



SAO LEGAL WRITING

Effective Decision Writing: Key Principles & Best Practices

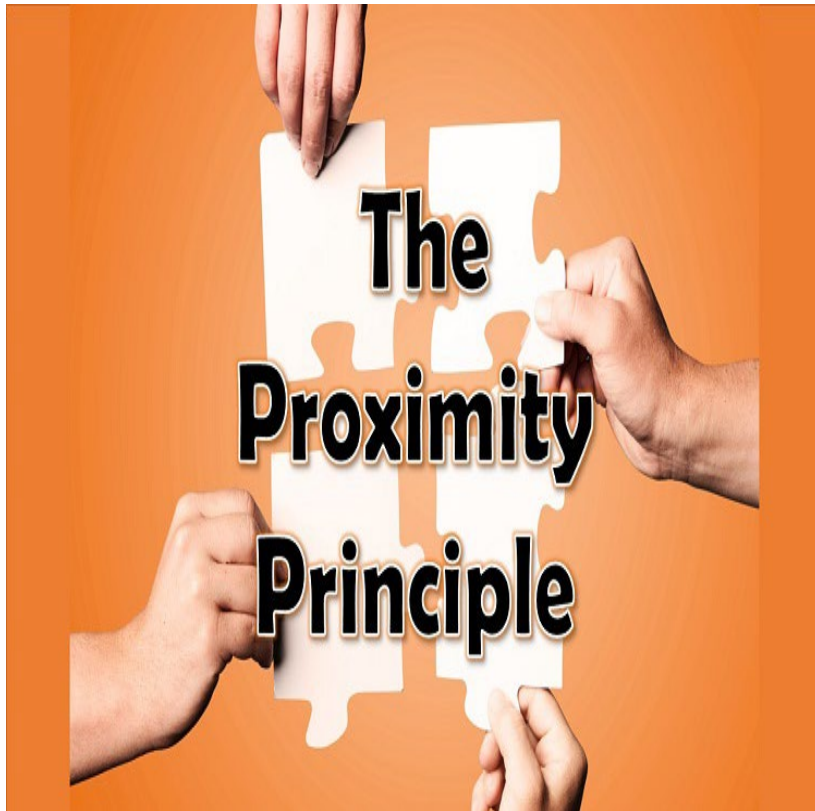
Part 2

Workshop Presented to BCCAT

November 6, 2024

Principle 3:

Group related information together



- Structure decisions around the issues
- Build unified & cohesive paragraphs
- Connect ideas explicitly

1. Structuring decisions around the issues

- Identify the specific issues to be decided in the opening section
- Organize the analysis section by issue
- Analyze each issue separately to arrive at the ultimate disposition
 - Discuss & organize the facts, evidence, submissions, & law by issue
 - Provide a reason for every conclusion
 - Place the relevant evidence & analysis close to the conclusion they support

