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By Carole Lewis,
Judge of the Supreme
Court of Appeal

Good legal writing

Let me start with a disclaimer. I do not hold myself out as an expert on legal writing. I do, however, have views on improving written work that comes before courts, and these views gain strength the longer I sit on the Supreme Court of Appeal.

There is nothing special about legal writing: lawyers should simply write well. This paper is general and addresses the writing of legal opinions, papers, affidavits, pleadings, heads of argument and any other written work. It is a plea for simplicity and clarity; for jettisoning jargon and legalese and above all, for brevity and clarity.

Brevity is not the same as shortness. It is about being direct and giving the reader information in the most accessible way. Verbiage disguises thought rather than expressing it. In the famous little book *The Elements of Style* (Third Edition, 1979) written by Professor William Strunk in 1929, and updated by his former student, E B White, Strunk said:

"Vigorous writing is concise. A sentence should contain no unnecessary words, a paragraph no unnecessary sentences, for the same reason that a drawing should have no unnecessary lines and a machine no unnecessary parts. This requires not that the writer make all his sentences short, or that he avoid all detail and treat his

subjects only in outline, but that every word tell."

One cannot write clearly and well unless one's thoughts are clear. That entails thinking before writing. This may seem obvious, but the impression often gained when reading heads of argument and even judgments is that the writer has started at the keyboard (or put pen to paper) before being sure what is to be written, in the hope that the pen will lead to the answer. Invariably that approach will lead to an excess of words and to muddled writing.

Lack of thought is particularly apparent in affidavits in motion proceedings. Affidavits are supposed to be about fact. Very often now they contain legal argument and opinion, the deponent explaining that the legal views advanced have been made by legal advisers. A little thought in advance of drafting affidavits (and indeed heads of argument) would save reams of paper and burden those who have to read less.

Think first about the purpose and nature of the document, argument or opinion and its logic: the logic should inform the content. If the ideas are clear then the points will be clear and writing them directly is more likely to make the reader understand what is written. In Strunk and White's words "The first principle of composition ... is to foresee or determine the shape of what is to come and pursue that shape."

Although the structure of heads of argument warrants separate

Good Legal Writing Sabar

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