Seven Steps To Clearer Judgment Writing

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Judgment writing is a skill that can be learned, practised, improved and refined. A well-structured judgment enhances clarity and conciseness, and helps ensure that the reasoning process is complete. But how do judicial officers decide what to include and how best to express it? In this essay the authors provide a useful guide to judgment writing by breaking the task into seven distinct steps. These seven steps provide a framework for the content and structure of clear and transparent judgments.

Introduction

"Writing is *easy. All you do is look at the blank page*
until the drops of blood form on your forehead."
Red Smith

Judges must give reasons.[1] This essay, however, is not about the whys and wherefores of that basic premise. It is about the reason-giving process itself, in particular in written form. judgment writing is more an art than a science. It can be learned, practised, improved and refined, and many judges welcome the opportunity to hone their writing skills. judgments are, after all, the product of their judicial endeavour. They are available to be read, considered and analysed, into the future as well as immediately.

There is every motivation for judges to communicate well. Firstly, the parties to litigation need to understand the result and the reasons for it. Transparency is essential to our system of law and the public's confidence in it. Secondly, clear, well-written decisions are integral to the common law and the development of precedent through case law.

There are many articles and books about judgment writing.[2] We shall not attempt to repeat them, but rather to encapsulate their essential points and distil them into a pragmatic guide to clearer writing.[3] Our seven steps traverse the two main components of clear judgment writing - the structure and the content. At the outset, we emphasise the significance of structure: a well-structured judgment enhances clarity and conciseness, and helps ensure that the reasoning process is complete.

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1 *Pettit v Dunkley [1971]* 1 NSWLR 376 at 382 per Asprey JA.

2 See, for example, Sir Frank Kitto, 'Why Write judgments", reprinted in this collection, p 69; L Mailhot and JD Carnwarth, *Decisions, Decisions - A Handbook for Judicial Writing,* 1998 Les Editions Yvon Blais Inc, Canada; Professor E Berry, *Writing Reasons - A Handbook for Judges,* 1998, E-M Press, Quebec; Justice M Kirby, "On the Writing of *judgments' (1990) 64 Australian Law Journal 691;* Professor E Campbell, "Reasons for judgment: Some Consumer Perspectives"(2003) *77 Australian Law journal* 62; Professor E Campbell and Professor HP Lee, *The Australian judiciary, 200* 1, Cambridge University Press, Melbourne.

3 We do not profess to rank among the country's best legal writers. But we have been fortunate enough to attend extended judgment writing courses and workshops, in the course of which we have been exposed to excellent teaching, and imbued with enthusiasm to pursue the quest, not necessarily for more brilliant judgments, but for clearer, more comprehensible writing.

Just like a well-written short story or play, a judgment requires an introduction, a middle and an end. Lord Denning described the structure as follows:[4]

> "I try to make my judgments live ... I start my judgment, as it were, with a prologue - as the chorus does in one of Shakespeare's plays - to introduce the story. Then I go from act to act as Shakespeare does - each with its scenes drawn from real-life ... I finish with a conclusion - an epilogue again as the chorus does in Shakespeare. In it I gather the threads together and give the result...

This is more than structure for structure's sake. It provides the architectural framework of a judgment, to ensure that the issues are clearly stated, the relevant facts and law are appropriately analysed and a conclusion is reached that clearly reveals the reasoning process. The judgment should flow logically and in an organised manner from the introduction to the conclusion.

Step I Start before the beginning

The judgment writing process starts well before the end of the case, and well before a pen is put to paper or a dictaphone raised. In fact, it should start before the case begins. A great deal depends on the preparation for the case, which includes reading court documents (pleadings, affidavits, witness statements, the depositions, presentments or indictments) to identify the contested issues. It may also involve consideration of the legal principles or evidentiary rules that are likely to arise in the course of the hearing. AU of this assists the judge to understand the issues, even before the trial begins.

In many courts, written outlines of argument, openings, chronologies, statements of agreed facts, flowcharts or other documents must be filed before the trial begins. These also assist the judge's preparation. With a sound grasp of the case, the judge can then ensure that counsel opens with a focus and direction that will ultimately help form the judgment. Good advocates will generally do that of their own accord, striving to present the material sufficiently cogently, coherently and concisely to provide at least the cornerstones of a judgment favourable to their case.

In practical terms, a simple request that each party articulate the live issues (which frequently change, even from recently filed case outlines) can in itself achieve a great deal. Above all, it helps bring definition to the case both for counsel and judge. The issues, once clearly stated, provide the reference points for the hearing, for rulings on relevance and admissibility of evidence, for note-taking and, ultimately, for the judgment itself.

