
Plain English in Québec Legislation

by Lena Day

Why is it that the average person, even a well-educated one, setting out to read a bill or law for the first time, half if not fully expects to have trouble cutting through the language to get to the meaning? It could be argued that bills and statutes use complex language because they address complex subjects—taxation or securities regulation, for example—or because they are meant mainly for people “in the know” such as members of lobby groups, practitioners in the fields concerned, lawyers and officials. The bottom line, though, is that laws affect everyone and this alone is a compelling argument for using idiomatic and understandable language. This article looks at efforts made by the Québec National Assembly to introduce plain English in its legislation.

Québec came under British law in 1763 when France signed the Treaty of Paris. Eleven years later, the British Parliament restored French civil law but maintained British criminal law when it passed the *Quebec Act*. As a result, civil law was drafted exclusively in French from 1774 to 1866 and criminal law, exclusively in English from 1774 to 1841.¹ To guarantee that both French and English in Québec would have access to statutes in their own language, the framers of the *Constitution Act of 1867* included a requirement, in section 133, that the Acts of the Legislature of Québec be printed and published in both French and English.

Today, Quebecers have access to bills and newly enacted laws in French and English on the National Assembly website and can follow every step of the law-making process by downloading transcripts or webcasts of Assembly and committee sittings.² They can obtain paper copies of annual or revised statutes at reasonable cost from the government publishing house and electronic versions free of charge on its website.³ But access is about more than physical access. It is also about understanding.

Many of the problems in English, in particular, come from the traditional British style of legislative drafting,

which leaves modern-day readers to struggle with long sentences, archaic words and strings of synonyms or near-synonyms. English-speaking jurisdictions the world over are now turning away from this traditional style of drafting and aiming to produce legislation in clear, concise language.⁴ Inspired by their efforts, we—the legislative translation team of the Québec National Assembly—have recently begun moving to plain English.

Our Constraints

Québec’s laws are drafted in French and translated into English, and even if French is the official language, the French and English versions carry the same weight.⁵ Because we translate the laws rather than draft them, we cannot go as far as other jurisdictions have gone or intend to go. Many are combining plain language and plain design: they are changing the “look and feel” of their statutes by using easy-to-read fonts, rethinking the way in which sections are organized and numbered, and adding features such as headers, summaries and diagrams to help readers find what they need.⁶ This is beyond the scope of what we can do, as the content and structure of bills are decided by the legislative drafters in the government departments, revised by the legislation secretariat of the *Ministère du Conseil exécutif* (the Executive Council) and approved by the Cabinet legislation committee.

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Our job as translators is to provide an accurate translation of the French text we receive.

Also, since the *Civil Code* is central to our legal system, we are bound to use civil-law terms such as “hypothec” and “immovables” rather than the common-law terms more familiar to most English-speaking readers—“mortgage”, “real property” and so on. And because we do not have the authority to rewrite existing legislation, we can apply the plain language approach only to new legislation. We may, of course, use plain language techniques when translating bills that amend current statutes but must do so cautiously, as the new text introduced by the amending bill must fit in with the existing text.

Our Plain Language Guidelines

Given our constraints, we will focus on those aspects that are within our purview, namely, vocabulary, grammar and style. Here are the main guidelines we have set for ourselves so far:

- Prefer the simple to the pedantic. Choose words that are generally understood and short words over long ones, for example, “send by fax or e-mail” rather than “transmit by facsimile or electronic communication”.
- Replace archaic words with current ones, for example, “whereas”, “notwithstanding”, “pursuant to” and “to wit” with “as”, “despite”, “under” and “that is”.
- Avoid Latin words and phrases unless they have become part of the English language (“vice versa”) or part of the language of the law and have no simple English substitutes (“prima facie”).
- Avoid strings of words that mean the same thing or almost the same thing (“null and void”, “terms and conditions”, “aid and abet”, “part and parcel”). Choose the word that best fits the intended meaning and the context.
- Avoid “the said” to refer to something or someone described earlier in a provision (“the said body” or “the said persons”). Use “the” if no confusion is possible or “that” or “those”.
- In new legislation, do not use “shall” to express a legal obligation or “shall not” to express a prohibition. Use “must”, “is to”, “are to” or “must not”, for instance. In declaratory or descriptive sentences, use the present indicative (“binds” instead of “shall bind”, “applies to” instead of “shall apply to”). The present indicative in a law carries the same weight as “shall” since the law is considered as always speaking.
- Use “if” instead of the traditional “where” to express a condition that may or may not occur and “when” to express a condition that will certainly occur but whose timing is uncertain (“if a person is granted a licence”, “when this Act ceases to have effect”).
- Use “any” sparingly. Use the indefinite article or recast the sentence in the plural. Write “A director may be reappointed” or “Directors may be reappointed”, not “Any director may be reappointed”.
- Avoid wordiness. In expressions like “Subject to the provisions of section 23”, drop “the provisions of” even if the French version says “*les dispositions de*”. Write “Subject to section 23”.
- Use gender-neutral language in new legislation and when possible in bills amending current legislation. Use substitutes like “police officer” and “firefighter” for words like “policeman” and “fireman”. Avoid using “he or she” and “his or her”, which can become unwieldy. Try other techniques such as using the plural (“Applicants qualify if they...”) or repeating the noun (“If the inspector finds that..., the inspector may...”).
- Keep sentences as short as possible. Split long sentences into two or more shorter ones.
- Prefer the active voice (“The student must sign the application.”) to the passive voice (“The application must be signed by the student.”).
- If you can choose between a verb and a related noun to express an idea, prefer the verb form (“The student may apply” rather than “The student may make an application”).
- Use the positive rather than the negative (“The application is valid only if the student has signed it.” rather than “The application is not valid unless the student has signed it.”).
- Keep related words as close together as possible. Keep the subject close to the verb, auxiliary verbs close to main verbs, and modifiers close to the words they modify. Try not to split the subject and the verb with a qualifying clause.

The English language has changed a lot since the 19th century. So has society and so has the law. It is our hope these guidelines will help us deliver the message of the law to modern-day readers as plainly and effectively as possible. These, again, are guidelines, not hard-and-fast rules. It is understood that we must use our judgment and consider the context when applying them in the legislative documents we translate. It is also understood that our move to plain language is a work in progress. We will continue monitoring what other jurisdictions are doing to see what techniques we can adapt to our translation work. We will also find ways of obtaining feedback from the users of our laws to measure the impact of the changes we have made so far. And we will continue developing our plain language guidelines so that the English versions of our laws can speak to our times.

To quote Bryan A. Garner, Editor in Chief of *Black’s Law Dictionary*: “We value simplicity, but writing as simply as possible does not always mean writing simply. Complicated language occasionally proves unavoidable. Take the legislative jungle that is the tax code: ‘It can

never be made simple, but we can try to avoid making it needlessly complex.’ We can try to say it in plain language.”⁷

Notes

1. Geneviève Gagnon, “La traduction et l’édition des lois à l’Assemblée nationale du Québec,” *Bulletin de la Bibliothèque de l’Assemblée nationale* 34, no. 1-2 (May 2005), p. 30.
 2. See “Parliamentary Proceedings”, in *Assemblée nationale du Québec*:
<http://www.assnat.qc.ca/eng/37legislature2/index.shtml>.
 3. See “Laws and Regulations”, in *Les Publications du Québec*:
<http://www.publicationsduquebec.gouv.qc.ca/accueil.en.html>.
 4. For an overview, see Chapter 3, “International Comparisons” in *Plain Language and Legislation*, a recent Web publication of the Office of the Scottish Parliamentary Counsel (March 2006), pp. 19-28,
<http://www.scotland.gov.uk/Resource/Doc/93488/0022476.pdf>. (January 30, 2006).
 5. *Charter of the French language* (R.S.Q., chapter C-11), s. 7.
 6. A prime example is Canada’s sample rewritten Employment Insurance Act,
<http://www.hrsdc.gc.ca/en/ei/legislation/claimeng.pdf>.
 7. Bryan A. Garner, *The Elements of Legal Style*, 2nd ed. (New York: Oxford University Press, 2002), p. 5.
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