

Task Force on the
Future of the
Canadian Financial
Services Sector

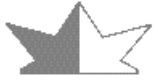
Consumers in the Financial Services Sector

Volume 1:
Principles, Practice and Policy – the Canadian Experience

Edited by Robert R. Kerton

September 1998

Research Papers Prepared for the Task Force on the Future
of the Canadian Financial Services Sector



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**The views expressed in these research papers
are those of the authors and do not necessarily reflect
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Canadian Financial Services Sector**

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Chapter 1

Principles: Transparency and Redress – Essential Components of Consumer Protection Policy

by
Robert R. Kerton

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Introduction

We have experienced a cascade of innovative offerings from providers in the financial sector. Some of these are electronic, some are truly new, some are hybrid combinations of older options, some come with stunning combinations of qualifications like grace periods or minimum balances, some have accumulated points for future credit, some are covered by deposit insurance while others from the same source are not covered, some are clearly explained, some have several pages of turgid legal phrasing to read, and some have contract terms which arrive well after the bargain has been struck. We use words like “no load” to mean “load” and employ hidden incentives designed to tempt selling agents. The result is a financial marketplace that provides a serious challenge to everyone except, perhaps, the most sophisticated operators. Canada has an urgent need for some clear rules to allow consumers to find the financial services they want. In addition, the financial marketplace has a need for fair rules so that the sellers with the superior offerings can win market share from others. And Canadian firms and consumers need to have financial sector rules that are at least able to match rules available in comparable countries.

Over the last half century the main consumer concern in financial sector regulation, fuelled by the long string of difficulties experienced by trust companies, has been solvency.¹ In the 1990s, official Canadian appraisals of the financial sector began to show more concern for broader consumer issues. The House of Commons Committee on Finance, Trade and Economic Affairs listened to consumers and gave increased attention to transparency, redress and privacy. In an appraisal of consumer protection and disclosure, the Ministry of Finance pointed out that “. . . financial institution legislation in some other industrialized countries focuses more on these types of issues.”² The Ministry took particular note of consumers’ appeals for more transparency, pointing out that the “. . . trend is being experienced internationally.”³ To some, it was apparent that Canada had fallen behind comparable countries in financial sector policies on transparency

¹ William D. Coleman, 1992. “Financial Services Reform in Canada: The Evolution of Policy Dissension,” *Canadian Public Policy*, XVIII:2, June; pp. 139-52.

² Canada, Ministry of Finance, 1994. *Developments in the Financial Services Industry Since Financial Sector Legislative Reform*, Ottawa, September; p. 20.

³ Canada, Ministry of Finance, 1995. *Enhancing the Safety and Soundness of the Canadian Financial System*, Ottawa, February; p. 8. The report made recommendations for a formal Act for the Office of the Superintendent of Financial Institutions (OSFI). The Ministry report recommended enhanced disclosure but did not assign OSFI (or anyone else) explicit consumer protection responsibilities for transparency, education, or redress. Policy advances were proceeding ahead of treatments in economic theory which was making important advances on topics concerned with markets shopped by sophisticated professionals. Textbook treatments likewise give relatively little attention to “noise” from the proliferation of offerings or the associated search costs of consumers. Some policy appraisals did foresee the competition issues but assessments did not anticipate consumer search problems from the brisk pace of change. John Chant, 1987; “*Regulation of Financial Institutions, A Functional Analysis*,” *Bank of Canada Technical Report 45*.

and redress.⁴ Indeed the Senate Banking Committee, which had never been especially sensitive to consumer interests, issued a report stating boldly that “. . . the ultimate objective of public policy with respect to financial institutions is maximum benefit and safety for the consumer.”⁵ The Ministry of Finance paper on proposals for the major review of legislation slated for 1997 contained specific measures for privacy, basic service, disclosure, tied selling, and prepayment terms.⁶ A major step forward with transparency was contained in a joint report of federal and provincial Consumer and Finance Ministers issued in 1996. This was a result of a committee on Internal Trade with the title: *Proposals for Harmonization of Cost of Credit Disclosure Laws in Canada*⁷. The proposals included plain language provisions and standard methods of calculation of interest in a list of practical steps to bring Canada’s financial agreements well toward, say the Truth In Lending laws that have been in force in the US since 1971. Unhappily, the eleven competing jurisdictions could not agree on a method of enforcement so consumers still bear the extra expense firms experience for multiple compliance. By 1997 the Senate Committee was in strong support of progress with consumer redress and transparency. Its report contained a chapter entitled “Strengthening Consumer Protection.”⁸ Despite the evident consensus, Canada still awaits urgently needed improvements.

Transparency in Financial Transactions

Transparency, according to the Oxford Dictionary is defined as "manifest, obvious, clear ... open." It is clear *to the viewer*. In contrast, "disclosure" is under the control of the party doing the disclosing. It is possible to obey a law on disclosure in a manner that raises the time cost of the consumer to a high level. It is no surprise if the buyer does not pay the time cost to learn about information that may be important. A long history of problems with disclosure has led to efforts to specify language, message length, type size, and other characteristics of transparency. It is no surprise that sellers obey economic incentives in revealing or concealing information. The important point is that transparency, like beauty, is in the eye of the beholder.

Transparency and the Consumer’s Search Problem

The real method for finding the best framework for Canada requires us to design rules for the *users* of financial services, the ultimate consumers who are supposed to benefit from high quality

⁴ Robert R. Kerton, 1995. "A Consumer Test for Financial Regulation in Canada," *Policy Options*, Institute for Research on Public Policy, 16 (5), June; pp. 24-27. In Europe it was much earlier that redress policies received explicit attention, and both in public and private organizations. See Kjersti Graver, *Consumer Redress in Seven European Countries*, Stichting Wetenschappelijk Onderzoek Konsumentenaangelegenheden (SWOKA or the Foundation for Scientific Research on Consumer Issues), 1987, Onderzoeksrapporten 44.

⁵ *Interim Report on the 1992 Financial Institutions Legislation*, 1995. Report of the Standing Senate Committee on Banking Trade and Commerce, Ottawa, August; p. 13.

⁶ Ministry of Finance, 1996. *1997 Review of Financial Sector Legislation: Proposal for Changes*, Ottawa, June; chapter 2.

⁷ Canada, Consumer Measures Committee, *Proposals for Harmonization of Cost of Credit Disclosure Laws in Canada*, 1996. Industry Canada, Ottawa.

⁸ *1997 Financial Institution Reform, Lowering the Barriers to Foreign Banks*, 1996. Report of the Standing Senate Committee on Banking Trade and Commerce, Ottawa, October.

financial products and efficient services. To do this one must start with the customer's search – or shopping – problem. Much more economics, including most of financial economics, assumes that market participants are well-informed parties making deliberate decisions.

This is appropriate for markets where the same purchase is made frequently. The approach is entirely suitable for markets shopped by sophisticated buyers. Consumer economics differs significantly in its assumption that relatively inexperienced individuals need to use time and money to acquire information. Outcomes depend on whether or not this expenditure repays itself, and indeed whether or not lack of expertise (or noise in the marketplace) prevents the consumer from taking "control" of a deliberate decision. The consumer may have a need for more information on prices in the marketplace, on preferences and the ability of one or another service to satisfy desires. The missing information may relate to service characteristics of complex (financial) offerings. Redress policies may be important. This approach obliges one to explore transparency conditions in any market and the searching skills of the consumer.

The consumer faces a challenging search problem: is it worthwhile to expend effort to get another more information? For example, is it economically worthwhile to get another price quotation from a different seller? In the economic approach, the consumer may either need information on the characteristics of the financial service, or on the price.⁹ If a unit of search saves \$200 on an auto insurance policy, and the time cost plus financial expense for that search was only \$15, the search should surely be undertaken. The general rule is that one should continue to search so long as the expected benefit exceeds the expected cost of that effort. One frequent problem in many consumer markets is that individuals are notoriously poor at estimating the expected benefit, largely because they do not (perhaps they cannot) know the distribution of prices (and other qualities) in the marketplace.¹⁰ This seems, on the face of it, a particularly challenging problem for amateurs in markets for financial services.

In a market shopped by professionals the individual will have a good idea of the potential benefit and potential cost. An individual who makes relatively few purchases will have more difficulty. And the shopping problem is further complicated by the difficulty of making accurate estimates of expected benefits of shopping. For some, the problem is unsolvable in a confusing marketplace. A sound financial decision is beyond the individual's control.¹¹ There is some

⁹ Stigler, G. J., 1961. "The Economics of Information," *Journal of Political Economy* 69 (3): 213-25.

¹⁰ Maynes, E. S. & Assum, T. 1982. "Informationally imperfect consumer markets: Empirical findings and policy implications." *Journal of Consumer Affairs*, 16; pp. 62-87.

¹¹ Michael A. Busseri and Herbert M. Lefcourt and Robert R. Kerton, 1998. "Locus of Control for Consumer Outcomes: Predicting Consumer Behavior," *Journal of Applied Social Psychology*, 28, 12; pp. 1066-86. Some consumers believe they can make decisions and affect outcomes, others feel that the outcome is beyond their control. Rotter's concept of *general* locus of control is of long standing and well tested in more than a thousand studies. J. B. Rotter, 1966. Generalized expectancies for internal versus external control of reinforcement, *Psychological Monographs: General and Applied*, 80, 1-28. Economist James N. Morgan has long argued that consumers often lack the economic understanding and problem-solving abilities that would allow them to act in ways in which economic theory would posit as 'optimal'. J. N. Morgan, 1968. "Multiple motives, group decisions, uncertainty, ignorance, and confusion: A realistic economy of the consumer requires some psychology," *Psychology and Economics*, 68, 58-63, and J. N. Morgan, 1988. "Consumer choice is more than search," in E. Scott Maynes (ed.), *The Frontier of Research in the Consumer Interest*, pp. 277-306, Columbia: American Council on Consumer Interests.

evidence to show that a sense of helplessness is at work in the financial sector.¹² For anyone sensing that outcomes are determined by powerful outside forces, a deliberate effort is thought to be futile. With too little search, the market need not move toward a single competitive price.¹³ One reason for policies aimed at improving market transparency is to allow the market to function.

Consumer economics makes use of a concept of a "perfect information frontier" where a given quality of an item can be purchased at the best price.¹⁴ Empirical work on a number of common products and services reveals a remarkably wide range of prices, often a range exceeding 50 percent for a given quality level.¹⁵ For auto insurance in Canada, some buyers pay nearly twice as much as others for identical coverage. For example, a married couple living in Ottawa with a son, a daughter and two vehicles can purchase auto insurance for as little as \$1,904 or as much as \$6,790, three and one half times as much¹⁶.

And shoppers do not always know the mix of characteristics they wish to purchase. A unique competitive price from supply and demand is useful, but it is a competitive outcome in markets shopped by experienced or informed consumers. In the examples given above, it pays to search for a second or third offer. However behaviour is based on the *expected* payoff and the consumer often wrongly assumes this to be low.¹⁷ How difficult is it to search in financial markets? In a study published by Claxton and Richie in 1981, Canadians from five cities were asked to rate the "shopping difficulty" of 24 products or services.¹⁸ Life insurance was seen to be difficult. Out of 24 types of purchases (from automobiles to travel services) the 225 people in the sample rated financial services 22nd (men) or 23rd (women) from the top in terms of difficulty. What this

¹² Research reveals that the more "external" the orientation – that is, the more one holds the belief that "it's beyond my control" – the more likely are persons to use consumer credit unsuccessfully. Tokunga, H., 1993. "The use and abuse of consumer credit: Application of psychological theory and research." *Journal of Economic Psychology*; 14, pp. 285-316. Other researchers have found that an "external" sense of control was associated with problematic personal debt. Livingstone, S. M. & P. K. Lunt, 1992. "Predicting personal debt repayment: Psychological, social and economic determinants." *Journal of Economic Psychology*, 13; pp. 111-134.

¹³ Smallwood, Dennis E. and John Conlisk, 1979. "Product Quality in Markets Where Consumers Are Imperfectly Informed," *Quarterly Journal of Economics*, XCIII (February 1979), 1-23.

¹⁴ Maynes, E. Scott, 1976. *Decision-Making for Consumers*, New York, Macmillan.

¹⁵ More often than generally known, lack of transparency and other factors permit an extraordinary range of prices in many markets. For 91 consumer products tested in the *Canadian Consumer*, the median price-quality correlation was only 0.3. More than 25percent of the coefficients were actually negative (as is often the case in other countries). Richard W. Bodell, Robert R. Kerton and R. W. Schuster 1986, "Price as a Signal of Quality: Canada in the International Context," *Journal of Consumer Policy* 9, 4, pp. 431-444. Similar results have been found many times since the pioneering research of Tibor Scitovsky, in 1944-5: "Some consequences of judging quality by price." *Review of Economic Studies*, 44, pp. 100-105.

¹⁶ Ontario Insurance Commission, 1997. *Your 1997 Guide to Rates in Ontario*, Queen's Printer for Ontario, Toronto; pp.14-15.

¹⁷ Maynes, E. S. & Assum, T. 1982. "Informationally imperfect consumer markets: Empirical findings and policy implications." *Journal of Consumer Affairs*, 16; pp. 62-87.

¹⁸ The purchase of life insurance was seen to be challenging. It was rated third most difficult (behind auto repairs and auto purchases) for men and ninth for women. This was a survey done in 1977 and 1978 before the explosion in new financial products and regulatory transformations. John D. Claxton and J. R. Brent Richie, 1981. *Consumer Perceptions of Prepurchase Shopping Problems and Solutions: Major Findings and Directions for Action*, Consumer and Corporate Affairs Canada, Minister of Supply and Services, Ottawa.

probably means is that back in the days before deregulation, financial sellers were seen to be doing their job well. Another possibility is that some consumers were living in a fool's paradise. It would be educational to know if many of the respondents from the late seventies – the ones who were so satisfied – had money with firms that later failed. Were some respondents among the 67,000 who lost their savings with the Principal Group? Perhaps "shopping difficulty" was assessed accurately at that time. But rapid change in the consumer's end of the financial services sector has introduced new problems. Alberta's Cashion Report provides one official assessment:

*"Development of product lines has resulted in a bewildering array of new products and types of products. The committee found a marketplace in which new products and services are developed almost daily. Some of these new products are being offered by new sources or sources previously operating in different areas. The industry is developing new products to meet and create specific consumer demand Distinguishing between the hundreds of choices is confusing for all but a very few consumers."*¹⁹

In 1998, the banking industry alone advises that it provides consumers with no fewer than 61 distinctly different products.²⁰ In the fast-changing marketplace for financial services, the consumer faces the double problem of assessing both the quality of the firm and the complexity of the product.

It is not only the consumer who gains from transparency. Those sellers who have the best offerings share an economic interest in transparency: they gain market share whenever consumers can detect the superiority of their services. It is well known that market failure known as a "market for lemons" can prevail²¹. When the difficulty with transparency is severe, the market reaches an outcome known as the "lemon solution" (after the used car market where an inferior specimen is known as a lemon). In the extreme, only lemons exist at a non-lemon price, and there are no willing buyers.

Avoiding the Market for Lemons

What condition generates a market which ultimately fails because of the lemons outcome? It is quite simple:

The consumer cannot detect – in advance – the difference between the offerings of sellers with superior quality and those with inferior quality.

¹⁹ Cashion, J. P., 1989. *A Blueprint for Fairness*, Report of the Committee on Fair Dealing in Consumer Savings and Investments, Edmonton.

²⁰ Canadian Bankers Association, 1998. *Canadian Bank Facts*, 1997/98 edition, May, Toronto.

²¹ Akerlof, G. A. 1970. "The Market for Lemons: Quality Uncertainty and the Market Mechanism," *Quarterly Journal of Economics*, Vol. 84 (August, pp. 488-500).

The customer of The Canadian Commercial Bank, of BCCI, or of Bre-X would argue just such a point. Times have never been more favourable marketing financial lemons.²² Why? We have experienced

- (i) an explosive output of new financial products, a confusing time for many consumers,
- (ii) a breakdown of the traditional fences separating financial pastures, and
- (iii) a regulatory vacuum at the national level.

The result is that the information burden facing the consumer is immensely greater now.

- The first loser is the consumer who fails, amid the confusion, to find the financial service and/or the supplier who can best meet preferences.²³
- There is a second major loser: the firm with superior offerings. The burst of new financial products and the regulatory vacuum prevent the shift in market share toward sellers with superior offerings: intelligent consumers cannot find superior quality in the noisy marketplace. It is for this fundamental reason that sellers with high quality offerings support reform of the regulatory framework. On economic grounds, reform absolutely must include (a) measures to increase *market transparency* so that consumers can see what they are choosing and (b) new measures to improve *redress* which has the positive impact on costs of those who are trying to get away with marketing lemons.
- The third loser is the marketplace itself. When the portion of lemons increases, prudent consumers simply leave. And they do this even if they deny themselves some potentially favourable exchanges. Perhaps something like this has recently taken place in stock markets. In the extreme, a market collapses and exchanges that could make both parties better off do not take place. A complete collapse of any of Canada's financial markets seems highly unlikely. Much more likely is a continuation of chaotic competition with enough confusion to keep consumers from making the effective choices. If better decisions were possible, the marketplace would eliminate the poorest financial products, increasing the market shares of better firms. Thus, the role of transparency is paramount to the ability of the market to function at all.

Price Discrimination and the “Search Burden” on the Consumer

In some important research, Salop (1977) showed how a “noisy monopolist” can benefit from offering two goods which are really identical at two different prices and charging a higher price to less-efficient, high-cost shoppers. In financial markets, many consumers are confronted by a

²² Robert R. Kerton, "Financial Quality and the Consumer Interest", *Canadian Banker*, Vol. 97 (4), 1990; pp. 6-13.

²³ The 1990 report observes: “One result of all the new choices is that you can now get the old injury from a new source. That's rather like Washington Irving's observation that when travelling in a stagecoach it is a comfort to shift one's position to be bruised in a new place.” *ibid*, p. 11.

noisy cacophony of sellers: buyers can be bewildered by the proliferation of new or transformed services. If a seller has the ability to generate “noise” in the form of product proliferation (and the associated promotional effort) can result in higher search costs. In the extreme, the well-known result of this incentive system has a monopoly seller computing the marginal cost of generating extra noise and comparing it to the extra return from customers paying higher prices²⁴. Even with clever data mining it is unlikely that sellers of credit cards, insurance policies and other financial services have the sophistication needed to achieve “perfect” discrimination as in the model. Yet the noise does exist and it is the case that similar services sell for very different prices²⁵. Even if sellers are unwillingly trapped into brand proliferation there are higher profits when some consumers are unable to find the better price in a noisy marketplace.

One of the major reasons why financial economics and consumer economics arrive at different conclusions on some important points rests in the treatment of cognitive limitations (or information overload). As noted, Alberta’s Cashion Report found that “. . . extremely sophisticated products are appearing [and] distinguishing among the hundreds of choices at hand is confusing for all but a very few consumers.”²⁶ Are the documents used in this sector a help or a hindrance? In a later chapter by Judith Colbert and Paul Beam, Canadian financial agreements are assessed for transparency. This is important work as it is the first comprehensive public review to give scrutiny to the topic. Previous inquiries, like the Alberta review, suggest that documents are part of the problem rather than the solution. Is there a technological solution? Can electronic information provided to consumers (like the Industry Canada site, Strategis) improve the situation? Perhaps. Plain language documents can surely help. Yet information overload is a realistic prospect. For one thing, Canada allows its financial institutions to change contracts without the permission of the customer. What does transparency mean when contracts can be changed? Do Canadians believe they have a valid receipt at their ATM? Canada allows banks to place in its contracts a provision that the customer’s receipt from an ATM is not a legal record . . . only the bank’s electronic record is to be accepted in court. Insurance companies supply the contract after the deal has been struck. The remarkably comprehensive review of electronic money published by the G10 reveals that among the ten countries there is no common policy on either electronic money in general, or on transparency in particular.²⁷ The G10 Report rightly points out that transparency is often superior to a detailed set of regulations. No doubt this is easier said than done.

²⁴ Stephen Salop, 1977. "The Noisy Monopolist, Imperfect Information, Price Dispersion and Price Discrimination," *Review of Economic Studies* 44, pp. 393-406.

²⁵ The original explanation of the model pertained mostly to goods. In general, professional buyers obtain the goods at the lower price (for example, purchasing agents for hospitals know how to distinguish among branded products and obtain the better price). The two price practice seems to be much more prevalent in the service sector, and the concurrent existence of very different two prices for one service seems especially evident in the Canadian market for financial services. Life insurance, auto insurance and credit cards provide ample evidence. Brokerage fees have moved somewhat away from this outcome but the fees for handling mutual funds seem to fit the model rather well.

²⁶ Cashion, J. P., 1989. *A Blueprint for Fairness*, Report of the Committee on Fair Dealing in Consumer Savings and Investments, Edmonton, p. 22.

²⁷ Group of Ten, 1997. *Electronic Money; Consumer protection, law enforcement, supervisory and cross border issues; Report of the working party on electronic money*. BIS and IMF, p. 9-10.

Canadian financial institutions – and especially banks – have recently completed an exercise to simplify documents (both paper and electronic versions). In a later chapter the success of this effort will be calibrated, but for now it is enough to see this as a race – a race between the explosive growth in the number and character of new services and the effort with transparency policies.

To reiterate: the noise in the marketplace for financial services allows a process to take place that is not well understood in some traditional analyses of the sector. Actively or passively, consumers sort themselves into at least two groups: those who can – at low cost – find the lower price, and those who end up confused enough to pay the higher prices offered at the same time. This is a form of price discrimination based on searching skill (on the search capital available to the individual). It need not be the case that sellers have the degree of sophistication needed to reach the pricing optimum in any precise way, but the operation of the consumer sector of financial markets provides a similar result without the deliberate calculations. Insurance products are difficult for many consumers to compare, fee schedules of bank accounts are complex, mutual funds have countless fees and conditions that are difficult to compare, and even for the two major credit card brands (Mastercard and Visa) there are 36 differentiated products. How long do you want to search?

How Clear and Complete Do Consumers Think Documents Are?

Canadian consumers find it a serious challenge to make decisions in the marketplace for financial services. Two decades ago, in the regulatory era of “four pastures” this searching seemed easier, based on survey data.²⁸ This suggests that part of the reason for the increased challenge is the transformation of the financial sector from retailers of certain product lines to purveyors of all things. The services themselves grew in number and complexity. It is surely true that some purchases involve more sophisticated decisions than others so differences should be expected. Some providers have made a more effective effort to communicate. What do consumers think now?

The most reliable survey on quality is the independent study conducted by the National Quality Institute (NQI). Six of the providers of financial services are included in the survey, along with fifteen other services. The 1997 evidence will be presented in the concluding chapter at the end of this volume.

²⁸ In 1981, as noted above, evidence suggested that shopping for financial services was second (or third) easiest among 24 shopping items surveyed. John D. Claxton and J. R. Brent Richie, 1981. *Consumer Perceptions of Prepurchase Shopping Problems and Solutions: Major Findings and Directions for Action*, Consumer and Corporate Affairs Canada, Minister of Supply and Services, Ottawa.

Cognitive Limitations

Consumer markets differ fundamentally from markets shopped by experts. When the product or service is changing rapidly, or where the consumer infrequently purchases an item,²⁹ the market does not settle down to an equilibrium,³⁰ certainly not one where the best quality-price offering is rewarded.³¹ In Canada, the Cost of Borrowing (Banks) legislation (originating in 1992) prescribes a method of calculation for eleven charges that must be disclosed. This was an important step. US Truth-In-Lending legislation has tried to address excess verbiage that conceals salient information. It obliges sellers to present important information – like the annual percentage rate of interest – in a specified format and in larger font than surrounding material (in a so-called “federal box”). A Canadian receiving any such solicitation will be struck by the ease with which essential information can be found.

Who loses? The breakdown of the traditional fences separating financial pastures has helped Canadian consumers in some ways, yet has also sharply increased the search problem. So far, the financial supermarket has not impressed customers, at least judging by the continuing success of agile competitors offering specialist services like credit cards or auto insurance. The immediate effect has been an increase in noise rather than information. The explosion in financial products and the resultant lack of transparency means that intelligent consumers cannot find superior quality in the noisy marketplace. To gain market share, sellers with high-quality financial products will support reform for this part of the regulatory framework. Cognitive limitations permit the continuing existence of lemons. When the portion of lemons increases, prudent consumers simply leave the market. The Toronto Stock Exchange has been criticized for its failure to sort out lemons. Reviews of the Vancouver Stock Exchange, like the Matkin Report, suggest that there must be some people who have refused to use the exchange even when they thereby denied themselves some potentially favourable trades.

Plain Language Contracts

Despite recent efforts to produce plain language contracts, problems persist. The Senate Committee (1997) was direct in its assessment of information on the cost and availability of financial services:

²⁹ The seminal research on this found that “reputation” can be effective as a signal for *frequently* purchased items. Benjamin Klein and Keith B. Leffler, 1981. “The Role of Market Forces in Assuring Contractual Performance,” *Journal of Political Economy* 89 (4); pp. 615-41. Abundant research testifies to informational demands and to the consumer’s sense of influence or “control” over a decision; Hoch, S. J. & Ha, Y., 1986, “Consumer learning: Advertising and the ambiguity of product experience,” *Journal of Consumer Research*, 13, pp.221-233; Lefcourt, H. M. (1982). *Locus of Control: Current Trends in Theory and Research*, New Jersey: Lawrence Erlbaum Associates; Livingstone, S. M. & Lunt, P. K. (1992), “Predicting personal debt repayment: Psychological, social and economic determinants,” *Journal of Economic Psychology*, 13, pp. 111-34.

³⁰ E. Scott Maynes and Terje Assum, 1982. “Informationally imperfect consumer markets: Empirical findings and policy implications.” *Journal of Consumer Affairs*, 16; pp. 62-87.

³¹ Dennis E. Smallwood and John Conlisk, 1979. “Product Quality in Markets Where Consumers Are Imperfectly Informed,” *Quarterly Journal of Economics* 93(1) pp. 1-23.

With respect to the cost of financial services and the availability of basic financial services, not surprisingly, all who addressed these issues supported developments that would benefit the Canadian consumer, by making information about financial institutions' fees and services as clear as possible. The Committee agrees with the witnesses and the White Paper. The Committee urges the Government to address this question immediately and to develop specific proposals.

A mere decade ago it seemed that Canada desperately needed a law stating that financial contracts, if they are to be enforced by courts, must be written in language that can be understood by (say) 70 percent of the population. Usually this test is measured by one of the standard readability measures like the Fog Index or the Flesch Count. It is useful to do so to affect laggards. Some progress has been made. The plain-language announcements of fees are just one source of encouraging evidence, at least compared to the late 1980s when institutions used the tactic of stinging customers by surprise with new bank fees.

Prior to 1992, Canada Deposit Insurance Corporation gave an information pamphlet to consumers entitled "We have a lot of answers about deposit insurance." It illustrates both the communication problem and how hard it is to overcome it. The original stated: "Note: Any instrument evidencing that a member institution has received or is holding money from or on behalf of a person pursuant to a transaction. . . ." One standard measure, the Flesch Kinkaid Index, found the document to be virtually off the scale, requiring a grade twenty-three education. The new pamphlet seems to be much better, yet still requires a grade 15 (college/university) education according to the tests.³² Over the last decade most, but not all, private institutions have expended considerable effort transforming masses of documents into plain language. The results of these efforts will be measured, in a later chapter, against the conventional tests to see how successful they have been. In addition, the readability of agreements in the Canadian financial services sector can be compared to the readability of, say, product warranties. It is feasible to compare some Canadian contracts with agreements used in the US market. This is of particular interest because some US jurisdictions have laws requiring the use of plain language.

Transparency in Sales Conditions: Coming to Terms with Terms

Plain language helps the customer see what is in a financial contract, but language is not the *only* component affecting bargaining power. The contract terms themselves can be balanced or they can be one-sided. For example, most deposit institutions require the customer to sign an agreement stating that if there is any problem with ABM records, the transaction record printed by the ABM does *not* have legal standing. According to this statement, dispute resolution must use only the institution's electronic records.

There is a second problem: that of guessing the change in contract terms that might be imposed at a later date by a financial institution. This mocks the very concept of transparency. There is an

³² On the Fog Index the reader needs more than grade 19. Three passages were tested on the Flesch-Kinkaid index, scoring required grades of 19, 15, and 14. The chief problem was sentence length with the best of the three averaging over 23 words per sentence.

argument that modern transactions bring changes that need to be addressed by such provisions. That begs the question why this is so in Canada, but not elsewhere. New Directives of the European Union assert that it is unconscionable to create contracts whose terms can be changed by one party without the advance permission of the other. In the US the Home Equity Consumer Protection Act (1989) made one-sided changes illegal. Yet many financial services agreements bought by Canadian consumers allow the institution, on its own, to “ ... change, add to or delete any terms and conditions . . .” A contract whose terms might be changed unilaterally is anything but transparent.

Transparency in Financial Counselling

Some of the worst problems in the marketplace occur when financial counsellors operate with hidden fees and commissions. The Stromberg report on mutual fund reward schemes found practices that are “ . . . more than questionable . . . They are wrongful acts.” The incentive system thrives on concealment in many sectors of the financial services industry. National action is required because of the lemon solution and because any firm following a high moral road will not win under present circumstances. It is particularly reprehensible when the advisor sets up as an “independent” financial counsellor. This fails any reasonable consumer test. A number of voluntary codes have been proposed but they share the fate of all non enforceable measures. Additionally, among 18 industrialised countries, Canada is the *only* one not requiring banks to disclose on their financial reports their commissions earned and paid. New provisions must contain a clear truth-in-exchange law to require all agents, counsellors or brokers to reveal the source and amount of all such remuneration. The best sellers support reform, but the lag is significant. This is a major opportunity to improve markets.

Transparency and the Riskiness of Financial Institutions

The argument against 100 percent deposit insurance puts an onus on depositors to assess the risk of deposit taking institutions so that a careful choice is made.³³ The Consumers Association of Canada (CAC), pivotal in having deposit insurance raised from \$20,000 to \$60,000, now argues against any form of coinsurance. The CAC argues in its 1995 Briefing Paper on the CDIC that

“It is extremely difficult for a depositor to assess the riskiness of the bank’s activities. Professionals have not done very well. Coinsurance would make it cheaper for the bank because the consumer would share the loan losses -which could lead to even more of the unwise loans.”³⁴

³³ Among the very large number of studies of deposit insurance is a concise treatment of the issues in Lawrence P. Schwartz, 1993, *Improving Federal Deposit Insurance*, Series on Government and Competitiveness, School of Policy Studies, Queen’s University, Kingston.

³⁴ Consumers Association of Canada, Report of the CAC Committee on Financial Services, Ottawa, 1997. This assumes that the bank owners attempt to avoid principal-agent problems by monitoring management. Management seeks co-insurance to get lower premiums from CDIC. With risk homeostasis, management substitutes riskier loans to allow for the portion of loan losses now to be incident on depositors as co-insurance.

From discussions, it appears that both the Ministry of Finance and the CDIC itself recognize that it is difficult for individuals to assess the riskiness of a bank's lending practices. The general point about the difficulty of rating is made tellingly in a study on how the private sector conducts the risk rating of life/health insurers. The US General Accounting Office found (September 1994) that the scales used by five rating companies require great sophistication. Comparisons of ratings are difficult, even for persons with expertise. And the value of the ratings was not always high, even for experts.³⁵ A follow-up study by Weiss (March 1995) found that *not one* of the rating agencies assigned a "vulnerable" rating to either Confederation Life of Canada – or its US counterpart – prior to the first public regulatory action. It is therefore the regulatory action that is the reliable signal.

When the cost of search is so high for the individual, it is far cheaper to provide it collectively. Once the case for a public good is established, it still remains to see that the service is provided in the most efficient manner. If this is to be addressed from a clean slate, it is highly unlikely that the current mix of federal and provincial responsibilities would result. Strictly on the grounds of consumer protection there is a strong case for consolidating the activities in fewer offices. The final Report of Australia's Financial Systems Inquiry came precisely to this conclusion:³⁶ "Recommendation 1 : Corporations law, market integrity, and consumer protection should be combined in a single agency." The case is, if anything, even stronger in Canada.

Efficacy of Public Regulators: Duelling Jurisdictions

From the point of view of the consumer's search problem, it may well be cheaper to pay for a collective search by government experts than to attempt to assess the riskiness of institutions as an individual. The costs (of the CDIC) in Canada are \$20,000 per billion of supervised assets while the comparable figure for the US is \$177,000 per billion. It is true that the insurance fund as a percent of insured deposits is 55 percent of the US number, but the current system provides Canadians with protection at a cost that tests well against costs of the US system.

An important issue needing scrutiny concerns the amount of regulation that is optimal. One school of thought holds that every jurisdiction should be allowed to "compete" with the quality of its regulation. If sellers are allowed to choose the jurisdiction, in which they are regulated there will be a migration to the jurisdiction that best serves all. This is a case for duelling jurisdictions. Jurisdictions with costly rules to provide information or protection that is not valued by customers will be avoided. The other school holds that sellers will migrate to jurisdictions with the weakest provisions for consumer protection. Often the proponents of either camp are so sure of the self-evident truth of their position that no need is seen for consulting evidence that might resolve the issue. The initial pass over available examples suggests that if

³⁵ United States General Accounting Office, *Insurance Ratings: Comparison of Private Agency Ratings for Life / Health Insurers*, Briefing Report to the Chairwoman, Subcommittee on Commerce, Consumer Protection and Competitiveness; Committee on Energy and Commerce, House of Representatives; US GAO, Washington, 1994.

³⁶ Australia, Wallis Commission (1997), *Financial System Inquiry Final Report*, Commonwealth of Australia Information Service, Australian Government Publishing Service, Canberra; p. 32.

evidence is consulted it threatens *both* positions. Unhappily, it does not provide an unequivocal rule that provides practical resolution. This is being reviewed in a later chapter.

From Disclosure to Transparency

Are there elementary rules to be used to achieve transparency? Yes, though the relationship is not so simple as the seller-focussed concept of “disclosure.” Consider an example from the property insurance business: the “. . . Vice President, [of the Insurance Bureau of Canada] Prairie Region told reporters, **We get 800 to 1000 calls every month from people who suffered extensive losses thinking their current policies protected them.**”³⁷ In most instances a court will find that the salient facts were “disclosed” in the pertinent agreement. When the product or service is in the lower half of the quality range it is usually not in the economic interest of sellers to have the buyer discern this. Difficulties in getting sellers to disclose negative aspects of services are legion,³⁸ and no doubt, account for laws stipulating the exact language to be used.³⁹ Even then it is possible to “disclose” information with complex verbiage, or at such length, that the prudent decision-maker rightly decides not to bear the search costs. Transparency is in the eye of the customer. The eminent consumer economist E. Scott Maynes defines transparency as “*a condition in which consumers ‘see through’ markets and accurately discern all the relevant magnitudes. . . .*”⁴⁰ Included in the magnitudes accurately seen are: an assessment of the desired mix of service characteristics (and weaknesses), redress mechanisms, service varieties, price-quality combinations, and the appropriateness of possible substitutes.

The chief difficulty in understanding transparency arises because it encompasses two concepts relating the size of the challenge to the skill of the consumer. It is useful to borrow a term from Olympic diving. The “degree of difficulty” of a consumer choice depends on the complexity of the service itself (C) and on the resources available to the consumer (R). The two concepts occur as a ratio.⁴¹ To take a simple example, consider an illiterate consumer (with low R) buying laundry detergent (which is not overly complex). The difficulty (d) depends on C/R. Perhaps a package illustrated with pictures can achieve transparency. For a more complex item, say a conditional sales contract, C is much greater. Unfortunately, R can be changed only slowly in most cases. R can be accumulated over time through market experience, education, the acquisition of consumer search skills and the like. R is a form of human capital.⁴² Like other

³⁷ Letter from Donna Patterson, Senior Campaign Co-ordinator, The Alliance for Industry Action of the Insurance Bureau of Canada to the Consumers’ Association of Canada, 22 May 1998. The campaign proposes several measures, including a plan to minimise confusing terminology.

³⁸ Robert R. Kerton and Richard Bodell, 1995. “The Marketing of Lemons: Quality, Choice and the Economics of Concealment” *The Journal of Consumer Affairs*, 29(1), pp 1-28.

³⁹ Richard L. Morse and William A. Fasse, 1973. “Truth in Savings,” *The Journal of Consumer Affairs*, 7,2, pp. 156-64.

⁴⁰ E. Scott Maynes, 1986. “Towards Market Transparency,” *Price Information and Public Price Controls, Consumers and Market Performance, Proceedings of the Fourth European Workshop on Consumer Law*, ed. by M. Goyens, Bruylant: Brussels.

⁴¹ 1992 Robert R. Kerton, “Consumer Protection in an Unequal World: International Problems Need International Solutions,” *Journal of Behavioral and Social Sciences*, Vol. 38, pp. 87-109

⁴² 1980 Robert R. Kerton, “Consumer Search Capital, Delineating a Concept and Applying It to Developing Countries,” *Zeitschrift Fur Verbraucherpolitik/ Journal of Consumer Policy*, Vol. 4, 1980/4, pp. 293-305.

forms of capital, R can be general (literacy, for example) or it can be “specific.” A mathematician may find insurance annuities very easy to deal with, yet find the degree of difficulty in a conditional sales contract to be high. Transparency therefore depends on both the complexity of the service, and the resources of the consumer. Canada seems to put fewer resources into improving the resource base than is the case elsewhere, in the US, for example.

Does the complexity / resource ratio leave us without general rules that can be applied? Fortunately, both logic and experience have provided principles that are practical enough to employ.

Principles of Transparency

1. Presentation Clarity

The style must support comprehension. Short direct sentences achieve much. The presentation must use the language, phrasing, illustrations, colour, images and media outlet appropriate for the resources of the target audience. Jargon, legal terms, charts and equations are to be used for audiences familiar with those methods and avoided for all others.

2. Organizational Clarity

The logic must be appropriate for the consumer. The format must highlight information that is important to the customer, whether by making skilful use of white space, pictures, borders size of print or through other means. An incentive problem ordinarily exists because the seller is not well motivated to draw attention to negative features, nor, in many cases, to facilitate price or quality comparisons. For this reason many jurisdictions outside of Canada have specific rules requiring sellers to highlight information important to the consumer.

3. Brevity

Documents would be nicer if the authors were conciser. Obviously there is a tradeoff between completeness and brevity. Perhaps the legal need for completeness has been too dominant as a motive. Whatever the reason, the remarkably long agreements in Canada’s financial services sector impose serious burdens on conscientious consumers. Technology may bring relief to some: Electronic transactions, carefully presented, may be able to present salient points clearly, with pointers to more detailed explanations. Perhaps too, some buyers will be able to choose explanations in different styles. In nearly every case, the brevity principle is key because transparency is greatly facilitated by conciseness. From the consumer’s point of view, adequate transparency has been achieved when a communication has lowered the cost of search to an acceptable level.

4. Timing

All essential information must be provided before the purchase is made. The facts and details must be available when there is a “felt need” of the consumer. This does not oblige a consumer

to undertake a preliminary search to find out where to look. It certainly does not mean a waiting game with automated attendants programmed for the seller's convenience. The financial service sector may contain the most offensive examples of agreements arriving *after* the consumer has had to make the shopping choice. Further, Canada may be unique among developed countries in the extent to which contracts in the sector can be changed – *without the permission of the consumer* - after the purchase has been made. To facilitate transparency, the timing principle requires information to be available as it is needed.

5. Collective Search

When the cost of search is high to an individual, and economies of scale justify a public effort, transparency requires collective search mechanisms. A securities and exchange commission may be able to reduce costs to consumers and to honest sellers by investigating the truthfulness of accounting documents. An individual will find it extremely costly to try to assess the riskiness of financial institutions. Even professionals find this to be very difficult. For transparency, a deposit insurance corporation can conduct the search as a collective effort, perhaps charging member institutions risk-related premiums. Transparency is advanced whenever there is accumulation of effective (public or private) resources for search.

The Economic Role of Redress

Most transactions are satisfactory to both parties. Among the millions of exchanges that take place every hour are some that do not work out as expected. Redress policies play a vital role at that time. First, they help to reassert justice for the wronged or disappointed party. Second, redress performs an indispensable economic function by allocating greater market shares to firms with superior services. In particular, when redress is fully applied it creates special expenses for those who market lemons. A framework for the financial sector that neglects this factor is inadequate: it is unfair to consumers and superior sellers alike. A redress system that lags behind best available international practice places unnecessary harm on Canadian customers and is a threat to the international competitiveness of Canadian firms⁴³.

How Is the Financial Services Sector Seen?

In a 1997 Canadian survey⁴⁴, 72 percent of 10,333 consumers rated banks as “excellent” or “good” in overall service quality with real estate and life insurance very slightly ahead of that. Credit unions were third from the top among 21 services rated, auto insurance seventh, and banks 17th.

⁴³ "A Consumer Test for Financial Regulation in Canada," *Policy Options*, Institute for Research on Public Policy, 16 (5), June 1995: pp.24-27.

⁴⁴ Conducted by ACNielsen for the National Quality Institute using questions developed with the Consumers Association of Canada. *How Canadians View the Quality of Products and Services 1997 Annual Report*, National Quality Institute, Etobicoke, 1997.

Do sector leaders understand the consumer's experience? Back in 1976, Sentry Insurance surveyed 1,510 persons in the US about quality. It also surveyed 218 consumer activists. These two groups shared virtually the same view – fully 61 percent agreed that the quality of most products had grown worse over the last ten years. In the same survey, 100 senior business managers gave a completely different answer: only 22 percent thought that quality had grown worse while 66 percent felt that the quality of most goods and services had improved. This was a shocking example of being out of touch. Senior executives probably have superior shopping skills, and they presumably shop in upscale sub-markets, but it seems to be difficult or impossible to walk in another person's moccasins.

The Movement to “Defensive Marketing”

Private redress systems can be highly profitable operations. The surprising fact is the long time it has taken for firms to realize the economic point. Many sellers, indeed most sellers have treated complaints as negative rather than seeing them as a potential source of competitive advantage. Financial firms are somewhat later than firms in the goods producing sector in joining the move to seek a competitive edge by means of customer service. In the economics of “defensive marketing⁴⁵” it can be more profitable to spend money to retain an unhappy customer than to try to gain a new one. Every bit as important, alert sellers can make product improvements based on information gained through astute complaint management. Complaints and redress matter very much to the country because the expression of complaints, or “voicing” as it is known, has been shown to be responsible for many of the truly important dynamic improvements to an economy and to its institutions⁴⁶. One reason for the slowness of the response is the unfortunate and quite incorrect assumption that all complaints are “voiced” to the seller. In an early and significant US study,⁴⁷ one with a sample size of over 28,000 purchases, fewer than 30 percent of actual consumer problems were expressed as complaints. In the early study by A. Best and A. R. Andreason in 1976, the financial group did rather well, finishing 26th from the top, out of 34 products / services, in producing (non-price) problems. But 42 percent of the dissatisfied financial customers did not voice their complaints despite the fact that the data suggests the statistical chance of having the problem corrected was as high as 50 percent .

Can Board Representation Improve Redress Policies?

In the Sentry study 1510 members of the public were asked if they agreed or disagreed that all large companies should be required to have public or consumer representatives on their boards. Sixty five percent of the public agreed with representation and five percent of 100 business leaders. Under the Community Investment Act of 1989, US banks were required to include

⁴⁵ C. Fornell and B. Wernerfelt, 1988. "Defensive Marketing Strategy By Customer Complaint Management: A Theoretical Analysis," *Journal of Marketing Research*, 24, pp. 337-46. A. Alan Andreason, 1988. "Consumer Complaints and Redress: What We Know and What We Don't Know," *The Frontiers of Research in the Consumer's Interest*; American Council on Consumer Interests, Columbia.

⁴⁶ A.O. Hirschman, 1970. *Exit Voice and Loyalty*, Cambridge; Harvard University Press.

⁴⁷ A. Best and A. Andreason, 1976. *Talking Back to Business, Voiced and Unvoiced Consumer Complaints?* Center for the Study of Responsive Law, Washington.

consumers from organizations with at least two years standing on their boards. Though aimed at openness and honesty, this representation gives those institutions a new edge in understanding their customers. Most of the US evidence about the representation law is positive, though at the 1995 meetings of the umbrella group the Consumer's Federation of America, there was concern that some representatives had been co-opted. On balance, it seems likely that customer representation with Canadian financial institutions would enhance consumer and small business interests. The ultimate result of the change would depend on whether the representation of excluded stakeholders created a different mix of gains among stakeholders or whether some firms could use the extra input to improve quality and revenues.

Essential Components of An Effective Redress Policy

The first stage for redress policies is the policy of the seller. If that fails, there must be some generally accepted place where an appeal can be made. For the financial sector, as elsewhere, four characteristics of effective redress policies have been specified⁴⁸ as:

1. Accessibility

The method available is known and the unsatisfied party has the ability to reach the redress agency. This access is feasible on both cost and time grounds.

2. Independence

The redress agency is free from financial other incentives which are seen to constrain its decisions. Lack of independence is seen as an impediment to *fairness*.

3. Transparency

There is no concealed reasoning. The rules and the processes are understood and the decision is explained.

4. Efficiency

Decisions are reached promptly and without consuming unnecessary resources. In some circumstances this may mean group measures are taken, sometimes but not always including measures similar to class actions.

This list applies to both public and private redress systems. Indeed, the core ingredients are essential for resolving problems in the international arena where it is desperately needed. It is possible to use these criteria in a report card format to appraise redress systems.

⁴⁸ Robert R. Kerton, "Financial Quality and the Consumer Interest," *Canadian Banker* 97 (4), 1990; pp. 6-13.

Assessing Redress Policies

METHOD	Accessibility	Independence	Transparency	Efficiency
1. Private Complaint System				
2. Public Complaint Board				
3. Independent consumer/investor body				
4. Voluntary Trade Code				
5. Arbitration System				
6. Courts				
7. Ombudsman <ul style="list-style-type: none"> • with sanctions • without sanctions • provincial supervision • Superintendent / Financial Institutions 				

To understand how well or how poorly Canada fares with its mix of redress systems, it will be highly useful to know how successful other countries are. Jeremy Mitchell surveys the UK experience in one chapter to follow, and the use of Directives by the European Union in another chapter. Joop Koopman reviews the interesting way that a tripartite system of participation provides redress in the Netherlands. Rainer Metz analyses the more legalistic regime in Germany. A complementary system using ombudsmen and “market courts,” used in both Sweden and in Denmark, is reviewed by Suzanne Storm. Peter Kell explains progress with consumer redress in Australia after the 1997 Report of their Financial Systems Inquiry. James Brown appraises recent developments in the United States. (See Vol. 2, Ch. 2)

Many are the alternative redress systems that can be devised, but they all must meet a common core of requirements for a successful regime. In practice, the characteristics common to effective public systems are not different from effective private systems. In each case it is essential to earn a measure of trust through the actual provision of redress where deserved. The primary importance of perceived fairness depends critically on the first three criteria: accessibility, independence from interference, and transparency of the reasoning or judgement.

