Article 536 par. 1 of the Quebec Code of Civil Procedure

An application for recovery of a claim not exceeding $15,000, excluding interest, or for the resolution, resiliation or cancellation of a contract provided neither the value of the contract, nor the amount claimed, if any, exceeds $15,000, is instituted under the rules of this Title if the plaintiff is acting in their own name and for their own account or is acting as administrator of the property of others, tutor or curator or under a protection mandate.
dark, allowing very little light to pass. How do we find the treasure in this house? How do we find the meaning, the legislative message, in these obscure texts?

[Subtitle]

Research in law sheds light on the importance of how legislative texts are drafted

Mistrale Goudreau [Professor, Faculty of Law, Civil Law Section]:
[In front of camera]
My name is Mistrale Goudreau, and my research focuses on intellectual property, law and technology, and the drafting of laws. To ensure access to justice, laws must be understandable; that's why I do this research.

Éliane Boucher [Master’s candidate, Faculty of Law]:
[In front of camera]
My name is Éliane Boucher, and my research focuses on the principles of linguistics applied to the drafting of laws.

Mistrale Goudreau:
[In front of camera]
Laws have often been drafted without respect for the lessons of linguistics, or the concepts, or principles of legislative drafting standards.

Éliane Boucher:
[In front of camera, with text below appearing beside her]
So, we end up with laws that, in theory, are addressed to everyone—that are addressed to citizens—but that are very difficult to understand because of the way the sentences are constructed. The basic principles for plain language writing are relatively simple. We try to keep sentences short; we try to favour what we call the active voice; we also try not to use double negatives—strategies like that.

obscure writing = uncertain interpretation

short sentences
active voice
double negatives

Our research, therefore, aims to analyze the law from the perspective of linguistics and principles of readability and comprehension, and to find ways to make the text of the law more clear.

[Subtitle]

Interdisciplinarity

Mistrale Goudreau:
I have never relied on one single theoretical framework or used only one methodology. I have sometimes called upon approaches that are more philosophical. There have been times when I have looked to psychology to try to learn lessons about respect for the law. Currently, with my students, I am pushing towards semiology and linguistics. So that’s a new methodology that I use.

Éliane Boucher:

It fits in with the larger steps that are being taken across Quebec and Canada to promote access to justice. Ultimately, it’s clear that everyone is better off when we have laws that we can understand.

Mistrale Goudreau:

If the rule is going to apply to the general public, it is important that the rule be simple and clear in its application—that the public knows exactly what is allowed and what is not allowed.

transparent writing = coherent interpretation

Interpretation of the law sometimes presents major challenges in complex areas such as copyright law

Mistrale Goudreau:

Copyright concepts are difficult to understand because they are very complex; they can be understood in different ways. My research has shown me that, in many cases, laws have been written without following writing conventions or without following the lessons learned from linguistics. What is a reproduction? If someone makes a film adaptation of a novel, is it a reproduction of the novel?

This has led the legislator to multiply legislative definitions, a bit like “Humpty Dumpty”, the well known character from Lewis Carroll's novel Through the Looking Glass. In the novel, Humpty says to Alice: “When I use a word, it means just what I choose it to mean—neither more nor less.” Alice replies: “The question is whether you can make words mean so many different things.” Humpty Dumpty answers: “The question is which is to be master—that's all.”

How can laws be written to produce effective public policies?

Mistrale Goudreau:

If I were given a blank slate, what we would find is a legal expert and a policy developer together, pen in hand, jointly writing the law. If we had listened more closely to the legal expert, the laws would be different in terms of form but also in terms of substance. So the fact that the legal expert is with the
policy developer, in my mind, would improve how policies and laws are drafted and designed because everyone would understand that their task is hybrid. That is, the policy developer should be interested in the law writer’s task and the law writer should be interested in the development of the policy. Ultimately, both must understand that their tasks must be done in dialogue.

ACCESS TO JUSTICE

a question of form

a question of substance

better written policies and laws

a hybrid task

a dialogue

Nicolas Boileau wrote: “Without language, in a word, the most divine author is always, no matter what he does, a bad writer.” I would say, without well-written laws, the decision-maker state is always, no matter what it does, a poor regulator.

[Subtitle and text]

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Mistrale Goudreau
Éliane Boucher

[Logos: Barreau du Québec; Chambre des notaires; The Law Foundation of Ontario; Université de Montréal; Social Sciences and Humanities Research Council of Canada; uOttawa; Conseil de la magistrature du Québec]

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