

McGill Law Journal accessible summary:

Readability deficits in decisions involving parties with unique reading needs

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Topic and importance

Court decisions should be readable by the people they most affect. Research suggests Canadian court decisions are routinely written at a level that large portions of the population will struggle to follow. However, without knowing more about the education and background of the parties involved in each case, it is hard to say whether those parties could understand the decision. This article investigates that question by focusing on two types of cases where readable decisions matter most: criminal cases against young people under the Youth Criminal Justice Act (YCJA); and cases where at least one party has no lawyer and is representing themselves (known as a self-represented litigant, or SRL). To measure readability, the article uses a specially designed tool called Madden's Adjudicative Decision Readability Score (MADRS), which gives each decision a score reflecting the level of education a reader would need to understand it. A score of 3 means a high school graduate could follow the text, and a score of 5 means a university degree is required.

Main arguments

In cases involving young people charged under the YCJA, the average decision scored 4.43, meaning most readers would need some post-secondary education to understand it. This is problematic because the young people these decisions are about are, by law, under 18 when the events in the decision happened. So, these people will almost never have more than high school educations before getting their decisions. Only 5.4% of decisions were written at a level those young people could easily understand on their own. Their lawyers may help to explain the decisions to them. However, the lawyers who represent young accused people are usually legal aid lawyers who are busy and under-resourced; reading and explaining a document of average length would take significant time that is rarely compensated.

The findings for SRL cases are even more striking. Those decisions averaged a score of 4.83, requiring close to a completed university degree to understand. Remarkably, these decisions are harder to read than the average decision in criminal cases where parties have lawyers. In other words, judges appear to write less simply when facing someone without legal training than when everyone in the room has a lawyer. This article suggests that judicial frustration with some types of difficult SRLs may partly explain the pattern. However, the least readable decisions in the study involved more sympathetic SRLs, so frustration alone cannot fully explain why SRL decisions are so unreadable.

Conclusion and additional considerations

Canadian judges routinely say they write their decisions for the parties before them, but this article's findings suggest that, in practice, they often fall short of that goal. Writing more readable decisions does not mean

writing less carefully or accurately, and judges have practical tools available to improve how they write, including writing workshops, peer feedback, and the example of colleagues who already write more accessibly.