A primary requirement for the Canadian Banking Ombudsman was the third criterion above: independence. In an assessment published about the time the Ombudsman’s office was created, the Association coopérative d’économie familiale du Centre de Montreal (ACEF), highlighted independence as a primary concern. ACEF reviewed offices of the ombudsman in nine countries,⁴⁹ concluding that the British model was the most promising, though not ideal. More recently the Canadian Community Reinvestment Coalition, a coalition of over 80 consumer,

⁴⁹ On the basis of experience, ACEF concluded that the evidence favoured the UK approach as most independent. Association coopérative d’économie familiale du Centre de Montreal, *L’Ombudsman des banques: un instrument pour s’accorder*; rapport présenté au ministère de l’Industrie du Canada, 27 Novembre, 1995, p. 61. A year later, the ACEF Centre, Montreal, issued *La création d’un ombudsman bancaire: quelques éléments d’analyse*,” document de référence, rencontre “Bâtir l’avenir” Ottawa, 1996.

labour and public groups, published *Banking Ombudsmen: Why They Must Be Independent*.⁵⁰ These criticisms of the credibility of the Office resulted, in 1998, in a change in the operation of the Office of the Banking Ombudsman so that a majority of the members of the Board are now independent of banking interests. This achieved a requisite set by ACEF in its 1995 review,⁵¹ though ACEF argued for a “strong majority” of board members while the 1998 Annual Report of the Ombudsman lists six public and five industry members. At the same time, the new rules give the power over the hiring or removal of the Banking Ombudsman solely to the independent directors. This insulation is a measure not achieved elsewhere.

The Banking Ombudsman, Michael Lauber provides this self-assessment:

*In my opinion, the Canadian Banking Ombudsman has a governance structure and operating scope that are equal to or superior to any of the ombud plans that I have reviewed. When compared to other plans, the Board of Directors of the CBO has more authority, the Ombudsman is more secure in the position, and the CBO covers a broader range of bank products and services.*⁵²

Thus, for the banking sub-sector, it seems the Canadian system now performs well on the criterion of independence.

Accessibility of redress is not high in Canada. Many of the largest institutions could not, in the early 1990s, publicly produce a copy of a redress policy.⁵³ Redress is a very recent development, compared to other industries and to other countries. Options Consommateurs surveyed over 1,000 consumers, finding that 52 percent of complainants were dissatisfied with the way their problems were handled. Worse, Options Consommateurs tested 153 financial institutions finding that 20 percent of the persons with the job of looking after complaints were unable to resolve correctly a very simple problem of a double withdrawal.⁵⁴ Canada must do better. A more comprehensive supervisory system is needed for a start: one with effective guidelines for treatment, In addition, some sort of one-stop redress centre is clearly required in the new marketplace for financial services.

⁵⁰ CCRC *Position Paper No. 1*, September 1997, Ottawa, Canadian Community Reinvestment Coalition. In 1995 the affiliated group, Democracy Watch, had outlined much the same reasons for skepticism about the success of a banking ombudsman who is not independent. “Balancing the Financial Services Marketplace” Democracy Watch, November, Ottawa.

⁵¹ Association coopérative d'économie familiale du Centre de Montréal, *L'Ombudsman des banques: un instrument pour s'accorder*; rapport présenté au ministère de l'Industrie du Canada, 27 Novembre, 1995; p. 87. The requirements included “. . . une forte majorité de personnes provenant de l'extérieur du milieu bancaire, y compris des représentants des consommateurs et des petites entreprises. Ce Council devrait notamment être chargé de la sélection de l'Ombudsman. Il pourrait également être chargé de l'adoption du budget annuel . . .” p. 87.

⁵² He also avows that the U.K. Banking Ombudsman, David Thomas, agrees that, the ombud arrangement in Canada is well designed for protecting the institutional independence of the Office. Michael Lauber, 1997. *Submission to the Task Force on the Future of the Canadian Financial Services Sector*, Toronto; October.

⁵³ Michael Dohaney, “Redress as a Component of Quality in the Financial Service Sector,” Major Paper for the M. A. degree, Economics, University of Waterloo, May 1993.

⁵⁴ Options Consommateurs, 1996. “Financial Institution Complaint Mechanisms: Unfinished Works,” Montreal; p. 3.

Performance levels on the criteria of transparency and efficiency are compromised significantly by the confusion of product lines and by the large number of competing jurisdictions that exist in Canada. This is costly to firms and to consumers unable to bear the costs of searching out avenues for redress. The Office of the Superintendent of financial Institutions (OSFI) gives a good deal of attention to prudential matters and almost none to redress. OSFI receives over 10,000 calls including 6,000 calls on banks alone, yet sees its role solely as a quarterback handing off complaints to other agencies. Options Consommateurs points out that “. . . the law has not specifically given [OSFI] the authority to impose solutions.”⁵⁵ They note that OSFI deploys barely 1 percent of its resources to the redress function.

Evidence in the following chapters appraises redress systems in the United States, Germany and Australia and examines the varying degrees of success with ombudsmen in the UK and “ombudsmen plus” in very different structures in Denmark, Sweden and the Netherlands.

Benchmarks for Redress Systems

A recent survey entitled *The Global Enforcement Challenge*⁵⁶ enlarges the list of essential elements for successful redress to include no fewer than eleven of the following requirements. A sound redress system is: quick, affordable, transparent, fair, effective, user-friendly, accessible, well-publicised, straightforward, professional, and appealable. Undoubtedly there is some value in the comprehensive list but far more useful is the concise conversion of the needed characteristics into six “benchmarks.” This has been published by the Australian Ministry for Customs and Consumer Affairs⁵⁷ as:

- **Benchmark 1 – Accessibility**
- **Benchmark 2 – Independence**
- **Benchmark 3 – Fairness**
- **Benchmark 4 – Accountability**
- **Benchmark 5 – Efficiency**
- **Benchmark 6 – Effectiveness**

These six are cogent enough to be deployed directly, perhaps with extra attention to tracking or auditing methods. The adoption of such benchmarks in the financial services sector would have been controversial barely a decade ago when big players in the financial sector could refuse to

⁵⁵ Options Consommateurs, 1996. “Financial Institution Complaint Mechanisms: Unfinished Works,” Montreal; pp. 6-7.

⁵⁶ Australia Competition and Consumer Commission, *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace*, Discussion Paper, Commonwealth of Australia, Canberra, August 1997.

⁵⁷ Australia, *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Senator Chris Ellison, Minister for Customs and Consumer Affairs, Consumer Affairs Division, Department of Industry Science and Tourism, Canberra, August 1997.

make public their redress policies.⁵⁸ Now they cause barely a ripple. Certainly the industry experts in customer affairs – for example, officials who belong to the Society of Consumer Affairs Professionals – will find it easy to work with clearly defined benchmarks. If benchmarks are to succeed, they must be seen as having at least the characteristics specified above. In the best of situations, the redress method would also impose costs on sellers of poor services but no extra costs on sellers who do meet the expectations of their customers. With the steady movement toward globalization, Canada must have a redress system which is up to best international practice, not only to serve domestic consumers, but also to give Canadian financial institutions an edge in international markets.

Transparency and Redress Principles: Improving the Marketplace

If the guiding principles listed above can be implemented, the market can operate in a framework that is fair to consumers and to those sellers with the best offerings. The need for ongoing intervention will be lessened considerably. It is this framework that needs attention.

The international community, including the United Nations, makes use of eight “basic consumer rights.” Two of the most elementary of these rights are:

- The right to information, and
- The right to Redress.

Two others are closely related:

- The right to representation, and
- The right to consumer education.

If these rights are respected, transparency and redress will meet the needs of consumers, sellers, and the marketplace too.

In the consumer and small business portion of the market for financial services, the range of price and quality differences is exceedingly broad – far wider than can be explained by the smooth operation of a competitive marketplace. Perhaps the market shopped by professionals is a symphony of economic interests guided by the invisible hand bringing in needed instruments for ongoing harmony. By way of comparison, the market for personal finance is a not a symphony but cacophony of voices with no harmony at all and making little sense to many prospective

⁵⁸ As noted above, Dohaney’s 1992-3 study of redress policies of major financial institutions proved to be unexpectedly difficult when most of the banks surveyed were unable even to produce copies of their official redress policies. The clear exception as best in its class was the Bank of Nova Scotia. Michael Dohaney, "Redress as a Component of Quality in the Financial Service Sector," Major Paper for the M. A. degree at the University of Waterloo, May 1993. By the end of 1995 each had an explicit policy, an ombudsman and there was an overall banking sector ombudsman.

buyers. It is difficult for many individuals to find the best offering, even if significant gains might be made. The level of transparency is too low for immediate success, disappointment is all too frequent, and redress is not easily accessible to many who need it.

The proliferation of complex new differentiated financial services, combined with the transformation of traditional sellers, has led to enough noise in the marketplace to confuse all but the most sophisticated of consumers. In some cases, sellers are not well motivated to remove hidden incentives, to improve contract provisions, to supply clearer contracts, or to create a low-cost path toward redress. In other cases, suppliers of financial services have made serious efforts to permit access to superior offerings or to provide redress when things go wrong. How well does Canada do, compared to similar countries? The American social philosopher, Yogi Berra, is reported to have said “You can see a lot, just by looking.” The next chapters take a deliberate look at best practices in countries in Europe, in the United States and in Australia. In addition, actual agreements in place in Canada are given scrutiny. This should permit an overall assessment of strengths and weaknesses in the consumer part of the financial services sector, an assessment based on realities in Canada and in comparable countries.

Chapter 2

Practice: Assessing Financial Documents for Readability

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Preface: Some Assumptions and an Introduction

Judith Colbert and Paul Beam have undertaken this study through watAGE Inc., a company which specializes in markup software for technical documentation and online learning, particularly in an SGML environment. Our respective areas of expertise include our academic discipline of English language studies and accumulated experience in both the writing and the training of others to write, particularly in business and corporate environments. Professor Beam has been Chair of the Centre for Professional Writing at the University of Waterloo and Doctor Colbert has worked extensively with senior levels of government in the drafting of documents and their applications to public use. We share the Task Force's interest in the relationships between customer awareness and satisfaction and the wellbeing of commercial activities which rely on that public goodwill and trust. We believe this study will indicate areas for corporate development in achieving that goodwill and, in the process, adding to the quality of the products and services they provide. The study indicates clearly that much must now be done to provide comprehensible documentation in all areas of the industries we have surveyed. It also points to the sources from which that knowledge and set of skills can be derived and to the benefits, as profits and reputation, which accrue by taking the effort and responsibility to assure that Plain Language standards are incorporated and applied across all areas of the organization's written dealings with the public.

Plain Language is not an academic sub-discipline, nor is it a set of legal standards. It is an attempt by legislators, consumers groups and document specialists to help organizations and agencies to convey descriptions and instructions to clients and users clearly and completely. Its object is to make comprehensible to a large audience new products and processes so that buyers can make informed judgements and use their purchases with safety and satisfaction. Some of the activity in assuring Plain Language principals in the presenting of information to the public is altruistic, some self-promotional, some genuinely user-based and effective. At present few Canadian organizations use Plain Language consistently. Among these, some attempt to have inexperienced writers apply it as a formula, with bad results. Our study reveals these deficiencies but also shows some areas of genuine success from which we can extrapolate ways in which clear expressions of products and their applications for the general public can be written.

There is a general hope among legislators, technical writers and consumer organizations that clarity of expression will aid buyers to make informed choices. This desire to have all clients understand fully the liabilities they undertake and the benefits they expect to derive from the agreement of purchase is the reason that Plain Language theory has been developed. It has a varied, inconsistent history and its standards and practices are still under development. Broad rules and good ideas apply only at the level of 'best practices' among writing groups and professional organizations. Legislatures enact general guidelines but language options, advertising methods and the emerging technologies of computer-based, interactive displays make general rules of little value where they are applied strictly as formulae or where the writing group is either unmotivated or inexperienced. There is no 'template' or form to assure effective documentation by the mere adherence to a simple set of rules. Language options and the complexity of many products make this a naïve hope. Plain Language documents can be demonstrated to be effective under usability test conditions, but they have to be created by

informed writers who wish to help motivated readers understand their products and service. There is no short cut to writing well-structured, informed documentation.

‘Plain Language’ is a concept of the market place, not of the research laboratory or classroom. Its principles are supposed to standardize descriptions of services, processes and products. The concept is based on these general premises:

- Concepts can be expressed in language that the general public can understand in all areas of commerce requiring individuals’ informed consent.
- Tests of vocabulary and sentence length and complexity performed on an organization’s public information reliably predict reader comprehension according to readers’ education levels.
- Public documents require both objective testing and the consideration of experienced writers. There is no formula that permits inexperienced writers to create clear, comprehensible documentation from a ‘writing guide’ or rules applied by rote.

Plain Language consists of two separate analytic steps. The first, the better known, are tests on the vocabulary and syntax of the text of the document. These are conducted most accurately on electronic files and the results can be viewed in a number of comparisons, as the contents of this report illustrate. The degree of consistency between results and separate tests of readers’ comprehension of subject matter make these both reliable and standardized. These tests reveal the contents of the document in the contexts of vocabulary recognition, word length and the complexity of sentence syntax. They presume to test only comprehension and do not assess readers’ abilities to discriminate among the various options offered in most sales situations or to perform subsequent functions with the products under consideration. Formalized usability testing can reveal these additional stages of readers’ capabilities but they fall outside our considerations.

The group of tests we used to evaluate readability levels are the Flesch and Fogg indices. They are the medical thermometers of the writing world. They measure the condition of the text; they do not diagnose the pathology. Most languages are complex structures, open to wide idiosyncratic manipulation by writers. This means that, with a bit of perversity or too little writing experience, authors can write documents quite contrary to simple comprehension, while staying well within most Plain Language guidelines. The results of our tests are diagnostic; they are not ‘descriptive’ in that they do not instruct writers and editors how to modify documents in light of the comprehensibility results. They still leave the onus for clear writing and effective descriptions of process directly on the document designer.

The second, much more difficult, component of Plain Language analysis consists of the author-editor’s informed development of the document. Here one considers ‘structure’, the sequences in which processes are described, the ordering of the stages and parts, the linking of ideas, concepts, terms. This is the hard part. Only two tests can be applied here. The first is the assessment of an analytic editor whose experience comes to bear in the formulation and development of the logic of the document. Additions and modifications shape the results into a final form. The second is

usability testing of the completed work on samples of the audience for whom the material is intended. Such facilities are expensive and time consuming. They are expensive to contract, more expensive to maintain and they constantly intimidate an organization's technical writers.

'Jargon' to you is 'precision' to me . . .

Common sense prevails in large organizations, as it often does in other parts of life. Understandably developers are unwilling to leave over the description and explanation of their work to people who do not understand it with the comprehensive view of the expert. This attitude applies in all fields, in all companies in all situations where the subject expert must hand off to the communicator. Shared confidence in conveying accurate, complete definitions to the naïve purchaser usually comes only with designer and writer working closely together over time. The building of an organization's documentation capability in the context of its design efforts is usually a protracted, expensive and highly valued process.

But even where this is achieved, a real difficulty remains. How does an organization's development team achieve the clear expression of a complex product or service with the minimum of 'jargon' for the maximum understanding by a naïve public? Quite correctly, experts use very precise terms to describe complex products and the degree of this complexity is increasing exponentially in all fields. 'Jargon' is the pejorative term for a necessary expansion of technical vocabulary to describe the details of the operation, safety and completeness of any product. It cannot be compromised below a certain level of detail and no effort in writing can reduce some processes to models which an inexperienced or minimally educated reader can understand.

Plain Language models suggest that words of more than two syllables should be replaced, where possible, by simpler terms. The implications of adopting this practice in areas like pharmacy, engineering, medicine and many scientific fields are intimidating. Some terminology is unique, complex and irreducible. An uncompromising application of Plain Language rules in conditions requiring understanding of complex issues is at once a disservice to the fields of expertise which are compromised and the public who will be badly served.

The legal profession, one of the strongest supporters of the Plain Language movement, is itself one of its most difficult obstacles. Legal terminology is simultaneously precise to its needs and obscure to the majority of readers. Bound by its history, it requires specific expressions unknown to any but trained lawyers. Contracts, agreements, writs of all kinds, employ a language that is not amenable to alteration, to simpler expressions. And legal terminology seldom conforms to the short sentences and two-syllable words of documents which large numbers of readers can comprehend. In many contract situations no compromise is possible for the expression required to protect the very users who may have difficulty understanding the legal structures of that protection.

Plain Language in the Spectrum of Customer Protection

‘Plain Language’ in isolation cannot achieve the goal of a confident, informed public dealing on equal terms with large organizations in important transactions. It is not sufficient by itself to overcome client inertia, lack of knowledge and almost every consumer’s lack of background and context as he or she encounters complex situations, products, service options in our society today. Language is simply not that accurate an instrument and its use is not sufficiently standardized to allow for such refinement.

Plain Language fills a part of a spectrum of activities which take place from the point where a supplier makes a service or product available and a client chooses to acquire and use it. These are the additional factors which influence that process, some or all of which can negate or diminish the effects of plain language practice.

Plain Language presumes a tacit bargain of good faith between provider and client, buyer and seller. There is an unstated belief that both parties genuinely wish to disclose fully all information needed to enable the purchaser to make informed decisions. Some of the unfair burden placed on plain language principles is the presumption that the provider has any interest in doing that. The simple, direct equation of a sale deriving optimally from a client’s clear understanding of the contract flies in the face of most advertising and a great deal of marketing. The subtle diversity of the financial products we studied shows that contradiction in almost all product lines and commercial services. Each company seeks a competitive edge which is not achievable by plain language enunciation, even less achievable by its near cousin, ‘comparison shopping’.

As a concept, Plain Language is quite conservative. It makes a series of presumptions about writing and texts, about the motivation and abilities of readers and about authors’ abilities, intentions and good will. In most cases these are neither warranted nor demonstrable. Usability tests of the kinds we have applied in our analysis give failing grades to most of the materials we have examined. All materials fall into comprehension ranges far above the majority of users for whom the materials were designed. Our analyses have dealt exclusively with the readability of documents per se. We have studied only the vocabulary levels and sentence lengths of static, print-based documents and this is pretty well the limitation of Plain Language initiatives at this time.

The commercial, elegant counterpart to Plain Language testing is the now extensive, simultaneous analysis by extended word processing software, like Word and Word Perfect, where spelling errors and unconventional associations are noted even as one types. An author can invoke a style editor, pejoratively described as ‘Flat Bland’, to note any sentences beyond a certain length and to flag complex syntax. This process, more comprehensive than Plain Language testing, is idiosyncratic to the writer. One can define a hypothetical audience and the style checking software will highlight all expressions outside the ranges set for that group. It notes the kinds of expression deemed likely to cause comprehension errors or reader disquiet. But, because of the complexity of language, the specifics of a given subject and the general lack of writing training among the vast majority of people required to write on their given subjects,

these tools remain incomplete at best, dangerously error-prone if relied on exclusively by untrained users.

Only comprehensive editing by trained experts, from consistent principles, applied to all public expressions of an organization, can implement Plain Language and only sustained training of writers can assure its development from the initial author through the writing department to marketing and standards. This is a hard answer. It means companies must spend more than they wish at each stage of the process and even more on sustained testing to assure results. It probably accounts for the sporadic and minimal effects Plain Language has enjoyed over the past twenty years.

The Concept of the 'Document': 'Electronic, Online, Linked, Interactive and 'Evolving'

During this time, as professional groups, independent researchers and academic theorists have advocated analysis of text-based documents from consistent standards of comprehension measurement, the nature of the 'document' itself has been changing radically. All 'development' of documentation has become electronic. Third world societies are the last bastions of hand-set, cold-type print. Students now have never used a typewriter. Computer display terminals have become the de-facto standard for display. Their growth and accessibility drive all aspects of document design and, while print budgets continue to increase, they do so primarily because of the ease of creating for convenient reading later a paper copy of part of a much larger, often complexly integrated set of electronic files.

'Documentation' is presently best understood in the arcane studies of 'mark up', the processes by which the elements of both print and online documents are displayed in the respective media. In this world of cryptic symbols and algorithms, a 'document' has its form determined by the system which owns it. The document's dimensions, fonts, colours, sequences of parts and the searchability which permits a reader to move directly to specific information all have ramifications for readability and comprehension. Yet, for all intents, the Plain Language methodologies apply still exclusively to language-based expression (not graphics) and to a structure derived from the static base of the printed page.

Display Screen 'Interactivity' and the New Models of Links, Interpreted Responses and CGI.

Of greater concern for issues of comprehension are three recent developments which render a 'document' (and its applications) even less amenable to Plain Language analysis. Expressed simply, many documents of precisely the kind Plain Language is usually invoked to assess no longer exist in a 'static' format. These 'documents', the results of a series of online processes are – literally – 'unique'. They exist once and once only and cannot ever be duplicated because they are unique to each user's patterns of selection of information and the system's responses to information by and about the user. A case in point is a consumer's selection of a product to be understood and purchased electronically. Here user choices provide a response-based pattern of 'help' and information, even the text-based components of which cannot be tested because they cannot be duplicated for a second user. The processes are much more like individual

conversations than they are 'public pronouncements' shared by many and available to all. Plain Language techniques, as applied in this study, break down in this environment. Nor is this a small and deviant sector of commerce as it was even two years ago. It is increasing in frequency of use and market-share of sales activity.

But of greater importance, marketers, writers, product developers and sales people are being trained to see a 'product' in the total development and display of its parts. These extend initially for the design and production of the item, through the understanding and modifications necessary from designers and marketers and finally to its presentation to the public, as the object and the instructions for its use. In effect, an unbroken link of electronic files extends from inception through application. This is the new meaning of a 'document'. And the ramifications for the consumer are large.

Increasingly electronic documents are being rendered specific to each user, at each application. Identification and assessment of a user by a commercial system – a bank, online shopping mart or investment agency – results in text responses unique to that client, in that circumstance. It may well be impossible to recreate the document sequence of any case under any other set of conditions. Where Plain Language advocates traditionally have sought to provide the same document for all clients, current technology is moving quickly to address each potential customer in terms of his or her known characteristics, education level, financial resources and even personality. Plain Language methods have now to be moved to the very levels of the algorithms which govern the language responses of the interpreting system. Conventional editing techniques cannot be employed here to text fragments which cannot be reproduced. General principles of Plain Language cannot be invoked for texts which do not conventionally begin, end or relate to each other in the structures of precedent and hierarchy.

Electronic documentation is developing rapidly and will influence buying, selling and the making of contracts in ways not dealt with in law, in which the conventional print document still holds pride of place. Our study does not address these innovations but the Task Force must be aware of them because they will internationalize the conventions of trade even as they seek to standardize the terminology by which we conduct electronic business across borders which know no 'language standards'. Consideration of this phenomenon may well be a next step in the Task Force's investigations.

The Big Guy and the Little Guy: Sellers and Buyers and the Transfer of Ownership

Plain Language is only a set of unstated presumptions which practitioners then attempt to standardize. Among these are the beliefs that:

- all readers and users can be addressed at a base level of understanding so that, this level defined, writers can be assured that documentation will be understood accurately and effectively by all audiences in all circumstances.
- that level can be defined and expressed as standards in text and graphics instructions.

- readers will be able to make rational assessments from materials expressed at this level of comprehensibility.

Common sense indicates here that theory does not manifest itself in practice. Readers are not this homogenous group. They vary by age, experience, education and ability and the level of comprehension for any given situation is remarkably low. In conditions where full comprehension is a requirement, extensive training and testing of the user group must apply in every case.

However, the law perceives all adults as having similar and sufficient powers of analysis and discrimination to act in their own best interests. It does not impose special requirements on owners and sellers to establish that buyers and users meet certain criteria of comprehension before they are permitted to buy and use most products or to enter into legal arrangements of ownership and responsibility. Only in a few cases involving operation of vehicles and the use of firearms are adults required to pass tests to demonstrate discretion and a correct awareness of the item's purpose and use. In most cases, 'caveat emptor' prevails.

As well, customers generally are nonchalant about customer rights. In most cases the owner-producer enjoys a tremendous advantage, in both mastery of the product or process in question, but also of the issues and the details which make up its context. In effect, the deck is usually stacked against the customer so that, even with legal representation, a case can be made that client position of understanding is less than the owner's.

Nor does this seem to be an unnatural condition: "I don't know what art is, but I know what I like"; "I don't need to build a car to drive one". There is an automatic, shared assumption that the creator/owner should know more about and be more competent with, the items in question than the neophyte or even a user familiar with the item.

There is a general imbalance between consumer indifference and ignorance on the one hand and the producer's desire for 'most gain for least effort' on the other. Over the past century, in all areas of consumer affairs, the doctrine of developer's responsibility has generated extensive, interlocking sets of standards in virtually every area of commercial and legal interaction. In all contracts the presumption – among the general public, before the law and within professional organizations – is that great responsibility lies with the producer/provider to assure that the object or service is what the owner claims it to be. In effect, what the buyer/client receives is essentially what all external standards agencies understand that product or service to be and to do.

Over time the responsibility to enforce fair exchange in all areas of social commerce has devolved onto government agencies. Now that responsibility is being extended to how a product is presented for use. From early efforts to assure the consistency of the product, its pricing and distribution, developed societies now are requiring extended standards on the producer's part to assure that buyers can ascertain precisely what they are acquiring, what it is, does and how it works. As well, these must be available in every situation where a contract is the point at issue.

Plain Language can support this principle. It cannot assure compliance by either producer/seller or the buyer/user. The former has the primary goal of selling the product and to do this, in

normal practice, organizations will emphasize its virtues and diminish its failings. Plain Language provides no remedies for this at all. In a society where the government exerts primary authority to assure quality, the public is seldom motivated to seek complete disclosure about the items of commerce which make up our daily lives. In cases of major or long-term decisions, the very complexity of the processes governing the buyer-seller relationship, the options around the choice and the number of alternate suppliers makes the selection process daunting to the point of futility.

Plain Language can help here if it is made a consistent component of an industry- and profession-wide process. This is the trend of present Plain Language development and here we see most value in its application. Watchdog groups and informed individuals are the best defences in present circumstances to assure industry compliance. The concerns among large corporations to protect their reputations are the simplest assurance that the public is protected. Government and consumers advocacy agencies monitoring all sectors of commerce remain the most effective methods of protecting a generally apathetic and uninformed consumer base in a developed commercial society.

A point to consider in conclusion is that Plain Language is not sufficiently developed or valued to be part of any teaching or training process at the secondary, college or university levels. Nor is it included in any hiring requirements for technical writers. The two Canadian Institutes, in Toronto and Vancouver, with their high initial hopes of interest and participation from large organization, shut their doors some five years ago, after two years of productive work, when the initial infusion of government funding ended. No formal development on a significant scale is occurring in Canada at the present time.

Our studies reveal that none of the documents we have examined can pass the basic tests of readability for the audience levels for which they were designed. Few of the organizations which developed and disseminate them have resources in place to produce the comprehensible materials they admit they seek to create and even these few have not allocated the resources or plans to rectify the deficiencies.

In the second condition of Plain Language, the commitment to win through to demonstrably precise and useful documents for the general public, no policy exists at the corporate level to assure either the assessment or the compliance necessary to achieve that goal. It falls outside the scope of this report to recommend the necessary steps to achieve Plain Language conditions for Canadian corporate and government readability standards but it is clear from our studies that no sufficient policies apply to direct such an effort were it undertaken as a national enterprise.

The factors working in favour of Plain Language are significant, however. This inquiry points exactly to the problems faced by Canadian businesses in areas of document comprehensibility. Continuation of this initiative will define the scale and location of the problem within Canadian corporate structure. The Task Force has both direction and initiative to effect change. Now it also has evidence of both the problem as it is manifest across representative documents in a broad section of the financial services industry and illustrations, however preliminary, of companies' concerns and early attempts to address and resolve the issues.

So the Task Force also has allies in the private sector itself and now possesses some prototypes of Plain Language planning and in-house practices to achieve clear documentation. This also illustrates will and effort on the part of corporations which perceive a degree of marketability in the concept of helping customers in that important moment of the client's decision to buy. Corporations which implement Plain Language practices and then accept the costs of acting on test results by modifying documents in light of their audience's responses, take a moral high ground not lost to their marketers and sales force of being seen to care about their customers – a significant business goal.

We see Plain Language as being a highly saleable concept when:

- it incorporates concern for customers' real understanding of the terms of acquiring and using the product or service to the fullest extent of the developer's design,
- the developer exerts genuine efforts to determine that the documentation results are effective in both familiarizing the client with the product in all its aspects and in describing its use to the maximum benefit of the purchaser,
- the organization markets its efforts and concern for a client's clear understanding of the contract as an index of its commitment to quality in all aspects of its public trust. Large corporations with established markets understand this appeal immediately and they are best positioned and financed to implement documentation standards similar to and as high as those they bring to bear in all other areas of their production.

Government agencies see, as does this Task Force, the large benefits which accrue nationally to corporate efforts to assure and support the customer – the general public – that Canadian services and products are precisely what they claim to be and that clients can purchase and use them with confidence and understanding. Where the public has recourse to consumer groups and information via the Web, that process is efficient, easily accessed and a clear and present threat to any companies not conforming to prevailing standards in their respective fields.

Organizations make commitments to:

- Incorporate Plain Language policies into their production planning,
- Invest in the trained staff to assure both its incorporation and practice,
- Allocate sufficient resources, money and time to implement the results into the products and services they sell to the general public.

Doctor Colbert's analyses follow and they illustrate both the abilities to evaluate the degrees of readability and the implications of the results for general audiences. What emerges clearly from her research is that Plain Language methods reveal consistent, accurate definition of documents by levels of readability, that these testing methods can be incorporated into the early stages of document development and that sufficient research exists to bring together guidelines for corporate implementation of Plain Language standards within an organization.

Author's Foreword

*Nous disons qu'un texte est clair quand nous ne percevons pas le langage dont il est fait.
We say that a text is clear when we cannot see its words, when they vanish into transparency.*

Paul Valéry, *Cahiers*

Readability is a first condition of transparency and the ability of a text to be comprehended. Therefore, when watAGE was asked to prepare a report on document transparency for the Federal Task Force on the Future of Canada's Financial Services, we considered it appropriate to explore the readability of commercial and public sector contracts and agreements. Before beginning, it was also necessary to re-examine current readability theory, to ensure that the measures we have used provide an accurate assessment of how well consumers can understand financial documents.

In the end we decided to carry out both a quantitative analysis, using established readability formulae, and a qualitative analysis, based on criteria for plain language and open communication. We felt that, together, these evaluations would yield results that would allow us to determine how effectively the documents under examination communicated to their intended audience and to compare the effectiveness – or readability – of each document in relation to the others.

Somewhat to our surprise, we encountered our first barrier to transparency in the collection process itself. Documents were not as readily available as we expected. Readability depends on the documents in question being available to consumers.

Clear and extensive research shows that literacy among the general population is also likely to be a barrier to transparency. Once again, readability is a less significant factor where readers lack even basic literacy skills. Most of the documents under examination relate to major 'life change' situations encountered by the population at large.

The remarks that follow result from three studies involving Canadian documents in English and French, as well as documents from the United States. Accordingly, Sections I-III relate to contracts and agreements from those sources. Section IV is a consolidation that permits comparisons and contrasts and leads naturally to Section V, which forms our conclusions and recommendations. Sections I-IV are comprised of three parts as well as appendices.

In all, we analyzed representative samples from over 90 documents. Some of these involved multiple passages in which we undertook quantitative analysis, using two computer programs

that generated readability statistics based on three readability formulae.¹ The magnitude of this undertaking acquires perspective when previous studies are considered. For example, Peter Calamari, author of the Southam Literacy Report (1987), notes the most comprehensive readability survey carried out in Canada to that time was conducted in 1980 and involved 59 documents, using three formulae. He cites a more recent survey involving more than 30 publications and two formulae. Both surveys, like the studies described here, concluded that documents assessed were difficult and complex.² In effect, all documents in all three studies are deemed by our analyses to not be comprehensible by the majority of their intended audiences.

The studies that follow provide a unique view of readability in a North American Context, surveying the readability of documents in both languages from Canada, as well as documents from the United States. The results shed light on users' knowledge of issues in the financial marketplace in three major groups in the current free trade zone.

Discoveries about relative similarities and differences between English- and French-language documents in Canada help to shed light on how the two populations work with financial institutions and interact with each other. A Canadian expert on translation has commented recently that "the solutions of the translators dilemmas are not to be found in dictionaries, but rather in understanding the way language is tied to *local* realities, to literary forms, and to changing identities"³. She points to the decisions translators make about the cultural meanings that language carry. The results of these studies show, unfortunately, that writers and editors seldom make decisions about language in financial documents with real knowledge of the audience in one culture, let alone, two.

Legislative initiatives in the United States provide one potential avenue for increased transparency in financial documents. On the whole, they seem to have had a positive effect on many aspects of readability, but some measures fall short with respect to others. Canadian examples of voluntary activities, in relation to both the process of achieving standardization and regulatory structure, and actual document improvement, also offer a potential route to greater clarity.

Ultimately, while the individuals who put pen to paper and fingers to the keyboard may be called "document authors," documents are written by a whole range of individuals and committees, some in positions of significant authority. We use the term "author" in this report in its broadest possible sense, in recognition of the complexity of the document creation process.

In carrying out these studies, watAGE was assisted by many individuals – some who helped anonymously, others who provided information and documents either in their official capacities, or some distance from their call of duty. Many helped because they wanted to do their part to

¹ In the French-language study alone (reported in Section II) analysis involved almost six thousand words in 21 French documents. When the English-language passages assessed for comparison are included, the total number of words rises more than 12,000 in 46 documents. (Totals for English words and documents are slightly higher than French totals, since the French documents were occasionally compared to more than one English document.)

² Peter Calamari, *Broken Words*, pp. 46-49

³ Sherry Simon, *Culture in Transit*, pp. 10-11.

ensure that future financial documents would serve their clients better. Our thanks are extended to all.

As the French author, Paul Valéry wrote, we say that a text is clear when we cannot see its words, when they vanish into transparency. Similarly, financial documents are transparent when the words are invisible, when they offer no barrier to meaning but rather provide open access to the market place. Our job as language specialists is complete when we are no longer needed, when readability is assumed. Until then, we hope that the studies presented here will take us all closer to that goal.

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Section I: Assessing Canadian English-Language Documents

Part I.1: Collection of Agreements

I.1.1 Introduction

From late December 1997 through early March 1998, 49 agreements in English were collected from four sections of Canada's financial sector, including:

Auto Lease

Standard Lease Agreement - 5

Banking Services

Basic Banking Agreement - 8

ATM Agreement - 7

Credit Card Application - 7

Loan Application/Agreement - 7

Insurance

Auto - 2

Life - 7

Mutual Funds

Prospectus - 6

Appendix I.1 includes details about the documents collected.

I.1.2 Comments

I.1.2.1 Auto Lease Agreements

Auto lease agreements were collected, without difficulty, from major domestic and foreign car dealerships in Ontario. No agreements were collected from independent auto lease companies, such as "lease-to-own" companies, or from daily car rental agencies.

Auto lease agreements are provincially regulated and hence, are not necessarily standard across the country. As a result of a current industry initiative to voluntarily achieve standardized full disclosure leases, the agreements of major manufacturers share many common features.

Negotiations under way among all provinces to achieve standard language are scheduled to bear fruit in the form of revised legislation in all provinces in the near future. It is expected that such legislation will affect all auto lease agreements, not just those offered by manufacturers.

One dealer expressed concern about the practices of companies leasing vehicles to individuals who are unable to meet the credit requirements of the larger auto companies. This concern was not investigated in this study but remains an area for future activity. Similarly, the role of provincial legislation in determining the content and presentation of agreements remains to be assessed. Both issues may be clearer when the new legislation appears.

Another dealer suggested that the industry had done much to improve the transparency of its documents and questioned whether consumers take enough responsibility for understanding the documents they sign.

1.1.2.2 Banking Services

This study includes agreements from a total of eight institutions including chartered banks, a trust company and a credit union. They were collected during personal visits to branches in Ontario cities.

Banking agreements were collected from all eight institutions, while only seven samples were available in each of the other categories. In some cases, institutions did not offer a service (a credit card, for example), and in other cases, the documents were not available (see below, Access to Documents).

In many cases, one "contract" includes a number of different documents common to a range of agreements. A basic banking contract, for example, may include an application form plus booklets on agreements, services and privacy issues which are also shared by that institution's ATM and/or credit card agreements and application forms. Since these documents are separate from both each other and the application and other forms that consumers must sign, it may be questioned whether consumers always receive all of the components of a particular contract.

For example, during document collection for this study, it was very easy to obtain a credit card application from a kiosk display in at least two branches of one banking institution. However, after consultation with colleagues and managers, no staff in either branch could find a copy of the agreement promised in the application, although in each case, they provided a phone number for further inquiry. In one branch, staff had not even been aware of the existence of the agreement. This, too, remains an outstanding issue for further investigation.

In the end, no credit card agreements were available for analysis. It appears that agreements are sent directly to individuals who have submitted signed credit card applications. In such circumstances, consumers may need a special warning. It appears that the arrival of their new card is their first opportunity to examine the agreement to which they will be bound. Further, the application and/or agreement may state that use of the card constitutes their acceptance of the agreement. Since there is usually a considerable time lapse between signing of an application and receipt of a card, consumers who take great care in the application phase may be careless

about details by the time their cards arrive. Consumers are likely to have great difficulty accessing an agreement before submitting a signed application. In contrast, a wealth of marketing information is readily available and in some cases easily mistaken for the agreement itself (see below, Marketing Information).

Technology may also be a barrier to transparency. One institution did not provide a loan agreement, saying that loan agreements are specific to individual situations and are generated by computer only as the need arises. In some other cases, relatively brief loan applications, rather than agreements were assessed in this study. Once again, it proved extremely difficult to obtain copies of agreements in advance of making a commitment. Comparison shopping for loans on the basis of agreements appears to be almost impossible.

1.1.2.3 Insurance

(i) Auto Insurance

Auto insurance contracts include three documents: the policy (regulated in each province), the certificate (renewed each year) and an application. In practice, consumers may mistake their certificate of insurance for their policy, and be unaware of their application, either because it was completed many years ago or because they were granted coverage as a family member. Depending on coverage, certificates vary in format and contents from company to company. In Ontario, at least, certificates appear to include language that is similar, if not identical, to the language of the provincial policy. Auto insurance certificates were not assessed in this study although they appear to be complex documents, worthy of further study. Similarly, this study did not include applications for insurance.

Auto insurance is mandatory throughout Canada and is regulated by provincial and territorial legislation. The provincial government provides full or partial insurance in British Columbia, Saskatchewan, Manitoba and Québec. The Insurance Bureau of Canada provided sample policies from five provinces, including a policy in French from the province of Québec. Since the policies from Nova Scotia, Newfoundland and New Brunswick are similar and very different from Ontario's policy, only the policies from Nova Scotia and Ontario were analyzed. A future study may consider additional policies and the relation of all policies to certificates and applications.

(ii) Life Insurance

Life insurance documents were the most difficult of all to obtain. Eventually, all companies responded to requests, but only after what appears to have been much internal consultation. One request was not pursued after it was passed on to a vice-president at head office who was out of town when contacted.

Fortunately, one company was extremely helpful, from both corporate and local offices. That company provided a sample as well as contact with a local broker who primarily services agents (rather than consumers). That broker very willingly provided a range of samples and agreed that it was next to impossible for consumers to see sample policies in advance of making an insurance decision. Using a computer program, the broker also demonstrated that among the major

companies, annual premiums for the same coverage can vary by several thousands of dollars. Once again, it would be difficult for consumers to access this information, even if they were aware of the need to look for it.

Life insurance companies were willing to provide marketing information about their services, but said that they relied on their agents and brokers to provide consumers with specific policy information. Further, they said that it was difficult to provide samples since each policy was tailored to the needs of individual consumers.

1.1.2.4 Mutual Fund Prospectuses

Samples of mutual fund prospectuses were easily obtained from the corporate office of a financial services group, not usually frequented by consumers. However, a financial adviser who serves clients in a local office of a different organization was unable to assist since all prospectuses were kept at that organization's corporate office. Once again, it appears that consumers have easiest access to documents of legal importance, after they have made a purchasing decision.

1.1.3 Issues

1.1.3.1 Access to Documents

Except for auto lease agreements, accessing documents for analysis proved to be more difficult than expected. In almost all cases, documents were specifically requested for this study in person or by telephone by an individual who is highly educated and experienced with a range of financial services and products. Further, requests were often made to known contacts within an institution. In most cases, the greatest difficulty was experienced when no contact was available. A few anonymous visits were made to branches of banking institutions.

It appears, therefore, that many of these documents are unavailable to average consumers in advance of completing a transaction. Consumers without a personal contact within an institution or who must cope with barriers such as age, disability or unfamiliarity with language have an even greater disadvantage. Access appears to be the first and perhaps most important transparency issue.

1.1.3.2 Marketing Information

Marketing information – essentially advertising – is freely available, in great quantity. Often it is mixed with more formal documents, such as credit card applications, distracting consumers from the more specific, legal information elsewhere on the page. In one case, in particular, the "marketing information" was designed so that the brochure appeared to be a legal document, but according to its fine print, it was not. Consumers were asked to consult another document for the agreement itself.

1.1.3.3 Role of Agents, Brokers and Employees

Many institutions, especially in the banking and life insurance industries, rely on individuals to convey information about agreements to the public. This reliance appears to be particularly heavy in relation to loans and life insurance policies. A consumer's understanding of an agreement depends on the ability of the agent, broker or employee to explain its meaning. Similarly, these individuals often determine whether a consumer has access to an entire "agreement package" or contract. Parts may be out of stock in a particular location, or staff may be unaware of their existence.

In many cases, therefore, the extent and quality of information available to consumers largely depends on the expertise of staff, rather than on the content of specific documents. This reliance on staff is particularly troubling since staff may be unaware of particular details or uninterested in providing the information consumers need to make wise decisions.

1.1.3.4 Multiple Documents

As noted above, some agreements consist of multiple documents, often combined with marketing information. In some cases, institutions have distinctive and well-designed packages that provide consumers with good information about financial services. In other cases, these packages appear to be scattered and confusing.

1.1.3.5 Computer-Generated and Online Documents

Increasingly, institutions appear to be turning to computer-generated agreements, meaning that standard "off the shelf" samples are unavailable. Further, local staff in particular, appear to be unable to use the computer to generate a generic sample for inspection. While a convenience for institutions, computer-generated documents appear to make information more difficult for consumers to access information.

Institutions are also turning to the internet to provide online services. This trend is gaining momentum and raises serious issues of transparency that are beyond the scope of this study but which may be of great importance in future.⁴ Defining and identifying transparency in online agreements may be the most urgent problem facing the sector.

⁴ Among the issues to consider are organization, links, information retrieval and load time. A survey of online documentation on websites maintained by banking institutions A,B,C,D,E and G produced mixed results. At the time of access, sites A, E and G appeared to be effectively organized and displayed. Information flowed logically and included a variety of links to various sections of the site. On the other hand, sites B, C and D seemed less efficient, with fewer links and less attractive design features. Information retrieval was both awkward and time-consuming at site B, while the other sites had simple but effective search engines that dramatically reduced the time required to find information. Loading speed was approximately the same for all web sites, except site B which had a limited amount of information to load.

1.1.3.6 Legislation

Many of the forms such as auto lease agreements and auto insurance documents fall under provincial jurisdiction and may be controlled by legislation that, in large measure, determines their transparency. Regulations can make documents more transparent by stipulating that information be clearly presented. Regulations that embody complex legal concepts and language can also make documents more difficult to understand.

Further, when interpretation of agreements involves reliance on legal precedents based on specific documents and legislation, institutions are reluctant to change the language of their agreements, even when changes are likely to mean that their consumers will understand those agreements better. Once again, this is an area for future study since a complete assessment of the impact of legislation on transparency was beyond the scope of this project.

1.1.4 Summary and Conclusion

Except for car lease agreements, document collection for this study proved to be more difficult than anticipated. As a result, transparency issues arose even before analyses could be carried out. Issues arose in relation to access to documents; marketing information; role of agents, brokers and employees; multiple documents; computer-generated and online documents; and legislation. In many areas, further research is indicated. In others, solutions are more obvious. In all cases, it appears that transparency could be enhanced through attention to collection issues.

Part I.2: Quantitative Analysis

1.2.1 Introduction

One way to determine the transparency of documents is to assess their readability through quantitative analysis using computer programs.

Readability may be defined as the measure of a document's state of being readable. It is measured by the ease or difficulty readers experience as they try to understand a document and makes a major contribution to transparency. Some aspects of readability are subjective. Others, which can be measured by computer, are objective.

Computer programs that measure readability analyze documents for indicators of difficulty such as the complexity of words, the length of sentences and paragraphs, and the percentage of verbs in the passive voice. These programs generate a number of statistics, including the Fog Index developed by Robert Gunning, and Rudolf Flesch's Readability Score and Flesch-Kincaid Grade Level. The results indicate the relative difficulty of written material and identify the approximate educational level required to understand a particular passage of prose. In so doing, they help authors determine whether or not their writing is appropriate for their readers. Appendix I.2 includes further details about readability indexes and their significance.

In this study, representative portions of each document were analyzed using two computer programs, Grammatik IV and Rightwriter the Intelligent Grammar Checker (Sample analyses appear in Appendix I.5). Wherever possible, portions relating to the same subject area were chosen throughout the document class. For example, the sections on deferred sales charges were analyzed in mutual fund prospectuses. In most cases, each program produced similar the results for each portion of text analyzed. Where results differed, other portions of the same documents were also assessed. In some cases, larger portions were analyzed to confirm the accuracy of the scores. Scores from both programs, by financial services section and document type, appear in Statistical Summaries I.1-4 in Appendix I.3. Grammatik IV scores only appear in Statistical Summary I.5 in Appendix I.3, and in the statistical profiles presented in Appendix I.4. Discrepancies in the grade levels between the Fog and Flesch-Kincaid formulae are to be expected and result from differences in those formulae.

I.2.2 Readability Scores

I.2.2.1 Statistical Summaries

Statistical Summary I.5 is reproduced in Table I.1. It summarizes results for all documents assessed in this study, in comparison with desirable results. Mean scores in all sections indicate that all documents exceed desirable ranges and

- require a **College/University Level** education (Fog Index)
- are either **Difficult** or **Very Difficult** to read (Flesch Readability Score)
- are **Complex** (Flesch-Kincaid Grade Level).

Findings at this level may be less useful than at lower levels, in part because beyond grade 12, a range of other experiences are also considered important to the reader's ability to understand a document. None the less, they do convey the message that the documents are difficult to read.

