **Empowerment of the reader to deal with the information**
- **In some contexts, to get the reader to react – persuasion**

The Golden Rule Of Writing

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- ***Always write for your audience***

The Golden Rule Of Writing

Possible audiences:

- **depends on your document
and the occasion**

The nature of your audience

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- **Less knowledgeable about your topic than you will be – you must *educate* them**

The nature of your audience

- **Less knowledgeable about your topic than you will be – you must *educate* them**
- **They don't know you. Are you smart? Can you be believed? – you must *instill confidence***

The nature of your audience

- **Overworked – you must *make it easy***

The nature of your audience

- **Overworked – you must *make it easy***
- **The reader has ego, independence and autonomy – you must *empower them* to use the information**

What you must do

- **This falls out of the purposes and the nature of your audience**

What you must do

- **Efficient information transfer, empowerment of the reader, get the reader to react, educate the reader, instill confidence, and make it easy.**

What you must do

- **Efficient information transfer, empowerment of the reader, get the reader to react, educate the reader, instill confidence, and make it easy.**
- **BE CLEAR, DIRECT AND BRIEF**

What you must do

- **NOT vague, indirect/evasive, and long-winded**

What you must do

- You **NEVER** want the reader wrestling with your prose and questioning it

What you must do

- You **NEVER** want the reader wrestling with your prose and questioning it
- You **ALWAYS** want the reader to soak it up, easily and with total trust.

How to do it

- **One main principle**
- **Four practical rules**

How to do it

- **One main principle: always provide context before detail, “point first writing”**

How to do it

- **One main principle: always provide context before detail, “point first writing”**
- **Say what you are going to do, then do it. Make a promise, then keep it.**

How to do it

- **Always ask yourself, “Does the reader know where I am going and why?” If not, stop, and implement “point first.”**

Why it works

- **The hidden power of “point first writing”**

Why it works

- **The hidden power of “point first writing”**
- **Readers absorb information best if they understand its significance as soon as they see it, not afterwards.**

An example

The husband hit his wife with a metal rod. She bled profusely. She went to the hospital. The doctor sewed up her wound. However, she died from the injury. The coroner conducted an inquiry. He called the husband as a witness. He declined to testify, invoking his right to silence. The husband has no right to silence in the coroner's inquiry in these circumstances.

An example

The husband has no right to silence in the coroner's inquiry in the circumstances of this case. In this case, the husband hit his wife with a metal rod. She bled profusely. She went to the hospital. The doctor sewed up her wound. However, she died from the injury. The coroner conducted an inquiry. He called the husband as a witness. He declined to testify, invoking his right to silence.

Four practical rules

To achieve clarity, directness and brevity...

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**
- **Use one word if you can**

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- **Concentrate on connections**

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
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**Use active, direct
verbs**

Use active, direct verbs

**"It was said by the Supreme Court that
the law must be changed."**

Use active, direct verbs

**"It was said by the Supreme Court that
the law must be changed."**

Better version:

Use active, direct verbs

"It was said by the Supreme Court that the law must be changed."

Better version:

"The Supreme Court said that Parliament must change the law."

Use active, direct verbs

Bad version:

"It was said by the Supreme Court that the law must be changed."

Good version:

"The Supreme Court said that Parliament must change the law."

Use active, direct verbs

Bad version:

"It was said by the Supreme Court that the law must be changed."

- 13 words
- 30 page memo

Good version:

"The Supreme Court said that Parliament must change the law."

- 10 words (-23%)
- 23 page memo

Use active, direct verbs

Bad version:

"It was said by the Supreme Court that the law must be changed."

- **Who does the saying (the Supreme Court) is slipped in as an afterthought.**
- **Indirectness, evasion and doubt**

Good version:

"The Supreme Court said that Parliament must change the law."

- **Who does the saying is said up front.**
- **Directness, honesty and certainty**

Use active, direct verbs

Bad version:

"It was said by the Supreme Court that the law must be changed."

- **Who must change the law is left entirely hidden.**
- **Imprecision, evasion**

Good version:

"The Supreme Court said that Parliament must change the law."

