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DECLARATION

I, the undersigned, hereby declare that the work contained in this thesis is my own original work and has not previously in its entirety or in part been submitted at any university or Technikon for a degree.

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Date: .....

ABSTRACT

The framework of the employment relationship is regulated by labour legislation. The relationship is known as the tripartite relationship, it is made up of the employer, employees normally represented by the union and the state. The state is responsible for the statutory and legislative framework within which this relationship is conducted.

Legislation has been traditionally written in such a manner that only a selected group could understand and interpret it. The new dispensation in South Africa necessitated a move from the traditional manner in which legislation has been drafted to a more open and transparent format, which the general public can understand and comprehend.
Plain language drafting that has been in use for the past 28 years internationally is a method of drafting legislation which focuses on the reader or end-user.

This study investigated the impact on comprehension and understanding levels of subjects when presented with a format of labour legislation that was redrafted using the guidelines of plain language drafting as opposed to the current format of the legislation.

The research hypothesis was "Legislation will be more easily understood if redrafted in terms of plain language principles."

An extensive literature review on plain language drafting, plain language principles and on mass communication was undertaken. The focal area in the literature review dealt with research that has been conducted on plain language drafting in labour legislation and on the theory of drafting and plain language.

The empirical study was conducted at a model C type, senior secondary school in the Western Cape with English speaking grade 11 students. The study tested the comprehension and understanding levels of the respondents in an experimental and control group environment. The experimental group received

the redrafted format of the legislation and the control group received the current format of the legislation.

The results of the empirical study, conclusively demonstrated that the respondents in the experimental group who received the redrafted format of the legislation, far exceeded the performance of the results that were achieved by the control group who received the current format of the legislation. The test results were exposed to various statistical measures to validate the research hypothesis. The findings of the statistical measures supported the research hypothesis.

The findings of the empirical study concurred with the literature review and the research hypothesis; that when plain language drafting principles are applied to legislation, the reader more easily understands it.

In conclusion the statistical tests have conclusively proved that, overall, plain language does improve comprehension of the legislation.

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OVERVIEW AND PROBLEM IDENTIFICATION

1.1 Introduction

Modern society centers in economic activity as conducted by industry and commerce and supported by various private and public services. In this context the primary societal relationship is to be found in the tripartite interaction between the parties to the labour relationship, namely employers, employees (often represented by unions) and the State.

The initiation and continuation of the relationship rests with employers and employees, but the State has a vested interest in the continued peaceful conduct of this relationship. If the relationship flounders, the economy suffers and so does the rest of society. For this reason the State will intervene in the relationship by providing a legislative and regulatory framework, within which the other two parties conduct their day-to-day interaction.

It is trite knowledge that no relationship functions effectively in the absence of proper and effective communication. In the case of the labour relationship dysfunction is revealed in labour unrest and disputes of right brought to arbitration and adjudication.

Dysfunction may be caused mainly by ineffective communication between the primary parties, namely employers and employees, but could also result from a failure by the State to communicate adequately on the legislation that governs the relationship. If this occurs, the legislation will not be effectively implemented and the relationship itself may suffer.

The plain language movement evolved as a reaction to the remoteness and complexity of legal language. Plain language is a concept which is extremely difficult to define as it is interpreted differently in terms of the perspective adopted. It is also a relative concept. Plain language invites the question: plain to whom?

The primary objective of plain language is improved or effective communication.

1.2. Legislation and the Labour Relationship

1.2.1 The Objectives Of Labour Legislation

The cornerstones on which labour legislation is based are:

- The protection of both the employer and the employee;
- The empowerment of the parties in the relationship;
- The promotion of an environment which would lead to economic, individual and social development;
- The provision of the appropriate mechanisms that should be used in the event of a dispute.

To give effect to the above, albeit somewhat simplistically, Labour Acts include the following, which can broadly be placed into the following categories:

Prescriptive:

- The Basic Conditions of Employment Act (75 of 1997) - BCEA
- Unemployment Insurance Act (30 of 1966) - UIA
- Occupational Health and Safety Act (85 of 1993) – OHSA
- Compensation of Injuries and Disease Act (130 of 1993) – COIDA

Enabling:

- The Labour Relations Act (66 of 1995) – LRA

Empowering:

- The Employment Equity Act (55 of 1998) – EEA
- The Skills Development Act (97 of 1998) - SDA

Since the first democratic elections in South Africa, (April 1994), the employment relationship as regulated by legislation, has been subjected to numerous changes. Over the past seven years the revision and establishment of new legislation has dominated the labour market. The other parties to the relationship have been obliged to interpret and implement new laws such as The Employment Equity Act (No 55 of 1998) and the Skills Development Act (No 97 of 1998), as well as numerous redrafts to existent statutes and subsequent amendments to these.

While the implementation of the above legislation is largely the responsibility of the employer and the employee parties, the successful drafting and dissemination of labour legislation is the responsibility of the State. In order for the rules and regulations to be implemented effectively and efficiently, the intended users, namely employers, employees and the unions, must understand the legislation. This means that it must be effectively communicated.

1.2.2 Dysfunction in the Relationship

The destabilisation of employment through labour unrest is a clear indication to all stakeholders that the employment relationship is not healthy and this would be a concern to potential investors and stakeholders, especially foreign investors contemplating entry to the South African labour market, Rautenbach (1994: 6) confirms this when he states that: "In an international world which is becoming increasingly competitive, South Africa is seen as a high wage, strike prone society".

A large percentage of the labour disputes that are referred to the CCMA deal with the interpretation, misunderstanding and perceptions of the labour laws. The possibility exists that either the communication process has broken down or, alternatively, that a number of barriers were encountered, resulting in miscommunication and conflict in this relationship. This assumption is, supported by Bendix (2001:181) when she comments that: "As in all relationships, clear, effective, two-way communication is essential to the smooth conduct of the labour relationship."

Within the context of the labour legislation, the primary communication process is between the state, the employer and the employee. The state is the sender and the latter two parties the receivers of the message. If the assumption postulated earlier, namely that no relationship functions effectively in the absence of proper and effective communication, is the pivotal point of the problem, then the focus of the study should be on the state with the emphasis being placed on written communication in the form of labour legislation.

1.3 The Role of Communication in Labour Legislation

1.3.1 Communication as a catalyst

In order to establish whether there are barriers in the mode and method of communication used to impart labour legislation to the various stakeholders, the starting point would be the manner in which the message has been drafted. If the legislation is written in such a manner that the majority of users have difficulty in understanding and interpreting it, then the value of that legislation to the intended users is questionable.

The importance of clear plain communication with regard to legislation is emphasized by Botha (1995: 6) who states that, "The law cannot fulfill its role to regulate and to order if it cannot be understood".

Vik and Gildorf (1994: 1) support this by stating, "Communication means the exchange of ideas using common symbols. The most important word to remember here is exchange. Remember: You communicate only when your audience understands your message".

Effective communication does not refer merely to grammatically correct communication. This view is shared by Botha (1995: 6) who states that, "Plain language drafting should be seen as a dynamic process, and not as the mechanical application of the static grammar rules of traditional legislative drafting". He further explains that, "The emphasis is on comprehensible

language. It is not the ideas that are simplified, but the language used to convey those ideas. The degree of difficulty of the legislative text will be determined by the end-user." Botha further explains that, "Difficult legal language will also have an influence on the acceptance of the legal order."

A similar view is expressed by Kimble (1994:2) who states, "Plain language has to do with clear and effective communication – nothing more or less. It does, though, signify a new attitude and a fundamental change from past practices". The founding principle of plain language drafting in legislation is that legislators of legal text must write clearly and comprehensibly. It is a format of drafting that is aimed at the end user, whereby the readers of the legislation would understand and be able to adhere to, access and/or defend their rights. Plain language drafting is a technique, the format of which is deeply enshrined in the fundamental principle of communication: the principle which states that effective communication occurs only when the message conveyed is understood by the reader/receiver. Botha (1998:6) supports this view when he states, "The process of "language" is not complete if the message is not properly understood. If written rules are to be obeyed, they must first be understood".

In the employment relationship the receivers are the employer and the employees, also represented by the union, who, it is contended, are the target audience to whom the message of the legislation is sent. To assess if the communication process has been effective, the target audience must have understood the message. In the context of the legislation, this would include all the Acts, Codes of Good Practice and various administrative forms that require completion by various instances.

1.3.2 Mass Communication and language usage

Dominick (1993:18) states that, "Mass Communication refers to the process by which complex organizations with the aid of one or more machines produce and transmit public messages that are directed at large, heterogeneous, and scattered audiences".

The economically active population in South Africa comprises approximately 11,673 million people (Labour Survey Report 2002). All or most of these would, at some time or other, be required to interpret labour legislation, either in their role as employers, employees, union officials or departmental functionaries wishing to ensure implementation of said legislation. If the volume of the users involved is considered, it can be concluded that drafters of legislation need to adopt a mode of communication that incorporates the principles of mass communication.

The process of mass communication is normally the end product of more than one person. In the labour relations sphere the formation, establishment and implementation of Labour Acts involves various stakeholders and representatives at different stages of the process. These stakeholders would include legal specialists, representatives of employers' bodies, trade unions, union federations and government.

Generally in mass communication there is very little feedback from the receiver. However, in the labour arena, feedback can be obtained from identified users. Furthermore negative feedback may be evidenced in the nature of disputes brought before the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court (LC). It may therefore be necessary to investigate such disputes to establish whether their origins can be traced to ineffective communication.

1.3.3 Inferences

The preliminary study led to the conclusion that in drafting labour legislation for dissemination to a vast range of stakeholders, cognisance needed to be taken of the principles of plain language drafting and those related to mass communication. The inference could be drawn that failure to do so might result in a breakdown in the communication process and the consequent ineffective implementation of said legislation.

1.4 Overview of the Research

1.4.1 Research Question

Is the manner in which labour legislation is drafted responsible for misunderstanding and misinterpretation?

1.4.2 Hypothesis

Legislation will be more easily understood if redrafted in terms of plain language principles.

1.4.3 Research Design

The research falls into the paradigms of both qualitative and quantitative research.

It initially involved the identification of sections of the legislation that were redrafted using the principles of plain language. The various sections of labour legislation that were selected, were drawn from the researchers' industry experience, where users of the legislation had difficulty with the understanding and interpretation of the legislation and also from cases brought to the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court.

An empirical study to validate the researchers' hypothesis was undertaken. A comparative analysis of the results was done, to scientifically assess the validity of the research hypothesis.

1.4.4 The Research Process

In order to prove or disprove the hypothesis it was necessary to:

- Collect secondary data from existing literature in the form of best practice criteria for plain language usage and mass dissemination of information.

- To select various sections of the current labour legislation.
- To analyse those sections of the legislation, which had been identified for the study, in order to redraft these section with the practice criteria used for plain language drafting in chapter four.
- To redraft the identified sections of legislation using plain language and mass communication principles.
- To conduct experimental and control group assessments, based on both formulations of the legislation, in order to establish which formulation users most easily understand.
- To engage in descriptive and inferential analysis of data, in order to prove/disprove the hypothesis.

1.4.5. Units of analysis

The legislation that was used in the study was taken from the prescriptive, empowering and enabling Acts, which have been either drafted or redrafted following the 1994 elections. They are:

- The Basic Condition of Employment Act (75 of 1997),
- The Employment Equity Act (55 of 1998), &
- The Labour Relations Act (66 of 1995).

These Acts were selected as the focus of the study since they were implemented after the first democratic election in South Africa.

1.4.6. Delimitation of Research

In line with similar research conducted overseas (see Literature Review) empirical research was limited to 5 selected sections of legislation; and subjects comprised of two groups of 75 English speaking high school pupils, selected by random sampling as representative of the total population.

1.4.7. Significance Of The Research

The research provided proof that there is a need to reassess the current format in which labour legislation is drafted with a view to improved understanding of such legislation.

More effectively communicated legislation could result in its effective implementation and contribute to the minimisation of conflict in the labour relationship.

1.5. Outline Of Thesis

1.5.1. Chapter One: - Overview And Problem Identification

This chapter provides an overview of the study; it briefly identifies the problem, the hypothesis and the research question. It provides a brief synopsis of the methodology that the researcher will engage in to disprove or prove the hypothesis. It imparts the objectives and significance of the study. It further provides insight into the key concepts and definitions that are applicable to this study.

1.5.2. Chapter Two: - Literature Review

The literature study focuses on plain language drafting in legislation. It deals with related research on plain language drafting as well as related theory that impacted on, informed and enhanced the study.

1.5.3 Chapter Three: - The Employment Relationship and Labour Legislation

This chapter provides the framework within which the legislation would be implemented and discusses the roles of the main participants. The focal role is that of the government as the legislator.

1.5.4. Chapter Four: - Mass Communication And Legislation

This chapter investigates the strong correlation between the relevant concepts in mass communication and target segmentation that would be applicable, as well as beneficial, in the drafting and dissemination of legislation.

1.5.5. Chapter Five: - Plain Language Drafting in Practice

This chapter is the focal area of the thesis. It provides the theoretical framework and explanation of the fundamental concepts in plain language drafting. It also imparts the criteria and guidelines that were used to redraft selected sections of labour legislation. These were included in the instrument that was used to prove/disprove the validity of the hypothesis

1.5.6. Chapter Six: - Empirical Study

This chapter outlines the scientific methodology that was employed to disprove/prove the hypothesis.

1.5.7. Chapter Seven: - Analysis And Interpretation of Results

This chapter reports on the statistical procedures that were applied to process the obtained data from the empirical study. The statistical procedures are an essential requirement because they provide scientific evidence on the basis of which the hypothesis is rejected or accepted. This is supported by in-depth analysis of the research outcomes.

1.5.8 Chapter Eight: - Conclusions and Recommendations

This chapter concludes the dissertation on plain language drafting and labour legislation. It provides recommendations on the drafting of labour legislation, based on the findings of the literature review and study, as well as the empirical study. It also identifies potential areas for future research on plain language within the South African context.

1.6. Key concepts & definitions:

1.6.1 "Plain language law" – is simply the techniques of plain language applied in a legal context. It involves applying to legal documents and statutes those same techniques that good writers use in normal prose. It is effective writing in a legal context. (Butt, 2002:2)

1.6.2. "Statute" – a law passed by an official ruling body and written down formally. (Oxford, 2000:1166)

1.6.3 "Labour / employment relationship" – exists whenever one person (the employee) works for and receives remuneration (a wage or salary and other "perks") from another person (the employer). This concept is used interchangeably within the study.

1.6.4 "Labour legislation" – are laws introduced for the specific purpose of establishing parameters of conduct of the labour relationship and to provide minimum regulations pertaining to substantive conditions of employment.

1.6.5 "Employer" – a person or company that employs people.
(Oxford. 2000:378)

1.6.6 "Employee"
(a) Means any person, excluding an independent contractor, who works for another person or for the state and receives, or is entitled to receive, any remuneration; and
(b) Any other person who in any manner assists in carrying on or conducting the business of an employer. (BCEA of 1997)

1.6.7 "State / Government" – the civil government of a country

" State" – Within the South African context, the state comprises the executive, the legislature, and the judiciary. The executive includes the political leadership responsible for formulating and executing labour policy and strategies, while the legislature shapes the labour legislative framework, which governs the labour relationship. (Venter. 2003:66)

1.6.8 "Communication"

(a) A transactional process between two or more parties whereby meaning is exchanged through the international use of symbols. (Engel; 1994:31)

(b) Simplified can be described as "the passage of information" or "an exchange of ideas" or as "the process of establishing a commonness or oneness of thought between a sender and a receiver".

(Belch & Belch; 1993:188)

1.6.9 "Mass Communication" – refers to the process by which a complex organisation with the aid of one or more machines produces and transmits public messages that are directed at large, heterogeneous, and scattered audiences. (Dominick; 1993:18)

1.6.10 "Target Segmentation / Audience" – a specific segment of the population for whom the product or service has a definite appeal.

1.6.11 "Legislative Drafter" – a member of a body that drafts law.

1.6.12 "Plain language" – Plain language is a method of writing for clarity and effectiveness. It is guided by strategies for organising and writing so that the reader will understand the text on the "first read". It is the opposite of "medicalese; legalese" bureaucratic language, and jargon. The phrase "plain language" can also be used to mean clear, reader – friendly graphic design in printed documents.

1.7. Conclusion

The overall purpose of the study was to investigate whether, if the communication method in the drafting of labour legislation was changed, understanding and comprehension would be enhanced.

In order to achieve the above, the researcher undertook a project that can be likened to a journey, where the destination is known, but where the validity of the directions has to be scientifically tested, based on the literature review and the empirical study.

Chapter 2

LITERATURE REVIEW

2.1. Introduction

The research problem questions the efficacy of labour legislation as a product of drafting style, hypothesising that the application of, in particular, plain language drafting principles would result in more comprehensible legislation.
This necessitated exploration of existing theories linking plain language principles to the drafting of statutes and of related research in this field.