I.2.2.2 The Most Readable Documents

Only two documents in this study stand out for reading ease, and it appears that even they will present difficulties for those without some high school education:

	Fog Index	Flesch Readability	F-K Grade
Auto Lease C	12	68-Standard	9-Good
Mutual Fund Prospectus F	12	64-Standard	9-Good

1.2.2.3 The Least Readable Documents

Nova Scotia's auto insurance policy proved to be least readable. Ontario's policy is much easier to read, but is still difficult:

	Fog Index	Flesch Readability	F-K Grade
Nova Scotia	40	0-Very Difficult	36-Complex
Ontario	16	49-Difficult	12-Complex

Table I.1: Statistical Summary I.5 – All Documents

Documents	#	Mean Fog	Grade Level	Fog Range	Mean Flesch * Readability	Flesch * Readability	Flesch * Range	Mean FK + Grade	Difficulty
Desirable Scores			High school	8-12		Standard - very easy	60 – 100	6-10	Good
Auto Lease	5	23	College/U	12-26	34	Difficult	7-68	20	Complex
Bank Services									
Basic Agr	8	20	College/U	14-26	42	Difficult	31-51	17	Complex
ATM Agr	7	19	College/U	15-28	38	Difficult	13-51	15	Complex
Cc App/Agr	7	21	College/U	17-24	38	Difficult	25-52	16	Complex
Loan App/Agr	7	21	College/U	17-26	36	Difficult	23-49	17	Complex
Insurance									
Auto	2	28	College/U	16-40	25	Very difficult	0-49	24	Complex
Life	7	24	College/U	19-29	28	Very difficult	13-46	20	Complex
Mutual Funds									
Prospectus	6	19	College/U	12-33	29	Very difficult	8-64	16	Complex
Total	49								

* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

1.2.2.4 Comparisons

(i) St Paul Fire and Marine Insurance Company

Improvements can be made. Some years ago, the St Paul Fire and Marine Insurance Company asked Dr Rudolf Flesch, founder of the Flesch Readability Index, to help them improve the language of their policies.⁵ To illustrate the results, Appendix I.5 includes findings from RightWriter and Grammatik IV analyses of the two versions of the Cancellation section of a sample Personal Liability Catastrophe Policy. The first is the original sample given to Dr. Flesch. It was more difficult than Ontario's but easier than Nova Scotia's. In contrast, the revised version is more readable than any document in this study:

	Fog Index	Flesch Readability	F-K Grade
Original	20	49 – Difficult	16 – Complex
Revised	11	73 – Fairly Easy	7 – Good

(ii) The US Insurance Industry in General

With respect to life insurance, the mean Flesch Readability score for the documents assessed in this study is 27. The most readable document according to the Flesch Score is Policy C at 46, the least readable is Policy B at 13. In comparison, Grammatik IV assesses the mean readability of life insurance policies at 45. Only one of the policies in this study approached the US industry mean as identified by Grammatik IV. Further, it is of interest to note that many states legislate the readability of insurance policies according to the Flesch scale. The State of Pennsylvania, for example, requires that policies have a readability score of at least 40.⁶

(iii) Product Warranties in the US

A study of written product warranties in the US provides a more complete comparison of transparency in consumer documents.⁷ Researchers using Fog and Flesch measures to assess the ability of consumers to comprehend and understand selected warranties found that 78 percent of the warranties scored beyond the high school level. They concluded that if their statistics were indicative of other warranties "many consumers will experience problems understanding warranties and the warranties may have relatively little meaning."

Since only 5 of the 47 documents assessed here scored Grade 12 or below (using the lower Flesch-Kincaid Grade level), 89 percent of the documents may be said to score beyond high

⁵ The sample appears in Houp and Pearsall, pp. 146-7.

⁶ See Swaney et al, p. 179

⁷ Kelly F. Shuptrine and Ellen M. Moore, "Even After the Magnuson-Moss Act of 1975, Warranties Are Not Easy to Understand," *The Journal of Consumer Affairs*, XIV, 2 (winter 1980), 394-404.

school. A similar conclusion is therefore reasonable: many consumers will experience problems with these documents which may have relatively little meaning.

I.2.3 Canadian Consumer Profile

How well do Canadian consumers read? In 1996 Statistics Canada reported in 1996 that 67.2 percent of Canadians over 15 have graduated from high school.⁸ Does that mean that two thirds of Canadians read at a grade 12 level or beyond? Perhaps not. A year later, Statistics Canada observed in its *Canada Yearbook* that four in every 10 adults are "so limited in their reading skills they can't deal with much of the written material they encounter daily."⁹

Results of the International Adult Literacy Survey (IALS) conducted in the fall of 1994 are similarly discouraging.¹⁰ Carried out in seven countries by a number of agencies, including Statistics Canada, the Survey tested prose, document and quantitative literacy skills, distributing scores across five levels. In the end, such a small proportion of the individuals tested reached the highest level (Level 5) that Levels 4 and 5 were combined to ensure the statistical reliability of results. With respect to Canada, 20 percent of the population achieved the combined Level 4/5 on the prose and quantitative scales, with 22 percent reaching it on the document scale.

A sample of the tasks at Levels 4 and 5 for each of the scales illustrates the level of comprehension apparently achieved by only one fifth of the population:

Level	Prose	Document	Quantitative
4	Answer a brief question on how to conduct a job interview requiring the reader to read a pamphlet on recruitment interviews and integrate two pieces of information into a single statement.	Summarize how the percentages of oil used for different purposes changed over a specific period, by comparing two pie charts.	Calculate how much money you will have if you invest \$100 at a rate of 6% for 10 years, using a compound interest table.
5	Use an announcement from a personnel department to answer a question that uses different phrasing from that used in the text.	Identify the average advertised price for the best-rated basic clock radio in a consumer survey, requiring the assimilation of several pieces of information.	Use information on a table of nutritional analysis to calculate the percentage of calories in a Big Mac that comes from total fat.

Each of these scales has relevance to financial documentation. IALS considers that prose literacy relates to "typical texts" such as newspapers, books and manuals, while document literacy is

⁸ Statistics Canada, *Education in Canada, 1996*, Table 66, p. 197.

⁹ *Canada Yearbook 1997*, Chapter 5.

¹⁰ *Reading the Future: A Portrait of Literacy in Canada*, especially pp. 20 and 16.

concerned with "texts that depend on layout and graphics," including forms, maps, tables and graphs. Quantitative literacy involves arithmetic operations and has been described in other studies as numeracy. Skills relating to one or more of these scales (and sometimes all three) are required to read most financial agreements. Survey results, however, suggest that even though two-thirds of Canada's population have completed high school, only a very small percentage are likely to possess the literacy skills that would allow them to understand complex documents on financial topics.

I.2.4 Summary and Conclusion

Computer analysis of 49 samples collected from the financial services sector indicates that almost without exception, the documents are difficult and complex and require a college/university level of comprehension. They also proved to be less readable than warranty documents assessed in the United States. In contrast, Statistics Canada reports that 40 percent of Canadians have difficulty reading much of the written material they encounter daily and only 20-22 percent are able to comprehend relatively simple prose, document and quantitative reading samples.

These findings point to the need to explore whether other factors, not assessed through quantitative computer analysis, are able to enhance the readability of documents. Among the factors to be considered is the extent to which the documents appear to address their audience. Findings in this section of the study suggest a great gap between the characteristics of the documents and the capacity of their audience to understand them. They suggest that the purpose of such documents is disclosure in response to regulatory requirements, rather than genuine communication with consumers.

Part I.3: Beyond the Fog – Interpretation of Analysis

I.3.1 Introduction

Transparency cannot be assessed on the basis of quantitative analysis alone. Communication transparency means that a document is both readable and comprehensible. Readability, as determined by the formulae discussed above, is a text-based measure, used to predict ease of reading and comprehension. Comprehensibility is reader-based. Using more subjective means including observation and reader-response, it measures the extent to which readers understand a document. Readability scores and indexes are primarily important for their ability to predict, using an objective, repeatable method, whether a reader will have difficulty with a particular text. To confirm that prediction, and explore both the causes and remedies of the difficulty, requires more complex assessments, involving a wide variety of factors related to language, context and audience.¹¹

¹¹ See for example, Schriver, pp. 150-151; Huckin, p. 104; Selzer, p. 73,ff.

In recent years, the plain language movement has attempted to address issues of comprehensibility. Just as laws in several states, as well as directives of the US military, require documentation to achieve certain statistical readability scores, so several states have enacted plain language laws to help ensure that citizens understand the laws they are to obey.

Broadly speaking, proponents of plain language address more than language, as they seek clarity in both expression and presentation. Further, plain language does not mean simple or simplistic language. Australia's Law Reform Commission of Victoria (1986) suggests that plain English is "simplified" in the sense that it is "rid of entangled, convoluted language – language that submerges, confuses, and conceals its message" and is free of language that has been "severely condensed or amputated and the message truncated." Documents are not rid of terms which "express important distinctions" but offer some assistance to "nonexpert readers" coping with technical terms. "To a far larger extent," the Commission continues, "plain language is concerned with matters of sentence and paragraph structure, with organization and design, where so many of the hindrances to clear expression originate."¹²

I.3.2 Qualitative Analysis

To get beyond quantitative analysis and determine both the extent to which scores accurately predict readability and the document characteristics that enhance readability, a selection of documents has been further assessed according to a range of criteria. These criteria are not based on rules and limits but on the principles that lie behind the choices author's make.

The results of a qualitative analysis of three specific documents appear in Tables I.2 to I.4 in Part I.3. Meanwhile, the sections that follow here provide a general discussion of the criteria or assessment principles that stand behind that analysis and provide examples based on a number of documents collected for this study.

I.3.2.1 Address a Specific Audience

At the outset of a project, effective authors identify their audience and look for strategies for communicating with their readers. These strategies include addressing their readers at a level of difficulty that is appropriate to their skills and in most cases, finding ways of communicating as directly as possible. With respect to the documents collected here, many addressed a third-person reader (for example, "an investor") while others provided an elaborate "key" to the pronouns ("we" refers to ..., "you" refers to ...) without conveying the sense that they were speaking directly to the reader. Others, make a connection with their audience by addressing their readers directly throughout the text and providing aids such as a glossary to help them understand the document.

Further, authors need to consider the goals of their readers. Will readers be

- looking for information they want quickly?

¹² Cited in Schriver, pp. 149-150.

- trying to understand new ideas?
- reviewing familiar material?
- interpreting or assessing information?
- making a choice or completing a task like filling out a form?

For example, an author who responds to a need for quick and easy access to relatively familiar information is likely to create a very different document from an author presenting new and complex ideas that may not be readily understood. An author who confuses those goals will not give enough information about the new ideas, and will create unnecessary barriers for people who need to find specific information quickly.

1.3.2.2 Use Language that is Clear and Appropriate

As the fundamental unit of communication in all documentation, language must be clear and appropriate. It is important for authors to choose and organize words so that they transmit meaning effectively and efficiently, and in a manner that is appropriate to their audience and situation. Readability formulae analyze documents at the level of words, sentences and paragraphs. They identify characteristics that predict difficulties, even though they are not necessarily the specific cause of the difficulty. For example, average sentence length (ASL) is very high in complex documents. In the selections assessed for this study, for example, ASL reached scores of 38, 40, 51, 63 and even 79. It is common sense to conclude that these sentences will be harder to understand than sentences of 10, 15 or 20 words.

When searching for a reason why short sentences are more readable, it is possible to suggest that the difficulty lies not so much with the number of words but with the number of ideas in a sentence. A longer sentence is likely to contain more ideas. At the same time, a sentence of ten words that includes too many ideas may also be hard to understand. Attempts to increase readability by merely shortening sentences will likely fail. On the other hand, efforts that result in both shorter sentences and fewer ideas will probably be effective.¹³

Similarly, a high percentage of passive verbs in a document does not necessarily mean that the document is difficult to understand – especially if the subject of the sentence is vague or unimportant. "Interest rates are adjusted quarterly" is clear and to the point. However, since the most effective documents speak directly to a specific audience, authors who most often use the active voice are likely to achieve the best results.

In addition to writing clearly, it is also important to write appropriately. No one document will meet the needs of a mass audience. As literacy statistics confirm, a highly complex document aimed at a mass audience is almost surely to be inappropriate for most members of that audience and is doomed to fail as a communication tool. For example, highly technical legal language is

¹³ See for example, Swaney et al who discuss "proposition density" in sentences, p. 180.

very appropriate for an audience of lawyers who are likely to find that it communicates meaning clearly and effectively. The same document obscures meaning and is decidedly inappropriate for average consumers. Inappropriate means "unsuitable," not "incorrect."

1.3.2.3 Choose a Presentation Style that Supports Comprehension

Presentation style relates to the physical characteristics of a document. With respect to documents on paper these characteristics include

- the size and colour of the type
- the colour and quality of the paper
- the density of the type on the paper
- the amount of "white space" surrounding the type
- the presence of headings and illustrations
- the shape and size of the document.

Electronic documents have similar characteristics, except that issues related to background colour and screen size replace concerns about paper quality and size, while links largely determine access and structure.

Presentation style is an important tool for authors. When material is difficult – or readability scores are high – transparency can be enhanced when positive decisions are made about presentation features. For example, the effects of difficult language can be mitigated by the using a large, clear type-face, substantial paper that does not permit print to bleed through from one side to another, adequate white space, and relatively small blocks of type that is not justified to the right margin and is separated by headings and complemented by illustrations, and by choosing a size and shape that makes the document easy to hold and read.

When presentation features have been ill-chosen, difficult material can be made even more difficult. For example, a number of lease agreements and banking forms were printed in small type on two sides of very thin paper. Often the characters on one side were printed in black ink which bled through to the other side of the document where important information was printed in pale grey ink in very small type. The pale grey characters were almost impossible to decipher, even for a researcher trying hard to see them. Most consumers are likely to give up and some, for example those with impaired vision, undoubtedly have little hope of reading them. Similarly, the "fine print" on at least one credit card application was so "fine" that it was difficult to transcribe even after it had been enlarged on a photocopier. Such barriers to transparency are unnecessary and raise serious doubts about the authors' desires to communicate.

1.3.2.4 Recognize Contextual Factors But Do Not Depend on Them

Many institutions appear to rely heavily on contextual factors to complement and support their printed documents. Such factors include the presence of staff members, the use of multiple documents and the availability of advertising and marketing information.

Of these, the most important by far is the presence of staff members. It appears that institutions are often relatively unconcerned about the transparency of their documents. Instead, they rely on their staff to convey the information they think consumers require. This is particularly true in the areas where documents were difficult to obtain. For example, loan officers are to explain loans, financial advisors are to inform clients about mutual funds, and most significantly, insurance agents are to explain policies. This leaves consumers at the mercy of other factors such as the honesty and knowledge of staff, the availability of staff, and the location of staff. It may be company policy to gloss over the negative aspects of an agreement. Staff may be poorly trained or unable to cope with the complexities of a transaction. There may not be enough staff on duty at a particular time and in a particular place. The consumer may wish to be at another location, for example, at home comparing a number of possibilities.

Another contextual factor that influences transparency is the use of multiple or supporting documents. Many of the banking institutions, especially, provide a number of booklets and pamphlets that, together, represent a specific agreement. If one or more of those items is unavailable, the agreement may be incomplete. Consumers who are unable to synthesize information from a variety of sources may become confused. This multiplicity of documents may become more of a distraction than an aid to understanding. Well-designed "packages" are, of course, less distracting than more haphazard collections.

Further distraction is often provided by competing "marketing" or "advertising" information. Such information may be designed to appear "official" or may conflict with the more significant contractual information. Once again, consumers may not be able to sort out the information that is necessary from the material that has been added to help "sell" the financial product or service.

1.3.2.5 Have a Definite Intent – to Inform, Sell, Disclose

At the outset, authors of effective documentation have a clear purpose. If their purpose is to inform consumers then their documents should be different from documents designed as tools for selling or merely disclosing facts. As noted above, several of the documents assessed in this study appear to be designed, at least in part, as selling tools. Others, especially in view of their difficulty, seem to be designed merely to disclose what is legally required. By accident or design, there is little to suggest an attempt to communicate significant information. The worst offenders in this regard are the auto insurance policies represented here by Nova Scotia's policy which is almost impossible to read. In contrast, Ontario's policy suggests, especially in its opening sections, that at least an attempt has been made to communicate with the public.

1.3.2.6 Meet Legal Requirements and Avoid "Legalese"

Most of the documents assessed in the study were surprisingly free of old-fashioned "legalese." Exceptions were Nova Scotia's auto insurance policy, parts of the Ontario auto insurance policy, selected passages from the life insurance policies, and the documents of one banking institution. Difficulties also arose with convoluted explanations designed to clarify legal concepts, as illustrated in Table I.2 below.

1.3.2.7 Match Industry Standards Without Resorting to Jargon

Industry language poses a major problem for authors of technical documents. Some industry language must be present and some complex words must be used to explain difficult concepts. Authors can help consumers understand difficult terms by speaking directly to their audience, standardizing terminology, providing carefully crafted explanations using simpler words and short sentences and creating glossaries of difficult terms that readers can turn to at any point in their use of the document. They can also ensure that the document's presentation features enhance readability. For example, graphic illustrations, generous amounts of white space and short paragraphs give readers opportunities to pause and digest difficult concepts before moving on to new ideas.

Further, authors must know their audience and express themselves appropriately. For most readers, industry language that is not well-explained descends to the level of meaningless jargon. For those with technical knowledge of the field, however, such language enhances communication by providing a short-hand introduction into familiar worlds of meaning.

1.3.2.8 Optimize the Characteristics of the Medium – Paper, Online, Video

Authors today choose from a number of media. Although this study focuses primarily on paper documents, it is worth noting that each medium has specific requirements that must be honoured for maximum transparency. Techniques that work in one medium may not be effective in another.

For example, page lengths are constant and clearly defined in paper documents. In online documents, however, a "page" can scroll down through one or more screens and since screen sizes vary, the amount of scrolling also varies, depending on the size of the reader's screen. In addition, online documents may include links to other documents so that the information available on a page is almost infinitely expandable. This distinction between "pages" can be important, especially for paper documents.

Two versions of one institution's credit card application were available for this study. In the older version the form incorporates both lines and space to write the required details (name, address, etc.), as well as explanatory notes about the information required. The newer version incorporates more attractive design elements but includes only the lines and space to insert the required details. All of the explanatory notes have been moved to the back of the document. This change raises questions: Will consumers turn the page over? If they do not, will they miss important information?

The newer arrangement, while awkward for consumers completing paper applications, may well have been designed with an eye to electronic presentation. Online users could be prompted by highlighting in the text of the form to access a link that includes information presently printed on the back of the paper form. If an online version included appropriate links consumers would be aware of the information through the highlighting and would have easy access to it. In contrast, the same format in paper documentation can obscure facts that consumers need to know.

I.3.3 Transparency: Quantitative Plus Qualitative Analysis

Transparency, therefore, is more than readability scores and is the sum of a wide spectrum of characteristics, including the subjective assessment of the reader, whether that reader be a researcher or consumer. Tables I.2 to I.4 provide the results of qualitative analysis based on the criteria described above and applied to three mutual fund documents. They show how assessment based on those criteria (qualitative analysis) can be combined with readability scores (quantitative analysis) to achieve a more accurate measure of transparency. They also help to clarify the extent to which readability scores are able to predict comprehension and provide a guide for document assessment when statistics alone appear to be inadequate.

Table I.2 shows how the results from the two types of analysis reinforce each other and confirm the difficulty of a document. Similarly, Table I.3 illustrates how both types of analysis confirm relative reading ease. Table I.2 to I.4, meanwhile, indicates how mitigating factors that emerge from qualitative analysis can enhance readability. It should be noted that in the latter case, while the results of the statistical analysis are somewhat tempered by findings from qualitative analysis, they are not totally contradicted. As predicted by the quantitative analysis, it remains true that shorter sentences containing fewer ideas would likely improve comprehension and increase the transparency of this document.

Table I.2: Transparency Assessment – Qualitative Analysis Supports Quantitative Analysis – Difficulty Confirmed

Criteria	Mutual Fund B
1. Audience Awareness	Formal style. Addresses audience impersonally as "the investor." At one point the "Investment Advisor" – the other party in the transaction – is identified as an "it." States goal: "to provide a concise outline of relevant information" and to describe rights for security holders established in securities laws.
2. Language	Language is difficult and formal and includes words like "pursuant," hereafter," "thereof," "aggregate" and "attributable." Average sentence length is 63 words. Sentences include multiple ideas and cross-references to other parts of the document.
3. Presentation	Is presented as a small booklet designed to fit in a #10 business envelope. Cover is printed with coloured ink and includes some design elements. Other pages of light weight paper are densely printed with very small black type. Paragraphs and sentences are long and largely unbroken by bullets or points. Copy is divided into sections (a), (b) and subsections (i), (ii) which are often not set apart from the main body of paragraphs but are run on through the length of the line in an apparent attempt to save paper. Document compresses a great deal of information into 46 pages.
4. Contextual Factors	This document has likely been designed on the assumption that consumers will be assisted by investment advisors. In fact, it includes references to the Investment Advisor that suggest that the document is also aimed at that more informed audience. It was not available through the local office of an investment group. It states at the outset that it is to be accompanied by audited annual financial statements of individual funds as well as other documents and provides an address where such documents can be obtained.
5. Intent	Intent appears to be to provide information and disclose facts in response to legal requirements. May be some confusion whether the intent is to inform consumers or investment advisors. Aside from cover design, few elements suggest a marketing function.
6. Legal Requirements	States legal requirements at the outset as well as its role in meeting those requirements.
7. Industry Requirements	Includes highly technical language. Does not provide a glossary but does attempt to define terms. Often, however, definitions and descriptions are complex and convoluted and may not be help consumers. For example, "The redemption charge is a percentage of the Net Asset Value per Unit of each Unit of a Fund redeemed at the time of redemption, which redemption charge declines over time from the date of issue, or deemed date of issue." Transfer Charge is described as follows: "Units to which a redemption charge would otherwise apply and, in the case of Short Term Fund, any net income (including any net realized capital gains) accrued in respect of such Units, may be redeemed at any time for the purpose of immediate investment in Units of one or more of the other ... Funds without the imposition of a redemption charge."
8. Medium	Is solely a paper document. Only marketing information is currently available on this organization's website.
9. Readability Scores	Readability scores suggest that this document is Very Difficult to read and written at a grade 31 level, with an average sentence length of 63 words in the passage analyzed.
10. Over-All Transparency	Qualitative analysis appears to support readability statistics. In this example, quantitative analysis accurately predicted that the document was not transparent and therefore, difficult for readers.

Table I.3: Transparency Assessment – Qualitative Analysis Supports Quantitative Analysis – Ease Confirmed

Criteria	Mutual Fund F
1. Audience Awareness	Informal style. Addresses audience directly using the pronoun "you." Audience is clearly the consumer: "This simplified prospectus outlines what you should know before investing ...". The company is "we." Establishes purpose at the outset: to provide information about mutual fund securities as required by law.
2. Language	Attempts to describe procedures in relatively simple, informal language that speaks directly to the consumer: "If you choose the DSC Option [previously defined], you pay no sales charge when you buy the Fund. To compensate your dealer for his or her services, [we pay] your dealer a commission." Average sentence length is 20 words which helps make sentences easier to understand. Approximately 16% of the sentences use the passive voice, which may cause readers some difficulty, depending on specific usage.
3. Presentation	Is presented as an attractive 8½" x 11" book, with a full colour cover, printed on white paper, in black ink with headings and shading in a contrasting colour. Headings and sub-headings separate blocks of information and bullets are used extensively. Each page has a significant amount of white space. The book begins with a summary. Running footers on each page throughout the document identify the summary and other sections. A glossary at the end provides clear definitions.
4. Contextual Factors	This document is designed for consumers, but suggests that investment decisions be made in consultation with a dealer. It also refers to the standard requirement that it be accompanied by information in the company's Annual Information Form and tells where consumers can obtain that form. Like other prospectuses, however, it was not available through the local office of an investment group.
5. Intent	Although this document is required by law, its primary intent appears to be to inform consumers and make complex concepts easier for them to understand. Its attractive cover and "user-friendly" characteristics are likely to be attractive to consumers and have some marketing value.
6. Legal Requirements	States legal requirements at the outset as well as its role in meeting those requirements.
7. Industry Requirements	Makes significant attempts to define highly technical language, within the text and in the glossary. Terms included in the glossary are not identified within the text. Readers must seek out the glossary and definitions on their own.
8. Medium	Is solely a paper document, although information on the first page directs readers to the company's web site.
Readability Scores	Readability scores suggest that this is a Standard document, written at a grade 9 level, with an average sentence length of 20 words in the passage analyzed.
Over-All Transparency	Qualitative analysis supports readability statistics which predict that the document is of standard readability. Factors relating to audience approach and presentation enhance transparency and therefore, make it easier for readers to understand. As a result, the document is likely more transparent than the statistics indicate.

Table I.4: Transparency Assessment – Mitigating Factors Enhance Readability

Criteria	Mutual Fund A
1. Audience Awareness	Informal style. Addresses audience directly using the pronoun "you" and poses questions in the first person: "What is the Minimum Purchase I Can Make?" Clearly establishes purpose to inform consumers in the opening paragraph: to provide "a concise outline of the relevant information ... you should know before making a decision to purchase securities."
2. Language	Attempts to describe procedures in relatively simple, informal language that speaks directly to the consumer: "When you purchase Securities by the deferred sales charge method you are not required to pay any sales commission at the time of purchase." Average sentence length is 28 words which suggests that the document would be clearer if the sentences were shorter. Longer sentences include multiple ideas. 50% of the sentences use the passive voice, but often not inappropriately: "Your entire investment is invested in securities."
3. Presentation	Is presented as an attractive 8½" x 11" book, printed in two colours on substantial white paper. Written material is complemented by information in boxes. Black type is easy to read. Information unfolds according to a series of questions (asked by a mythical consumer) and answers. Important facts and headings are highlighted with shading in a contrasting colour. Other design elements provide emphasis and interest, although they may distract some readers. The book begins with an effective summary in chart form with suggestions for referencing additional information. Running headers on each page identify each section. A glossary at the end provides clear definitions.
4. Contextual Factors	This document is obviously designed for consumers. It also refers to the standard requirement that it be accompanied by information in the company's Annual Information Form and tells where consumers can obtain that form. Like other prospectuses, however, it was not available through the local office of an investment group.
5. Intent	Although this document is required by law, its primary intent appears to be to inform consumers and make complex concepts easier for them to understand. Although its "user-friendly" characteristics, including its design elements, are likely to be attractive to consumers and have some marketing value, the document does not obviously appear to be a marketing tool.
6. Legal Requirements	States legal requirements at the outset as well as its role in meeting those requirements.
7. Industry Requirements	Makes significant attempts to define highly technical language. Announces glossary at the outset: "We recognize that this <i>Simplified Prospectus</i> may contain some words or phrases that are new to you. To help you, we have included a glossary" Words that appear in the glossary are presented in italics in the text. Includes many examples throughout document.
8. Medium	Is solely a paper document. Only marketing information is currently available on this organization's website.
Readability Scores	Readability scores suggest that this document is Difficult to Fairly Difficult to read and written at a grade 12 level, with an average sentence length of 28 words in the passage analyzed.
Over-All Transparency	Qualitative analysis does not fully support readability statistics. Mitigating factors, especially in relation to audience approach and presentation elements, enhance transparency and therefore, make it easier for readers to understand than statistics indicate.

Finally, Table I.5 summarizes principles for document assessment, while Table I.6 provides advice to authors for enhancing readability, based on those assessment principles.

The principles outlined in Table I.5 provide a framework or checklist for document assessment. They illustrate the process of qualitative document analysis and may be helpful for readers seeking to understand and articulate their reactions to materials they need to examine.

Table I.5: Principles for Document Assessment

Does the document

- 1. Address a Specific Audience?**
 - 2. Include Language that is Clear and Appropriate for its Audience?**
 - 3. Incorporate a Presentation Style that Supports Comprehension?**
 - 4. Recognize Contextual Factors Without Depending on Them for Meaning?**
 - 5. Demonstrate a Definite Intent – to Inform, Instruct, Sell, Disclose?**
 - 6. Meet Legal Requirements While Avoiding "Legalese"?**
 - 7. Match Industry Standards Without Resorting to Jargon?**
 - 8. Optimize the Characteristics of its Medium – Paper, Online, Video?**
-

Similarly, the criteria presented in Table I.6 provide a checklist for document designers. Each is accompanied by practical recommendations that may be helpful for authors wishing to create effective documents based on plain language principles.

Table I.6: Criteria for Enhanced Readability – Advice to Authors

1. Address a Specific Audience

Identify your audience. Communicate as directly as possible and maintain a connection with your readers throughout your text. Address your readers at a level of difficulty that is appropriate to their skills and, when necessary, provide aids such as a glossary to help them understand specific terms. Identify your readers' goals and create documents that help them reach those goals.

2. Use Language that is Clear and Appropriate for Your Audience

Choose and organize words so that they transmit meaning effectively and efficiently, and in a manner that is appropriate to your readers. Relatively short sentences that include one or two ideas clearly expressed are likely to be most effective. To communicate most directly, include a high percentage of active verbs. Choose words that match the technical competence of your audience.

3. Choose a Presentation Style that Supports Comprehension

Think about the physical characteristics of your document and use them to make it more transparent. Characteristics of documents on paper include the size and colour of the type, the colour and quality of the paper, the density of the type, the amount of "white space" surrounding the type, the presence of headings and illustrations, and the shape and size of the document. Electronic documents share many of these characteristics, but issues related to background colour and screen size replace concerns about paper quality and size, while links largely determine access and structure.

4. Recognize Contextual Factors But Do Not Depend on Them for Meaning

Consider the context in which your document will be read. Will your readers' be alone or will knowledgeable staff be present to assist them? Will they need additional information, located elsewhere, to help them understand what you are saying? Will they be confused by competing information or design elements?

5. Have a Definite Intent – to Inform, Instruct, Sell, Disclose

Identify the purpose of your document. For example, you may be informing consumers, providing instructions, designing a selling tool or merely disclosing facts. Ensure that your purpose matches your readers' goals.

6. Meet Legal Requirements and Avoid "Legalese"

Use legal language when necessary but avoid old-fashioned "legalese" such as "pursuant to" and "hereafter." Explain difficult, but necessary, legal terms.

7. Match Industry Standards Without Resorting to Jargon

Industry language that is not well-explained becomes meaningless "jargon" for a non-technical audience. Help your readers understand difficult terms by speaking to them directly, providing carefully crafted explanations using simpler words, short sentences, and illustrations. Create glossaries of difficult terms. Ensure that presentation features enhance readability.

8. Optimize the Characteristics of the Medium – Paper, Online, Video

Make sure that your document meets the specific requirements of your medium.

I.3.4 Summary and Conclusion

Readability scores focus on text-based features to predict the relative difficulty readers will experience with a document. Other, more subjective criteria help to determine whether those scores are accurate predictors and also point to factors that can mitigate or intensify the influence of such text-based features. These criteria focus on readers and on document characteristics that influence their comprehension and include: audience awareness, language, presentation, contextual factors, intent, legal requirements, industry requirements, and medium.

Examples assessed in this study show that quantitative computer analyses are able to predict both the reading difficulty and ease of documents. They also illustrate how other factors have a mitigating influence and increase document transparency. Because quantitative analysis suggests that the overwhelming majority of documents assessed in this study are complex and difficult, no sample stood out to illustrate how document features can invalidate a prediction of reading ease, although one sample suggests that they are able to increase the difficulty of already difficult documents.

In conclusion, it appears that statistical analysis helps to predict readability and that application of specific criteria based on plain language principles will make it possible for authors to achieve greater document transparency.

Appendix I

Appendix I.1: Documents Collected

Auto Lease Agreements

Chrysler Credit Canada; Vehicle Lease Agreement; sections analyzed: 15. "Default" and 16. "Remedies Upon Default."

Ford Credit Canada Limited; Lease Agreement; section analyzed: 18. "Default."

GMAC; Lease Agreement; section analyzed: 16. "Default."

Honda Canada Finance Inc.; Vehicle Lease Agreement; section analyzed: 18. "Default."

Toyota Credit Canada Inc.; Toyota Care Lease with Option to Purchase; section analyzed: 18. "Default."

Banking Services Documents

Banking Agreements

Bank of Montreal; Getting to Know You, plus the booklet, *Better Banking Guide: Everyday*

Banking Services; section analyzed: "Account Agreement," subsection "Joint Account," pp. 25-26.

Canada Trust; Personal Account Agreement; section analyzed: "Multiple Account Holders."

Canadian Imperial Bank of Commerce; "Personal Account & Services Application Account Information;" section analyzed: "Personal Account Agreement," subsection 8. "Joint Accounts."

Guelph and Wellington Credit Union; "Operation of Account Agreement [document and card];" section analyzed: "Joint Account Agreement" [card].

National Bank of Canada; "Application for Opening Personal Account(s)" [card], plus booklets – General Information and Agreement Governing Personal Account Deposits of the National Bank of Canada and Natcan Trust Company and Your Guide to Personal Banking Services; section analyzed: "Scope of Agreement" in General Information.

Royal Bank of Canada; *Client Agreement – Personal Deposit Account*; section analyzed: 16. "Joint Accounts."

Scotiabank; Application for Deposit Services, plus booklets – *Personal Banking Agreement*, *A Guide to Personal Deposit Accounts – Service Fees and Interest Rates*, and *Scotiabank and You: A Question of Privacy*; section analyzed: "All Personal Deposit Accounts Except Scotia Gain Plan Joint Deposit Agreement," in *Personal Banking Agreement*, pp. 1-2.

Toronto-Dominion Bank; TD Financial Services Agreement, plus booklets – *Financial Services Terms, About TD Deposit Accounts and Related Services*, and *Protecting Your Privacy*; section analyzed: "H-Joint Accounts" in *Financial Services Terms*, p. 16.

ATM Applications/Agreements

Bank of Montreal; FirstBanking Automated Services Application Form; section analyzed: "Records and Dispute Resolution."

Canada Trust; Easy Access Agreement and Easy Access Terms and Conditions; section analyzed: Canada Trust Records in *Easy Access Terms and Conditions*.

Canadian Imperial Bank of Commerce; Taking Your Needs Into Account: Day-to-Day Banking; section analyzed "CIBC Instant Banking Service Agreement," subsection 6. "Records," p. 31.

Guelph and Wellington Credit Union; *Member Card Debit Card/Personal Identification Number Agreement*; section analyzed: "Evidence of Transactions."

Royal Bank of Canada; *Client Agreement – Card and Personal Security Code*; sections analyzed: 9. "Transaction Verification" and 10. "Transaction Records."

Scotiabank; ScotiaCard Self-Service Banking Access Enrolment/ Maintenance, plus – booklets – *Personal Banking Agreement*, *A Guide to Personal Deposit Accounts – Service Fees and Interest Rates*, and *Scotiabank and You: A Question of Privacy*; sections analyzed from the "Scotiabank Cardholder Agreement" in *Personal Banking Agreement*: 5. "Transaction Records," p. 6 and 11. "Our Records Binding," p. 8.

Toronto-Dominion Bank; *Financial Services Terms*; sections analyzed: "Transaction Activity," p. 16.

Credit Card Applications

Canada Trust; MasterCard Application in the brochure, *The Power of MasterCard. The Value of Canada Trust*; section analyzed: "By signing below ...".

Bank of Montreal; MasterCard Application in the brochure, *MasterCard and Gold MasterCard: The Card that Understands the Individual*; section analyzed: "Terms and Conditions."

Canadian Imperial Bank of Commerce; VISA Card Application in the brochure, *Choose the Rewards and the Benefits that are Right for You*; section analyzed: "Terms and Conditions."

National Bank of Canada; MasterCard Application in the brochure, *Dive into the New Wave of Winning Cards*; section analyzed: "General Terms and Conditions."

Royal Bank of Canada; VISA Application in the brochure, *Visa Gold: No Fee Now. No Fee Later.*; section analyzed: terms following "Apply Today!"

Scotiabank; Scotiabank VISA Quick Application in the brochure *Scotiabank VISA: Choose the Card that's Right for You*; section analyzed: "Terms and Conditions."

Toronto-Dominion Bank; VISA Application in the brochure, *Choose the Card That Suits Your Needs*; section analyzed: "In this section, the words ...".

Loan Applications/Agreements

Bank of Montreal; Personal Loan Service Application (including Mortgages and MasterCard); section analyzed: "If you issue me a card, I agree ...".

Canadian Imperial Bank of Commerce; CIBC Personal Loan Note; sections analyzed: "The balance of my loan and accrued interest ..." and "Additional Terms of My Note."

Guelph and Wellington Credit Union Ltd.; Variable Rate Loan Agreement; sections analyzed: 2. "The loan referred to in paragraph 1 ...," and 3. "In consideration of the Credit Union making the loan ...".

National Bank of Canada; Consumer Credit Application; section analyzed: "I certify that the information provided herein ...".

Royal Bank of Canada; Promissory Note – Fixed Rate Personal Loan; sections analyzed: 5-7 [re payments].

Toronto-Dominion Bank; Credit Line Agreement; section analyzed: Terms and Conditions, 5. "Demand."

Scotiabank; Application for Credit; section analyzed: "We collect information from you ...".

Insurance Documents

Auto Insurance

Ontario Automobile Policy (OAP 1), Approved for use on or after November 1, 1996; sections analyzed: "Introduction," "What We Cover," and "Deductible Clause."

S.P.F. No. 1 Standard Automobile Policy (Owner's Form) for Nova Scotia; sections analyzed: "Insuring Agreements," "Section A – Third Party Liability," and "Deductible Clause."

Life Insurance

Canada Life; Life Executive Preferred – Joint Lives, Sample Contract; section analyzed: "Self-Destruction Exclusion."

Empire Financial Group; Solution 100 Contract, Sample Contract; section analyzed: "Incontestability."

Financial Life; [Term to 100]; section analyzed: "Self-Destruction."

Manulife Financial; Family Term, Sample Contract; section analyzed: "If an injured person commits suicide."

Royal Life Insurance Company of Canada Ltd.; [Sample]; sections analyzed: "Self-Destruction," and "Incontestability."

Transamerica; Term to 100 Policy; section analyzed: "General Provisions – Amount Payable is Limited in the Event of Suicide."

Westbury Life; Term 100 Provisions; section analyzed: "Incontestability," and "Self-Destruction."

Mutual Fund Documents

CI Mutual Funds Simplified Prospectus; section analyzed: "What are the Costs Associated with Securities Purchased by the Deferred Sales Charge Method?" p. 22.

Fidelity Funds Simplified Prospectus; section analyzed: "(b) Deferred Sales Charge Option-Redemption Charge," p. 27.

Mackenzie Financial Corporation, Simplified Prospectus of The Industrial Group of Funds,

Ivy Funds, The Universal Funds; section analyzed: "b) Redemption Charge Purchase Option," p. 24.

O'Donnell Group of Funds Simplified Prospectus; section analyzed: "Deferred Sales Charge Option," p. 13.

Simplified Prospectus of Templeton Growth Fund, Ltd.; section analyzed: "Redemption Charge on Deferred Sales Charge Shares," pp. 15-16.

Trimark Simplified Prospectus; section analyzed: "DSC Option," p. 37.

Appendix I.2: Readability Indexes

Readability indexes are based on statistical measures of writing and rooted in the principle that writing is easier to read when sentences and words are short.

Flesch-Kincaid Formula

The Flesch-Kincaid formula is the United States Government Department of Defense standard (DOD MIL-M-38784B). All contractors producing manuals for the American armed services must use this formula. The resulting readability index is equivalent to the Overall Reading Grade Level (OGL) for the document.

$$\text{Grade Level} = (.39 \times \text{ASL}) + (11.8 \times \text{ASW}) - 15.59$$

$$\text{ASL} = \text{average sentence length (\# of words / \# of sentences)}.$$

$$\text{ASW} = \text{average \# of syllables / word (\# of syllables / \# of words)}.$$

Good business writing ranges from sixth to tenth grade. A higher score (for example, over 13) does not necessarily mean that a document is appropriate for that grade level. Instead, it indicates that the writing is complex and difficult to read.

Flesch Readability Score

This score checks the readability of documents according to the following formula:

$$\text{Score} = 206.8 - (1.015 \times \text{ASL}) - (84.6 \times \text{ASW})$$

$$\text{ASL} = \text{average sentence length (\# of words / \# of sentences)}.$$

$$\text{ASW} = \text{average \# of syllables / word (\# of syllables / \# of words)}.$$

The formula assesses writing on a score from 0-100. The higher the score, the easier the reading. A score between 60 and 70 is considered to be Standard. This formula is widely used in the United States to assess the readability of insurance policies.

Fog Index

The Fog index requires a writing sample of at least 100 words and is calculated by adding the

$$\text{Index} = 0.4 \times (\text{ASL} + \text{number of hard words per 100 (words having three or more syllables)})^*$$

$$\text{ASL} = \text{average sentence length (\# of words / \# of sentences)}$$

This index identifies the educational level required for comprehension. A Fog Index of six compares to a sixth grade level of comprehension. A good range is 8-12.

Interpretation of Indexes

Flesch-Kincaid Grade Level

GRADE 4-6	SIMPLE
GRADE 6-10	GOOD *
GRADE 10-14	COMPLEX

Flesch Readability Score

SCALE 0 – 100; LOWER SCORE = MORE DIFFICULT WRITING

90 – 100	Very Easy
80 – 90	Easy
70 – 80	Fairly Easy
60 – 70	Standard *
50 – 60	Fairly Difficult
30 – 50	Difficult
0 – 30	Very Difficult

Fog index

17	College/University Graduate #
13 – 16	College/University
— Danger Line —	
11 – 12	3rd And 4th Year High School
— END EASY READING —	
7 – 10	GRADE 6 – GRADE 10 *
— EASY READING —	

* = Desirable Scores

= The Fog Index identifies this level as appropriate for college only. Since "college" may have a different meaning in Canada, the term "university" has been added to this interpretation here. In Ontario, for example "college" usually refers to diploma granting community colleges, rather than universities, and might be expected to correlate with somewhat lower reading levels.

Discrepancies

Values differ due to rounding and differences in computing the two measures. The Fog Index measures words with three or more syllables and excludes proper names, word combinations, and three syllable verbs made by adding a suffix. The Flesch Count measures every word, all letters, numbers and symbols. Generally, the Flesch-Kincaid Grade Level is somewhat lower than the Fog Index, but the differences are not substantial enough to change the overall interpretation of results.

Discrepancies also arise when computer programs interpret "words" and "sentences" differently.