The judge's note-taking method is an integral part of judgment writing. It is particularly important in fact-rich cases, in order to marshal voluminous or complex material. The ideal methodology is personal, even idiosyncratic, but we offer the following hints. Each issue as outlined by counsel can be identified, perhaps set out on a separate notepad page. During the hearing, the relevant parts of the evidence, references and cross-references in transcript or notes, as well as any observations, can be gathered together there. Judges then have at their fingertips most of the material required to write about and make findings about particular

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4 Lord Denning, *The Family Story,* 1991, Butterworths, London, pp 207-208.

issues. In this regard, it may also be helpful to use topic headings, preferably in a contrasting colour, in the course of noting the evidence. judges who use electronic transcript and software such as *Transcript Analyser or Brief Analyser,* may make such notations electronically. These headings or notes provide considerable assistance in navigating the evidence when writing the judgment.

Of course a judgment cannot be concluded until the case has been heard in its entirety. However, that does not preclude a judge from working on a draft judgment during the hearing, in particular, much of the background, including any relevant chronology, can be prepared. This will help a judge recall the material if, for any reason, a case is adjourned part-heard or the judgment needs to be reserved for delivery at a later time.

Step 2 Use the first page

According to one expert,[5] the first page of a judgment is "prime real estate" and in a well constructed judgment, "the front page says it all". It is important to emphasise that the sound and clear construction of the first page is as much for the judge as for the reader. It sets the foundation and maps the course of the judgment.

The beginning of the judgment should be concise and uncluttered by unnecessary detail, such as the recitation of pleadings, legislation or case law. Try to set the scene simply and clearly, as a prelude to any further or complex description or analysis of the case. Set out succinctly the issues for determination. The reader should not have to sift through the judgment to find them. The judgment should readily disclose where it is heading and any relevant background.

As an essential ingredient of good communication, the start of a judgment should be interesting. The conventional opening to the effect: "This is an application pursuant to s 23A of the *Limitation of actions Act* 1958 for an order that..." is neither interesting, nor the most effective way to inform the reader of what is to follow. It has always been shunned by some, most notably Denning LJ. In his famous "bluebell time in Kent" judgment,[6] for example, Lord Denning skillfully described what the case was about in just three introductory paragraphs. He set the scene - the facts founding the claim, the nature of the claim and the issue for the court to resolve:

> "It happened on April 19, 1964. It was bluebell time in Kent. Mr and Mrs Hinz had been married some 10 years, and they had four children, all aged nine and under. The youngest was one. Mrs Hinz was a remarkable woman. In addition to her own four, she was foster-mother to four other children. To add to it, she was two months pregnant with her fifth child.
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> on this day they drove out in a Bedford Dormobile van from Tonbridge to Canvey Island. They took all eight children with them. As they were coming back they turned into a lay-by at Thumham to have a picnic tea. The husband, Mr Hinz, was at the back of the Dormobile making the tea. Mrs Hinz had taken Stephanie, her

5 Professor James Raymond, former Professor of Rhetoric at the University of Alabama.
6 *Hinz v Berry* [19701 2 QB 40 at 42.

> third child, aged three, across the road to pick bluebells on the opposite side. There came along a Jaguar car driven by Mr Berry, out of control. A tyre had burst. The Jaguar rushed into this lay-by and crashed into Mr Hinz and.the children. Mr Hinz was frightfully injured and died a little later. Nearly all the children were hurt. Blood was streaming from their heads. Mrs Hinz, hearing the crash, turning round and saw this disaster. She ran across the road and did all she could. Her husband was beyond recall. But the children recovered.
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> An action has been brought on her behalf and on behalf of the children for damages against Mr Berry, the defendant. The injuries to the children have been settled by various sums being paid. The pecuniary loss to Mrs Hinz by reason of the loss of her husband has been found by the judge to be some £115,000; but there remains the question of the damages payable to her for nervous shock - the shock which, she suffered by seeing her husband lying in the road dying, and the children strewn about."

Not all legal writers have the stature, the skill or the ability of Denning LJ. Certainly, to copy him is not necessarily a good idea. But one can learn from gifted writers and emulate the finer points of their judgment structure.

If old habits are hard to break, or "writer's block" sets in, a practical tip is to start the judgment as if talking to a colleague in chambers, or an intelligent but non-legal neighbour.

