

CHAPTER 3

RESEARCH METHODOLOGY

3.0 INTRODUCTION

This chapter discusses firstly, the sample, secondly, the investigative tools, thirdly, the research procedure and fourthly, the method of data analysis.

3.1 THE SAMPLE

The subjects of this study consist of eleven lawyers, all from Seremban. Their years of experience in the legal profession range from three to eighteen years. All the eleven subjects are litigation lawyers, hence the drawing up of affidavits is a routine procedure. Two of the subjects run their own firms individually, six of them run their firms with legal partners and three of them have not established their own firms but are employed by other firms. The details of the sample are shown in Table 1:

Table 1

The sample according to years of experience and employment.

Respondents (R)	Years of Experience	Employment
R1	3	Employed by a firm
R2	3	Employed by a firm
R3	3	Employed by a firm
R4	4	Legal Partner
R5	5	Legal Partner
R6	5	Legal Partner
R7	8	Legal Partner
R8	8	Legal Partner
R9	9	Legal Partner
R10	11	Own Firm
R11	18	Own Firm

3.1.1 Criteria for Choosing Subjects

The following criteria were used to select the subjects:

- 1) All subjects were chosen from one locality i.e. Seremban.
- 2) Those who have only worked as lawyers and held no other profession earlier were chosen.
- 3) Subjects selected had to have experience in handling litigation proceedings, and in writing affidavits in English for maintenance and custody matters as well as land dealings.
- 4) Only those who use English at home, at work and in their social life were selected as subjects.
- 5) Two groups of lawyers were chosen. The first group comprised lawyers with less than seven years experience in the legal field. The second group comprised lawyers with more than seven years experience in the legal field. The dividing line between junior and senior lawyers is taken to be seven years because according to the *Legal Profession Act 1976* (1994), a lawyer with more than seven years working experience in the legal profession is considered a "master".

3.2 INVESTIGATIVE TOOLS

The investigative tools of this research comprise facts of two cases, drafts and fair copies and a semi-structured interview.

3.2.1 Facts of Cases

The facts of two cases, Case 1 (a matter of custody and maintenance) and Case 2 (a land deal) (Appendix A), were constructed by an experienced lawyer who has been handling litigation cases for 20 years.

The facts of both the cases were distributed to each of the respondents who were requested to draft two affidavits independently, based on the given facts.

3.2.2 Drafts and Fair Copies

Each respondent (R.1 to R.11) prepared individually, drafts and fair copies for the respective cases given to them. The drafts (D) and fair copies (F.C.) of the eleven respondents (R.1 to R.11) were labeled as D.1(a), D.1(b) to D.11(a), D.11(b) and F.C.1(a), F.C.1(b) to F.C.11(a), F.C.11(b), where (a) refers to Case 1 and (b) refers to Case 2.

3.2.3 Semi-structured Interview Questionnaire

A semi-structured interview questionnaire (Appendix B) was prepared as a guide to the researcher during the interview. The respondents were not given a copy of the questionnaire, so

that the information elicited thus, would preserve individualism and originality. The interview tapes of the eleven respondents (R.1 to R.11) were labeled I.1 to I.11.

3.3 RESEARCH PROCEDURE

This study investigated how lawyers drafted and finally wrote affidavits based on given facts of two cases. Specifically, it examined the writing styles and strategies used by the lawyers in the writing of affidavits. It also examined whether years of experience in the legal field, influenced the writing of affidavits.

First, a pilot study was carried out with three lawyers using the facts of Case 1, Case 2 and the semi-structured interview questionnaire. The data of the pilot study was collected after three days and analyzed. Next, the facts of Case 1 and Case 2 were administered to the 11 subjects of the study (R1 - R11). Their drafts and fair copies were collected after three days and analyzed. Finally, subjects (R1 - R11) were interviewed individually using the semi-structured questionnaire.

3.3.1 Pilot Study

A pilot study was carried out prior to the research. The aim was to discover if any changes were necessary in the facts of Case 1 and Case 2, and in the interview questionnaire. The subjects comprised three lawyers, one senior lawyer and two junior lawyers. The facts of the two cases, Case 1 (a matter of custody and maintenance) and Case 2 (a land deal) were distributed to the three subjects. They were then requested to draft two affidavits individually, based on the facts of the two cases. The drafts and fair copies were collected after three days and analyzed. The respondents were then interviewed individually using the semi-structured

questionnaire. The respondents had no problems in understanding the facts of the cases and the questions asked during the interview. Moreover, the data obtained from the drafts, fair copies and interview were found to be appropriate and sufficient for analyzing the writing styles and strategies in the writing of affidavits.

