

# Effective Legal Writing

# 1

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After reading this chapter, you should be able to:

- Explain the importance of proper writing.
- Describe the characteristics of effective legal writing.
- Identify and explain the five stages of the writing process.
- Describe the plain legal language movement.
- Understand the importance of point-first writing.

## Introduction

The legal profession relies heavily on written communication. Paralegals provide legal representation to clients within limited areas of law as authorized by the **Law Society of Ontario**. Representing clients requires the ability to inform and persuade judges, colleagues, opposing advocates, clients, and other individuals through effective writing. This chapter discusses the importance of proper legal writing and the key considerations in developing effective legal writing skills.

## The Importance of Proper Legal Writing

Proper legal writing is important for the individual paralegal, his or her clients, and the administration of justice. Paralegals have a duty to provide legal services to a standard of a competent paralegal, which includes proper writing and drafting skills.<sup>1</sup> In order to represent clients competently, paralegals need to use proper writing skills to communicate effectively. A paralegal who writes poorly risks falling below the standard of a reasonably competent paralegal, which may result in disciplinary proceedings by the Law Society of Ontario. It may also negatively affect a paralegal's reputation in the legal profession and his or her ability to build or maintain a profitable business.

When a paralegal sends correspondence to his or her client that is grammatically unintelligible, the client's confidence in the paralegal is shaken. Any client would question such a paralegal's ability to provide effective representation. Poorly written court documents can also result in rejected legal claims and the loss of a client's legal rights. For example, the rules regarding **pleadings** usually require the **plaintiff** to set out the **cause of action** clearly and concisely.<sup>2</sup> In other words, the document which commences a court proceeding must clearly identify the alleged facts that support the plaintiff's legal right to sue the defendant. If it does not, the court may **strike out** that document, thereby prohibiting the plaintiff from proceeding with his or her legal claim.<sup>3</sup>

Poorly written court documents also waste court time and resources. The court system relies heavily on written communication in the form of pleadings, affidavits, briefs, facts, and so on. When legal documents are confusing and unclear, judges, justices of the peace, adjudicators, and court clerks may spend unnecessary time trying to understand their substance.

Poor legal writing can also affect a paralegal's credibility with the court. If a paralegal is careless about his or her writing, the judge may conclude that the paralegal cares little about the substance of the client's case. Legal documents that are grammatically unintelligible, unclear, confusing, misleading, deceptive, or inflammatory will leave a negative impression on the judge. A paralegal should strive to make a good first impression with the judge or other decision maker through effective legal writing.

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1 See *Paralegal Rules of Conduct*, Rule 3.01(4)(c)(iv), online: <<http://www.lsuc.on.ca/list.aspx?id=1072>> [Rules].

2 *Rules of the Small Claims Court*, O Reg 258/98, Rule 7.01(2), online: <<https://www.canlii.org/en/on/laws/regu/o-reg-258-98/latest/>>.

3 *Ibid*, Rule 12.02(1).

## What Is Effective Legal Writing?

Paralegals who are effective legal writers convey meaning to their audience clearly and concisely. To do so, they need to follow the conventional rules of grammar and syntax. However, good grammar and syntax are not enough to make writing effective. Effective writers also know their audience and their purpose in writing each document. Is the document intended to inform, report, request, advise, persuade, or complain? Is the audience a judge, an employer, a client, an opposing advocate, or the public? The answers to these questions will set the stage for a paralegal and may affect his or her writing style.

The following are some examples of the different audiences a paralegal might write to, and the various reasons for doing so.

A paralegal might write a letter to his or her **client** to

- inform the client about a hearing date;
- inform the client about steps in the proceeding;
- request that the client produce documents;
- advise the client about his or her legal rights; or
- report to the client about the outcome of a meeting, hearing, or negotiation.

A paralegal might write a letter to **an opposing advocate** to

- request available dates for a hearing, mediation, or case conference;
- request disclosure;
- persuade the opposing advocate of a legal position; or
- propose a settlement.

A paralegal might write a memorandum to his or her employer to

- summarize the law on a particular issue;
- inform the senior lawyer or paralegal of the legal arguments in support of or against the client's position;
- inform the senior lawyer or paralegal of any developments on the file (e.g., a telephone call with the client); or
- instruct a process server to file legal documents with a court or tribunal.

A paralegal might draft a pleading or other court form to

- inform the judge, justice of the peace, or adjudicator of the alleged facts that support the client's cause of action or defence;
- advise the judge, justice of the peace, or adjudicator of the applicable legislation and case law; or
- persuade the judge, justice of the peace, or adjudicator to find in favour of his or her client.

