LANGUAGE OF LAW: IMPERATIVE FOR LINGUISTIC SIMPLICITY

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Abstract
Language is a veritable tool of the legal profession as a lawyer's proficiency is sometimes measured in terms of his linguistic dexterity: both verbal and written. However, over the centuries, there seemed to have evolved a distinct language of law usually referred to as legal language. Legal language employs specialised vocabulary and unusual sentence structure which contributes to its peculiarities. It is sometimes cumbersome to understand legal language due to the usage of a large number of difficult words and phrases, arcane expressions, indecipherable verbiage and technical terminologies which are alien to the layman many of which expressions are derived from French and Latin. The crux of this research is to interrogate the legal implication and communicative competence of language in legal discourse both within and beyond the courtroom extending to the drafting of legal documents and interactions between lawyers and clients. The research also examines the trend towards the adoption of plain English in legal discourse and finds out that the interface between law and language is the simplicity of expression.

Keywords: Law, Language, Legal Discourse, Communicative Competence, Linguistic Simplicity

Résumé
La langue est un véritable outil de la profession d’avocat, la compétence de l’avocat étant parfois mesurée en fonction de sa dextérité linguistique: verbale et écrite. Cependant, au fil des siècles, un langage juridique distinct, généralement appelé langage juridique, semble avoir évolué. Le langage juridique utilise un vocabulaire spécialisé et une structure de phrase inhabituelle qui contribue à ses particularités. Il est parfois difficile de comprendre le langage juridique en raison de l’utilisation d’un grand nombre de mots et d’expressions difficiles, d’expressions obscures, de verbiage indéchiffrable et de terminologies techniques étrangères à tout le monde, dont beaucoup sont dérivés du français et du latin. Le but de cette recherche est de savoir l’implication juridique et la compétence
communicative de la langue dans le discours juridique, tant à l’intérieur qu’au-delà de la salle d’audience, jusqu’à la rédaction de documents juridiques et aux interactions entre avocats et clients. La recherche examine également la tendance à l’adoption d’un anglais simple dans le discours juridique et découvre que l’interface entre le droit et la langue est la simplicité de l’expression.

**Mots-clés:** droit, langage, discours juridique, compétence communicative, linguistique simplifiée

**Introduction**

It is a well-known fact that without language; it would be difficult to talk about law, but without the law, relevance of language is still prominent in human society. It seems safe to say that human beings had language long before they had a law. Chomsky has claimed that language is innate, that is, inborn. He makes an assertion that every normal human child is born with a language acquisition device. This device enables the child to acquire the language of its environment, that is, language spoken in the community where the child lives. Failure of this device is observed in children with speech disability. Human beings acquire first before they learn the rules and regulations that guide how language should be used and the laws that regulate social conduct.

Laws or legal norms cannot be understood if it is not articulated or described in language. Also, language is used in carrying out the business and activities that pertain to law. One must be able to communicate this law to the general public before it can be said to be an effective law. It has been remarked that the use of language is necessary for any legal system in two special respects. The first is that lawmakers characteristically use language to make law, and the second is that law must provide for the authoritative resolution of disputes which arise from the effects of that use of language.

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would now be pertinent to acquire an organised understanding of what language and law are. Language can be defined as any organized means of conveying or communicating ideas, especially by human speech, written characters, or sign language. It can also be defined as a system of conventional spoken, manual or written symbols through which human beings, as members of a social group and participants in its culture express themselves, convey ideas and share their emotions. Law, on the other hand, can be defined as a regime that orders human activities and relations through the systematic application of the force of politically organized society, or through social pressure, backed by force, in such a society. It can also be defined as the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; especially, the body of rules, standard, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them. This latter definition is what we are concerned with in this article, that is, the language of these legislation, judicial precedents, etc., but it is not limited to these, it also includes: standard form contracts, legal forms, legal briefs, pleadings, and legal documents generally. The next question one must ask is what is legal language or language of law?