As such, no changes were made to the facts of Case 1 and Case 2, and the questionnaire.

3.3.2 Administration of Facts of Cases

The facts of Case 1 and Case 2 were handed out to the eleven subjects. They were requested to draft the two respective affidavits and then prepare the fair copies of their drafts. A time period of three days was allocated to the respondents to prepare the affidavits.

3.3.3 Labeling of Drafts and Fair Copies

The data consisted of twenty-two drafts and twenty-two fair copies of affidavits from the eleven respondents. Each respondent's drafts and fair copies were collected and labeled as follows:

Table 2

Categorization of drafts and fair copies according to respondent's years of experience.

Respondents	Years of Experience	Drafts (D)	Fair Copies (F.C.)
R1 to R6	3 - 6	D.1(a), D.1(b) to D.6(a), D.6(b)	F.C.1(a), F.C.1(b) to F.C.6(a), F.C.6(b)
R7 to R11	8 - 18	D.7(a), D.7(b) to D.11(a), D.11(b)	F.C.7(a), F.C.7(b) to F.C.11(a), F.C.11(b)

3.3.4 Examination of Drafts for Writing Styles

Each draft was investigated individually to study the writing styles of drafts. The drafts were analyzed to determine whether the writing styles of lawyers, in the writing of affidavits were determined by the choice of words and sentence types, the arrangement of words and sentences, and the ideas conveyed.

3.3.4.1 Choice of Words

To determine the choice of words used in the drafts, the following were studied:

- 1) Are technical words used and is there a recurrence of technical words?
- 2) Are Latin words used, because the English language is derived from both words of Latin origin and words from Anglo-Saxon origin. In a selection of words, there are instances, where the word of Latin origin is preferred, for it expresses the thought well.
- 3) Are abstract and archaic words used?
- 4) Are legal tautologies and compound constructions frequently used?
- 5) Are active verbs or passive verbs used? Rylance (1994) says that the main advantage of using active verbs is that they force the writer to be specific and direct.

3.3.4.2 Sentence Types and Sentence Structures

To determine sentence types and sentence structures the drafts were analyzed for the following:

- 1) Are the sentences statements (declarative), questions (interrogative), commands/ instructions (imperative) or exclamations (exclamatory).
- 2) Are the sentences simple, compound or complex sentences?

3.3.4.3 Arrangement of Words

To determine the arrangement of words in the drafts the following were investigated:

- 1) Is the emphatic word order employed?
- 2) Are the beginnings and the endings of sentences emphasized?

3.3.4.4 Arrangement of Sentences

The arrangement of sentences in the drafts were investigated:

- 1) To determine if the order of the drafts are logical and there is organisation of the facts presented. One of the five drafting rules as propounded by Davidson in his *Precedents and Forms of Conveyancing* as cited in Aitken (1991), is that, the order of the draft should be strictly logical. According to Aitken (1991), in his book *The Elements of Drafting*, the pattern in which facts are presented is also taken into view because organization of material and logical arrangement, layout and typography are aids to understanding.

3.3.4.5 Ideas Conveyed

The drafts were also investigated to determine what the ideas conveyed are.

3.3.4.6 Differences in Writing Style

The drafts were investigated to determine if in the writing of affidavits, the writing style between junior and senior lawyers differ.

3.3.5 Examination of drafts for Writing Strategies

Each draft was investigated individually to study the writing strategies of drafts. The drafts were analyzed to determine whether the writing strategies of lawyers, in the writing of affidavits include the recursive nature of writing and constant revision in terms of form, grammar and 'chunks of discourse'.

3.3.5.1 Recursive Nature of Writing

The drafts were investigated to determine if the "recursive nature of the writing process" is one of the writing strategies engaged by lawyers in the writing of affidavits. Perl (1980 (a)) cited in Kelly (1984), in studying the strategies of more skilled writers discovered what she described as "retrospective structuring" i.e. movement forward occurs only after one has reached back. Murray (1980) cited Kelly (1984) also sees writing as recursive rather than linear i.e. to learn what to do next the writer looks within the piece of writing rather than following a plan or a model.

3.3.5.2 Constant Revision

The drafts were also investigated to determine if "constant revision of their writing" which includes revision in form, grammar and 'chunks of discourse' is another writing strategy engaged by the lawyers in the writing of affidavits.