2.2. Legislation and Communication

2.2.1. Legal Texts

An extensive amount of research has been conducted on plain language drafting and the law internationally. Two authors who have written extensively on legal texts and plain language are Dick and Thornton,

Dick (1995: 5) defines legal drafting as follows, "Legal drafting is legal thinking made visible". He further explains that drafting is a blend of art and science. He believes that certain principles can be learned and proficiency in drafting acquired, to varying degrees, through practice. Good legal drafting is a lifelong learning process, because the focus is on the reader.

Dick (1995: 1) explains, "Basically, plain language drafting is directed to the needs of the reader". He elaborates that clear drafting involves a thinking and writing process that calls for discipline and a time commitment on the part of the drafter.

In the process of communication the message has not been sent successfully if the receiver has not understood the intended message from the sender. However, in traditional legislative drafting, the success of the communication process seems to have low priority, as the drafter using this format appears not to have written for the reader. The drafters, seems to write with the legal fraternity in mind, which may not be the target audience. Dick (1995:2) underscores this when he states: "To draft effectively a drafter has to consider those who are going to read the

document and make it understandable to them. In fact, audience analysis may be the single most important factor when drafting".

The same author (1996:2) believes that "plain language takes many forms and is quite flexible". It is therefore another reason to implement this method in drafting.

Thornton (1996:1) sets the scene for communication and legislation when he states "Communication is of the essence in every society. A society cannot exist as a social community unless its members can communicate with one another". He furthers continues that "language is the most important medium of communication, particularly so far as the regulation and control of society are concerned".

This is where the legislative drafter toils, in the field of communicating the regulation of society. The main objective of the drafter according to Thornton is "the task to frame the communication of policy decisions having legal consequences to members of society". He firmly believes that a drafter's major task is in the field of communication. He supports this when he states that "on the basis of policy instructions, the drafter must survey the relevant law as it exists and then decide what is to be communicated and how. The medium is written language". (ibid:1)

Thornton (ibid:2) elaborates on this by explaining that, in written communication, "The words stand above, we see nothing but the written page and hear nothing at all. The absence of vocal aids and many kinds of visual aids is a serious handicap, but it is the permanence and finality of written language when compared with speech that constitutes an even more serious hurdle to successful communication".

2.3. Research on Plain Language Drafting

2.3.1. Experimental Redrafting of Legislation

Cutts (2000:5) believed that Acts of Parliament could be drafted in simple, ready language without loss of clarity, certainty or comprehensiveness.

In 1970 the author already had support for his hypothesis from a Law Lord who stated that: "But what the law is ...ought to be plain. It should be expressed in terms that can be easily understood by those who have to apply it ...Absence of clarity is destructive to the rule of law; it is unfair to those who wish to preserve the rule of law, it encourages those who wish to undermine it ..." (ibid: 2000:6)

Based on the above, the author in 1992 accepted a challenge from his fellow parliamentary draftsmen who were not convinced that the above could be achieved. The challenge given to him was to take any current Act and redraft this Act to support his hypothesis. Cutts took as his example the Timeshare Act of 1992 of the United Kingdom.

The objective of the study undertaken was to examine the clarity of parliamentary drafting in the United Kingdom with particular reference to a recent piece of Consumer Law. (Cutts, 2000:7) The reason for choosing the Timeshare Act of 1992 for the study was that it was recent, brief and gave new rights to many thousands of timeshare owners.

Cutts presented the parliamentary counsel with a counter challenge. He required the counsel, upon receiving the clearer Timeshare Act in conjunction with the report to critically evaluate whether the clearer Timeshare Act had fulfilled the challenge thrown down by his predecessor; to justify the obscurity, long-windedness and poor structure of the original Act; to determine which version of the Act they would prefer to work with if they were a judge, MP or ordinary citizen; to place the two versions of the Act before an independent panel of lawyers, judges and user representatives, to decide which one best met the criteria of certainty and intelligibility which all regard as desirable. (Ibid:7)

Cutts maintained that "No document can safely be regarded as clearer until users' performance prove it." (ibid:8) Therefore the revised and original Act was tested with 91 students on placement with leading law firms, most of them studying law. The students' response to the revision was overwhelming: 87% preferred it.

The two versions of the Act were also tested with 40 ordinary citizens of which there were three groups: advisers from London Citizens Advice Bureaux, volunteers in an ecology centre and staff from a plant research centre.
Of the above 80% said that they found the revision "much easier" to read and find their way around, while another 12% found it "easier" and asked to rate the clarity of wording of the revision, they gave it an average mark of 82% while the original scored only 32%. (ibid:9)

As a result of the study, Cutts (ibid:10) concluded that there was a need for a citizen summary that should be pre-tested on the intended audience; analyses of the language to be used must be done, attention had to be given to planning and organising of the structure of the Act and changing the typography used made a significant difference.

The author concluded in his revised copy of Lucid Law that; "The clarity of legislation will never capture the interest of most voters. Yet it remains important, not least because it affects the clarity of every document produced in explanation of the law. Legislation also sets a standard for legal documents. When lawyers see that law is clear, they have less excuse for producing gobbledygook in their contracts and precedents. And, increasingly, non-legal professionals are reading the law in its raw state during their daily work. They do not want to be continually running to lawyers for explanations. The same is true of ordinary citizens: if they face a knotty legal problem, they may wish to read the law itself, even if they are taking professional help. Parliament, while seeking certainty of application, has an equal duty to make the law as clear as it can." (ibid:5)

In seeking out plain language as a method of drafting labour legislation, it can be deduced from the above studies that this method would lead to improved comprehension.

2.3.2. The Impact of Plain Language Documents

In a study on the effects of plain-language documents, Mills and Duckworth (1996:65) adopted a systematic approach to investigate more fully the issues of efficiency and organisational change that arise from the process of introducing plain-language documents.

The authors had commenced their project with a discussion paper titled;

The costs of obscurity: a discussion paper on the costs and benefits of plain language. (Mills & Duckworth: 1994) The literature research conducted to produce the paper set the foundation for the empirical investigation in 1996.

The purpose of the 1996 study was to examine the techniques of assessing increased efficiency and organisational change that arise from the use of plain-language documents. The main purpose of this project was to look at ways in which the effects of introducing plain-language documents into particular organisations could be assessed. In order to achieve this the authors carried out a number of case studies.

One of the aims of the study was to produce a practical manual for those intending to introduce plain-language documents. The manual has since been published successfully.

Following the study Mills and Duckworth (ibid:65) concluded that their studies had confirmed the general belief that the process of introducing plain-language text and layout saves time and trouble for the users of the documents.

The research outputs provided benefits for applicants in that less effort and trouble had to be expended in understanding the form, time was saved in completing the form and once the completed form had been submitted, there were reduced needs to amend, clarify or extend the information tendered in the application. Administrators also benefited by the reduction in the number of tasks that had to be performed and the fact that new forms led to fewer additional inquiries by staff and fewer re-submissions by applicants.

2.3.3. Studies on the usability testing of plain language

In a joint project with the Department of Justice Canada and Human Resources Development Canada (HRDC), GLPi and Vicki Schmoyka (2000:1) undertook a study on the usability testing of plain language draft sections of the Canadian Employment Insurance (EI) Act.

The purpose of the study was to create a new "plain language" version of The EI Act – a version with the potential to be more reader-friendly and usable. The second part of the study was a comparative usability testing of the current EI Act and the redrafted version. The testing was commissioned to help provide strategic insight into plain language legislative drafting so that drafting could be as effective as possible and speak to the realities and unique needs of key legislative user groups.

The testing was used to gauge levels of comprehension of selected content; explore the "accessibility" of the information – that is, the ease and speed with which information can be found and document navigation occurs; conduct comparative assessments to identify attendant strengths and weaknesses; explore the degree to which potential changes and reader aids are considered clear, valuable, relevant and useful; gauge reactions to the new proposed language approach; and help identify areas for refinement and improvement.[1] (GLPi et al. 2000: 1)

Overall, results from this study[2] suggest that reading a law and answering questions about it is challenging for the general public and for the informed users of legislation. However, this study shows that plain language drafting techniques – from larger type size to a table of sections, to more user-friendly writing – can make the task of finding and understanding information in the law easier. This study also suggests that a plain language version of the law is user-friendlier,

[1] A copy of the full line of testing protocols can be found in the appendix of the report: "Results of Usability Testing Research on Plain Language Draft Sections of the Employment Insurance Act" –GLPi and Schmoyka (August 2000)

[2] Overview of key findings can be found in the abovementioned report (page 5-10)

inspires user confidence, and improves the speed with which information can be found in an Act as well as the understanding of that information.

2.3.4. Testing on the Comprehension and Reading Speed of Statutes Redrafted in Plain Language

To provide empirical evidence that plain language drafting, when applied to legislation, did improve the comprehension and speed levels of reading of the legislation, Professor Joseph Kimble conducted his own testing on comprehension and reading speed of statutes redrafted into plain language.

The researcher used two different documents in the pre and post assessments. One was a contract used by Michigan state agency for work done for the agency by independent contractors and the other a South African statute.

The contract was tested on 27 members of agency staff, most of whom had never used the contract. It was also tested on 38 second and third year law students. The statute was tested on 43 other law students, mostly first years that had volunteered, as well as 24 staff members of a law school.

For each test half the members were randomly allocated the original version and the other half received the plain language version.

The results are reproduced in Tables 2.1 to 2.4. Kimble (1994:7) substantiates his own study by citing 14 studies that had been undertaken in the USA, Canada, Australia and the United Kingdom in which the evidence clearly showed that plain language improves comprehension from 10% to 55% or from 50% to 80%, or even from 50% to 66%.

	Original	Plain Language
Overall % of correct Answers (accuracy)	**53.6**	**78**
Average minutes to Answer all questions	**14.8**	**12.4**

Table 2.1. Test of Contract on State – Agency Staff

Improvement in accuracy: 45.5%

Improvement in speed: 16.2%

	Original	Plain Language
Overall % of correct Answers (accuracy)	**65.6**	**81**
Average minutes to Answer all questions	**15.7**	**12.6**

Table 2.2. Test of Contract on Law Students

Improvement in accuracy: 23.5%

Improvement in speed: 19.7%

	Original	Plain Language
Overall % of correct Answers (accuracy)	**59.9**	**70**
Average minutes to Answer all questions	**34.3**	**32.7**
Average rating of Difficulty, with 1 = very Easy & 10 = very hard (perceived ease)	**6.3**	**3.7**

Table 2.3. Test of Statute on Law Students

Improvement in accuracy: 16.9%

Improvement in speed: 4.7%

Improvement in ease: 41.3%

	Original	Plain Language
Overall % of correct Answers (accuracy)	**55.6**	**67.5**
Average minutes to Answer all questions	**39.7**	**36.15**
Average rating of Difficulty, with 1 = very Easy & 10 = very hard (perceived ease)	**6.75**	**5**

Table 2.4. Test of Statute on Law – School Staff

Improvement in accuracy: 21.4%

Improvement in speed: 8.9%

Improvement in ease: 25.9%

2.4. Critique of Plain Language Drafting

As with every method or approach there are both protagonists and antagonists. Plain language drafting is no different, but, because the tradition of legal drafting is so inured, the critique in this instance may be more vehement.

2.4.1.Plain language in Legislative Drafting

An Achievable Objective or a Laudable Ideal? At the Fourth Biennial Conference Proceedings of the Plain Language Association International (PLAIN), held in Toronto, Canada – September 26-29, 2002, Brian Hunt, a Research Officer in the Office of the Parliamentary Counsel to the Government of Ireland delivered the above titled paper.

He commenced with a quote from Professor Butt, who had stated: "A dose of healthy scepticism never goes astray". The main thrust of Hunt's paper was to convince the audience why plain language is not entirely suitable to legislative drafting. The author firmly believes that "plain language is not the answer to all our problems and to the problem of turgid and inaccessible legislation". (Hunt :2002:1)

Hunt believes that the drafting of statutes is not a literary exercise. He further explains that legislation is never intended to be entertaining, browsed through, read from cover to cover or that it has been written to achieve ease of reading. (ibid: 2002:1) He states that "statutes are drafted for an altogether different purpose – statutes are drafted so as to give effect to policies and principles in law – which will invariably be subject to close scrutiny and interpretation by the courts". (ibid: 2002:2) Therefore words in legislation are chosen for their precise meaning and consistency of meaning.

Hunt maintains that it is a fallacy of plain language proponents, in that "ordinary people have a desire to read legislation". He elaborates by stating "those who advocate the use of plain language in legislative drafting are making one very

large – and I say; unwise - assumption. That assumption is that members of the public are interested in reading law legislation". (ibid: 2002:6) He further asserts that, due to the lack of substantive evidence to support the focal principle in plain language drafting, namely writing for the intended audience and that this method is reader orientated, the arguments in favour of the above are extremely weak. In fact, he mentions that, "It has been established that the key audience for legislation is not law persons, but rather lawyers, judges, regulators, law enforcers, interest groups etc." (ibid: 2002:6)

Hunt goes on to explain that the translation of documents drafted from the traditional style into plain language, exposes weaknesses in the use of plain language. According to him the conversion into plain language is responsible for changing the meaning of legislation. He believes that, as with any other professional vocation, there is a specific language attached to law. The medical field has a medical language and non-experts in medicine do not have a problem with this, therefore the same should apply to legislation. He supports this by stating that, "When a person encounters a difficulty involving a statute, what is wrong with him/her taking it to an expert in the field – a lawyer?" (ibid: 2002:13)

According to Hunt, the use of plain language in legislative drafting considerably increases the scope for misinterpretation and traditional legislative drafting considerably limits the scope for misinterpretation.
He concludes by saying that "plain language is not a one size fits all device". The real answer to inaccessible legislation is good quality, plain language explanatory materials. (ibid 2002:16)[3]

2.4.2. Penman's Critique

Another critique comes from Robyn Penman, from the Communication Research Institute of Australia, who states that there is no hard evidence that plain language improves comprehension; that plain language advocates tend toward a narrow, text-based approach to communication; that the only way to

[3] The abovementioned paper can be viewed on www.betterregulations.ie

be sure whether readers understand a document is to test it on the readers; and that plain language will not reduce litigation because the very essence of law is interpreting words. (Penman: 1993: 4)

2.5. Counterargument to Critiques

2.5.1. Stephens' Evaluation of Critique

Stephens (1997:20) replies to some of the critiques of plain language drafting. It is her belief that, plain language is fast becoming an accepted standard and that it is customer friendly, time saving and has marked advantages for both parties. Plain language is flexible, it is reader orientated, therefore there is a range of options available. She further elaborates that "Plain language is a multi faceted approach to writing style and a communication process. (1997:10) In answer to the criticism that there is no empirical evidence on plain language drafting improving comprehension or that readers prefer this type of format in legislation, Stephens retorts that, within the field of plain language, there is an abundance of research available on plain language, in text, on – line and from consultants within the field; The Rapport: which provides news about plain language keeps plain language practitioners up-to-date on current practices and research; the plain language online centre provides professional contacts and information of interest on plain language and the law; "Clarity" is a worldwide but a British-based group of lawyers and interested lay people, whose aim is the use of good, clear language by the legal profession and in South Africa we have an office of Clarity, which is based at The Faculty of Law, at the University of Pretoria.

Stephens postulates that "Language regulating legal rights and duties can be comprehensible. It must precisely describe complex information". Of what use is the law if people cannot understand their obligations? She believes that "plain legal language may take more time, energy and resources but it is possible and preferable". (ibid: 1997:11)

2.5.2. Kimble's retorts

Professor Joseph Kimble (1995:1) addressed the issue in an article titled "Answering the critics of plain language ". The main objective of the article was to put to rest the conservative critics of plain language. The purpose of the article was two-fold, namely to address the old criticism and the new criticism.

The old criticism is, in essence, that plain language either should not or cannot be used because it debases the language; and cannot, because of the overriding demands of precision. (ibid: 1995:1)

Kimble's reply to this is that "Plain language is not anti – literary, anti – intellectual, unsophisticated, drab, ugly, babyish or base." According to Kimble, "Plain language has to do with clear and effective communication - nothing more or less. It does though, signify a new attitude and a fundamental change from past practices". (ibid:1995:1) He adds that most of the time, clarity and precision are complementary goals.

The author states that, "The purpose of legislation is most likely to be expressed and communicated successfully by the drafter who is ardently concerned to write clearly and to be intelligible. The obligation is to be intelligible, to convey the intended meaning so that it is comprehensible and easily understood. This requires the unremitting pursuit of clarity by drafters." (ibid: 1995: 3)

Kimble (ibid:1995:4) adds that, " if the drafter strives for clarity, that involves plain or clear communication as indicated earlier and precision, it can only improve the end result, these two concepts are mutually beneficial." The author cites numerous workable examples of both clarity and precision.[4]

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[4] In his paper on *Answering the Critics of Plain Language*, Professor J. Kimble cites numerous case laws and examples of the benefits of applying the concepts of clarity and precisions as a combination in drafting. See Volume 5 of The Scribes Journal of Legal Writing. (1994-1995)

2.5.3. Further Justification of Plain Language Drafting

There is no empirical study that has been undertaken by the traditionalists or plain language critics that have validated their critique of plain language drafting. This is In contrast to the extensive positive research that has and indeed continues in the field of plain language drafting.