**Legal Language**

All legal systems develop some linguistic features which either differ slightly or vastly from that of ordinary language. Legal

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4Black’s Law Dictionary (9th edition), page 958
7Ibid.
language, also called legalese, is the use of language in legal context. It can be defined as the specialised language of the legal profession. It may also be defined as the formal and technical language of legal documents. Legal language has several genres. It ranges from spoken exchanges between lawyers and witnesses in cross-examination, to instructions given to members of the jury, to jargon used by lawyers to one another, to the written language in case law, law reports and prescriptive legal texts. It is a distinct technical language and contains several words not contained in the ordinary English language. Legal language in legislation and contracts is subject to its own interpretative rules such as the literal rule, the mischief rule, the golden rule, the ejusdem generis rule, etc., which do not apply to ordinary language. This language is not independent of the ordinary English language, but like other technical languages such as medical language or the language of psychology, it is an overlay on ordinary language and is beyond it, making it unique. This language forms part of a lawyer’s legal education and he/she learns how to speak, write and interpret this language. This learning may take place directly in the lecture hall where he/she is taught to think, write, speak and answer questions.

13 Ibid.
14 Ibid.
15 Ibid.
like a lawyer would. It may also take place indirectly by the reading of legal cases, books, lecture handouts, or articles which are replete with legal language. Any intuitive student of law would adopt the mannerisms and expressions in such material and it would affect the way such student expresses legal thoughts.

The broad conception of legal language is that language of law and its interpretative rules have evolved over the years to reflect the needs of the people who expect it to be more precise and effective in everyday use.\(^6\) The narrow conception would limit legal language to just the semantics (the meaning of words) or syntax (grammar rules) and would exclude the interpretative rules from legal language.\(^7\)

While both conceptions would have their merits and demerits, it is better to say that the rules for the interpretation of legal language can be considered to be part of it. This is so because hearer or reader needs to be able to understand or interpret the legal document and without this understanding or interpretation, there is simply no point in using it in the first place.

**Origins of Legal Language**

It is important to note that language arises from culture, practice and historical dimensions.\(^8\) Any language will reflect the history of the people that speak it.\(^9\) For example, the language of English law, which we are concerned with here, was influenced by the Anglo-Saxons, Dane, and Normans, all of whom settled in England at various times. British colonies adopted not just the concept of the common law of England but also the language used in applying those concepts.\(^10\) Thus, it would be wise to look at how legal

\(^{16}\) Ibid.

\(^{17}\) Ibid.


\(^{19}\) P.M. Tiersma, supra at note 9, page 1

\(^{20}\) Id. at pages 2-3
language emerged from ordinary language and achieved its distinctiveness.

About 2000 years ago, Julius Caesar conquered the land now known as England. Roman law which led to civil law would likely have applied there but soon disappeared after the Romans left to defend their disintegrating empire. They, however, left the linguistic influence of Latin on the people though it was not particularly legal. The departure of the Romans left a power gap in England that the Angles, Saxons, Jutes, Frisians and possibly others quickly exploited. Their related languages gave rise to what is now known as Anglo-Saxons, or the Old English. The Anglo-Saxons (those occupying England) were illiterate and operated mainly on customary law. Oaths were often used to decide cases and an accused who failed to recite his oath verbatim without stammering would lose his case.\(^{21}\) Transactions such as wills and transfer of land also depended on recital of oaths verbatim. These contained poetic devices intended to aid memory such as the alliterative “to have and to hold”.\(^{22}\) This phrase is still used today in many legal transactions and is popularly called the habendum clause in a Deed. Oaths are still used today in testifying in court and giving affirmations to affidavits.

About the year 600, Christian missionaries arrived in England, and brought with them literacy and reintroduced the Latin language. Soon after that, English laws began to appear in writing; many were in Latin and others were in the Old English. Vikings mostly from what is now Dane then invaded the British Isles and settled in an area of north-eastern England called Dane law (because it was governed by Danish law). These Scandinavians eventually merged with the Anglo-Saxon population, but their language left behind some distinct traces in the English language e.g. "gift", "loom",

\(^{21}\)Id. at page 12
\(^{22}\)Id. at page 13
"sale", "trust", and even the word "law" which originally means, "that which is laid down". The most significant invasion was in the year 1066 when William, Duke of Normandy, who claimed the English throne invaded England and defeated the English defenders in what came to be known as the Norman Conquest.  

