

Writing Readable Documents

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1. INTRODUCTION

We all know that legal documents must be accurate, complete and effective. When it comes to legal documents, readability has always taken a back seat to those other, loftier, goals. Until recently, nobody gave much thought to whether documents could be read by a non-lawyer. It's true that some legal documents are never read by anyone but lawyers and judges. Others, however, are used by laypersons for important purposes in their personal lives. Wills, Enduring Powers of Attorney and Personal Directives fall into the category of legal documents that are frequently read by non-lawyers.

Because individuals look at these documents for information about what to do when a loved one has died or has lost capacity, these documents need to be readable. Not everyone is willing or able to take a document to a lawyer for an interpretation every time they have to make a decision. A layperson may not even realize that the document may have a meaning different from the one he understands. Much of what we in the legal profession – both lawyers and legal assistants alike – take for granted is poorly understood by the general public. Words we toss around regularly are foreign to them. You need only think about how many times you've heard a layperson refer to a "Power of Eternity" or the "executive of an estate" to realize that people outside the legal profession have only a tenuous grasp of the meaning of legal terms. Readability is accessibility. If they can't read and understand the documents, people are more likely to make mistakes that could be costly in terms of money and family disputes.

Documents should be accessible not just to lawyers but to everyone who needs to know what that document says. Wills, Enduring Powers of Attorney and Personal Directives may be read by clients, beneficiaries, family members, doctors, nurses, accountants, bankers, Land Titles Office clerks, insurance agents, creditors or others. Documents should say what they mean. They should use plain language wherever that is possible without losing the legal meaning.

Some readers might find the following sentence problematic:

“It is herein suggested, requested and recommended by the author, creator and/or proponent of the within bound compendium of information and analysis that any and all participants, registrants and attendees of the seminar at hand do not fail or neglect to consult, review, retain and make a prima facie analysis of the information contained in the aforementioned compendium.”

That sentence simply says that I would like you to read this paper, but the message is hard to find among the extra words and poor grammar.

This type of flowery, overdone language seems to be very prevalent in Wills and to some extent Enduring Powers of Attorney as well. This is partly due to the fact that Will precedents have been handed down from principal to articling student and from partner to associate for years with very few changes or updates being made to them. In the past, most clients were prepared to accept their lawyer's word that the document did what it was supposed to do, but client attitudes have changed quite a bit over the years. A lawyer's work is more transparent now. Clients now want to read and understand for themselves. These clients demand readable language.

Clinging to outdated, clumsy wording is also partly due to the fact that lawyers have traditionally not charged much money for the preparation of Wills, so it doesn't seem like a good investment to spend time cleaning up those old precedents. Lawyers who specialize in estate planning have generally streamlined and modernized their precedents to increase efficiency but there are still hundreds of lawyers across the province creating Wills from out of date precedents.

A third reason is that often Wills are prepared by lawyers who are general practitioners who don't have the time or expertise to re-evaluate every clause or phrase in a document they don't use every day. A very small number of lawyers in Alberta specialize exclusively in Wills and Estates, and almost all of them work in the larger cities.

2. MAKE SURE YOUR LAWYER IS ONSIDE BEFORE MAKING CHANGES

The purpose of a Will, Enduring Power of Attorney or Personal Directive is to express a person's wishes in a way that clearly and fully communicates them to the reader. So in addition to being readable, the document must be clear and accurate. You cannot

sacrifice clarity or accuracy to achieve readability. In this paper we will explore some ways in which Wills, Enduring Powers of Attorney and Personal Directives can be written in a modern, clean style that conveys the legal information necessary but is also client-friendly. Document preparers must be very careful, however, that the simplification process is not taken so far that essential words or phrases are omitted from documents.

I strongly advise you not to make changes to the wording or structure of a precedent without showing the “before” and “after” versions to the lawyer who gave you that precedent. Taking the initiative to improve the documents produced by your office is admirable and might even earn you a few brownie points, but you do not want to accidentally remove something that is significant to the law and might have unforeseen consequences. If the lawyer doesn’t know a change has been made to the precedent, he or she will carry on as if the words are still there. The cleaning up process has to be a coordinated effort between you and the lawyer.

It would be a good idea to prepare a new precedent from your old one by using the “track changes” feature. This will highlight in red any changes that you make and show exactly what was added or deleted. This feature is found under “tools” on the standard toolbar and also under an icon on the reviewing toolbar. This way, if the lawyer objects to some of your clean-up suggestions, they can be reversed.

3. KEEP IT SIMPLE

One of the keys to getting any written message across effectively is making sure that it is tailored to its audience. The main audience for a Will is the client, so it is important that he or she be able to read and understand the document he or she is being asked to sign. The lawyer will review it, paraphrase it and explain it at the time of signing, but it may be reviewed years later, without the lawyer present. A client shouldn’t need his or her lawyer present as “translator” to read this document.

Also keep in mind that Wills are potentially read not just by your office personnel and the client, but also by the personal representative, the residual beneficiaries, the judge who grants the probate and the accountant who prepares the estate tax returns. The best way to make a document readable by all of those people is to keep it simple.