Baldwin (1999; 6) lists readers' preference as one of the main advantages of plain language drafting. According to Baldwin, readers understand documents better if they are drafted in this way, they locate information faster, documents are easier to update, it is easier to train people and documents are more cost effective

Peter Butt (2002: 4), in his defence of plain language drafting, deals first with concerns regarding the use of this format. These include concerns that plain language will lower standards of good writing, concerns about intelligibility and the concern that plain language can only be achieved if certainty is sacrificed. It is feared that plain language will lead to the loss of established meanings of words settled over centuries of judicial interpretation, that costs of plain language are prohibitive and that this form of drafting is time consuming.

Butt (ibid: 4) replies to these criticisms by stating that it is possible to express legal concepts in plain language. Butt explains that the key to the whole plain language movement is law and that it is indeed possible to express legal concepts in plain language. This is supported by his definition of "plain language law" which is simply the techniques of plain language applied in a legal context. It involves applying to legal documents and statutes those same techniques that good writers use in normal prose. He simplifies by saying: "It is effective writing, in a legal context".

Butt further asserts (ibid:5) that plain language saves money. Here the evidence is, according to him, unequivocal and overwhelming. He refers to numerous studies undertaken which have produced concrete evidence that

plain language is more "efficient" and therefore saves money. As mentioned earlier, Butt interprets "efficient" in plain language documents as being easier to read and comprehend.

The author is convinced that the public prefers plain language. (ibid: 5) This conviction is based on empirical evidence from large-scale research. He states that "members of the public – particularly those with no legal learning – prefer plain legal language. If they are clients, it gives them a better chance to understand the legal consequences of the documents they sign; if they are citizens, it gives them a better chance to understand the laws that bind them".

This author even maintains that judges prefer plain language. This would pertain to judges in the United States of America, England and Australia. He supports this with studies that were conducted by Kimble and Harrington in the U.S.A., showing that 80% of judges surveyed would prefer pleadings to be in plain language rather than in the traditional convoluted American style[5]. He furthers notes that the same judges also thought that lawyer's who drafted pleadings in plain language were better lawyers than those who used the traditional drafting style. Some of the comments from the English and Australian judges on traditional drafting that is convoluted and unclear are; "blotched" (1), "half-baked" (2),"cobbled–together" (3),"doubtful" (4), "incomprehensible" (5), "legal gobbledegook" (6), and "singularly inelegant" (7).

2.6. Conclusion

The research that has been conducted in the field of plain language drafting internationally is a clear indication that plain language drafting has become an essential requirement in the 21st century.

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[5] Harrington and Kimble, "Survey: Plain English Wins Every Which Way (1987) 66 Michigan Bar Journal 1024, "Language Preferences of Judges and Lawyers: A Florida Survey" (1990 64 Florida Bar Journal 32

The above research would have significant practical impact for the Department of Labour, and other users who are responsible for the drafting of legislation, especially the case studies which dealt with the completion of forms and the administration of these forms when redrafted in plain language.

The focal point of plain language drafting is the reader, and it is implied by the research that before drafting the legislation the following questions need to be asked and addressed;

- Who is the law written for?
- Whose obligation is it to ensure that legislation is upheld?

If the normal answer to question one and two is the general public to whom the law applies, then it would be logical that the intended statute must be written with the primary audience in mind.

It is contended that the law fraternity is the secondary audience, who should only be consulted when the law is tampered with or indeed broken. The purpose of legislation is that it should be obeyed (by the lay person) and not broken.

There is no documented research on plain language drafting in South Africa, even though there is marked improvement in the manner in which legislation has been drafted since 1994. Botha (2003:6) shares the above view when he states that, " The principles of plain language drafting are already reflected in some of the latest South African legislation: this is demonstrated in the English text of the Constitution where shorter sentences and better structured paragraphs are used, and "shall" is replaced by the more comprehensible "must'; plain language drafting is also evident in the footnotes and diagrams which are used in the Labour Relations Act 66 of 1995, to shorten sentences and paragraphs, and to explain difficult concepts."

The move from the ordinary man in the street being supplied information on a need to know basis, to a dramatic shift to an understanding and inquiring culture, has necessitated the change in the drafting style of legislation. People want to know, understand and challenge their rights and obligations, which is an entitlement that is enshrined in a democracy such as South Africa.

Chapter 3

THE EMPLOYMENT RELATIONSHIP AND LABOUR LEGISLATION

3.1 Introduction

All legislation is applied within a particular framework. The employment relationship is the framework in which labour legislation is applied. It is therefore important to provide a brief overview of the nature of the relationship, as well as the parties that are involved in this relationship. Since it is within this context that the labour legislation is applied, the drafters of labour legislation must have a sound understanding of the relationship for which they are drafting rights and obligations and within which the relationship must be conducted.

3.2. The Labour Relationship

3.2.1. The Nature of the Relationship

Bendix (2001: 3) describes the labour relationship as "the relationships between people who work and those for whom they work". The commonality is work around which this relationship revolves and evolves. This relationship has the same components as that of a human relationship, namely mutuality of interest, reciprocity of support, understanding, trust, facilitative communication, shared goals and values, and this relationship would falter should one or more of these qualities be absent. Bendix (2001:4)

According to Bendix (2001:5) "the major distinguishing feature of the labour relationship is that it arises from the need for economic activity within society and from man's need to work and to earn a living, but its uniqueness is to be found in the societal and individual importance of the relationship, the often negative attitude of the parties involved and in the depersonalised and mostly collective nature of the relationship itself".

Modern society is economically based; therefore man's worth is measured by his material wealth/gain. If the above statement has validity, it can be appreciated that the majority of people enter the work relationship out of necessity rather than choice. This, according to Bendix (2001: 5), is

responsible for the negative approach to the relationship on the part of the employee. The employer, on the other hand, has traditionally viewed the employee as merely a factor of production, which is highly replaceable. Therefore this is not an individual, personalised relationship, but rather a collective relationship, with owners/managers/shareholders on the one side and workers/unions on the other side. Bendix (2001: 5) supports this view, by stating that "Traditionally, the labour relationship is defined not as a relationship between an employer and an employee, but as one between employers and employees". In view of the above, it becomes apparent that the labour relationship is both complex and paradoxical by nature (Bendix, 2001: 6).

Hallinshead et al (1999: 5) concur with Bendix when they explain this phenomenon as follows "The commodity bought and sold at the time of hiring is the employee's capacity to work, or labour power. The employer's interest is in the exercise of this capacity in the production of goods and services, "and in the generation of surplus from the employee's endeavours". The authors further explain that, because of the above, there is an inherent antagonism in the employment relationship. This is due to the fact that both parties enter the relationship with the commonality being "work", but the approach of the parties to the relationship is different. The employer, being the provider of "work", employs the parties to increase the profits and the employee supplies the work / labour to fulfil his/her needs.

3.2.2. The Role of the State in the Relationship

It is obvious that, by its very nature, the labour relationship is more prone to conflict than other relationships. Within this context clear guidelines as to the rights and obligations of both parties, usually provided by regulation or legislation, are essential.

The labour relationship is generally described as a tripartite relationship between the employers, employees and the State. Bendix (2001: 10) believes that the labour relationship is "best described as a relationship between an employer and an employee or employers and employees as the main partners, with the State, to a greater or lesser extent, playing a regulatory and

protectionist role, as it does in numerous other relationships, albeit to a less noticeable degree". This is graphically illustrated in Figure 3.1.

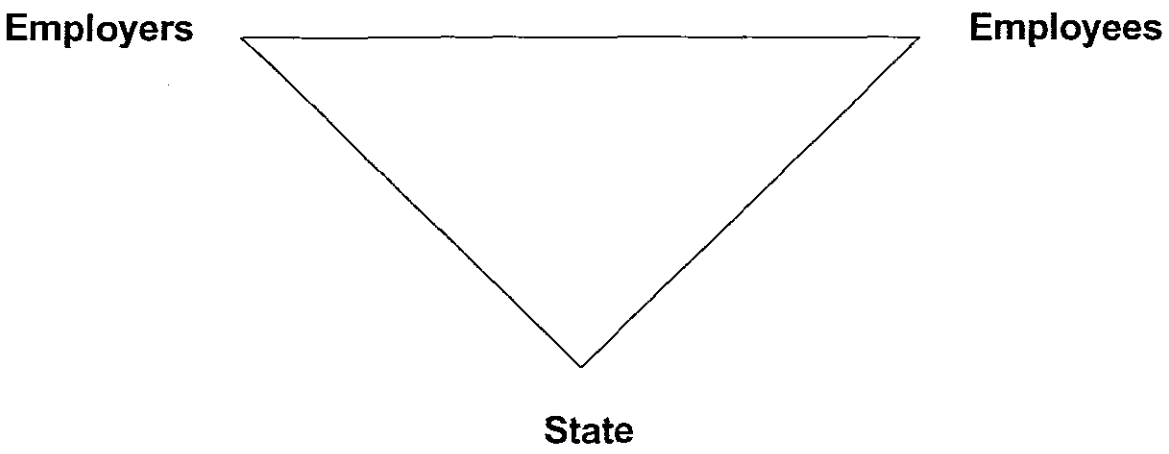

Figure 3.1: The Parties to the Labour Relationship
(Adapted from Bendix (2001: 11)

According to Nel; Gerber; van Dyk; Haasbroek; Schultz; Sono & Werner (1998: 4), three parties are involved in the employment relationship, directly the employee and the employer and, indirectly, the State. According to these authors, the State is both master and servant of the other two participants. On the one hand, the State holds legislative power and, on the other, it is expected to give assistance to both the other participants in satisfying their respective needs.

Bendix (2002: 2) also explains that "Because work and the relationship at work are so important to the economy and society, a third party, the State, with its instrument in the form of Government, will usually enter the labour relationship". The author believes that the aim of the State "is to ensure that the relationship functions as smoothly as possible, and that problems in the labour relationship do not impact on the economy or society".

For the purpose of this study the focus will be on the role of the State as the regulator in the relationship, with particular emphasis on labour legislation,

which the State is responsible for drafting, disseminating and monitoring. This study is concerned with the manner in which the legislation is drafted and the various processes to ensure optimal implementation and understanding by the majority of users.

In order to achieve this, it is necessary to contextualise the legislation within its operational framework.

According to Bendix, (2001: 699), "The core of any system is the relationship between employers/employers organisations and employees/employee bodies or unions within that system. The interaction between the parties will depend on the approach adopted, the prevalent organisational style and their history and strategy. However these will in turn be determined by the government's economic policy, and the state of the economy, social structures, employment levels, technological developments and the product markets." A particular determinant is the legal framework which, in its turn, is dependent on the government's political orientation and the degree of interferences in the relationship between employers and employees. (Tustin 2002:128) These variables are diagrammatically illustrated in Figure 3.2.

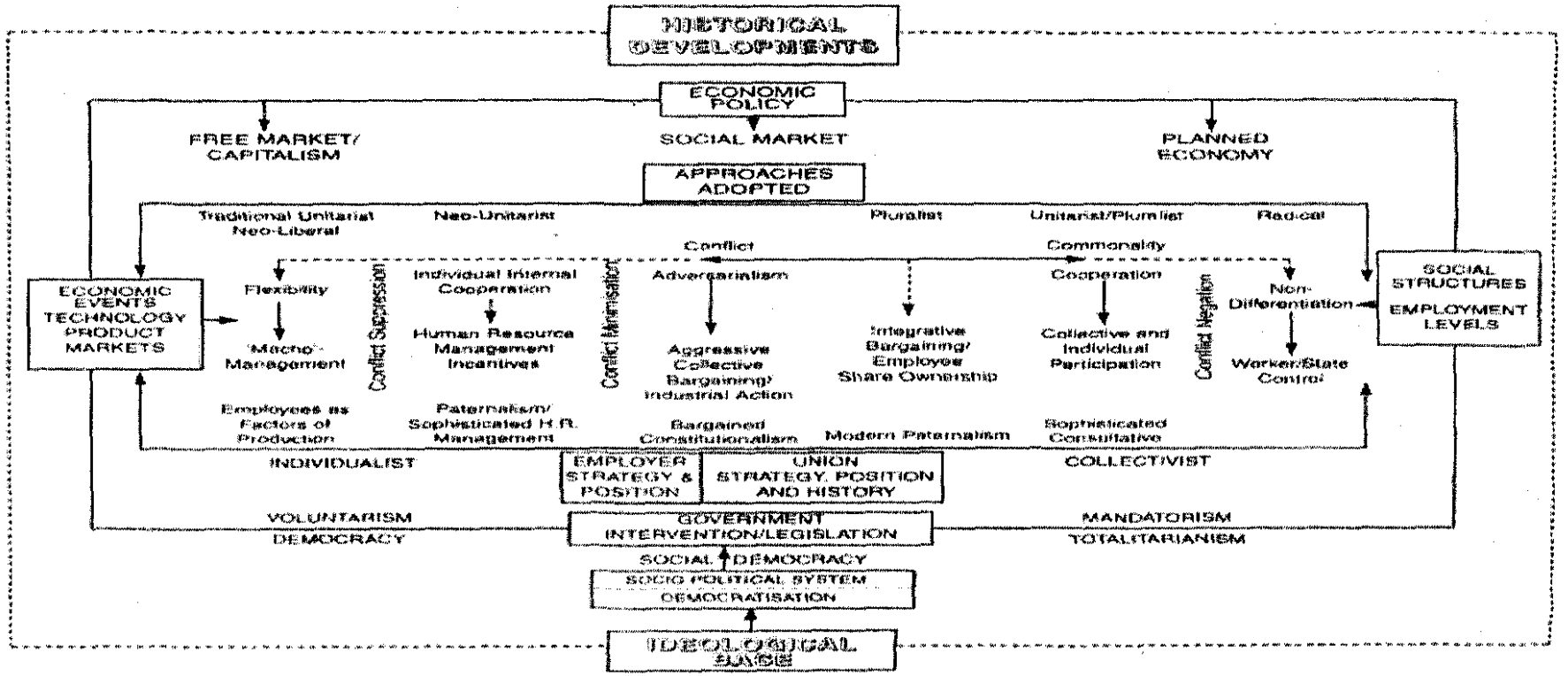

Figure 21.1: VARIABLES WITHIN AN INDUSTRIAL RELATIONS SYSTEM

Figure 3.2. The Industrial Relations System
(Adapted from Bendix: 2001:700)

3.3. Legislation in the South African Context

Labour legislation is introduced for the specific purpose of establishing parameters for the conduct of the various parties in the labour relationship. The cornerstones on which labour legislation is based are the protection of both the employer and the employee; the empowerment of the parties in the relationship; the promotion of an environment, which would lead to economic, individual and social development and the provision of the appropriate mechanisms that should be used in the event of a dispute. (Grogan: 2001: 16)

The rules and regulations that govern the employment relationship are depicted in Table 3.1. In South Africa all legislation is negotiated within the context of the Constitution, which is the supreme law of the country, from which all legislation derives its founding principles.

Furthermore, legislation is guided by Conventions and Recommendations, of the International Labour Organisation (ILO) of which South Africa was one of the founder members.

In the drafting of legislation, the government follows a corporatist approach with all legislation being negotiated within the National Economic Development and Labour Council. (NEDLAC) This body, has the brief from government of promoting consultation between Government, labour and business on economic and labour issues. (See Table 3.1)

As can be seen from the Table 3.1, legislation may be divided into 5 distinct sections.

3.3.1. Conditions of Employment:

Listed in this section is the common law, which is relevant to the employment relationship, particularly as regards the duties and obligations of the employer and employee. It also provides the legal framework for the employment contract. The statute devoted to conditions of employment is the Basic Conditions of Employment Act (BCEA)

The bargaining structures are listed because agreements negotiated by registered Bargaining Councils would, once gazetted, become subsidiary legislation.

3.3.2. Employee Welfare

This section deals with the labour legislation that provides regulation, compensation and insurance pertaining to employee welfare. Statutes include the Unemployment Insurance Act, the Occupational Health and Safety Act and the Compensation for Occupational Injuries and Diseases Act.

3.3.3. Employee Relationship

The Labour Relations Act is the legal framework that regulates the employment relationship; it provides the necessary machinery for collective bargaining, participation and individual and collective rights.

3.3.4. Redress

This section comprises the legislation that deals with discrimination and affirmative action in the workplace namely the Employment Equity Act and the Prevention of Unfair Discrimination and Promotion of Equality Act.

3.3.5. Training and Development

This section provides the legal provisions regarding training and development within the workplace namely the Skills Development Act, Skills Levy Act and the South African Qualifications Authority Act.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA

GOVERNMENT LABOUR POLICY

CONDITIONS OF EMPLOYMENT		EMPLOYEE WELFARE	EMPLOYMENT RELATIONSHIP	DISCRIMINATION AFFIRMATIVE ACTION	TRAINING & DEVELOPMENT
COMMON LAW CONTRACT BASIC CONDITIONS OF EMPLOYMENT ACT		OCCUPATIONAL HEALTH AND SAFETY ACT UNEMPLOYMENT INSURANCE ACT	LABOUR RELATIONS ACT	EQUITY ACT	SKILLS DEVELOPMENT ACT
BARGAINING COUNCIL AGREEMENT OR MINISTERIAL DETERMINATION	PLANT OR COMPANY AGREEMENT	COMPENSATION FOR OCCUPATIONAL INJURIES & DISEASES ACT		PREVENTION OF UNFAIR DISCRIMINATION AND PROMOTION OF EQUALITY ACT	SOUTH AFRICAN QUALIFICATIONS AUTHORITY ACT

NEDLAC

ILO CONVENTIONS AND RECOMMENDATIONS

Table: 3.1. Legal and Statutory Regulation of the Employment Relationship (Adapted from Bendix: 2001:101)

3.4. Conclusion

Since 1994, South African has developed a progressive and comprehensive body of labour law. However, laws on their own are useless, it is those stakeholders who are required to implement the laws who determine their success.

