

Commodification of contract drafting: a winning strategy

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In the world of contract drafting, Ken Adams is the guru.

For the past three years, the 48-year-old former corporate lawyer and self-described contract nerd based on New York's Long Island has held seminars around the world for lawyers eager to learn how to use clear and concise language when drawing up contracts.

His book, *A Manual of Style for Contract Drafting*, now in its second edition, has become a bible of sorts for solicitors.

Now, Adams is hoping the manual will serve as a "style guide" for law firms and corporate law departments seeking to establish rules for their lawyers to comply with when drafting contracts.

"This is a specialized form of writing that regulates conduct," he explains.

"The stakes are so high — every word matters. And mistakes tend to have bigger implications than they do in general writing."

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It can involve a simple matter of punctuation, as witnessed in a contractual dispute between Bell Aliant and Rogers Communications Inc. before the CRTC nearly three years ago over the use of a comma that created two possible interpretations of a clause.

Relying on the comma-less, French version of the contract, the commission eventually ruled in favour of Rogers.

(Rogers' counsel, Cassels Brock & Blackwell LLP, retained Adams to provide a 69-page affidavit on the implications of comma use.)

But while Fortune 100 companies have sought Adams's expertise in contract drafting, law firms are slowly starting to follow suit.

"It's a tough sales job, since writing is core to a lawyer's sense of professional identity, and lawyers are known for having a decent ego. So suggesting to lawyers, particularly partners, that the way they draft contracts is something to be desired is a bit of a challenge."

"You can't count on them responding well," he says.

"Furthermore, law firms are in the business of presenting themselves to clients as having unparalleled skills in certain areas and it would not be consistent with that for them to acknowledge that contract language is generic. They may well have strategic expertise that others don't have, but the language used to build it is a commodity."

In Adams's view, lawyers are "regurgitating" words penned by other lawyers, and the resulting language of mainstream contract drafting used by law firms is "dysfunctional."

Having a set of rules to direct the process would correct that, and his manual could serve as a "foundation" for a law firm to develop its own style guide, says Adams, who teaches the first-ever contract-drafting course at the University of Pennsylvania Law School in Philadelphia, from where he graduated in 1989.

He points out that associates and partners would then have to learn how to use that guide and contract templates would have to be redrafted. "There's no point in teaching people to draft contracts according to a set of rules if you're working with documents drafted by people unaware of those rules."

In some instances, law firms might have the volumes to warrant the commodification of the drafting process.

For instance, Palo Alto, Calif.-based Wilson Sonsini Goodrich & Rosati, which advises technology companies and venture capital firms in Silicon Valley, has created a free online WSGR (the firm's initials) Term Sheet Generator. Entrepreneurs and investors can use the document assembly tool to generate an "initial draft" of a term sheet for a preferred stock financing and then craft a "final, customized" term sheet with the help of lawyers.

Adams believes that ultimately, contract drafting should be a "commodity."

As he explains: "Any given deal is going to closely resemble any number of previous deals."

Creating unique contracts each time is to "reinvent the wheel" and thus, is "grossly inefficient" and detracts from a lawyer's prime tasks of determining strategy and negotiating a deal.

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Software, such as Business Integrity's ContractExpress Deal-Builder, which drives Wilson Sonsini's term sheet generator, can upload authorized template language — with alternative provisions to address different scenarios — onto a document-assembly system. A user would generate a contract by entering information in

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