Proper style is also necessary to ensure that a document is clear and concise. *Style* refers to how meaning is expressed through the use and arrangement of words, sentences, and numbers, as well as to the tone and organization of the document. In general, a paralegal can develop a good writing style by (1) simplifying his or her writing, (2) organizing his or her writing in an effective manner, and (3) ensuring the tone of the text is courteous and appropriate for the intended audience. Chapter 3 will teach you the tools necessary to accomplish these skills.

## The Writing Process

Planning, outlining, writing, revising, editing—these are the components of the writing process. As mentioned above, effective writers know their audience and their purpose for writing each document. For example, you need to know why you are writing a letter to a client before you begin writing it. If you are writing an opinion letter to a landlord client to advise whether or not the landlord has to repair the rental unit, you should know the purpose of the letter—to answer the client’s question. This is why it is easier to start writing after the legal research is complete: once you know the conclusion, an analysis and an introduction are much easier to develop.

### Stage 1: Planning

The first stage of the writing process is the planning stage. This is the “why” of the document drafting. In the landlord client example above, the “why” of the letter is to advise the client about a course of action, based on your research and analysis of the law. When writing a research memorandum for an employer, the “why” might be to summarize and inform an employer about the state of the law on a particular issue. Prior to drafting the memorandum, you should conduct the necessary research as part of the planning stage.

The planning stage also involves **brainstorming**. After determining the “why” of the document and completing the research, you should start to write down ideas, facts, and information that the document will address. This is not the time to organize your ideas; rather, the focus should be on identifying all possible ideas, arguments, and so on.

### Stage 2: Outlining

Preparing an outline involves logically organizing the information, facts, and ideas developed during the planning stage. This allows you to see the connections among different ideas and therefore is helpful in effectively organizing the substance of the document. There are different ways to prepare an outline. One way is to prepare a linear list of the points you would like to make or address, along with sub-points under each main point. You can then rearrange the points until you are satisfied with the organization and flow of information.

### Stage 3: Writing/Drafting

Once the outline is complete, the next step is the writing/drafting stage. Completing a comprehensive outline makes drafting the document easy. The writing/drafting stage

involves preparing the actual document in draft form—that is, drafting the text of the document in complete sentences, using the outline as a guide. When writing, you should always keep in mind the intended audience and the purpose of the document.

### Stage 4: Revising

Revision is an essential stage in the writing process. After completing a draft of your document, you should spend time improving its content, rewriting to ensure that the information presented flows logically and coherently. At this point you should also revise the document to include missing information and remove unnecessary content.

### Stage 5: Editing

The final stage of the writing process is editing the document for errors. You should devote significant time to correcting spelling mistakes, grammatical errors, and stylistic problems. It is not enough simply to read the document once to check for errors. Effective writers often read documents multiple times to identify errors. Appendix A provides a sample editing checklist that will help you with the editing stage.

**FIGURE 1.1** The Five Stages of the Writing Process



## The Plain Legal Language Movement

The use of legal jargon in written communication is a common critique of trained legal professionals. **Legal jargon** is specialized legal language that those who are not trained legal professionals find difficult to understand. In addition, legal professionals can produce written communications that are long, complex, and confusing. Many legal professionals do not write in language that clients or other readers can easily understand.

Over the years, there has been a movement towards encouraging legal professionals to embrace plain legal language communication. Cheryl M Stephens defines plain legal language as “language that is clear and comprehensible to its intended reader.”<sup>4</sup> The goal of plain legal language writing is for people without legal training to understand legal documents. Those who do have legal training (such as judges, justices of the peace, and adjudicators) also commonly prefer reading documents written in plain language rather than obscure technical legal language. Using clear and simple language makes the concepts and issues clear to the reader, who can then understand the message without wondering what certain technical legal words or phrases mean.

Effective legal writers communicate in plain language, and paralegals can and should do the same. This book teaches you the tools necessary to write in plain, simple language, including:

4 Cheryl M Stephens, “Plain Language Legal Writing: Part 1—Writing as Process” (Canadian Bar Association, 4 March 2014), online: <<https://www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Plain-Language-Legal-Writing-Part-I---Writing-as-a>>.

- using short-form references appropriately,
- avoiding legal jargon,
- avoiding expressions (informal language and slang),
- cutting unnecessary words,
- using short sentences,
- using action verbs, and
- using the active voice.

## Using Abbreviations, Acronyms, and Other Short-Form References Appropriately

Effective legal writers do not overuse short-form references, including acronyms and abbreviations. An **acronym** is a word formed from the initial letters of other words. Paralegals should only use acronyms that are commonly known.