Step 3 Deal with the history and the facts

Judgments have traditionally begun with a description of the litigation to date, including a recitation of the pleadings. This makes for heavy reading and should not be included unless it is essential to an understanding of the issues to be decided. When describing how he avoided all reference to pleadings and orders, Denning LJ described them as "mere lawyer's stuff".[7]

Sometimes it will be necessary to recite a history of the litigation or a narrative of the facts, but mostly it will not. Overall, it is liberating for the judge as well as the reader to move away from a laborious recounting of every step in the litigation and the facts from A to Z. Only the facts or the history relevant to what is to be decided should be included. This is a particular challenge in cases where, for example, there is a complex history of litigation or a" cradle to the grave" factual scenario, as commonly encountered in family law or contested will cases.

Although it is rarely necessary to include the details of interlocutory proceedings, there are exceptions. For example, a vigorous contest about discovery may be relevant when there is an allegation of concealment of assets and a related dispute as to documentary proof of their existence or whereabouts, or where credit generally is in issue. The simple and reliable rule is that if nothing ultimately turns upon it, it should be left out.

The facts may be discussed in at least three parts of the judgment:

1. in the introduction, to identify issues or to add context or colour

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7 Denning, op cit n 4.

2. as part of a brief general narrative, early in the judgment, to establish time, place or order of events
3. in deciding the issues of fact or law, including credibility.

Care must be exercised when dealing with facts, to include no more than are necessary. A narrative of facts, some relevant and some not, is likely to distract and confuse the reader. Although it is tempting for a judge to demonstrate mastery of voluminous material by including the detail, a sound grasp is best demonstrated by distilling the facts to those necessary to resolve the dispute and explain the reasoning.

Complex facts can be difficult to handle in a concise and balanced way. The clearest example is in a family law case involving a myriad of allegations and counter-allegations, spanning a lengthy period. These cases are rarely confined to discrete transactions or events, typical of a contractual dispute or a personal injuries claim. They highlight the importance of the start of the judgment. Provided the direction of the judgment is clear and "the front page" sets the scene, only those facts pertaining to five issues need be addressed.

By way of illustration, in a case as to the division of matrimonial property, a history of property transactions throughout the marriage may be set out in the parties' material. Generally it should not form part of the reasons for judgment. But if the case involves a tracing exercise, in order to track moneys or assets claimed by one to be concealed by the other, it is clearly germane and should be included. Even then, those parts of the history which are agreed can be dealt with succinctly.

For example: "The parties agree that between 1981 and 1993 they bought and sold three homes. They further agree that the proceeds of each sale were used towards the purchase of the next home."

Findings on the disputed facts can then be made. There is no need to labour the process by reciting every aspect of the evidence. It is sufficient simply to summarise the area of dispute and to make a finding. Naturally that finding must be supported by reasons. The knack is to give sufficient reasons to clearly and briefly explain the decision. There is no need for the reasons to incorporate "an extended intellectual dissertation upon the chain of reasoning'.[8]

The credibility of the parties or witnesses is often an important part of the fact-finding process. Views differ as to where findings of credit should be made. According to some, they should be set out early in the judgment. Others include them when dealing with particular disputes. Largely, it will depend on the case. Where a party's credit is integral to the major areas of dispute, and there is a clear view as to his or her credit overall, then it may be convenient to note the findings early in the reasons for judgment. Where, on the other hand, credit is relevant to some disputed facts but not others, or where a witness has been apparently honest in some respects but not others, it may be more convenient to deal with credit as and when it arises in relation to a particular issue.

In making a finding on credit, it is sufficient to indicate a preference for one body of evidence over another and to explain the preference. (For example, because of the consistency of the

8 *Athens v Randwick city council* [20021 NSWCA 83.

evidence, the existence of corroboration or support by other evidence, a logical appeal, or because it was given in a reasonable manner.) It is usually unnecessary or undesirable to find that a witness was untruthful. It is suggested that a finding of dishonesty should be made only where the circumstances warrant it, for example, where there is an allegation of fraud or where there has been blatant dishonesty on matters critical rather than peripheral to resolution of the dispute.

