

## THE HONOURABLE CHIEF JUSTICE GEOFFREY MA TAO-LI (1): WHAT MAKES GOOD LEGAL WRITING?

### **What makes good oral legal writing in English in professional settings?**

The main thing to bear in mind, or the starting point in approaching a legal question, is to understand what the objective is, to understand the person to whom the legal essay or the legal opinion is directed. Now, it usually, in terms of a judgment, it is to the parties, it is to the world in general. In terms of a legal opinion, which I think is probably the main part of legal writing, it would be the client, if you're a barrister to the solicitor. Now, with that in mind, you then put yourself as the first approach to legal writing, put yourself in the position of the recipient of the advice, and ask yourself what is it that the person is after. Usually it's an answer. That will then give you an idea as to how to approach your writing and the first point here is to have a structure. In terms of a legal problem, answering a question in a legal problem, the formula should be quite simple, really. You look to see what the problem is, you identify that, you then analyze what the facts are in any particular case; you identify what the law is, and then you simply answer the question. Now, it sounds simple and probably many people will think it's obvious, but you will be quite surprised how often people don't follow this simple formula.

### **What do you think are the main challenges in legal writing?**

This is another way of asking the question of what not to do because the formula is simple enough: identify what the problem is, identify the facts, find out what the law is, and then apply the law to the facts. What a lot of people do is they get distracted by a number of things. Sometimes they can't help it and they go off on a tangent of their own, they go on a frolic of their own, and they tend, I think this is the worst thing one sees in a piece of legal writing, they tend to show off their knowledge of the law instead of addressing the problem which is before them.

### **How does writing for a particular audience make a difference to the way in which you write?**

Well, I think the two easiest examples to draw on would be a legal opinion and a judgment. Let's start with a legal opinion. You're usually addressing this to a client who wants to know an answer to a legal problem. That client wants to know, apart from the answer, your reasons for arriving at that

answer. Now, very often if you are in a split-profession jurisdiction such as Hong Kong, the barrister writes an opinion for the solicitor, so one will need to go into more of the legal background and the legal reasoning behind that. And here, the mistake, as I've said before, is actually then in showing off because this detracts from what is an important part of any sort of legal opinion and that is clarity. Now, the client is not interested in an answer which is unclear nor in reasoning which is unclear. In terms of a judgment, your audience is slightly different. It is, of course, to the parties to the litigation. It's not to the lawyers, except inasmuch as they need to look at the legal reasoning in order to decide whether, for example, there's going to be an appeal, but also, judgments, particularly in a common law jurisdiction, are for the world to see, so that people are able to understand the reasoning and the process of the courts. So, for this reason, judgments tend to be perhaps a little on the more detailed side in order to reach, as it were, reach out to this wider audience.

**As a judge, what are you looking for in the writing that you have to read?**

Well, as a judge, the writing that we are exposed to, apart from judgments of fellow judges, would be the submissions of counsel, of the lawyers who come before the courts. And this again follows the same pattern, the same pattern of addressing what the issues are in the case, setting out what the relevant facts are, setting out, perhaps this is more important in an appellate court, the applicable law and then applying the law to the facts. And again, it is quite surprising how often we don't see that in submissions from counsel. I've done this myself as counsel and I've been a judge for quite a number of years now, and one sees this, wrong to say a mistake, but it's perhaps a symptom of a lack of clarity. Clarity's all important when it comes to legal opinion or legal writing.

**What do you mean by a 'lack of clarity'?**

A lack of clarity comes about when, for example, you are not logical, when you don't address the very problem you're asked to address and go off, as I've put it before, on a frolic of your own because it distracts the reader from concentrating on what really should be the main part of the opinion, which is the answer to the problem and the reasons behind that. Now, the use of long

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Transcript

words, the use of long sentences, complicated sentences, writing as though you're writing a novel because you think there's some sort of English competition, all are what I call mistakes. And what I mean by appreciating your audience and your objective is that you keep things simple and every sentence or every word you use should be directed towards that objective of coming up with an answer to the legal question and justifying that answer.