Traditional structure

Introduction

- Usually very brief & generic

Facts

- Chronological or thematic

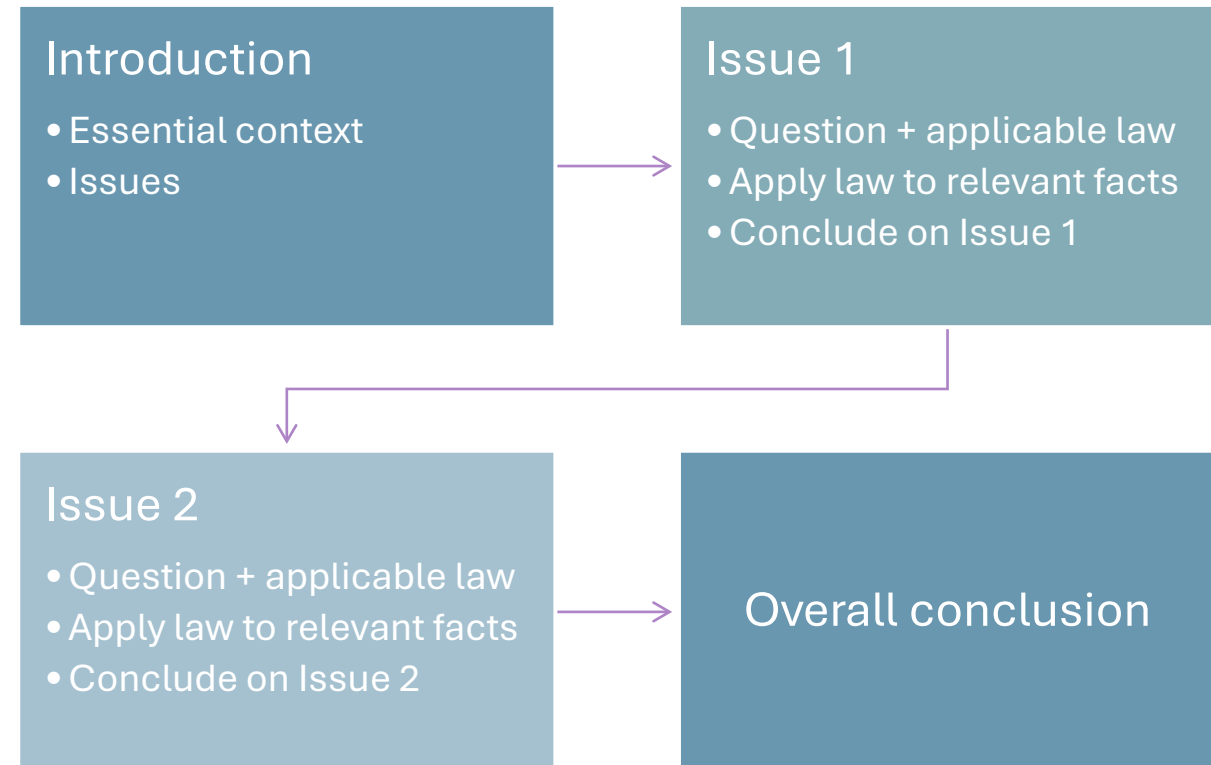
Law

Analysis

- Apply law to facts

Conclusion

Issue-driven structure



Advantages of an issue-driven structure

For readers

- Clear
- Easy to read & understand
- Concise

For writers

- Focuses your attention on the exact questions to answer & tests to apply
- Helps you winnow out irrelevant information
- Promotes analysis
- Allows you to write the sections in any order

Locating the issues in your decision

1. Skim your decision.
2. How far do you have to read before spotting the issues?
3. Type your answer in the chat.

2. Building unified & cohesive paragraphs

Focus on	Focus on one central topic
Begin	Begin with a sentence that flows from the preceding paragraph & introduces the topic
Develop	Develop the topic logically in the sentences that follow
End	End with a sentence that rounds off the paragraph & flows into the next one

3. Connecting ideas explicitly

- Three common types of transitions
 - Generic transitions
 - Bridging
 - Dovetailing

Using generic transitions

- Think about the connection you want to establish
 - “However” signals a change in direction
- Vary both the expressions you use & the places you use them
- Try to avoid using these expressions
 - “As per”
 - “As such”
 - “That being said”

The problem with “as such”

- “As such” is often used (incorrectly) as a substitute for “therefore”
- BUT “as such” is a pronoun
 - It should refer to or stand for something already mentioned
- A sentence shouldn’t include the phrase “as such” unless the preceding clause answers the question:
 - “As what?”

For example

- **Incorrect**

Insurance companies foresaw numerous liability problems with Uber in Toronto and hesitated to open avenues for claims. **As such**, they decided to let the courts decide.

- As what? (no idea)

- **Correct**

The clarity, correctness, and judiciousness of her decisions made her a respected trial judge. **As such**, she was a testament to the importance of effective writing.

- As what? (a respected trial judge)

With thanks to Barb Morris for these examples

How do you use generic transitions?

1. Choose one substantive section of your decision.
 2. Highlight all generic transitions.
 3. Which ones do you use most often?
 4. Do you use them in the same place in a sentence?
 5. Can you eliminate any of them?
- Be prepared to discuss your observations with the large group.

Bridging

Using the same word in two subsequent sentences

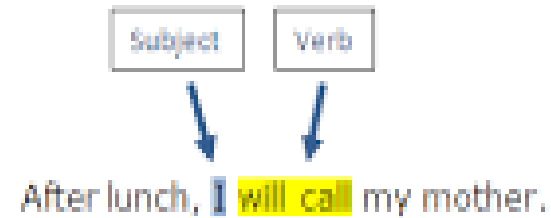
- Every semester after final exams are over, I can't figure out what to do with all my lecture notes. These notes might be useful someday, but they just keep piling up in my closet. Each time I open my closet, I take a step back to avoid the inevitable avalanche of information I might never need.