3.3.5.3 Differences in Writing Strategies

The drafts were investigated to determine if in the writing of affidavits, the writing strategies employed between junior and senior lawyers differ.

3.3.6 Examination of Fair Copies

After the examination of the drafts, each fair copy was examined to determine, if any further changes were made in the fair copies before the fair copies were ready for submission.

3.3.7 Conducting the Semi-structured Interview

The eleven respondents were interviewed individually a day after their affidavits were collected. The entire interview with each respondent was audio taped. The respondents had a copy of their drafts and fair copies during the interview. Through this interview, the researcher aimed to obtain the respondents' opinions and perceptions about their writing styles and the strategies used in the drawing up of the affidavits. The semi-structured interview questionnaire comprising eleven questions of which, two questions are on the procedure for writing affidavits, four questions on writing styles, two questions on writing strategies and three questions on suggestions / views were used to gain insight into the thinking process involved in the writing of

affidavits. The respondents were also asked to explain the way their affidavits were written and whether institutional conventions were used as guidelines. They were further questioned on the use of keywords and the alterations made in their respective drafts. The interviews were also conducted to find out why affidavits are written the way they are, taking into consideration what is said by Bhatia, (1987) "considering the extent to which it is governed by tradition and convention and the extent to which it is dictated by necessity by the fact that there is no other way in maintaining the clarity, preciseness, lack of ambiguity and specification of scope required." (citing Swales and Bhatia, 1983).

3.4 METHOD OF DATA ANALYSIS

Three sets of data were analyzed: the drafts, the fair copies and the interview findings. The data obtained were analyzed based on the research questions. The findings from the three different sources of data were then brought together, to triangulate them in answering the research questions. The data was obtained from the following:

3.4.1 Drafts

- 1.) To determine the frequency of the choice of words, a percentage count of technical words, archaic words, abstract words, legal tautologies and compound constructions was done in the body of each affidavit. The body of the affidavit was chosen because it is the part that contains evidence (The College of Law, 1996).
- 2.) (a) To determine the frequency of occurrence of sentence types, a percentage count of statements, questions, commands / instructions and exclamations was done in the body of each affidavit.

- (b) To determine whether the sentences are in the active voice or passive voice, a percentage count of active and passive sentences was done in the body of each affidavit.
- 3.) To determine sentence structures, a percentage count of simple and, compound and complex sentences was done in the body of each affidavit.
- 4.) To analyze the arrangement of words, a description of whether the emphatic word order (refer to Subsection 3.3.4.3) is employed in the conclusion of each affidavit was done.
- 5.) To analyze the arrangement of sentences, a description of the order of facts presented was done in the body of each affidavit. According to Aitken (1991) the facts can be presented in a chronological order, ascending order of importance or descending order of importance.
- 6.) To analyze what the ideas conveyed in the affidavits are, it was explained whether the ideas are relevant or irrelevant to the facts of the cases given.
- 7.) The writing styles in terms of choice of words, sentence types and structures, and arrangement of words and sentences of the two groups of lawyers were compared to determine if they differed.
- 8.) To identify if the 'recursive nature' of the writing process was employed, it was explained whether the drafts showed signs of retrospective structuring.
- 9.) To determine if there was 'constant revision' of their writing, count of times there were changes in form, grammar or 'chunks of discourse' was done.
- 10.) The writing strategies (in terms of the recursive nature of the writing process and 'constant revision' in their writing) between the two groups of lawyers were compared.

3.4.2 Fair Copies

The data collected was studied and the following predetermined themes were identified and recorded:

- i) Whether the fair copies showed any form of further alterations in terms of form, grammar or 'chunks of discourse' from the drafts.
- ii) Whether the fair copies conformed to the prescribed form of affidavits.

3.4.3 Interview

The data obtained from the interviews was analyzed. Since the interview questions were partially structured, the analysis of data was as follows:

- i) Questions 1 and 2 pertain to the procedure for the writing of affidavits and how drafts are drawn up.
- ii) Questions 3 to 6 pertain to the individual writing styles of lawyers, the choice of words and types of sentences used and how these words and sentences are arranged to give logical organization of facts presented. Also, what the ideas conveyed in their affidavits are.
- iii) Questions 7 and 8 pertain to the writing strategies used by lawyers and whether the lawyers need to go back to what they have written, in order to move forward. Also, whether the lawyers constantly revise their writing by making alterations in their drafts.
- iv) Questions 9 to 11 pertain to the role that precedence, writing experience and frequency of writing affidavits play in the writing of affidavits.