

Legal writing and written advocacy

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Federal Court of Appeal**

Legal writing and written advocacy

Opening Comments

Legal writing and written advocacy

Part I – The basics

Introduction

- **Try out a few ideas from this presentation: do it and you get instant gains**

Introduction

- **It's so easy!**
 - ▶ **One golden rule of writing**
 - ▶ **Only three things to keep in mind**
- **With practice, you get better; and it all becomes second nature**

The golden rule

- **Always write for your audience**
 - ▶ **It is all about your audience**
 - ▶ **It is never about you**

The audience: characteristics

- 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 audience: characteristics

- Most people have limited time and want to grab the information and run – you must **make it easy**

The audience: characteristics

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

So how should you write?

- Educate, instill confidence, make it easy, empower: all accomplished if you are **CLEAR, DIRECT AND BRIEF**
- NOT vague, indirect/evasive, and long-winded

So how should you write?

- 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

The judicial audience

- **Are usually ordinary people: clear, direct and brief satisfies most of their needs**
- **BUT this audience does have some unique features and needs**

The judicial audience

- **An audience with knowledge gaps:**
 - ▶ **The law? It depends**
 - ▶ **What are the facts and how should the law apply to them? A knowledge gap.**

The judicial audience

- **Our motivations: serve the public interest; just want to solve the practical problem**
- **Our egos: empowerment vs. dictation**
- **The adversarial context: credibility**

The judicial audience

- **Busy**
- **How much do we read?**
- **Sometimes involuntary reading; competing preferences**
- **When and where do we read**
- **The state of our brains**

The judicial audience

- **Judges are persuaded in three ways (to varying degrees):**
 - ▶ **intellectual persuasion,**
 - ▶ **emotional persuasion,**
 - ▶ **credibility persuasion**

The judicial audience

- **Intellectual: “My client wins because, on the law as applied to the facts, my client should.”**
- **Emotional: “My client wins because it is right that he should.”**
- **Credibility persuasion: “The judge believes and trusts me”**

The judicial audience

- Intellectual: “My client wins because of the law as applied to the facts, my client should.”
- Emotional: “My client wins because it is right that he should.”
- Credibility persuasion: “The judge believes and trusts me”

BE CLEAR, DIRECT AND BRIEF

The judicial audience

“Persuasion works best when it is largely invisible.”

- Stephen V. Armstrong and Timothy P. Terrell,
Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing.

- **Ideally, the writer is invisible**
- **Assertions vs. demonstrations: the power of understatement**

The judicial audience

- **Conclusions:**
 - ▶ **Clear, direct and brief matters even more for this audience than most**
 - ▶ **Credibility really matters**
 - ▶ **Demonstrations persuade, assertions do not**

The way forward

- **At the document level, one main principle: point first or context before detail**
- **At the sentence level, three practical rules to achieve clear, direct and brief**

Point first writing / context before detail

- **Two ideas:**
 - (1) Say what you are going to do, then do it. Make a promise. Keep it. This is often called “point first writing”**
 - (2) Provide necessary context early, at the right time**
- **Should be done throughout the document, not just introductions**

Point first writing / context before detail

- **Why do “point first writing” and “context before detail” work?**
- **Readers absorb information best if they understand its significance as soon as they see it, not afterwards.**

Point first writing / context before detail

- **Without point first and context before detail: a blizzard of detail that the reader cannot handle**
- **Reader: “Why are you telling me this?”**
- **Poisonous to persuasion**

**Point first writing /
context before detail**

A, E, I, M, P, T, X

**Point first writing /
context before detail**

**I am going to give you every
fifth letter of the alphabet:**

A, E, I, M, P, T, X

Point first writing / context before detail

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

Point first writing / context before detail

- **A model to emulate: the designer of a museum exhibit**
- **Environmental prosecution example**

Clear, direct and brief

- **Individual sentences matter most of all.**
- **Three rules.**
- **Have them front of mind and you can speed draft a document that meets more of the judge's needs**

The three rules

- 1. Eliminate wimpy words**
- 2. Use one plain, good word if you can**
- 3. Concentrate on connections**