Appendix I.3: Statistical Summaries

Statistical Summary I.1: Auto Lease Agreements (EC)

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	22	47	25	26 – VERY DIFFICULT	22 – COMPLEX
	RW			22	23	21
B	G4	33	36	19	44 – DIFFICULT	16 – COMPLEX
	RW			16	48	14
C	G4	18	21	12	68 – STANDARD	9 – GOOD
	RW			12	60	10 – COMPLEX
D	G4	33	70	34	7 – VERY DIFFICULT	30 – COMPLEX
	RW			27	21	24
E	G4	25	52	26	27 – VERY DIFFICULT	23 – COMPLEX
	RW			22	32 – DIFFICULT	20

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.2a: Banking Services (Ec) – Banking Agreements

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	25	32	20	40 – DIFFICULT	16 – COMPLEX
	RW			17	39	16
B	G4	11	22	14	59 – FAIRLY DIFFICULT	11 – COMPLEX
	RW			13	56	11
C	G4	30	36	19	51 – FAIRLY DIFFICULT	15 – COMPLEX
	RW			17	48 – DIFFICULT	15
D	G4	8	38	21	37 – DIFFICULT	18 – COMPLEX
	RW			20	34	18
E	G4	8	38	21	37 – DIFFICULT	18 – COMPLEX
	RW			20	34	18
F	G4	0	26	19	44 – DIFFICULT	14 – COMPLEX
	RW			15	38	14
G	G4	25	51	26	31 – DIFFICULT	22 – COMPLEX
	RW			21	38	18
H	G4	0	44	22	36 – DIFFICULT	19 – COMPLEX
	RW			19	38	17

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.2b: Banking Services (Ec) – Credit Card Applications

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	5	28	18	52 – FAIRLY DIFFICULT	13 – COMPLEX
	RW			15	48	13
B	G4	21	40	23	33 – DIFFICULT	19 – COMPLEX
	RW			21	30	19
C	G4	8	32	21	39 – DIFFICULT	18- COMPLEX
	RW			19	39 – DIFFICULT	17
D	G4	18	24	17	44 – DIFFICULT	13 – COMPLEX
	RW			15	40	14
E	G4	9	30	20	41 – DIFFICULT	15 – COMPLEX
	RW			15	43	14
F	G4	20	51	22	36 – DIFFICULT	16 – COMPLEX
	RW			19	33	17
G	G4	0	34	24	25 – VERY DIFFICULT	19 – COMPLEX
	RW			16	35 – DIFFICULT	14
H	G4					
	RW					

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.2c: Banking Services (Ec) – Atm Agreements

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	0	24	17	43 – DIFFICULT	13 – COMPLEX
	RW			15	43	13
B	G4	16	22	17	44 – DIFFICULT	13 – COMPLEX
	RW			15	38	13
C	G4	25	20	15	51-FAIRLY DIFFICULT	11- COMPLEX
	RW			13	50	12
D	G4	50	36	21	34 – DIFFICULT	18 – COMPLEX
	RW			18	34	17
E	G4	40	30	18	46 – DIFFICULT	14 – COMPLEX
	RW			17	41	16
F	G4					
	RW					
G	G4	25	26	20	34 – DIFFICULT	15 – COMPLEX
	RW			16	33	15
H	G4	33	49	28	13- VERY DIFFICULT	24 – COMPLEX
	RW			21	21	19

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.2d: Banking Services (Ec) – Loan Documents

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	40	42	22	40 – DIFFICULT	18 – COMPLEX
	RW			18	44	16
B	G4	9	38	23	33 – DIFFICULT	18 – COMPLEX
	RW			21	30	19
C	G4	12	37	20	42 – DIFFICULT	17 – COMPLEX
	RW			23	27-VERY DIFFICULT	22
D	G4	22	31	21	33 – DIFFICULT	17 – COMPLEX
	RW			18	30	17
E	G4	0	29	17	49 – DIFFICULT	14 – COMPLEX
	RW			16	43	15
F	G4	22	28	21	32 – DIFFICULT	16 – COMPLEX
	RW			20	32	16
G	G4					
	RW					
H	G4	33	45	26	23- VERY DIFFICULT	22 – COMPLEX
	RW			21	29	19

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.3a: Insurance (EC) – Auto/Catastrophe Policies

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
AUTO						
NS	G4	33	79	40	0 – VERY DIFFICULT	36 – COMPLEX
	RW			22	20	20
ON	G4	23	22	16	49 – DIFFICULT	12 – COMPLEX
	RW			13	46	12
ST PAUL					PERSONAL LIABILITY CATASTROPHE	POLICY SAMPLE
OR	G4	11	29	20	35 – DIFFICULT	16 – COMPLEX
	RW			16	40	15
REV	G4	0	14	11	73 – FAIRLY EASY	7 – GOOD
	RW			8	76	6

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.3B: Insurance (EC) – Life Policies

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH + READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	20	50	25	29 – VERY DIFFICULT	22 – COMPLEX
	RW			23	31 – DIFFICULT	20
B	G4	0	39	24	25 – VERY DIFFICULT	20 – COMPLEX
	RW			23	25	19
C	G4	0	56	29	13 – VERY DIFFICULT	26 – COMPLEX
	RW			29	13	26
D	G4	0	36	22	34 – DIFFICULT	18 – COMPLEX
	RW			22	35	19
E	G4	0	25	19	46 – DIFFICULT	13 – COMPLEX
	RW			13	43	14
F	G4	50	32	24	18 – VERY DIFFICULT	19 – COMPLEX
	RW			16	19	17
G	G4	0	46	25	28 – VERY DIFFICULT	21 – COMPLEX
	RW			25	24	22

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary I.4: Mutual Funds (EC) – Prospectuses

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	50	28	20	33 – DIFFICULT	16
	RW			13	48	12 – COMPLEX
B	G4	0	63	31	16- VERY DIFFICULT	27
	RW			29	17	27 – COMPLEX
C	G4	50	33	20	36 – DIFFICULT	17
	RW			17	35	17 – COMPLEX
D	G4	66	30	17	43 – DIFFICULT	15
	RW			14	52- FAIRLY DIFFICULT	13
E	G4	100	64	33	8- VERY DIFFICULT	28
	RW			21	36 – DIFFICULT	19 – COMPLEX
F	G4	16	20	12	64 – STANDARD	9
	RW			10	68	9 – GOOD

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

X ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

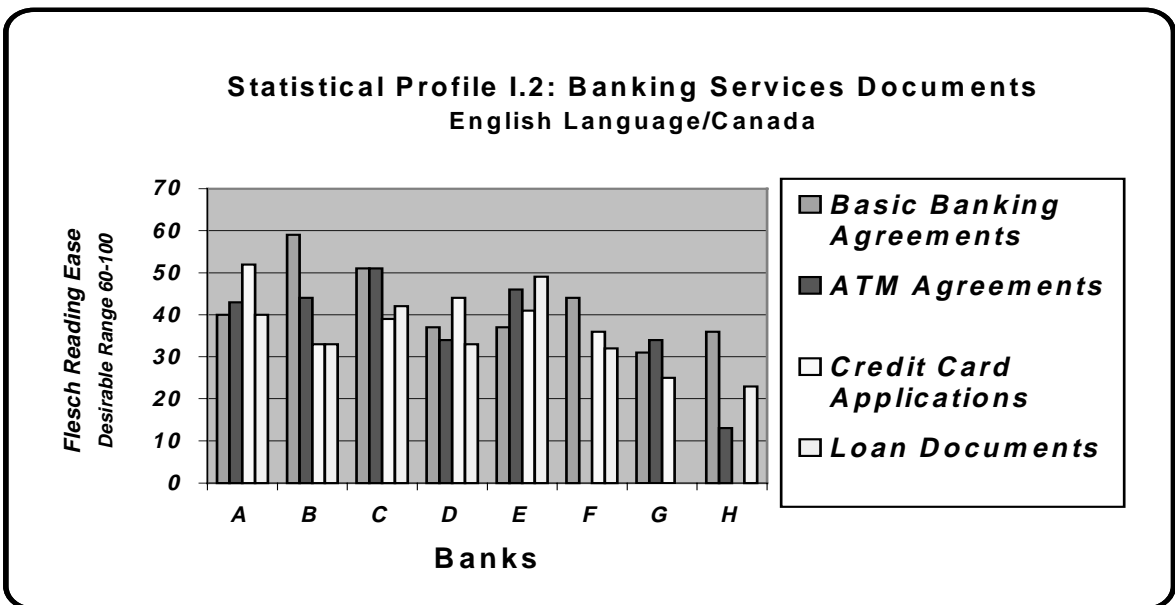
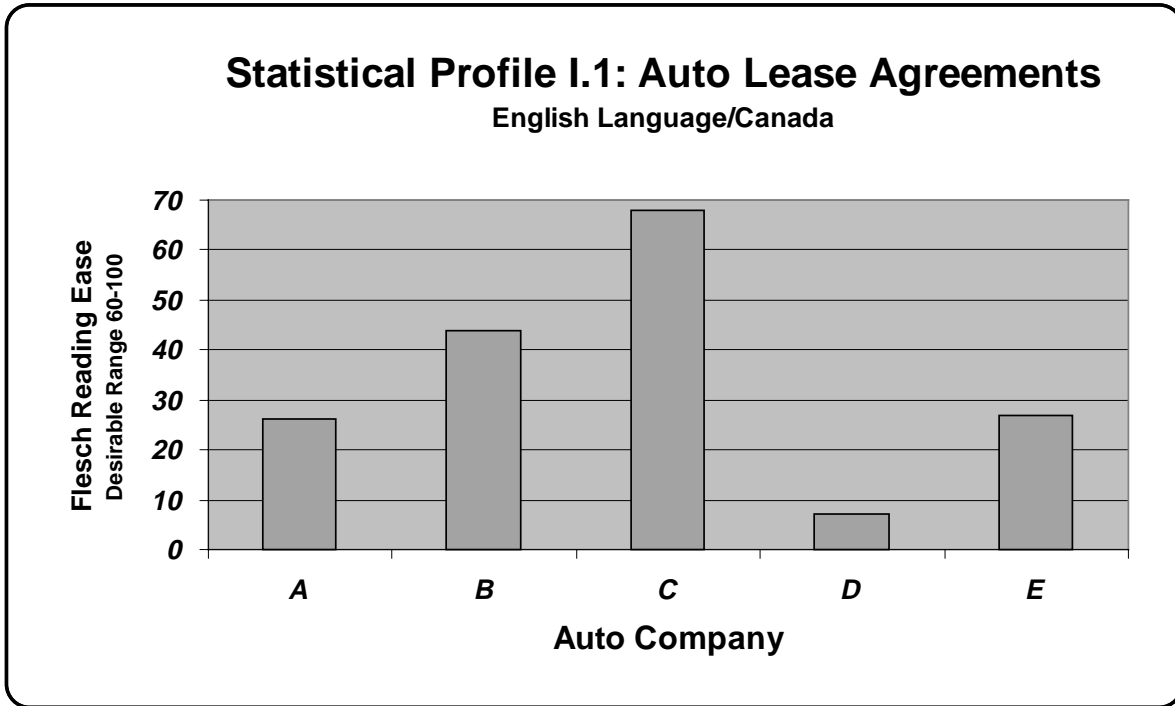
Statistical Summary I.5 – All Documents

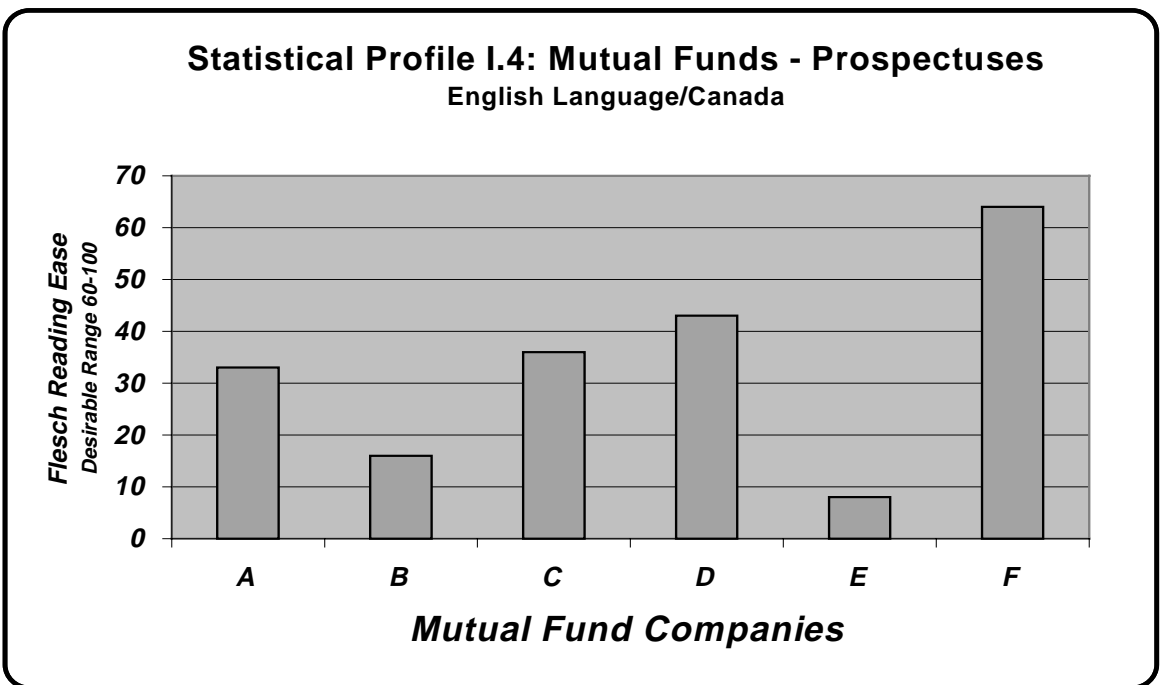
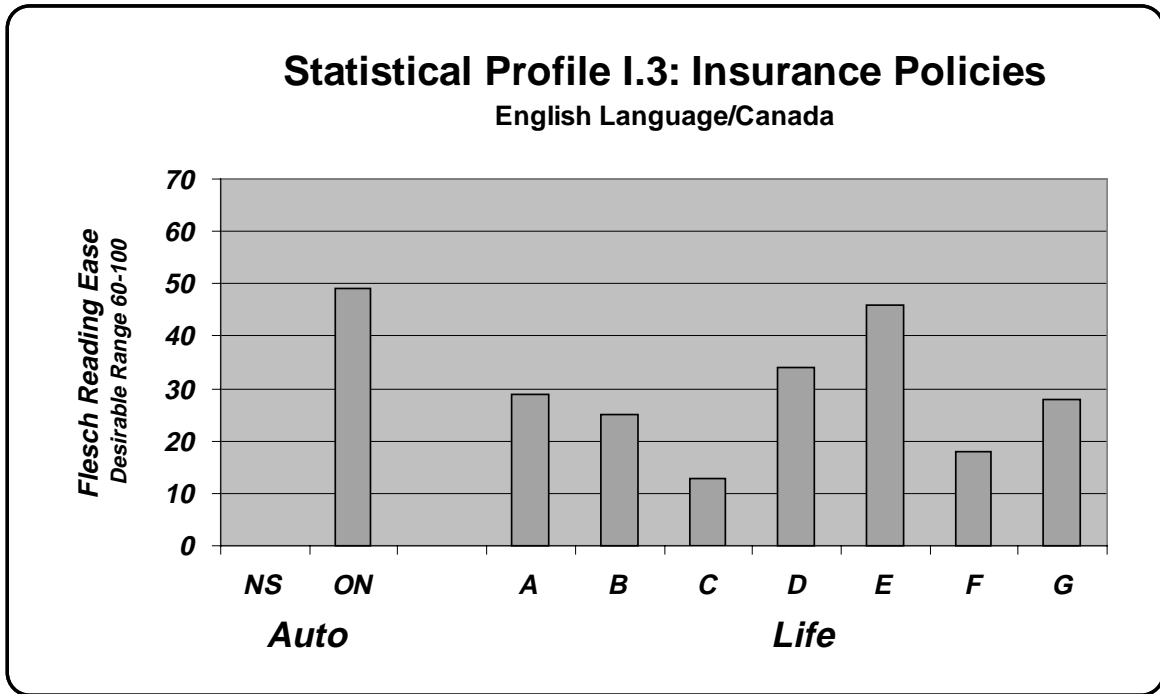
DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK ⁺ GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE	5	23	COLLEGE/U	12-26	34	DIFFICULT	7-68	20	COMPLEX
BANK SERVICES									
Basic Agr	8	20	COLLEGE/U	14-26	42	DIFFICULT	31-51	17	COMPLEX
ATM Agr	7	19	COLLEGE/U	15-28	38	DIFFICULT	13-51	15	COMPLEX
CC App/Agr	7	21	COLLEGE/U	17-24	38	DIFFICULT	25-52	16	COMPLEX
Loan App/Agr	7	21	COLLEGE/U	17-26	36	DIFFICULT	23-49	17	COMPLEX
INSURANCE									
Auto	2	28	COLLEGE/U	16-40	25	VERY DIFFICULT	0-49	24	COMPLEX
Life	7	24	COLLEGE/U	19-29	28	VERY DIFFICULT	13-46	20	COMPLEX
MUTUAL FUNDS									
Prospectus	6	19	COLLEGE/U	12-33	29	VERY DIFFICULT	8-64	16	COMPLEX
TOTAL	49								

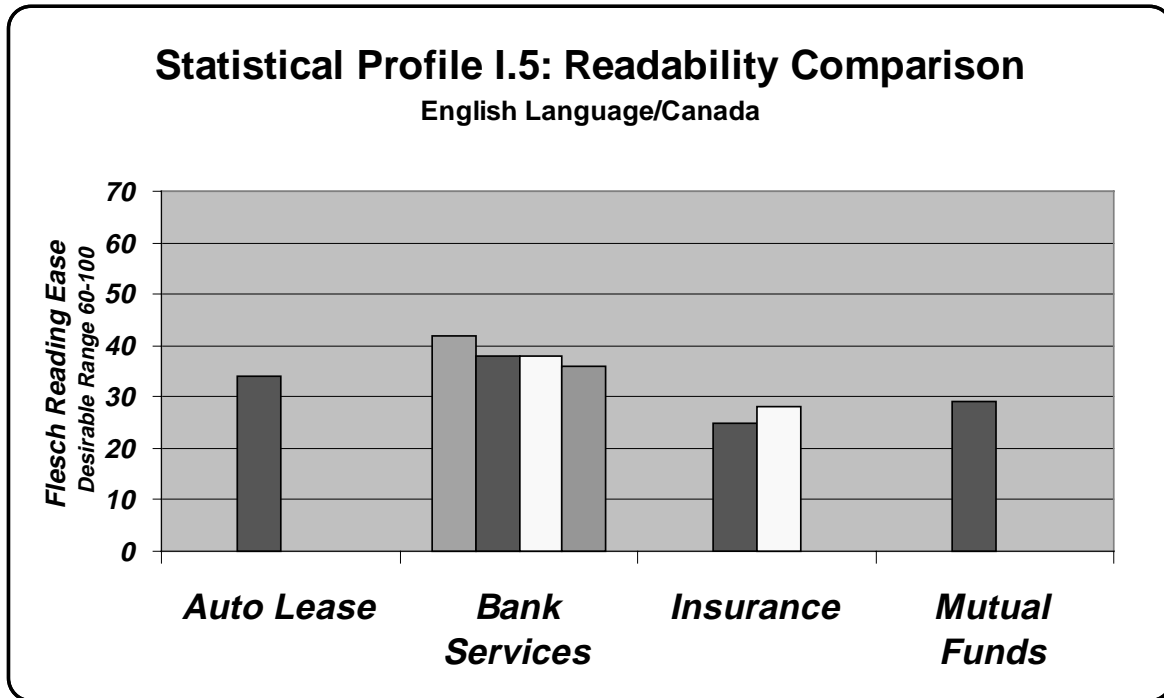
* The higher the score, the more readable the document.

+ FK = Flesch-Kincaid Grade Level.

Appendix I.4: Statistical Profiles







Appendix I.5: An Example From the US Insurance Industry

SAMPLE FROM A PERSONAL LIABILITY CATASTROPHE POLICY OF THE ST PAUL FIRE AND MARINE INSURANCE COMPANY [cited from Houp and Pearsall, p. 147]

RIGHTWRIGHTER ANALYSIS – ORIGINAL TEXT

Cancellation

This policy may be cancelled<<*_S1. PASSIVE VOICE: be cancelled *>> by the Named Insured by surrender thereof<<*_U7. LEGALESE: thereof *>> to the Company or any of its authorized agents, or by mailing to the Company written notice stating that thereafter<<*_U7. LEGALESE: thereafter *>> such cancellation shall be effective.<<*_S12. CAN SIMPLER TERMS BE USED? *>><<*_S4. IS SENTENCE TOO DIFFICULT? *>><<*_S3. LONG SENTENCE: 40 WORDS *>>

This policy may be cancelled<<*_S1. PASSIVE VOICE: be cancelled *>> by the Company by mailing to the Named Insured at the address shown in this Policy written notice stating when, not less than thirty (30) days thereafter<<*_U7. LEGALESE: thereafter *>>, such cancellation shall be effective.<<*_S4. IS SENTENCE TOO DIFFICULT? *>><<*_S3. LONG SENTENCE: 36 WORDS *>> The mailing of notice as aforesaid<<*_U3. ARCHAIC: aforesaid *>> shall be sufficient<<*_S13. REPLACE sufficient BY SIMPLER enough? *>> notice and the effective date of cancellation stated in the notice shall become the end of the policy period.<<*_S3. LONG SENTENCE: 28 WORDS *>> Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing. If the Named Insured cancels, earned premium shall be computed<<*_S1. PASSIVE VOICE: be computed *>> in accordance with<<*_U12. WORDY. REPLACE in accordance with BY according to *>> the customary<<*_S13. REPLACE customary BY SIMPLER usual? *>> short rate table and procedure. If the Company cancels, earned premium shall be computed<<*_S1. PASSIVE VOICE: be computed *>> pro rata. Premium adjustment may be made<<*_S1. PASSIVE VOICE: be made *>> at the time cancellation is effected<<*_S1. PASSIVE VOICE: is effected *>><<*_G4. WRONG VERB. REPLACE is effected BY is affected *>> or as soon as practicable<<*_U12. WORDY. REPLACE practicable BY practical *>> thereafter<<*_U7. LEGALESE: thereafter *>>. The check of the Company or its representative, mailed or delivered, shall be sufficient<<*_S13. REPLACE sufficient BY SIMPLER enough? *>> tender of any refund due the Named Insured. If this contract insures more than one Named Insured, cancellation may be effected<<*_S1. PASSIVE VOICE: be effected *>><<*_G4. WRONG VERB. REPLACE effected BY affect *>> by the first of such Named Insureds for the amount of all the Named Insureds; notice of cancellation by the Company to such first Named Insured shall be deemed<<*_S1. PASSIVE VOICE: be deemed *>><<*_U4. ARCHAIC. REPLACE deemed BY think *>> notice to all Insureds and payment of any unearned premium to such first Named Insured shall be for the account of all interests therein<<*_U7. LEGALESE: therein *>>.<<*_S12. CAN SIMPLER TERMS BE USED? *>><<*_S4. IS SENTENCE TOO DIFFICULT? *>><<*_S3. LONG SENTENCE: 66 WORDS *>>

DESCRIPTIVE INDEX: 0.54

0.1 0.5 0.9 1.1
 |****|****|****|****|* | | | | | |
 TERSE |----- NORMAL -----| WORDY
 The use of adjectives and adverbs is normal.

JARGON INDEX: 0.46

The writing contains a good deal of jargon.

SENTENCE STRUCTURE RECOMMENDATIONS:

1. Most sentences contain multiple clauses.
Try to use more simple sentences.
14. Many prepositional phrases are used.

<< WORDS TO REVIEW >>

Review this list for words that may confuse your message. These include words that are negative, frequently misused, colloquial, or jargon. As you review each word, think of its effect on the reader.

- 1 accordance (Often misused)
- 1 authorized (Often misused)
- 7 cancellation (Possible jargon)
- 3 effective (Often misused)
- 1 not (Negative)
- 1 practicable (Often misused)
- 2 sufficient (Often misused)
- 3 thereafter (Possible jargon)
- 1 therein (Possible jargon)
- 1 thereof (Possible jargon)

<< END OF WORDS TO REVIEW LIST >>

<< ** END OF SUMMARY ** >>

GRAMMATIK IV ANALYSIS – ORIGINAL TEXT

===== Grammatik IV =====

Statistics for c:\wp51\plain\stpaul1.g4b

Problems marked/detected: 0/19

Readability Statistics

Flesch Reading Ease: 35
 Gunning's Fog Index: 20
 Flesch-Kincaid Grade Level: 16

Paragraph Statistics

Number of paragraphs: 1

Average length: 9.0 sentences

Sentence Statistics

Number of sentences: 9

Average length: 28.4 words

End with '?': 0

End with '!': 0

Passive voice: 1

Short (< 12 words): 1

Long (> 24 words): 4

Word Statistics

Number of words: 256

Prepositions: 36

Average length: 4.91 letters

Syllables per word: 1.69

Count categories

0 – Counting rule 1

0 – Counting rule 2

0 – Counting rule 3

0 – Counting rule 4

0 – Counting rule 5

0 – Counting rule 6

0 – Counting rule 7

0 – Counting rule 8

0 – Counting rule 9

=====

SAMPLE FROM A PERSONAL LIABILITY CATASTROPHE POLICY OF THE ST PAUL FIRE AND MARINE INSURANCE COMPANY [cited from Houp and Pearsall, p. 147]**RIGHTWRITER ANALYSIS – REVISED TEXT**

Can This Policy Be Cancelled?

Yes, it can. Both by you and by us.

<<* **G2. IS THIS A COMPLETE SENTENCE? ***>>

If you want to cancel the policy, hand or send your cancellation notice to us or our authorized agent. Or mail us a written<<* **_G9. IS a written BEING USED CORRECTLY? ***>> notice with the date when you want the policy cancelled. We'll send you a check for the unearned premium, figured by the short rate table – that is, pro rata minus a service charge.<<* **_S4. IS SENTENCE TOO DIFFICULT? ***>>

If we decide to cancel the policy, we'll mail or deliver to you a cancellation notice effective after at least 30 days. As soon as we can, we'll send you a check for the unearned premium, figured pro rata.

<<**** SUMMARY ****>>

The document STPAUL2. was analyzed using the rules for General Business writing at the General Public education level. It is a WordPerfect document. The marked-up copy is stored in the file STPAUL2.OUT.

READABILITY INDEX: 6.03

4th 6th 8th 10th 12th 14th
 |****|****| | | | | | | |
SIMPLE |—— **GOOD** ——| **COMPLEX**
 Readers need a 6th grade level of education.

The Flesch Index for this document is : 76.104

The Fog Index for this document is : 8.386

Number of Words in Document: 110
 Number of Unique Words in Document: 59
 Number of Numbers in Document: 1
 Number of Words within Sentences: 109
 Number of Sentences: 8
 Number of Syllables: 152
 Average Number of Syllables/Word: 1.382
 Average Number of Words/Sentence: 13.625
 Use of Must: 0
 Use of Shall: 0
 Use of Can: 3
 Use of May: 0
 Percentage of words that are Prepositions: 10.909
 Number of Spaces in Document: 107
 Number of Tabs in Document: 0
 Number of End of Line Characters in Document: 6
 Number of Printable Characters in Document: 467

STRENGTH INDEX: 0.77

0.0 0.5 1.0
 |****|****|****|****|****|****|****|****|***| | | |
WEAK **STRONG**
 The strength of delivery is good, but can be improved.

DESCRIPTIVE INDEX: 0.44

0.1 0.5 0.9 1.1
 |****|****|****|* | | | | | | |
TERSE |—— **NORMAL** ——| **WORDY**
 The use of adjectives and adverbs is normal.

JARGON INDEX: 0.00

SENTENCE STRUCTURE RECOMMENDATIONS:

1. Most sentences contain multiple clauses.
Try to use more simple sentences.

<< WORDS TO REVIEW >>

Review this list for words that may confuse your message. These include words that are negative, frequently misused, colloquial, or jargon. As you review each word, think of its effect on the reader.

- 1 authorized (Often misused)
- 2 cancellation (Possible jargon)
- 1 effective (Often misused)

<< END OF WORDS TO REVIEW LIST >>
<< END OF SUMMARY **>>**

GRAMMATIK IV ANALYSIS – ORIGINAL TEXT

===== Grammatik IV =====

Statistics for c:\wp51\plain\stpaul2

Problems marked/detected: 0/7

Readability Statistics

Flesch Reading Ease: 71
Gunning's Fog Index: 12
Flesch-Kincaid Grade Level: 7

Paragraph Statistics

Number of paragraphs: 4
Average length: 2.7 sentences

Sentence Statistics

Number of sentences: 11
Average length: 12.9 words
End with '?': 1
End with '!': 0
Passive voice: 0
Short (< 12 words): 4
Long (> 24 words): 0

Word Statistics

Number of words: 142
Prepositions: 11
Average length: 4.31 letters
Syllables per word: 1.45

Count categories

- 0 – Counting rule 1
- 0 – Counting rule 2
- 0 – Counting rule 3
- 0 – Counting rule 4
- 0 – Counting rule 5
- 0 – Counting rule 6
- 0 – Counting rule 7
- 0 – Counting rule 8
- 0 – Counting rule 9



Section II: Assessing Canadian French-Language Documents

Part II.1: Collection of Agreements

II.1.1 Introduction

During June 1998, 21 agreements in French were collected in Ontario and Québec, from four sections of Canada's financial sector, including:

Auto Lease

Standard Lease Agreement - 3 (plus 1 in English, Québec only)

Banking Services

Basic Banking Agreement - 3

ATM Agreement - 5 (plus 1 in English, revised from December 97 and 2 in English, not available for the English study)

Credit Card Application - 5 (plus 1 in English, not available for the English study)

Insurance

Life Policy/Declaration - 2 (plus 1 in English, not available for the English study)

Mutual Funds

Prospectuses - 3 (plus 2 in English, revised from December 97)

To ensure that this study of French-language documents paralleled the English-language study reported in Section I, comparable materials in English were also requested. Where the English-language documents had been updated or were different, equivalent passages in the English version were examined as well. It may be of interest that of the 49 agreements collected for the English-language study, only three were "bilingual" in the sense that they included both English and French text: one auto lease and two ATM agreements, both of which are analyzed below. Appendix II.1 includes more specific details about these documents.

II.1.2 Comments and Issues

II.1.2.1 Auto Lease Agreements

Manufacturers who serve consumers nation-wide appear to have a variety of solutions to the legal and linguistic problems that arise when financial transactions fall under provincial jurisdiction. The three documents collected for this study represent three different solutions:

- a standard "bilingual" lease that includes both English and French and is available and used in all provinces, except Québec and possibly, British Columbia (where legislation differs);
- two standard leases, one in each language, used in all jurisdictions across the country, as required;
- a standard lease in English for all customers outside of Québec, along with distinctly different agreements in both English and French for use in Québec. (Attempts to collect a sample lease agreement in French from this manufacturer's dealerships in southern and eastern Ontario and in two areas of New Brunswick with large French-speaking populations were unsuccessful. In each case, the response was that "the language of commerce is English and we use only English documents here." A dealer representative in southern Ontario said that while he had never been asked to process a lease in French, one reason that a French-language lease would not be used in that dealership was that no one was qualified to administer it. He pointed out that a French-speaking customer who wished to carry out a transaction in French would have to bring a translator. He said that responsibility for understanding the agreement would then rest with the translator and the customer, rather than the customer and the dealership.)

In all cases, sample lease agreements could not be obtained by a routine request to either the manufacturer or the manufacturer's credit subsidiary. They were only available from local dealerships. There may be a number of reasons for this practice, including the fact that the manufacturer depends on local staff to explain the agreement.

II.1.2.2 Banking Services

Banking services are federally regulated and the same agreements and applications appear to be available in English and French across the country, although most are separate publications. As noted above, two banking documents (ATM agreements) from the English-language study also included parallel French text. Branches in southern Ontario did not have French documents on the premises but were cooperative in providing sources. Many came from the Ottawa area where materials are routinely available in both languages.

In southern Ontario, documents in French were specifically requested "for a research project." Such document collection does not represent the experience of an "average consumer" and many of the issues discussed in the English-language study did not arise. On the other hand, a French-speaking assistant in Ottawa who might well be a consumer had some difficulty collecting banking documents, particularly basic banking agreements. Institutions informed the assistant that agreements were only available to individuals actually opening accounts. Other documents

were available in online versions only. Since corresponding documents were provided in both languages from most institutions, other difficulties experienced while collecting English language documents (such as the availability of applications but not agreements) may also apply to French-language document collection.

II.1.2.3 Life Insurance

In view of the difficulty experienced while accessing insurance policies in English, document collection from specific companies was not attempted for this study. Instead, French-language policies were requested from the local insurance broker who had been helpful in the English document collection process. In the month or so available to him, he was able to locate only one policy, even though he has wide contacts within the industry across the country. Insurance declarations in French and English were provided by H el ene Carty.

II.1.2.4 Mutual Fund Prospectuses

Samples of mutual fund prospectuses in both English and French were easily obtained from the Toronto Head Office of the respective mutual fund companies. One company representative who provided the sample happened to be a francophone from Qu ebec who had worked in the field in both Ontario and Qu ebec. He said that in his experience there were few differences between the materials provided in English- and French-speaking Canada. The same funds are available in Qu ebec, although there are differences in details related to taxation.

Two of the three companies whose prospectuses were analyzed had revised their materials since the English study was carried out. Parallel passages in those revised documents were also analyzed for this report. One of those companies had also created an accompanying web site that provides information in English and French. Users of the site can download a prospectus in either language whenever they wish.

The option to access information in French and download a French language prospectus may be particularly attractive in non-francophone areas. For example, in Southern Ontario, French documents were unavailable from the corporate office of the financial services group that provided samples for the English-language study. In addition, a financial adviser in Southern Ontario who has served clients in a local office of a different financial services organization for almost 20 years said that he had never been asked to carry out a transaction in French.

II.1.3 Summary and Conclusion

With a few exceptions, French-language document collection was specifically undertaken for research purposes and does not represent the experience of consumers. Financial institutions in southern Ontario were pleased to provide French-language documents, in response to special requests but did not have them readily at hand. Many responded that they had never been asked to provide service in French. Document collection in the Ottawa area, where materials in both languages are readily available, was more typical. Since some of the difficulties described in Section I, particularly in relation to banking documents, also arose in relation to French-language

banking documents, it may be assumed that they are characteristic of document collection in either language across the country. In addition, the process confirmed that, except when applications and agreements are available on the internet, francophone consumers are likely to have difficulty accessing French-language financial contracts in all but a few areas outside Québec. It also showed that the development and collection of financial documents is more complex when documents relate to transactions that fall under provincial jurisdiction.

Part II.2: Quantitative Analysis

II.2.1 Introduction

Quantitative document analysis was first carried out in the United States. Several formulae, based on the English language, were developed and used there in education, industry and the military to attempt to predict how easily passages of prose could be read. Many assigned a particular score or grade level to the passage being analyzed.

Beginning in the 1960s researchers in France began to wonder if these formulae, and in particular the formula developed by Rudolf Flesch, could be applied to French language prose. The movement to explore readability or *la lisibilité* was led by François Richaudeau who has commented in many publications since his first major study of the topic, *La Lisibilité*, appeared in 1969.¹⁴

About the same time, a Belgian educator, Gilbert de Landsheere, considered the application of the Flesch formula to French-language prose in his surveys of educational research. He used the formula to analyze prose passages and attempted an assessment of their difficulty, based on his adaptation of the Flesch readability scale. De Landsheere's adaptation is discussed more fully in Appendix II.2.

More recently in Canada, researchers at the International Center for Research on Biligualism/Centre international de recherche sur le bilinguisme in Québec, analyzed the readability/*la lisibilité* of a number of legal and general documents in both English and French using several instruments, including the Flesch formula. That study, *L'Éducation et l'information juridiques dans un contexte bilingue: Étude exploratrice sur la compréhension populaire des lois* (1987), while more comprehensive, parallels this exploration of financial documents by considering both English- and French-language technical (legal) documents, and using both quantitative (readability scales) and qualitative (reader questionnaires) means of assessment.

Because the Flesch formula depends upon word and sentence length, it can be applied to languages other than English. Questions arise, however, in relation to the meaning of its application to other languages since every language has its own distinctive characteristics. Issues arise in relation to how units such as syllables are defined in each language and also how scores are assessed for readability/*la lisibilité*.

The two computer programs used in this study, Grammatik IV and Rightwriter the Intelligent Grammar Checker, appear to calculate word and sentence length almost exactly as computed by de Landsheere. (See Appendix II.2.) With respect to the scale of difficulty, de Landsheere appears to consider that a score of 30, for example, represents less difficulty in French than in English. In other words, a passage with a score of 30 will be easier to read in French than a document in English that achieves the same score. Researchers at the Québec institute, while acknowledging differences between the two languages, note that Richaudeau established 50 as

¹⁴ Richaudeau discusses readability/*lisibilité* in a number of publications, including those listed in Section IV.

the lower limit of difficulty ("place le niveau de 50 comme frange inférieure des textes difficiles") and compare passages in the two languages throughout their study.¹⁵

With respect to this study, the Flesch scale will be considered an accurate measure of the relative readability/la lisibilité of the passages in French. When comparing French and English passages, the Québec precedent will be followed, with the proviso that a downward adjustment may be advisable, particularly when indicated by quantitative analysis. Since the goal of this study is to ascertain the transparency of financial services documents and determine whether they communicate effectively to consumers, this adjustment – or proposed adjustment – within complex ranges may be relatively unimportant. Even a slightly complex document is probably too difficult for the majority of consumers. Once again, the Québec precedent based on Richaudeau will be followed here, and scores under 50 will be considered difficult.

Since the literature relates to the Flesch formula it will be the primary focus of this study which will report both the Flesch readability score and the Flesch-Kincaid grade level. Robert Gunning's Fog Index will not be reported since it relies on word length which has a different significance in each language (In English words of many syllables are often more difficult to understand than shorter words; in French, syllables often accumulate because of verb endings or changes in parts of speech, for example, and are unrelated to reading ease.)

This study will also report both average sentence length (ASL) and average word (AWL). AWL, in syllables, is reported as a check that both programs are interpreting "words" in a similar way and in response to de Landsheere's comment that there are more small words in French than in English (although this does not appear to be borne out in the calculations made for this study). ASL is also reported in the studies of English-language documents. It remains a prime indicator of readability/la lisibilité, since many sentences in both languages appear to be much longer than is recommended for reading ease.

As in the other studies reported here, wherever possible, portions of text relating to the same subject area were chosen throughout the document class. For example, the sections on deferred sales charges were analyzed in mutual fund prospectuses in both French and English. Where the English document had been revised or re-issued since the earlier analysis (December 1997), the comparable passage in the newer document (June 1998) was also analyzed.

In most cases, each program produced similar results for each portion of text analyzed. Where results differed, other portions of the same documents were also assessed. In some cases, larger portions were analyzed to confirm the accuracy of the scores. Scores from both programs, by financial services section and document type, appear in Statistical Summaries II.1-4 in Appendix II.3. Grammatik IV scores only appear in Statistical Summary II.5 in Appendix II.3, and in the statistical profiles presented in Appendix II.4.

¹⁵ See *L'Éducation et l'information*, p. 29-30.

II.2.2 Readability Scores

II.2.2.1 Statistical Summaries

Statistical Summary II.5 is reproduced in Table II.1. It summarizes the results of readability testing for all French-language Canadian financial documents assessed in this study, in comparison with desirable results. Mean scores indicate that all French-language documents in all sections except mutual fund documents exceed desirable ranges and

- are **Difficult** or **Very Difficult** to read (below 50 – Flesch Readability Score)
- are **Complex** (Flesch-Kincaid Grade Level).

Although the mean Flesch readability score for the mutual fund documents was above 50, the mean Flesch-Kincaid Grade level indicated that the documents were **Complex**, but not as complex as the other French-language documents.

Table II.1: Statistical Summary II.5 – All French-Language Canadian Documents

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK + GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE	3	N/A	N/A	N/A	18.7	-	15-32	23	COMPLEX
BANK SERVICES									
Basic Agr	3	N/A	N/A	N/A	39	-	24-49	16	COMPLEX
ATM Agr	5	N/A	N/A	N/A	32	-	15-42	16.8	COMPLEX
CC App/Agr	5	N/A	N/A	N/A	21	-	6-31	18.8	COMPLEX
Loan App/Agr	-	-	-	-	-	-	-	-	-
INSURANCE									
Auto	-	-	-	-	-	-	-	-	-
Life	2	N/A	N/A	N/A	11.5	-	0-23	-	COMPLEX
MUTUAL FUNDS									
Prospectus	3	N/A	N/A	N/A	53		43-64	13.3	COMPLEX
TOTAL	21								

* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

II.2.2.2 The Most Readable Documents

The most readable French-language documents in this study were mutual fund prospectuses. Highest scores, as measured by both the Grammatik IV and RightWriter programs, were achieved by Mutual Fund Document BFr. As Statistical Summary II.4 shows, however, there is often a slight discrepancy in scores between the two programs. As a result, Mutual Fund Documents AFr and CFr each received one score over 50 and one score under, suggesting that both are relatively easy to read in comparison with other documents in the study. Mutual Fund Document BFr also appears to require the least education, with a score indicating that its grade level is just on the edge between Good and Complex:

	Fog Index	Flesch Readability	F-K Grade
Mutual Fund Prospectus BFr	N/A	64	10-Good/Complex

II.2.2.3 The Least Readable Documents

The life insurance policy, Insurance Document AFr, was the least readable document in the study. Close behind, were Credit Card Application AFr and ATM Agreement AFr:

	Fog Index	Flesch Readability	F-K Grade
Insurance Policy AFr	N/A	0	[DID NOT REGISTER]
Credit Card App AFr	N/A	6	21-Complex
ATM AGR AFr	N/A	15*	21-Complex

* RightWriter produced a readability score of 8.

It may be of interest that while Insurance Policy AFr represents a major national company, banking institution A is a Québec-based organization that primarily serves French-speaking consumers.

II.2.2.4 Comparisons

(i) Document Collection, June 1998

To ensure that similar and contemporary English and French documents were being assessed, comparable English-language documents were collected at the same time as the French-language documents. Results from analysis of those documents (identified as Jun98) appear in Statistical Summaries II.1-II.4, along with results from the earlier analysis of comparable English-language documents (identified as Dec97). They do not appear in Statistical Summary II.5 or in summaries and profiles comparing results from the three sections of this report. The summaries and profiles include statistics reported in Section I.

(ii) English-Language Documents Collected, December 1997 and June 1998 (Banking Services and Mutual Funds)

The new documents added in June 1998 in relation to banking services and mutual funds appear to be available nationally and do not seem to have been created to accompany French-language documents for a particular market or location. Scores indicate that the revisions to the two banking documents, ATM Agreement BEn and Credit Card Application BEn, produced fairly similar results. Readability scores remained in the Difficult to Fairly Difficult range and the Flesch-Kincaid grade level continued to indicate that the documents were Complex (Grade 13). The revisions made little difference to document transparency.

Similarly, changes to Mutual Fund Document CEn resulted in little change in scores, although judging by the Flesch-Kincaid grade level, CEn2 (Jun98) appears to be slightly more complex than CEn1 (Dec97). As Mutual Fund Prospectus F, Mutual Fund Document CEn1 was identified as one of the two most readable documents assessed Section I. The additional complexity of the revised version was also apparent in a brief qualitative analysis of the document.

In sharp contrast, Document BEn2 (Jun98) showed a marked improvement over Document BEn1 (Dec97), which as Mutual Fund Prospectus B was described in Table I.2 as a difficult document made more difficult by presentation features. Scores achieved by the revision were the highest recorded by any of the documents collected for this study, from either Canada or the United States:

		Fog Index	Flesch Readability	F-K Grade
Mutual Fund				
Prospectus BEn1	G4	31	16	27
(Dec97)	RW	29	17	27
Mutual Fund				
Prospectus BEn2	G4	11	70	8
(Jun98)	RW	10	75	7

This dramatic change was also apparent from qualitative analysis of the document (see Tables IV.7 and IV.8 below). Scores for the companion document in French also appear to be higher than scores for other French documents, indicating that all of that company's literature may be more readable than other industry documents. Further, this new set of documents is also accompanied by a revised web site which includes the opportunity to download a prospectus, as discussed in Section IV. The fact that such improvement is possible and has been achieved suggests that equally readable documentation is within the reach of all other financial services institutions.

(iii) English- and French-Language Documents Collected, December 1997 and June 1998 (Auto Leases)

The situation with respect to auto leases which fall under provincial jurisdiction is slightly different and more complex. In all, three sets of documents were collected:

- **Set A** – Document AFr (C) is available in both French and English across Canada, except in Québec and possibly British Columbia. Document AFr is, therefore, a French-language lease created for French-speaking consumers outside Québec. Document AEn (C) was collected in December 1997 and analyzed for discussion in Section I.
- **Set B** – Document BFr (C&Q) and BEn (C&Q) appear to be in use in all provinces. Document BEn was also analyzed and collected in December 1997.
- **Set C** – Document CFr (Q) is available and used only in Québec. Similarly, Document CEn(Q) which was collected and analyzed in June 1998, is also available and used only in Québec. Document CEn (C) is used elsewhere in Canada and was analyzed in December 1997.

Readability scores reported in Statistical Summary II.1 suggest that the French-language documents created for use outside Québec, (with readability scores of 15 and 19) may be somewhat more difficult to read than the document created for use in Québec (with a readability score of 32). All are well below 50. Further, analysis suggests that they all require a grade level of over 20 which means that all are Complex. With respect to the English-language documents in this group, the two used across the country achieved scores in the Very Difficult range, with the English-language document designed for use in Québec receiving a slightly higher score in the Difficult range. English Document BEn stands out from the group for its readability and as Auto Lease C was, in fact, identified as the other "most readable" document in Section I of this study.

(iv) Insurance Documents

Very few insurance documents were available for this study. None the less, available scores suggest that Canadian insurance documents in French are as difficult as the documents assessed in Section I. Grammatik IV analysis of both Insurance Documents AFr and AEn (comparable life insurance policies) resulted in a Flesch Reading Ease score of 0. No Flesch-Kincaid grade level registered for either document. Scores are well below the industry standard established in the United States.

(v) French- and English-Language Documents, in General

Statistical analysis predicts that, with the exceptions noted above, both the French- and English-language documents assessed in this study are at the very least, difficult and complex. Sentence, word and syllable counts in the samples analyzed suggest that the documents are very similar – direct translations – and that no attempt has been made to make documents in one language more readable than documents in the other. Section IV provides a detailed comparison of the results from the study of English-language documents reported in Section I above, and the results of the study of French-language under discussion here.

II.2.3 French-Speaking Canadian Consumer Profile

How well do French-speaking Canadians read? As noted in Part I, Statistics Canada has reported that four out of 10 Canadian adults have limited reading skills. Similarly, the International Adult Literacy Study (IALS) found that 20 percent of the Canadian population (anglophone and francophone) achieved the highest level, the combined Level 4/5, on the prose and quantitative scales, with 22 percent reaching it on the document scale.

The IALS test was administered in Canada in 1994 in both English and French. Participants were allowed to take the test in the language of their choice. The French results refer to those who chose to answer test items in French and reported results "represent only part of what might be considered the French-speaking population of Canada."¹⁶ They do not include all who identified their main language as French. For example, three percent of those who said the language they spoke most easily was French chose to be tested in English. Only 72 percent of those who said their mother tongue was French took the test in French. Most of the rest, lived in a province other than Québec or New Brunswick. Similarly, interviewers for the Southam Literacy Survey carried out across Canada in 1987 reported that francophone participants living outside Québec (like anglophones inside Québec) "almost always chose to do the survey in the dominant language of their province." As a consequence, francophones living in western Canada were likely to be recorded as English speaking.¹⁷

In spite of difficulties with definitions and language preferences/usage, IALS researchers using "language of test" as the defining criterion produced statistics that permit comparisons across Canada and between language groups. As the Table II.2 shows, their results indicate that scores were affected by language transfer and milieu. At Levels 1 and 4/5, francophone scores were generally higher in Québec than outside Québec, which includes many areas that lack a supportive francophone infrastructure and receptive cultural milieu, including access to French-language educational opportunities at the secondary and postsecondary levels. In addition, French-language test scores may also reflect the fact that francophone Canadians must cope with the distinction between written and spoken French, as well as differences arising from regional variations in the spoken language.

¹⁶ *Reading the Future: A Portrait of Literacy in Canada*, p. 34.

¹⁷ *Peter Calamai, Broken Words: Why Five Million Canadians are Illiterate* (The Southam Literacy Report), p. 25.

A more detailed examination of these scores reveals that such a small number of participants taking the test in French outside Québec reached Level 4/5, that it was not possible to produce a reliable estimate. In fact, with respect to the prose and document scales, one third of these participants have only Level 1 skills.

Table II.2: Canadian IALS Results by Language of Test

IALS LITERACY LEVELS (Age 16 +)	PROSE SCALE	DOCUMENT SCALE	QUANTITATIVE SCALE
LEVEL 1 (lowest)			
CANADA (ALL)	22	23	22
FRENCH TOTAL	28	31	28
FR IN QUÉBEC	27	31	28
FR OUTSIDE QUÉBEC	33	33	28
LEVEL 4/5 (highest)			
CANADA (ALL)	20	22	20
FRENCH TOTAL	9	14	10
FR IN QUÉBEC	9	14	10
FR OUTSIDE QUÉBEC	-	-	-

In practice, these results suggest that complex financial documents in French are likely to be inaccessible to almost all francophones living outside Québec. Further, the fact that only 9, 14 and 10 percent of francophones within Québec achieved Level 4/5 on the three scales suggests that the audience for complex documents within Québec is very small.

Section IV of this study includes a more detailed comparison of anglophone and francophone results. None the less it may be important to note here, that participants taking the IALS test in French scored well above national scores for Level 1 and well below, for Level 4/5. These results suggest that documents created for one population may not be appropriate for another and that direct translations, particularly from English to French are unlikely to be effective.

II.2.4 Summary and Conclusion

Researchers in Europe and Québec have used the Flesch formula, with some adjustments, to assess French language documents. Assuming, with other researchers, that a score of 50 marks the upper threshold of difficulty, mean scores for French-language documents in all categories in this study were in the difficult range, while mutual fund prospectuses with a mean score of 53 appear to be only slightly easier.

In contrast, literacy research suggests that complex financial documents are likely to be inaccessible to less than 14 percent of francophones in Québec, and to an even smaller number outside that province. This means that difficult French-language financial documents are likely to have meaning for only a very few French-speaking consumers and highlights the special problems of those living in areas that lack a supportive francophone infrastructure and milieu.

Part II.3: Readability and Intelligibility of French Texts

II.3.1 Foreword

Readability formulas tend to rank texts depending on level of difficulty and allow us to pinpoint the factors that influence message transmission. Studies to this effect by Flesch and Flesch-Kincaid are enlightening. We should nonetheless be wary of a basically formalistic approach toward language aimed *a priori* at the English language, which reduces the number of words and syllables and the degree of complexity of a text to a single denominator. We need more information on the end-user, as well as the contextual or extra-linguistic variants that contribute greatly to text comprehension and take situational needs into account.

II.3.2 Qualitative Analysis

A comparative analysis of documents paints a fairly gloomy picture of their degree of complexity in either official language. The Flesch readability formula has been improved and the interpretation of the results was less stringent for French texts. Nonetheless, scores obtained indicate a greater degree of difficulty because of the length of the words and phrases, which raises doubts about the intelligibility of the piece of writing.