In Ontario, commonly used acronyms include

- TIFF (Toronto International Film Festival),
- NAFTA (North American Free Trade Agreement),
- NATO (North Atlantic Treaty Organization),
- SIN (Social Insurance number), and
- MADD (Mothers Against Drunk Driving).

An **abbreviation** is a shortened version of a longer word or phrase.

In Ontario, commonly used abbreviations include

- SCC (Supreme Court of Canada),
- LSO (Law Society of Ontario),
- CBC (Canadian Broadcasting Corporation),
- DOB (date of birth),
- ATM (automated teller machine), and
- OBA (Ontario Bar Association).

Paralegals should use acronyms, abbreviations, and other short-form references to shorten sentences and avoid overusing a long word or phrase. Some abbreviations and other short-form references are fine, as long as they are used appropriately, which includes not overusing them and being consistent in their use. Consider the following passage:

The Applicant (A) and the Respondent (R) arrived at the Human Rights Tribunal of Ontario (HRT) on May 8, 2017 to attempt to resolve their dispute by negotiating a mediated agreement (MA) during mediation. A alleges R violated her human rights (HR) under section 5 of the Ontario *Human Rights Code* (OHRC) and requests monetary damages (MD) in the amount of \$5,000.00. R does not believe he violated A's HR and he refuses to pay any MD under the OHRC. While A and R participated in the MS at the HRT, they did not reach a MA.

This passage contains eight different abbreviations, many of them uncommon and unnecessary. Towards the end of the passage, the reader becomes confused in trying to remember what each abbreviation stands for. Consider this revised passage, with the number of abbreviations minimized:

The Applicant and the Respondent arrived at the Human Rights Tribunal of Ontario (HRT) on May 8, 2017 to negotiate a resolution of their dispute during a mediation session. The Applicant alleges that the Respondent violated her human rights under section 5 of the Ontario *Human Rights Code* (OHRC) and requests \$5,000.00 in monetary damages. The Respondent does not believe he violated the Applicant's rights and he refuses to pay any damages under the OHRC. While the parties participated in the mediation session at the HRT, they did not reach a final resolution.

Good legal writers also use other kinds of short-form references in their writing, such as one or two words that represent a longer name or word.

Consider the following examples:

1. The Landlord applied to the Landlord and Tenant Board (the "Board") for an order evicting the tenant from his property. The Board held a hearing on May 29, 2017, and dismissed the Landlord's application.
2. In order to start an action in the Small Claims Court, the Rules of the Small Claims Court (the "Rules") require the plaintiff to file a plaintiff's claim (Form 7A) with the court clerk. You can access the Rules using the Canadian Legal Information Institute's website.
3. The paralegal appeared before the Ontario Court of Justice (the "Court") to request an adjournment of her client's trial. The Court adjourned the trial to September 12, 2017.

When using short-form references, including acronyms and abbreviations, always use the full name or phrase the first time and identify the short-form reference in parentheses. You can then refer to the short-form reference throughout the rest of the text. This helps you shorten your sentences and avoid using a long word or phrase repeatedly. Some people identify the short-form reference in quotation marks; some do not. Either way is acceptable, as long as you remain consistent.

Consider the following examples:

1. All members of the Law Society of Ontario ("LSO") are invited to attend the LSO Annual General Meeting on May 10, 2017. Please register with the LSO Equity Department via email.
2. An automated teller machine ("ATM") is a machine that performs various banking services electronically. There are 1,200 ATMs in the City of Oshawa.
3. The plaintiff attended the Toronto International Film Festival ("TIFF") on September 10, 2017. TIFF is one of the world's largest film festivals and features a number of films, lectures, and other events. The defendant worked as an event manager for TIFF in 2017.

Chapter 3 provides more examples of proper and improper uses of acronyms, abbreviations and other short-form references, as well as a number of practice exercises.

## Avoiding Legal Jargon

Paralegals can develop their plain English written communication skills by avoiding the use of unnecessary legal jargon. This includes substituting plain English for Latin terms where possible, especially when writing an opinion or reporting letter to a client.

Common legal jargon words/phrases, with suggested alternatives, include the following:

- cause of action → set of facts that allows one person to pursue a legal claim against another
- conveyance → transfer
- forthwith → immediately
- herein → in this document/letter
- hereinafter → subsequently referred to as
- hereto → to this document/letter
- nil → nothing
- on the grounds of → because
- *prima facie* → on its face
- pursuant to → in accordance with
- subsequent to → following / after

Consider the following example:

The Applicant filed a Form 1 Application with the Human Rights Tribunal of Ontario (hereinafter referred to as the “Tribunal”) pursuant to the Ontario *Human Rights Code* (hereinafter referred to as the “Code”). Subsequent to the hearing, the Tribunal denied said Application on the grounds that the Applicant failed to establish a prima facie case of discrimination under section 5 of the Code. Attached hereto is a copy of the Tribunal’s decision.