There is a distinction between a rejection of the evidence of a witness and a finding that a witness has deliberately lied. In *Smith v NSW Bar Association,*[9] Brennan, Dawson, Toohey and Gaudron JJ pointed out that something additional to rejection of particular evidence is needed in order to establish deliberate lies. Deane j discussed some of the factors which lead to difficulty for a judge in determining whether a witness has deliberately lied:[10]

> "Unless it be truly necessary for the purpose of disposing of the particular case, however, a specific finding that a party or witness has deliberately given false evidence should ordinarily not be made. Ordinarily, a party or other witness will not be concerned or entitled to set out to establish that, if his or her oral evidence is ultimately found to be mistaken, the mistake was an honest one. As a consequence, material which serves only to establish that a party or other witness subjectively believes that his or her evidence is correct is likely to be inadmissible in the proceedings in which the evidence is given.'

Step 4 Set out the law

It is essential for the judge to identify and set out the legal principles applied in arriving at the decision. There is generally no need for a lengthy dissertation in a first instance judgment, although there will be occasions in superior trial courts when judgments should contain more expansive statements of law. Appellate courts, most of the time, discuss the law in greater depth than is called for in first instance judgments. In *The Australian judiciary,* Professor Campbell and Professor Lee write of ongoing concern about the length and prolixity of judgments.[11]

in an address to judges of the Supreme Court of New South Wales, Justice Mahoney, President of the New South Wales Court of Appeal, said:[12]

> "Judgments should refer shortly to the principles of law relevant to the determination of the question in dispute. If you do not remember to do this, then on appeal it may be argued that you did not know what the principles of law were or, indeed, that you did not know what you were deciding.
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> Sometimes the formulation of the question of law will be involved in, or overlapped by, the formulation of the question to be decided. But it may go beyond it. What will be necessary in formulating the question of law will, of course, depend on the particular case."

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9 (1992) 176 CLR 256 at 268; see also *Kirby J in State Rail Authority of NSW v Earthline Constructions Pty Ltd (in liq,)* (1999) 160 ALR 588 at 617-618.

10 *Smith v NSW Bar Association* (1992) 176 CLR 256 at 271.

11 Campbell and Lee, op cit n 2, p 230.

12 Justice Mahoney, "The Writing of a judgment", Supreme Court Annual Conference, 23 June l995.

When citing from a decided case, the passage of the judgment should be chosen carefully and frugally. Only so much of it as expresses the proposition in question should be quoted. Ideally, that may amount to no more than one or two sentences, rather than a paragraph, or several paragraphs. Of course, there are times when citing a longer part of a judgment may be necessary.

Often, a legal principle can be stated by paraphrasing, rather than by direct quotation. This approach makes judgments easier to read. The authority for the proposition of law should be given, either immediately before or immediately after the proposition, or as a footnote or endnote. The manner of citing authorities for legal principles is a choice made by the judgment writer, and may depend on whether the judge's court has adopted particular judgment writing guidelines or protocols.

To illustrate how a lengthy part of a previous judgment can be summarised, consider the following authority, as to the test to be applied in determining whether a discovered document is subject to a claim of legal professional privilege. Gleeson CJ, Gaudron and Gummow JJ said in a joint judgment:[13]

> "58. At first sight, sole purpose appears to be a bright-line test, easily understood and capable of ready application. Many disputes as to its application could be resolved simply by examining the documents in question ... If the only way to avoid the apparently extreme consequences of the sole purpose test is to say that it should not be taken literally, then it loses its supposed virtue of clarity.
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> 59. One of the considerations prompting rejection of the pre-existing test was that it was unduly protective of written communications within corporations and bureaucracies. The sole purpose test goes to the other extreme...
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> 60. A dominant purpose test was sufficient to defeat the claims for privilege *in Grant v Downs, and Waugh.* The reason why Barwick CJ, the House of Lords, and the New Zealand Court of appeal preferred that test was that they were unable to accept, as either necessary or desirable, the apparent absoluteness and rigidity of a sole purpose test. If the only way to avoid that absoluteness and rigidity is to water down the sole purpose test so that, in its practical application, it becomes more like the dominant purpose test, then it should be abandoned. Either the test is too strict, or it lacks the clarity which the respondent claims for it.
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> 61. It would be possible to seek to formulate a new test, such as that adopted by Jacobs j *in Grant v Downs,* or Deane j *in Waterford,* in a further attempt to adjust the necessary balance of competing policies. To do so, however, would produce only confusion. As a practical matter, the choice presently confronting this Court is between sole purpose and dominant purpose. The dominant purpose test should be preferred. it strikes a just balance, it suffices to rule out claims of the kind considered *in Grant v Downs and*

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13 Esso Australia Resources Ltd v The Commissioner of Taxation (1999)201 CLR 49 at [58]-[61] (references omitted).

> *Waugh,* and it brings the common law of Australia into conformity with other common law jurisdictions."