Eliminate wimpy words

- **The biggest wimpy word of all...the verb “to be”**
- **Other examples: to make (“make a decision”), to arrive at (“arrived at a decision”), to have (“have a thought”), to receive (“receive an idea”), to bring (“bring an end to..”), to get (“get an idea that”)**

Eliminate wimpy words

- **As often as reasonable, get rid of wimpy verbs – replace them with stronger verbs**
- **It's true for nouns too – but we'll concentrate on verbs**

Eliminate wimpy words

- **Let's concentrate on the verb "to be"**
- **There's a whole family of wimps:
am, are, is, was, were, be, being,
been, becoming, became**

Eliminate wimpy words

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

Eliminate wimpy words

**"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.”**

(using active voice not passive voice)

Eliminate wimpy words

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.”

- **13 words vs. 10 words (23% surplusage)**
- **Bad version: who does the saying (the Supreme Court) is slipped in as an afterthought; indirectness, evasion and doubt; this is “anti-persuasion”**
- **Good version: precision, crisp, confident and candor**

Eliminate wimpy words

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

Eliminate wimpy words

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

**“This baseball bat will make you
move!”**

Eliminate wimpy words

- **Exceptions: when passive voice might be better than active voice.**
- **To connect sentences better (putting common themes or words close together); the subject is unnecessary and gets in the way of the story**

Eliminate wimpy words

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

(nominalizations)

Eliminate wimpy words

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

Better version:

“Smith values the shares at \$50 million”

Eliminate wimpy words

Watch “there is” or “this is” constructions...

“There is an appeal before the Court that may make a change to the law.”

Eliminate wimpy words

Watch “there is” constructions...

“There ~~is~~ an appeal before the Court that may ~~make~~ a change to the law.”

Better version:

“A pending appeal may change the law.”

Eliminate wimpy words

“A court must always be certain that it is legally authorized to act. A court that acts without legal authorization is acting contrary to law and our fundamental constitutional arrangements.”

Eliminate wimpy words

“A court must always ~~be~~ certain that it ~~is~~ legally authorized to act. A court that acts without legal authorization ~~is~~ acting contrary to law and our fundamental constitutional arrangements.”

Better version:

“A court must always ensure it acts with legal authorization. Without that, it violates the law and our fundamental constitutional arrangements.”

Eliminate wimpy words

“It is true that there was a single line in X’s memorandum that alluded to the fact that a payment had been made, but there was no evidence of this before the Court.”

Eliminate wimpy words

~~“It is true that there was a single line in X’s memorandum that alluded to the fact that a payment had been made, but there was no evidence of this before the Court.”~~

Better versions:

“X suggested in a single line in its memorandum, unsupported by evidence, that it paid the debt.”

“X suggested in a single line in its memorandum that it paid the debt, a suggestion unsupported by evidence.”

“X suggested in a single line in its memorandum that it paid the debt. The record does not support that.”

After only rule one: taking stock

- **I've hardly asked you to do anything;
easy to keep this rule in mind**
- **Enormous gains in brevity:
potentially pages of savings**
- **Clearer, more direct and crisp:
confidence-building, persuasive**

Eliminate wimpy words

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.**
- **He underwent a tooth extraction.**

Eliminate wimpy words

Exercise:

- **It was not until I opened my email that I got the news.**
- **She arrived at the decision to bring an end to the contract.**
- **This is a case about the law of contract.**

Eliminate wimpy words

Exercise:

- **It was the growth of consumer power that led to new legislative reforms.**
- **The purpose of this document is to explain how to construct a box.**

Eliminate wimpy words

Exercise:

- **We are in agreement with your position, but if it is your intention to cause delay, we will stand in opposition to you.**

Eliminate wimpy words

Other wimps:

- **“To get” – take, acquire, pluck, grab, steal, pilfer, rob**
- **“To make” – usually just get rid of it**
- **“To have” – hold, clutch, embrace**

(or in either case, reconstruct the sentence to get rid of it)
- **“To indicate” – say, shout, declare, etc.**

Use one plain, good word if you can

A tip:

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

Use one plain, good word if you can

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

Use one plain, good word if you can

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

“He took three breath tests”

Use one plain, good word if you can

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

**“He took three
breath tests”**

Use one plain, good word if you can

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

- 12 words
- evasive, indirect,
jarring

**“He took three
breath tests”**

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

Use one plain, good 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 plain, good 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 plain, good word if you can