Dovetailing

Referring back to a point made in the previous sentence or paragraph

- In focusing on the respondent's condition, the tribunal could find that because he had the key and was sitting in the cab of the truck, he would have been able to operate the truck had he been awakened. Not only is it possible that the respondent could have operated the truck, it is clear that he drove the truck from the bar to highway before parking it on the shoulder.

Principle 4: Construct clear, direct, & simple sentences



Thanks to Barb Morris for many of the examples in this section

How readers make sense of sentences

They search for the grammatical core (SVO)

Subject: person/thing performing the action

Verb: action being performed

Object: recipient or object of the action

The tribunal issued a decision.

Drafting tips – clear, direct, & simple sentences

- Start with a concrete subject
- Follow quickly with a strong verb
- Limit each sentence to one idea
- Use simple, precise, everyday words

“It”, “there”, & “this” aren’t concrete subjects

- **It** is important to note that the information included in this section represents the subjective experiences of those who participated.
- **There** has been a lack of cooperation between the parties in assisting counsel in this case.
- **This** was not brought to the members’ attention before the hearing.

Eliminate empty introductory “it” phrases

- It would appear that
- It is interesting that
- It was clear that

Let's look at how you start your sentences

1. Choose two or three pages inside the body of your decision.
2. Highlight all sentences that start with “it”, “this”, and “there”.
3. Can you identify what “it”, “this”, and “there” refer to in all cases?
4. If not, replace each word with a concrete subject.

Verbs are the heart of every sentence

“Verbs act. Verbs move. Verbs do. Verbs strike, soothe, grin, cry, exasperate, decline, fly, hurt, and heal. **Verbs make writing go**, and they matter more to our language than any other part of speech.”

~ Donald Hall

The verb “to be” doesn’t “make writing go”

Instead of

- **It is** the board that determines the applicable rule.
- **There are** four rules that should be observed.

Write

- The board determines the applicable rule.
- Four rules should be observed.

Edit out “to be” phrases

- Instead of

The Court of Appeal set aside the decision because **there were** a number of omissions and errors in it. **There was** an error in the credibility findings and **there was** evidence that **was** misconstrued.

- How about?

The Court of Appeal set aside the decision because the Commission erred in its credibility findings and misconstrued the evidence.

Uncover hidden verbs

“**Nominalizations**”: verbs or adjectives transformed into nouns by adding one of the following suffixes: *-ion, -ment, -ness, -ity, -ance, -ence, or -ent*

Verb Form	Noun Form
require	require <u>ment</u> of
impose	imposi <u>tion</u> of
discuss	discuss <u>ion</u> of
resemble	resembl <u>ance</u> to
remove	remov <u>al</u> of
fear	fear of

Nominalization examples

Instead of

- The members **made a decision** in favour of the appellant.
- Both parties expressed **a preference for** a remote hearing.

Write

- The members **decided** in favour of the appellant.
- Both parties **prefer** a remote hearing.