- **Who must change the law is disclosed.**
- **Precision, candour**

Use active, direct verbs

“You will be made to be moved by this baseball bat.”

Use active, direct verbs

“You will be made to be moved by this baseball bat.”

“This baseball bat will make you move!”

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**
- **Use one word if you can**
- **Concentrate on connections**

Wage war on the verb 'to be'

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**When possible, replace the verb “to be”
with an action verb**

Wage war on the verb 'to be'

**When possible, replace the verb “to be”
with an action verb**

Am, are, is, was, were, be, being, been

Wage war on the verb ‘to be’

“Smith’s contention is that those shares are worth \$50 million”

Wage war on the verb 'to be'

“Smith’s contention is that those shares are worth \$50 million”

Wage war on the verb 'to be'

**“Smith contends that those shares
are worth \$50 million”**

Wage war on the verb 'to be'

**“Smith values the shares
at \$50 million”**

Wage war on the verb ‘to be’

**“Smith’s contention
is that those shares
are worth \$50
million”**

**“Smith values the
shares
at \$50 million”**

Wage war on the verb 'to be'

**“Smith’s contention
is that those shares
are worth \$50
million”**

- 10 words**
- evasive, indirect**

**“Smith values the
shares
at \$50 million”**

- 7 words (-30%)**
- crisp, direct**

Wage war on the verb 'to be'

Exercise:

- **There was an intention by John Smith to be in violation of the contract.**
- **There is support for Mary Brown's testimony in the testimony of John Smith.**

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**
- **Use one word if you can**
- **Concentrate on connections**

Use one word if you can

Use one word if you can

**We are more likely to absorb things
that are easy to understand.**

Use one word if you can

We are more likely to absorb things that are easy to understand.

$$\left[\frac{(456 - 6^3) - 5}{40} \right] + \left[\frac{1/8 \times (240)}{(2 \times 3)(2 + 3)} \right] = ?$$

Use one word if you can

We are more likely to absorb things that are easy to understand.

$$\left[\frac{(456 - 6^3) - 5}{40} \right] + \left[\frac{1/8 \times (240)}{(2 \times 3)(2 + 3)} \right] = ?$$

$$1 + 1 = ?$$

Use one word if you can

A tip:

Use one word if you can

A tip:

**Write the way you would speak
to a neighbour or a family
member**

Use one word if you can

“He underwent three breath tests by means of a breath testing device”

Use one word if you can

~~**“He underwent three breath
tests by means of a breath
testing device”**~~

Use one word if you can

~~**“He underwent three breath
tests by means of a breath
testing device”**~~

“He took three breath tests”

Use one word if you can

**“He underwent three
breath tests by
means of a breath
testing device”**

**“He took three
breath tests”**

Use one word if you can

**“He underwent three
breath tests by
means of a breath
testing device”**

- 12 words**
- evasive, indirect**

**“He took three
breath tests”**

- 5 words (-58%)**
- crisp, direct**

Use one word if you can

Throat clearing phrases:

**“It is important to
note that the plaintiff
lived in Toronto”**

Use one word if you can

Throat clearing phrases:

**“It is important to
note that the plaintiff
lived in Toronto”**

Instead:

**“The plaintiff lived
in Toronto”**

Use one word if you can

Redundant pairs:

**“If and when we can
define and establish
our final aims and
goals, each and
every member of our
group will be able to
help.”**

Use one word if you can

Redundant pairs:

**“If and when we can
define and establish
our final aims and
goals, each and
every member of our
group will be able to
help.”**

Instead:

**“If we define our
goals, every
member of our
group will be able
to help”**

Use one word if you can

Redundant modifiers:

**In this world of
today, official gov't
red tape is seriously
destroying initiative
among individual
business
executives.”**

Use one word if you can

Redundant modifiers:

In this world of today, official gov't red tape is seriously destroying initiative among individual business executives."

Instead:

"Today, gov't red tape is destroying initiative among business executives."

