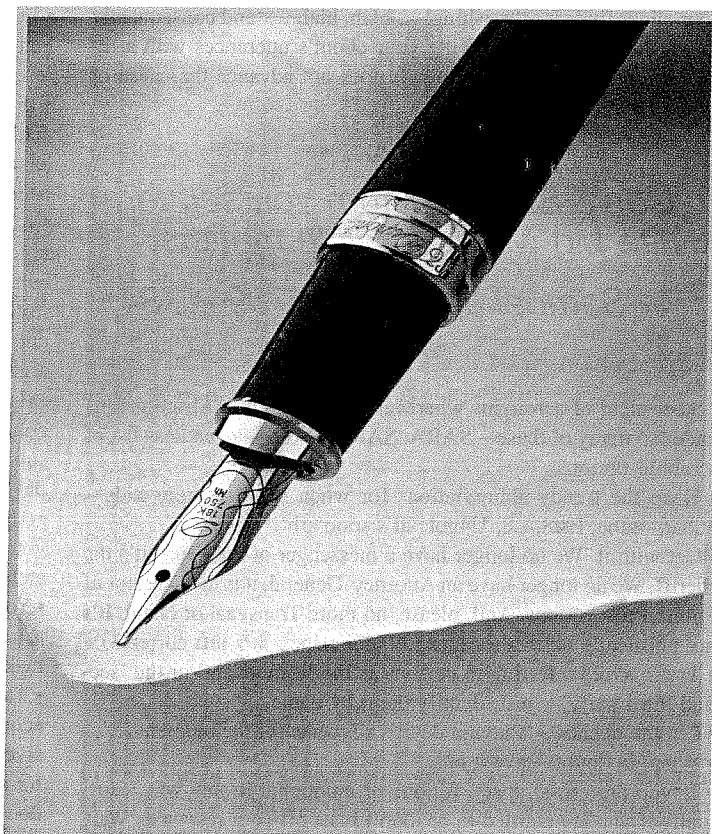


Making sense

Louis Rood
has some
handy hints on
effective
communication
for lawyers.



It is remarkable how often one comes across attorneys who write badly. It is almost as if they have no wish to be understood. Without setting out all the obvious reasons why it is helpful to use plain language, may I offer the following random selection of tips for getting your message across?

- Use short sentences.
- Use short paragraphs.
- Make only one point in each paragraph.
- Sometimes you have to write a longer letter. But if your sentences are short, and your paragraphs are brief, the whole letter will be easier to digest.
- Why is less more? If you still think you can charge more if you have more folios (100 words), or more pages, or hammer home your points by repeating them, you are sadly mistaken. It will all slow you down. Clients want a quick response and swift action. You can reach more clients, sooner, per hour, if you keep it brief and to the point. Of course it takes skill to be concise. But the more skilful you are, the more clients you will attract.
- Dump the Latin. Even common English phrases taken from Latin do not impress anybody. Most readers (including many lawyers) don't know what they mean – *ultra vires*, *mutatis mutandis*, *a tempore morae*, *seriatim*, *non sequiter*, *ad hominem*, *vice versa*, *mala fide*, *status quo*, *rule nisi*, *supra*, *infra*, *per se*, *pro rata* – the list goes on *ad nauseum*! There are ordinary English words and expressions for all these dearly beloved antiquities.

The Duke of Wellington (1769–1852) once advised a young Member of Parliament: 'Don't quote Latin; say what you have to say, and then sit down.'

- Avoid French, a more recent pretension largely introduced from the Bar – *vis-à-vis*, *en passant*, *raison d'être*, and that popular South Africanism *apropos*.
- Drop the legalese – 'in the instant matter', 'thereanent', 'in the premises'. Your client has no idea what they mean. Whose premises? I have even been asked whether 'lodgement' is some kind of budget accommodation.
- Get off your high horse. How often haven't we all seen this beauty: 'Without derogating from the generality of the aforesaid, each and every allegation not specifically traversed shall be deemed to have been denied as fully and effectually as if done so separately and expressly'.
- Prune those hot air superlatives – 'utterly', 'totally', 'absolutely', 'extremely', 'exceptionally'. If it's clear, it's clear. It does not have to be crystal clear.
- Can you believe that lawyers still intone: 'Yours of the 5th ultimo has reference'. If something happened on 5 March 2006, say so. No more *proximo*, *ultimo* or 'instant' – is this some range of Italian coffees?
- Get with the 21st century. Abandon those constipated conglomerations – 'hereinbefore', 'henceforth', 'thereupon', 'furthermore', 'aforesaid'.
- Resist the temptation to display your intellectual plumage – don't use words no-one can understand. I recently encountered 'panegyric'. It's not even worth reaching for the dictionary.
- Lay persons switch off when lawyers babble on about *parate execute*, 'tacit', 'statutory hypothecs', 'formulae' and the 'pledgee', 'mortgagor', 'offeree' and 'cedant'. Their eyes glaze over when you mention a 'praedial servitude', '*mora* interest', or a 'delict'. So don't.
- Some lawyers are happiest writing to their colleagues, fondly believing that at least they appreciate an obscure obfuscation. Why then do so many of us posture with phoney declarations like: 'We are not a little taken aback at your client's appalling attitude ...' or

'Our client finds it astonishing' ... blah, blah ... 'and consequently has no intention of dignifying your client's utterances with a response'. Don't be so pompous. It does not advance the cause of your client.

