


In the present case the impropriety of counsel furnishing his own address as an address for the purposes of litigation was graphically illustrated. Had the defendant wished to pay the amount claimed from him, the only address which he would have found in the summonses or in the particulars of claim at which he could do so would have been the respondent's. Had he repaired to that address, the respondent would have been expected by his client to receive the payment and to account to her in due course. The position would be further exacerbated if the defendant had wished to pay the respondent in cash, and had demanded a receipt.

The respondent complained that he had been unable to ascertain whether certain of the work which he had undertaken was work which might be performed only by attorneys.

The court held that he should not have needed to do so. Any responsible advocate knew, without having to ask, that certain work was normally performed by attorneys, and that it would be improper for him to accept a brief to do such work instead of the attorney, thereby relieving the attorney concerned of responsibility for the work. If he had really been in doubt, a perusal of the judgments in the case law ought to have been amply sufficient to apprise the respondent of the impropriety of his conduct.

As to the respondent's reliance on the provisions of Magistrates' Courts Rules 2(1), 6(2), 13(4)(a) and 52(1)(a) read with the definition of 'practitioner' contained in the Magistrates' Courts Act, the court held that there was no basis for the proposition that it was the intention in the Rules to do away

with the long-established division of work between attorneys and advocates. Signing and issuing summonses and notices of motion in the magistrate's court and furnishing an address for the service of process was work normally performed by, and was part of the normal functions of, an attorney. Whatever other crosses it may be the lot of counsel to bear from time to time during the course of his professional life, bearing such fardels as these was not one of them; moreover, an advocate might not permit himself to become an attorney's lackey or *factotum*.

The court found the respondent guilty of professional misconduct and suspended him from practising as an advocate for a period of two months. 

From the publishers

Plain Legal Language for a New Democracy

Edited by Frans Viljoen and Annelize Nienaber

Protea Book House (2001)
180 pp
Soft cover R99,95 (VAT incl)

Richard Feynman was the greatest physicist of the second half of the twentieth century. He disliked verbiage, which confused clarity of thought. In 1986 he was appointed to the committee investigating what had gone wrong with the space shuttle *Challenger*. Some engineers showed him around a space shuttle, which exhibited a high-frequency vibration problem.

They kept referring to the problem by some complicated name — a "pressure-induced vorticity oscillatory wa-wa," or something.

I said, "Oh, you mean a whistle!"

"Yes," they said; "it exhibits the characteristics of a whistle."¹

The message of *Plain Legal Language for a New Democracy* is: "Speak clearly." That is good advice. It fits handily on a bumper sticker. What makes the book self-defeating is that it has expanded the bumper sticker into 180 pages (including lists of plain language sources, not forgetting web-pages; a list of contributors; and an index).

The book grew out of "the first academic conference and workshop on plain legal language in South Africa" (p 12), held at the University of Pretoria's Faculty of Law in mid-1999. We are not told whether there was ever a second one, but one would be surprised. The conference was addressed by

heavy hitters in the field of plain language, such as Mark Adler, the chairman (*sic* — pp 36, 159, 173) of "an international movement for plain legal language" known as Clarity. (Indicating that one can use plain language, but nonetheless not have clear thoughts, Mr Adler is on other occasions referred to as the chairperson (p 13) and the president (p 12) of Clarity.)

The title of the book is indicative of the misguided thesis which underlies the project: that obscure and inaccessible legal language marked the apartheid state, whereas "[a]fter 1990, the transition to democracy made plain legal language possible" (p 10). I have not made a study of this, but it would be surprising indeed to find that dictatorships are not very well served by the plainest legal language imaginable. Also, if democracy and clarity go hand in hand, then Mr Adler's movement is ill-suited to the United Kingdom from which he hails.


The editors themselves seem to undermine the thesis, for they quote in support of the struggle for clarity in legal language passages by Prof J C de Wet and Judge WJ Hartzenberg, neither of whom was in the vanguard of the struggle against apartheid. Also, the Labour Relations Act 66 of 1995 is held up as the paradigm example of the triumph of plain language in a democratic South Africa. Here, however, is Martin Brassey on section 197 of that Act:

"The problems of the section are to an extent linguistic — in one case, at least, a phrase is used which conveys precisely the opposite of the meaning intended. To an extent, moreover, they are structural, expressions being framed in different ways when they seemingly have the same import and antitheses being set up when none exist. Mostly, however, they are conceptual... The result is a section that yields no completely coherent meaning when construed by the conventional canons of statutory interpretation. Each construction, tentatively adopted, meets an insuperable obstacle in the language and must be jettisoned until ultimately there is

nothing left but the frustration of failure."²

Because the message is such a simple one, it is only through liberal use of the truly platitudinous — if I may use that word, which at five syllables is perhaps pushing the outside of the envelope of plain language — that one gets to a book of this length. My favourite platitude is "The plain language continuum or scale" (p 23), which, accompanied by a diagram, no less, goes: "Difficult... Plain... Plain".

There are also a fair number of howlers. Following hard upon a sentence which must surely register as a major earthquake on the plain language scale ("The most prominent problem with regard to the terminographical process is that all possible concepts in a given subject field are not taken into account before coinage takes place"), Mariëtta Alberts identifies as a particular problem with legal language in South Africa the fact that "often non-existing (European) concepts... are imported into African languages" (p 107). Leaving aside her identification of European concepts with non-existence, it is most unfortunate that three of her five examples of concepts which apparently do not exist in Africa are "homosexual", "gay" and "lesbian" (p 108). She also states that South Africa's legal system is "greatly influenced" by "Indigenous Law in an African context", and that in South Africa "the term 'defamation' is used for the *criminal offence*" (p 104). And so on.

Still, if the book reminds us — by counter-example, if nothing else — of the importance of expressing clear thoughts clearly, it will have served some kind of useful purpose. 

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Endnotes

- 1 Richard P Feynman "What Do You Care what Other People Think?" *Further Adventures of a Curious Character* (1992) 185.
- 2 Brassey *Employment and Labour Law vol 3: Commentary on the Labour Relations Act A8*: 86.