He and his followers spoke a particular type of French. Soon after the conquest, the English speaking ruling class was replaced by a ruling class that spoke Norman French. English ceased to be a written language but remained the language of the common people. Courts and the legal profession were established, and because French was spoken by the upper class, the proceedings of courts were in French. Around the year 1300, the language of the act of Parliament shifted from Latin to French, but Latin remained the language of written transactions of the ruling class. The language of written statutes remained French till around the 15th century when it became English.

At the time when a centralised English court system emerged, the laws were primarily in French. Many legal terms are of French origin, e.g. action, appeal, bar, plaintiff, complainant, counsel, court, felony, condition, precedent, estate, slander, tort, letters patent, misdemeanor, attorney general, etc. Some of these words do not even exist in French legal language any more or if they do, they have different names. That makes them unique to English legal language. By the 17th century, French ceased to be a spoken language but most of the records of the court were in French and the legal principles found in them were called precedents, a French word. The legal profession continued using the French language, and this was not appreciated by the public and critics who felt lawyers were trying to hide access to the law and secure their monopoly on legal services. Although lawyers at that time were not educated in Latin, most of the legal maxims were in Latin, e.g.

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23 Ibid.
24 Id. at page 14
25 Id. at page 16
"caveat emptor" ("let the buyer beware"), *expressiouniuses-texclusioalterius* ("the expression of one thing is the exclusion of the other"), etc. English rose to prominence when the use of French and Latin in legal proceedings was abolished in 1731. Documents that were previously prepared in French and Latin now had to be composed in the English language. However, they were translated word-for-word so the French word order was preserved. Also, some terms were not translated at all because they were technical terms that had acquired a specific legal meaning, making it difficult to find an exact English equivalent that would have the same effect. These terms were thus incorporated without any change. Some of these foreign terms are now used in ordinary speech, e.g. court, judge, jury, plaintiff, defendant, tortfeasor, profit a prendre, etc.26 Some of these words make the lay public confused and guess at their meaning due to their foreign origin.

**Features of Legal Language**

There has arisen a movement advocating plain English arguing that lawyers have continued to use convoluted, archaic and confusing English called legalese, to hide the law from the public. The reasons for such an assertion are hidden within the features of legal language:

(i.) Legal language is archaic and conservative27 – This is one of the more common assertions about legal language. Legal language includes many Old-English and Middle-English terms that have passed out of general usage for some time e.g. “to wit”, “aforesaid”, witnesseth”, “herein”, “therewith”, etc. Many of these as stated earlier, emerge from indirect learning of these terms from authoritative expression by the court. The continued use of these expressions may be due to habit, laziness or because the legal

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26Id. at page 17
community encourages the recycling of these words though they may be obsolete in ordinary language. The plain English movement has sought to end this archaic language to make legal documents, laws and forms easier for the public to understand. In the United States, the federal and some states' legislature has made it a priority for laws to be clear, accurate and in understandable language. It is noted that this language though archaic can be precise. A learned author even noted it can be surprisingly creative and innovative.\textsuperscript{28}

(ii.) Legal language is full of Latin and French words and expressions\textsuperscript{29} – It has also been argued that legal language contains an unnecessary amount of Latin and French words and expressions. This is owing to the history of legal language as explored earlier on. The records of the court and the writs were originally in Latin but this eventually diminished. Though the language is dead, it remains on life support because of its continued existence in legal language. As stated earlier, French was introduced into English legal language after the Norman Conquest. This also diminished, but it retained a place in legal language as French word placement and words were retained.

(iii.) Legal language is wordy and redundant\textsuperscript{30} – Legal language has also been criticised for being too wordy and redundant as opposed to brevity and accuracy. It may be argued on behalf of legal language that this is done to express legal concepts in the most precise manner. An example of this wordy and redundant language is seen in the title of almost every will: "Last Will and Testament". There is no difference between a will and a testament but for some reason, it has refused to change. Another example may be noticed in Deeds where the location of the land is stated as “situate, lying and being at No. 9 Jackson Road”. The terms “situate” “lying” and “being” actually mean the same thing and the use of only one would suffice but lawyers refuse to change this expression despite its

\textsuperscript{28}Id. at page 6
\textsuperscript{29}Id. at page 8
\textsuperscript{30}Id. at page 12
redundancy. Another example of this redundancy is “make, publish and declare” as only one would suffice depending on the situation.