In deciding a claim of legal professional privilege, that judgment could be paraphrased as follows:

> "*In Esso Australia Resources Limited v The Commissioner of Taxation,* the High Court, by a majority, adopted the dominant purpose test. In their joint judgment, Gleeson CJ, Gaudron and Gummow JJ discussed the sole purpose test, established in *Grant v Downs,* and the manner in which it had been applied, and concluded:
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> > 'As a practical matter, the choice presently confronting this Court is between sole purpose and dominant purpose. The dominant purpose test should be preferred.'"[14]

Of course, it would be necessary to describe the dominant purpose test, and then to apply it to the disputed document or documents in the instant case.

Step 5 State the conclusion

As the beginning of the judgment introduces the subject matter, the conclusion should resolve each of the issues identified at the start. The ending should contain no new material, whether factual or legal, which has not previously been discussed.

Some judges choose to announce the result at the start of the judgment. Others, perhaps the majority, announce their decision at the end. There is no "correct" view. Traditionally, the decision is given at the end, thereby providing a logical flow to the judgment. Those who favour stating the decision at the beginning, justify doing so to ease the tension for those with an interest in the outcome of the case. They also acknowledge that most readers turn to the last page first in any event.

Whether to maintain the conventional approach or to declare the outcome at the start is a matter of personal preference. Ultimately the choice may be influenced by the type of case. For example, when sentencing a prisoner or deciding a dispute concerning the residence of children, revealing the decision immediately may be more humane, especially if the reasons for that pronouncement are lengthy and may take some time.

How the decision is reached must be evident. This is accomplished by adopting a transparent reasoning process, dealing with both the relevant facts and law. Whatever has influenced the decision should be stated in sufficient detail to thoroughly explain it. Some writers have described the task of the judge as being one of persuasion.[15] Arguably, the real obligation is to explain, publicly, how a decision has been reached, rather than to persuade the reader.[16]

After completing the decision, the proposed orders and relief granted should be stated.

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14 Ibid at [61].

15 See references in n 2.

16 See, for example, Gibbs j *in Russell v Russell* (1976) 134 CLR 495 at 520.

Step 6 Choose an appropriate style

Use plain language

Judgments should be easy to read. The use of plain, everyday language helps to achieve this. Unless there is a need for it, technical language and legal jargon should be avoided. This does not require judges to resort to an artificial, simplistic writing style, but rather to use normal and sensible words and phrases. Consider the following example:

Original:	"The argument as applied to the instant case is, in essence, that prior to and at the time of the rezoning application the nature of the project was clearly understood to be a condominium development."
Plain language rewrite:	"Counsel argues in this case that both before and at the time of the rezoning application the project was clearly understood to be a condominium development."

Develop a style with which you are comfortable

Judges develop their own techniques for writing judgments. justice Mailhot of the Quebec Court of Appeal and judge Carnwath of the Ontario Court of justice observed:[17]

> "One does not learn how to write well by simply reading textbooks. Only repeated practice of writing, together with an awareness of the importance of effective communication, can lead to favourable results.'

Each judge has an individual manner of expression. judgments should be expressed in a language and style which suits the decision-maker. As has already been observed, there are many admirers of the language and style of Lord Denning. Few could, with any success, or it is suggested should, attempt to write in his distinctive way. It is generally better for judges to write in their own style rather than mimicking another's, which does not come naturally and is bound not to read naturally either.

It is sometimes suggested that style should not be confused with substance and, that in writing judgments, it is substance rather than style which is important. This infers a conflict between style and substance. That this is not so is cogently argued by Edward Berry, the distinguished Canadian Professor of English and author, who has taught judgment writing to several generations of North American judges.[18]

When choosing a writing style, the judge should always be conscious of the effect of the judgment and particular findings on those who are concerned with it. Care should be taken to avoid injection of personal views, by adhering to the purpose of the judgment. This consideration may temper an inclination to humour, irony, trenchant criticism, anger or morality, although there are occasions when humour or the expression of moral value may be appropriate.[19]

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17 Mailhot and Carnwarth, op cit n 2, p 3.
18 Berry, op cit n 2, pp 75 -76.
19 Kirby, op cit n 2, pp 11 I- 1 25.

Simplify paragraph and sentence structure and composition
In composing judgments, careful thought should be given to both paragraph and sentence structure and composition. For example:

Original: "In this situation, I am of the opinion that the evidence that Mr Harris has given is somewhat inconclusive."