Use one word if you can

Meaningless modifiers:

**“Most students
generally find some
kind of summer
work.”**

Use one word if you can

Meaningless modifiers:

**“Most students
generally find some
kind of summer
work.”**

Instead:

**“Most students
find summer
work.”**

Use one word if you can

Excessive discourse:

“It is almost certainly the case that, for the most part, totalitarian systems cannot allow a society to settle into what we would perceive to be stable modes of behaviour or, even more crucially perhaps, stable relationships.”

Use one word if you can

Excessive discourse:

“It is almost certainly the case that, for the most part, totalitarian systems cannot allow a society to settle into what we would perceive to be stable modes of behaviour or, even more crucially perhaps, stable relationships.”

Instead:

“Totalitarian systems cannot allow a society to settle into stable behaviour or stable relationships.”

Use one word if you can

Double negatives:

**“There is no reason
not to believe that
engineering
malfunctions in
nuclear energy
systems cannot
always be
anticipated.”**

Use one word if you can

Double negatives:

**“There is no reason
not to believe that
engineering
malfunctions in
nuclear energy
systems cannot
always be
anticipated.”**

Instead:

**“We can assume that
malfunctions in
nuclear energy
systems will surprise
us.”**

Use one word if you can

A phrase for a word:

“A small sail-powered craft that has turned on its side or completely over must remain buoyant enough so that it will bear the weight of those individuals who were aboard.”

Use one word if you can

A phrase for a word:

“A small sail-powered craft that has turned on its side or completely over must remain buoyant enough so that it will bear the weight of those individuals who were aboard.”

Instead:

“A small sailboat that capsizes must float well enough to support its crew.”

Use one word if you can

Obvious implications:

**“Energy used to power
our industries and
homes will in the years
to come be
increasingly expensive
in terms of dollars and
cents.”**

Use one word if you can

Obvious implications:

**“Energy used to power
our industries and
homes will in the years
to come be
increasingly expensive
in terms of dollars and
cents.”**

Instead:

**“Energy will cost
more.”**

Use one word if you can

- **And, if you can, make it a simple word with concrete meaning**

Use one word if you can

- **And, if you can, make it a simple word with concrete meaning**
- **Remember that you are writing the way you would speak to a non-legally trained neighbour or a family member**

Use one word if you can

- **The questioning commenced at 5:30 p.m.**

Use one word if you can

- **The questioning commenced at 5:30 p.m.**
- **The officer attended at the house as soon as his office was contacted.**

Use one word if you can

- **The lawyer indicated that his client would not attend.**

Use one word if you can

- **The lawyer indicated that his client would not attend.**
- **Counsel advised the accused that the hearing was scheduled for 5:00 p.m.**

Use one word if you can

Lawyerly phrases that repel -

- **Adjacent to – next to**
- **With respect to – about**
- **In respect of – concerning**
- **In excess of – more than**
- **Prior to – before**
- **Pursuant to – under**

Use one word if you can

Concentrate on the verbs and nouns, delete the modifiers (adjectives and adverbs).

- **In one word, verbs say plenty: Acquire, take, grab, snatch, lift, pilfer, expropriate, steal, rob**
- **Same with nouns: horse, racehorse, thoroughbred, nag, steed, stallion.**

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **Adjectives, less so. They are clumsy and “in your face”: “He intentionally and sneakily took the bag” vs. “He pilfered the bag.”**

Use one word if you can

Concentrate on the verb and nouns, delete the adjectives and adverbs.

- **“She was very, very angry”**

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **“She was very, very angry”**
- **“She was enraged”**

(Wydict, Plain English for Lawyers, 4th ed.)

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **“This is quite puzzling.”**

Use one word if you can

Concentrate on the verb and nouns, delete the adjectives and adverbs.

- **“This is quite puzzling.”**
- **“This is baffling.”**

(Wydict, *Plain English for Lawyers*, 4th ed.)

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **“The witness intentionally testified untruthfully about the cargo”**

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **“The witness intentionally testified untruthfully about the cargo”**
- **“The witness lied about the cargo.”**

(Wydick, *Plain English for Lawyers*, 4th ed.)