One of the first variables that could be a barrier to success is the manner in which the legislation is written. The manner in which the legislation is drafted is of fundamental importance when the society in which it is implemented is multilingual. The situation is further exacerbated by the historical disparities in the educational levels of workers in South Africa. It is within the above context that labour legislation has to be implemented. Communication is a resource, and it should not be part of the problem. Therefore, when drafting legislation, serious consideration must be given to the manner in which it is written.

Chapter 4

MASS COMMUNICATION AND LEGISLATION

4.1 Introduction

Mass communication involves the process of communicating with more than one person simultaneously. The focus of success in mass communication is the end users'. In the context of labour legislation, the laws are written for the economically active population, who are or could form part of the employment relationship. Consequently, in the drafting of labour legislation, the drafters must take cognisance of the end users when seeking the correct format to apply. The focal point of plain language drafting the reader; consequently the study must include the facets of mass communication that could enhance and improve the end product.

4.2 Mass Communication and the Legislative process

To establish whether there is a correlation between mass communication and the process that is applied to the formulation, dissemination and promulgation of labour legislation, the characteristics of the two processes need to be analysed.

In determining whether there are similarities in the two processes mentioned earlier, the researcher selected the definition of mass communication from Dominick (1993:18) as cited in Chapter One, and began by analysing the general characteristics in the definition of mass communication and linking these, where applicable, to the legislative process, with specific reference to labour legislation.

According to Dominique (ibid: 18), "Mass Communication is the end product of more than one person". In the formulation of labour legislation this would apply in the following manner:

- It is initiated by Government, which is represented by the Department of Labour
- A team of legal specialist/legislators is appointed, which is responsible for the drafting of the Green Paper, the White Paper, the Bill and the final Act

- Either at the Green Paper, White Paper or Bill stage, the document is tabled with NEDLAC. The parties are responsible for agreeing on the issues that should be addressed in the legislation
- The Paper is then put out for public comment
- The comments from the Paper are deliberated by NEDLAC and the applicable revisions are adopted into the original document
- The Act is then presented to Parliament to be accepted and passed
- Thereafter, the Act is signed off by the State President for enactment
- Finally the Act is gazetted in the Government Gazette for promulgation
- The Department of Labour is responsible for the eventual dissemination of the Act to the various stakeholders[6]

It is obvious from the process set out above that the law (Act) is indeed the end product of the efforts of numerous people.

Dominick (ibid: 18) further states that mass communication occurs, "With the aid of one or more machines produces and transmits public messages". The statutes are mass-produced by the government printers in various provinces and are also accessible in electronic format on the Internet.

In terms of Dominick's description (ibid: 18), mass communication is "Directed at large, heterogeneous and scattered audiences". The target audience for labour legislation would be the economically active population which totals 11,5 million. They would vary greatly in terms of literacy, linguistic ability and educational level and are spread over a wide geographic area. Source and receiver are not in each other's immediate physical presence.

Dominick (ibid: 19) further explains that, in mass communication, the sender is addressing a faceless audience and, because the message is interpersonal, the receiver chooses what he/she wants. Therefore, in mass communication, the receiver is the key to the process. The author (ibid: 20) supports this when

[6] The process that legislation follows has been obtained from the Department of Labour (Pretoria); NEDLAC (Johannesburg) and by visiting the website of www. nedlac.org.za

he states that, "if the receiver chooses not to attend to the message, the message is not received".

Drafters of legislations have no face-to-face interaction with the audience. If mass communication is to be effective, they would have to work with statistical data to gather information on their audience. By implication a large proportion of time should be spent on researching and analysing the receivers of legislation.

4.3. Mass Communication in Written Form

The task of communicating with the masses becomes all the more complicated when the medium used is that of writing. Written communication has its own set of complexities that are unique to this form of communication. The saying the **"the pen is mightier than the sword"** does hold. It is very difficult to undo a perception or interpretation that has been written for the masses, as people are loath to accept changes readily. In the context of labour legislation, any laws and regulations may be received with trepidation by the employer and the employee. Consequently it is the responsibility of the drafters to ensure that both the employer and the employee readily accept the manner in which the legislation is drafted.

Williams produced a model for mass communication in written form, which has been adapted in Table 4.2, to show the strong correlation between mass communication and the process used in the drafting of labour legislation.
(Van Schoor: 1979: 68)
In Table 4.2 the drafting of legislation is the responsibility of the government, this is done under the auspices of the Department of Labour and passed through Parliament (legislators). According to the criteria and guidelines of marketing and mass communication drafting, this phase is the most crucial for success. The message is contained in the various Acts that are passed by Parliament. The purpose of the Acts is to provide the legislative framework which governs the employment relationship. The medium used would be written language. The written format would be available from the government printers and the electronic format is accessible on the Internet.

The Department of Labour in the various provinces would be responsible for the administrations of the Acts. Currently these Acts are available at the government printers and the electronic format is accessible on the Internet. This is a continuous process. The recipients / target audience are the receivers of the end product. They are the intended destination of the message which would be in the form of the various Acts. If the message (Acts) are not understood or received here then no communication has taken place.

Williams (Van Schoor: 1979:69), is of the opinion, that communication always takes place in a cultural context. This links to Dominick's identification of "heterogeneous" as one of the components in his definition of mass communication. In the employment relationship within which legislation is distributed this would encompass a number of important considerations such as the diversity of culture, the disparity in educational backgrounds, historical and political beliefs, distrust in the relationship and distrust in authority. These could all be barriers in the communication process, and, as such, must be researched and analysed.

Williams (ibid: 69) states that in a democratic culture the "right to communicate" and the "right to receive" the intended message should not be compromised. If this were achieved, then it would ensure an open approach in mass communication. By implication this would mean that a prerequisite to communicate and to receive would be to understand.

Communication objectives are dependent on what the state wants to achieve through its legislative process. Consequently, the starting point in the drafting of legislation should be the objective and then the focal strategy would be on the receiver of the legislation to ensure that the objectives would be met.

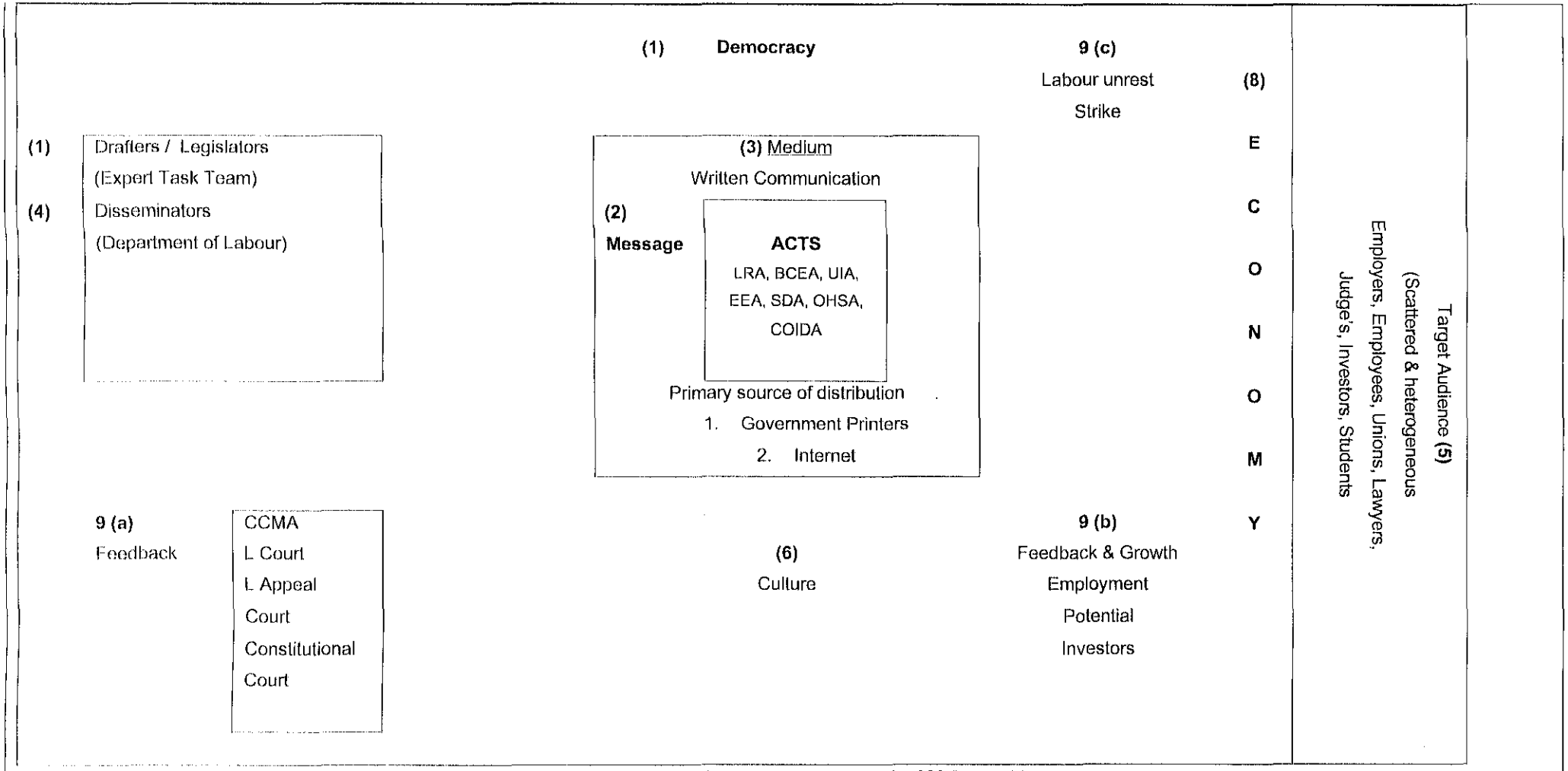

Table 4.1. Mass Communication in Written Format

Adapted from Raymond Williams' idea of mass communication (Van Schoor: 1979:68)

4.4. Market Research and Mass Communication

It has been stated that in mass communication and plain language legislation the focus is on the end-user. This has been established by extensive research on the two disciplines. In this respect it can be linked to the marketing discipline

In marketing research is of paramount importance. The rationale behind this is to ensure that, when the end product is eventually mass-produced all the teething problems will have been rectified and the product adapted to the needs of the consumer. Market research involves both the analysis of the target market and the testing of the product on the target market. (Lamb; Hair & McDaniel: 2000: 51)

How could this approach assist with the drafting process in legislation? When the success of the intended message lies with the consumer/reader, the obvious strategy to adopt is to be able to read the target audience, so that they, the target audience, will clearly identify with the final product and, in so doing, would probably support the cause. This, by assumption, could be construed as contributing largely to the success of the project.

In labour legislation the government's objective is to ensure that the various stakeholders uphold the law. For this to be achieved there must first be an understanding of the law, before it can be applied. If understanding of the said laws is essential to implementation, measures must be put in place to ensure that the end product will work. This could be achieved if drafters of the legislation go through the steps in market research, to ensure firstly that they clearly identify the various characteristics of the target audiences, such as educational level, literacy level, age, culture etc, as this could assist them when they decide on the method to be used in drafting the legislation.

As stated in the literature review, plain language drafting is reader-orientated. The traditional manner of drafting focuses on the minority, such as the legal fraternity. Therefore when drafting legislation, the target audience must be identified and analysed. One of the research steps used in market research is the testing of a product, (ibid:179) which is also a requirement for plain

language drafting. The reason for this step is to ensure that a representative sample of the market tests the product so the that necessary adjustment can be made to the final product.

If the first section in the definition of mass communication and its link to the promulgation of legislation is considered, then a strong link can be drawn between that process and the process of market research. Market research and the integrated marketing communication strategy will not hinder the process of drafting, but it could contribute to the improved understanding and comprehension of the legislation by the majority.

4.5 Conclusion

It has become evident that, for the legal framework to be implemented effectively and efficiently the drafters of the said legislation must take into consideration certain principles of mass communication, which could lead to enhancing understanding of the legislation when applied. The commonality in mass communication and drafting legislation is that for successful communication to occur the focus should be on the end-user. It may, further be useful, within the context of mass communication, to apply procedures from market research before deciding on the format to be adopted when drafting legislation.

Chapter 5

PLAIN LANGUAGE DRAFTING IN PRACTICE

5.1 Introduction

The information on plain language and the law has been applied in the instrument used in the empirical section of this study. In this study the principles of plain language drafting are applied to the current format of selected sections of the legislation, which will be redrafted using these principles.

5.2 Origins of the Plain Language Movement

The plain language movement evolved as a reaction to the remoteness and complexity of legal language. The essence of plain language, is its stress on improved communication. Writers of plain language keep their readers clearly in mind, so that, by writing clearly and plainly, they ensure that the reader will be able to understand a document quickly and easily rather than waste time making sense of complex language or sentence construction. Plain language encompasses format, design, layout and the "plainness" of the individual words used.

The Plain Language Movement originated in 1978, in the United States of America. Twenty-five years ago, with the signing of the Executive Order 12044, President Carter stated that all regulations must be "written in plain English and understandable to those who must comply with it". (Flesch; 1979:1). This movement was founded on the premise that legal documents and legal language could be drafted in such a manner that the intended audience would easily understand them, without the law losing any of its precision. The Plain Language Movement has support from government in countries such as the United Kingdom, Canada, New Zealand and the United States of America. Bill Clinton (1998: 1) sent out a memorandum to the Heads of the U.S Federal executive departments, directing them to begin using "plain language" to make government "more responsive, accessible, and understandable in its communications with the public ..... plain language saves the Government and the private sector time, effort, and money".

Australian Commonwealth drafters have been given a directive to ensure that all rules and practices be constructed in such a manner as to "achieve a single purpose, which is to make the law easier to understand, but without changing its meaning." Turnbull (1993: 7) supports this when he states that, "plain language drafting makes the text leaner and cleaner, and therefore easier to read and understand". He further claims (ibid: 9) that it is a drafter's duty to make the law as simple and as clear as possible. He explains that it is the drafters' responsibility to ensure that the policy-makers intentions are clearly carried over to the users. He strongly supports the plain language movement in drafting, stating that research has produced substantial evidence that this style of drafting indisputably makes the law simpler, and, when done properly, its just as precise as the traditional style.

5.3. The South African view of Existing Legal Drafting

In his research, Botha (2003: 4) provides case evidence of the critical manner in which some of the judges commented on the traditional manner of drafting within the South African context. This supports the view expressed by some of their counterparts internationally. Botha (2003: 5) cites the following cases as evidence:

In an almost desperate attempt to make sense of section 22(1)(d) and 22(1)(bb) of the Compulsory Motor Vehicle Insurance Act 56 of 1972 (as amended several times), Botha J A in Santam Insurance Ltd v Taylor 1985 1 SA 514 (A) 523 B and 526E expressed himself as follows on the confusion:

"In an attempt to escape from the prolixity, which disgraces this piece of legislation, I shall take a number of short cuts when referring to its provisions. In my opinion the man in the street would be at least as perplexed by the language used by the legislation as is the man on the Bench who is writing the judgement". (ibid: 5)

In Oos-Randse Administrasieraad v Rikhoto 1983 3 SA 595 (A) 610C Van Heerden J A made it clear that section 10(1)(b) of the Black (Urban Areas) Consolidation Act 25 of 1945, as well as some of the regulations promulgated

in terms thereof, were anything but comprehensible: Van Heerden had the following to say;

"Op sy sagste gestel is 'n hele aantal van die bepalings, asook die samehang van die twee stelle regulasies en die vyftal wette waaronder hulle uitgevaardig is, moeilik verstaanbaar vir regsgeleerdes. 'n Mens kan dus aanvaar dat die regulasies nie glashelder is vir die beamptes wat hul moet administreer of die groot aantal leke op wie hulle van toepassing is nie".
(ibid: 5)

In Kenly Farms (Pty) Ltd v Minister of Agriculture 1984 1 406 (C) Van den Heever J was even more scathing in her criticism of the legislative drafting:

"Grappling with this Act (the Agriculture Pests Act 3 of 1973), the three sections of Part V make one wish that parliamentary draftsmen were compelled to read Strunk's The Elements of Style annually, and to set out in positive form and definite, specific, concrete language what they intend their readers to understand". (ibid: 5)

Hoexter J A in South African Transport Services v Olgar 1986 2 SA 684 (A) 693H had the following to say about section 25 of the Road Transport Act 74 of 1977:
"Paragraph (a) of s15 (2) of the Act is the product of indifferent draftsmanship. It represents a typical example of the confusion likely to result when a draftsman tries to lump together indiscriminately in a single paragraph both essential requirements and purely alternative requirements. So awkward is the arrangement of its subparagraphs that upon ordinary linguistic treatment para (a) is susceptible of the two very different constructions discussed in the judgement of the Court". (ibid: 6)

5.4. Implementation of Plain Language Drafting Principles in South Africa

There is evidence in existing labour legislation of moving towards adopting some plain language principles in drafting. Proof of this is to be found in the Labour Relations Act (66 of 1995) where footnotes, diagrams, as well as shorter sentences and paragraphs are sometimes used. However many traces of traditional drafting remain.