Alternative: "Mr Harris' evidence is inconclusive."

In addition to using plain language, employing shorter sentences, wherever practicable, is helpful. When long sentences cannot be avoided, they should be preceded and followed by shorter sentences, as variety in sentence composition retains the reader's interest and facilitates the flow of the judgment.

Paragraphs can also vary in length, from as short as one sentence, to many sentences. It is often effective to begin and end each paragraph with a transitional sentence, providing a link to the preceding and following paragraphs.

Use paragraph numbers, headings and subheadings
It is increasingly common to see numbered paragraphs in judgments, and for headings and subheadings to be used. Whether this is done is really a matter of preference for the judge or court. One positive consequence of numbered paragraphs is that it greatly assists in directing attention to a portion of a judgment. Using headings and subheadings is also helpful to those seeking to find a particular part of a judgment. It may also assist the judge by providing a checklist to ensure that all matters needing attention have been dealt with.

Use active rather than passive voice
For easier reading, employ the active, rather than the passive voice. This creates a more direct impact. Two simple examples illustrate this proposition.

Example 1

Passive voice: "He was acquitted by the jury".

Active voice: "The jury acquitted him".

Example 2

Passive voice: "It was reported by the engineer that the bridge was structurally sound and safe".

Active voice: "The engineer said that the bridge was structurally sound and safe."

Avoid Latin expressions and legalese
Although a judgment is a legal decision, resorting to formal language, including Latin phrases or expressions, should be avoided, unless there is a good reason to use such language or phrases. Some Latin expressions have become part of everyday language and their use cannot be avoided, for example, *subpoena, quorum and affidavit. Other* expressions, such as *viva*

voce, inter alia or nunc pro tunc can readily be substituted with expressions such as "oral", "among others" and "immediately'.

Consistent with the aim of using plain language, expressions such as "the said", "hereinabove mentioned" or "it is therefore ordered, adjudged and decreed" should not be used. There are suitable substitutes for such words and phrases. By writing clearly and concisely, the subject matter being discussed should be apparent, without resort to these expressions.

Avoid redundancy

It is tempting to explain the reasons for a decision by reference to the complicated nature of the proceeding or the issues to be resolved. Such rumination in a judgment increases its length, but does little to improve its quality. There is no purpose in saying, for example:

> "After reviewing all of the evidence, and weighing carefully the competing arguments advanced by the parties, I have decided that..."

Judges must carefully consider the evidence and the competing submissions made on behalf of the parties. There is no need to say that this has been done. Whether there has been a proper or sufficient scrutiny of the evidence, and whether the arguments advanced, especially by the losing party, have been sufficiently considered should be apparent to the reader from the contents of the judgment.

Step 7 Edit the judgment

It is commonly said that there is no such thing as good writing, there is only good rewriting. Preparing a draft judgment is hard work. But the hardest work begins when the draft judgment is finished. Good editing ensures that a judgment is lucid, thorough, coherent, concise and has transparent reasoning. It identifies flaws, such as the use of discriminatory language. Editing is a manifold task that should include:

- using a checklist of topics or issues to ensure that the judgment embraces all that it should and that all issues are resolved
- checking names, dates, figures and other data for accuracy
- eliminating repetition
- excluding irrelevant findings of fact
- pruning lengthy quotations of law, passages of transcript, or extracts from affidavits or documents tendered in evidence
- removing and replacing Latin expressions, jargon or outmoded expressions
- eliminating explanations of the obvious
- using the active voice rather than the passive voice, wherever possible
- simplifying lengthy, complex sentences and adopting short sentences, where appropriate
- checking the use of punctuation to avoid ambiguity and facilitate comprehension
- scrutinising the length and content of paragraphs.

Of course, time is a factor in determining how much editing is possible. But even when a decision must be delivered urgently, some editing is still required, especially to ensure that the decision covers all the issues raised for determination. Where there is no immediate pressure of time (other than the imperative to deliver a decision as expeditiously as practicable), a more thorough revision should be undertaken. The more a judgment is edited or revised, the better it will be, within reason.

Conclusion

For most judges, preparing judgments is the most demanding, challenging and even stressful part of judicial life. Paradoxically, it can also be the most creative and rewarding. The hints we have offered do not purport to provide a recipe for easy or fast judgment writing. But with the clarity that flows from sound structure and style, the writing process is likely to be more streamlined and judgments are likely to be shorter. For time-poor judges, with the pressure of case upon case, it is an attractive spin-off that judgments which are easier to read are likely to be easier to write.