Use one word if you can

Concentrate on the verbs and nouns, delete the adjectives and adverbs.

- **“Defendant’s sales agents maliciously took advantage of people with little money and limited intelligence.”**
- **“Defendant’s sales agents preyed on the poor and the ignorant.”**

(Wydict, *Plain English for Lawyers*, 4th ed.)

Four practical rules

→ Try exercises A and B...

- Use active, direct verbs
- Wage war on the verb “to be”
- Use one word if you can

Four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**
- **Use one word if you can**
- **Concentrate on connections**

Concentrate on connections

- **Three levels of connections:**
 - **connections within sentences**
 - **connections between sentences**
 - **overall connections**

Connections within sentences

Connections within sentences

- **Keep subjects and verbs right together.**

Connections within sentences

- **Keep subjects and verbs right together.**
- **Divide information into bite-sized chunks. Don't be overly ambitious.**

Connections within sentences

- **Keep subjects and verbs right together.**
- **Divide information into bite-sized chunks. Don't be overly ambitious.**
- **Put like with like.**

- **Keeping subjects and verbs together:**

The plaintiff, John Smith, having sought since July 2010 to recover losses from Acme incurred in January of that year, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

- **Keeping subjects and verbs together:**

The plaintiff, John Smith, having sought since July 2010 to recover losses from Acme incurred in January of that year, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Old version: The plaintiff, John Smith, having sought since July 2010 to recover losses from Acme incurred in January of that year, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Revised: Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Advantages of the revised version – the solid sentence core

Having sought since July 2010 to recover losses from Acme incurred in January of that year, **the plaintiff, John Smith, sued** Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Divide information into bite-sized chunks:

Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Divide information into bite-sized chunks:

Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

--- Lots going on there; reader has to pause and think

Divide information into bite-sized chunks

Old version: Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Revised: John Smith had a contract with Acme Co. In January, 2010, Acme breached it. For the next seven months, John suffered losses but Acme refused to compensate him. So John sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Advantages from this change – digestibility, less mystery about what's going on

Old version: Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Revised: John Smith had a contract with Acme Co. In January, 2010, Acme breached it. For the next seven months, John suffered losses but Acme refused to compensate him. So John sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Put like with like (advantage is clarity):

Old version: John Smith had a contract with Acme Co. In January, 2010, Acme breached it. For the next seven months, John suffered losses but Acme refused to compensate him. So John sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Revised: John Smith entered into a contract with Acme Co. based on certain representations of its employee, Mary Brown. In January, 2010, those representations proved to be false. For the next seven months, John suffered losses but Acme refused to compensate him. John seeks damages from Acme for the breach of contract and from Mary and Acme, as her employer, for the negligent misrepresentation.

The overall difference:

Old version: The plaintiff, John Smith, having sought since July 2010 to recover losses from Acme incurred in January of that year, sued Acme Co. for damages for breach of contract and also sued both Acme's salesperson, Mary Brown, and Mary's employer, Acme, for damages for negligent misrepresentation.

Revised: John Smith entered into a contract with Acme Co. based on certain representations of its employee, Mary Brown. In January, 2010, those representations proved to be false. For the next seven months, John suffered losses but Acme refused to compensate him. John seeks damages from Acme for the breach of contract and from Mary and Acme, as her employer, for the negligent misrepresentation.

An example to try:

Canada, after falling behind 6-1 in the third period due to sloppy play, came from behind by scoring four quick goals but, after hitting the goal post on three occasions, fell just one goal short, losing 6-5 -- a result that might not have happened if it didn't take so many penalties earlier in the game.

(Micro-coherence within sentences: put subjects and verbs together, offer bite-sized chunks of information, put like with like)

Connections within sentences

- **Keep subjects and verbs right together.**
- **Divide information into bite-sized chunks. Don't be overly ambitious.**
- **Put like with like.**

Connections between sentences

Connections between sentences

An example:

Mary Brown claims that she wrote the book, “Coming Alive”. The novel was about a love affair between two people, Bob and Janice. The man first began romancing the woman in 1984. 16 years ago, their child was born out of wedlock.