The task group that was responsible for Communications 2000, did give attention to plain language drafting (1996:13) In the final report the task group looked at general trends in communication. Of interest to this study is the comments made by the task team in the following paragraph; which deals with the vital link between communication, language, the media and the general publics' understanding of the message

"What is the concept of language, of communications that are accessible and can be understood, and of appropriate media for people who may be unable to read or write, as well as those who may struggle to obtain information for any reason (language, illiteracy, age or disability). The Plain Language Movement has played an important role in changing government thinking in this area. Its effects are best illustrated in the UK, British Colombia and the European Parliament. In Sweden, all legislation is referred to plain language experts once the legal drafting process is complete." (1996: 33)

A number of recommendations made by the Task Group, would be of relevance to the study.

Recommendation 50, states that "A critical factor in the modern democracy is the growing demand on government to speak to the population in a language and manner they understand". It furthers elaborates that: "Legislation, contracts, official correspondence, forms and other written matter used by government must therefore come under scrutiny to ensure that ways are found to make them accessible".

According to Recommendation 70, "It is proposed that the Cabinet Committee on the Information Economy be set up to investigate and make recommendations on the strategy with regard to plain and accessible government documentation".

Recommendation 71, proposes that, following these recommendations, " government issue a series of regulations/directives with regard to all new government documents. This documentation should include legislation, regulations, white papers and other policy documents, government forms, standard letters as well as standard contracts".

Recommendation 72, states that "It is proposed that key existing documents be "translated" into plain language and designed in a way that is accessible. It is also recommended that consideration be given to the introduction of a language unit in Parliament to ensure that the language and layout of legislation is accessible to the public".

Recommendation 73, proposes that "a language unit be developed in Parliament to check, according to established and agreed guidelines, the language of legislation before it is promulgated and after it has been through the formal legal and parliamentary process".

It is evident that in South Africa there is already awareness of the need for a change in the format of legislation. However, continuing problems with the interpretation of existing legislation raises the question as to the degree to which principles of plain language drafting have been truly implemented.

5.5 Plain Language Usage

Plain language drafting is a style of drafting that speaks to the audience in a manner which they would be able to understand. The obscure and complicated style of many legal documents is one of the few social problems that can be eradicated by careful thought and disciplined use of the pen. Writing in a manner that people do not understand is demeaning. It is demeaning because

it could make the reader of legislation feel powerless and stupid. When legislation is drafted in such a manner that the target audience does not understand the legislation, it provides adequate reasons for non-compliance with the legislation.

Steinberg (1997:7) defines plain language as "language that reflects the interests and needs of the reader and consumer, rather than the legal, bureaucratic, or technological interests of the writer or the organization that the writer represents". This concept is further explained by Martin Cutts, (1998:3) researcher director of the Plain Language Commission in the United Kingdom, when he states that plain language is "The writing and setting out of essential information in a manner that gives a cooperative, motivated person a good chance of understanding the document at the first reading, and in the same sense the writer meant it to be understood"

Flesch (1979: 3) explains that it is necessary to understand the three ground rules of plain language usage, which are to use nothing but Plain English; to know the reader and to use the right tone.

Dick (1995:1) describes plain language drafting style in the following manner "Basically, plain language drafting is directed to the needs of the reader," The author explains that those who support plain language as a drafting style for legislation and other public documents point out that plain language is not a restriction or debasement of the language. It should not be likened to "simple" or "simplified" language. Plain language uses the entire resources of the language and is the normal language in daily use". It is a communication style which the public are familiar with, therefore comprehension and understanding can be achieved. (ibid:1)

It has been stated that plain Language is a drafting style that is reader–orientated. As previously noted, it can be problematic to identify the target audience or primary audience when dealing with legislation because the dissemination of the information involves masses. Ruth Sullivan (2001: 47), in her research on the above issue, has indicated, that this can be overcome, if the legislatures / drafter writes for the most vulnerable group affected by the

legislation to be drafted. By implication, the assumption is that, after having done extensive research on the target audience and analysed the results, the drafter would be able to identify the most vulnerable group. The rationale would be that, if they can comprehend the legislation, then everyone else should too.

5.6. The Four Fold Strategy of Plain Language Drafting

Plain language drafting and testing has been done extensively internationally; therefore there are numerous books, articles, research, websites and movements that have been established worldwide. From these the Four Fold Strategy for public and legal documents that was established in Canada has been selected as example and criteria to be applied. The choice is not done on any scientific principles, but rather on the researcher's preference. An additional motivation for using this strategy is that the Employment Equity Act is largely a modified version of Chapter 23 of the Canadian Constitution (2nd Supp) (Nel, et al 2001: 178). The researcher's assessment is that, if the drafters of labour legislation previously utilised material from Canada, then there should not be a problem with the choice of criteria from the same country to redraft selected sections of current labour legislation in South Africa.

The following principles adapted from a working document by Ian Turnbull, QC (First Parliamentary Counsel, Canberra, April 1993) listed hereunder were adopted as guidelines for redrafting sections of South African labour legislations during the research process.

5.6.1. Proper Planning

This includes;

- Identifying all the main goals and principles as early as possible, and leaving the details till the main structure is worked out;
- Reducing the number and complexity of the concepts in the scheme;
- Constructing the scheme clearly, using diagrams and flow-charts, if necessary, before beginning to express it in legislative form.

5.6.2. Adherence to the well - known rules of simple writing

These include;

- Using short, well constructed sentences;
- Avoiding jargon and unfamiliar words;
- Using short words;
- Avoiding double and triple negatives;
- Using the active voice instead of the passive voice;
- Keeping related words as close together as possible; for example, not separating subject from verb, or auxiliary verb from main verb.
- Using parallel structures to express similar ideas in a similar form; for example, not mixing conditions and exceptions, and not mixing "if" and "unless" clauses.

5.6.3. Avoidance of traditional legal forms

When possible, these should be replaced with simpler, more generally understood expressions. The use of Latin terms would, for example, be avoided.

5.6.4. Use of aids to understanding

This guideline is based on the assumption that making a text easy to understand is not just a matter of the language used in the text. Many other techniques can help the reader;

For example;

- Using graphics, like flowcharts;
- Using "Reader's Guides" to explain how to read very long Acts;
- Using examples to illustrate how to a law applies in a particular case;
- Using purpose clauses, not only at the beginning of the Acts, but also at the beginning of Parts, Divisions and Sub divisions;
- Explaining calculations by directing the reader to take a series of steps, instead of just stating a formula;
- Using "road map" clauses which tell the reader how the Act is structured and which are the key provisions;

- Using short sentences, to concentrating on the main purpose of each section and also increasing the number of section headings;
- Using explanatory notes in the text to draw attention to important definitions and other key provisions;
- Making algebraic formulas "user friendly" by using words instead of traditional a, b, c symbols;
- Avoid long slabs of unbroken text by breaking it up into smaller units.

Thornton who also provides detailed guidelines for plain language drafting substantiates the above.

According to Thornton (1996:54) the rules of clarity are as follows:

- Write simply but precisely;
- Draft for users with their various standpoints always in mind;
- Be very clear about the purposes of the legislation and make sure that purpose is manifested in the legislation.

He further elaborates, that, the drafter should,

- Organise material logically, and chronologically where appropriate at every level, this should be applied to the whole statute, parts, subparts, sections and schedules within that statute.
- Consider the use of supplementary aids to facilitate communication;
- Develop consistency of style and approach;
- Revise the text with simplicity and precision in mind,
- And, finally, test the draft in relation to comprehensibility. (ibid: 54)

He also provides rules for drafting sentences, namely:

- Draft in the present tense;
- Avoid long sentences, particularly if un-paragraphed;
- Prefer the active voice to the passive,
- Prefer the positive to the negative;
- Avoid double negatives and beyond;
- Follow conventional word order;

- Do no split verb forms unnecessarily;
- Paragraph with restraint and care;
- Avoid subparagraphs and sub-subparagraphs,
- Avoid nominalizations;
- Use cross-references with restraint;
- Punctuate conventionally and with restraint. (ibid: 56)

Thornton (ibid: 58) states that in the pursuit of clarity the drafter must consider the selection of the appropriate words carefully, he provides the following guidelines for word choice:

- Omit unnecessary words;
- Prefer the familiar words;
- Choose the exact word;
- Avoid archaic and legalese words;
- Avoid non-English expressions;
- Avoid emotive words;
- Use informal and recently coined words with discretion;
- Use one word and not more if one word will do;
- And finally use words consistently.

According to Thornton (1996:128), the drafting process has five stages, to which the drafter should adhere, namely: the process of understanding the legislation; the process of analysing the legislation; the design of the final draft; the composition and development process and finally the scrutiny and testing of the final draft. This is a sequential process.

The principles outlined above are underscored by Carol Ann Wilson who states that there are many lists of "plain English principles" or "plain language principles" but, to be on the cutting edge, the main principles to learn and apply in documents are that the drafters should write for the reader and should avoid jargon and legalese; prefer the active voice over the passive; use strong verbs and avoid turning verbs into nouns; organize thinking in order to organize your document; omit unnecessary, useless, and weak words; emphasise the positive

and eliminate negatives, especially double negatives and use good document design: plenty of white space, avoid all capitals and underlining, use serif typefaces, and use left-justified, ragged right margins

5.7. Conclusion

This chapter has dealt extensively with the principles and methodology of plain language drafting. These have informed the design of the research instrument.

It is evident from the literature on plain language drafting that this method of drafting requires the drafter to not only be fully competent in law, but also in the art of communication and writing for the general public.

Chapter 6

EMPIRICAL STUDY

Chapter 6

6.1 Introduction

This chapter deals with the research design, methodology and the instrument chosen to test the validity and reliability of the hypothesis and the research question.

6.2. Research Design

The research design, which is the blueprint for the empirical investigation falls into the paradigms of both qualitative and quantitative research.

It is qualitative by nature, because it involves the contextual analyses of selected sections of labour legislation, which were used for redrafting.

The redrafted legislation uses the criteria and principles of plain language drafting, which have been documented as best practice. The best practice principles and criteria applied are the result of an extensive literature review undertaken by the researcher on the subject matter and related literature from other disciplines that would have a direct impact on plain language drafting for a mass audience.

It is quantitative; because an empirical study has been carried out on a representative sample to validate the research question and to disprove/prove the hypothesis.

The methodology engaged in, was chosen to ensure maximum reliability and validity.

6.3. Research Process

The research process followed the pattern of the research conducted overseas. Certain clauses in current legislation were identified for redrafting in conformance with the principles of plain language drafting.

The redrafted version was tested on an experimental group while the current format of the legislation was given to the control group. This was done to determine which version was more comprehensible to the sample population.

In the study the hypothesis is that legislation will be more easily understood if redrafted in terms of plain language principles.

In order to prove/disprove the hypothesis, it was necessary to establish, by use of an experimental and control group, whether the redrafted version would result in improved understanding of the legislation. As Mouton (2001:208) states, "Experimentation is especially appropriate for hypothesis testing".

The independent variable is the plain language drafted version of the legislation. While the scores obtained by the experimental group would constitute the dependent variable.

6.3.1 Stage One - Selection And Reformatting Of Indicative Sections Of Labour Legislation

In this stage the researcher identified the legislation that would be used for redrafting. The Acts and relevant sections that were used in the study are listed in Table 6.1.

LABOUR ACTS	SECTION	TITLE IN THE ACT
LRA (66. of 1995)	Section 213 – page 215 "workplace" (c)	Definitions
BCEA (75. of 1997)	Section 16 (1) – page 18 Section 16 (2) – page 18	Pay for work on Sundays
BCEA (75. of 1997)	Section 34 (1) – page 32 Section 34 (5) – page 32	Deductions and other acts concerning remuneration
BCEA (75. of 1997)	Section 82 - page 62	Temporary employment services
EEA (55. of 1998)	Section 7 – page 14	Medical Testing

Table 6.1: Sections of Legislation Selected for Research Instrument

6.3.1.1. Definition of a Workplace – LRA (66) of 1995

Existing version of the Legislation

Definition of a workplace (c)

> In all other instances means the place or places where the *employees* of an employer work. If an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, the place or places where *employees* work in connection with each independent operation, constitutes the workplace for that operation; and

Reasons for Selection

"Workplace", was chosen because it is a new definition in the Act, which relates to the co-decision making and consultation function of workplace forums.

Subsection (c) was isolated, because it is the only part of the definition, which is relevant to the private sector.

This section is so unclear, that it has led to disputes and court actions, regarding the exact nature and interpretation of a workplace.

- In the case of Oil Chemical & General Workers Union v Total SA (Pty) Ltd. (CCMA: WE15487, 30 March 1999), the argument focuses on the definition of a "workplace" for which the union wanted to claim their organisational rights. Bendix (2001:264) in her discussion on the matter, commented that; "It was expected that the lack of a definition as regards a "representative union" and the verbose definition of a "workplace" would present problems."
- In the case of SA Taxi Drivers Union v Ebrahim's Taxis (CCMA WE 10626) one of the issues relates to the properties of a workplace and whether the union was representative in order to claim organisational rights. In this instance the employer refused to discuss the unions' demands or even to attend the arbitration proceedings.

Guidelines Adopted

The guidelines of plain language drafting that were applied to this section were:

- Everyday language that could be understood by the majority of users
- Making use of examples
- Bold typeface and spacing where appropriate.
- Positive voice to be used.

Redrafted Version

A workplace is the place or places where the employees of one employer, company or organisation work

(a) Where the company has only one site or operation that is one workplace;
(b) Where the company has more than one site or operation, BUT where a Head Office makes the decisions, all sites and operations together are seen as one workplace;
(For example: all Edgar's Stores are seen as one workplace)
(c) If the sites or operations are so big that each operates on its own, each one of these will be a workplace;
(For example: the different mines owned by Anglo American are all separate workplaces)
(d) Where the sites or operations perform different functions, each one on it's own will be a workplace;
(For example: B.P Petrol stations and the shops on the premises are different workplaces)
(e) Where the company has two or more operations and they go by different names and make their own decisions, each on it's own will be a workplace
(For example: Safmarine and Maersk, which have merged but still operate separately, are different workplaces.)

6.3.1.2. Deductions

Existing Version

Section 34(1)

An employer may not make any deduction from an employee's remuneration unless-

(a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or

(b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award. .

Section 34(5)

An employer may not require or permit an employee to-

(a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(b) acknowledge receipt of an amount greater than the remuneration actually received.

Reasons for Selection

Sections 34 (1) & (5) were chosen because all employees have the right to understand and question deductions from their wages and salaries.

The lack of clarity in and understanding of this section became apparent to the researcher during her experience in industry. Human Resource generalists are frequently confronted with questions about allowable and non-allowable deductions. These queries emanate from the employer as well as the employee. The potential for conflict increases when dealing with the money of individuals or groups of individuals, specifically when it involves reducing the employees' wages/salary owing to deductions not foreseen by the employee as, for example, an error in wage calculations, maintenance orders, garnishing orders, etc.

Proof of the extent to which contested deductions can damage the relationship is found in a case reported in the Mail & Guardian (16.05.03). The article reports on the dismissal of 1102 labourers after an illegal strike. The workers

were unhappy about deductions that left them with less than they had received before they received the newly promulgated minimum wages. About 12 000 family members were affected by the dismissals because the main provider no longer had an income.

On 6th July 2003, City Press reported that Farm Labourers were "being treated like slaves". According to the article, Labour Inspectors discovered an "alleged slave camp" where farm labourers earn 14c every three months. The reason for this is that the farmer allows the workers to buy on credit at his shop and at the end of the month deducts money owed for goods, as well as rent payments, from their wages. Such hefty deductions are not permissible in terms of the Act.

Guidelines Adopted

The guidelines of plain language drafting that were applied to this section are:

- Writing for the reader – sample
- Use of everyday language
- Removal of unfamiliar terms such as "debt specified" and "remuneration"
- Use of examples
- Bold type face and spacing where applicable
- Visually appealing style and layout

Redrafted Version

Section 34(1)

An employer can deduct money from an employee's wage only if:

(a) The employee owes money to the employer and has agreed to the deduction in writing; or

(b) There is a law, collective agreement, court order or arbitration award which allows the deduction.

(For example: The Income Tax Act allows deductions for income tax)

Section 34(5)

An employer may not ask an employee to pay back any part of his/her wages. However; where an employee has been paid too much, the employer may require the employee to pay back the overpayment.

6.3.1.3. Payment for work on Sundays

Existing Version

Section 16(1)

An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.

Section 16(2)

If an. employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of subsection (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.