'Don't, Sir, accustom yourself to use big words for little matters.'

– Samuel Johnson (1709–1784)

- Steer clear of acronyms wherever possible. South Africa groans under so many of these – SARA, SARB, SAPS – an endless list of scrabble options.
- Keep the trendy abbreviations for when you sms your kids – 30bar, 4tune, Est8, L8, U4got. 'It's sooo arb'.
- Get with it. We no longer have a messenger of the court, it's the sheriff. We no longer have an Attorney-General, it is the Director of Public Prosecutions. And, please, no more Transvaal or Natal. It's not politically correct to refer to Polokwane – it's just correct.
- Try to avoid referring to persons as the 'respondent' or the 'second third party' – just identify them by name.
- Cut the clichés – 'Playing devil's advocate for the moment ...'.
- When in doubt, leave it out.
- If you are cross, upset, furious or emotional in any way, especially if you are entitled to be, don't blast off your response. Wait, settle down, let it rest, sleep on it. Then when you are calm, compose your reply. Keep it crisp, concise and cold.
- Don't write letters that look and sound like complex contracts: 'Para 7.3.1.'. Rather use your letter-writing skills to improve the coherence of your contracts. Drafting may be difficult. Reading shouldn't be.
- Do not be too familiar in print, even with your closest client. That chummy, buddy-buddy intimacy does not stand up well to later scrutiny when things may prove not to be quite so cosy. Maintain your professional detachment – polite, courteous, friendly and firm.
- Be consistent – if you want to use 'lessor' don't switch to 'landlord' half way through.
- Perhaps grammar and syntax have gone to the dogs in the modern world. But please don't make it worse. When referring to a company, for example 'Le Roux & Sons (Pty) Ltd', it is not 'they' (plural) but 'it' (singular).
- Inside your computer lurks that mini-dictator, the spellcheck, taking care of your little lapses. So you find yourself sending letters that say 'Thank you for your patients'. Read the final product before you sign.
- Eliminate that unnecessary bolstering verbiage – 'in this regard', 'indeed', 'in fact', 'accordingly', 'in this respect'.
- Very few lawyers are comical. Don't be facetious. Resist the temptation to make witty asides, or 'snarky' comments – the reader may not find it funny.

'Far too many relied on the classic formula of a beginning, a muddle, and an end.'

– English poet, Philip Larkin (1922–1985)

• Edit out the excess baggage. 'Our client's rights are reserved', is better than: 'Please note that all our client's rights are hereby fully reserved'.

• If you want to write a letter, first think about what you want to achieve, then think about how best to achieve it, then say only what has to be said. It's like going on a long trip – pack only what you need, then leave half of it behind.

• A good letter is like a good play. The best theatre lets the story unfold, and captures the attention of the audience, who forget that behind the scenes is a playwright and a director. So write with restraint and modesty. Consider the pace, flow and structure. Set out the facts logically. Present your proposals rationally. Let your arguments come to the fore naturally. A well-marshalled, methodical approach is likely to prove persuasive, and may even become compelling. But if you constantly intrude your personality and subjectivity into the narrative, this interrupts the flow and tends only to obscure the facts.

• Always think about the recipient. This is the person who will read your letter or fax or e-mail. Tailor your communication appropriately. Be respectful – you are in the business of rendering a service.

• You don't know it all. If a particular communication is important, ask a colleague to check it. Sometimes even a small amendment can make a big difference.

• This is South Africa – we have many cultures and many social, economic, ethnic, religious and other differences. Don't be offensive. Don't be abrasive. Don't be rude. Don't look for a fight. Look for a solution. It's all quite simple. Respecting the dignity of others does not weaken you. It is likely to evoke a like response. It sets the tone. It lays the groundwork for seeking solutions.

'The great enemy of clear language is insincerity. When there is a gap between one's real and one's declared aims, one turns as it were instinctively to long words and exhausted idioms, like a cuttlefish squirting out ink.'

– George Orwell (1903–1950)

- Language does change. The real issue is not the language, but the communication. What is the best way to connect with the reader? Say things in a way the reader will understand and be responsive to?
- Writing plainly is writing well. The use of ordinary words is not 'dumbing down' – it's smartening up. When you develop a reputation for saying what you mean, for being a straight talker, with no innuendos or ambiguities, you will be considered to be honest, reliable, a man (or woman) of your word. That is something to which every lawyer should aspire.

Louis Rood BA LLB (UCT) is an attorney at Fairbridges in Cape Town.

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