

CHAPTER FIVE

IMPLICATIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

The aim of this study was to determine the writing styles and strategies used by Malaysian lawyers in the writing of affidavits. I have chosen as my sample both junior and senior lawyers to gauge how experience in the legal profession plays a vital role in determining the ability and capability of Malaysian lawyers in writing affidavits.

In an attempt to answer the research questions (Subsection 1.4.2), I have specifically examined affidavits written by 11 lawyers, comprising 6 junior lawyers and 5 senior lawyers, all in the range of 2 – 18 years of legal experience.

In this chapter, the findings on writing styles and strategies employed by lawyers, in the writing of affidavits, recommendations to equip lawyers with a good command of the English language, legal knowledge and experience in the legal domain mentioned above, together with suggestions for further research are presented.

5.1 SUMMARY OF MAIN FINDINGS

The summary of the main findings of this research is as follows:

1. The writing styles of lawyers, in the writing of affidavits are determined by the choice of words, which comprise technical words, archaic words, abstract words, legal tautologies and compound constructions. Of these, technical words and archaic words

are the most used by all lawyers. Abstract words, legal tautologies and compound constructions are not used as much as technical and archaic words (Subsection 4.4). The senior lawyers use a higher percentage of all types of words mentioned above (Subsection 4.1.8). The largest difference between junior and senior lawyers is in the use of technical words, 1.45%. The smallest difference between both these categories of lawyers is in the use of compound constructions (0.06%) (Subsection 4.1.8)

2. The writing styles of lawyers in the writing of affidavits are also determined by sentence types. Statements are the most relevant sentence type in the writing of affidavits (Subsection 4.4). The majority of these statements are in the active voice as compared to the passive voice. 90.21% of the total sentences in the drafts of the junior lawyers, and 93.36% of the total sentences in the drafts of the senior lawyers are in the active voice (Subsection 4.1.8). Junior and senior lawyers use more compound and complex sentences compared to simple sentences. Of the total number of sentences, junior lawyers use 93.4% compound and complex sentences and senior lawyers use 97.4% compound and complex sentences. (Subsection 4.4).
3. The emphatic word order is employed by all lawyers, in the arrangement of words in the sentences in the Conclusion (Subsection 4.4). The findings reveal that the lawyers convey their messages and opinions regarding the cases, to the Judge by emphasizing the beginnings and endings of the sentences. The most important material is in the beginnings and endings of the sentences and the less important material is in midsentence.
4. In the arrangement of sentences, all lawyers arrange their facts in the chronological word order for Case 1 and in ascending order of importance for Case 2 (Subsection

4.4). The chronological word order is used when evidence is clear, readily comprehensible and admissible as in Case 1. The ascending order of importance is used when the client's understanding of the most complex issues is assisted by prior understanding of the simpler issues (Subsection 4.16).

5. The ideas conveyed in the drafts are relevant and pertain to the facts of the cases. Junior lawyers tend to elaborate the facts of cases whereas the senior lawyers write accurately, briefly and precisely.
6. Years of experience in the legal profession influence the writing styles of lawyers, in terms of choice and arrangement of words and sentences as well as ideas conveyed. Writing strategies comprising 'the recursive nature of writing' and 'constant revision' employed by lawyers, in the writing of affidavits are also influenced by years of experience.
7. In employing writing strategies, lawyers write in a recursive manner. They go back and forth on what they have written, in order to move forward.
8. 'Constant revision' 'is another strategy employed by all lawyers. Lawyers constantly revise in terms of form, grammar and 'chunks of discourse'. Junior lawyers make more alterations in terms of form and grammar compared to senior lawyers and senior lawyers make more content level changes compared to junior lawyers.

