

## Demystifying Plain Language in Legal Translation

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### Abstract

The purpose of this brief communication is to challenge the existing notion that plain language and legal translation are incompatible, while also inviting further research. Tackling some common objections to plain language and relying on three brief examples, I posit that if we define plain language as nothing more (and nothing less) than just seeking clarity, then plain language is perfectly compatible with legal translation.

**Key words:** plain language, clarity, legal translation, fidelity to source, literality.

### Resumen

El objetivo de este artículo breve es cuestionar la idea de que el lenguaje claro y la traducción jurídica son incompatibles, al mismo tiempo que intenta alentar más investigación en la materia. Mediante el análisis de algunas objeciones comunes al lenguaje claro y analizando tres ejemplos simples, postulo que si definimos al lenguaje claro como nada más (y nada menos) que claridad, entonces este es perfectamente compatible con la traducción jurídica.

**Palabras clave:** lenguaje claro, claridad, traducción jurídica, fidelidad al texto Fuente, literalidad.

### I. The Case for Plain Language

In April 2017, Neil Gorsuch, then-newest judge in the United States Supreme Court, made national headlines for consistently “sticking to plain language” in his decisions (Wolf 2017). Not too long after that, the Supreme Court of Canada began to publish plain language Cases in Brief claiming: “We’re doing this because we want to be more transparent and accessible to Canadians—but we’re also doing it because we must. The

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reality is that there are fewer journalists covering the Court than ever, and those who remain are pulled in many different directions. This is an attempt to fill the gap” (Sheppard 2018).

One would think plain language in courts is a new thing; but one would be wrong. Already in 1990, the U.S. Supreme Court had held in *Moskal v. United States* that: “In determining the scope of a statute, we look first to its language, giving the words used their ordinary meaning” (*Moskal v. United States*, 498 U.S. 103, 108 (1990)). And SCOTUS has consistently upheld this position ever since (see, for example, *Ingalls Shipbuilding, Inc. v. Director, Office of Workers Compensation Programs, Dep’t of Labor*, 117 S. Ct. 796, 801 (1997)). In fact, both the Rehnquist and the Roberts Courts have consistently argued in favor of a plain language interpretation of a statute with very little dissent since the 1990s (Strauss 2016).

But Courts are not the only ones hopping aboard the plain language train. Many jurisdictions have plain language statutes in effect, including the U.S. and the U.K. Many law firms invest time and financial resources to ensure that all client and court-facing documents are written in plain language, yet legal translators are often reluctant to embrace plain language in legal translation.

“As secondary drafters,” they say, “the decision is not up to us.” To them, I say it depends on how you understand what plain language is. If plain language is about clarity, then the case for plain language in legal translation practically writes itself.

## **II. Some Middle Ground**

Plain language is everywhere in the legal world: from how we draft laymen-facing documents like consumer contracts to how we address the courts. It raises questions; many of which have no straight-forward answer. And, while some plain language advocates argue that plain language is appropriate in every legal setting, not everyone agrees, counterarguing instead that plain language impoverishes or “dumbs down” legal language.

Regardless of whether you’re a plain language advocate or not, the most rational take on the matter of plain language lies somewhere in the middle. While there is merit to the

argument that not everything needs to be spelled out in laymen's terms (terms of art for example are sometimes the clearest and most precise way to get the message across), there is equal merit to the argument that at least laymen-facing documents need to be drafted in terms the average person can understand.

The same can be said about legal translation. While it is true that fidelity to source means nothing can be added or subtracted from the text we're translating and translators are bound to the tone, style and register of the source text, it is equally true that if plain language is about clarity, then plain language can easily be applied to legal translation without being unfaithful to source.

### **III. Main Misconceptions and Objections**

Whenever one uses the terms *plain language* and *legal translation* in the same sentence, certain objections are sure to come up.

#### *a. Dumbing it down*

A common misconception about plain language is that it dumbs down the message, as if complex ideas necessarily require cryptic phrasing. The more complex the idea, apparently, the more impossibly convoluted we have to make it sound. But dumbing down a message and conveying it clearly are obviously not the same thing; and plain language is about the latter.

#### *b. "Uglying" it up*

Another common objection is that some languages are simply too musical and beautiful and too much of that music would be lost in plain language. But again, that objection parts from a misconception about what plain language is, which becomes very evident when we look at some of the guiding principles of legal drafting in plain language, such as:

- Avoid using multiple conditionals in a single sentence (which is another way of saying: one sentence, one condition)
- Avoid using the same word for multiple meanings (principle of consistent usage)

- Avoid double negatives or exceptions to exceptions (also known as common sense)

While all of these principles go a long way to clearly conveying the message, none of them involve sacrificing naturalness, flow or whatever people mean when they speak of the “music” or “beauty” of a language —unless by “beauty” what they mean is lack of structure, order or common sense.

*c. Unpopular Means Bad*

A common argument is that because plain language is not *wildly* popular, then it must be a bad idea. By that rationale, what makes an idea *good* is solely its popularity too. But just because something is wildly popular doesn't mean it's a good idea. There was a time when slavery was wildly popular and no person in their right mind today would argue that slavery is anything less than one of the most shameful collective mistakes of human history. Conversely, there was a time when people thought the telephone had too many shortcomings and look at how that turned out. We need a little more than popularity to decide against or in favor of plain language.

*d. Confusing primary and secondary drafting*

A common objection (and one that actually holds some merit) is that translators are not primary drafters. We are secondary drafters; and, as such, it's not up to us to decide whether plain language is to be used in the target text.

Granted. Secondary drafters are bound by fidelity to source.

But plain language is not about not using terms of art, it's about how we structure the language around those terms. And as secondary drafters, translators *can* restructure sentences for clarity in the target language, within reason.

Let's look at the following example:

<b>Source</b>	<b>Standard Translation (Formal Equivalence)</b>	<b>Plain Language Translation</b>
Se sostuvo que los apelantes, que eran empleados del Estado Nacional al momento de sufrir la lesión, debieron haber reclamado la indemnización en ese entonces.	It was sustained that, because the applicants were Federal employees at the time the injury occurred, they should have filed a compensation request at that time.	It was held that, because the applicants were Federal employees at the time of the injury, they should have filed a compensation request then.
Con el propósito de identificar el pago omitido, es posible que nos veamos en la necesidad de auditar las cuentas del Prestador a fin de lograr una mejor comprensión de las razones por las que se generó el error.	For the purpose of identifying the missing payment, we may need to audit the Vendor's accounts so we can gain a better understanding of the reasons why the error occurred.	To trace the missing payment, we may need to audit the Vendor's accounts to better understand the reasons why the error occurred.
Las presentes secciones describen los diferentes tipos de información que podrían satisfacer los requisitos de postulación de conformidad con la Circular 2.B en lo que respecta al programa.	The present sections describe the different types of information that could satisfy the application requirements in accordance with Circular 2.B as it would apply to this program.	These sections describe what different types of information meet the application requirements of Circular 2.B for this program.

Notice that nothing is added or taken away. The message remains exactly the same, terms of art are still there. All that's different is how the language around those terms is structured. With all this mind, if we define plain language as being about clarity, then there's no reason not to apply the principles of plain language drafting to legal translation. But to do that, we need to familiarize ourselves with those principles, which involves a much more robust analysis than that which I can offer here.

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