Mary Brown claims that she wrote the book, “Coming Alive”. The novel was about a love affair between two people, Bob and Janice. The man first began romancing the woman in 1984. 16 years ago, their child was born out of wedlock.

Mary Brown claims that she wrote the
book, “Coming Alive”. The novel was
about a love affair between two people,
Bob and Janice. The man first began
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Mary Brown claims that she wrote the book, “Coming Alive”. This book was about a love affair between two people, Bob and Janice. Their love affair first began in 1984. In 1995, their child was born out of wedlock.

Compare:

Mary Brown claims that she wrote the book, “Coming Alive”. The novel was about a love affair between two people, Bob and Janice. The man first began romancing the woman in 1984. 16 years ago, their child was born out of wedlock.

Mary Brown claims that she wrote the book, “Coming Alive”. This book was about a love affair between two people, Bob and Janice. Their love affair first began in 1984. In 1995, their child was born out of wedlock.

Words that help connections between sentences:

Transitional words: "for example", "therefore", "however", "on the other hand", "further", "moreover", "thus", "consequently", "accordingly." Orienting words: "for the most part", "historically," "in this case."

Overall connections

- **implementing point first within paragraphs, implementing the proximity principle (compression), and implementing overall point first (*e.g.*, an introduction)**

Recap: Coherence

- **Micro-coherence: within sentences and between sentences**
- **Macro-coherence: implementing point first within paragraphs and implementing the proximity principle (compression), and implementing overall point first**

**Overall connections:
Point first & logical order**

Overall connections: Point first & logical order

- **Point first – topic (first) sentence – glue to previous paragraph using techniques for connections between sentences**

Overall connections: Point first & logical order

- **Point first – topic (first) sentence – glue to previous paragraph using techniques for connections between sentences**
- **Then logical development using techniques for connections between sentences**

Overall connections: Point first & logical order

- **Point first – topic (first) sentence – glue to previous paragraph using techniques for connections between sentences**
- **Then logical development using techniques for connections between sentences**
- **Develop from old information to new.**

Overall connections: Point first & logical order

- **Point first – topic (first) sentence – glue to previous paragraph using techniques for connections between sentences**
- **Then logical development using techniques for connections between sentences**
- **Develop from old information to new.**
- **Concluding sentence (maybe)**

Overall connections: The proximity principle

Overall connections: The proximity principle

- **An advanced technique**

Overall connections: The proximity principle

- **Structuring adds to meaning and understanding**

Overall connections: The proximity principle

- **Structuring adds to meaning and understanding**
- **Putting like things with like things helps the reader make connections**

Overall connections: The proximity principle

- **Structuring adds to meaning and understanding**
- **Putting like things with like things helps the reader make connections**
- **Keeping different things apart adds to clarity and understanding**

Overall connections: The proximity principle

The proximity principle:

Overall connections: The proximity principle

The proximity principle:

- **Closely related information and ideas should be kept together**

Overall connections: The proximity principle

The proximity principle:

- **Closely related information and ideas should be kept together**
- **Unrelated information and ideas should be kept apart**

Overall connections: The proximity principle

The proximity principle:

- **Closely related information and ideas should be kept together**
- **Unrelated information and ideas should be kept apart**
- **The reader encounters the facts and law together when relevant**

Overall connections: The proximity principle

An example...

See precedents, Tab 9

Overall connections: other devices

- **The role of overviews and introductions (more Jan. 24-26)**

Overall connections: other devices

- **The role of overviews and introductions (more Jan. 24-26)**
- **Aids to structure: headings, transitions throughout to give constant orientation and pt. first**

Overall connections: other devices

- **The role of overviews and introductions (more Jan. 24-26)**
- **Aids to structure: headings, transitions throughout to give constant orientation and pt. first**
- **Brief orienting paragraphs when needed**

Recap: the four practical rules

To achieve clarity, directness and brevity...

- **Use active, direct verbs**
- **Wage war on the verb “to be”**
- **Use one word if you can**
- **Concentrate on connections**