Now read the passage below, in which the legal jargon has been removed and replaced with plain English:

The Applicant filed a Form 1 Application with the Human Rights Tribunal of Ontario (the “Tribunal”) in accordance with the Ontario *Human Rights Code* (the “Code”). After the hearing, the Tribunal denied the Application because the Applicant failed to prove the necessary elements of the claim under section 5 of the Code. Attached is a copy of the Tribunal’s decision.

The text is much easier to follow and understand, especially for a client or member of the public who is not legally trained.

In addition to avoiding legal jargon, effective legal writing includes simplifying the words used. Consider the following example:

The paralegal engaged himself in an oral exchange with the prosecutor.



We can rewrite this sentence in plain English as follows:

The paralegal spoke with the prosecutor.

## Avoiding Informal Language and Expressions

While effective legal writers avoid legal jargon and use plain English, this does not mean they should write as they speak. There is a difference between oral communication and written communication, especially in the legal industry. Many informal words and expressions (also known as slang) are used in everyday spoken language but should not be used in written legal communication of any sort, including letters, emails, memoranda, and affidavits. When speaking, we use many informal words and expressions. Consider the following phrases and expressions common in spoken language:

**I swear** I will attend the mediation tomorrow.

**At the end of the day**, you need to file your claim before the limitation period expires.

The Applicant decided to give the position a **shot** and started the job on April 5, 2017.

There are **loads** of people who suffered as a result of the defendant's negligence.

I am **gonna** schedule your appointment for May 8, 2017.

Good legal writers use simple, plain English *and* maintain a sense of formality and professionalism in the language they use. Consider how you can rewrite the above informal phrases and expressions in a professional and formal manner without changing the meaning:

I confirm that I will attend the mediation tomorrow.

It is important that you file your claim before the limitation period expires. If you do not, you may lose your right to pursue your claim.

The Applicant decided to give the position a chance. She started the job on April 5, 2017.

There are many people who suffered as a result of the defendant's negligence.

I am going to schedule your appointment for May 8, 2017 / I will schedule your appointment for May 8, 2017.

## Cutting Unnecessary Words and Using Short Sentences

Effective legal writers simplify their writing by cutting out unnecessary words and using short sentences. Doing so makes the text clearer and more persuasive.

It is usually when revising or editing a document that paralegals attempt to cut out unnecessary words or shorten sentences. When doing so, however, they must be careful not to change the meaning of a sentence or of the entire text.

Consider the following passage:

It is absolutely necessary that the paralegal attend at the Ontario Court of Justice tomorrow to represent his client in this matter and make a formal request for an adjournment of the scheduled hearing. While the paralegal may put forward a request for an adjournment of the hearing, the prosecutor will oppose that request of the paralegal and will ask the justice of the peace to proceed with the hearing as scheduled.

This passage includes a number of unnecessary words that clouds the meaning of the passage. The sentences are also long. As a result, the passage is tiresome to read.

Clarity is improved when the passage is rewritten as follows:

The paralegal must attend at the Ontario Court of Justice tomorrow on behalf of his client to request an adjournment of the hearing. The prosecutor will ask the justice of the peace to deny that request and proceed with the hearing instead.

The passage is reduced from 72 words to 42 words without changing the meaning of the text.

Chapter 3 provides a number of examples and practice exercises that will assist you in learning to cut out unnecessary words and using short sentences in your writing.

## Using Action Verbs

Effective legal writers use strong action verbs in their writing and avoid using verb-noun combinations in sentences.

Consider the following example:

The legislation offers protection to the workers.

We can simplify this sentence and make it more powerful by replacing the verb-noun combination *offers protection* with the verb *to protect* in the present tense, as follows:

The legislation protects the workers.

## Using the Active Voice

**Voice** refers to a type of sentence structure. There are two voices: active and passive. A sentence is in the active voice when the subject of the sentence performs the action of the verb. As such, the subject is usually at the beginning of the sentence.

Consider the following example:

The paralegal filed the statement of defence.

The subject of the sentence is *the paralegal*. It is the paralegal who performs the action of filing the statement of defence.

A sentence is in the passive voice when what would normally be the object of the sentence becomes its subject. Passive voice shifts the focus of the sentence from the person or thing who acts to the person or thing acted upon.

Consider the following example:

The statement of defence was filed by the paralegal.