(iv.) Legal language leads to repetitiveness – Similar to the wordiness and redundancy of legal language, repetitiveness of legal language is also a feature. A repetitive brief will eventually end up being long and windy. The repetitiveness of legal language has been criticised by the Nigerian Supreme Court in the case of Uwazurike v Nwachukwu31 where the court per Onnoghen JSC stated “I have to note at this stage, that the brief of the 1st appellant is full of repetition of the same point(s) over and over again. It has been said that repetition does not improve an argument…”32 The court also rebuked the appellant for raising hypothetical issues in their brief.33 In a Court of Appeal decision, Kabo Air Ltd. v. Mohammed34 the court found it pertinent to make some remarks about the quality of the briefs filed by both counsels:

The arguments were unnecessarily long, windy, confuses, confusing, repetitive, and they contained too many narratives rather than arguments. One of the invaluable assets that a counsel must always possess is drafting skills. Briefs of arguments in an appeal contain the story of a party on which the appellate court justices are called upon to adjudicate. Like all good stories, the arguments must flow; they must be consistent, they must be concise, they must be comprehensible; and they must be accurate. Some of the eternal qualities of a good brief of arguments are brevity and precision, it must not be too short to leave out the essentials and must not be too long as to become otiose. The goal must be to achieve maximum brevity with accuracy and clarity. A good brief does not allow for verbosity… Litigation is not an essay competition where success is determined by the length of the brief of arguments and it has been said that repetition does not improve an argument.35
Other features of the legal language include technical vocabulary, impersonal constructions, passive constructions, nominalisations and its long and complex sentences.\textsuperscript{36}

**Factors Responsible for Legal Language**

It would, however, be harsh to criticise a concept without understanding the reasons for the continuance of such a concept. Some of these factors are seen in the origin of legal language, but there are other factors responsible for the development and continuance of legal language. They are:

(i.) Mixed linguistic heritage:\textsuperscript{37} As noted earlier, the legal language developed with Latin, French and English as part of its history. This has not slowed down with time; in fact, they have become even more popular. An example is *nemodat quod non habet* (“no one gives what he/she does not have”).

(ii.) The doctrine of precedent:\textsuperscript{38} The doctrine of precedent enjoins lawyers to let the earlier decision stand so that when the situation arises in a new case, the earlier decision and its principles will be applied. Lawyers have acquired the habit of adopting earlier expressions and pleadings, some of which are archaic. Many of these have been adopted into standard form contracts and deeds. A popular example is “in witnesseth whereof” used where a person signs a contract. Thus the practice was aggravated by publishing handbooks which contain sample forms and precedents.

(iii.) Ostentatious pomposity:\textsuperscript{39} This is the intentional quality of self-importance lawyers employ in legal documents by the use of jargon and bombastic words. This has now become a mark of the profession with lawyers known to intentionally use big and foreign words to inspire awe and respect. An author remarks that this

\textsuperscript{36}Tiersma, supra at note 26  
\textsuperscript{37}H.Y. Yeo, “Plain English for Lawyers” (1996) 8 Singapore Academy of Law Journal, page 303  
\textsuperscript{38}Ibid.  
\textsuperscript{39}Ibid.
language style and vocabulary have almost attained a cultist quality.  

(iv.) Computation of fees - Historically, lawyers had a pecuniary reason for lengthy words and phrases in documents because they were paid per the number of sheets or folio that had been generated. Thus it was in a lawyer's interest to produce as many pages as possible. Unfortunately, this practice has continued even though this method of fee computation is no longer being used.

**Linguistic Competence of Legal Language**

Linguistic competence is often demonstrated in legal discourse as the legal practitioners are fond of using abstract and condensed linguistic form that they have been trained to recognise and reproduce. They focus on the correct use of some specialised vocabulary, complex and difficult words, complicated phrases, technical terminologies and arcane expressions which are of Latin and French origins. The nature of language use in legal context depicts dexterity of the users through their ability to encode their message in a complex linguistic form. Availability of linguistic resources that require specialised usage in legal discourse has earned the professionals in the field respect, and that has also earned the profession prestige as a noble profession.

Legal practitioners acquire linguistic knowledge through conscious and rigorous learning. They follow language learning processes as adults by making conscious efforts to master the use of a specialised language. They learn the words and phrases that serve as a communicative code within the profession, whose meaning is closed to those outside the profession. The complexity of the clause structure in legal documents may not be easily understood by laymen.