Our examination of texts whose ranking was conceived *a priori* for English supports these results, although we based ourselves on broader reasons. The number of periphrases, or circumlocutions, has a direct bearing on the length of texts without affecting their intelligibility, unless stylistic interferences disguise the meaning of the message.

Contrary to English, French makes moderate use of the passive voice, which is used *a priori* in scientific and legal texts. Therefore, this feature does not lend itself to comparative analyses or to the French language, which rarely uses the passive voice. Instead, the focus should be on the overuse of the nominative form when assessing the concern to present ideas as clearly as possible. In many cases, terminology tends to be more complex in French than in English. Resorting to the nominative in French tends to weigh sentences down. More formal turns of phrase, such as the use of the impersonal “on” in French, or expressions such as “*être du ressort de*”, [to fall within the competence of], albeit short in terms of syllables and words, contribute to the impersonal nature of texts.

Furthermore, the number of circumlocutions is another factor. According to Flesch, not only do periphrases weigh sentences down but they also contribute to the complexity factor, which is specific to circumlocutions. The most recent edition of the *Greater Oxford Dictionary* lists some 600 000 words that enrich the English language, whereas *Le Grand Robert* provides fewer than 100 000. The shortage of verbs is particularly striking given that they are the engine and the driving force in the sentence, and worrisome given that they impose the use of the nominative, which weighs the sentence down and increases the degree of complexity of the French language.

The preferred use of the nominative form in telegraphic style over the imperative deserves close attention. This preference in French automatically hinders message transmission because the

priority placement of the verb in English provides a type of anchoring effect and facilitates message transmission.

II.3.2.1 The End-user

When conveying a message, end-users, their knowledge, and situational needs should always be taken into account. The human interest factor can be enhanced by selecting personal words and phrases and by using direct and exclamatory discourse. False precisions and jargon should be avoided. These crucial pre-requisites for comprehension were ignored in many texts we examined, especially those that do not directly address the reader but use impersonal turns of phrase such as: “*il est essentiel que vous... l’investisseur... etc.*” [it is essential that you ... the investor ... etc.] or false precisions such as “*vous*” *représente* [“you” represent] ... “*je*” *représente* [“I” represent].

The writer/editor also needs to remember that since the purpose of the message being transmitted is to inform the reader, the focus should mainly be on the information needs of the reader. These influences determine the format of a text and the resulting sentence sequencing. When the reader has to overcome several interferences, footnotes and useless long segments before grasping the meaning of a document, the reader’s memory is no longer sufficient to sustain interest. On the other hand, detailed information should be expertly provided where context so dictates.

II.3.2.2 Language

What is easily conceived is expressed clearly and the words to describe it come easily. This old adage should serve as a guide to writers/editors. Word order and word choice, the use of link words and sentence sequencing are all crucial factors. Readability formulas are interesting tools that grab the attention of the writer/editor but do not identify the source of the degree of difficulty. A 20-word sentence is not necessarily harder to read than a five or ten-word sentence if it is well-structured, if it conveys a single idea and if it makes good use of link words. Therefore, shortening a text does not necessarily make it any clearer.

Moreover, the absence of verbs in the passive voice in French is not an indication of the degree of difficulty of a text. The human interest rating, however, plays a crucial role.

II.3.2.3 Presentation

Certain technical aspects help the intelligibility of a text, such as:

- The size and colour of the characters
- The shade and the quality of the paper
- The opaqueness of the paper
- Blank spaces

- Titles and illustrations
- The form and format of the document
- Margin justification

These textual aspects should not be overlooked because they provide visual support to message transmission. The texts we examined make the reading of the French much more labour-intensive, in other words more difficult. Limited blank spaces and reduced type size as a result of lengthy translations into French hamper text intelligibility. Even the simplest texts may be uselessly rendered more cumbersome with awkward technical support. A more sophisticated text may be simplified by judiciously choosing blank spaces, by providing the eye and the mind with anchoring points, and by using emphasis, boxes, illustrations, and text frames. In this way, type D banking documents reflect an adaptation attempt that, albeit imperfect, facilitates reading and comprehension.

However, certain banking service usage conventions or credit-card use conditions cut a sorry figure and make text comprehension all the more difficult. The Francophone reader is confronted with dense discourse, with no emphasis, few anchors and link words. The type size is necessarily smaller and the spacing between letters is reduced compared to English, as a result of a literal translation that is overly clumsy and ambiguous.

Where graphic artists have tried to render the text more comprehensible with images or emphasis, they have often regrettably chosen red to accentuate the message. This is a particularly bad choice because it is the most difficult colour to read and most readily overlooked by an ageing reading population.

Furthermore, printing certain texts on a coloured background or on top of an image reduces the contrast and hampers reading. Writers/editors should respect well-known graphic standards, namely that black on white, or blue on white enhance legibility.

II.3.2.4 Situational Factors

Many companies recognize the importance of a third party to help the reader better understand a document. Not only are Francophones confronted with the same difficulties as their Anglophone counterparts in this regard, but they must also deal with very specific constraints. Outside Quebec, Francophones do not receive good service in this respect because not only do they have difficulty obtaining the texts in French, but assistance from an intermediary is often non-existent, even when the company provides a toll-free number. Furthermore, when such intermediaries are available, their linguistic knowledge and that of local French are often inadequate. Documents are more difficult to read outside Quebec as a result of the great linguistic disparity and schooling inequalities nationwide.

II.3.2.5 Objectives

Writers/editors must establish very clear objectives for themselves and the resulting documents must be straightforward. More often than not, these documents are subservient to business objectives and only provide the information required by legislation. This is why insurance policies are difficult, even impossible to read.

II.3.2.6 Legal Information

False precisions in certain types of documents (business agreements, car rental forms, life insurance policies) make them difficult to read. However, certain brochures (The National Bank) address the reader directly and are devoid of stilted impersonal turns of phrase. However, attempts to express legal terms or concepts in a roundabout way still run into some difficulty.

II.3.2.7 Language Specificity

Some technical documents are twice as hard to understand in French than in English because they make use of unknown words or expressions, or of borrowed terms. One convincing example is the French translation of the word “disclaimer” which becomes “*Stipulation d’exonération*.” Writers/editors can simplify matters for the reader by addressing the reader directly, illustrating the text, inserting blank spaces and providing the reader with good anchors in a simple and clear style, free of stylistic elitism.

II.3.3 Transparency: From the Qualitative to the Quantitative

Transparency, *i.e.*, trying to express ideas as clearly as possible, goes far beyond readability scores and text frames. It is in keeping with the readers’ knowledge and takes their situational needs into account. The following table provides a summary of a document’s analysis and obstacles to intelligibility. It also shows that the intelligibility indicators of one text go far beyond the simple calculation of words and syllables.

Table II.3: Transparency Assessment Grid

CRITERIA	BANKING DOCUMENT B
1. End-user	Impersonal turns of phrase and false precisions make the text difficult to read and ambiguous. The reader needs to overcome several interferences not the least of which is the presence of a third party between the message's addressor and addressee.
2. Language	Sentence structure and word order serve to disguise the message. Circumlocutions and sub-phrases are numerous and weigh the text down.
3. Presentation	Characters are far too small, there is too little spacing between letters, and use of right-justification hampers readability. Lettering on a yellow background and lack of contrast tire the eyes.
4. Situational Factors	Countless cross-references and numerous extra-linguistic interferences hamper text readability.
5. Objectives	Aimed at the dissemination of information and not for message transmission.
6. Legal Information	Document's legal aspect gives the impression of an official and standard document.
7. Language Specificity	Overuse of elitist language and lack of harmony of terms create a barrier to comprehension.
8. Form	Reserved for printing on paper.
9. Readability Scores	High difficulty threshold.
10. Transparency	The qualitative analysis proves that the quantitative readability score obtained tends to reduce the real difficulty threshold.

II.3.4 Summary and Conclusion

Generally speaking, the meaning of a French text is not based on its formal elements or on the simplicity of its syntax: the problem is rather one of structure and anchoring. The meaning may be understood if it is not cluttered with interferences, footnotes, borrowed terms or references to foreign languages. We tend to believe that the French language presents a collective need for both standardization and popularization and that text analysis requires more sophisticated instrumentation than the one provided by the Flesch formulas. Indeed the formal factors (length of sentences, number of syllables per word) and techniques (type font, blank spaces) enhance the value of the form and prove the formula's comparative value, but overlook certain key aspects of comprehension. Word or sentence length does not necessarily constitute a complexity factor in French and the scores obtained are often biased. This is what prompted the simplification of the formula and a less stringent interpretation of the results. It should also be pointed out that quite often (*c.f.*, banking documents A and D), texts are literal translations of English and are more concerned with maintaining word-for-word similarity than coming up with the right equivalence.

Appendix II

Appendix II.1: Documents Collected

Auto Lease Agreements

Chrysler Credit Canada; Contrat de location de véhicule automobile; sections analyzed: 15. "Défaut" and 16. "Recours suite à un défaut."

Vehicle Lease Agreement; sections analyzed: 15. "Default" and 16. "Remedies Upon Default."

GMAC; Convention de location (consommateur); section analyzed: 17. "Défaut." Lease Agreement; section analyzed: 16. "Default."

Toyota Credit Canada Inc.; Solution Toyota – Bail avec option d'achat; section analyzed: 18. "Défaut."

Toyota Care Lease with Option to Purchase [Québec]; section analyzed: 18. "Default."

Toyota Care Lease with Option to Purchase; section analyzed: 18. "Default."

Banking Services Documents

Banking Agreements

[Caisses populaires de l'Ontario]; Dossier Passe-partout particulier; sections analyzed: "2. Engagement du garant" and "3. Nature de la demande – Clause juridique."

Banque de Montréal; Bienvenue à la Banque de Montréal, plus the booklet, *Guide-conseil: Services bancaires courants*; section analyzed: "Convention de compte," subsection "Compte conjoint," pp. 26-27.

Bank of Montreal; Getting to Know You, plus the booklet, *Better Banking Guide: Everyday Banking Services*; section analyzed: "Account Agreement," subsection "Joint Account," pp. 25-26.

Banque Nationale du Canada; "Demande d'ouverture de compte(s) pour particulier(s) [card], plus booklets – *Renseignements généraux et convention sur les comptes de dépôts personnels de la Banque Nationale du Canada et de la Société de fiducie Natcan* and *Guide des services bancaires personnels*; section analyzed: "Portée de la convention" in Renseignements généraux.

National Bank of Canada; "Application for Opening Personal Account(s)" [card], plus booklets - *General Information and Agreement Governing Personal Account Deposits of the National Bank of Canada and Natcan Trust Company* and *Your Guide to Personal Banking*

Services; section analyzed: "Scope of Agreement" in *General Information*.

ATM Applications/Agreements

[Caisses populaires]; Conditions d'utilisation carte passe-partout particulier; section analyzed: "15. Responsabilités."

Terms and Conditions Governing the Use of the Passe-partout Card; section analyzed: "14. Liability."

Banque CIBC; *Entente relative à l'utilisation des téléservices CIBC*; section analyzed: "9. Instructions et relevés."

Canadian Imperial Bank of Commerce; *Taking Your Needs Into Account: Day-to-Day Banking*; section analyzed: "CIBC Instant Banking Service Agreement," subsection 6. "Records," p. 31.

Banque de Montréal; *Demande de services bancaires automatisés*; section analyzed: "Relevés de transaction et marche à suivre en cas de différend."

Bank of Montreal; *FirstBanking Automated Services Application Form*; section analyzed: "Records and Dispute Resolution."

Banque Nationale du Canada; *Convention d'émission et d'utilisation des services bancaires automatisés*; sections analyzed, "14. Renseignements personnels" and "15. Modifications."

National Bank of Canada; *Agreement Governing the Issue of Cards and the Use of Automated Banking Services*; sections analyzed, "14. Personal Information" and "15. Amendments."

Banque Royale; *Convention relative à l'utilisation de la carte et du code d'identification personnel*; section analyzed: "6. Perte ou vol de la carte" and "7. Limites."

Royal Bank of Canada; *Client Agreement – Card and Personal Security Code*; sections analyzed: 9. "Transaction Verification" and 10. "Transaction Records."

Credit Card Applications

[Caisses populaires]; Formulaire de demande de carte VISA Desjardins; section analyzed: "Déclaration." VISA Desjardins Card Application Form; section analyzed: "Signatures."

Banque CIBC; Formule de demande VISA in the brochure, *Votre guide des primes et des avantages offerts par CIBC-VISA*: section analyzed: "Conditions."

CIBC; VISA Card Application in the brochure, *Your Guide to the Rewards and Benefits of CIBC VISA*; section analyzed [Jun98]: "Terms and Conditions."

VISA Card Application in the brochure, *Choose the Rewards and the Benefits that are Right for You*; section analyzed [Dec97]: "Terms and Conditions."

Banque de Montréal; *Demande de carte MasterCard et de carte en or MasterCard: Une carte taillée sur mesure*; section analyzed: "Modalités."

Bank of Montreal; MasterCard Application in the brochure, *MasterCard and Gold MasterCard: The Card that Understands the Individual*; section analyzed: "Terms and Conditions."

Demande d'adhésion Carte MasterCard in the brochure, *Entrez dans la nouvelle vague des cartes gagnantes*; section analyzed: "Conditions générales" and "Renseignements Personnels."

National Bank of Canada; MasterCard Application in the brochure, *Dive into the New Wave of Winning Cards*; section analyzed: "General Terms and Conditions."

Banque Royale; Formulaire de demande VISA Classique II; section analyzed: "Important: veuillez lire les conditions suivantes faisant partie de cette demande."

Royal Bank of Canada; VISA Application in the brochure, *Visa Gold: No Fee Now. No Fee Later.*; section analyzed: terms following "Apply Today!"

Life Insurance Documents

La Métropolitaine; Déclaration d'assurabilité individuelle; section analyzed: from "Section 4: Convention, Accusé de réception et Autorisation."

MetLife; Declaration of Personal Insurability; section analyzed: from "Section 4: Agreement, Acknowledgement and Authorization."

Transamerica; Police d'assurance-vie Temporaire 100; section analyzed: "Dispositions générales – Le montant payable est limité en cas de suicide."

Term to 100 Policy; section analyzed: "General Provisions – Amount Payable is Limited in the Event of Suicide."

Mutual Fund Documents

CI Fonds mutuels prospectus simplifié; section analyzed: "Quels sont les coûts reliés aux titres achetés selon la méthode des frais de vente reportés?" p. 23.

CI Mutual Funds Simplified Prospectus; section analyzed: "What are the Costs Associated with Securities Purchased by the Deferred Sales Charge Method?" p. 22.

Prospectus simplifié: Votre guide pour investir dans les Fonds Fidelity; section analyzed: "Paiement des frais à la vente des parts" and "Montant de 10% sans frais," p. 36.

Simplified Prospectus: Your guide to investing in Fidelity Funds; section analyzed [Jun98]: "Paying when you sell your units" and "10% free amount," p. 36.

Fidelity Funds Simplified Prospectus; section analyzed [Dec97]: "(b) Deferred Sales Charge Option-Redemption Charge," p. 27.

Fonds mutuels Trimark: Votre manuel de l'investisseur; section analyzed: "Calcul du produit de rachat," p. 31.

Your Trimark Mutual Funds Owner's Manual; section analyzed [Jun98]: "Calculating the Redemption Proceeds," p. 31.

Trimark Simplified Prospectus; section analyzed [Dec97]: "DSC Option," p. 37.

Appendix II.2: Adapting Readability Indexes to French-Language Documents

In the 1960s educators in all countries were looking for ways to make pedagogical research more scientific. In particular, with respect to language, French-speaking researchers were turning to Americans working in English for future directions. In a Preface to Gilbert de Landsheere's *Introduction à la recherche pédagogique* (1966), the president of l'Association internationale de pédagogie expérimentale de langue française commented that "Les publications en langue française sont pauvres à ce sujet et il faut aller rechercher dans les publications anglo-saxonnes les indications et études indispensables" (p. 9). In turning to publications in English, French language researchers encountered the readability formulae developed by Rudolf Flesch, Robert Gunning and others, and confronted the issues that arose when methods developed for analysis in one language and setting were transferred to others.

Chief among those who worked to adapt English language readability formulae to French prose, was the Belgian scholar, Gilbert de Landsheere whose work is cited by many commentators, including François Richaudeau. De Landsheere notes differences in the way words, syllables and sentences are counted and defined. He indicates that since Flesch regarded contractions (les contractions du type: don't) as one word, his group has decided to consider as one word elisions (les formes élidées: l'heure), les millésimes (1964), les prix (10F), les abréviations (CQFD) et les mots composés (week-end). With respect to syllables he notes that Flesch was guided by pronunciation. In French this poses difficulty because of frequency of the silent "e" ("l'e muet") and because of regional differences in pronunciation. He decided to count all syllables, including the silent "e." As for sentences, he defines them as a unit of thought which ends with a period, exclamation mark or a question mark ("Une phrase est une unité de pensée terminant par un point, un point d'exclamation ou un point d'interrogation" (p. 209, 1970.)

Many years later, Quebec researchers reached a slightly different solution to the same problem:

Ceci serait dû au mode de calcul des syllabes. Nous considérons que lire n'est pas décoder. En conséquence, nous avons calculé les syllabes françaises en nous fiant à notre intuition de lecteur francophone: la voyelle muette finale (e) n'étant pas comptée, le total est moins élevé qu'en anglais. Également, le compte des mots longs varie entre le français et l'anglais. "C'est-à-dire" constitue une seule unité de sens pour nous et "assurez-vous" en compte deux. (L'Éducation, pp. 29-30)

The second issue de Landsheere considered was the scale that Rudolf Flesch used to identify the level of readability represented by particular scores. Because of differences in language and culture, as well as his method of applying the formula, de Landsheere made adaptations that, to him, more accurately reflected the results in relation to the French language. The details of his adaptation appear on the following page. The general result of his adaptation, however, appears to be a modification that leads to a less severe interpretation of results by approximately 20 points (a score of 50 on the French scale may be closer to 70 on the original English scale). In this light, Richaudeau's decision to mark the lower limit of difficulty at 50 seems generous, although in the samples analyzed in this study a Flesch score of 68 equated with a Fog Index of

10 and a Flesch-Kincaid grade level of 9 which is within the complex range. De Landsheere's differential is reflected in the scores attributed to de Landsheere's samples and to the results when the same passages were analyzed for this study using Grammatik IV and RightWriter:

Exemple 6 – Texte original: extrait d'une circulaire ministérielle belge du 22 avril 1955.

Il est octroyé une allocation pour heure de surcroît de travail aux membres du personnel enseignant et assimilé des établissements d'enseignement de plein exercice ressortissant au ministère de l'instruction publique, pour toute prestation au-delà du maximum d'heures que comporte leur fonction principale à prestations complètes dans un établissement où ils exercent totalement ou partiellement leur fonction principale.

Les heures de surcroît de travail sont donc rémunérées à partir de la première heure de prestation effectuée au-delà du maximum d'heures que peut comporter une fonction à prestations complètes. (De Landsheere (1970), p. 214)

Analysis:

DOC	*	# WDS	# SENT	ASL ^x	AWL ^{&}	FLESCH READING EASE	FLESCH-KINCAID GRADE LEVEL
Ex6	G4	86	2	43	1.94	0	25
	RW	89	2	44.5	1.8	8.6	23 – COMPLEX
	DL	87	2	45	2.12	- 17	

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER / DL = DE LANDSHEERE

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Flesch Scores as Adjusted by De Landsheere

Score Flesch	English	Score Adjusted by de Landsheere	French (with references to educational system in France, not Québec)
90-100	very easy très facile		
80-90	easy facile	80	Livre de lecture – 2 ^e primaire
70-80	fairly easy assez facile <u>6th grade</u>	70-80	
60-70	standard moyen	65	TV enfantine (niveau pré- scolaire)
50-60	fairly difficult assez difficile	50	Livre de lecture – 5 ^e et 6 ^e primaire
30-50	difficult	40	Documents historiques – 1 ^{re} année d'enseignement secondaire
	difficile	35	TV scolaire – enseignement secondaire inférieur
0-30	very difficult très difficile	30	Leçons d'histoire – 1 ^{re} année d'enseignement secondaire
	très difficile	25	TV scolaire – enseignement secondaire supérieur
		15-25	Journaux parlés/ télévisés
		15 0	Journaux écrits (Le Monde) Émission radio très difficile (sociologie)
		-10	Texte difficile de Proust

Appendix II.3: Statistical Summaries (Fc)

Statistical Summary II.1: Auto Lease Agreements (FC)

DOC	*	# WDS	# SENT	ASL ^x	AWL ^{&}	FLESCHEADING EASE ⁺	FLESCHEADING GRADE LEVEL
AFr	G4	465	9	51.6	1.64	15	24
C	RW	476	11	42.8	1.71	18	21 – COMPLEX
AEn	G4	427	9	47.4	1.57	26 – VERY DIFFICULT	22
C	RW	438	10	42.7	1.66	23	21 – COMPLEX
BFr	G4	564	12	47	1.65	19	23
Q&C	RW	640	14	45.2	1.68	18.4	22 – COMPLEX
BEn	G4	453	22	20.5	1.39	68 – STANDARD	9 – GOOD
Q&C	RW	478	21	22	1.46	60	10 – COMPLEX
CFrQ	G4	403	8	50.3	1.46	32	22
Jun98	RW	443	10	43.3	1.54	32	20
CEnQ	G4	361	8	45.1	1.49	35 – DIFFICULT	20
Jun98	RW	398	10	38.4	1.54	38	18 – COMPLEX
CEnC	G4	412	8	51.5	1.5	27 – VERY DIFFICULT	23 – COMPLEX
Dec97	RW	446	10	43.6	1.5	32.4	20

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Statistical Summary II.2A: Basic Banking Agreements (FC)

DOC	*	# WDS	# SENT	ASL ^x WDS	AWL ^{&} SYL	FLESCHEADING EASE ⁺	FLESCHE-KINCAID GRADE LEVEL
AFr	G4	121	3	40.3	1.67	24	20
	RW	132	3	44.0	1.72	16	22
AEn	G4						
N/A	RW						
BFr	G4						
N/A	RW						
BEn	G4						
N/A	RW						
CFr	G4	444	18	24.6	1.63	44	14
	RW	454	18	25.1	1.7	35	15
CEn	G4	397	18	22.0	1.48	59 – FAIRLY DIFFICULT	11
Dec97	RW	405	18	22.1	1.52	56	11 – COMPLEX
DFr	G4	89	3	29.6	1.62	49	14
	RW	99	3	31.3	1.67	28	17
DEn	G4	83	3	27.6	1.59	44 – DIFFICULT	14
Dec97	RW	93	3	27.7	1.66	38	15 – COMPLEX *
EFr	G4						
N/A	RW						
EEn	G4						
N/A	RW						

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Statistical Summary II.2B: ATM Agreements (FC)

DOC	*	# WDS	# SENT	ASL ^x	AWL ^{&} SYL	FLESCH READING EASE ⁺	FLESCH-KINCAID GRADE LEVEL
AFr	G4	231	6	38.5	1.8	15	21
	RW	239	6	39	1.89	8	22
AEn	G4	209	5	41.8	1.68	22	21
	RW	216	5	41.8	1.78	14	22
BFr	G4	120	5	24	1.8	29	15
	RW	128	5	24.8	1.8	28	16
BEEn	G4	118	5	23.6	1.59	48 – DIFFICULT	13
Jun98	RW	121	5	23.6	1.66	42	13 – COMPLEX
BEEn	G4	118	5	23.6	1.65	43 – DIFFICULT	13
Dec97	RW	126	5	23.6	1.66	43	13
CFr	G4	163	7	23.2	1.73	37	14
	RW	165	7	23.6	1.8	30	15
CEEn	G4	131	6	21.8	1.66	44 – DIFFICULT	13
Dec97	RW	141	6	21.8	1.73	38	13 – COMPLEX
DFr	G4	197	7	27.7	1.62	42	15
	RW	209	7	29.4	1.67	35	16
DEEn	G4	174	7	24.8	1.71	37 – DIFFICULT	15
Dec97	RW	186	7	24.8	1.73	35	15
EFr	G4	167	4	41.7	1.5	37	19
	RW	181	5	36.2	1.47	45	16
EEEn	G4	160	8	20	1.6	51 – FAIRLY DIFFICULT	11
	RW	168	7	23	1.57	51	12 – COMPLEX

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Statistical Summary II.2C: Credit Card Applications (FC)

DOC	*	# WDS	# SENT	ASL ^x WDS	AWL ^{&} SYL	FLESCH READING EASE ⁺	FLESCH-KINCAID GRADE LEVEL
AFr	G4	188	6	31.3	2.0	6	21
	RW	200	6	32.7	1.9	9	20
AEn	G4	258	7	37	1.65	30	19
	RW	264	6	39	1.63	29	19
BFr	G4	446	17	26	1.76	31	16
	RW	469	18	26	1.83	25	16
BEn	G4	384	15	26	1.49	55 – FAIRLY DIFFICULT	13
Jun98	RW	394	16	24	1.55	50 – FAIRLY DIFFICULT	12 – COMPLEX
BEn	G4	482	17	28.3	1.49	52 – FAIRLY DIFFICULT	13
Dec97	RW	491	18	26.7	1.56	48 – DIFFICULT	13 – COMPLEX
CFr	G4	614	14	43.8	1.7	18	22
	RW	637	16	39.7	1.7	19	21
CEn	G4	556	14	39.7	1.58	33 – DIFFICULT	19
Dec97	RW	569	14	39.8	1.60	30	19 – COMPLEX
DFr	G4	441	15	29.4	1.79	25	17
	RW	487	15	31.9	1.82	20	18
DEn	G4	469	15	31.2	1.64	36 – DIFFICULT	16
	RW	507	15	32.6	1.66	33	17
EFr	G4	280	9	31.1	1.77	25	18
	RW	294	10	29.1	1.78	27	17
EEn	G4	285	9	31.6	1.52	46	15
EEn	RW	294	10	29.4	1.54	47	14

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Statistical Summary II.3: Insurance – Life Documents (FC)

DOC	*	# WDS	# SENT	ASL ^x	AWL ^{&} SYL	FLESCH READING EASE ⁺	FLESCH-KINCAID GRADE LEVEL
AFr	G4	105	1	105	1.59	0	-
	RW	124	2	61	1.65	5	28
AEn	G4	97	1	97	1.54	0 – VERY DIFFICULT	-
Dec97	RW	114	2	56	1.53	20	24 – COMPLEX
BFr	G4	193	8	24	1.88	23	16
	RW	205	9	23	1.95	29	16
BEn	G4	192	8	24	1.83	28	16
	RW	195	8	24	1.88	22	16

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

+ The higher the score, the more readable the document.

Statistical Summary II.4: Mutual Funds – Prospectuses (FC)

DOC	*	# WDS	# SENT	ASL ^x	AWL ^{&} SYL	FLESCH READING EASE ⁺	FLESCH-KINCAID GRADE LEVEL
AFr	G4	180	7	26	1.52	52	13
	RW	186	7	26	1.55	49	13
AEn	G4	165	6	28	1.72	33 – DIFFICULT	16
97&98	RW	185	8	22	1.6	48	12 – COMPLEX
BFr	G4	187	9	21	1.5	64	10
	RW	192	9	21	1.44	59	10
BEn1	G4	126	2	63	1.5	16- VERY DIFFICULT	27
Dec97	RW	137	2	63	1.48	17	27 – COMPLEX
BEn2	G4	168	9	18.6	1.39	70-	8
Jun98	RW	172	9	18	1.3	75-FAIRLY EASY	7 – GOOD
CFr	G4	183	5	37	1.49	43	17
	RW	188	6	31	1.45	53	14
CEn1	G4	117	6	19.5	1.45	64 – STANDARD	9
Dec97	RW	120	6	19.8	1.4	68 – STANDARD	9 – GOOD
CEn2	G4	191	8	23.8	1.45	60 – STANDARD	11 – COMPLEX
Jun98	RW	196	8	24	1.4	65 – STANDARD	10 – GOOD

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

& AWL = Average Word Length (measured in syllables).*

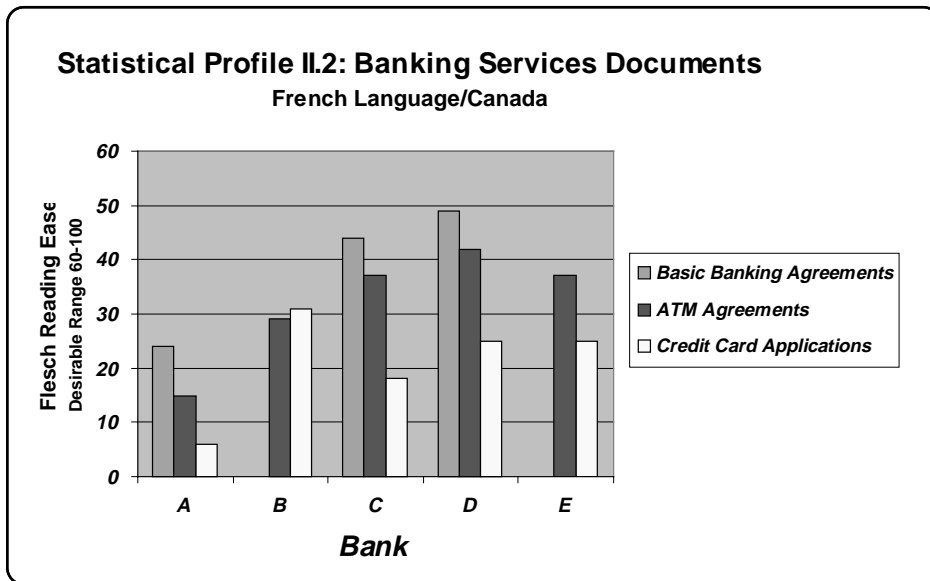
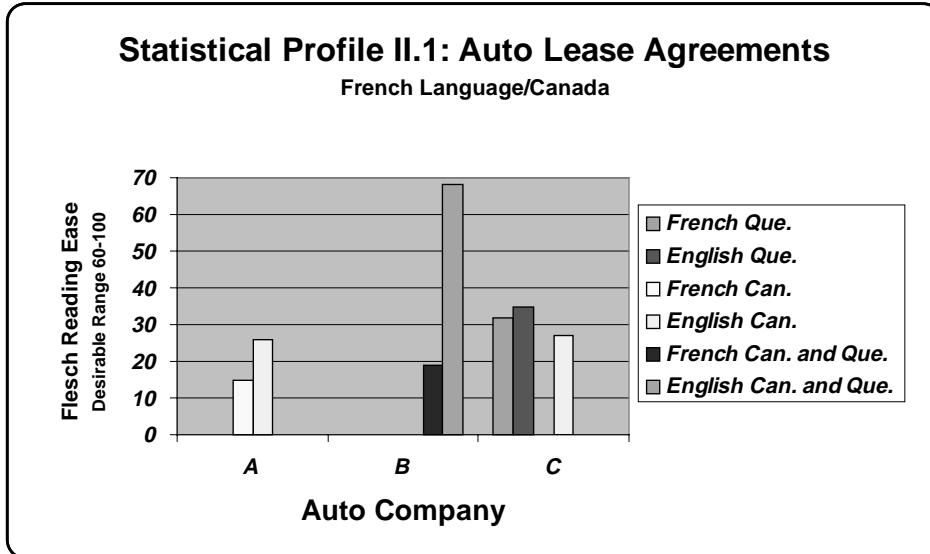
+ The higher the score, the more readable the document.

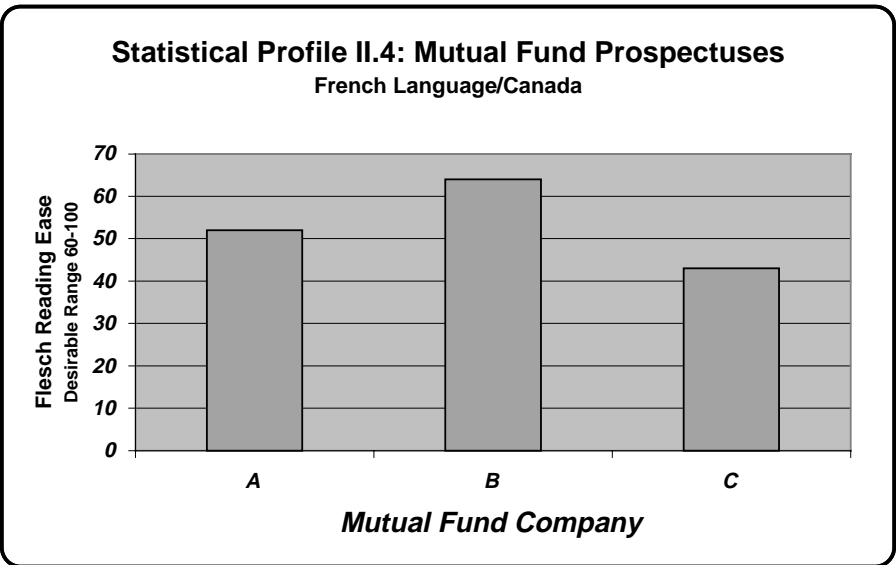
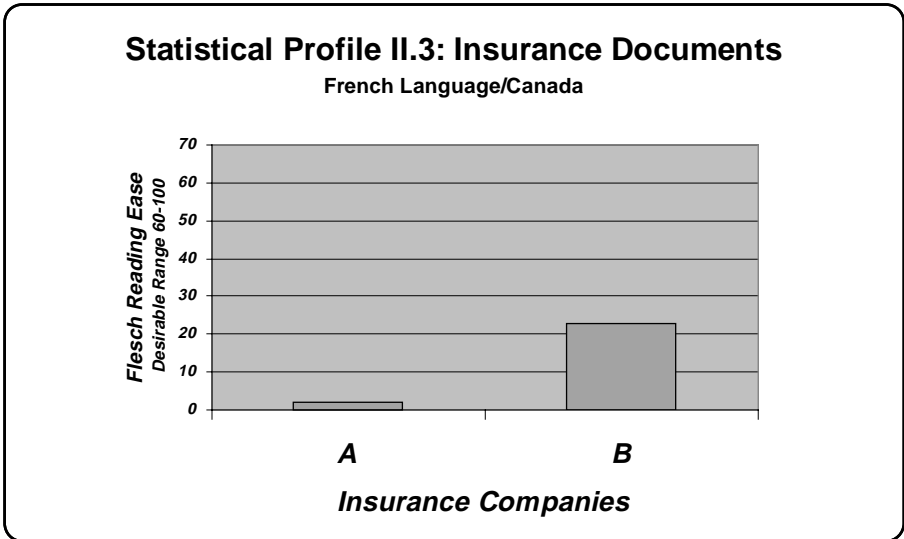
Statistical Summary II.5 – All French-Language Canadian Documents

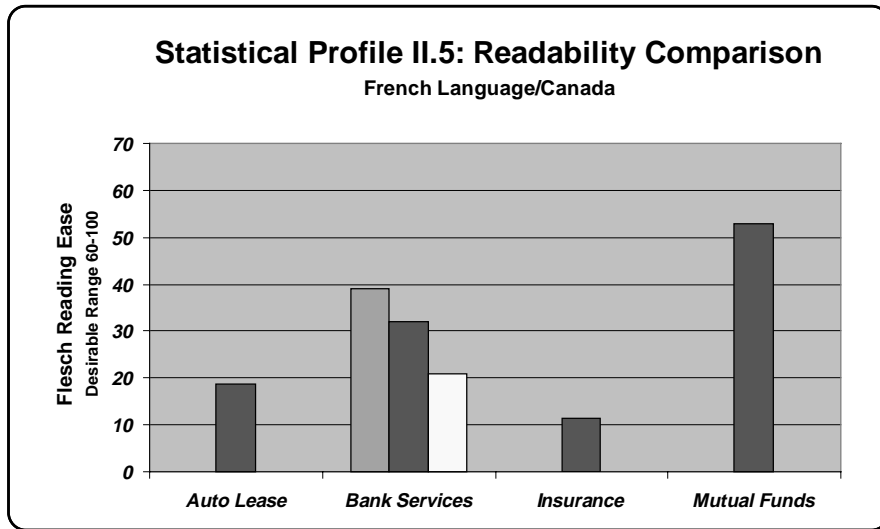
DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK + GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE	3	N/A	N/A	N/A	18.7	-	15-32	23	COMPLEX
BANK SERVICES									
Basic Agr	3	N/A	N/A	N/A	39	-	24-49	16	COMPLEX
ATM Agr	5	N/A	N/A	N/A	32	-	15-42	16.8	COMPLEX
CC App/Agr	5	N/A	N/A	N/A	21	-	6-31	18.8	COMPLEX
Loan App/Agr	-	-	-	-	-	-	-	-	-
INSURANCE									
Auto	-	-	-	-	-	-	-	-	-
Life	2	N/A	N/A	N/A	11.5	-	0-23	-	COMPLEX
MUTUAL FUNDS									
Prospectus	3	N/A	N/A	N/A	53		43-64	13.3	COMPLEX
TOTAL	21								

* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

Appendix II.4: Statistical Profiles







Section III: Assessing Documents From The United States

Part III.1: Collection of Agreements

III.1.1 Introduction

Documents collected in the United States from late 1997 through early 1998 were pre-selected as examples of positive and negative practice for James Brown's report, "Information Transparency and Redress – United States Experiences," (Vol. 2, Ch. 2) and later, provided for this transparency study. As a result, this section of the report will not consider document collection issues. References to Brown's study appear throughout the section that follows.

In all, this study considered 11 documents from three sections of the financial sector in the United States, including:

Banking Services

Basic Banking Agreement	-	2
Cash Card Agreement	-	2
Credit Card Application	-	3

Insurance

Home	-	3
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Mutual Funds

Investor Information	-	1
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Each of the banking and insurance agreements comes from a different industry source. Thus, although the number of documents in each service category is small, they combine to provide a perspective on the practices of seven representatives of the banking industry and three insurance companies in the United States. The investor information is from one mutual fund company.

Appendix III.1 includes details about the documents assessed in this study. Appendix III.2 includes model legislation related to transparency in documentation as well as sample legislation based on that model.

Part III.2: Quantitative Analysis

III.2.1 Introduction

Readability formulae were developed in the United States to provide an objective means of predicting whether particular passages of prose would be easy or difficult for general audiences to read. These formulae have been applied in several countries but especially in the United States where they are used in education and industry, as well as the military. In many jurisdictions, they have been entrenched in legislation designed to protect consumers by requiring that documents achieve minimum readability scores. As the examples in Appendix III.2 show, such legislation usually requires that documents also display other plain language characteristics more properly associated with qualitative document analysis. For that reason, the full effect of that legislation will be discussed in Part III.3 below.

Once again, Grammatik IV and Rightwriter the Intelligent Grammar Checker were used here to analyze agreements from the United States for indicators of difficulty such as the complexity of words, the length of sentences and paragraphs, and the percentage of verbs in the passive voice. As in the study of English Canadian documents, the resulting statistics include the Fog Index developed by Robert Gunning, and Rudolf Flesch's Readability Score and Flesch-Kincaid Grade Level. Appendix I.2 includes further details about the readability formulae and their significance.

As in the other studies detailed in this report, representative portions of each document were analyzed and wherever possible, portions, relating to the same subject area were chosen throughout the document class. Scores from both computer programs, by financial services section and document type, appear in Statistical Summaries III.1A-III.2 in Appendix III.3. Grammatik IV scores only appear in Statistical Summary III.3 in Appendix III.3, and in the statistical profiles presented in Appendix III.4. As noted in Appendix I.2, discrepancies in the grade levels between the Fog and Flesch-Kincaid formulae are to be expected and result from differences in those formulae.

In most cases, each computer program produced similar results for each portion of text analyzed. Where results differed, or seemed uncharacteristic of the document as a whole, other portions of the same documents were also assessed to confirm the accuracy of the scores.

In the case of Banking Services Document A (Banking Agreement), where the score on the initial sample seemed unreasonably low, two additional passages were analyzed. The mean score for document A, derived from Grammatik 4 results from the three passages, was used for calculations that appear in the summaries other than Statistical Summary III.1A and in Statistical Profile III.1.¹⁸

¹⁸ As Statistical Summary III.1AA shows, passage A1 appears to be much more difficult to read than passages A2 and A3, both of which more closely conform to industry scores. The score for passage A1 remains in Statistical Summary III.3 since the subject matter of that passage permits a closer comparison to Document B. The additional scores are presented in Statistical Summary III.1AA to indicate that the document as a whole appears to be comparable to others in the industry.

III.2.2 Readability Scores

III.2.2.1 *Statistical Summaries*

Statistical Summary III.3 is reproduced in Table III.1. It summarizes results for all documents assessed in this study, in comparison with desirable results. Mean scores indicate that the banking and mutual fund documents

- require a **College/University Level** education (Fog Index)
- are either **Fairly Difficult** or **Difficult** to read (Flesch Readability Score)
- are **Complex** (Flesch-Kincaid Grade Level).

In contrast, the insurance documents

- just exceed the **High School** and require a **College/University Level** education (Fog Index)
- are on the cusp of **Standard** reading difficulty (Flesch Readability Score)
- fall just within the range of **Good** (Flesch-Kincaid Grade Level).

Further, although these scores indicate that most documents require a significant amount of education, the banking documents, in particular, are clustered within the **Fairly Difficult** range and represent grade levels close to the lower limits of complexity.

Table III.1: Statistical Summary III.3 – All US Documents

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK + GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
BANK SERVICES									
Basic Agr [@]	2	16.5	COLLEGE/U	16-17	49	DIFFICULT	48-50	12.5	COMPLEX
CASH CD Agr	2	14.5	COLLEGE/U	12-17	59	FAIRLY DIFFICULT	50-65	11	COMPLEX
CC App/Agr	3	14.3	COLLEGE/U	11-17	58	FAIRLY DIFFICULT	46-68	11	COMPLEX
ALL BANKING DOCUMENTS	7	15.1	COLLEGE/U	14-17	55.3	FAIRLY DIFFICULT	49-58	11.5	COMPLEX
INSURANCE									
Home	3	13	COLLEGE/U	12-14	59.7	FAIRLY** DIFFICULT	54-64	9.7	GOOD
MUTUAL FUNDS	2	14	COLLEGE/U	14-14	44	DIFFICULT	43-45	11.5	COMPLEX

* The higher the score, the more readable the document.

** Note: score may be rounded to 60 in the STANDARD range.

+ FK = Flesch-Kincaid Grade Level.

@ Calculated using mean scores for Document A.

~ Selections from two sections of the same firm's website were assessed.

III.2.2.2 The Most Readable Documents

Within the banking services category, Documents D (cash card agreement) and G (credit card agreement) appear to be the most readable, although both require some high school education:

	Fog Index	Flesch Readability	F-K Grade
Doc D	12	65 – Standard	9 – Good
Doc G	11	68 – Standard	9 – Good

Similar readability scores were also achieved by insurance documents B and C:

	Fog Index	Flesch Readability	F-K Grade
Doc B	12	64 – Standard	9 – Good
Doc C	13	61 – Standard	9 – Good

III.2.2.3 The Least Readable Documents

The least readable document appears to be banking Document A (basic banking agreement). Even when the mean score among three passages is considered, the document seems most likely to present reading difficulty. When all documents in the study are considered, only two fall within the Difficult range and with scores in the high 40s, they are very close to 50 which marks the beginning of the Fairly Difficult range.

III.2.2.4 Comparisons

(i) The Insurance Industry in General

As noted above, many states legislate the readability of insurance policies and other documents. The Policy Simplification Model Regulation developed by the National Association of Insurance Commissioners (NAIC) in 1981 suggests that insurance policy text must achieve a score of at least 40 on the Flesch Reading Ease Test. The state of Florida, whose more recent legislation (be discussed in Part III.3 below) is based on that model, requires a minimum score of 45. Like the model, the State of Pennsylvania requires that policies have a readability score of at least 40.¹⁹ According to the authors of *Grammatik IV*, the mean readability of life insurance policies is 45. The mean score achieved by the home insurance policies analyzed in this study was 60. Further,

¹⁹ See Swaney et al, p. 179.

with the exception of the passage A1 in Document A, all samples analyzed for this study exceeded those requirements.

In contrast, the mean Flesch Readability score for the Canadian life insurance documents assessed in Section I is 27. The most readable Canadian life insurance policy achieved a score of 46 which is lower than any of the US home insurance documents and equals the lowest US banking document score reported in Statistical Summary III.3.

(ii) Product Warranties in the US

In the study of written product warranties in the US described in Section I of this report, Shuptrine and Moore using Fog and Flesch measures found that 78 percent of the warranties scored beyond the high school level (Grade 12).²⁰ In comparison, in this study seven of the 10 samples, or 70 percent, scored beyond high school, including two scores of Grade 13. Although they indicate some improvement over the warranty study, published in 1980, these results suggest that some education beyond high school is required for comprehension of most documents in the study. On the other hand, when the lower Flesch-Kincaid formula is used, only three of the samples, or 30 percent, resulted in scores beyond the Grade 12 level, including two with scores of Grade 13. In contrast, 89 percent of the documents in the study of Canadian documents in English scored beyond high school.

Further, the range of scores in this study is much narrower than in the earlier warranty study, once again suggesting an improvement in readability:

	Fog Range	Flesch Readability Range
Warranty Study (1980)		
All Scores	Grade 8-28	0-96
Mean Scores	Grade 13.3-20.2	11.0-65.5
US Financial Study (1998)		
All Scores	Grade 11-17	43-68
Mean Scores	Grade 13-17	44-59.7

²⁰ Kelly F. Shuptrine and Ellen M. Moore, "Even After the Magnuson-Moss Act of 1975, Warranties Are Not Easy to Understand," *The Journal of Consumer Affairs*, XIV, 2 (winter 1980), 394-404.

III.2.3 Consumer Profile in the United States

Like Canada, the United States is among the seven countries that participated in the 1994 International Adult Literacy Survey.²¹ As described in Section I above, this survey tested prose, document and quantitative literacy skills across the general population in 1994. Scores were distributed across five levels, although in the end, such a small proportion of the individuals tested reached the highest level (Level 5) that Levels 4 and 5 were combined to ensure the statistical reliability of results.

The tasks to be performed by readers increase through the five levels on all three scales. At Level 1 of the document scale, for example, readers were asked to locate a piece of information, based on an exact match. Any distracting information that is present is located away from the correct answer. Some tasks require readers to enter personal information on a form. By Level 4, the tasks to be performed include matching multiple features of information, cycling through documents, and integrating information. These tasks may also require the reader to make higher order inferences and consider conditional information. At Level 5 readers are required to search through complex displays of information containing multiple distracters, make high-level inferences or use specialized knowledge.

The following table shows a selection of findings from the IALS project.

IALS LITERACY LEVELS (Age 16-65)	PROSE SCALE	DOCUMENT SCALE	QUANTITATIVE SCALE
LEVEL 1 (lowest)			
UNITED STATES	21	24	21
LEVEL 4/5 (highest)			
UNITED STATES	21	19	23

In the United States, 24 percent the population aged 16 to 65 achieved Level I on the document scale, while 21 percent achieved the combined Level 4/5 on the prose scale, with 19 and 23 percent reaching it on the document and quantitative scales respectively (p. 22). These scores suggest that almost one quarter of that population is limited to finding exact information matches and entering personal information on a form. Only about 20 percent of the population is able to comprehend and respond to complex reading materials. When creating documents for this population, particularly documents related to financial services, it is important to bear in mind not only the scores, but also the type of difficulty they represent.