Throat clearing phrases:

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

Use one plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good word if you can

Meaningless modifiers:

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

Use one plain, good word if you can

Meaningless modifiers:

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

Instead:

**“Most students
find summer
work.”**

Use one plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good 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 plain, good word if you can

● Other unnecessary phrases:

- In the normal course of events = normally
- On an annual basis = annually
- As of this date in time = now
- A large number of = many
- In addition to the above = as well
- In the event that = if
- **With respect to, in regard(s) to, with regard to = regarding, concerning, about**
- Due to, due to the fact that = because
- As per your request = as you requested

Use one plain, good word if you can

Others:

- **Adjacent to – next to**
- **In excess of – more than**
- **Prior to – before**
- **Pursuant to – under**

Use one plain, good word if you can

Still others:

- **It is respectfully submitted**
- **In my view**
- **In my opinion**

When might you use these?

Use one plain, good word if you can

The problem of self-commentary:

- **“Having considered the matter carefully, I conclude...” “While I am not submitting that...”**

Use one plain, good word if you can

The problem of “prepositional bloating”:

- In the course of the investigation of the crime by the officer from the OPP, a group of tenants of the apartment building gathered in the lobby on the ground floor.

Use one plain, good word if you can

The problem of “prepositional bloating”:

- In the course of the investigation of the crime by the officer from the OPP, a group of tenants of the apartment building gathered in the lobby on the ground floor.
- During the OPP officer’s investigation, a group of tenants gathered in the ground floor lobby.

Use one plain, good word if you can

The problem of over-elaborating the action:

- **The director decided to put her in charge**

Use one plain, good word if you can

The problem of over-elaborating the action:

- **The director decided to put her in charge**
- **The director put her in charge**

Use one plain, good word if you can

The problem of self-commentary:

- **“Having considered the matter carefully, I conclude...” “While I am not submitting that...”**
- **You are putting yourself in issue**
- **Unless you intend to put yourself in issue, leave yourself out**

Use one plain, good word if you can

- **Concentrate on the nouns and verbs, delete the adjectives and adverbs.**
- **Adjectives and adverbs are clumsy, bulky and “in your face”: “He intentionally and sneakily took the bag” vs. “He pilfered the bag.”**
- **Avoid the following: very, quite, certainly, obviously, surprisingly, definitely, surely, really, quite, absolutely, clearly**

Use one plain, good word if you can

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

- **“She was very, very angry”**

Use one plain, good word if you can

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

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

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

Use one plain, good word if you can

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

- **“This is quite puzzling.”**

Use one plain, good word if you can

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

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

Use one plain, good 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 plain, good 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.”**

Use one plain, good 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.”**

Use one plain, good 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.”**

Use one plain, good word if you can

Snarky adverbial beginnings.

- **Interestingly**, the respondent fails to cite any of the jurisprudence under the Act.
- The respondent fails to cite any of the jurisprudence under the Act.

The first two rules: taking stock

- **Enormous gains in clarity, directness and brevity**
- **Significantly more persuasive effect**
- **Meeting all the needs of the judicial audience**

Both rules together

Exercise:

By virtue of servicing the bank account, the bank was required to monitor activity in the account held by Smith. It was this that led the bank to uncover a number of clues that indicated that its customer was engaging in fraud.

Both rules together

Exercise:

By virtue of servicing the bank account, the bank was required to monitor activity in the account held by Smith. It was this that led the bank to uncover a number of clues that indicated that its customer was engaging in fraud.

- **The bank discovered Smith's fraud while monitoring his account, a task it must do.**

Both rules together

Exercise:

With respect to Canadian jurisprudence, the professor is of the view that the judgments from the Federal Court of Appeal greatly exceed in quality the judgments rendered by the Supreme Court of Canada.

Both rules together

Exercise:

With respect to Canadian jurisprudence, the professor is of the view that the judgments from the Federal Court of Appeal greatly exceed in quality the judgments rendered by the Supreme Court of Canada.

- **Examining the cases, the professor says the Federal Court of Appeal beats the Supreme Court of Canada every time.**

Both rules together

Exercise:

It is important to note that the Supreme Court of Canada is comprised of nine judges because each judge has a need for eight others to detect all of his or her mistakes.