Reasons for Selection

Section 16 (1) & (2) were chosen because employees who work on a contract or part-time basis, would normally work on Sundays. The individuals are normally students or at the lower end of the skills market. They have in the past been and continue to be open to exploitation. With the South African unemployment rate as high as it is, people are so desperate for work that unscrupulous employers could easily take advantage of this group, and might try to engage in dubious employment practices.

Guidelines Adopted

The guidelines for plain language drafting that were applied to this section are:

- Use of active voice
- Easily understood plain language
- Examples in the text
- Numerical citing
- Boldface and spacing where applicable
- Analysing and organising information with the reader in mind (normal population).

Redrafted Version

Section 16(1)

Anyone who works on a Sunday will be paid at least a day's wage. **However;** an employee may be paid more than a day's wage, depending on the hours worked on that Sunday.

Section 16(2)

- Employees who do not usually work on a Sunday are paid at double the normal rate, subject to a minimum of a day's pay.

(For example: Someone who works for two hours will be paid a day's rate and not 2x2 hours, but someone who works for six hours will be paid 2x6 =12 hours - more than a day's pay)

- Employees who usually work on a Sunday are paid at 1,5 times the normal rate, subject to a minimum of a day's pay.

(For example: Someone who works for 2 hours on a Sunday will be paid a day's pay and not 1,5 x 2 hours, But someone who works for 8 hours will be paid for 1.5 x 8 hours = 12 hours – more than a day's wage)

6.3.1.4. Temporary Employment Services

Existing Version

Section 82

(1) For the purposes of this *Act*, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.
(2) Despite subsection (1), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.
(3) The temporary employment *service* and the client are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that client, does not comply with this Act or a sectoral determination.

Reasons for Selection

Section 82, of the legislation was selected, based on the following;
In temporary employment, the individual is involved in a multi-employer relationship, that of the agency and the host company. The said individual, on entering into this relationship, must fully understand his or her rights and who is responsible for which rights. Many employers enter this relationship with the sole purpose of cutting costs in terms of labour expenses (industry knowledge). The agency's main objective is to satisfy the needs of the client (employer) /and not those of the employee. In this type of relationship the employee is normally viewed as a commodity. (The above assumptions have been largely drawn from the researcher's 17 years of industry working experience.)

- A case in point is that of Mandla v LAD Brokers (Pty) Ltd in the Labour Court (C291/99). The issue was whether the applicant was the employee of LAD Brokers or an independent contractor. This issue arose when the applicant was dismissed from LAD Brokers for operational requirements and claimed that he had certain rights as an employee of the temporary employment service.

Guidelines Adopted

The guidelines of plain language drafting that were applied to this section are:

- Use of the active voice
- Ordinary, plain language usage
- Omitting legal jargon and unfamiliar words, such as "procured", "jointly and severally liable"
- Analysis and organisation of information with the reader being the focal point (normal population)
- Typeface and spacing

Redrafted Version

Where an employment agency/labour broker recruits and pays an employee to work for another company, that person is seen as an employee of the employment agency / labour broker.

The above excludes a person who is an independent contractor.

Where an employee of an employment agency/labour broker works for another company and a law or determination applying to the employee is broken, the employee may sue either the employment agency/labour broker or the company or he may sue both of them together.

6.3.1.5. Medical Testing

Existing Version

Medical Testing:

> 7. (1) Medical testing of an employee is prohibited, unless-
> *(a)* legislation permits or requires the testing; or
> *(b)* it is justifiable in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of a job.
> (2) Testing of an employee to determine that employee's HIV status is prohibited unless such testing is determined to be justifiable by the Labour Court in terms of section 50(4) of this Act.

Reasons for Selection

The Employment Equity Act is a historic piece of legislation in South African context. It is, therefore imperative that no section of the legislation should be written in such a manner that the Act itself promotes further discrimination of the very parties it intends to promote. Clarity should prevail so that the employer clearly understands his/her obligations in terms of this Act. An applicant or an employee, who has been discriminated against, must be able to understand that there is a possibility of recourse.

A case that illustrates the difficulties encountered with this section, is that of Hoffmann v SA Airways (CCT17/00). The Constitutional Court examined the employers' policy of testing applicants for employment for HIV/AIDS and refusing employment if infection progressed to a stage where the applicant became unsuitable for employment.

Guidelines Adopted

The guidelines of plain language drafting that were applied to this section are:

- Using spacing and bold type face where appropriate
- Using the active voice
- Use of examples in text
- Use of everyday understandable language
- Reader orientation (normal population)
- Omission of legal jargon and unfamiliar terms, such as "justifiable", "inherent requirements".

Redrafted Version

(1) Medical testing of an employee is not allowed, unless

(a) The testing is required or allowed by law,

(b) The reason for testing is one of the following:

- Medical facts; **(for example: TB is contagious, therefore testing is necessary)**
- Employment conditions; **(for example: all persons wanting to work underground in the mining industry will be tested for lung defects)**
- Social health policy; **(for example: if conditions in a certain area such as cholera make a test necessary)**
- Certain types of illness will drain medical aid group insurance funds or any other similar benefits;
- It is an essential requirement of the job; **(for example: all pilots have their eyes tested)**

(2) An employee can be tested for HIV only if an application has been made to the Labour Court and the Labour Court has made an order allowing the testing to be done.

6.3.2. Stage Two – Verification of Redrafted Versions

The redrafted versions of the legislation were referred to two legal professionals to ensure that the reformulation had not affected the meaning, the precision and accuracy of the legislation. Thereafter they were referred to a language expert, for guidance and advice on simplification of the language.

The redrafted formats were scrutinised by the research supervisor, who is an expert in the field of industrial relations and who also holds an honours degree in languages.

6.3.3. Design and Validation of Research Instrument

Test Design

In order to assess whether legislation was better understood if drafted according to the principles of plain language drafting, it was necessary to establish whether subjects presented with the redrafted format would be able to better answer questions than those given the same questions but presented with the current format.

The contextual information for the questions was designed around the legislation identified for this purpose. On each section of the legislation two comprehension type questions were asked.

The reason for asking two questions per section of the legislation was to ascertain whether the respondent fully understood the relevant section.

The questions were designed in such a manner that each individual question interrogated a different aspect of the section in question.

The manner in which the respondents had to answer was to choose the correct answer, from the legislation.

The questionnaire had a total of 10 questions.

The language used in the questionnaire was English.

Pre Test of Instrument

The questionnaire was tested on first year full time English-speaking business students at a Technikon in the Western Cape. It was decided to use English speaking students rather than members of the working population as subjects, so as to eliminate as far as possible variables in the form of home language and pre-knowledge of legislation.

An e-mail was sent to all first year lecturers, requesting them to canvas students to participate in the study. According to a survey, conducted earlier in the year by the language lecturers, there was total of 107 mother tongue English speaking students.

On the day of the test, use was made of the availability sample. A total of 18 students presented themselves for the test. The possible reasons for the low response could be that the testing was conducted on a Friday afternoon and a typical student would generally be averse to participating in a voluntary testing session at this time.

Randomisation was used to select two groups, namely experimental and control.

The main objectives for the pre-testing were:

- To ensure clarity in both aspects of the instrument: the redrafted section of the legislation and the questions and to critically evaluate the question constructions and the rating scale used.
- To ensure that the mistakes and ambiguity were identified and rectified.

Mouton (2001: 244) supports the pre-testing of the instrument, when he states that "The surest protection against such errors is to pre-test the questionnaire in full and/or in part".

The pre-test clearly identified the following problems

- More detailed instructions were needed.
- Multiple-choice questions failed to differentiate between the control and experimental groups

- There were certain sections in the redrafted legislation where language usage was still a problem.
- Detailed training should be given to co-instructors to ensure consistency.
- Friday is generally not an appropriate day to select for testing with students at a tertiary education, where attendance is self-regulated

Redraft of Instrument

All the above issues were addressed and rectified in the actual study undertaken.

Questions were changed from multiple-choice type to open-ended questions and the test demanded that reasons be given for particular answers. This was done to forecome the guessing apparent in the multiple-choice type questions as this was seen as a possible reason for the lack of differentiation between the two groups. Those redrafted sections which had proved problematic were reassessed and redrafted.

The Actual Test

Below is a sample of the questions used in the final study.

Question 1:

(Refer to Item 1 of the law and answer the following questions. Provide a reason, based on the law, for your answer)

1.1 Woolworth's has a central Head Office. **Are the Cape Town, Parow and Johannesburg branches separate workplaces or one workplace?**

1.2 Metallurgic has three operations in Cape Town. The first manufactures televisions. The second makes antique furniture and the third kitchen

appliances. **Are the three sites separate workplaces or one workplace?**

Question 2:

(Refer to Item 2 of the law and answer the following questions. Provide a reason, based on the law, for your answer)

2.1 Jack has wilfully damaged property at his company. The machine that he has damaged would cost R500.00 to repair. The supervisor has instructed the wage officer to see that Jack repays the money over a period of time. **What is the wage officer allowed to do, if anything?**

2.2 Tim, a divorced gentleman, has not paid maintenance for his two children for six months. His ex-wife has now taken him to court to demand payment. The court has issued an order for the money to be paid. **Is the company allowed to deduct the money from Tim's wages?**

Question 3:

(Refer to Item 3 of the law and answer the following questions. Provide a reason, based on the law, for your answer)

3.1 Dawn is an employee of MacDonald's. She normally works an 8-hour day and earns R10.00 an hour. Her working week runs from Friday to Tuesday. **How will Dawn be paid for her work on Sundays?**

3.2 Bjork is a receptionist at a Clothing Manufacturer and usually works from Monday to Friday. Every quarter the company holds a factory sale for the general public on a Sunday. On these four occasions, Bjork is requested by her company to work for 3 hours. She normally works an eight-hour day and earns R20.00 per hour. **How will Bjork be paid for the Sunday work?**

Question 4:

(Refer to Item 4 of the law and answer the following questions. Provide a reason, based on the law, for your answer)

4.1 Another company, Sea Oil, asks CU Work Agency to send them 10 electricians and 10 plumbers for a special project. Johan is pleased to hear that CU has selected him and that he will be paid R50.00 per hour by CU. **Of which company is Johan an employee?**

4.2 Sea Oil, where Johan has been sent by CU, has insisted that he works at least 5 hours overtime every day; the Basic Conditions of Employment Act only permits 3 hours overtime per day. **Because they have broken the law, Johan now wants to sue Sea Oil. Can he do this?**

Question 5

(Refer to Item 5 of the law and answer the following questions. Provide a reason, based on the law, for your answer)

5.1 Cyril works as a gardener for the local municipality. He has just discovered that he is HIV positive. He has frequently been absent from work over the past five months. The grapevine in his section has been speculating about his illness and his supervisor now wants Cyril to go for an HIV test because he is worried about the rest of his staff. **Can the supervisor force Cyril to go for an HIV test?**

5.2 In the Western Cape, Groote Schuur Hospital has over the last 3 months had 15 males from the Eerste River area die of Hepatitis B. **Are companies in this area allowed to do medical testing, and, if so, what would the reason be?**

6.3.4. Sample Selection

When selecting an appropriate sample for the conducting of the test, cognisance must be taken of the ability to extract meaningful recommendations, which should be applicable to the population of the study. (Babbie & Mouton 2001: 186)

The population relative to the study would be that of the economically active population in South Africa that are either employed, create employment or those who would like to be employed. Therefore the population is infinite.

The complexities involved with a mass population, are that the researcher, on selection of the sample, must carefully evaluate how representative the sample is in relation to the population. Consequently the researcher selected grade 11 students, whose home language is English as opposed to Technikon / higher education students as were used in the previous studies referred to in the literature review and in the validation exercise. The rationale behind this choice was that individuals who attend post-graduate studies are part of a specialised group, who would therefore not be representative of the population identified in the study. Mouton (2001: 213) supports this when he states that "Simply put, university undergraduates are not typical of the public at large". The author further elaborates that, in the norm of generalizability in the sciences this group could represent a potential defect in social scientific research.

The sample used was extracted from grade 11 learners at a Model C type school in the Western Cape. The reason for this selection was to ensure consistency, as well as to as far as possible eliminate any secondary variables that would impact on the outcome.

The characteristics of the sample were:

- All students selected were mother tongue English speakers.
- All students selected ranged from ages 15 years old to 17 years.
- It being a co – educational school. there were both males and females in the sample.
- Demographics were representative of the population in the country

- All students selected had no prior permanent employment
- Therefore, by assumption, they had no prior exposure to labour legislation
- It could be assumed that the sample was representative of the normal population

In selecting the control and experimental groups, the technique used was that of randomisation.

The sample population consisted of 150 students; the researcher assigned every alternate person in the sample as the control while the rest constituted the experimental group.

This was done to achieve consistency within the population.

Mouton (2001: 213) supports this method of selection when the author states, "Because each sample will reflect the characteristics of the total population, so the two samples will mirror each other". The example that the author cites in the text made use of 40 subjects, on the basis of which he points out that, when using the randomisation method, two probability samples are selected, one being the control group, and the other the experimental. According to Mouton, it can be assumed that each group is representative of the entire population from which it was drawn. He also believes that when the subject's numbers are larger in the sample, randomisation is an extremely viable choice. (Ibid: 213)

From research on sampling, it can be assumed that the identified sample group in the study is representative of the population and that, from it; generalisations can be extracted for the infinite population.

6.3.5. Application of Research Instrument

The researcher obtained permission from the Principal and the Head of the Grade 11 students to conduct the test. The testing took place on a Monday morning at 09:00 on the school's premises. The testing was conducted in the school hall.

Testing Procedure

The procedure for the testing was as follows;

- The subjects who participated in the test were all seated at 08:50
- Overall instructions were given by the researcher
- Due to the large number of subjects participating in the study, five honours students assisted with the process
- The student helpers were also used in the pre-testing and had received full training and detailed instructions for the study
- Detailed written instructions were also supplied to each student helper to ensure consistency
- The researcher and the student helpers handed out the study material to the individual respondents
- The material used for the study had been divided into two packs, each pack consisted of,

- **The Control Group's pack;**
    - A test sheet
    - A white answer sheet
    - A copy of the current format of the legislation applicable to the study

- **The Experimental Group's pack;**
    - A test sheet
    - An orange answer sheet
    - A copy of the redrafted format of the legislation applicable to the study

- The stratified randomisation technique was used in the handing out of the packs (that is, every alternate student received the same pack)
- Upon completion of the test each respondent had to put up his/her hand so that the completed answer sheet could be collected
- The respondents all finished at various times
- The completion time for the whole sample was at 10:13.

Scoring of Answer Sheets

The researcher personally scored all answer sheets. If either an answer or reason was incorrect, the subject received no credit for that answer. Each question received a credit of 10 for the correct answer. The total score for the test was 100. The test scores ranged from 0 – 100. Total scores for each subject were awarded by totalling the credits achieved.

6.3 Conclusion

As can be established from the aforegoing, the process followed in the design of the instrument and its application was both rigid and structured. This should contribute to the validity of the results as discussed in the following chapter.

Chapter 7

ANALYSIS AND INTERPRETATION OF RESULTS

Chapter 7

7.1 Introduction

The empirical data collected was analysed by means of the descriptive and inferential method. The aim of descriptive statistics is to present the multiplicity of the collected data in a coherent and functional manner. The main objective in the presentation of the data in a coherent and functional manner is that the main characteristics of the hypothesis and the research question can be easily grasped. (Bless & Kathuria: 1998:5)

The raw data obtained from the testing was analysed in terms of the qualitative status and the quantitative status. In the qualitative analysis, the researcher analysed the results achieved between the experimental and the control groups. The latter received the current format of the legislation and the former the redrafted version using the principles of plain language drafting. The hypothesis and the research question were the criteria used for the analysis.

Descriptive statistics establish the foundation for inferential statistics. This form of analysis provides the means by which one is able to draw inferences about population properties on the basis of what is known about the sample.

This chapter presents the raw data in a tabular manner to aid understanding. From this data meaningful interpretations may be drawn. In order to achieve the above the raw data was collated in the Excel version 4 Statistical Package. This data was compiled into workable information, which the researcher subjected to various statistical procedures to determine the validity of the hypothesis and the research question and to determine whether the sample could be accepted for purpose of generalisation.

7.2. Descriptive Analysis of Test Results

The research question is whether plain language drafting would enhance and improve understanding of labour legislation. In order to tests this, two groups were selected using the random sampling method, as described in the previous chapter. These two groups were the experimental group who received the redrafted format of the legislation and the control group who received the current format of the legislation. Both groups received the same questionnaire.

