

Making law accessible to the ordinary person

The use of simpler language is one step in a broader effort to redesign the law to be more human-centred and intelligible.

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For The Straits Times

Most people are not able to understand legal language on their own. Though technically they can access the law, they are not in any position to vindicate their own rights or defend themselves against legal challenges.

However, the Courts (Civil and Criminal Justice) Reform Act 2021 passed in Parliament last month is a welcome step in addressing this aspect for the ordinary person. Though the Act contains many important changes, it is those to simplify legal terminology that are interesting and have the potential to dramatically improve public access to justice.

For example, the archaic terms "in camera", "plaintiff" and "subpoena" will be replaced with the far more intuitive "in private", "claimant" and "order to attend court" respectively.

One way of looking at the changes is to see them as applying human-centred design principles to the law.

Design is an approach to problem-solving that emphasises understanding the perspective of the person who experiences a problem or need.

We are surrounded every day as consumers with examples of excellent design: take mobile phones, which despite being complex technology are so intuitively designed that they can be set up and working within a few minutes.

The same attention to user experience can and should be applied to law: This means asking how an ordinary person, whose rights and liabilities are at issue, what we can do to make his or her experience better. We should remember that the law is not primarily for lawyers or judges – it applies to everyone.

A FORCE FOR GOOD

Design principles have been slowly infiltrating into our law for some time now, though in a sporadic, implicit and unsystematic way.

In 2013, the Legislation Division of the Attorney-General's Chambers embarked on a project to modernise the language of Singapore's statutes.

It adopted a human-centred approach, conducting a public survey of over 1,000 respondents to determine how the readability of our laws could be improved.

The result was the Plain Laws Understandable by Singaporeans (Plus) project, an initiative that seeks to update the law and make it more understandable to the average person – for example, by taking out unnecessarily complicated language (like "hereby" or "heretofore") or simplifying phrasing ("for avoidance of doubt" will become "to avoid doubt").

The advent of "therapeutic justice" (TJ) in family law shows how human-centred design can be a powerful force for good. Though TJ principles have been slowly developing in the Singapore courts since the 1990s, in recent years there has been a decisive shift to TJ

as the main focus of the Family Justice Courts (FJC).

The Presiding Judge of the FJC, Justice Debbie Ong, has described TJ as a "lens of care" through which to view family law proceedings, and as a "problem-solving system".

Chief Justice Sundaresh Menon has recently said that TJ is defined by three themes: It must be holistic, taking account of both legal and non-legal issues; restorative, aiding parties in repairing relationships; and forward-looking, encouraging parties to focus on their shared futures and not their painful past.

FOUR WAYS FORWARD

Putting human-centred design into the law is welcome, but more can be done.

First, these principles could be implemented in a more systematic way. All proposed legal changes could be scrutinised to ensure that they comply with human-centred design best practices.

For a start, policymakers could incorporate a structured human-centric design process. This generally involves four stages: empathising with the target audience, defining the problem, testing solutions, and then delivering the final product.

Second, to support the first suggestion, policy-making officers and legislative drafters could be trained specifically in human-centred design. This helps to increase their empathy and also the effectiveness of their policy – since the solutions would need to be tested.

Training legislative drafters in human-centred design helps to ensure that the end-product, the law, is as readable as possible. The lessons of Plus should be preserved and expanded upon.

Third, human-centric design could be expanded beyond family law, to criminal law, for example.

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The adversarial nature of the criminal process can give the mistaken impression that the prosecution and defence are at loggerheads, each trying to "win" the case.

Actually, the prosecution, defence and court are all trying to reach a just result – one that balances the interests of society, the accused and the victims alike. The rationale for the adversarial system is that it is the best way to achieve this balance – but that can sometimes get lost in the sound and fury of a trial.

Perhaps it is time to consider whether fundamental reforms are necessary here as well: For example, the law on criminal disclosure – the process by which the prosecution has to show its evidence to the defence before trial – keeps getting more and more complex. The law tries to strike a balance between disclosing enough evidence to the defence to conduct its case, without undermining the prosecution.

Maybe the solution is to reframe the problem and ask how the two sides can perform complementary, instead of competing, functions when reviewing evidence so that issues can be narrowed down and trials sped up.

Modern trials, with the advent of digital evidence, are increasingly likely to involve thousands of documents and hundreds of gigabytes of digital data. Working together may serve the purposes of justice more than working apart.

Fourth, human-centred design could help break down silos and make the law more interdisciplinary. For example, Stanford University has a Legal Design Lab, in which lawyers and designers work together on making law more intelligible.

One of their projects involves taking court correspondence,

traditionally dense and text-based, and altering it using visual design principles to be more readable by breaking up the text and using text boxes, images and symbols.

In Singapore, court correspondence is still very much text-based, but there is no reason why visual design elements cannot be incorporated, if those elements are demonstrated to increase access to justice.

Another example is the Civil Resolution Tribunal of British Columbia, Canada – the counter staff hired by the tribunal are not paralegals, but trained hospitality staff. This was because its research showed that tribunal users were likely to be stressed and confused when coming in – and so the first job was to provide them with empathy and reassurance. Similar steps could be taken here in Singapore, especially in the FJC, which has already made TJ its lodestar.

GREATER ACCESS TO JUSTICE

While legal terminology is often changed and tweaked when laws are amended, the Courts (Civil and Criminal Justice) Reform Act stands out because of the reason for the changes – not technical enhancement, but simplification to enable greater access to justice.

Together with the Plus project, which aims to revamp existing laws to make them more understandable, it shows how laws can be redesigned to put ordinary people first.

Simplifying language is but the tip of the iceberg, as true commitment to human-centred design could completely revolutionise the user experience of the law: not just streamlining procedures, but also delivering greater understanding and more productive outcomes.

The law affects everyone and therefore should be understandable to everyone.

Though some degree of complexity is inevitable, as far as possible, laws should be kept simple. There is a saying, attributed to Albert Einstein: "Genius is making complex ideas simple, not simple ideas complex." Law is man-made; its complexity is likewise man-made. Complexity in law is a design problem and should be solved using design tools.

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