

## **WHY Plain English should replace legalese in courts** By JOHN STURROCK

### **'Grandad, is it time for a change?' asks Gloagie**

"AVIZANDUM"

"What was that, Grandad?"

"Avizandum," said Grandad again, as he awoke from his slumber.

"So what does avizandum mean, Grandad?" asked the young boy. "You often whisper that in your sleep".

"Ah well, Gloagie" said the old man. "It's one of those snappy words that captures a whole lot... it means 'I am going to take time to consider my decision'. It's used by judges at the end of a case in court."

"Why?"

"Tradition and efficiency, my boy"

"Grandad, I was reading one of your big books the other day. It was all about craves and conclusions and prayers - they all seemed quite similar and I couldn't understand why these words were all used. Who understands them?"

"Those who need to know," winked Grandad.

"You mean the public and other lay people whose cases are in the courts?"

"Well now..." Grandad's voice drifted off.

"And what is a plea in law and a condescendence? Why do they use words like 'separatim' and 'esto' and 'brevitatis causa?'" persisted the boy.

"They provide concise and well-understood shorthand, Gloagie, to help the judges and lawyers to navigate their way through complex ideas with a common language.

"They have stood the test of time. Just like 'interlocutor' and 'humbly sheweth' and 'hereinbefore' and 'inter alia' and 'obiter dictum'..."

"Surely these are barriers, Grandad? Barriers to other people understanding what the court process is all about? How are people supposed to know what it is all about? Why can't they use plain English in the courts like everyone else nowadays?"

"Some things are timeless, Gloagie. We'd have to be sure that changing them wouldn't undermine the whole fabric of the system. Gradual change perhaps. But there's no proof that it will make things better. Change for change's sake.

"Next thing they'll want one format for all cases in court. A simple statement of what it is people are seeking, followed by the facts and maybe an explanation of the legal propositions they rely on. Where would that leave us?"

"I've been reading a book which says that, historically, lawyers have excluded the public from what they do by using unclear legal language. The book says that this allows lawyers to show they are different and enables them to maintain a monopoly on understanding."

"Probably written by someone with no knowledge of the law."

"It's endorsed by a former chairman of the English Bar. And it quotes a top American lawyer as saying 'there is probably no single reform that would improve the image of lawyers more than to get them to speak plainly and directly and understandably'."

"Res ipsa loquitur," sighed the old man as he slipped back into his slumber.

"Some things speak for themselves," muttered Gloagie as he shuffled out of the room.

- What do you think? Should lawyers use plain English that can be understood by people without a legal training? Is it time for the use of Latin terms to be abandoned? Would it make court proceedings easier to follow? Have your say by e-mailing your views to [law@scotsman.com](mailto:law@scotsman.com).