5.2 IMPLICATIONS

This study has several implications for the teaching of writing to law students and to junior lawyers. The results of this study firstly, provide support for a good command of legal knowledge (content and vocabulary) in the writing of affidavits as a requirement for solicitors. Without this requirement a solicitor will face difficulty drafting an affidavit for the deponent. The initial procedure for writing affidavits shows that the solicitor has to be equipped with a good command of legal knowledge. Besides understanding the facts in the document, it is also pertinent for a solicitor to have a discussion with the deponent so as to adduce information required to reply to the said document. Having done so, the solicitor can then commence preparing a draft for the deponent's perusal before the same is printed out. The purpose of the perusal by the deponent is to ascertain the accuracy of the facts stated therein in reply to the document. The contents are explained, interpreted or translated to the deponent for his confirmation as to the accuracy of facts and his intentions. The solicitor then can embark upon polishing the draft in respect of language, grammar and choice of words, as well as ensuring that he has adhered to the requirements and / or the format of affidavits. This final step in the procedure for writing affidavits also implies that literary style is important in the teaching of writing to law students and junior lawyers.

Secondly, it is advantageous if students enrolling for a law course have a high level of proficiency in English and in the duration of the law course, writing skills should be taught to law students. Writing skills is a requirement because similar to any other form of writing, legal writing including the writing of affidavits requires writing skills comprising the use of precise words and terminology to give effect to precision, accuracy and comprehensiveness; also using

correct grammar, writing to the point with an economy of words and expressing relevant ideas in complete sentences.

Thirdly, this study further implies that the practice effect is evident in impacting a solicitor's development in the writing of affidavits. In so far as the writing of affidavits is concerned, lawyers who write affidavits frequently, are able to comprehend the issues at hand and then, are able to marshal facts in order, with circumstances provided to produce a complete narration of facts. This implies that solicitors improve their literacy skills by way of practice. They should also use precedence and convention as the building blocks to their affidavits.

5.3 RECOMMENDATIONS

The following recommendations are made so that law students who enter legal practice directly upon graduation are equipped with the necessary language expertise because the relationship between law and language cannot be denied.

Firstly, students enrolling for a law course should seek to improve their standard of English. They should work at minimizing grammatical errors and they should learn to be versatile in their writing abilities.

Secondly, law schools instead of placing emphasis only on legal knowledge imparted should also attempt to instill writing in their syllabus. These writing skills in English should be incorporated into the legal syllabus and not to be detached. Law students should be taught legal skills and writing style.

Thirdly, junior lawyers who are still handicapped in linguistic expertise in the writing of affidavits should continue to use precedence and convention as a foundation to the writing of

affidavits. Another alternative would be to emulate often, senior lawyers or their masters in acquiring the style and skills required in legal writing in general, and specifically in writing of affidavits.

5.4 SUGGESTIONS FOR FURTHER RESEARCH

As this is a study pertaining to writing styles and strategies in the writing of affidavits, the results cannot be generalized to the writing styles and strategies of other legal documents in English. Hence, more studies of this nature can be conducted especially studies on legal correspondence between clients and lawyers and the drawing up of agreements and wills to see if they yield similar results. This will help us to understand the prerequisites a solicitor should possess in terms of language proficiency, knowledge of legal content and legal language combined with writing skills, in order to be able to produce legal documents.

Another suggestion for further research is the study of a bigger sample of respondents, comprising junior and senior lawyers from all states in this country. This will definitely provide a more detailed description of the writing styles and strategies of Malaysian lawyers in writing affidavits.

5.5 CONCLUSION

In seeking to determine and classify the writing styles and strategies of Malaysian lawyers in the writing of affidavits I hope to shed more light on the interdependability between language and the law. A solicitor who is well versed in the law and simultaneously has language expertise will be able to perform exclusively well in producing affidavits. All this involves skill in the choice of words, the order in which they are put and the structure of sentences. Every

word is chosen and every sentence is composed with great care to convey the legal message because there is a need for precision and unambiguity. The standard of clarity, accuracy, grammar and stylistic elegance are important related skills in the writing of affidavits. Finally, as writing is highly stylistic, lawyers have to develop their individual writing style to give credit to the affidavits drawn up.