Keep subjects & their verbs close together

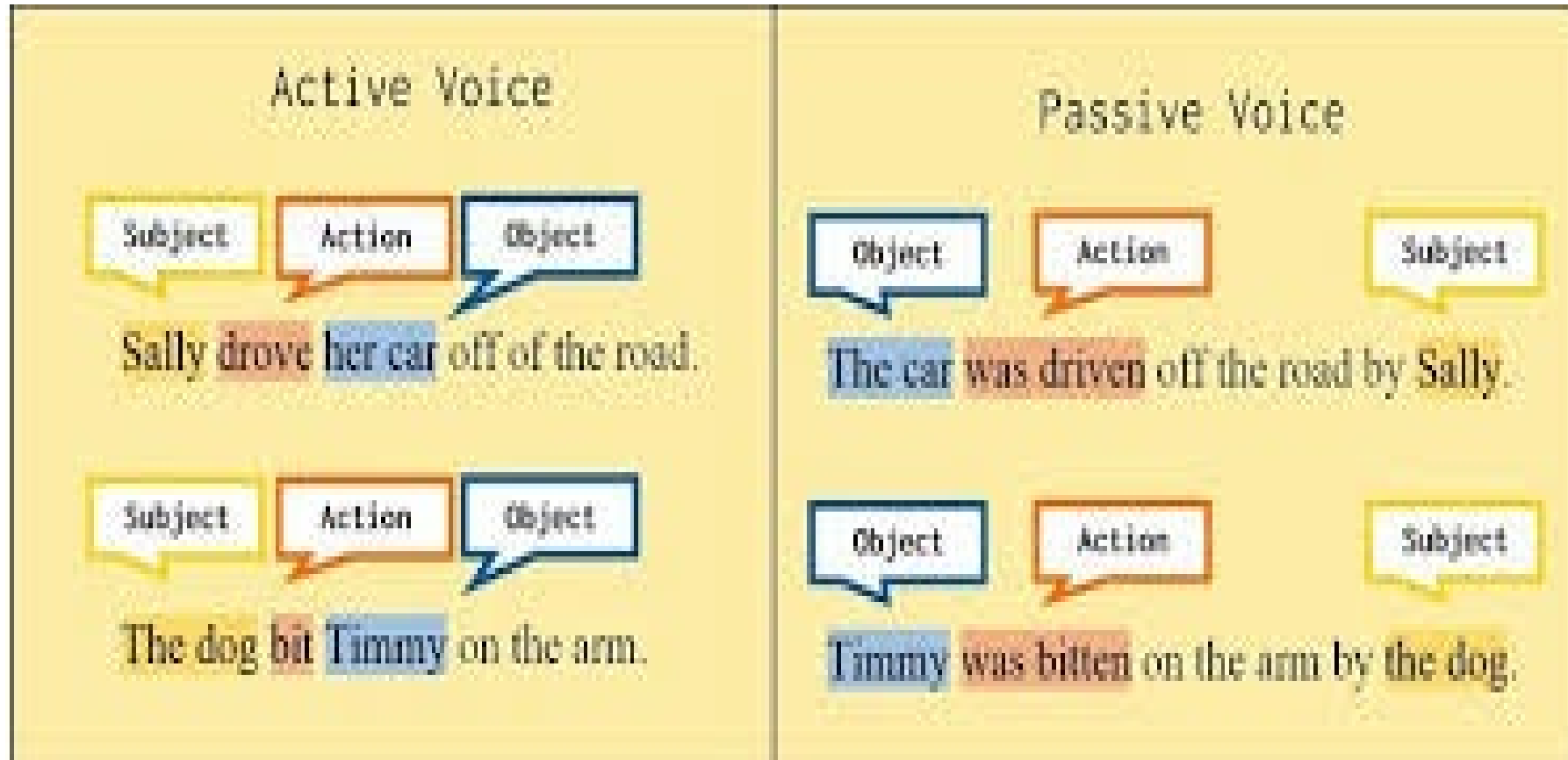
- **Instead of**

The hearing, which involved testimony from dozens of witnesses, some of whom flew here from California, lasted for almost two months.

- **How about?**

The hearing lasted for almost two months because it involved testimony from dozens of witnesses, some of whom flew here from California.

The active & passive voices



Problems with the passive voice

Weak

- Focuses attention on the object instead of the subject
- Uses less forceful verbs

Wordy

- Requires additional prepositional phrases

Takes longer to understand

- Words aren't in the order we expect to find them (SVO)

Prefer the active voice

➤ Instead of

The applicant was questioned **by** the tribunal about why his business partner was not informed **by** the applicant on the day their mutually owned shares **were sold by him** to a third party.

➤ Write

The tribunal asked the applicant why he did not inform his business partner on the day that he sold their mutual shares to a third party.

From active to passive voice – no subject

- **Active voice**

The lawyer informed the Commissioner that the applicant had withdrawn its application.

- **Passive voice (no subject)**

The Commissioner was informed that the applicant had withdrawn its application.

From active to passive voice – start with the object

- **Active voice**

The hearing panel denied the appeal.

- **Passive voice (start with the object)**

The appeal was denied by the hearing panel.