Both rules together

Exercise:

It is important to note that the Supreme Court of Canada is comprised of nine judges because each judge has a need for eight others to detect all of his or her mistakes.

- The Supreme Court of Canada has nine judges because each judge needs eight others to find all the mistakes.**
- Each Supreme Court judge needs eight others to find all the mistakes. That's why there's nine of them!**

Exercises

Although Smith Hall is regularly populated by students, close study of the building as an architectural work is seldom undertaken by them.

Reminder: one word if you can [neighbour; delete adverbs/adjectives, let the strong verbs play]; avoid indirect expressions; war on “to be”

Exercises

Although Smith Hall is regularly populated by students, close study of the building as an architectural work is seldom undertaken by them.

The students living in Smith Hall ignore its architecture.

Exercises

It was decided by them to submit their resignations as students on account of the fact that it was necessary for them to help support their family.

Reminder: one word if you can [neighbour; delete adverbs/adjectives, let the strong verbs play]; avoid indirect expressions; war on “to be”

Exercises

It was decided by them to submit their resignations as students on account of the fact that it was necessary for them to help support their family.

They decided to drop out of school to support their family.

They left school to support their family.

Exercises

It is our opinion that Mary Brown, always being full of effort and with her mind always on the job when she is playing ice hockey, would be a very, very good lawyer in court if she shows those same qualities there.

Reminder: one word if you can [neighbour; delete adverbs/adjectives, let the strong verbs play]; avoid indirect expressions; war on “to be”

Exercises

It is our opinion that Mary Brown, always being full of effort and with her mind always on the job when she is playing ice hockey, would be a very, very good lawyer in court if she shows those same qualities there.

If Mary Brown, a hockey player with focus and tenacity, brought those qualities to the courtroom, she would be the class of the Bar.

Exercises

There are many ways in which Leafs' goalie Frederik Andersen, who is interested in winning, is able to have the puck stopped from going in the net.

Reminder: one word if you can [neighbour; delete adverbs/adjectives, let the strong verbs play]; avoid indirect expressions; war on "to be"

Exercises

There are many ways in which Leafs' goalie, Frederik Andersen, who is interested in winning, is able to have the puck stopped from going in the net.

Keen to win, the Leafs' Frederik Andersen finds many ways to stop the puck.

Exercises

It is critical to note that, with respect to what we will see tonight, trouble is caused when John Tavares is allowed by the not very good Montreal defence to take a dominant position in or about the area in the front of the net.

Reminder: one word if you can [neighbour; delete adverbs/adjectives, let the strong verbs play]; avoid indirect expressions; war on “to be”

Exercises

It is critical to note that, with respect to what we will see tonight, trouble is caused when John Tavares is allowed by the not very good Montreal defence to take a dominant position in or about the area in the front of the net.

Tonight, we will see the trouble John Tavares causes when he is left all alone to dominate in front of Montreal's net.

Tonight, we will see the trouble John Tavares causes in front of Montreal's net, left all alone there, to dominate.

Concentrate on connections

- For “sentence + sentence,” you want “clarity + clarity.”
- To make “clarity + clarity,” sentences must be internally clear and the “+” element must be clear.
- Connections must be made within sentences and between sentences.

Concentrate on connections

Build sentences with easily-discerned meaning. Then connect them.

- **Glue sentences together. The 4x100 relay.**
- **Keep subjects and verbs right together. This creates a “strong sentence core.”**
- **Divide information into bite-sized, connected chunks and then arrange the chunks logically. Don’t challenge your audience.**

Glue sentences together

- **Between sentences: repeat words and ideas from the previous sentence and use words that “glue.” Transitional words: “for example”, “therefore”, “however”, “on the other hand”, “further”, “moreover”, “thus”, “consequently”, “accordingly.”**

Glue sentences together

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.

Glue sentences together

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
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of wedlock.

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Glue sentences together

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 2000, their child was born out of wedlock.

Glue sentences together

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 2000, their child was born out of wedlock.

Glue sentences together

More glue: move from better-known information (usually presented in the last sentence) to new)

Example: “She was fired from her job. She robbed the bank because she had no money.”