²¹ *Reading the Future: A Portrait of Literacy in Canada*, especially p. 22.

III.2.4 Summary and Conclusion

Readability testing predicted that US banking and mutual fund documents were either Fairly Difficult or Difficult to read and were within the Complex range. In contrast, home insurance documents received Flesch scores on the cusp of Standard reading difficulty and required a mean grade level just within the range of Good. Most scores clustered in the Fairly Difficult range and, on the whole, indicate that these documents are less complex than those assessed in the other two studies reported here. Scores also suggest that these documents are less difficult than the product warranties analyzed in an earlier study.

As in Canada, however, literacy researchers who conducted the International Adult Literacy Survey found that a majority of the general population had difficulty with complex written materials. Further, a closer look at the criteria they used to define literacy levels (such as the ability to match information or cope with distracters) suggests that meeting those criteria is essential for understanding most financial documents.

Part III.3: Beyond The Fog – Interpretation Of Analysis

III.3.1 Introduction

Document transparency is dependant upon a number of factors, relating to both document authors and readers, as well as their respective environments. Readability formulae help authors predict whether the documents they produce will be understood by their readers. They have the advantage of providing objective measures that can be applied across a number of documents. They are, however, unable to account for many other factors affecting transparency, including those related to readers and their environments. Many of these additional factors are also highly subjective and are difficult, if not impossible to measure through quantitative analysis.

In spite of these difficulties, however, some jurisdictions and organizations in the United States, have attempted to regulate document transparency by establishing readability requirements. As mentioned earlier, in 1981, the National Association of Insurance Commissioners (NAIC) developed a model policy simplification statute and regulation that includes among its conditions the requirement that property and casualty insurance policies achieve a minimum readability score and meet other criteria for simplification relating to factors such as type size, organization, legibility and cross-referencing. Following that model, Florida's Statute – Insurance Laws (Title XXXVII, Chapt. 627, Part II, s. 627.4145) – focuses on the Flesch readability test and internal features such as word and sentence length upon which the Flesch formula depends, as well as other surface characteristics, like layout, spacing, captions, appearance and the presence of a table of contents.

By requiring minimum Flesch scores (NAIC model – 40; Florida – 45), such legislation forces authors addressing consumers to choose their words carefully and attend to the appearance of their documents. Both examples, however, also provide for exceptions, as in the Florida statute:

(2) The department may authorize a lower score than the Flesch reading ease test score required in subsection (1) whenever it finds that a lower score will provide a more accurate reflection of the readability of a policy form, is warranted by the nature of a particular policy form or type or class of policy forms, or is the result of language which is used to conform to the requirements of any law.

In addition, the instructions for carrying out a Flesch test permit exemptions, including "any policy language required by law" (ss. 5(f)5), which are detailed in Appendix III.2.

In published remarks on the influence of laws that mandate Plain English in consumer contracts first delivered at a 1991 conference at the University of Waterloo, Donald Freeman makes the point that such legislation either proposes tests that are "eminently beatable" (readability tests) or subject to "creative interpretation" by lawyers (the descriptive requirements).²²

Freeman, a professor of both English and law, cites an example from New York law:

²² Freeman, p. 157.

"The term Owner as used in this Lease means only the owner from time to time of the leasehold interest granted by this Lease, including the fee owner or mortgagee in possession for the time being of the building or the lessee or leasehold mortgagee in possession for the time being, or a lease of the building of which the apartment is a part."

Freeman points out that in spite of complying with New York's plain language statute (which he considers to be "the best of the lot"), the passage still poses difficulty for consumers:

To understand what this means, a consumer has to understand the legal force of phrases like "from time to time," "for the time being," "leasehold interest," "mortgagee in possession," and the ancient Law French real estate term "fee." The drafters get away with this kind of stuff because a requirement of "non-technical language" was dropped, after much lobbying, from the final version of the statute."

This comment highlights the fact that plain language laws are more effective when drafted without influence from groups or individuals with special interests who have something to hide or may benefit from obfuscation.

Regardless of whether the passage of concern here met New York's requirements, it scored only 26 on the Flesch reading ease scale as measured by Grammatik IV which also predicts that readers will need a Grade 26 education to understand it. Although the formulae were unable to detect difficulties related to subtleties in word meaning and usage, it may be argued that such detective work is not the role of such formulae, and that prevention of such difficulties is properly the responsibility of those who draft legislation or otherwise have responsibility for transparent documentation. With respect to this passage, readability testing does its job when for very different reasons, primarily sentence length (64 words in this case), it predicts that the passage will be difficult to read. Freeman's remark does, however, emphasize that readability testing alone cannot guarantee that consumers will understand a particular document.

Commenting on a second example, related to loan repayment as detailed in Rule 78, Freeman makes an additional point that focuses on the outcomes of documentation:

The simplicity of the surrounding syntax in most of Rule 78 disclosures, along with the innocuous look, sound, and feel of the phrase itself make it appear that a consumer really acts with knowledge when he or she signs a loan contract invoking this provision. Here is consumer-oriented legal language, and it cannot be the only such language, where the Plain English laws must go beyond grammatical simplicity and vague statements about technical language and readability to mandate that lenders disclose at least the consequences of an adhesive loan provision like this one

In other words, legislation has to take into account more than the surface features of a document. It has to consider the reader, including the environment and social context in which the document will be read (for someone with legal training, the New York law is probably perfectly transparent), and the outcomes that will result when the reader takes action based on comprehension of a particular passage.

Detractors aside, the results achieved in the small sample of US documents assessed in this study suggest that such legislation may have had an effect. The lowest mean readability score among US documents was 44, close to the minimum suggested in legislation. In contrast, the lowest mean score among Canadian English-language documents was 25, a point that is considered further in Section IV, below.

On the other hand, one may question the significance of this apparent effect of legislation. Do other factors related to either document language, the environment or the reader, come into play that reduce "apparent transparency" and devalue the meaning of formula scores?

III.3.2 Qualitative Analysis

Considerations related to the environment and reader characteristics lend themselves to qualitative analysis that focuses on the principles behind document creation. Such principles are based on ethics and values that, once again, do not lead directly to objective measurement. Honesty, open-handedness, a sense of fair play and concern for the effects of outcomes on others – qualities at the heart of many objections to the laws described above – cannot be legislated. None the less, they lie at the root of transparent documentation. Although they are difficult to measure and cannot be achieved with a recipe, their presence may be detected through the application of certain criteria, by both those responsible for document creation and readers assessing document transparency.

III.3.2.1 Address a Specific Audience

Identifying a specific audience and considering its characteristics are among an author's most important responsibilities. Open and effective communication to average consumers, as opposed to subject specialists, requires specific tools and strategies.

A primary tool is knowledge of the audience and of the capacity of that audience to access information. Authors will take great care to ensure that the documents they create are relatively simple if they know that IALS researchers discovered that 50 percent of the US population between 16 and 65 is limited to matching single document features in a reading environment that includes only a few distracters. They will also take care if they realize that on the prose scale at Level 2, achieved by 47 percent of the population, readers were asked to integrate two or more pieces of information, or to compare and contrast information. On the quantitative scale, achieved by 46 percent of the population, participants were required to perform a single arithmetic operation using numbers easily located within a text or document (p. 87). These findings suggest that about half of US consumers in the defined age group would be unable to access complex information in documents that include the distraction of competing information.

One way to assist readers in finding their way through documents is to ensure that they can see a relationship between themselves and the material being presented. By and large, the US documents assessed in this study address their respective audiences directly. Part 2 of Banking Document A opens with "This section is designed to help you determine when funds from your deposits will be available for withdrawal." ... Banking Document G (Credit Card Agreement) includes a section on billing rights (guaranteed under legislation in that jurisdiction). The passage

addresses the audience in simple language and conveys concern for readers who suspect that their bill is incorrect:

BILLING RIGHTS – KEEP THIS NOTICE FOR FURTHER USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill: If you think our bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information.... Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any finance charges related to the questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

On the Flesch scale, this passage received the highest score of all of the samples from the United States and, as will be apparent from discussion in Section IV, achieved the second highest of all the documents assessed in these studies. A closer look at its contents suggests that this score did, indeed, predict that the document would communicate effectively to readers.

III.3.2.2 Use Language that is Clear and Appropriate

In addition to identifying and addressing a specific audience, it is important for authors to use language that is appropriate to that audience. It is also important to group ideas carefully and ensure that sentence length and organization make the document easier to read. Legislation that focuses on surface features such as word and sentence length, but permits exemptions for technical language, jeopardizes document clarity and appropriateness.

The passage cited above from Banking Document G is obviously directed to a general audience and seems free of terms that lawyers and others could construe to the advantage of a third party. Even Banking Document A1 (Banking Agreement), which received the lowest readability score

of the samples assessed from the United States, addresses its audience directly, using simple language: "If you do not contact us within two business days, and we can prove that we could have stopped someone from using your [card] without your permission if you had told us ...". The problem with this sentence is that it continues on for 63 words. By the end of the sentence it is difficult for anyone to remember how it began. The average sentence length in this sample is 36 words. In contrast, the average sentence length in the sample from Banking Document G is 20.4 words.

III.3.2.3 Choose a Presentation Style that Supports Comprehension

The physical characteristics of a document directly, and obviously, influence readability. They also include features such as type size and paper quality which are measurable and relatively easy to legislate.

Since all but four of the US documents considered here were only available as photocopies, the potential for assessing physical characteristics is limited. In general the photocopies suggest that the originals (particularly the Banking Documents) were unremarkable and may even have had a negative effect on readability. Most of the type was very small and arranged in dense columns on full-size, 8½" x 11" pages. The example on the following page is typical.

Tables III.1 and III.2 show that characteristics of two of the four original documents can reduce readability by making access to information more difficult. They show that the comprehensive and detailed contents of Banking Document A (Banking Agreement) are compressed into relatively small pages, dense with type. On the other hand, the information in Insurance Document C, while well-spaced, is difficult to discern on tissue-thin paper that the elderly with shaking hands would find difficult to hold and that note-takers would find impossible to use.

As noted earlier, Document G (Credit Card Agreement), available as a photocopy only, received the highest readability score in the study. When document analysis for this study was complete, however, it was discovered that researchers had included this document as an example of "poor practice" that, although complete and in compliance with legal standards, was found to be difficult to read because of its small type.

For reading comfort, most reports and printed matter are generally printed in approximately 11- to 12- point type (the default type size on many programs is 12 point). Like the rest of this report, the passage from Document G, cited above, is printed in 11 point type. The same sample appears below in 6 point type which is approximately the size of the type in the original document, except that in the original, the letters are condensed so that the column which is 4½" here, is only 3½" there:

BILLING RIGHTS – KEEP THIS NOTICE FOR FURTHER USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill: If you think our bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information.... Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. If we find that we made a mistake on your bill, you will not have to pay any finance charges related to the questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

Reading difficulties are obvious, especially since the entire document is printed in type of this size, with only one very small chart for relief. Headings are bold, upper case letters but are not set apart from the text. One 8½" x 11" page includes two solid columns of condensed type, the other only one.

Clearly, this document (which is typical of at least three of the US samples) illustrates that the benefits of comprehensive, high quality content and effective language use can all but be negated by poor presentation features. Sadly, consumers who have difficulty locating and processing discrete bits of information would find this document of little help to them. Indeed almost all consumers, but especially those with a vision impairment – including the middle-age shift to bifocals – would have difficulty reading this document.

In contrast, Banking Document E (Credit Card Agreement) is an original document that while printed in very small type, has generous amounts of white space, and includes an easy-to-read chart that is highlighted in a contrasting colour. Although Brown's study reports that other researchers found this document to be less comprehensive, they also judged it to be "clear and understandable." And yet, according to the results of quantitative analysis, this document is the most difficult and complex. Once again, it appears that presentation factors can have a powerful effect on how documents are perceived and more importantly, on how much information consumers can access about complex topics. Larger type and more white space may cost more, but in the long run they add value for consumers and for the institutions that want to communicate with them.

III.3.2.4 Recognize Contextual Factors But Do Not Depend on Them

Since these documents were provided for this study, less information is available in relation to contextual factors. Home Insurance Document A includes both a policy and an accompanying brochure, clarifying recent changes to the updated policy and inviting policyholders to contact their insurance agent.

III.3.2.5 Have a Definite Intent – to Inform, Sell, Disclose

The main intent of these documents appears to be to provide or disclose information to consumers, often after the point-of-sale. There is little suggestion that they were meant as sales tools. As discussed above, the format of the photocopied banking documents (cash card and credit card agreements), in particular, suggests that they may be primarily designed to disclose information, even though they are written in language that seems clear and appropriate for communication.

III.3.2.6 Meet Legal Requirements and Avoid "Legalese"

The documents in the study appear to have met legal requirements without the use of "legalese." All three home insurance policies include definitions of legal terms. Insurance Document A identifies words with "defined meanings" by printing them in bold face type throughout the document. As noted above, Insurance Document B is also accompanied by a brochure that explains changes to the policy. For example, the first page of changes includes changes to Section I, Coverage C – Personal Property Protection:

Under "Limitations on Certain Personal Property," the \$5000 coverage limit on electronic data processing equipment now applies **regardless of where the equipment is located**. Before, the equipment was required to be principally located on the residence premises.

III.3.2.7 Match Industry Standards Without Resorting to Jargon

Technical language, like legalese, in financial documents is unavoidable. As noted above, efforts have been made in the US documents to simplify the language and provide explanations where necessary. Banking Services Document A (Banking Agreement) also uses a simple graphic, charts and boxes to clarify the text.

III.3.2.8 Optimize the Characteristics of the Medium – Paper, Online, Video

All of the documents assessed here, except the information from the mutual fund company, are paper documents. Of the four paper originals, one is a single sheet of card stock, while the others are booklets that might have been designed to take better advantage of the medium.

Insurance Document C is printed on extremely thin paper and Banking Document A (Banking Agreement) is printed on fairly thin paper reducing the effectiveness of the documents. Insurance Document C is also folded to fit a standard #10 business envelope making it awkward because it does not lie flat and is difficult to hold. Similarly, Banking Document B (Banking Agreement), although perhaps the most expensive and most attractive of the documents supplied, consists of separate, rather awkward, stapled booklets designed to fit a #10 envelope.

Mutual Fund Document A is the only documentation retrieved from an electronic source. As such, it contains multiple links, menus, navigation buttons, opportunities to both download information and forms, and communicate by e-mail, telephone and US mail. It contains several levels of headings, bold face type and generous amounts of white space. It is, in fact, the only

relatively comprehensive documentation provided for the US study that appears to be relaxing to read and appears to provide comfortable access to information. Once again, other researchers selected this documentation as an example of best practice. And, once again in contrast to their view, quantitative analysis showed this document to be difficult and complex.

Determining which view is more accurate would take further analysis. Certainly it appears that presentation features can influence the apparent accessibility of information, although it is true that it is always possible to at least obtain a copy of an online document. And yet, in the case of this electronic document, would individuals who have difficulty with multiple pieces of information be able to use the various search features available in this document and upon which it depends? Could they integrate information from a variety of sources into single units? Was this document relatively more effective for individuals who are undoubtedly familiar with electronic media than it might be for those who are not? How much can presentation factors do to assist individuals with inadequate literacy skills? These remain issues for further study.

III.3.3 Transparency: Quantitative Plus Qualitative Analysis

Considered together, quantitative and qualitative document analysis can provide a comprehensive assessment of transparency that may begin to shed light on the factors that determine whether consumers understand the documentation that accompanies the goods and services they buy.

Quantitative analysis can begin to uncover those factors by exposing surface features that may impede understanding. For example, readability formulae depend on sentence length defined in words. Use of such formulae focuses attention on the number of ideas a sentence conveys and the amount of information a reader is expected to process. It is only when the information is presented in manageable units, that its impact can be assessed and document transparency truly determined. For that reason, quantitative analysis is a viable first step toward understanding transparency.

Qualitative analysis can move the process further by exploring other document characteristics. Based on quantitative analysis, most samples in this study appear to be moderately complex. Scores predict that they are within reach of those who have achieved a high school education. On closer examination, however, some appear to be more transparent than others. Surprisingly, as the analyses in Tables III.2 and III.3 reveal, several appear to be less accessible than their readability scores suggest, largely as a result of correctable presentation factors, such as paper quality and type size. Others which seem more accessible because of presentation features, may or may not be, pending further analysis.

Table III.2: Transparency Assessment – Factors Exert A Mixed Influence On Readability

CRITERIA	BANKING DOCUMENT A (BANKING AGREEMENT) *
1. Audience Awareness	Informal style. Addresses the consumer directly using personal pronouns "we" and "you" from the outset. Announces goal in the first sentences of the publication – to provide "important information" and "explain." Continues later, to clarify goal – says that Part 2 is "designed to help you determine when funds from your deposits will be available...".
2. Language	Uses relatively simple, informal language. In two passages sentences average 21.1 and 21.9 words. In the first passage analyzed, a greater average sentence length of 36.6 words lowered the readability score for this document. Long sentence appear to be a problem elsewhere in the booklet. On page 9, the first sentence under the heading "Foreign Checks" is 58 words long. As computer analysis showed readability of this text appears to vary throughout the document.
3. Presentation	Is presented as a stapled 8" x 5" booklet, with a dark green front cover with white lettering. Inside pages are white with bold face headings. Major headings appear in reverse type within black boxes. Printing is formatted into two columns. Type face is very fine and type size is small. Paper is relatively thin and type from one side of the page is occasionally visible on the other. White space is confined to narrow margins and gutters. Some material is placed in information boxes. There is a graphic illustration of a sample check. The effect, while pleasing from a distance, on closer inspection proves to be difficult to read, particularly for any one visually impaired or with poor reading or language skills. Includes a Table of Contents on p. 1.
4. Contextual Factors	This document is designed for consumers. "Consumer Service Telephone Numbers" are provided on the back cover. Telephone numbers are also found on the first inside page, although they are printed in standard type and are not prominently displayed. Appears to be comprehensive and independent of the need for explanation from staff.
5. Intent	The primary intent of this document appears to be to provide information to consumers. It may also have been created in fulfilment of a legal obligation to disclose certain facts to the public. Although there are some minimal design elements, the booklet does not obviously appear to have a marketing function.
6. Legal Requirements	The booklet does not state that it was created to meet specific legal requirements.
7. Industry Requirements	Provides informal definitions of technical or special terms within the copy. For example, explains on p. 13 that "Electronic Banking ... is the expression we use in referring to all transactions in which the transfer of money begins electronically, without paper."
8. Medium	Is solely a paper document.
9. Readability Scores	The three passages analyzed from this document produced Flesch reading ease scores ranging from Difficult, through Fairly Difficult to Standard, and Flesch-Kincaid grade levels from Grade 10 to 18. As noted below, this variability appears to be confirmed elsewhere in the document.
10. Over-All Transparency	Qualitative analysis also produces mixed results. While many features support readability, on closer look, other document characteristics, such as type and page size, appear to make the document more difficult to read than the readability statistics suggest.

Note: This document originated in New York. Many document characteristics may be governed by legislation.

Table III.3: Transparency Assessment – Factors Reduce Readability

CRITERIA	HOME INSURANCE DOCUMENT C *
1. Audience Awareness	A formal document. Uses "you," "we" and related pronouns throughout as defined in Definitions section at the outset. Does addresses the audience directly and informally on the front cover: "This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollar. However, we want to point out Please read your policy carefully...".
2. Language	Describes provisions of the policy in relatively clear, simple language. Statements are straight forward. For example, the following discussion appears under the heading "Falling objects:" "This peril does not include loss to property contained in a building unless the roof or an exterior wall of the building is first damaged by a falling object. Damage to the falling object is not included." In the passage analyzed, 9% of the sentences are passive and average sentence length is 18.5 words.
3. Presentation	Is presented in an awkward 8" x 7" booklet format, folded once to fit into a #10 envelope. Inner pages are tissue thin and cover appears to be standard 20# bond copy paper. The cover includes a cut-out, presumably to permit insertion of additional material, including a name and address. Lettering on the white cover is in red ink. The thin inner pages are printed in heavy black type that bleeds through to the other side of the paper making the document very difficult to read. When the booklet is open the insubstantial 14" x 8" pages with a heavy crease in each half are awkward to hold and distracting to the reader. Printing on the page is relatively dense. The document appears to be well-organized and section headings and defined words are clearly emphasized with bold type. Type size is comfortable for reading.
4. Contextual Factors	This document is obviously designed to provide official information for consumers. There is no reference to contextual factors.
5. Intent	The primary intent of this document appears to be disclosure and the provision of official information to consumers. The document is not a marketing tool.
6. Legal Requirements	The booklet does not state that it was created to meet legal requirements.
7. Industry Requirements	Includes a "Definitions" section at the outset. Defined words are highlighted in bold throughout the text. In addition, provides clear definitions of other terms as required.
8. Medium	Is solely a paper document.
9. Readability Scores	Readability scores suggest that this document is Fairly Difficult to Standard to read and written at a grade 9 level, with an average sentence length of 18.5 words in the passage analyzed.
10. Over-All Transparency	Qualitative analysis does not fully support readability statistics. Presentation features reduce its readability significantly and make it more difficult for readers to access information that appears to be otherwise well-expressed.

Note: This document originated in Illinois. Many document characteristics may be governed by legislation.

III.3.4 Summary and Conclusion

Readability formulae were developed in the United States and are used most extensively there. Many jurisdictions and organizations require that documentation achieve a minimum readability score. Some commentators, represented here by Donald Freeman, doubt the value of such legislation. The scores achieved by the documents in this study suggest that such legislation may have some effect on documentation practice, since all samples achieved scores above the minimums suggested in sample legislation provided and identified as average by Grammatik IV. The small size of this sample, and the fact that documents were chosen by project researchers and not selected at random, make it difficult to generalize about practice in the United States as a whole.

Within limits, readability scores can predict transparency. Qualitative analysis, however, can explore the factors affecting transparency further. Such analysis indicates that high readability scores and well-crafted prose alone do not ensure transparency. Truly transparent documents must meet other conditions. Knowledge of these conditions, embodied in the criteria introduced in Table I.6 can assist authors and help the public assess documentation. None of this is enough, however, without a clear understanding of the reasons for transparency and the principles that lie behind it.

Appendix III

Appendix III.1: Documents Collected

Banking Services Documents

Banking Agreements

Citibank; *Account Information: Citibank Consumer Accounts (New York)*; sections analyzed: from "Notifying Us Quickly Limits Your Responsibility," p. 16; "Funds Availability for Citibank Checking Accounts" and "When Does a Check Clear?" p. 7; and "Delays or Non-Execution of Transfers," "Canceling or Changing a Transfer," and "Rejecting a Transfer Request," p. 18.

Wells Fargo Bank; *Rules Governing Deposit Accounts* (Effective December 1, 1997) and *Schedule of Account Terms and Fees* (California – Effective December 1, 1997) and *Schedule of Account Terms and Fees* (California Addendum Effective January 1, 1998); section analyzed from "Rules Governing Deposit Accounts": "Cutoff Times for Transactions," p. 35.

Cash Card Agreements

Chase Manhattan Bank; *Chase Standalone Smart Card Agreement*; section analyzed: "Making Smart Card Purchases."

First Union National Bank of Florida; *Disposable First Union VISA Cash Card Agreement*; sections analyzed: "2. Use of your Card," "3. Refund Policy," and "4.Expiration Date."

Credit Card Agreements

American Express Centurion Bank; *Agreement Between Hilton Optima Cardmember and American Express Centurion Bank*; section analyzed: "Billing Errors or Inquiries/Problems with Goods and Services," "Insurance," "Use of Cash and Travelers Cheque Dispensing Machines," and "Waiver."

Bank One; *Bank One's Credit Cards*; section analyzed: selections.

Household Bank (Illinois); *Cardholder Agreement and Disclosure Statement*; section analyzed: "Your Billing Rights – Keep this Notice for Future Use."

Home Insurance Policies

Allstate; *Allstate Deluxe Homeowners Policy*; section analyzed, "7. Appraisal," p. 20.

American Family Mutual Insurance Company; *Homeowner Policy – Form 3* (Edition 10/84); section analyzed, "6. Appraisal," p. 7.

State Farm Fire and Casualty Company; *State Farm Homowners Extra Policy*; section analyzed: "4. Appraisal," p. 13.

Mutual Fund Documents

The Vanguard Group; www.vanguard.com; section analyzed: from Services Directory in *Account Services*, selections from "How to Open a Vanguard Nonretirement Account" and from Prospectuses in *Investor Education*, selections from "Literature Library."

Appendix III.2: Readability Legislation

Appendix III.2.1: Model Legislation (Act And Regulation)

This legislation was developed in the United States by the National Association of Insurance Commissioners (NAIC) and published in 1980 as a guide for state legislatures and other regulatory bodies.

A: PROPERTY AND CASUALTY INSURANCE POLICY SIMPLIFICATION MODEL ACT

Table of Contents

Section 1.	Title
Section 2.	Purpose
Section 3.	Definitions
Section 4.	Applicability
Section 5.	Implementation Dates
Section 6.	Minimum Policy Simplification Standards
Section 7.	Outline of Coverage
Section 8.	Powers of the Commissioner
Section 9.	Compliance with Other Statutorily Required Language
Section 10.	Countersignature Not Required
Section 11.	Effective Date

Selections include:

Section 2. Purpose

- (A) The purpose of the Act is to establish minimum language and format standards to make property and casualty policies easier to read.
- (B) This Act is not intended to increase the risk assumed under policies subject to it. Nor is it intended to impede flexibility and innovation in the development of policy forms or content. It does not grant authority to the [Commissioner] to mandate the standardization of policy forms or content.

Section 4. Applicability

- (A) This Act shall apply to all policies with effective dates on
- (B) No other statute of this state setting simplification standards for language or format shall apply to any policy.
- (C) This Act shall not apply to policies in manuscript form or to the following kinds of insurance:
 - (1) Ocean marine;

- (2) Surety and financial institution bonds;
 - (3) Reinsurance; or
 - (4) Commercial aviation.
- (D) Any non-English policy shall be deemed in compliance with Section 6 if it was translated from an English policy which complies with Section 6.

Section 6. Minimum Policy Simplification Standards

All policies which, under Section 5, must comply with this Section shall be simplified, taking into consideration the following factors:

- (A) Use of simple sentence structure and short sentences;
- (B) Use of commonly understood words;
- (C) Avoidance of technical legal terms wherever possible;
- (D) Minimal reference to other sections or provisions of the policy;
- (E) Organization of text; and
- (F) Legibility.

Section 8. Powers of the Commissioner.

- (A) The Commissioner may, after notice and hearing, issue reasonable rules or regulations implementing Sections 5 and 6.
- (B) The Commissioner may, at his sole discretion, extend any dates under this Act.
- (C) The Commissioner shall have sole authority to enforce the provisions of this Act or seek remedies for its violation.

Section 9. Compliance with Other Statutorily Required Language.

The requirements of any other laws which specify the language or content of any policy may be met by a policy complying with Section 6. However, it must provide protection which, considered as a whole, is not less favorable to the insured than is required by such other laws.

**B: NONPERSONAL LINES PROPERTY AND CASUALTY INSURANCE POLICY
SIMPLIFICATION MODEL REGULATION****Table of Contents**

- Section 1. Authority.**
Section 2. Implementation Dates.
Section 3. Standards.

Selections include:

Section 3. Standards

- A. The policy shall include a table of contents or a summary of the organization of the policy.

Comment: Policies not printed in large numbers often do not lend themselves to the use of a table of contents. The summary of organization replaces the table of contents approach. It is intended to be of a general nature, describing for the policy holder the format of the policy. This might include, for example, the contents and location of the declaration page and the general location of other elements of the policy.

- B. Each section shall be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.
- C. The policy, except for declaration pages, schedules, and tables, shall be printed in not less than 10 point type, one point leaded.
- D. The policy shall be printed in a legible type style with adequate contrast between ink and paper. Captions, headings, and spacing shall be used to increase overall legibility.
- E. The policy shall be written in everyday, conversational language, consistent with its standing as a contract. Short sentences and a personal style shall be used wherever possible.
- F. Technical terms and words with special meaning shall be avoided where ever possible.
- G. The policy text shall be scored for readability under the Flesch Reading Ease Test. If a score of at least 40 is achieved, the policy text shall be acceptable. If a score lower than 40 is achieved, the policy text may be found by the [Commissioner] to be acceptable if the [Commissioner] shall determine that other standards are reasonably met. This principle shall apply to similar results under any other comparable reading ease test. For the purpose of this section a Flesch Reading Ease Test shall be scored by the following method ...,

[Details follow related to the application of the Flesch Test. For an example, see the Florida legislation below.]

Appendix III.2.2: Florida Statute

This statute is based on the NAIC's model legislation, cited in Appendix III.2.1.

Florida Statutes – Insurance Laws

TITLE XXXVII – INSURANCE

Chapter 627 – INSURANCE RATES AND CONTRACTS

Part II – The Insurance Contract

627.4145 – Form and readability requirements, Flesch reading ease test

- (1) Every policy shall be readable as required by this section. For purposes of this section, the term "policy" means a policy form or endorsement. A policy is deemed readable if:**

 - (a) The text achieves a minimum score of 45 on the Flesch reading ease test as computed in subsection (5) or an equivalent score on any other test comparable in result and approved by the department;
 - (b) It uses layout and spacing which separate the paragraphs from each other and from the border of the paper;
 - (c) It has section titles that are captioned in boldfaced type or that otherwise stand out significantly from the text;
 - (d) It avoids the use of unnecessarily long, complicated, or obscure words, sentences, paragraphs or constructions;
 - (e) The style, arrangement, and overall appearance of the policy give no undue prominence to any portion of the text of the policy or to any endorsements or riders; and
 - (f) It contains a table of contents or index of the principal sections of the policy, if the policy has more than 3,000 words or if the policy has more than three pages.
- (2) The department may authorize a lower score than the Flesch reading ease test score required in subsection (1) whenever it finds that a lower score will provide a more accurate reflection of the readability of a policy form, is warranted by the nature of a particular policy form or type or class of policy forms, or is the result of language which is used to conform to the requirements of any law.**
- (3) A filing subject to this section shall be accompanied by a certification signed by an officer of the insurer stating that the policy meets the requirements of subsection (1). Such certification shall state that the policy meets the minimum reading ease test score on the**

test used or that the policy meets the minimum reading ease test score on the test used or that the score is lower than the minimum required but should be approved in accordance with subsection (2). The department may require the submission of further information to verify any certification.

- (4) Any non-English language policy shall be deemed to be in compliance with this section if the insurer certifies that such policy is translated from an English language policy which complies with this section.
- (5) **A Flesch reading ease test score shall be measured by the following method:**
- (a) For policy forms containing 10,000 words or fewer of text, the entire form shall be analyzed. For policy forms containing more than 10,000 words, the readability of two 200-word samples per page may be analyzed instead of the entire form. The samples shall be separated by at least 20 printed lines.
- (b) The total number of words in the text shall be counted and divided by the total number of sentences, and the figure obtained shall be multiplied by a factor of 1.015.
- (c) The total number of syllables shall be counted and divided by the total number of words, and the figure obtained shall be multiplied by a factor of 84.6.
- (d) The sum of the figures computed under paragraph (b) and paragraph (c) subtracted from 206.835 equals the Flesch reading ease test score for the policy form.
- (e) For purposes of this subsection:
1. A contraction, hyphenated word, or numerals and letters, when separated by spaces, shall be counted as one word; and
 2. A unit of words ending with a period, semicolon, or colon, excluding headings and captions, shall be counted as one sentence.
- (f) The term "text" as used in this subsection includes all printed matter except:
1. The name and address of the insurer; the name, number, or title of the policy; the table of contents or index; captions and subcaptions; specification pages; schedules; or tables;
 2. Policy language required by any collectively bargained agreement;
 3. Any medical terminology;
 4. Words which are defined in the policy; and
 5. Any policy language required by law, if the insurer identifies the language or terminology excepted by this paragraph and certifies to the department, in writing, that the language or terminology is entitled to be excepted under this paragraph;

- (g) At the option of the insurer, riders, endorsements, applications, and other forms made a part of the policy may be scored as separate forms or as part of the policy with which they are to be used.
- (6) This section does not apply to:
- (a) Any policy which is a security subject to federal jurisdiction;
 - (b) Any group policy covering a group of 1,000 or more lives at date of issue, other than a group credit life insurance policy or a group credit health insurance policy; however, this paragraph does not exempt any certificate issued pursuant to a group policy delivered or issued for delivery in this state;
 - (c) Any group annuity contract which serves as a funding vehicle for pension, profit-sharing, or deferred compensation plans;
 - (d) Any form used in connection with, as a conversion from, as an addition to, or in exchange pursuant to a contractual provision for a policy delivered or issued for delivery on a form approved or permitted to be issued prior to the dates such forms must be approved under this section;
 - (e) Any policy or form, or partial revision thereof, or renewal thereof, which policy or form is filed prior to October 1, 1983; or
 - (f) Endorsements filed on or after October 1, 1983, which modify policy forms prior to October 1, 1983.
 - (g) Mortgage guaranty insurance policies, as defined in S. 635.011.
- (7) This section applies to forms filed on or after October 1, 1983.

Appendix III.3: Statistical Summaries (US)

Statistical Summary 1: Banking Services (US)

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
					BASIC BANKING AGREEMENTS	
A1 [@]	G4	16	35	22	33 – DIFFICULT	18 – COMPLEX
	RW		36	20	34	17
B	G4	30	20.9	16	50 – FAIRLY DIFFICULT	12 – COMPLEX
	RW		20.9	12	53	11
					CASH CARD AGREEMENTS	
C	G4	20	29.3	17	53 – FAIRLY DIFFICULT	13 – COMPLEX
	RW		29.3	15	50	13.6
D	G4	9	19.3	12	65 – STANDARD	9 – GOOD
	RW		19.7	10	61	9.6
					CREDIT CARD AGREEMENTS	
E	G4	0	23.1	17	46 – DIFFICULT	13 – COMPLEX
	RW		23.2	16	49	12
F	G4	28	21.4	15	60 – STANDARD	11 – COMPLEX
	RW		23.3	14	54 – FAIRLY DIFFICULT	11
G	G4	6	20.4	11	68 – STANDARD	9 – GOOD
	RW		20.4	10	67	9

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

@ For additional assessments of document A, see STATISTICAL SUMMARY 1A (US)

Statistical Summary A1: Banking Services (US) – Additional

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
					ADDITIONAL ASSESSMENTS DOC A	
A1	G4	16	35	22	33 – DIFFICULT	18-COMPLEX
	RW		36	20	34	17
A2	G4	37	22.1	16	51 – FAIRLY DIFFICULT	12-COMPLEX
	RW		21.2	13	51	11
A3	G4	9	18.4	13	60 – STANDARD	10 – GOOD
	RW		18.5	13	52 – FAIRLY DIFFICULT	11-COMPLEX
MEAN	G4			17	48 – DIFFICULT	13.3
					MEAN SCORE CARRIED FORWARD	

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary 2: Insurance (US) – Home Policies

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A	G4	22	20.3	14	54 – FAIRLY DIFFICULT	11-COMPLEX
	RW		20.3	14	52	11
B	G4	10	17.7	12	64 – STANDARD	9 – GOOD
	RW		17.7	11.6	61	9
C	G4	9	18.4	13	61 – STANDARD	9 – GOOD
	RW		18.5	13	59 – FAIRLY DIFFICULT	9.6

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary 3: Mutual Funds (US) – Documents

DOC	*	% PASSIVE	ASL ^x (WORDS)	FOG INDEX	FLESCH ⁺ READING EASE	FLESCH-KINCAID GRADE LEVEL
A1	G4	14	15.5	14	45 – DIFFICULT	11
	RW		16.6	12	49	11-COMPLEX
A2	G4	30	16.6	14	43 – DIFFICULT	12
	RW		16.7	12	41	12-COMPLEX
MEAN	G4			14	44	11.5-COMPLEX
					MEAN SCORE CARRIED FORWARD	

* G4 = GRAMMATIK IV / RW = RIGHTWRITER INTELLIGENT GRAMMAR CHECKER

x ASL = Average Sentence Length (measured in words).

+ The higher the score, the more readable the document.

Statistical Summary III.3 – All US Documents

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK ⁺ GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
BANK SERVICES									
Basic Agr [@]	2	16.5	COLLEGE/U	16-17	49	DIFFICULT	48-50	12.5	COMPLEX
CASH CD Agr	2	14.5	COLLEGE/U	12-17	59	FAIRLY DIFFICULT	50-65	11	COMPLEX
CC App/Agr	3	14.3	COLLEGE/U	11-17	58	FAIRLY DIFFICULT	46-68	11	COMPLEX
ALL BANKING DOCUMENTS	7	15.1	COLLEGE/U	14-17	55.3	FAIRLY DIFFICULT	49-58	11.5	COMPLEX
INSURANCE									
Home	3	13	COLLEGE/U	12-14	59.7	FAIRLY ^{**} DIFFICULT	54-64	9.7	GOOD
MUTUAL FUNDS [~]	2	14	COLLEGE/U	14-14	44	DIFFICULT	43-45	11.5	COMPLEX

* The higher the score, the more readable the document.

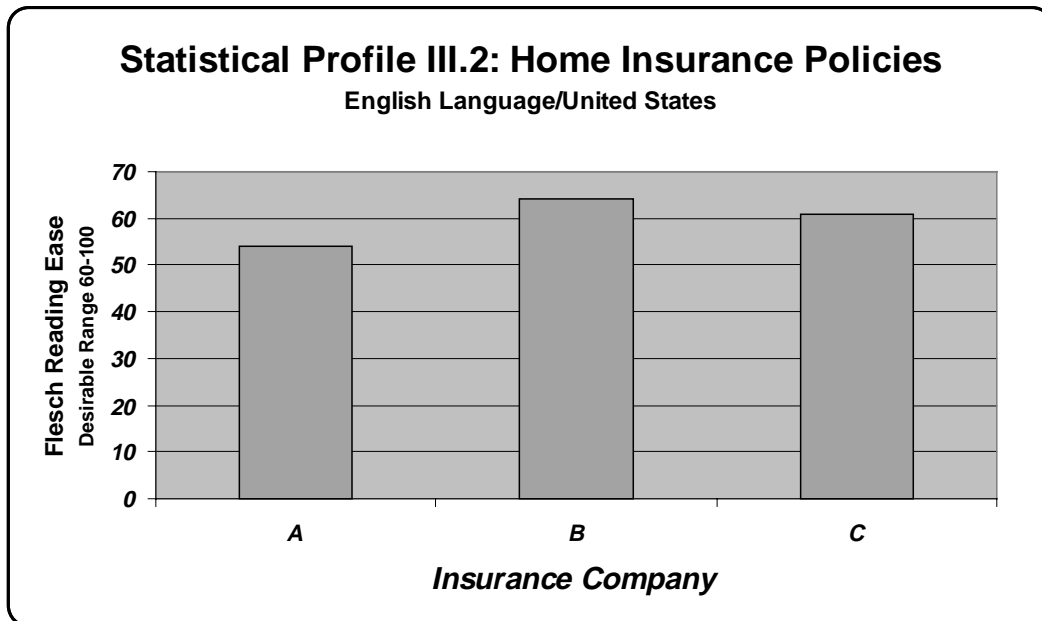
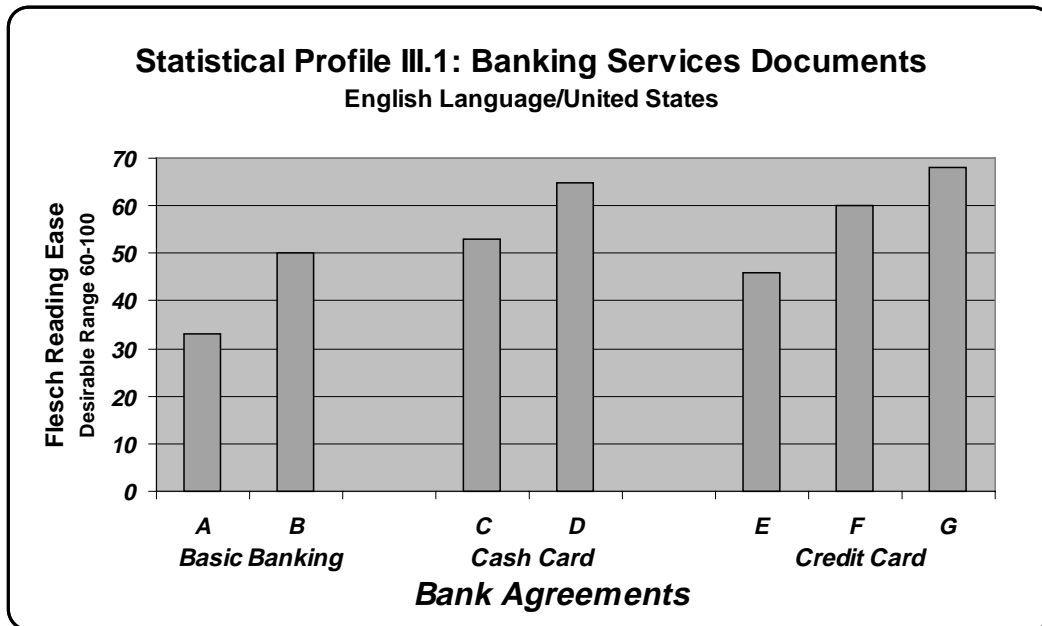
** Note: score may be rounded to 60 in the STANDARD range.

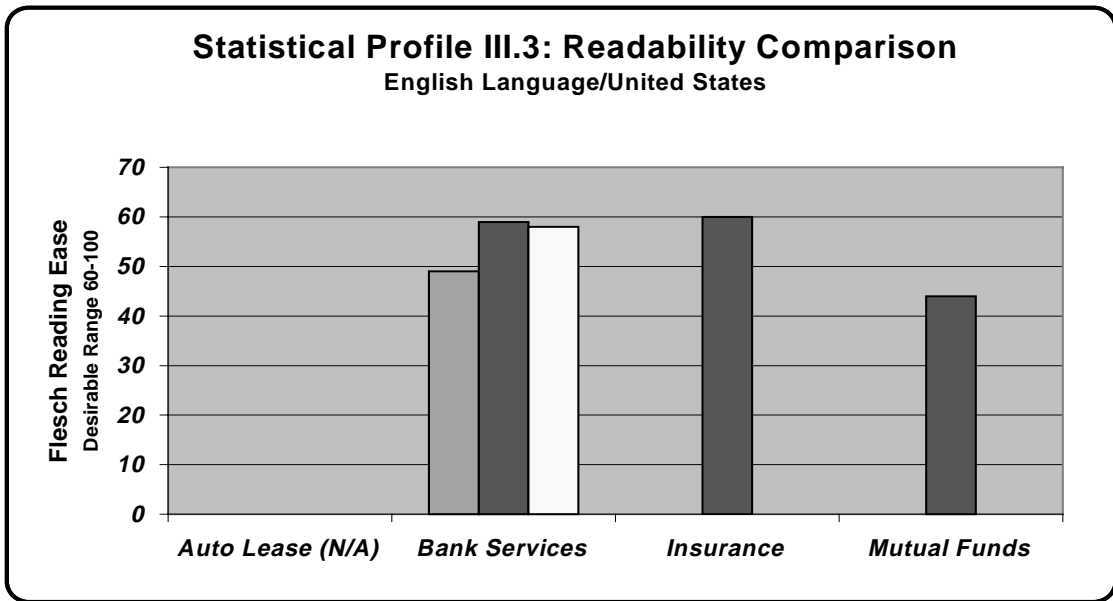
+ FK = Flesch-Kincaid Grade Level.

@ Calculated using mean scores for Document A.

~ Selections from two sections of the same firm's website were assessed.

APPENDIX III.4: Statistical Profiles





Section IV: Consolidation: Comparisons and Contrasts

Part IV.1: Collection of Agreements

IV.1.1 Introduction

In all, these studies involved approximately 90 financial sector consumer agreements, including Canadian documents in English and French as well as documents from the United States. Document collection took place over a six-month period from December 1997 to June 1998. In that time, a number of English-language documents and at least two web sites were revised.

The Canadian documents were collected largely at random. There was no attempt to select for particular document characteristics, although care was taken to include samples from a broad cross-section of Canadian financial institutions. The documents from the United States, on the other hand, were also used in James Brown's study of information transparency and had been pre-selected as examples of positive and negative practice.

Because the US documents were supplied, little is known about the collection process. Collection of the Canadian documents, however, revealed a surprising number of transparency issues, including access to documents; marketing information; role of agents, brokers and employees; multiple documents; computer-generated and online documents; and legislation. These issues are discussed in detail in Section I, in relation to English-language documents, and appear again in the comments that follow.

IV.1.2 COMMENTS

IV.1.2.1 Auto Lease Agreements

The Canadian studies considered manufacturer's auto lease agreements, available in both English and French. No auto lease agreements from the United States were assessed. The corporate offices of both the auto manufacturers and their credit subsidiaries were unable to provide sample agreements; however document collection from their local dealers was relatively easy. Major collection issues relate to language and legislation.

Although language is an important consumer concern, it appears that document design is largely driven by legal requirements, either self-imposed by companies to protect their own interests, or mandated by legislation. For example, one company has developed distinctly different English and French agreements for use in Québec, where the legal system differs significantly from the rest of Canada, but serves all clients outside Québec in English, even when dealerships are located in predominately French areas.

Since consumer leases fall under provincial jurisdiction, major issues arise for national companies attempting to use standard documentation across the country. A standardization

initiative currently underway, involving major manufacturers and all provinces and territories, is expected to lead to legislative reform that will provide uniform consumer protection across the country and assist in the development and use of transparent documentation.

IV.1.2.2 Banking Services Documents

In Canada, banking services are federally regulated with the result that documentation, in both languages, is standard across the country. For the most part, English and French documents appear to be mirror images of each other.

In compliance with Québec law, however, the great majority of documents in English have an additional disclaimer that applies only in Québec. The following example from a credit card application in English is typical:

It is my/our express wish that this application and any subsequent documents be in English.
J'ai/nous avons exigé que la présente formule et tous les documents s'y rattachant soient rédigés en anglais.

Under the law, consumers must ask for a document in English, otherwise the document is to be provided in French which is the language of business in Québec. Statements, like the one cited above, indicate that while the company is willing to provide the document in French, the consumer has to ask for an English version. The onus is on the consumer to choose the language of service. The presence of this statement suggests that the institution is protecting itself from the Québec language law and at the same time, serving consumers in the language of their choice.

In contrast to Canada's federal regulation, banking in the United States is at least partially controlled by state legislation. Banking institutions operating in more than one state must make accommodation in each document for requirements in different jurisdictions. The US documents assessed in this study were selected because they illustrate practices by large organizations serving consumers in several states and include statements of alternative practice in particular jurisdictions. In this regard, they may not be typical of the US banking sector as a whole.