7.2.1. Comparison of Total Scores

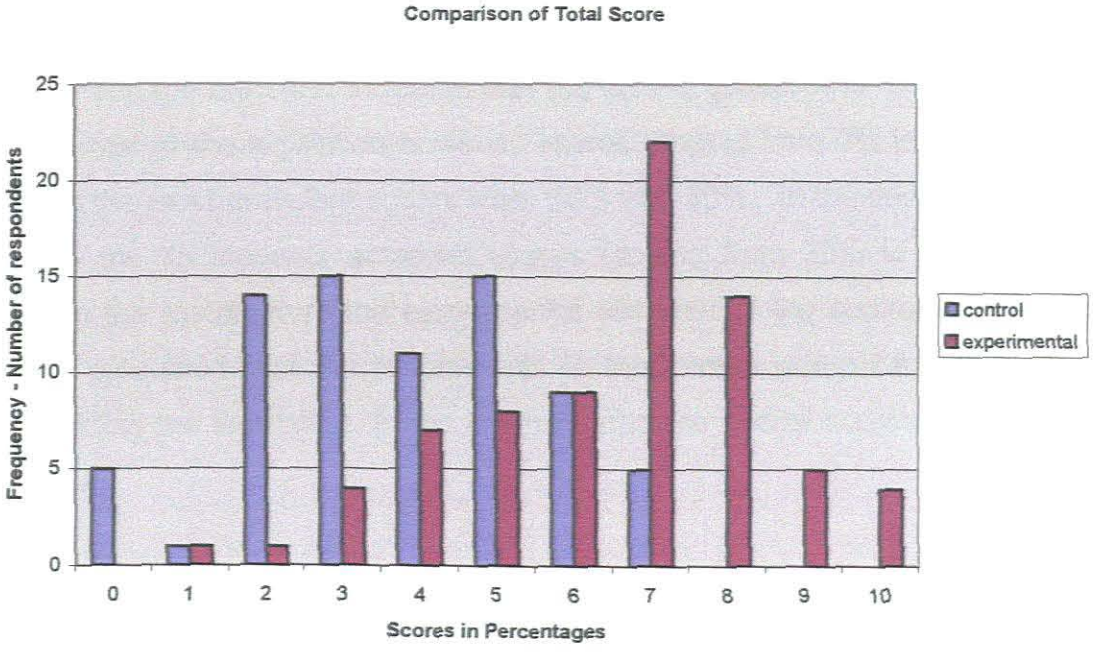

Figure 7.1. Comparative Frequency Distribution of Total Scores

(Although the subjects were accorded 10 for every correct answer. Scores were reduced to a scale of 0 – 10 for statistical and illustrative purposes.)

Figure 7.1, provides a graphic comparative display of the overall results achieved by the respondents during testing of the control and experimental group.

The above bar chart indicates that the experimental group achieved scores ranging from 10% to 100%. In the experimental group the most prevalent score achieved was 70%.
There were 22 students within this group who achieved a score of 70%.
52% of the respondents in this group also achieved scores ranging from 80% to 100%. The above results demonstrate that the respondents in this group experienced a high level of comprehension and understanding of the legislation, resulting in the scores achieved. Consequently it could be presumed that the intervention used was responsible for the respondent's performance.

In comparison the bar chart indicates that the control group, who received the current format of the legislation achieved scores ranging from 0% to 70%. In this group the most prevalent scores were 50% and 30%. In the control group 35 out of the 75 students achieved scores ranging from 30% to zero. In comparing the results from the experimental with that of the control group, it could be presumed that the respondents in the control group had difficulty understanding the legislation. In the control group the overall scores achieved were weak.

The variance in scores is illustrated in greater detail in Table 7.1.

In Table 7.1 the results in terms of median, mode, range and percentiles of the respondents in the two groups are compared, so that further interpretation regarding the intervention, which was plain language drafting, can be drawn. This table provides in-depth analysis of the results achieved by the groups.

The average scores achieved by the experimental group was 65.6 (mean) whereas the average score for the control group was 37.7 (mean) The mean indicates that on average the experimental group achieved far higher scores than their counterparts in the control group. **(See Table 7.1)**

Possible scientific value is given to the research hypothesis by the measures of central tendency, namely the median and the mode, which indicate similar

findings to that of the mean. The respondents in the experimental group shared a median of 70, whereas the control group reflected a median of 40. Once again the difference in the experimental respondents' performance, could result from the plain language draft of the legislation. **(See Table 7.1)**

The mode generated for the experimental group measured 70, whereas the control group reflected a mode of 30, giving further possible value to the research hypothesis. **(See Table 7.1)**

In the experimental group 23 of the students achieved scores of 80% and above, whereas in the control none of these scores were achieved. In the experimental group 52 students achieved scores of 50% to 70%, whereas only 29 students in the control group achieved the score. The majority students of the experimental group, which was 82.7%, achieved scores of 50 and above. It could be presumed that the drafting of the legislation in plain language was responsible for this performance. By comparison, the majority of students in the control group, namely 61,7%, achieved scores of 40 and below. It could be presumed that the current format of the legislation was responsible for this performance.

7.2.2. Comparison of Scores per Question

In this section the scores per question achieved by the experimental and the control groups are analysed, **(See Figures 7.2 and 7.3)** to establish if the intervention used in the instrument, resulted in a difference in scores for the different sections. Only selected questions that impacted on the hypothesis are highlighted and analysed.

TITLE	EXPERIMENTAL	CONTROL
Mean	65.6	37.7
Median	70	40
Range	10 - 100	0 - 70
Mode	70	30
Frequency scores of 80% to 100% TOTAL % of responses 80% and above	100 = 4 90 = 5 80 = 14 23 30.7	100 = 0 90 = 0 80 = 0 0 0
Frequency scores of 50% to 70% TOTAL % of responses 50% to 70%	70 = 22 60 = 9 50 = 8 39 52	70 = 5 60 = 9 50 = 15 29 38.7
Frequency of scores of 50 and above	**= 62** **= 82.7%**	**= 29** **= 38.7%**
Frequency scores of 40% to 0% TOTAL % of responses 40% and below	40 = 7 30 = 4 20 = 1 10 = 1 0 = 0 13 **17.3%**	40 = 11 30 = 15 20 = 14 10 = 1 0 = 5 46 **61.3%**

Table 7.1. Breakdown of Comparative Results

The experimental group frequency for question 1.1 is 65.6, whereas the control group frequency for the same question is 28.0. The same pattern is illustrated in the following questions; in question 1.2 the experimental group's frequency was 64.0, whereas the control group's frequency was 34.0; in question 5.2 the experimental group's frequency was 62.0, whereas the control group's frequency was 10.0. Question 5.2 indicates that plain language drafting improved understanding of the legislation. In the redrafted version of "medical testing" in the Employment Equity Act, legal jargon and unfamiliar terms such as "justifiable" and "inherent requirements" were omitted. Extensive use was made of examples familiar to the reader to support and clarify the text.

The above results indicate that in these questions the experimental group achieved much higher scores than the control group. It could therefore be presumed that the drafting style was responsible for the improvement. It also indicates that these particular sections of the legislation, which deal with workplace in the Labour Relations Act and medical testing in the Employment Equity Act, are drafted in a manner which is a barrier to understanding and comprehension of the legislation. **(See Figures 7.2 and 7.3)**

In question 2.2, which dealt with deductions, the control group's frequency was not much higher than the experimental group. The control group's frequency was 47.0, whereas the experimental group's frequency was 46.0. The reason for this could be that in this section of the legislation certain principles of plain language drafting had already been applied; therefore both groups performed equally. An additional reason for the above could be that the manner in which the questions were constructed led to difficulty in answering by both groups **(See Figure's 7.2 and 7.3)**

In question 4.2 and question 3.2 the experimental group's frequency was 38.2 and 35.11 respectively, which is low in comparison to this groups performance on other questions. Question 4.2 which dealt with "payment for work on Sunday's" from the Basic Conditions of Employment Act presented a problem with both groups although the control group's performance was worse. They achieved a frequency of 21.2. The possible problem could be with the question

that was asked **(See Chapter 6).** The sample population that was used has no work or industry knowledge, therefore they may not have understood that a factory sale is not a normal occurrence within this industry and therefore the payment structure would differ. Question 4.2, which dealt with "temporary employment" in the Basic Conditions of Employment Act also presented a problem for both groups. The control group achieved a frequency of 14.2 in this question as against the experimental group's frequency of 38.0. This section in the current Act is very complex and very brief. It should be extended and elaborated upon in both versions. The legal fraternity and specialists within the field of industrial relations may also struggle with the interpretation of this section. **(See Figures 7.2 and 7.3)**

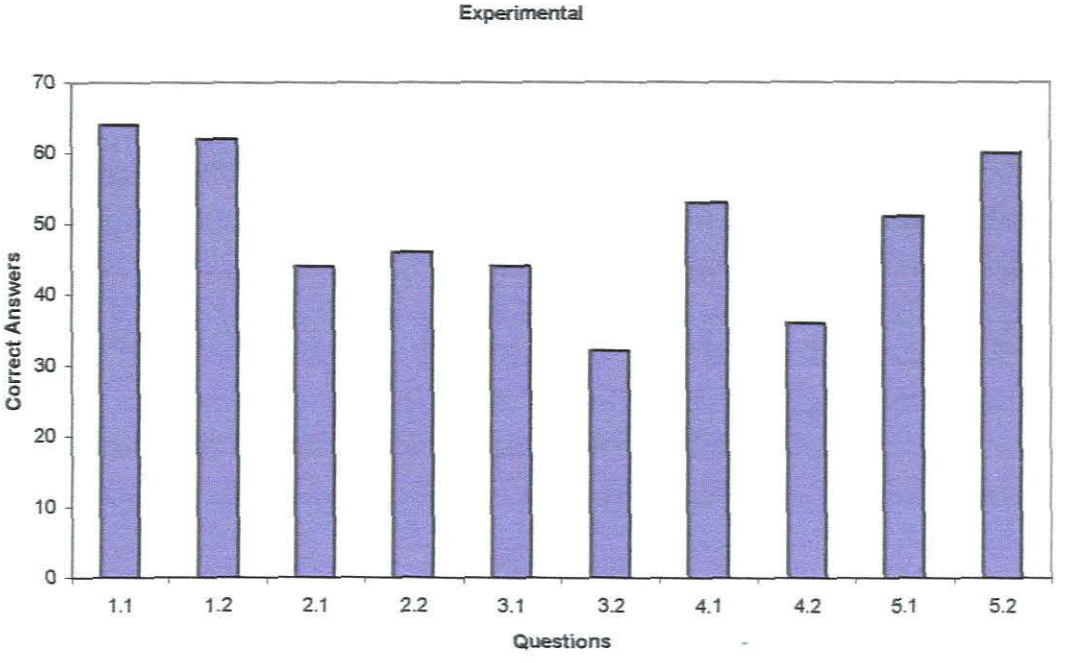

Figure 7.2. The relative frequency of correct answers per question (Experimental Group)

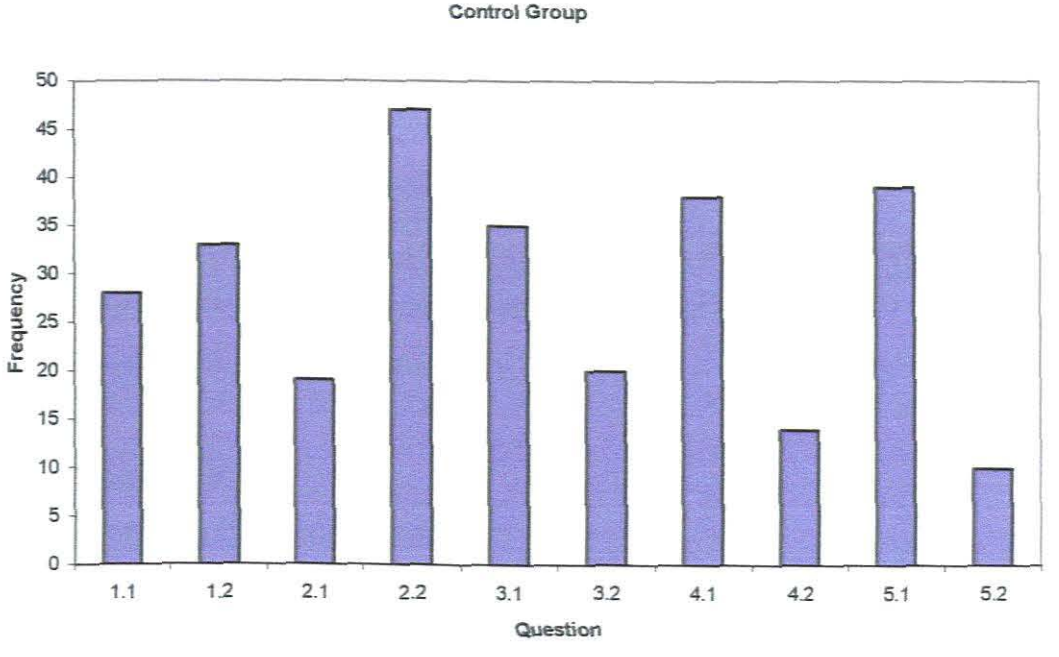

Figure 7.3. The relative frequency of correct answers per question (Control Group)

7.3. Inferential Analysis

In the foregoing section, results were analysed using descriptive statistics such as mean, mode and percentiles. These indicated a difference in performance between the experimental and the control group. These descriptive statistics are not enough to prove that there is scientifically significant difference between the groups and to validate the hypothesis. For the latter purpose it is necessary to apply inferential statistical methods such as the establishment of confidence levels and correlations.

7.3.1. Validation of hypothesis in terms of probability

The hypothesis as stated in Chapter 1 was that; legislation will be more easily understood if redrafted in terms of plain language principles.

The null hypothesis, which has to be disproved or rejected, is that; plain language drafting does not lead to better understanding of the legislation.

7.3.1.1. Assumptions

The assumptions are;

- The subjects are independently and randomly sampled (See methodology – Chapter 6)
- The samples are independent from each other
- The population variances are homogeneous **(See methodology)**
- The distribution under consideration are normal
- The size of the sample is large

7.3.1.2. Decision Rules

- $\alpha = .05$ as a level of significance;
- The alternative H, is non-directional
- One-tailed rejection area
- See application of hypothesis testing **(Table 7.2)**

7.3.1.3. Statistical Application

The statistical application is represented in Table 7.2. On the bases of the limits of 2.182338 and 3.3390995 as calculated, the null hypothesis can be rejected. Therefore the hypothesis, namely, that legislation will be more easily understood if redrafted in terms of plain language principles can be accepted.

Experimental		*Control*	
Mean	6.56	Mean	3.773333
Standard Error	0.227988	Standard Error	0.20758
Median	7	Median	4
Mode	7	Mode	3
Standard Deviation	1.974431	Standard Deviation	1.797696
Sample Variance	3.898378	Sample Variance	3.231712
Kurtosis	-0.02297	Kurtosis	-0.49991
Skewness	-0.5408	Skewness	-0.19478
Range	9	Range	7
Minimum	1	Minimum	0
Maximum	10	Maximum	7
Sum	492	Sum	283
Count	75	Count	75
Confidence Level(95.0%)	0.454275	Confidence Level(95.0%)	0.413612

lower 95% limit	2.182338
upper 95% limit	3.390995

Table 7.2. Confidence Level Table

7.3.2. Validation by Correlation

In support of the above the Pearson's Moment Correlation was calculated in order to establish whether there is any or no correlation between the results of the control and the experimental groups, alternatively whether the two populations are independent. The results of the statistical analysis are contained in Table 7.2.

Pearson's product moment correlation coefficient measures the strength and direction of the relationship between two intervals or ratio variables. (Mantzpopoulus 1995:58) The researcher undertook to measure the relationship between the scores to determine if a relationship exists between the results of the experimental and the control group. **(See Table 7.3)** This correlation measures the levels of independence between the results of the control and the experimental group. A weak, positive correlation scientifically proves that the two groups are independent. The r = 0.169 clearly indicates that there is no relationship between the results of two groups. These two groups were selected using the research technique of random sampling; consequently it can be assumed that the two groups were equal before entering the test. The logical conclusion that could be drawn from this testing is that the intervention, which was plain language drafting, assisted the respondents in the experimental group with understanding and comprehension of the legislation and that this accounts for the lack of correlation between the two groups. **(See Table 7.3)**

	Experimental	**Control**
Experimental	1	
Control	**0.169237441**	1
	Independent between Control and Experimental	

Table 7.3. Pearson Product Moment Correlation

A scattergram of the frequencies of the experimental and control group's test scores, depicting the weak relationship that exists between the two groups, is contained in Figure 7.4.