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40 Ibid.
41 Ibid.
Since linguistic competence refers to the speaker’s or writer’s ability to produce grammatically correct sentences, the sentences produced in legal documents are grammatically correct, but contain complex clause structures that hinder their communicative ability. The coding of sentence structure in legal documents requires a specialised skill wielded by experts in legal discourse. Therefore to decode their message, the same skill is also required. Effective communication can only take place among the professionals in the field of law. Those outside the field cannot easily decode the message inscribed in legal documents. Communicative competence is restricted to a larger extent in legal discourse as a result of complexity in its language use.

**Communicative Competence in Legal Language**

Communicative competence refers to the ability of a language user to make the appropriate choice of a linguistic form out of the several options of linguistic forms available to effectively convey the information to the audience. The linguistic form used in legal documents does not aid effective communication with readers or audience outside the legal profession. Those who are not in the legal field need a lawyer to interpret legal documents to them before they can fully understand the message. If the legal document is a kind of agreement or contract that binds two parties, the two parties are required to engage the services of legal practitioners to interpret the clauses that contain the condition of the agreement, or else, one of the parties may end up making a commitment to the conditions that are detrimental to the welfare of its party. In this context, language has been made to fail to perform its major function which is communication.

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43 Ibid
It has been proven that everyone in the society relies on language to communicate and socialise, and on law to guide their communication and social practices. For law to perform this function, it needs language as a vehicle to convey the information to the audience. The form of language that is required is supposed to be the form that will communicate the message clearly without any complexity or ambiguity. Thus, people in the society will easily understand the rules that regulate their social practices. That form is referred to as plain English.

**The Plain English Movement**
The plain English movement is the main opposition to legal language. The premise is that legal documents ought to be plainer and more comprehensive to the average person. The movement aims at making legal language attain communicative competence. Though the movement began in the 1970s, people have objected to the difficulty to understand legal language for many centuries. Jeremy Bentham is reported to have been a very stern critic of legalese. He described the language of lawyers as "excrementitious matter" and "literary garbage". He advocated brief sizes of law that are easier for people to understand and remember. He stated, "Until therefore the nomenclature and language of law shall be improved, the great end of good government cannot be fully attained."
The Plain English Movement was started by a Liverpool woman who was fed up with government forms she considered very difficult to understand. She took hundreds of these forms to Parliament Square and publicly shredded them. The government was sufficiently embarrassed and soon began to systematically revise its forms. The British government in 1999 implemented new civil procedure rules which abolished some established legal terms with modern equivalents. A

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46 Ibid.
subpoena is now known as a witness summons; an in-camera hearing is now a private hearing; a writ is now known as a claim form; a plaintiff is now known as a claim form. In the 1987 Victorian Law Reform Commission report, they noted:

The Plain English movement does not require that laws always be drafted in such a way as to make them intelligible to the average citizen. However, it does require that every effort be made to make them intelligible to the widest possible audience. There is no justification for the defects in language and structure which... sharply reduce the range of people who are capable of comprehending a document. Many legal documents are written in such a way that not the people to whom they are directed, but also judges and skilled lawyers have extreme difficulty in comprehending them. In such a case, it is not unfamiliarity with the subject matter as a lack of technical knowledge which causes a problem. It is the language and structure of the document itself. These should be improved, not in the hope of making the document intelligible to the average citizen, but to make it intelligible and immediately intelligible – to as many of those as possible who are concerned with the relevant activities.47

The advantages of plain English are as follows:

(i.) Cost Saving: It saves cost for clients as it is easier and quicker to understand limiting the amount of time and cost to be spent on a form or document.48

(ii.) Reduces Lawsuits: Those who clearly understand what legal obligation they have committed themselves to are more likely to fulfil it. Plain English reduces misunderstanding and resulting litigation.

(iii.) Enhancement of Image/Transparency: A clearer explanation puts all parties on the same level of understanding and establishes loyalty between the customer and the business owner. If the client

48 H.Y. Yeo, supra at note 36
can read and understand what is before him, he knows the other party has nothing to hide and their relationship is strengthened.\(^{49}\)

Conversely, there are also reasons why a Plain English style has been opposed. They are:

(i) In commercial contracts, the parties involved are usually well-educated businessmen who are knowledgeable in legal matters so there would be reduced need to use plain English because the parties would be more familiar with the language of the law.\(^{50}\) Thus it is argued that oversimplification should be avoided.