A number of collection issues arose with respect to banking documents, especially access to the documents themselves. In Canada most agreements (as opposed to applications) were difficult to obtain and appear to be available to individuals only after they have entered into a contractual arrangement with the institution. The extent to which this is also true in the United States is unknown, although a similar point is made by Brown with reference to US insurance policies (which, like their Canadian counterparts, are also difficult to access here in advance of completing a transaction). It may be worth noting that while credit card *agreements* were provided from the United States, this study assessed Canadian credit card *applications* in English and French.

In addition, some Canadian banking documents in both languages also proved to be inaccessible because they were available only as computer-generated documents that could only be accessed for the specific clients involved in the agreement. Once again, this practice is of little assistance to consumers in the process of trying to decide between one product and another. In addition, it

forces consumers to rely on information provided by employees who may or may not be knowledgeable about the product in question.

Much of the Canadian banking literature in both languages raised the possibility of confusion between marketing information and contractual language, since both were present in the same document (for example, credit card applications). In contrast, the US documents assessed appeared to have few "sales and marketing" characteristics and, in fact, seemed less readable because of their bland presentation features.

The Canadian banking agreements collected in English, in particular, included multiple documents that, taken together, constituted the agreement. (Fewer were collected in French but since practices and documents seem to be the same in both languages, many banking agreements in French are also likely to consist of several documents.) In contrast, efforts were made in at least one of the US samples to consolidate information into a single document. The result was a comprehensive piece that seemed to be relatively well-written but which included so much information, with little relief from design elements, that many consumers are likely to have difficulty accessing it. The trade-off appears to be between the confusion of multiple pieces and the confusion of too much information in a single document.

A more balanced approach resulting in a single, larger, well-written, well-presented document may be more successful. Such an approach has been taken, with relatively positive results, by several Canadian mutual fund companies, including the three whose English and French prospectuses were assessed in the French-language study described in this report. When contemplating this approach, institutions may well face yet another trade-off, this time between the cost of a larger document that would communicate more effectively, and what may be the lower cost of more modest documents. The extent of trade-off will depend on the cost of producing the multiple documents. If the cost of the multiple documents is high, a single publication may be less expensive. If the multiple documents are small and unremarkable, they may be more economical. On the other hand, the cost of not communicating may be highest of all and include both the value of lost business and the price of producing documents that have no meaning for existing consumers.

IV.1.2.3 Insurance Policies

Collection issues related to Canadian insurance policies in English are well-described in Section 1 of this report. Because of the difficulties encountered in that process, it was not repeated for the French-language study. Collection issues related to the policies from the United States are not known; however, as noted above, James Brown comments that, like their Canadian counterparts, such policies are only made available to consumers after they have made a purchasing decision. In such circumstances, issues of document transparency become less urgent as the focus shifts to the information provided by agents, brokers and company employees. The consumer has no objective standard of information on which to base decisions, and may well make errors in judgement arising from either intentional or unintentional misinformation.

IV.1.2.4 Mutual Fund Prospectuses

No significant difficulties were encountered in the collection of Canadian mutual fund prospectuses, in either language. Once again, however, industry practice appears to make these documents available to consumers *after a* transaction has taken place. One mutual fund company that revised both its hard copy documents and its website between the dates of the English-language and French-language Canadian studies now appears willing to make the document available in advance of a transaction and is also making its prospectus available as a download in both languages.

Online availability may be an option that more financial institutions – of all types – may adopt in future. It is a positive option, *provided that* it is available to the *general consumer* and not password protected for all but those who have made a purchasing decision. Online availability may also solve the problem of local availability. Canadian mutual fund prospectuses appear to be available only from corporate offices of financial institutions, and not from local offices. The ability to download documents from the web (either from an industry intranet or a public website) could make such information locally available in the language of choice.

The mutual fund documentation from the United States assessed in this study was the only information considered here that was taken directly from the web. The passages provided were not from the company's prospectus, but included an invitation to download the prospectus and an account registration form. Clients are encouraged to print and complete the form, and mail it to the company with their cheque or money order for the amount of their investment. They are also provided with a link to information about the location of investment centres where they can open their accounts in person. In such a transaction, document accessibility is not an issue and the focus shifts to readability. Issues related to the readability of the web information and its transparency for consumers are discussed elsewhere in this report.

(As an aside it may be noted that this company's website was also revised between February 1998 (when the US sample was printed) and June 1998 (when this study was completed). The revised version includes a direct link to the prospectus and the company explicitly encourages consumers to "Read the prospectus before you invest in a mutual fund." This company is obviously aware of the need for consumers to have information in advance of decision-making.)

The direct availability of documents from the web reduces the role of brokers, agents and employees. It permits consumers to make independent transactions without the benefit of advice or experience. Once again, it provides consumers with a trade-off between the convenience of independence and the advantages of assistance. In addition, it focuses attention on the importance of document transparency and readability. If the printed word is the *only* source of the information that is either available to consumers or that consumers are likely to access, it becomes critical that that information be clearly expressed and understandable to its readers.

IV.1.4 Summary and Conclusion

Collection issues appear to be similar for English- and French-language documents from the Canadian financial sector. Some similarities may also exist between documents from the United States, although not enough is known about document collection in the United States to make more than an assumption. Documentation in both countries appears to change frequently. Closer monitoring is required to determine how often online documents change and whether or not there is a shift away from paper formats to electronic media. Major issues in both countries appear to be related to the timing of document accessibility (before or after a transaction) ; the role of agents brokers and employees; single comprehensive documents vs multiple documents; and the increasing use of online or web-based information.

Part IV.2: Quantitative Analysis

IV.2.1 Introduction

All documents in this study were analyzed for readability using two computer programs, Grammatik IV and RightWriter the Intelligent Grammar Checker. These programs provided a number of statistics for each sample, including Robert Gunning's Fog Index (recorded for English language documents only) and Rudolf Flesch's Readability Score and the Flesch-Kincaid Grade Level.

The Flesch formula is now widely used in government and industry in the United States. Although developed in the United States to assess documents in English, it has also been applied to French-language documents in both Europe and Canada.

Appendix IV includes statistical summaries and profiles.

Mean scores for all documents in all categories appear in Statistical Summary IV.1. Statistical Summary IV.2 includes mean scores for all French- and English-language Canadian documents while Statistical Summary IV.3 reports mean scores for all English-language Canadian and United States documents. Scores for additional Canadian documents assessed for comparison purposes in Section II of this study do not appear in these summaries.

Statistical Profile IV.1 permits comparison of mean Flesch Reading Ease Scores for all documents that appear in Statistical Summary IV. 1. Statistical Profile IV.2 identifies the most/least readable individual documents, both among documents reflected in mean scores and among all documents assessed in the study. It also presents the highest/lowest mean scores among document categories.

IV.2.2 Readability Scores

IV.2.2.1 Statistical Summaries

Statistical Summary IV.1 is reproduced in Table VI.1: Mean Scores – All Documents.

Results indicate that most documents

- require a College/University Level education (Fog Index, where applicable)
- are either Fairly Difficult, Difficult or Very Difficult (Flesch Readability Score)
- are Complex (Flesch-Kincaid Grade Level).

Statistical Summary IV.1: Mean Scores – All Documents (English/French-Language Canadian and United States)

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH *	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK GD ⁺	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE En	5	23	COLLEGE/U	12-26	34	DIFFICULT	7-68	20	COMPLEX
AUTO LEASE Fr	3	N/A	N/A	N/A	18.7	-	15-32	23	COMPLEX
BANK SERVICES									
Basic Agr En	8	20	COLLEGE/U	14-26	42	DIFFICULT	31-51	17	COMPLEX
Basic Agr Fr	3	N/A	N/A	N/A	39	-	24-49	16	COMPLEX
Basic Agr US	2	16.5	COLLEGE/U	16-17	49	DIFFICULT	48-50	12.5	COMPLEX
ATM Agr En	7	19	COLLEGE/U	15-28	38	DIFFICULT	13-51	15	COMPLEX
ATM Agr Fr	5	N/A	N/A	N/A	32	-	15-42	23	COMPLEX
Cash Cd Agr US	2	14.5	COLLEGE/U	12-17	59	FAIRLYDIFFICULT	50-65	11	COMPLEX
CC App/AgrEn	7	21	COLLEGE/U	17-24	38	DIFFICULT	25-52	16	COMPLEX
CC App/AgrFr	5	N/A	N/A	N/A	21	-	6-31	18.8	COMPLEX
CC App/Agr US	3	14.3	COLLEGE/U	11-17	58	FAIRLYDIFFICULT	46-68	11	COMPLEX
LoanApp/Agr EnC	7	21	COLLEGE/U	17-26	36	DIFFICULT	23-49	17	COMPLEX
INSURANCE									
Auto EnC	2	28	COLLEGE/U	16-40	25	VERY DIFFICULT	0-49	24	COMPLEX
Life EnC	7	24	COLLEGE/U	19-29	28	VERY DIFFICULT	13-46	20	COMPLEX
Life Fr	1	N/A	N/A	N/A	11.5	-	0-23	-	COMPLEX
Home US	3	13	COLLEGE/U	12-14	59.7	FAIRLYDIFFICULT	54-64	9.7	GOOD
MUTUAL FUNDS									
Prospectus EnC	6	19	COLLEGE/U	12-33	29	VERY DIFFICULT	8-64	16	COMPLEX
Prospectus Fr	3	N/A	N/A	N/A	53	-	43-64	13.3	COMPLEX
Documents US	2	14	COLLEGE/U	14-14	44	DIFFICULT	43-45	11.5	COMPLEX
TOTAL	82								

* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

One exception is the United States home insurance category where the mean readability score was 59.7 and could be rounded to 60, on the cusp of the **Standard** range. Documents in that category also scored just under the Grade 10 level on the Flesch-Kincaid scale and may be judged to be **Good** rather than **Complex**.

These results are also apparent in Statistical Profile IV.1.

IV.2.2.2 The Most Readable Documents

As Statistical Profile IV.2 shows, the most readable documents accommodated in the table of mean scores were:

	Fog Index	Flesch Readability	F-K Grade
from the English-language Canadian study -			
Auto Lease C	12	68	9-GOOD
from the French-language Canadian study -			
Mutual Fund Prospectus BFr	N/A	64	10-GOOD/COMPLEX
from the study of US documents -			
Banking Document G (Credit Card Agreement)	11	68	9-GOOD

Just slightly lower scores in the 60s were recorded by another English-language Canadian mutual fund prospectus, an English-language Canadian auto lease, a US cash card agreement and two US home insurance documents.

The most readable document in the entire study, however, was an English-language Canadian document:

	Fog Index	Flesch Readability	F-K Grade
Mutual Fund Prospectus BEn2 (Jun 98)	11	70	8-GOOD

This document was collected and assessed during the study of French-language Canadian documents and therefore, its scores are not reflected in the table of mean scores. This document is a new prospectus revised to replace Mutual Fund B which proved to be one of the most difficult documents in the English-language document study. Contrasts between the two

documents are apparent in the qualitative analyses reflected in Tables IV.7 and IV.8 below. The scores achieved by Mutual Fund Prospectus BEn2 are just slightly lower than the scores achieved by the St Paul Fire and Marine Insurance Policy, revised by Rudolf Flesch and presented as an example in Section I (Fog – 11, Flesch Readability – 73, Flesch-Kincaid – Grade 7).

The fact that Canadian documents are among those with the highest readability scores shows that Canadian institutions can produce readable documents but does not off-set the effect of the vast majority of Canadian documents that achieved very low readability scores and are predicted to require many years of education for comprehension.

IV.2.2.3 The Least Readable Documents

Statistical Profile IV.2 identifies the least readable documents, also Canadian documents. An English-language auto insurance policy and a French-language life insurance policy both received Flesch readability scores of 0. A French-language credit card application and an English-language auto lease agreement received Flesch scores of 6 and 7 respectively.

Among the documents from the United States, mutual fund information from a company website received the lowest score at 43, although a selection from Banking Document A achieved only 33 (the mean score among three samples raised the document score to 48). Bearing in mind that US model insurance legislation requires a minimum mean score of 40, these scores which seem high as minimums in Canada may be regarded as very low in the United States.

Statistical Profile IV.2 also shows that the distance between high and low scores for both individual documents and document categories is much greater for Canadian results in both languages. Flesch Readability Scores for individual English- and French-language Canadian documents ranged from 68-0 and 64-0, respectively. In contrast, scores for documents from the United States were confined between 68 and 43. Similarly, mean readability scores for English- and French-language Canadian document categories ranged from 42-25 and 53-11.5, while scores for document categories in the United States were grouped between 60 and 44.

IV.2.2.4 Comparisons

(i) Canadian English- and French-Language Documents

Statistical Summary IV.2 compares scores among Canadian documents. In general, results indicate that there is little difference in scores between the Canadian English- and French-language documents included in this study. Although mean Flesch readability scores for English documents were higher, all – with the exception of the French-language mutual fund prospectuses – were below 50. On the Flesch-Kincaid scale those documents require a mean Grade level of 13.3, also the lowest among the Canadian categories. Otherwise, grade levels are clustered from 15 to 24, deep in the **Complex** range. Isolated documents in both languages produced scores within the **Standard** range, some with a corresponding improvement in Flesch-Kincaid Grade Level.

Without question, these scores indicate that the documents demand well-developed literacy skills and are likely to challenge most readers. In the face of such results, the fact that findings at higher levels are often questioned because other experiences are also thought to be important to a reader's ability to understand a document becomes almost irrelevant. Similarly, concerns about the application of Rudolf Flesch's scale to scores from French language samples fade in importance, since all are clearly within the range of complexity.

(ii) Canadian and United States Documents

In contrast to findings about the Canadian documents, scores for the documents from the United States suggest that they are more readable. As Statistical Summary IV.3 shows, documents in three categories achieved mean readability scores in the **Fairly Difficult** range (50-60). Some individual documents from the United States reached the **Standard** range (60-70), while, as noted above, the mean readability score for the home insurance document category was on the cusp of **Standard**.

Further, when documents from the United States were predicted to be difficult or complex, they were less difficult or complex than Canadian documents. As discussed above and illustrated in Statistical Profile IV.2, the lowest mean readability score among US documents was 44, above the insurance industry's minimum of 40. The lowest English-language Canadian mean score was 25, and in all three categories had mean scores under 30. The lowest French-language Canadian mean score was 11.5, with another at 18.7.

Similarly, the highest mean Fog Index among US documents was 16.5, while the highest among English-language Canadian documents was 28. In fact, the mean Fog Index for six of the eight English-language Canadian categories was over 20, and the index for the other two was 19. In other words, no Canadian document registered a Fog Index as low as the highest US category.

Similarly, the highest mean Flesch-Kincaid grade level achieved by US documents was Grade 12.5 and scores ranged from upward from Grade 9.7. Flesch-Kincaid grade levels for English-language Canadian documents extended from Grade 15 to 24. Once again, the lowest mean score was higher than the highest mean US score. Scores for French-language documents reached Grade 23, although one category was so complex that a grade level did not register. The lowest was 13.5, also higher than the highest mean US score.

(iii) Insurance Documents

Insurance documents have received particular attention in this study. This attention is warranted in part because of collection difficulties, in part because of the extreme scores they received and in part, because of regulatory initiatives taken by legislatures and the insurance industry in the United States to enshrine Flesch Reading Ease Scores as a standards of readability in insurance documents.

With respect to extreme scores, as noted above, there was a distinct difference between Canadian insurance policies in both English and French and the sample insurance policies provided from the United States. Quantitative analysis predicted that all of the Canadian policies would be

difficult, complex documents. In contrast, home insurance policies in the United States appear to be the most readable type of document assessed in this study.

Since the regulatory action taken by both government and the private sector in the United States is a key difference between the financial environments in the two countries, it may be assumed that this regulatory activity has had a positive influence on document transparency. Moreover, because scores of all other documents never fell much below the minimum suggested by the model legislation produced by the National Association of Insurance Commissioners, the trade association for chief insurance regulators in the United States, it appears that a ripple effect from activity within the insurance industry has led to higher document readability in other areas of the financial services sector.

VI.2.3 Consumer Profiles

Readability is influenced by two major variables: a document created by an author and an audience that reads the document. Readability scores relate to the document and attempt to predict how well the author's work will be understood by the reader. Literacy tests focus on the audience and attempt to predict how well that audience can read. This study frequently refers to the International Adult Literacy Survey (IALS) conducted in 1994 in a number of languages in seven countries, including Canada and the United States.²³ This survey provides baseline data that makes it possible to compare reading skills within population groups in Canada and between Canada and the United States. In addition, the Southam Literacy Survey, a more modest, though none the less important study carried out largely in Canada from 1985-1987, also permits comparisons among these groups.²⁴

In general, IALS results indicate that relatively few participants demonstrated Level 4/5 literacy skills as measured on prose, document and quantitative scales. Because researchers based international comparisons on data for participants from 16 to 65 years of age, but provided detailed statistics for Canadian participants from age 16 and over, it is difficult to make comparisons between francophone literacy and literacy in the United States. Comparisons can, however, be made between data for all of Canada (anglophone and francophone) and for the United States.

(i) English- and French-Language Canadian Literacy Profiles

Because of the many variables involved, comparison between literacy levels of anglophone and francophone Canadians is difficult. Many of those variables are discussed in Section II of this report and considered more fully in the IALS's *Reading the Future*. In spite of difficulties, comparisons have been attempted and the two studies considered here have produced similar results.

²³ *Reading the Future: A Portrait of Literacy in Canada*, especially pp. 31-35 for a discussion of francophone and anglophone survey results.

²⁴ See Peter Calamai, *Broken Words: Why Five Million Canadians are Illiterate* (the Southam Literacy Report).

The Southam Survey

The Southam Survey of 1987 found that illiteracy was higher among francophones than anglophones (29 percent compared to 23 percent) but noted that the gap narrowed significantly for younger participants. Among participants over 55 years of age, 36 percent of anglophones were identified as illiterate in comparison with 48 percent of francophones. Among participants 18 to 34 years old, only 14 percent of anglophones and 17 percent of francophones were illiterate (p. 24).

It should be noted that the Southam Survey defined functional literacy as "the ability to use printed and written information to function in society" (p. 7). Their definition has a direct bearing on the type of information that consumers of financial services may find difficult to understand and the tasks that they have difficulty performing. For example, functional illiterates in the survey failed to

- figure out the change from \$3 if they ordered a soup and sandwich (33 percent couldn't);
- sign their name in the correct spot on a social insurance card (11 percent couldn't);
- circle the expiry date on a driver's licence (six percent couldn't);
- circle the long distance charges on a telephone bill (29 percent couldn't).

International Adult Literacy Survey

Seven years later IALS researchers also found disturbingly low levels of literacy skills as well as a discrepancy between the scores of participants who took their test in English and French. Table IV.2 below illustrates their results.

Table IV.2: Canadian IALS Results by Language of Test

IALS LITERACY LEVELS (Age 16 +)	PROSE SCALE	DOCUMENT SCALE	QUANTITATIVE SCALE
LEVEL 1 (lowest)			
CANADA (ALL)	22	23	22
ENGLISH TOTAL	19	21	20
FRENCH TOTAL	28	31	28
FR IN QUÉBEC	27	31	28
FR OUTSIDE QUÉBEC	33	33	28
LEVEL 4/5 (highest)			
CANADA (ALL)	20	22	20
ENGLISH TOTAL	24	25	23
FRENCH TOTAL	9	14	10
FR IN QUÉBEC	9	14	10
FR OUTSIDE QUÉBEC	-	-	-

A comparison of scores achieved by Canadians who took the IALS test in English and French, reveals that in relation to those who completed the test in English, a dramatically lower percentage of Canadians who took the test in French achieved Level 4/5 on all scales. For example, 24 percent of those tested in English achieved Level 4/5 on the Prose scale, while only 9 percent reached that level in the French tests. Further, when a distinction is made between French-speaking participants in Québec and outside Québec, the results show that so few taking the test in French outside Québec achieved Level 4/5 that the sample was too small to produce reliable estimates.

Similarly, a greater percentage of all French-speaking participants had Level 1 scores, the lowest level of achievement, on all test scales – 33, 33 and 28 percent, in contrast to 19, 21 and 20 percent of English-speaking participants. Once again, on the Prose and Document scales, more Level 1 scores were registered by French-speaking participants from outside Québec than from inside Québec – 33 percent on both scales in contrast to 27 and 31 percent for those living in Québec. On the Quantitative scale, 28 percent of French-speaking participants in both categories registered scores at Level 1.

Thus, it appears that the literacy levels of French-speaking Canadians are lower than those of their English-speaking counterparts, and that literacy levels of French-speaking Canadians outside Québec are lower than those inside the province. These results are of major significance for those concerned with transparency in consumer documents across Canada.

They suggest, for example, that because the literacy levels of English and French Canadians are different, direct translations of documents from one language to another are likely to be ineffective, particularly if the translation is from English to French. In addition, they suggest that French documents that would be understood in Québec might well be too complex for French-speaking Canadians in the rest of the country. Further, since such a small percentage of the French population achieved Level 4/5, it appears that only a very few Canadians would be able to understand complex financial documents in French. These conclusions are based on evidence related to literacy alone. When other factors are considered, such as differences in cultural and social milieus and education levels, as well as distinctions between written and spoken French, including regional variations, the need to distinguish among populations becomes even stronger.

(ii) Canada's Immigrant Population

With respect to Canada, discussion throughout this study has focused on the two official language groups, English and French; however, neither the English- or French-speaking population is monolithic. Both includes immigrants, defined by IALS as those born outside Canada with no Canadian citizenship (p. 35).

Immigrant distribution is unequal across the country, and appears to favour the English-speaking population. For example, IALS researchers report that more people immigrate to Ontario and British Columbia than to other areas, and that immigrants made up 31 percent of the Ontario survey sample, 33 percent of the sample from British Columbia and 21 percent of the Alberta sample.

Immigrants to other IALS countries, including the United States, are predominantly at Level 1. In contrast, although Canada has a high proportion of immigrants at Level 1, it also has the highest proportion of immigrants at Level 4/5 of any participating country. (One may speculate that this may be particularly true of French-speaking immigrants who may have had access to better educational opportunities at home (in France, for example) than were available in Canada, especially outside Québec.)

In fact, Canada has a higher proportion of immigrants at both levels than native born Canadians. Researchers suggest that these statistics reflect Canada's immigration policies of favouring skilled workers and accepting immigrants on humanitarian ground. For those involved in document creation, however, these statistics also suggest that the readers at all levels have widely varying backgrounds and language needs.

(iii) Canadian and United States Literacy Profiles

The IALS study permits comparisons between Canada and the United States. As Table IV.3 shows, both countries have larger numbers at the lowest and highest levels, although Canada appears to have fewer at Level 1 and more at Level 4/5 on all three scales.

Table IV.3: IALS Test Results in Canada and the United States

IALS LITERACY LEVELS (Age 16-65)	PROSE SCALE	DOCUMENT SCALE	QUANTITATIVE SCALE
LEVEL 1 (lowest)			
CANADA (ALL)	17	18	17
UNITED STATES	21	24	21
LEVEL 4/5 (highest)			
CANADA (ALL)	23	25	22
UNITED STATES	21	19	23

As noted above, Canada's numbers are slightly higher than those that appear in Sections I and III of this study, since international comparisons are based on an age range of 16 to 65. When scores achieved by older Canadians are factored in the percentages drop (for example, 20, 22 and 20 percent of the population age 16 and up achieved Level 4/5 scores on the three document scales, compared with 23, 25 and 22 percent for the population between 16 and 65).

Canada's apparent advantage marks a shift from the findings of the earlier Southam Survey. When Canadian and American youth aged 21-25 were tested using similar measures, results showed that young Americans did better on more than two-thirds of the questions, although Canadians did fare better in some areas. Overall, the US youth in the United States scored

78 percent correct, in comparison with 74 percent for the Canadians. Researchers found, however, that the "lower reading proficiency" of the Canadians was "statistically significant" and not a chance result. They concluded that the survey showed that "Canadians fall down in the same places as Americans" only they fall "a bit farther" (p. 58).

IALS researchers also estimate that distribution patterns in the two countries are similar. Both countries have larger numbers at the lowest and highest levels, although the United States has a slightly larger proportion at Level 1. Both countries also have larger numbers at Level 1 on the document scale at Level 1, while in Canada there are also larger numbers at Level 4/5 on the document scale.

IALS researchers comment that the similarity in the distribution of literacy between Canada and the United States indicates that "these countries are roughly equal in their economic comparative advantage derived from their literacy profile" (p. 22). A corollary to that conclusion might be that documentation requirements within the two countries are likely to be similar and thus, practices found to be effective in one country ought to be given serious consideration in the other, with due concern for differences in opportunity structures. The similarity in the profiles of the two countries also suggests that each requires a similar understanding of transparency and that similar means of achieving it are likely required for effective communication.

IV.2.4 Summary and Conclusion

Quantitative analysis based on readability formulae provides an objective means of document assessment. Apart from providing scores for individual documents, it permits the calculation of mean scores that allow for comparisons across document categories. As a result, in addition to predicting which documents are likely to be most and least readable, quantitative analysis also makes it possible to suggest that the documents produced by one industry may be easier to understand than documents developed by another. Among the Canadian documents, for example, mutual fund companies seem to have produced the most readable documents in both languages, while the home insurance industry in the United States appears to have the most transparent policies.

Among the variables influencing insurance documents in the United States is legislation which may be responsible for what appears to be the greater transparency of insurance documents, as well as generally higher readability scores among the US samples. Further research is required to confirm this statement and attempt to isolate the effects of regulation on financial services documentation as a whole.

In spite of the higher US scores, the document predicted to be the most readable of all is an English-language Canadian mutual fund prospectus which not only proved to be statistically more readable, but also seems to have other characteristics that support transparency. The company's French-language prospectus shares high readability scores and similar characteristics of transparency. Co-incidentally, the same company's earlier English-language prospectus is predicted to be one of the least readable documents assessed here. The fact that these results were voluntarily achieved by a Canadian company suggests that readable documents can be produced in a Canadian environment, and provides impetus for the prospect of achieving guidelines for

document transparency, if not through private-sector initiative alone, certainly with significant input from the industry. Mechanisms for compliance may well be a matter for governments to consider. The results of the analyses reported here underline the urgency of the need for concerted action to ensure greater document transparency in Canada's financial services sector.

In all sections of this report, results from literacy surveys reinforce the distance between readability predictions and the reading skills of the general populations. These gaps exist for English- and French-speaking Canadians as well as Americans, and are particularly pronounced for Canada's francophone population outside Québec. They suggest that it is necessary to learn a great deal more about the factors influencing literacy and reading ease, and point to the need to explore further more sophisticated readability testing (including usability testing) and acquire greater knowledge of the documents characteristics that contribute to higher literacy levels. They also suggest that individuals with wide ranging responsibilities for document creation should take the time and resources to understand consumers better and develop contracts and other materials more suited to their reading skills.

Part IV.3: Beyond the Fog: Interpretation of Analysis

IV.3.1 Introduction

Each of the studies described in this report confirms that document transparency cannot be determined by quantitative analysis alone. Such analysis is objective, measurable and repeatable and has a role to play, as a first step in document evaluation. Other factors, beyond the reach of such formulae and more appropriately assessed by more subjective qualitative analysis, play an even greater role in the evaluation.

Document transparency has two aspects: one focusing on the document and its author, the other, focusing on the reader and the environmental factors that influence comprehension. Readability formulae address document characteristics and attempt to predict the extent to which the author's choices make a document easy or difficult to read. Qualitative analysis involves both the document and its intended audience.

In the United States, legislation designed to increase transparency includes requirements based on readability formulae, especially Rudolf Flesch's Reading Ease Test. Results of studies described in this report suggest that such legislation, and related industry initiatives, have had a positive influence on financial documents in the United States.

None the less, warnings must be heeded. Care must be taken to ensure that such legislation is not so riddled with exemptions that it is powerless to address the real barriers to transparency. Further, such legislation must also provide for assessment based on other criteria more properly evaluated through qualitative analysis.

In addition, such legislation in Canada would have to extend to both official languages. (The legislation cited in Appendix III.2 illustrates a US solution to the need to assess translated documents – i.e. if the original document meets readability standards, the translation is assumed to meet them as well. Such a solution is not likely to be appropriate in Canada, with respect to either English or French. It may have some application where translation to a third language is required.) Application of the Flesch formula to French-language documents, while possible, is also problematic, particularly with respect to how scores are evaluated. For that reason, qualitative analysis is particularly important for French-language documents.

IV.3.2 Qualitative Analysis

The documents assessed in these studies have been subjected to both quantitative and qualitative analysis. Qualitative analysis has been carried out according to criteria introduced in Section I and based on the principles that lie behind the choices author's make. Ultimately, these principles are founded on ethics and values that cannot be legislated but lie at the heart of honest, open, transparent documentation – in any language.

IV.3.2.1 Address a Specific Audience

The first criterion for transparency is that a document must address a specific audience and do so in a manner that is appropriate for that audience. A document that is highly readable for one individual or group may be very difficult for others.

Identifying the Audience

At the outset, institutions wishing to create transparent financial agreements and other literature need to assess their audience to determine, among other characteristics, how well its members can read. As IALS results show, the vast majority of the population in both the United States and Canada (whether tested in English or French) experience some reading difficulty. And yet, all mean Flesch-Kincaid grade levels reported here were in the Complex range, with one exception that was just barely within the Good range at Grade 9.7. Further, all mean readability scores were either in the Very Difficult, Difficult or Fairly Difficult range. These results suggest that the documents in this study, from all sources, are likely beyond comprehension by most of the population in both countries.

The reasons for this discrepancy are undoubtedly many. One that suggests a need for more market research, is that the individuals who have responsibility for document creation at all levels within financial institutions are themselves likely to be highly literate. According to the IALS survey of Canadians 16 years of age and over, financial services workers have higher scores than the population in general. Further, they scored highest of all industry categories on the document and quantitative scales, with 47 and 43 percent respectively scoring at Level 4/5. With 25 percent scoring at Level 4/5 on the prose scale, financial services workers were second only to personal services workers. In contrast, too few to produce reliable estimates received only Level 1 scores. As Table IV.4 illustrates, employees in the financial sector are mistaken if they assume that what is easy for them to read will also be easy for others.²⁵

²⁵ *Reading the Future*, p. 45

Table IV.4: Canadian IALS Results For Financial Services Workers

IALS LITERACY LEVELS (Age 16 +)	PROSE SCALE	DOCUMENT SCALE	QUANTITATIVE SCALE
LEVEL 1 (lowest)			
CANADA (ALL)	22	23	22
FINANCIAL SERVICES	–	–	–
PERSONAL SERVICES	7	8	8
CANADA (ALL)	20	22	20
FINANCIAL SERVICES	25	47	43
PERSONAL SERVICES	39	32	33

Addressing the Audience Appropriately

Several documents from the United States and a few from Canada address their audience directly and appropriately, and show evidence of a genuine desire to communicate with their readers. Examples include US Banking Documents A and G, discussed in Section III, and English-language Canadian Mutual Fund Prospectus A.

Many others, especially among the Canadian samples, are either unclear about who their audience is or are so impersonal that their audience seems more a creation of the document to satisfy legal requirements than actual, human consumers. This feeling of distance from the audience is particularly apparent when the document is a translation from another language, as in French-language Banking Documents BFr, CFr and EFr, and in English-language Banking Document AEn, analyzed in Section II.

One manufacturer's auto lease agreements distinguish between a corporate lessee and "a natural person"/"une personne physique." Many of the Canadian documents assessed here seem unconcerned with "natural persons"/"les personnes physiques." And indeed, once that distinction is made in that lease, subsequent references to "you"/"vous" seem distanced from the reader, even though "you" and "your" are defined at the outset as "anyone who signs this Lease as a lessee or co-lessee." These words are obviously being used in a legal sense, and not necessarily to communicate more directly with the reader. Further, constant interpolations (we (the name of the institution), for example) interrupt the flow of the document and reinforce its impersonal character.

Tables IV.5 and IV.6 illustrate the kind of information that emerges from qualitative assessments of English- and French language Banking Document B (Credit Card Application), originally analyzed in Section II above. Its confusing use of personal pronouns "you," "me," "us"/"vous," "me," "nous" and later the noun, "cardholder"/"le titulaire" makes it almost impossible for readers

to either see themselves in the documents or understand what they are saying. In this case, for example, "you" does *not* refer to the consumer, but to the banking institution (in contrast to general usage as illustrated by the lease above, where "you" refers to the lessee).

Obscured within this reversal is the deceptively simple statement that, to paraphrase, "the bank may from time to time give credit and other information on this application to ...". Quite apart from any additional legal interpretation of such language based on long usage and precedent (for example, "from time to time"), this statement as it stands gives important power to the institution. Consumers who sign the application on the other side are in fact agreeing to a number of significant conditions which they may not be able to discern, let alone understand.

IV.3.2.2 Use Language that is Clear and Appropriate

The examples discussed above illustrate the importance of clear, appropriate language, logical sentence structure and a personal tone that communicates directly with the audience. Although a lesser problem in French-language documents, excessively long sentences reduced readability in documents in all three studies.

Readability formulae such as the Flesch Reading Ease Test use word and sentence length to predict reading ease/difficulty. They may do so with some accuracy since longer words and sentences, especially in English, are often associated with greater reading difficulty, even though sentence-length in itself is only partly responsible for difficulty. Such formulae can not be expected to assess other factors that may or may not be related to sentence length, but the statistics they generate can serve as a red flag, prompting a more comprehensive qualitative analysis to explore other elements that may be of greater importance, including sentence organization, the number of ideas the sentence is attempting to convey, and characteristics of the readers and their environment.

Readers at all levels have difficulty with sentences of 40, 60, and even 100 words. Even sentences of 20-30 words increase opportunities for structural error and risk trying to communicate too many ideas at once. Only one English-language Canadian document assessed in this study registered an average sentence length (ASL) under 20 words, although another at 19.5 rounded to 20. The document with the lowest average was Mutual Fund Document BEn2, assessed for comparison in the French-language study. ASL for the passage analyzed was 18.6 words. Not surprisingly, this document achieved the highest readability score of any in the study.

The lowest French-language Canadian document was its counterpart, Mutual Fund Document BFr, with an ASL of 21 words. In contrast, Mutual Fund BEn1, this organization's earlier prospectus and one of the most difficult documents analyzed for the English-language study, has an ASL of 63 words.

In contrast, most of the passages analyzed from the US documents had an ASL either below 20 or within the 20-23 range. Only two documents exceeded this range, one (the highest) with 35 words and another with 29 words.

IV.3.2.3 Choose a Presentation Style that Supports Comprehension

In all three studies, presentation style had an effect on readability. In some cases, presentation elements mitigated the effects of other factors and enhanced readability. In others, stylistic elements obscured information and had a negative effect on readability. The samples from the United States, in particular, illustrate how the benefits of well-written text can be offset or cancelled by ineffective presentation features.

Many presentation features, such as graphs and charts are more than pleasing accompaniments to text. As the variety of results from the IALS indicate, individuals who excel in one type of literacy may be less successful in another. IALS chose to test for three literacy types: prose, document and quantitative. Those who score high on the document scale that relates to forms, maps, tables and graphs, but have more difficulty with prose, may *need* graphs and charts to help them understand the document.

Like readability scores, presentation requirements can also be embodied in readability legislation. Font size and the use of features such as bold-face type can be mandated, with both positive and negative consequences. For example, under the legislation from Florida, cited in Appendix III.2, "the style, arrangement and overall appearance of the policy [must] give no undue prominence to any portion of the text of the policy or to any endorsements or riders" (s. 1(e)). Many of the US documents included in this study were in fact printed in a uniform font size. Although this means that no section is emphasized at the expense of another, it also means that important information is presented in the same way as supporting details. Since in the examples provided for this study, that meant that all information was printed in relatively small type, none of it may have been adequately communicated to consumers.

Further, the tendency to justify type to the right margin creates a monolithic block of type with little white space for relief. It distorts relationships between letters, and in the case of the French-language documents, in particular, causes the letters to be squeezed together, making the document even more difficult to read. Right justification also increases the likelihood that words at the end of the lines will be broken and hyphenated.

Other presentation features influenced the readability of the documents in this study, including features such as use of colour, white space, paper quality and weight, illustrations, size and format, and type style.

IV.3.2.4 Recognize Contextual Factors But Do Not Depend on Them

It appears that many documents in all three studies, including documents that were difficult to collect such as insurance policies and personal loan agreements, are designed to be used along with advice from agents, brokers or employees. As a result, consumers are dependant on the knowledge and interest of others.

This practice is particularly problematic for French-speaking Canadians outside of Quebec who may find it difficult to even obtain documents in French and are likely to be very far from truly expert advice in their own language. When individuals are at hand to assist, too often their

French is inadequate. Similarly, when a toll-free line is provided, the person who answers (if someone answers) may not be sufficiently fluent in French to provide reliable advice.

Several Canadian documents considered here were "multiple documents" that required other documents for completion. This arrangement leaves open the possibility of that one or more parts of the set will be unavailable or lost by the consumer. On the other hand, attempts in the United States to produce single, comprehensive documents mean that a great deal of information must be transmitted in what is often a small amount of space.

The trade-off between comprehensiveness and comprehension must be assessed carefully. Financial institutions have to weigh the cost of additional presentation features (such as more paper and higher postage) against the real possibility that their documents will be of relatively little value to the consumers of their products. The desirability of a balance assumes, of course, that the goal of the institution is communication with consumers. Canadian banking institutions, in particular, that are serious about communication, may choose to shift resources from the marketing and advertising segments of their documents to those related to actual agreements and applications. In doing so, they are also likely to make the reading environment more conducive to comprehension by reducing distractions from sales-oriented information.

IV.3.2.5 Have a Definite Intent – to Inform, Sell, Disclose

Effective documents fulfil a definite intention or objective. Documents with more than one intent often fail to meet one or all of their multiple objectives. Several of the Canadian documents assessed here combined selling or marketing messages with more formal consumer information. That combination was less apparent in the documents from the United States, but that may have been because the sample was small and some (not all) were photocopies that may represent only parts of documents.

Most documents, from both countries, seemed designed largely to disclose information, without thought for audience characteristics and needs. This includes many documents from the United States whose readability scores suggest that they are more transparent than qualitative analysis showed them to be.

A very few documents, as illustrated by the one or two that combined high reading ease scores with positive design features, such as Mutual Fund Documents A and F from Section I, attempted both disclosure and communication with consumers.

IV.3.2.6 Meet Legal Requirements and Avoid "Legalese"

Almost all documents assessed in these studies avoid what might be termed "old-fashioned legalese." Many, such as Canadian insurance policies and banking documents, leave a legalistic impression because of sentence structure and presentation features. A few stand out for their attempts to define difficult and legal terms, including the home insurance documents from the United States, especially Home Insurance Document B, and Mutual Fund Documents A and F from the English-Language Canadian study.

IV.3.2.7 Match Industry Standards Without Resorting to Jargon

Technical language is essential in financial contracts. The challenge for authors is to explain that language so that it is accessible to consumers and at the same time, retain the words that carry specific technical meaning. When particular language is essential it is important to provide glossaries with definitions, as discussed above in relation to legal language.

Otherwise, it is preferable to substitute simpler, clearer words for difficult terms and, above all, to avoid creating new industry jargon. As Tables IV.5 and IV.6 illustrate, the frequent use of proprietary names for programs and features obscures meaning and create new jargon, as illustrated by the language of Banking Document B (a Credit Card Application from Section II).

In addition, as Canadian documents in both languages illustrate, there is an urgent need to standardize professional terms. For example, most mutual fund companies refer to a "Deferred Sales Charge (DSC)." However, one of the companies whose prospectus was analyzed for the study of English-language Canadian documents uses the term "Redemption Charge Purchase Option," a distinction that is apt to confuse consumers.

The French-language documents include even more inconsistencies. For example, banking institution calls its credit card application a "formulaire de demande," while another refers to a "formule de demande" and yet another offers a "demande d'adhésion." One institution calls its agreement "la convention;" another uses "l'entente." This lack of consistency makes comparisons between products from different institutions very difficult for new consumers, especially consumers with impairments or who lack reading skills.

IV.3.2.8 Optimize the Medium – Paper, Online, Video

With one exception, all documents assessed in these studies are paper documents. Problems encountered with the medium in both countries include paper that is too thin or too glossy, pages of inconvenient size and shape, and pages that present too much information.

If the same information were being transmitted online, paper quality would not be an issue, paper size would be replaced by screen size and pages would be stretched to accommodate as much information as necessary. The one document in this study that is designed for online presentation provided information about mutual funds in the United States. In contrast with other researchers who had previously judged this to be a relatively readable document, readability scores in this study predicted that the document would be difficult. Unlike the other samples from the United States, however, information in that document is well-spaced and defined by headings and other features that are likely to enhance readability, especially for consumers who are familiar with online documents.

One Canadian example, in both languages, illustrates the potential danger of attempting to produce documents for use in more than one medium. Supporting information in both Credit Card Application F in the English-language study and Credit Card Application D in the French-language study appears on the back of the form, in a format that may be very successful in an on-line document with visible links to explanatory remarks. In a paper document, lacking

links or other cues, such information is likely to be lost to readers who do not think to turn the page over. With an increasing trend to online presentations, this is an area for further investigation.

IV.3.3 Transparency: Quantitative Plus Qualitative Analysis

Much of the discussion in Part IV.3.2 above, is based on conclusions reached when quantitative analysis was combined with qualitative analysis to provide a comprehensive view of transparency. Examples from English-language Canadian documents assessed in Section I and reported in Tables I.2-I.4 illustrate how qualitative analysis of document characteristics supports readability scores either by enhancing readability or by confirming document difficulty. Similarly, Table II.3 (Tableau II.3: Grille d'évaluation de la transparence) shows that document characteristics can confirm statistical scores and even increase document difficulty. Examples from the United States described in Tables III.3 and III.4 illustrate how document characteristics decrease readability, and partially negate the value of high readability scores.

Qualitative analysis is essentially the same for English- and French-language documents. As Tables IV.5 and IV.6 illustrate, when documents are mirror images, analyses are also reflections of each other. The factors that make the English document difficult to read also make the French document difficult. If anything, they make the French document even more difficult because of the distancing effect of translation and because the French version condenses more words (including accents) in a space barely adequate for its English equivalent.

In Section IV.2.2.2 above, Mutual Fund Document BEn2 (Jun98) was identified as the most readable of all the documents assessed in these studies, and as the successor to Mutual Fund Document B (Dec97), one of the least readable documents described in Section I. Tables IV.7 and IV.8 provide more complete analyses of these two documents and show more clearly why one proved to be difficult and the other proved to be relatively easy to read. The contrast between the two documents, in relation to specific elements, also helps to isolate the steps that must be taken to improve document transparency. Further, the fact that a Canadian company has taken those steps with positive results (in both languages) illustrates that voluntary improvement is possible, without regulatory intervention.

Table IV.5: Transparency Evaluation Chart (See Table II.3)

CRITERIA	BANKING DOCUMENT B
1. Audience Awareness	Impersonal sentence constructions and inaccuracies render reading arduous and ambiguous. The reader must overcome several sources of interference, not the least of which is the presence of a third intermediary between the author and the recipient of the message.
2. Language	Sentence structures and word order serve to hide the message. Circumlocutions and subclauses abound and render the text extremely opaque.
3. Presentation	Letters are much too small, space between letters is much too narrow and right justification impedes reading. Printing on yellow background and lack of contrast are tiring to the eye.
4. Contextual Factors	Multiple cross-references and extra-linguistic interferences reduce the intelligibility.
5. Intent	The object is to communicate information rather than to transmit a message.
6. Legal Requirements	The legal format of the document gives the impression of it being standardized and formal.
7. Industry Requirements	Overuse of mannered language and lack of uniform terminology impede understanding.
8. Medium	Applies only to hardcopy documents.
9. Readability Scores	High difficulty threshold.
10. Over-All Transparency	Qualitative analysis shows that readability scores tend to lower the actual difficulty threshold.

Table IV.6: Transparency Assessment – Qualitative Analysis Supports Quantitative Assessment (English-Language Document)

CRITERIA	BANKING DOCUMENT B (CREDIT CARD APPLICATION FROM SECTION II)
1. Audience Awareness	Formal style. A third person narrator identifies "You" and "I/We" parenthetically making the document difficult and ambiguous. Unexpectedly, "You" refers to the banking institution and "I/We" refers to the cardholder(s). It is also difficult to distinguish what applies to the primary cardholder and what applies to all users of the card.
2. Language	Sentences are relatively long (average 24 words) and awkward sentence structure obscures meaning. For example, in the sentence "I will be bound by the ... Agreement which you will send me, as amended or replaced ...", the reader's first inclination is to assume that the clause "as amended ..." refers to "me" not "Agreement" which is farther away in the sentence. This construction appears more than once in the document.
3. Presentation	The page is filled with a dense block of small type. Lines are justified to the right margin which compacts the letters and leaves little free space on the page. Text is printed in black on a yellow background which makes reading more difficult. The passage is divided into sections, identified as a), b) ... but the points run on in sentences and are not clearly distinguished from each other.
4. Contextual Factors	The passage includes distracting marketing information embedded in the titles of the various types of cards available to the consumer, as well as parenthetical explanations which make it difficult to focus on the main message. The text refers to an Agreement that is not then available to the reader.
5. Intent	The objective of this passage "Terms and Conditions" appears to be disclosure. Little attempt has been made to communicate with an audience or to make the contents easy for consumers to understand. In contrast to this passage, other parts of the brochure contain marketing and sales information that is colourful, well-spaced (by and large) and a significant distraction for consumers.
6. Legal Requirements	Convoluting sentence structure and parenthetical comments create a legalistic impression. The English-language version also includes the "Quebec only" statement, required by law for English-language documents in that province.
7. Industry Requirements	The main message of this document is obscured by references to specific industry products that are confusing and introduce a variety of words and ideas that are not fully explained within the passage.
8. Medium	Solely a paper document.
9. Readability Scores	Readability scores suggest that this is a Difficult document, written at the Grade 13 level on the Flesch-Kincaid scale.
10. Over-All Transparency	Qualitative analysis supports readability statistics and even suggests that the document is more difficult than the statistics suggest.