Limit each sentence to one idea

BCLRB decision

The Employer, in turn, denied that any membership evidence from these individuals should be considered and it provided a different list of employees who it said, should its other arguments be dismissed, would properly comprise those employees who would be considered for the purpose of threshold support and the representation vote (the “Employer List”).

Use simple, precise, everyday words

- Choose the simpler synonym
- Avoid jargon
- Use the same word when discussing the same concept
- Create **meaningful** defined terms

Don't use “as” or “since” to signify cause Use “because”

- “As” (weak)

My decisions are effective **as** I edit them carefully.

- “Since” (better)

My decisions are effective **since** I edit them carefully.

- “Because” (best)

My decisions are effective **because** I edit them carefully.

Because I edit my decisions carefully, they are effective.

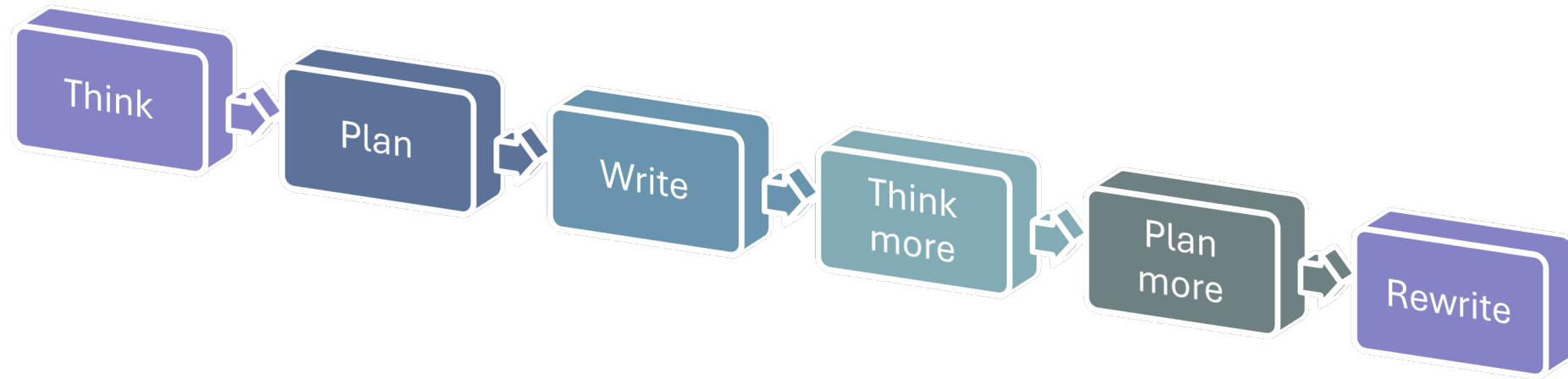
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A clear sentence is no accident. Very few sentences come out right the first time, or even the third time.

~ William Zinsser

”

Principle 5: Develop an effective writing process



What type of writer are you?

- **Process writer?**

You use writing to help you think & analyze

You resist creating an outline before you start writing

- **Planner?**

Your writing is essentially a record of the thoughts you've worked out before starting to write

You must create some type of outline before you start writing

The process of writing

1

Prewriting: thinking,
planning, outlining
(40%)

2

Completing a first
draft
(20% to 25%)

3

Rewriting: revising,
editing,
proofreading
(35% to 40%)

Some general writing process ideas



Work on a big
screen



Write at your high
energy time of the day



Avoid multitasking
while you write



Focus on one specific
task at a time



Study good writing

Write a “fast & fearless first draft”

- Write quickly – from memory
- Shut out your inner editor
- Save editing & proofreading for later

One way to edit & rewrite systematically



Overall shape

Accurate content & logical organization?



Paragraphs

Unified & coherent with smooth transitions?



Sentences

Clear, concise, & easy to read?



Words

Correct word choice, spelling, grammar, & punctuation?

Rethinking outlines

- Outline as you go
- Outline from memory
- Flip the process to reveal structure & flow by creating a reverse outline

What one change will you make to your writing process?

Some final inspiration from the experts

“Hard writing makes easy reading. Easy writing makes hard reading.”

~William Zinsser

“A picture is finished when all trace of the means used to bring about the end has disappeared”.

~James Whistler

Workshop takeaways

