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LAWFUL EXPRESSION

by

RICHARD EVANS

FOREWORD

**The Hon Justice Michael Kirby AC CMG
Justice of the High Court of Australia**

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Is it possible to teach anyone to write clearly? Above all, is it possible to teach lawyers who are so often bound to precedents, Latinisms and terms of art?

Our growing knowledge about the human genome suggests that communication skills, like intelligence, may be inherited. Perhaps the capacity to express complex ideas in simple prose is written in our genes. For good or ill, our oral communication is the principal way by which we project our thoughts. The way we speak tends to say a lot about our personalities. Whether we have an ability to capture attention in vivid word pictures. Or whether we are just boring prisoners of the seven deadly sins of communication identified by the author.

Writing skills will generally portray a different side of our inner being. The English language, being the marriage of the Germanic tongue of the Anglo-Saxons and the French of the Norman Conqueror displays an ambivalence, almost a schizophrenia. Nearly every idea

has a Saxon and Latin word in English. It makes for great literature but much ambiguity and confusion as well. The more formal written English draws heavily upon the Latin roots of the language. The more informal spoken English takes us back to the blunter and ruder Saxons. Individual diversity - and the absence of rigid rules - is one of the reasons why the English language is now indisputably the medium of global communication. Having captured that position at a time coinciding with remarkable changes of information technology, it is well placed to beat off any rivals.

So here are the quandaries. A universal language being used by countless millions, for most of whom it is not the mother tongue. A complex language influenced by its history, bringing together the two major linguistic streams of Western Europe. In the law, a formal language hidebound by precedent and professional terms of art. Now endlessly repeated by the miracles of word processing and the Internet and usually deeply resistant to change.

Onto this landscape bursts Richard Evans. He has assumed the responsibility to teach Australian lawyers some basic rules of good expression. To drive his points home he has illustrated his text with some truly awful examples. I get the impression that, over the years, he has kept a folder in his bottom drawer into which he has placed the howlers as they came along. Now he shares them with us. We can all learn from his simple and practical rules. That goes for a High Court Justice as much as for a beginner. Yet we should not forget that individual variation in communication is an attribute of human diversity. Dr John Bray once said that diversity was the protectress

of freedom. So the rules offered here are by no means rigid or inflexible. They are there to guide us; not to rule us.

The challenge is to apply the beneficial rules but to retain a medium of individual communication which is a true reflection of ourselves. This book provides helpful guideposts for our journey. It is written with a happy mixture of enthusiasm and practicality. Not every reader will embrace the advice to split infinitives merrily. Few will seek to mimic the evangelist Jimmy Bakker quoted in these pages. Fewer still would want to rework the famous passage from *Corinthians* to elevate "clarity", in lieu of charity, to the greatest of virtues. And in the law, obscurity can occasionally be a medium for adaptation, as the Australian Constitution has demonstrated for nearly a century.

Yet, generally speaking, lawyers have a long way to go in the quest for plain expression. To the extent that Mr Evans' book assists us to improve our ways, it will be welcomed - and not only by lawyers.

High Court of Australia
Canberra

Michael Kirby
1 October 1997