(ii) It takes more time to draft in plain English than in legal English. This is because most lawyers draft commercial contracts based on precedents; to draft a new document from scratch would unavoidably take a longer time than starting from a draft based on a precedent.\(^{51}\)

(iii) Precedents should not always be departed from but they can be when the terms can be expressed more simply. In other words, no change should be made except for a good reason.\(^{52}\) In other words, only those terms which the customer/client may find hard to understand should be expressed in plain English. This would bring a balance between legal English and plain English.

(iv) The law itself uses technical terms and concepts and these cannot easily be translated into Plain English. It has been remarked that it is not safe to draft in Plain English until we know how courts react to Plain English. Another objection raised is that words in common usage often have an open texture, and this may lead to ambiguity and uncertainty.\(^{53}\)

\(^{49}\)Ibid.


\(^{51}\)Id. at page 300

\(^{52}\)Ibid.

\(^{53}\)H.Y. Yeo, supra at note 36
The courts, however, would prefer clarity, brevity, comprehensibility and precision as stated in the Nigerian case of *Kabo Air Ltd v Mohammed.* 54 Also where words in statutes are clear and unambiguous, the first tool of interpretation of the court is the literal rule as shown in the case of *Nwankwo v Yar’adua.* 55 Thus the court would give these words their simple, ordinary and natural meanings unless a contrary intention is shown on the face of the statute. It can thus be argued that the court itself generally prefers a simplistic approach in interpreting words and would only deviate from such an approach when the term has a legal meaning which is different from its ordinary meaning.

It cannot be denied that a plainer or simpler method of legal expression is lacking in Nigerian law as expressed above. There can be no progress in our legal profession without adhering to the advice of the courts in legislating and in legal drafting of briefs. As the 1987 Victorian Law Reform Commission succinctly pointed out, the real audience of statutes, government forms, etc., is not the lawyers nor the judges, but rather the common man on the street whom the law affects in his/her day-to-day life. Also, briefs filed by lawyers must not be long and repetitive to not discourage the judges like a long and windy story which leaves an audience disgruntled, disgusted and unhappy. 56 There are many reasons plain English should be supported. One of them is that the law is made for man and not manmade for the law. 57 It is a public legal document that is made for man to understand and therefore obey as opposed to scratching his head in confusion and disobeying. Also, lawyers have a responsibility in advising their clients in the clearest and most comprehensive way possible 58 and to the court to make sure they

54 [2015] 5 NWLR (part 1451) 38, at pages 62 – 63
55 [2010] 10 NWLR at page 589
56 *Kabo Air Ltd. v. Mohammed* 2015] 5 NWLR (part 1451) 38 at 63
57 Mark 2:27 The Bible
succinctly raise the right issues before the court in an accurate and non-repetitive manner. However, it cannot be denied that there is some time-honoured language of law that actually expresses ideas in a more precise manner though not as brief as plain English, however, it is comprehensible.

**Conclusion**

It is, therefore, recommended that a balance be struck in the use of plain English and legal language in order for communicative competence to be attained in legal language. Plain English should replace legal language in government forms that are filled by the public. It should also replace technical legal language in statutes and any other legal document the public comes into contact with in daily life. However, with regards to communications between lawyers *inter se* and between lawyers and judges, it is suggested that where legal language would not be repetitive, long and windy, it should be preserved to express precisely the legal arguments and thoughts intended to be conveyed. Some tips for adopting plain English include: eliminating archaic words and phrases, using simpler or readily understood vocabulary, avoiding long complex sentences, removing all redundant expressions, avoiding reposition at all costs, using active voice, utilizing positive phrases as opposed to negative phrases, arranging ideas in a logical sequence, omitting unnecessary details, and adopting a friendly design and layout with larger print.\(^{59}\)

In conclusion, it is our opinion that there is a balance that can be struck between the technicalities of legal language and the simplicity of plain English to achieve greater compliance with the law and reduce litigation, among others.

\(^{59}\)H.Y. Yeo, supra at note 36.