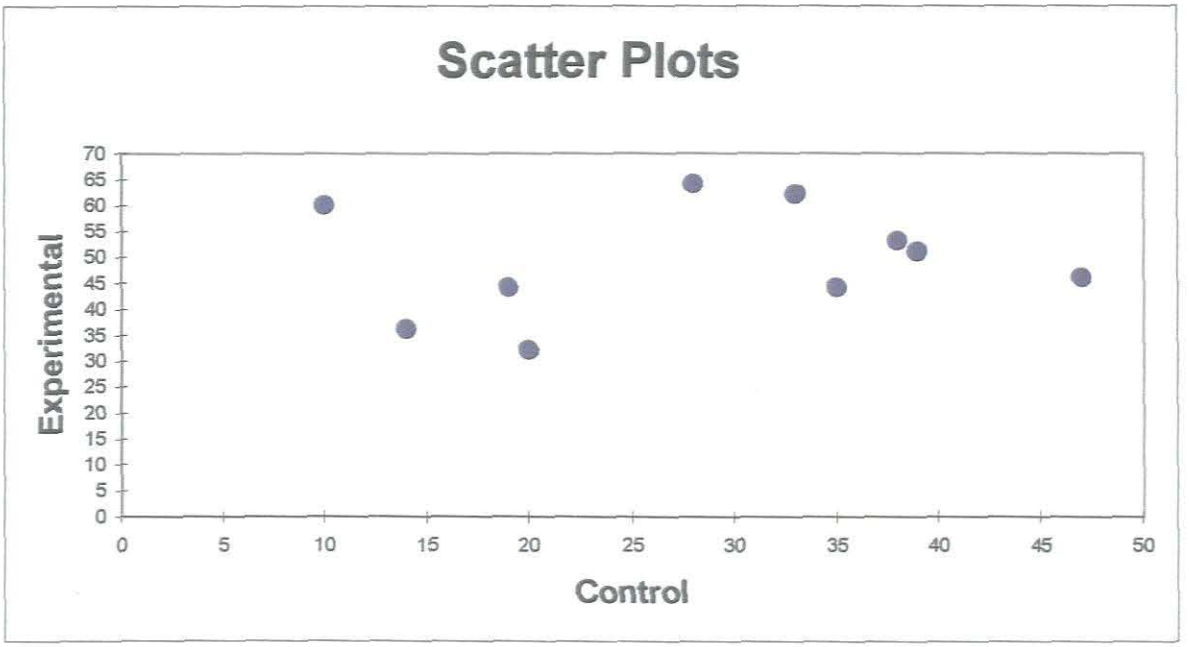

Figure 7.4. Scattergram of Scores (computed on regression line)

7.4. Confidence levels per question in the Experimental Group

The test was conducted on a sample population. It was necessary to establish in the case of each question what percentage of the total population would be able to answer the question if given the redrafted version of the relevant sections. Using the calculations in Table 7.2., it was possible to extrapolate the responses of the experimental groups in relation to each question to the normal population.

Count of 1.1	
1.1	Total
CORRECT	64
INCORRECT	11
Grand Total	75

p	0.85	= Percentage correct answers
q	0.15	= Percentage incorrect answers
n	75	= Number of respondents
lower 95% limit	0.77	
upper 95% limit	0.93	

Table 7.4: Confidence level of Question 1.1

As illustrated in Table 7.4, it can be accepted at a 95% confidence level that between 77% and 93% of the normal population would be able to answer the question if this section is presented in plain language format.

Count 1.2	Total
CORRECT	62
INCORRECT	13
Grand Total	75

p	0.83
q	0.17
n	75
lower 95% limit	0.74
upper 95% limit	0.91

Table 7.5: Confidence levels of Question 1.2

As illustrated in Table 7.5, it can be accepted at a 95% confidence level that between 74% and 91% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 2.1	
2.1	Total
CORRECT	44
INCORRECT	31
Grand Total	75

p	0.59
q	0.41
n	75

lower 95% limit 0.48
upper 95% limit0.7

Table 7.6. Confidence levels of Question 2.1

As illustrated in Table 7.6, it can be accepted at a 95% confidence level that between 48% and 70% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 2.2	
2.2	Total
CORRECT	46
INCORRECT	29
Grand Total	75

p	0.61
q	0.39
n	75

lower 95% limit 0.5
upper 95% limit0.72

Table 7.7. Confidence levels of Question 2.2

As illustrated in Table 7.7, it can be accepted at a 95% confidence level that between 50% and 72% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 3.1	
3.1	Total
CORRECT	44
INCORRECT	31
Grand Total	75

p	0.59
q	0.41
n	75

lower 95% limit 0.48
upper 95% limit0.7

Table 7.8. Confidence levels of Question 3.1

As illustrated in Table 7.8, it can be accepted at a 95% confidence level that between 48% and 70% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 3.2	
3.2	Total
CORRECT	32
INCORRECT	43
Grand Total	75

p	0.43
q	0.57
n	75

lower 95% limit 0.31
upper 95% limit0.54

Table 7.9. Confidence levels of Question 3.2

As illustrated in Table 7.9, it can be accepted at a 95% confidence level that between 31% and 54% of the normal population would be able to answer the question if this section is presented in plain language format. The relatively

lower percentages, corroborates the problems with this question as highlighted in the descriptive statistics.

Count of 4.1	
4.1	Total
CORRECT	9
CORRECT	44
INCORRECT	22
Grand Total	75

p	0.71
q	0.29
n	75
Lower 95% limit	0.6
Upper 95% limit	0.81

Table 7.10. Confidence levels of Question 4.1

As illustrated in Table 7.10, it can be accepted at a 95% confidence level that between 60% and 81% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 4.2	
4.2	Total
CORRECT	36
INCORRECT	39
Grand Total	75

p	0.48
q	0.52
n	75
lower 95% limit	0.37
upper 95% limit	0.59

Table 7.11. Confidence levels of Question 4.2

As illustrated in Table 7.11, it can be accepted at a 95% confidence level that between 37% and 59% of the normal population would be able to answer the question if this section is presented in plain language format. As in the case of question 3.2., the percentage range here is relatively low, once again corroborating problems highlighted in the descriptive analysis.

Count of 5.1	
5.1	Total
CORRECT	51
INCORRECT	24
Grand Total	75

p	0.68
q	0.32
n	75

lower 95% limit 0.57

upper 95% limit0.79

Table 7.12. Confidence levels of Question 5.1

As illustrated in Table 7.12, it can be accepted at a 95% confidence level that between 57% and 79% of the normal population would be able to answer the question if this section is presented in plain language format.

Count of 5.2	
5.2	Total
CORRECT	60
INCORRECT	15
Grand Total	75

p	0.8
q	0.2
n	75

Lower 95% limit0.71

Upper 95% limit0.89

Table 7.13: Confidence levels of Question 5.2

(i)

As illustrated in Table 7.13, it can be accepted at a 95% confidence level that between 71% and 89% of the normal population would be able to answer the question if this section is presented in plain language format.

7.5. Conclusions

Descriptive statistics already indicated that there is a significant difference in the performance of the experimental and the control group. This is evident in the relative percentage scores below and above 50%. **(See Table 7.1)** The results also indicated that there is a variation in the performance on different questions between the groups.

Definitive proof of differences in the overall performance of the two groups was provided by probability testing and correlation which validated the acceptance of the hypothesis.

Confidence levels testing of the questions validated the findings for the normal population. These tests also illustrated the problems that were encountered with certain questions. **(See Tables 7.5 – 7.13)**

The above statistical tests have conclusively proved that, overall, plain language does improve comprehension of the legislation.

Chapter 8

CONCLUSIONS AND RECOMMENDATIONS

Chapter 8

8.1 Introduction

The focus of the study was the manner in which labour legislation has been drafted for the end-user. It has been contended in this study that the current format detracts from understanding and that the methodology chosen is not for the target audience. The literature study and in-depth analysis shared this view. Many countries have adopted a new approach to the drafting of legislation. Numerous arguments and evidence have been documented on the feasibility and effectiveness of plain language drafting. The literature review has revealed the indispensable role of mass communication and marketing in relation to legislation and plain language.

The empirical study conducted on a 150 grade 11 English speaking students, which is accepted as a sufficiently large sample selected on a random basis, provided a clear difference between the performance of the results achieved by the experimental and control group. Confidence level testing and Pearson's Moment Correlation corroborated the results. An analysis of individual questions was conducted to establish what percentage of the total population would be able to answer the question if given the redrafted version of the relevant sections.

8.2. The South African Context

The employment relationship in South Africa has been riddled with distrust and conflict since the early 1900's. The changes that have been introduced since the advent of democracy are progressive and strive to meet the requirements of the tripartite relationship, as well as of workplace democracy. These changes are evident in the sophisticated labour legislation that has been implemented since 1995.

The recommendations referred to in Chapter 5 (1996: 60) clearly indicate that the government is indeed serious about changing the manner in which public documents are drafted. However, what is lacking in the recommendations and which is evident in the numerous researches and material that has been written on plain language is that the documents once drafted have to be tested on a sample of the intended audience. Another shortfall in the recommendations is the lack of attention to the analysis of the target market. This would be very similar to the process that would be used for market segmentation in marketing for the masses. If the target audience is not analysed, then the probability of failure of the intended product is high. The same relationship exists with legislation, mass communication and the target audience. The focus of success in mass communication is on the receiver. If this individual does not understand or react to the message sent by the sender then the communication has failed. The same principles would apply to labour legislation. If the end-users have difficulty understanding and comprehending the law, then the message has failed. Consequently, as in mass communication, the drafters of legislation must analyse their target audience, before the drafting of laws.

Results of the empirical study highlighted sections of the legislation that would benefit from redrafting; there may be other sections in the various Acts, which could also benefit if plain language drafting principles are applied. The empirical study provided evidence of where plain language principles have been applied to certain sections in current legislation, that is, simplicity in drafting has already been achieved in these sections. (See Chapter 6) The drafters in South Africa are aware of the need to uphold the provision within the Constitution, regarding communications and the State, government appointed a task team to investigate the government's current communication policy. One of the key objectives of this task group was to provide a new communication system between the government and the public. In their final report to the Deputy President Thabo Mbeki: the task team described this communication system as, "A New communication system is an economic and political imperative for the information age." Its purpose must be to provide a network throughout the country which provides every citizen with the information required to live and to control their lives". However, this has happened in small

instances but ad hoc and piecemeal application of plain language drafting is not adequate for the target audience of legislation. These principles of plain language drafting need to be applied in a more structured and holistic approach.

The plain language movement and its various workable empirical principles have been accepted and in many instances practised for the past 28 years in first world countries, where many of the inherent political, social and educational problems that we have experienced in South Africa do not exist. If these countries have adopted plain language drafting as the norm for public documents and the law, would it not stand to reason that a country with a unique history such as South Africa should adopt this process in all its totality. Surely the purpose of democracy and participation within the employment relationship is that all those involved should have a significant positive impact on this relationship. This positive impact within the employment sector is given voice by various speakers within government, when they call for growth, development, employment opportunities and the encouragement of the informal sector. However, the first step to the concept becoming a reality is the understanding of the rules and laws that provide the framework within which the relationship is conducted. It is imperative at this stage to highlight that the parties responsible for adhering to and implementing the legislation would be seen as the majority users, therefore legislation must be written with these stakeholders in mind, namely the employer, employees and the union.

Plain language drafting is not a magic wand, which will alleviate all the possible problems that could be encountered when implementing, applying and controlling the legal framework within which the labour relationship functions. Conversely, it has been proven in this study and in the literature review, that when legislation is drafted using the principles of plain language, comprehension and understanding of the legislation by the users of the legislation could improve.

The extensive literature material, resources and research that has been conducted on plain language drafting would make this an extremely viable and

working option that should be adopted in the drafting of labour legislation within South Africa.

It is within the framework of the empirical study and the literature review, that the recommendations for this study have been extracted, for the application of plain language drafting to labour legislation within the South African context.

8.3 Limitations of Study

8.3.1. Main Limitation

The main limitation of this study is that the sample population was not extracted from the target group. The economically active population should be the focus of future studies regarding plain language drafting in labour legislation. The rationale behind the selection of grade 11 learners was that, a sample population was used in the study where the variables could be controlled so that the findings of the empirical study would have validity. If the latter population is to be used a much larger sample would be required as to eliminate influence of variables in education level, pre-knowledge, linguistic ability, to name but a few.

8.3.1.2. Secondary Limitation

A limited number of extracts of different Acts were used in the empirical study for redrafting. As indicated in the literature review, (See Chapter 2) one Act in its entirety should be redrafted and tested. Alternatively detailed research should be conducted via the cases at the CCMA and the Labour Court to establish which clauses in various Acts are problematic. Finally expertise in both language and law is required so as to avoid redrafting pitfalls.

8.4. Recommendations

8.4.1. Legislation in General

If the entire process of plain language drafting is applied to labour legislation, the components of the process that should be the focal point are:

Identifying and analysing the target audience – economically active population;

Researching the target audience with regards to differences in education levels and backgrounds, culture, gender etc. that would influence the manner in which people comprehend and understand written communication;
Planning and organizing of relevant experts that would be required to ensure that the end message has maximum impact with its readers;
Appropriate selection of the various communication tools that would fulfil the requirements of the legislators and that of the users;
Testing of the end product on a representative sample and making the necessary adjustments;
Monitoring disputes brought to the CCMA, Labour Court and Labour Appeal Court in order to establish whether interpretation of legislation is the issue and reassign the sections in question.

As stated in Chapter 4, the marketing discipline devotes an inordinate amount of time, resources and skills to ensure that the product is developed for the "right" customer. It is suggested that the philosophy and principles of the integrated marketing communication concept should be adopted also in the drafting of legislation. Koekemoer (1998: 3) describes integrated marketing communication as a concept of marketing communication planning that recognises the added value of a comprehensive plan that evaluates the strategic role of a variety of communication disciplines and combines these disciplines to provide clarity, consistency and maximum communication impact.

This plan has been adapted to illustrate the process that should be followed in order to successfully "market" legislation. The plan clearly indicates the importance of the consumer and the target population in planning the integrated marketing communication strategy.

The success of the marketing communication strategy is dependant on the receiver, the starting point is with the receiver. Koekemoer (1998: 34) explains that, "when developing a communication plan, the marketer employs a planning flow in which the communication model is approached in reverse, the reason for this is so that receiver is the starting point since the success of a marketing communications programme is affected by the consumer". When applying this

process to drafting, the main focus would be on the target audience and the drafter should clearly identify and research the most appropriate level of language to be used in the drafting of the legislation for the reader.

According to Koekemoer (1998.3) the first step is; the decisions as to who is the primary target; lawyers or the general public. He explains that the focus of the decisions should be on the majority audience. In terms of labour legislation this would be the economically active population. In the deliberation of the above, questions such as how, where, what and why should be answered with regards to the target audience.

Secondly, look at the product as it is and assess whether the product is fit for the identified group. Koekemoer, emphasis that "the reality of the product in relation to the customer is the primary objective to the eventual success of the end product. "(ibid:3)
Government needs to reassess what they want from legislation; if necessary, to change, to assess what needs to be changed and to also reconsider the manner it which legislation is to be disseminated; to re-evaluate if a change in the drafting style will lead to greater empowerment.

Koekemoer (ibid: 4) further explains that the end product should be tested on the target segmentation. In terms of the legislation, testing should be done on a representative sample before promulgation and revised, if necessary, prior to dissemination.

The last step in the plan would be to disseminate and monitor the legislation. (ibid:4) When the legislation goes through the adoption stages, a concerted plan should be employed to ensure maximum response from the public at large. When the White Paper is put out for public comment, government should use the local and national newspapers, as a means of distribution, specifically the community newspapers. The reason for the community newspaper is that it is free and it is delivered to all households in South Africa.

8.4.2. More Immediate Remedial Action

It may be more viable to start at identifying and monitoring those sections of the legislations that are problematic. This can be achieved by checking the cases that have gone to the CCMA, Labour Court and the Labour Appeal Court where the issues have been with the interpretation of the legislation or to investigate those sections of the legislation that have given raise to numerous disputes. It may be necessary to review these sections and redraft these problematic sections, using the principles of plain language; to test and implement these redrafted sections of the legislation and monitor whether the readjustments have led to an improvement.

8.4.3. Development of Expertise

The drafting of legislations needs a combination of skills from the legal, communication and language disciplines, as mentioned in the literature review. **(See Chapter 2)**

Legislators should be trained in the principles of written communication to the masses and plain language drafting. They should take seriously their obligation to users. These obligations are contained in the constitution of our country.

8.4.4. Possible Future Research

This study has been conducted on a sample of the population that will in the near future become part of the labour market; future research on plain language drafting should be directed at the actual workforce.

Testing of the legislation could be conducted on entire Acts and not on sections, as has been done in this study.

Research on plain language principles and drafting should also be conducted in the other official languages.

A feasibility study on the drafting of plain language legal documents could be undertaken.

A feasibility study on plain language and government administrative documentation for the public would be advisable.

8.5. Summation

If legislation is drafted in plain language, then people will be more confident to participate in the adoption process of the legislation and it would also encourage scholars to engage in research within this discipline. The principles and the process of plain language drafting can be applied to all the eleven official languages within the country, as in Canada, where the government is using plain language drafting principles in all their official documents.

At the end of this journey that has been undertaken to test the validity and reliability of the hypothesis with regards to plain language drafting, the words of Peter Butt in his paper on (12 Sept.2002) offer a fitting conclusion "I don't think it is difficult to justify the need for plain language law. Surely no one can argue that the laws that bind us ought to be obscure. Surely no one can argue that the Acts of Parliament that regulate us ought to be incomprehensible. Surely no one can argue that the documents we sign like contracts, agreement, wills, and the like – ought to be impossible to understand. To put it more positively, it surely must be better if the documents we sign are understandable. It must be better if, in a democracy, we could understand the laws that parliament passes. And yet we've all heard the adage: "ignorance of the law is no excuse" – Well, it holds true even if the law is cast in such obscure language that the ordinary person simply can't understand it.

No, there must be some good reason for using language that no one can understand. The trouble is – the deeper you delve the harder it is to find a good reason; the harder it is to justify the dense, contorted, self-important style of writing we associate with legal documents and statutes."

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