Glue sentences together

“She was fired from her job. She robbed the bank because she had no money.”

- **The problem: The second sentence goes from new information to old. Reader encounters the word “robbed” and is thrown for a second**
- **Better: “She was fired from her job. Needing money, she robbed the bank.”**

Concentrate on connections

Build sentences with easily-discerned meaning. Then connect them.

- **Glue sentences together. The 4x100 relay.**
- **Keep subjects and verbs right together. This creates a “strong sentence core.”**
- **Divide information into bite-sized, connected chunks and then arrange the chunks logically. Don’t challenge your audience.**

Strong sentence cores

- **Keep subjects and verbs right together. This creates a “strong sentence core.”**

Strong sentence cores

- **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.

Strong sentence cores

- 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.

Strong sentence cores

- Keeping subjects and verbs together:

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.

Concentrate on connections

Build sentences with easily-discerned meaning. Then connect them.

- **Glue sentences together. The 4x100 relay.**
- **Keep subjects and verbs right together. This creates a “strong sentence core.”**
- **Divide information into bite-sized, connected chunks and then arrange the chunks logically. Don’t challenge your audience.**

Chunk and arrange

- **Divide information into bite-sized, connected chunks and then arrange the chunks logically. Don't challenge your audience.**
- **This is a HUGE issue for legal writers. All too frequently, legal sentences are far too ambitious.**
- **The solution is to chunk, then arrange the chunks.**

Chunk and arrange

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

Chunk and arrange

Extract and operate on the messy phrase, creating chunks:

“Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co.... ”

Chunk and arrange

Extract and operate on the messy phrase, creating chunks:

“Having sought since July 2010 to recover losses from Acme incurred in January of that year, the plaintiff, John Smith, sued Acme Co....”

“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....”

Chunk and arrange

Another example:

- **The sole eyewitness, having seen the accident from the window of an apartment which was on the seventh floor of a building located one-half block in a northerly direction from the intersection, testified that she did not see which car made the first entry into the intersection.**

Chunk and arrange

- The **sole eyewitness, having seen the accident** from the window of an apartment which was on the **seventh floor of a building located one-half block in a northerly direction from the intersection,** **testified that she did not see which car made the first entry** into the intersection.

Chunk and arrange

- **The sole eyewitness, having seen the accident from the window of an apartment which was on the seventh floor of a building located one-half block in a northerly direction from the intersection, testified that she did not see which car made the first entry into the intersection.**
- **There was only one eyewitness to the accident. She saw it from the seventh floor of a building that was one-half block north of the intersection. She testified that she did not see which car entered the intersection first.**

Chunk and arrange

In arranging the chunks, group like with like:

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.

Chunk and arrange

In arranging the chunks, group like with like:

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.

John seeks damages from Mary for negligent misrepresentation and from Acme for breach of contract and liability as Mary's employer.

Chunk and arrange

Can we go further in grouping like with like?

John seeks damages from Mary for negligent misrepresentation and from Acme for breach of contract and liability as Mary's employer.

Chunk and arrange

Yes.

John seeks damages from:

- **Mary for negligent misrepresentation;**
- **Acme for breach of contract and liability as Mary's employer.**

Concentrate on connections

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.

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:

- Mary for negligent misrepresentation; and**
- Acme for breach of contract and liability as Mary's employer.**

Advanced connection techniques

Rules of writing and advanced techniques mixed

“When courts consider a novel claim, they must keep in mind a line. On one side of the line is a claim founded upon a responsible, incremental extension of legal doctrine achieved through accepted pathways of legal reasoning. On the other is a claim divorced from doctrine, spun from settled preconceptions, ideological visions or freestanding opinions about what is just, appropriate and right. The former is the stuff of legal contestation and the courts; the latter is the stuff of public debate and the politicians we elect.”

(Paradis Honey Ltd. v. Canada, 2015 FCA 89 at para. 117.)

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Connection
(Repetition of word)

Connection
(Parallelism)

Connection
(Contrast – driving home
the dichotomy)

(Paradis Honey Ltd. v. Canada, 2015 FCA 89 at para. 117.)

Connection
(Repetition of word)

Connection
(Parallelism)

Connection
(Repetition of word)

Concluding thought

[illegible]