The subject of the sentence is *the statement of defence*. It is the statement of defence that is being acted upon in this sentence.

Paralegals should write in the active voice whenever possible, both because it improves clarity and because using the active voice tends to simplify the writing for the reader. Writing a sentence in the active voice usually requires fewer words than writing it in the

passive voice. It can also make the message stronger and more powerful than using the passive voice, producing a more persuasive message.

There are some situations in which a paralegal can use the passive voice. For example, the passive voice is useful when the action itself is most important, and the person initiating the action is less important or is not known. A paralegal can also use the passive voice to emphasize the receiver of the action in a sentence rather than the person carrying out the action.

Writers often struggle with identifying active and passive voice. Writing in the active voice can also be a challenge. Developing the habit of writing in the active voice takes time and practice. Chapter 2 explains the rules for identifying active and passive voice and includes a number of practice exercises.

## The Importance of Point-First Writing

**Point-first writing** is exactly what it sounds like: writing that states the conclusion or point first, followed by an explanation or discussion of that point. Point-first writing requires beginning a document or paragraph by stating the demand or position, then following up with a supporting explanation. For example, if a paralegal is seeking the release of an opposing party’s medical records, he or she should begin by stating that the release of the medical records is necessary and then explaining why the law and the facts support this conclusion.

Consider the following paragraphs:

### Example 1

Pursuant to Rule 9.3(b) of the Licence Appeal Tribunal Rules of Practice and Procedure (the “Rules”) a party may seek an order from the Tribunal at any stage of the proceeding ordering a party to disclose a list of witnesses whom the party may call to give evidence at the hearing and a brief description of each witness’s intended testimony. Further, Rule 9.2(b) of the Rules requires a party to disclose a list of witnesses whom the party may call to give evidence at the hearing and a brief description of each witness’ anticipated testimony at least 10 days before the hearing. The applicant made two written requests to the applicant to produce his list of witnesses; however to date the applicant has not produced it. The hearing is scheduled in five days and therefore the respondent seeks an order compelling the applicant to produce a list of witnesses he intends to call to give evidence at the hearing immediately.

This is the conclusion (or point)—the paralegal is asking the Tribunal to order the respondent to produce a list of witnesses.

### Example 2

The respondent seeks an order compelling the applicant to produce a list of witnesses he intends to call to give evidence at the hearing immediately. Rule 9.3(b) of the Licence Appeal Tribunal Rules of Practice and Procedure (the “Rules”) allows a party to seek such an order from the Tribunal at any stage of the proceeding. Rule 9.2(b) of the Rules requires a party to disclose a list of witnesses at least ten days before the hearing. The respondent made two written requests to the applicant to produce his list of witnesses. The hearing is scheduled in five days and to date the applicant has not produced the list.

Example 1 identifies what the paralegal is asking for at the end of the paragraph. The paralegal is requesting that the Tribunal order the applicant to produce a list of witnesses as required by the Tribunal's Rules of Practice and Procedure. As you can see, however, the paragraph reads a bit like a mystery novel: not until the very end of the paragraph do we learn what the paralegal wants the Tribunal to do.

Example 2 is the same paragraph as Example 1, rewritten using point-first writing. From the first sentence of the paragraph, it is clear what the paralegal wants: an order from the Tribunal compelling the applicant to produce a list of witnesses. The paragraph then goes on to explain why the Tribunal should make this order, providing the law (i.e., Rules of Practice and Procedure) and the facts that support what the paralegal wants.

Point-first writing is one of the most important skills of an effective legal writer, because it makes a document both clearer and more persuasive. This book teaches you a number of techniques that will help you develop your point-first writing skills.

## Summary

Effective writers are not only good grammarians but also know their audience, avoid legal jargon, use plain language, and know why they are writing a document in order to write it well. This book will give you the tools you need to become an effective legal writer. The book starts with an overview of some important grammar skills. In order to be an effective legal writer, a paralegal must be able to write with proper grammar and identify various types of grammatical mistakes when editing documents. Chapters 2 and 3 introduce a number of techniques for improving writing style when drafting legal documents. Developing an effective legal writing style will help you make your writing clear, concise, and persuasive. Then, after an overview of how to summarize and develop written legal arguments, the book takes you through the different types of written communications, such as letters, memoranda, emails, and legal forms. You will not become an effective legal writer overnight. It will take lots of practice. This book provides numerous exercises for you to practise your legal writing skills.

## REVIEW QUESTIONS

1. Why is proper writing important in the legal profession?
2. What is effective legal writing?
3. Describe the five stages of the writing process.
4. What is the plain legal language movement?
5. What is point-first writing? Explain why it is important for effective legal writing.