**Table IV.7: Transparency Assessment – Qualitative Analysis
Supports Quantitative Analysis – Difficulty Confirmed (Cf. Table I.2)**

CRITERIA	MUTUAL FUND B (Dec97)
1. Audience Awareness	Formal style. Addresses audience impersonally as "the investor." At one point the "Investment Advisor" – the other party in the transaction – is identified as an "it." States goal: "to provide a concise outline of relevant information" and to describe rights for security holders established in securities laws.
2. Language	Language is difficult and formal and includes words like "pursuant," hereafter," "thereof," "aggregate" and "attributable." Average sentence length is 63 words. Sentences include multiple ideas and cross-references to other parts of the document.
3. Presentation	Is presented as a small booklet designed to fit in a #10 business envelope. Cover is printed with coloured ink and includes some design elements. Other pages of light weight paper are densely printed with very small black type. Paragraphs and sentences are long and largely unbroken by bullets or points. Copy is divided into sections (a), (b) and subsections (i), (ii) which are often not set apart from the main body of paragraphs but are run on through the length of the line in an apparent attempt to save paper. Document compresses a great deal of information into 46 pages.
4. Contextual Factors	This document has likely been designed on the assumption that consumers will be assisted by investment advisors. In fact, it includes references to the Investment Advisor that suggest that the document is also aimed at that more informed audience. It was not available through the local office of an investment group. It states at the outset that it is to be accompanied by audited annual financial statements of individual funds as well as other documents and provides an address where such documents can be obtained.
5. Intent	Intent appears to be to provide information and disclose facts in response to legal requirements. May be some confusion whether the intent is to inform consumers or investment advisors. Aside from cover design, few elements suggest a marketing function.
6. Legal Requirements	States legal requirements at the outset as well as its role in meeting those requirements.
7. Industry Requirements	Includes highly technical language. Does not provide a glossary but does attempt to define terms. Often, however, definitions and descriptions are complex and convoluted and may not be help consumers. For example, "The redemption charge is a percentage of the Net Asset Value per Unit of each Unit of a Fund redeemed at the time of redemption, which redemption charge declines over time from the date of issue, or deemed date of issue." Transfer Charge is described as follows: "Units to which a redemption charge would otherwise apply and, in the case of Short Term Fund, any net income (including any net realized capital gains) accrued in respect of such Units, may be redeemed at any time for the purpose of immediate investment in Units of one or more of the other ... Funds without the imposition of a redemption charge."
8. Medium	Is solely a paper document. Only marketing information is currently available on this organization's website.
9. Readability Scores	Readability scores suggest that this document is Very Difficult to read and written at a grade 31 level, with an average sentence length of 63 words in the passage analyzed.
10. Over-All Transparency	Qualitative analysis appears to support readability statistics. In this example, quantitative analysis accurately predicted that the document was not transparent and therefore, difficult for readers.

Table IV.8: Transparency Assessment – Qualitative Analysis Supports Quantitative Analysis – Ease Confirmed

CRITERIA	MUTUAL FUND DOCUMENT BE _n 2 (Jun98)
1. Audience Awareness	Informal style. Addresses audience directly as "you." Provides an opening summary, then begins with an introduction designed to put the reader at ease: "This booklet, which is called a simplified prospectus, explains what mutual funds are and how they work. Take some time to read ... before you invest. You'll find important information that you need to make an informed decision ...".
2. Language	Language is simple and clear. Average sentence length is 18.8 words. Sentences usually have one main idea and flow naturally from one another: "A second advantage is something called <i>diversification</i> . Diversification means owning several different investments at once." Text proceeds in response to questions ("What is a mutual fund?"). Important information is repeated in side-bars. .
3. Presentation	Is presented as an 8½" x 11" book, with full colour illustrations on the cover and some inside pages. Type is black, a comfortable reading size, well-spaced and justified only at the left margin. Pages have generous amounts of white space. Page design is colour-coded according to fund type and text is accompanied by shaded information boxes and full-colour graphs. Paper is glossy but sufficiently thick to prevent most bleed-through. Information is generously spaced throughout the document's 54 pages.
4. Contextual Factors	This document is designed for consumers and copy suggests that it should be available to them before they make a purchasing decision. It was obtained through the company's head office but as noted below is available on a public website on the internet.
5. Intent	Intent appears to be to communicate information to consumers. Disclosure requirements are explained in a shaded column on the inside front cover. Design features suggest the document has a marketing function. It is presented in a matching folder that contains other information about the company. Marketing information although tastefully presented and interesting may distract some consumers.
6. Legal Requirements	States legal requirements at the outset as well as its role in meeting those requirements.
7. Industry Requirements	Includes technical language. Does not provide a glossary but includes simple explanations within the text: see the example above and, "If you choose to pay the sales charge when you sell your units, we deduct the charge as a percentage from the value of your units at the time you sell them. This charge is called a <i>deferred sales charge</i> because you can put off paying it or avoid it altogether."
8. Medium	Although this is a paper document, complementary information is available on the internet and the prospectus can be downloaded in English or French from the company's website.
9. Readability Scores	Readability scores suggest that this document is Fairly Easy to read and written at a grade 7 level.
10. Over-All Transparency	Qualitative analysis appears to support readability statistics. In this example, quantitative analysis accurately predicted that the document was relatively transparent and therefore, fairly easy for readers. Design features are likely to increase the readability of this document.

IV.3.4 Summary and Conclusion

Results from these studies confirm the importance of qualitative document assessment. Although statistical analysis can help by providing an initial, very objective indication of a document's potential for readability, such analysis cannot take into account the many variables involved in creating and transmitting meaning through language. The documents in this study provide examples that illustrate how a range of factors affects readability, to make documents either more or less readable. Many of these factors involve creative decisions on the part of writers and graphic designers. Others, perhaps the great majority, relate to decisions made far beyond creative departments, including decisions made in corporate board rooms, halls of justice and legislatures. Each of these decisions, whether it relates to paper size and colour, type size, technical and legal language or document format, leads back to an even more fundamental decision that determines whether a document will be a sincere attempt at open, transparent communication or whether it will play lip-service to disclosure and then set about to obscure meaning and thwart understanding. Although certain characteristics of readability – and the broader concept of transparency – can be taught, such lessons will be of little value without a commitment to openness, even-handedness and fair play. From that perspective, with positive principles in place, the criteria for document assessment can be met in ways that ensure that consumers will understand and respect the value of the contracts and agreements they sign.

Appendix IV

Appendix IV.1: Statistical Summaries

Statistical Summary IV.1: Mean Scores – All Documents (English- and French-language Canadian and US)

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH *	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK GD*	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD -VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE En	5	23	COLLEGE/U	12-26	34	DIFFICULT	7-68	20	COMPLEX
AUTO LEASE Fr	3	N/A	N/A	N/A	18.7	-	15-32	23	COMPLEX
BANK SERVICES									
Basic Agr En	8	20	COLLEGE/U	14-26	42	DIFFICULT	31-51	17	COMPLEX
Basic Agr Fr	3	N/A	N/A	N/A	39	-	24-49	16	COMPLEX
Basic Agr US	2	16.5	COLLEGE/U	16-17	49	DIFFICULT	48-50	12.5	COMPLEX
ATM Agr En	7	19	COLLEGE/U	15-28	38	DIFFICULT	13-51	15	COMPLEX
ATM Agr Fr	5	N/A	N/A	N/A	32	-	15-42	23	COMPLEX
Cash Cd Agr US	2	14.5	COLLEGE/U	12-17	59	FAIRLYDIFFICULT	50-65	11	COMPLEX
CC App/AgrEn	7	21	COLLEGE/U	17-24	38	DIFFICULT	25-52	16	COMPLEX
CC App/AgrFr	5	N/A	N/A	N/A	21	-	6-31	18.8	COMPLEX
CC App/Agr US	3	14.3	COLLEGE/U	11-17	58	FAIRLYDIFFICULT	46-68	11	COMPLEX
LoanApp/Agr EnC	7	21	COLLEGE/U	17-26	36	DIFFICULT	23-49	17	COMPLEX
INSURANCE									
Auto EnC	2	28	COLLEGE/U	16-40	25	VERY DIFFICULT	0-49	24	COMPLEX
Life EnC	7	24	COLLEGE/U	19-29	28	VERY DIFFICULT	13-46	20	COMPLEX
Life Fr	1	N/A	N/A	N/A	11.5	-	0-23	-	COMPLEX
Home US	3	13	COLLEGE/U	12-14	59.7	FAIRLYDIFFICULT	54-64	9.7	GOOD
MUTUAL FUNDS									
Prospectus EnC	6	19	COLLEGE/U	12-33	29	VERY DIFFICULT	8-64	16	COMPLEX
Prospectus Fr	3	N/A	N/A	N/A	53	-	43-64	13.3	COMPLEX
Documents US	2	14	COLLEGE/U	14-14	44	DIFFICULT	43-45	11.5	COMPLEX
TOTAL	82								

*The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

Statistical Summary IV.2: Mean Scores – All English- and French Language Canadian Documents

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK + GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD - VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE En	5	23	COLLEGE/U	12-26	34	DIFFICULT	7-68	20	COMPLEX
AUTO LEASE Fr	3	N/A	N/A	N/A	18.7	-	15-32	23	COMPLEX
BANK SERVICES									
Basic Agr En	8	20	COLLEGE/U	14-26	42	DIFFICULT	31-51	17	COMPLEX
Basic Agr Fr	3	N/A	N/A	N/A	39	-	24-49	16	COMPLEX
ATM Agr En	7	19	COLLEGE/U	15-28	38	DIFFICULT	13-51	15	COMPLEX
ATM Agr Fr	5	N/A	N/A	N/A	32	-	15-42	23	COMPLEX
CC App/AgrEn	7	21	COLLEGE/U	17-24	38	DIFFICULT	25-52	16	COMPLEX
CC App/AgrFr	5	N/A	N/A	N/A	21	-	6-31	18.8	COMPLEX
LoanApp/AgrE	7	21	COLLEGE/U	17-26	36	DIFFICULT	23-49	17	COMPLEX
INSURANCE									
Auto En	2	28	COLLEGE/U	16-40	25	VERY DIFFICULT	0-49	24	COMPLEX
Life En	7	24	COLLEGE/U	19-29	28	VERY DIFFICULT	13-46	20	COMPLEX
Life Fr	2	N/A	N/A	N/A	11.5	-	0-23	-	COMPLEX
MUTUAL FUNDS									
Prospectus En	6	19	COLLEGE/U	12-33	29	VERY DIFFICULT	8-64	16	COMPLEX
Prospectus Fr	3	N/A	N/A	N/A	53	-	43-64	13.3	COMPLEX
TOTAL	70								

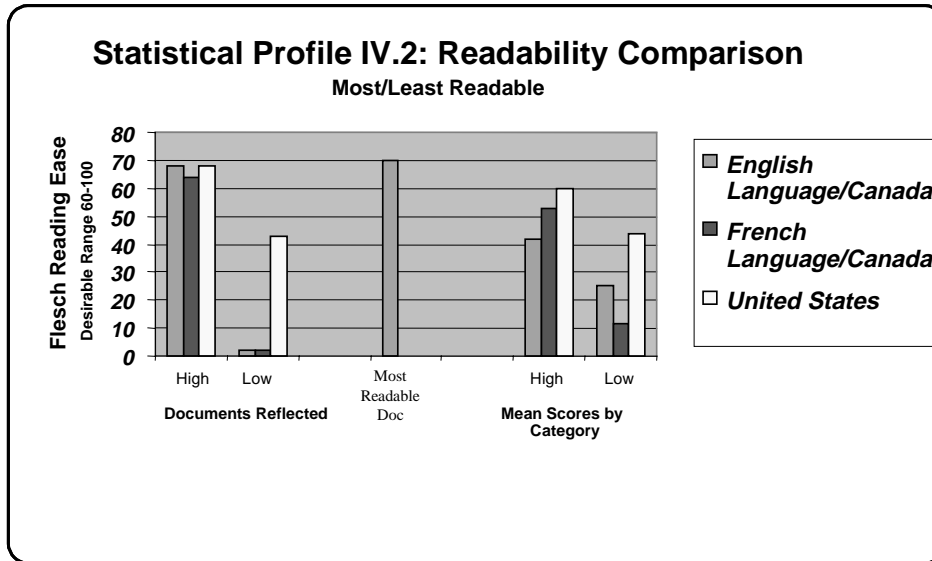
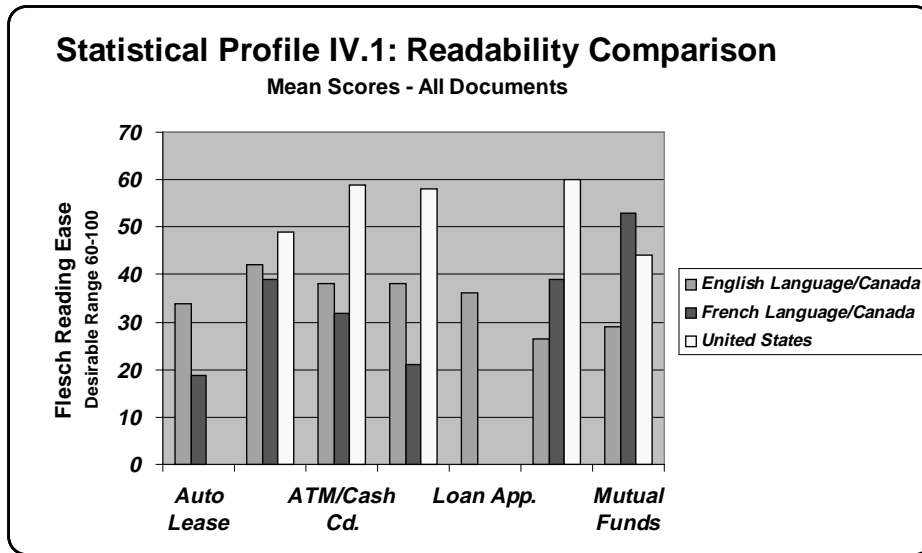
* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

Statistical Summary IV.3: Mean Scores – All English-Language Canadian and United States Documents

DOCUMENTS	#	MEAN FOG	GRADE LEVEL	FOG RANGE	MEAN FLESCH * READABILITY	FLESCH * READABILITY	FLESCH * RANGE	MEAN FK * GRADE	DIFFICULTY
DESIRABLE SCORES			HIGH SCHOOL	8-12		STANDARD -VERY EASY	60 – 100	6-10	GOOD
AUTO LEASE EnC	5	23	COLLEGE/U	12-26	34	DIFFICULT	7-68	20	COMPLEX
BANK SERVICES									
Basic Agr EnC	8	20	COLLEGE/U	14-26	42	DIFFICULT	31-51	17	COMPLEX
Basic Agr US	2	16.5	COLLEGE/U	16-17	49	DIFFICULT	48-50	12.5	COMPLEX
ATM Agr EnC	7	19	COLLEGE/U	15-28	38	DIFFICULT	13-51	15	COMPLEX
Cash Cd Agr US	2	14.5	COLLEGE/U	12-17	59	FAIRLYDIFFICULT	50-65	11	COMPLEX
CC App/Agr EnC	7	21	COLLEGE/U	17-24	38	DIFFICULT	25-52	16	COMPLEX
CC App/Agr US	3	14.3	COLLEGE/U	11-17	58	FAIRLYDIFFICULT	46-68	11	COMPLEX
Loan App/AgrEnC	7	21	COLLEGE/U	17-26	36	DIFFICULT	23-49	17	COMPLEX
INSURANCE									
Auto EnC	2	28	COLLEGE/U	16-40	25	VERY DIFFICULT	0-49	24	COMPLEX
Life EnC	7	24	COLLEGE/U	19-29	28	VERY DIFFICULT	13-46	20	COMPLEX
Home US	3	13	COLLEGE/U	12-14	59.7	FAIRLYDIFFICULT	54-64	9.7	GOOD
MUTUAL FUNDS									
Prospectus EnC	6	19	COLLEGE/U	12-33	29	VERY DIFFICULT	8-64	16	COMPLEX
Documents US	2	14	COLLEGE/U	14-14	44	DIFFICULT	43-45	11.5	COMPLEX
TOTAL	61								

* The higher the score, the more readable the document. + FK = Flesch-Kincaid Grade Level.

Appendix IV.2: Statistical Profiles



Section V: Conclusions and Recommendations

Part V.1: Conclusions

The studies described in this report lead to a number of conclusions:

1. Based on readability scores, almost all documents assessed in these studies are **Difficult** and **Complex**. Technical and legal constraints, company policies and agency formulae set requirements for expression too high for most readers.
2. Readability itself is multifaceted and is influenced by many factors. It may well be that we will have to add the study and use of it to academic programs.
3. Readability formulae may be able to predict difficulty and highlight symptoms (eg. too many words, sentences too long) but they cannot take into account authors' idiosyncracies and cliched jargon. Qualitative analysis is essential for accurate readability assessment.
4. Presentation features – backgrounds, print styles and point size, graphics and spacing – have a significant influence on readability and document transparency. This influence is more important for some consumers than others – second-language readers, the vision-impaired.
5. Issues of cost of printing and distributing paper documents are receiving real support by electronic distribution and as “needed” printing onsite. This reduces costs of huge print runs and expensive delivery. Online documents also ensure that all the information is immediately available and current. Many of the documents we examined relate to other documents in a set; often these were not available at the pick-up site. Electronic transmission access now assure that some of these problems of cost, delay and availability are being resolved in an increasing number of locations.
6. Readability is affected by contextual factors, including legislation, industry requirements, and the environment.
7. Access is a precondition for transparency. Consumers must be able to obtain, examine and compare documents at all stages of their decision-making processes.
8. Authorial intent must be transparent communication, not merely disclosure or marketing/selling.
9. Readability legislation can support transparency but can also reduce it. Effective readability or transparency legislation must take into account all factors, including how documents appear and how and when they are available to consumers.
10. Knowledge of readers' literacy levels and the factors influencing literacy is essential for the production of documentation that is appropriate, effective and readable. Academic and writing programs should now address this need in management training.

11. Literal translations of documents created in one language are likely to be ineffective and result in reduced readability in another. Translation requires the writer's knowledge of and freedom" to express the subject matter.
12. Document availability and consumer support for francophone Canadians is uneven and almost non-existent in many parts of the country outside Québec, even when assistance is promised in electronic formats.
13. Authors should not assume that their audience is monolithic. Both of Canada's official language groups, but especially anglophones, include large numbers of immigrants with limited English training and literacy skills.
14. Enhanced writing skills can lead to improvements in the surface characteristics of readability and may be taught to writers immediately involved in preparing public texts.
15. True improvement in readability begins with legislators, regulators, policy makers and administrators within governments and financial institutions who must take steps to standardize terminology and technical language. We must abandon legalistic approaches and eliminate all but essential legal terminology. We must identify consumer groups and learn more about their reading skills. When we establish a climate for open communication, reinforced if necessary by policies, guidelines, regulations and even, legislation, we go far to resolving reading obstacles.
16. Consumers have a responsibility to read documentation carefully and when it is unclear, to demand materials that are transparent and understandable in all respects, and available to them at any point in their decision-making process.

Ultimately, readability in relation to financial sector documents is about a balance between two unevenly matched partners, financial institutions and consumers, where the onus is on the more powerful to ensure that the documents they produce match, as closely as possible, the needs of the consumers who use them.

Part V.2: Recommendations

Several recommendations arise from the conclusions outlined in Section V.1:

1. **Extend research in transparency, and readability in particular, and make the information available to educators, commercial and financial groups, professional organizations and governments.**

Although extensive analysis stands behind this report, further assessment is required to determine why some documents are easier to read than others and equally important, to discover what teachable recurring document characteristics are significant to consumers. Further, Canadians must invest in the studies of greater numbers and ranges of documents in the study of the United States where existing legislation influences writing in ways not present in Canada. These studies must be simultaneous with respect to both English and

French language documentation with a view to establishing criteria and guidelines for financial services documents in Canada, and to providing training based on these criteria and guidelines.

2. Raise awareness of the need for transparency among decision makers.

Decision makers may currently be unaware of the incomprehensibility of the financial documents now available to consumers. Similarly, they may not realise based on the International Adult Literacy Survey and other studies, how many consumers are likely to experience reading difficulties. Effort should be made to inform decision makers of the discrepancies between document difficulty and reader skills, as well as the special difficulties encountered by francophone Canadians. The Government must be encouraged to support and promote increased literacy among all Canadians.

3. Encourage collaboration among consumers, industry and governments to develop readability standards and, if necessary, enact transparency legislation appropriate to the Canadian experience.

Readability standards imposed by governments alone are unlikely to lead to industry compliance or meet consumer needs. Rather, it will be necessary for representatives of all three groups, from all parts of the country, to come together to standardize terminology and establish basic guidelines for the creation of comprehensible financial documents in both English and French. In establishing these guidelines they should draw on the expertise of language specialists, as well as research findings emerging from recommendations 1 and 2 above. Precedents for this process may lie in the current auto industry/government initiative to standardize automobile lease agreements across Canada, and in the activities of insurance commissioners in the United States who developed model readability legislation.

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Chapter 3

Policy: The Consumer in the Future of Canada's Financial Services Sector

by
Robert R. Kerton

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Volume 1, Chapters 1 and 2, presented a consumer-oriented framework for analysis of the financial services sector in Canada. The chapters in the companion volume, Volume 2, reviews the best practices already in place in Australia, the US, UK, Netherlands, Sweden, Denmark, and Germany. The present chapter, Chapter 3, attempts to bring together the observations contained in these other chapters in an appraisal of the status of transparency and redress practices in Canada.

*"To spend money is easy. To spend it well is hard. Our faults as spenders are not wholly due to wantonness, but largely due to broad conditions over which as individuals we have slight control"*¹

Wesley Clair Mitchell, 1912.

Transparency and Redress in Financial Services at Home and Abroad

Regulation Then and Now

Examination of current practices in other countries reveals that far more attention is paid to transparency and redress outside of Canada. The consumer provisions of Canadian legislation are particularly weak, judged against international practice. This was recognized by the Ministry of Finance in its September 1994 Background Document prepared for the Senate Committee on Banking, Trade and Commerce:

*...there may be interest in reviewing the consumer orientation of the financial sector statutes in 1997. Although financial institution statutes do contain consumer protection provisions in such areas as cost of credit disclosure and the disclosure of service charges, their traditional focus has been on solvency regulation. It is not expected that this focus will change in 1997 but there have been suggestions that the legislation could do more to address the relationship between federal financial institutions and consumers, including small businesses. It is the case that financial institution legislation in some other industrialized countries focuses more on these types of issues. Suggestions have been made for instance that the role of the federal Superintendent of Financial Institutions may be too narrowly focussed on solvency issues.*²

The surveys of practices in Europe and Australia in the chapters above (and particularly the study of the European Union by Jeremy Mitchell), does indeed show a neglect, by comparison, of consumer protection in Canada. The positive part of this is reasonably good experience on

¹ Mitchell, W. C. 1912, "The Backward art of spending money," *American Economic Review*, 11, 269-281; p. 269.

² Ministry of Finance, 1994, *Developments in the Financial Services Industry Since Financial Sector Legislative Reform*, Ottawa, September; p. 20.

solvency matters. That recognised, the Canadian regulatory framework pays relatively little attention to transparency – which helps the market work – and to redress – which improves the offerings of those with poor service. This disregard for the market framework harms consumers and Canadian sellers alike. Canadian practice lags best international practice on certain aspects of disclosure by a decade or more. In many parts of the financial services sector there is a gap between redress practices in Canada and best practice elsewhere, a gap that is exacerbated by lack of coordination among provincial and federal jurisdictions. Privacy policy has made significant strides based on the participatory approach of the Canadian Standards Association. Electronic commerce is progressing. Use of ATMs is relatively high in the concentrated Canadian market but the quality of contracts leaves much to be desired.

The quality of consumer input has been too low to drive the practices in the financial services sector to the higher level achieved in the set of comparison countries. As Michael Porter argues, Canadian firms can have had their international competitiveness sharpened by forceful consumer input.³ Yet the legislative framework leaves comparatively little room for Canadian consumers to make an impact.

Why Regulation?

In the long-run, a millennium or so, history has shown that many things that our ancestors attempted to regulate by law are now left free by general consent, and other things which they left free, or nearly so, are now strictly regulated.⁴ In the tenth century, the price of bread was subject to strict regulation while every major town was free to create its own coinage. As technology and institutional arrangements change, the usefulness of a regulation or an institution changes too. At the start of the next millennium, most experts agree that financial sector regulation is necessary for the following five purposes: 1) to enforce contracts, 2) to grant specific fiduciary powers, 3) to enforce competition, 4) to ensure capital adequacy or solvency, and 5) to set minimal auditing, reporting and truth-in-sales standards.

In the very short run,(the deregulation of the last two decades), truth-in-selling and redress for wrongs have become much more important, though too little notice has been taken of the need for change. Greater use of market-based incentives requires higher standards for truthful sales and it similarly requires firmer rules for compensation whenever redress is deserved. Purpose number three, competition, likewise requires both transparency (to find the superior offerings) and redress (to tip the balance toward honest sellers and away from those with shoddy offerings).

³ Michael D. Porter 1980, *Competitive Strategy*. New York: Macmillan / Free Press.

⁴ Writing in the UK more than a century ago, W. Stanley Jevons pointed out, in the sentence preceding the one quoted above: "A comparison of our present laws regarding currency and trade, with those which existed in this country from the tenth to the fourteenth century, will show a curious double progress. . .[T]he price of a quartern loaf, the exercise of various trades, were then the subject of legislation, though we now know they cannot properly be brought within the scope of legislative control. On the other hand, an endless diversity of weights and measures were formerly used in different parts of the country and little or no attempt was made to reduce them to any system of precise definition. Almost every important town, too, had its mint . . ." *Money and the Mechanism of Exchange*, 1897, [first edition of 1875]; D. Appleton and Company, New York, pp. 333-4.

Competition offers much. But the financial sector has a history of licenses, charters and several other regulations which restrict entry for several reasons. Too often an assertion is made by some segment of the industry that consumers want protection against unfair practices or destructive competition. Consumer protection is frequently abused as an argument to gain some measure to limit contestability – or to eliminate competition altogether. A telling example comes from Jeremy Mitchell's assessment of the European Union (EU):

The justification for heavy regulation tended to be that the development of orderly markets and the avoidance of destructive competition were necessary to protect consumers. However, this approach carried a substantial price tag for consumers. A study carried out in 1988 by BEUC, the confederation of consumer organisations in the EU, showed very wide variations in premiums between countries – for example, premiums for comparable term insurance policies were between seven and ten times higher in Portugal than in the UK. There was a marked correlation between the level of premium and the degree of regulation. Mitchell, (see Vol. 2, Ch. 1, p.17)

By the same token, many of the targets for *deregulation* are also based on expected private advantage. Each regulation needs to be examined against a public purpose test.

Four Pastures and Competition

Until the 1970s, Canada's regulatory system was referred to as the "Four Pillars," because each of the four components (the banks, trust companies, investment firms, and insurance companies) operated with its own distinct legal foundation. To consumers, "Four Pastures" seemed more apt. The regulatory fences kept each species of financial cow chomping on the grass in one of the four pastures. The consumer went to the right pasture and paid the going rate. Sellers found that the grass on the other side of the regulatory fence looked temptingly green. Major ingenuity was put into methods of getting over, under, or around the barriers. This did bring some benefits to consumers in the form of price competition and new choices.⁵ However, very little of the entry was from *de novo* competitors. The serenity of the earlier era seems very strange now. One of the main differences is that one cannot be sure who sells what, nor whether or not there is a redress system based on the specific service purchased from one of the myriad of different selling organizations.

⁵ As in Robert. R. Kerton, 1990, "Financial Quality and the Consumer Interest", *Canadian Banker*, 97(4) July/August; pp. 6-13.

How Transparent are Agreements in the Financial Services Sector?

How Are Canadian Financial Services Viewed?

The National Quality Institute surveyed Canadians to obtain their views on quality. The sample, based on 10,333 responses, provides evidence on the relative standing of each of the 21 sectors covered. Among them are six service providers in the financial services sector. On overall quality, financial service providers are spread pretty evenly through the range. All financial supply sectors are rated more highly than large department stores. Credit unions, auto insurance and trust companies are all in the top half of the distribution.

Can this data speak to transparency? Yes, one of the questions asked about performance in supplying a clear and complete information.

Customer Ratings of Overall Service Quality: 21 Service Sub-sectors, Canada 1997

Excellent + Good Ratings	1997 %	Ranking 1997
Pharmacies	92.8	1
Hotels	88.6	2
* Credit Unions	87.1	3
Small Retail	87.1	4
Supermarkets	85.6	5
Restaurants	85.4	6
* Auto Insurance	82.1	7
Airlines	81.9	8
* Trust Companies	81.3	9
Auto Repair	80.9	10
Telephone	80.7	11
Railroads	79.7	12
Courier	76.8	13
Auto Dealers	76.3	14
* Insurance	74.2	15
* Real Estate Agent:	73.4	16
* Banks	72.3	17
Large Retail	65.7	18
Postal Service	64.3	19
Cable	61.1	20
Government	40.1	21

Source: A.C. Nielsen survey for National Quality Institute, 1997. N = 10,333.

How Do Consumers Assess Transparency?

Canadian consumers find it a serious challenge to make decisions in the marketplace for financial services. Some sub-sectors are seen to be doing better than others.

Clarity of Information in Financial Services: Consumer Appraisals of Six Sub-Sectors "Excellent" plus "Good" Ratings from NQI Data for 1997

	1997 %	Clarity Ranking Out of 21
Credit Unions	82.8	3
Trust Companies	77	7
Auto Insurance	75.1	10
Average for 21 Services*	74	-
Real Estate	71.5	15
Insurance	67.9	16
Banks	66.6	17

*The statistics are based on the responses to Question 7: How would you rate the service provider for giving you information about the product or service that is CLEAR and COMPLETE enough so that you are able to make a smart purchase decision? The average for 15 non-financial services is 74.2

Source: 1997 *Annual Report of the National Quality Institute*.

It is surely true that some purchases involve more sophisticated decisions than others. Yet some providers make a more deliberate effort to communicate. Whatever the reason, differences are apparent. Evidence collected by the National Quality Institute (based on 10,333 responses) shows that credit unions and trust companies provide documents seen to be clearer than those provided by banks or insurance firms.

It is evident that ratings for *overall* service quality of the six in financial services are very respectable compared to ratings for the other 15 service providers in the NQI survey. Further, every one of the six financial service sub-sector score is higher on overall quality than on transparency (clear and complete information). Transparency performance is thus a drag on overall success with perceived quality. This is a general problem rooted in incentives:

... given the mass nature of consumer markets, experience has shown that market forces will generally not act adequately to ensure that comprehensible, timely information will be broadly available to consumers. James Brown, (see Vol. 2, Ch. 2, p. 160)

Lack of transparency raises the search costs of consumers. Turn now to the results of an analysis of actual documents used in the Canadian financial sector.

Testing Transparency

The assessment of a sample of 49 English and 21 French agreements from the financial services sector leaves little doubt that Canadians have every reason to be confused. If Stephen Leacock's famous customer returned to a bank today he would be no less intimidated and even more befuddled. The assessment of Canadian contracts found many agreements that fail to communicate with the average customer. The Colbert-Beam report identifies best and worst among agreements in Canada's financial services sector. They uncovered only two documents – out of 70 – that were superlative for reading ease. Yet even the best agreements present difficulties for those without some high school education. The Fog Index is a common measure of reading ease where a high score indicates success with readability. Most readability indexes are based on sentence length and word complexity: The Flesh Readability scale or its cousin, the Flesch-Kinkaid index, can be used to measure the school grade required for comprehension of an agreement. These quantitative indexes were cross checked with qualitative assessments to ensure validity. Here is an overview of what they found:

(i) The Most Readable Documents

	Fog Index	Flesch Kinkade Grade
AUTO LEASE Company C	68-Standard	9-Good
MUTUAL FUND PROSPECTUS Company F	64-Standard	9-Good

(ii) The Least Readable Documents

Nova Scotia's auto insurance policy proved to be least readable. By this measure, 0 percent of the population can understand it. Ontario's policy is much easier to read, but is still requires a grade twelve level of understanding.

	Fog Index	Flesch Kinkade Grade
NOVA SCOTIA	0-Very Difficult	36-Complex
ONTARIO	49-Difficult	12-Complex

Were there any differences in difficulty between French and English language documents? Readability testing is difficult enough in one language so caution in the use of measures between languages is essential. Again, qualitative means of checking provides some confidence that the comparison can be done if caution is understood. An extra problem in understanding arises because francophones report ratings of quality for services that are slightly higher than

assessments of anglophones. What can this mean? First of all, it is well known that perceived quality depends on the set of expectations one has before the transaction.⁶ There are three parts of the financial services sector with results from the 1996 survey by the NQI where one can examine differences in ratings by the language of the respondent. For consumers reporting that their experience is poor or only fair, the results are strikingly different.

Ratings of Overall Quality of Service, 1996
English and French Language Respondents
 National Sample of NQI Data

Sub-sector	% Rating "Poor"	"Plus" "Fair"
	English	French
Banks	31	19
Insurance	29	13
Auto insurance	24	10

National Quality Institute, 1996. *Consumer Survey on Quality, 1996 Report*. Conducted for NQI and the Consumers Association of Canada by A C Nielsen.

English-speaking consumers of financial services report experiences that are decidedly more negative than those reported by French-speaking respondents. The greatest difference is for auto insurance and it may well be that Quebec's no-fault plan explains the 14 point difference, indicating the more favourable experience of Francophones. However the difference between the language groups is 16 points for (non-auto) insurance and 12 points for bank customers. Some part of the explanation rests in the portion of consumers using Desjardins because a test run by Options Consommateurs found it to be the top financial institution in ability to handle problems. In a sample where tellers were asked fairly simple questions at 153 outlets in Vancouver, Toronto and Montreal, only 48 percent of the persons responding gave "satisfactory" replies. Desjardins was ahead of second place Royal Bank 77 percent to 64 percent.⁷

Another way to look at this is to see if there is a difference in the experience of the language groups in their reports of how they see quality changing over the last three years. Evidence is available for insurance companies. There is a modest difference in the reports of those seeing an improvement over the three years to 1996 (15 percent for French, 12 percent for English) but a much larger difference in those reporting that quality had got worse (9 percent and 18 percent). The upshot is a 0.7 ratio for "improved" to "declined" for English-speaking respondents and the opposite balance, a ratio of 1.8 for French. This is a major difference in the experiences of the two groups.

⁶ H. K. Hunt, 1988, "Consumer Satisfaction / Dissatisfaction and the Consumer Interest" *The Frontier of Research in the Consumer Interest*, Edited by E. Scott Maynes, American Council on Consumer Interests, Columbia; pp. 731-47. Oliver Richard and Russell S. Weiner, 1987 "A Framework for the Formation and Structure of Customer Expectations, Review and Propositions," *Journal of Economic Psychology* 8, 469-99.

⁷ Options Consommateurs, 1996, "Financial Institution Complaint Mechanisms: Unfinished Works," Montreal; p. 3. The group was formerly known as Association coopérative d'économie familiale du Centre de Montreal.

The Judith A. Colbert, et al, (Colbert), (see Vol. 1, Ch. 2) study reviewed a number of documents in both languages. The results mostly show that a firm doing well on transparency in one language also does well in the other. The exception was a mutual fund prospectus earning an impressive grade nine readability level in the English document but only grade 17 in the French document Flesh- Kinkaid Grade level. The quantitative and the qualitative studies do not show that documents provided in French are easier to read. There is conclusive evidence that documents that are translated are more difficult than others.

The main conclusion from body of evidence (all 70 documents) is that they are extremely challenging. There are very few shining examples.

Transparency: Understandable Contracts

The results obtained in the chapter testing the readability of contracts demonstrate that Canada urgently needs a law stating that financial contracts, if they are to be enforced by courts, must be written in language that can be understood by (say) 70 percent of the population. This test can be measured by one of the standard readability measures like the Fog Index or the Flesch Count. Some US states use such a rule for contracts in the financial services sector. Evidence from the research by the Colbert team, and from the review by James Brown attests to the modest, but worthwhile, improvement gained by that approach. Colbert tested 49 English language documents from the financial services sector in Canada concluding:

Computer analysis of the 49 samples indicates that almost without exception, the documents are difficult and complex and require a college / university level of comprehension. They also proved to be less readable than warranty documents assessed in the United States. In contrast, Statistics Canada reports that 40 percent of Canadians have difficulty reading much of the written material they encounter daily and only 20-22 percent are able to comprehend relatively simple prose, document and quantitative reading samples.

These findings point to the need to explore whether other factors, not assessed through quantitative computer analysis, are able to enhance the readability of documents. Among the factors to be considered is the extent to which the documents appear to address their audience. Findings in this section of the study suggest a great gap between the characteristics of the documents and the capacity of their audience to understand them. They suggest that the purpose of such documents is disclosure in response to regulatory requirements, rather than genuine communication with consumers. Colbert (see Vol. 1, Ch. 2, p. 58)

After the barrage of imaginative new bank fees in Canada during the 1988 to 1990 period – and the ensuing clamour – new plain-language announcements of fees were a source of encouraging evidence. However the computer analysis and the quantitative assessment both indicate that, in general, communication has not been successful. The Colbert study reports:

... quantitative analysis suggests that the overwhelming majority of documents assessed in this study are complex and difficult, no sample stood out to illustrate how document features can invalidate a prediction of reading ease, although one sample suggests that they are able to increase the difficulty of already difficult documents.

Colbert, (see Vol. 1, Ch. 2, p. 70)

The most reliable method for ensuring that a document is understandable is to test it with a sample of people who are likely to use it. Most other well intended efforts end up designed by lawyers, or, somewhat better but still inappropriate, designed by university graduates to their own satisfaction.⁸

Over the last decade most, but not all, financial institutions have transformed masses of documents into plainer language. The standard measures employed in the Colbert-Beam tests show that despite recent efforts, the financial services sector has a long way to go yet. Most of the documents are written at a level that require at least some university or college education. The plain language seems to be written by professionals for professionals. The conclusion to the study of documents by Colbert is a serious indictment:

Our studies reveal that none of the documents we have examined can pass the basic tests of readability for the audience levels for which they were designed. Few of the organizations which developed and disseminate them have resources in place to produce the comprehensible materials they admit they seek to create and even these few have not allocated the resources or plans to rectify the deficiencies. (see Vol. 1, Ch. 2, p. 40)

One obvious step is to have the documents tested with actual users before they are issued to the general public.

The first problem is the difficulty of the language used in documents in the sector.

Beyond the problem of the understandability of the language in documents is a twin problem of timing and comprehensiveness of the documents. Not all documents are available on time: some arrive after the deal has been struck. In the review of practices in the US, James Brown identifies some best practice examples, including some which use highlighting and spacing to advantage. He also details the problem of insurance contracts arriving too late to be of use in service selection:

⁸ An example of a worthwhile effort which did not completely succeed is provided by the CDIC's information pamphlet to consumers titled "We have a lot of answers about deposit insurance." The 1990 version stated: "Note: Any instrument evidencing that a member institution has received or is holding money from or on behalf of a person pursuant to a transaction" On the Flesch Count this document was virtually off the scale, requiring a grade twenty-two education. The new pamphlet is better: it requires a grade 15 education. Obviously it cannot reach all who need the information. This effort is from a consumer-friendly body that goes so far as to include, in its *1998 Annual Report*, performance benchmarks for customer service.

*These documents represent the final, binding agreement between the carrier and the consumer. They are **not**, however, generally provided to the consumer **prior** to agreeing to coverage. Rather, they are typically provided to the consumer **after** a decision has been made to select a particular carrier and policy, after a binder has been obtained, and, most importantly, **after** a premium has been paid. Thus, their usefulness to the task of enhancing comprehension so as to enable the consumer **to select** the most suitable coverage and carrier is generally nil.*

James Brown, (see Vol. 2, Ch. 2, p. 171).

This problem exists in the same manner in Canada. Perhaps a measure of relief – for both property and life insurance companies – might result from an attempt to work with customers for improvements. In 1997 the Insurance Bureau of Canada surveyed 1,642 Canadians finding that A. . . about 50 percent in the poll didn't understand basic insurance terms such as a premium, deductible or claim. Canadians have fundamental misconceptions about how insurance companies arrive at their prices and how to make informed buying decisions.⁹ Subsequently, two joint working groups were set up to seek improvements. Some progress should be easy. After that, there may be no common understanding that for "informed buying decisions" the buyer must have the contract **prior** to a purchase decision. A regulatory initiative would ensure a level playing field.

The disagreement over the so-called "disappearing premium" life insurance policy illustrates another mis-communication problem. The firms are sure they sold a policy for which the premium might disappear if interest rates stay high, while the consumer is sure he or she was buying a policy with a premium that would disappear. Resources are now being absorbed in court actions and in a new Insurance Consumer's Group. The example illustrates how the lack of transparency necessitates a clear method for redress.

It is not only in the insurance field that contracts are difficult to acquire. This was revealed, unexpectedly, merely by our systematic attempt to collect documents from the sector for analysis. The Canadian study by Colbert found the following:

Except for car lease agreements, document collection for this study proved to be more difficult than anticipated. As a result, transparency issues arose even before analyses could be carried out. Issues arose in relation to access to documents; marketing information; role of agents, brokers and employees; multiple documents; computer-generated and online documents; and legislation. Colbert (see Vol. 1, Ch. 2, p. 52).

⁹ Dennis Slocum, 1997, "Insurers prodded to boost customer service," Globe and Mail, Toronto November 28, p. B4.

Francophone consumers face at least as many challenges in the financial marketplace. First, there is the extra hazard created by jejune translation.¹⁰ Next:

Document availability for Francophone Canadians is uneven. Consumer support is almost nonexistent in many parts of the country outside Quebec, even when assistance is promised in electronic formats.

Colbert, (see Vol. 1, Ch. 2, p.202).

The new technology offers both promise and threat. The good news is that computer-generated documents can be tailored to different skill groups with tagged choices for extra information on each item. This, of course, requires resources. Colbert report:

Where Plain Language advocates traditionally have sought to provide the same document for all clients, current technology is moving quickly to address each potential customer in terms of his or her known characteristics, education level, financial resources and even personality.

(see Vol. 1, Ch. 2, p.38).

The threat arises from legal arrangements concerning liability for defective software, liabilities largely being arranged without adequate consumer representation.

Electronic documentation is developing rapidly and will influence buying, selling and the making of contracts in ways not dealt with in law, in which the conventional print document still holds pride of place. Colbert, (see Vol. 1, Ch. 2, p.38).

Often enough, the consumer receives two, three or four documents without knowing which is the legal contract. The timing of the arrival of agreements in Canada is wholly for the convenience of the seller: it does not permit informed purchase decisions.

The second problem is the timing and organization of the contractual information.

The terms in the contracts are a completely different challenge. Evidence from the US, UK, Germany and Australia indicates that one-sided contracts are not limited to Canada. An egregious example is provided by the Visa Cash Card used in a trial at the Olympics in Atlanta:

*This document is the governing agreement concerning the Visa Cash Card given trial concurrent with the 1996 Olympic Games in Atlanta by First Union Bank, one of the largest banks in the U.S. The agreement is relatively straightforward and clear. It highlights the provision that loss of the card will **not** be reimbursed.*

¹⁰ The study concluded that "Literal translations of documents created in one language are likely to be ineffective and result in reduced readability in the other. Translators must be free to express subject matter in language appropriate to the language of translation." Judith A. Colbert, et al, (see Vol. 1, Ch. 2), p.116

It was viewed as being inadequate by several commentators, however, in that: a) it provides for a "processing fee" in connection with any refunds sought by the consumer, but fails to disclose what the fee is, or how it might be determined; and, b) it provides for "inactivity charges" following the expiration date, but similarly fails to disclose the amount or terms of such charges.

Further, in what is one of the specific terms found most objectionable by consumer representatives, it indicates (and even then, only at the conclusion of the item, in a relatively inconspicuous position) that "The issuing bank] may change the [] terms and conditions at any time without prior notice." James Brown, (see Vol. 2, Ch. 2, p. 165).

The encouraging exceptions are from Sweden and Denmark where a market court can disallow such contracts. Scandals in the UK, Sweden and Denmark motivated experiments. In most cases, an institution had used the law to enforce contracts that many citizens felt were unfair. Some one-sided arrangements are explicitly against the law, but most contract improvements come from guidelines developed in the marketplace with help from the office of the Ombudsman. As Susan Storm relates, (see Vol. 2, Ch. 1) the office of the Ombud attempts to represent the consumer by negotiating improved wording acceptable to all parties. Consumer organizations and others are favourably impressed. He or she consults with all the parties and issues guidelines for dealing with customers. One particularly important guideline states that any information provided by a bank must be solely in the interest of the customer. Further, the consumer ombudsman takes on cases with the potential for being a precedent. Storm notes that there is much that Canada can use.

In the US, the Federal Reserve Bank has a highly successful policy unit creating model contracts. These can be attractive to suppliers of financial services for two reasons. It lowers the cost of creating contracts, and the use of model terms provides a legal safe harbour against most legal challenges.

The Federal Reserve Board, as the statutory administrative agency assigned by the Congress under the Federal Consumer Credit Protection Act, has promulgated a wealth of model forms dealing with various types of common consumer financial services and products. These forms are intended to be usable by a financial services provider, and as a result, to provide a "safe harbor" from the statutory penalties provided for in the underlying statutes.

*They have been developed and designed **both** to comply with the specific requirements of the various statutes and their implementing regulations, **and** to provide meaningful information to consumers about the relevant subject matters so as to promote market transparency. Significant efforts have been made by the Federal Reserve in developing such forms to solicit input from industry, from consumer representatives, from educators, and others. James Brown, (see Vol. 2, Ch. 2, p. 174).*

The Danish and the American examples offer two different, but highly successful, examples of practical methods for introducing significant improvements to the imbalance present in Canadian contracts.

The third transparency issue is lack of balance in financial contracts

As Wesley Clair Mitchell pointed out in 1912, the consumer has too many items to look after to be able to be an expert in many of them. Very few customers have the skill to be able to strike out unwanted clauses, or to add balance to a contract created in the legal office of the seller.

In most cases the owner-producer enjoys a tremendous advantage, in both mastery of the product or process in question, but also of the issues and the details which make up its context. In effect, the deck is usually stacked against the customer so that, even with legal representation, a case can be made that client position of understanding is less than the owner's.
Colbert, (see Vol. 1, Ch. 2, p.39).

Further, the seller is not well motivated to give influential negative information. Of obvious importance is the cost of any transaction. The sellers of mutual funds seem to be reluctant to reveal the inducements present in their industry. Long experience with "reticence" problems in the US has resulted in the "Federal Box" on credit documents. The annual percentage rate of interest and the annual dollar cost of credit must be presented in few words of a certain size. Usually this is the largest type in the text. This is a positive disclosure requirement that has proven to achieve a measure of transparency. It is interesting that some regulations also limit the number of words to be used. Evidently this is to recognize that excess verbiage is a tactic for concealing salient information. Insurance contracts seem to blind-side consumers with important exclusions.

From the start, US experience with the box found that only part of the population can understand moderately complex matters like an annual percentage rate of interest. Many consumers use the dollar value of the finance charge (and sometimes they use it incorrectly) as this charge has a direct impact on the monthly budget. The rate of learning was impressive for those with higher income and / or education. This has a worthwhile impact on the market. "However, to the extent that high-cost credit sources service the least knowledgeable segments, those sources [may not need] . . . to compete on the basis of price."¹¹ All things considered, the positive requirement exemplified by the information in the US "federal box" has made a substantial improvement in transparency.

The fourth transparency issue is the need for salient (positive and negative) information to be included, and with enough prominence to lower the search cost.

Has a serious attempt been made to avoid obfuscation? Were Canadian documents tested with actual consumers? Is technical language essential? The Colbert study finds that difficult

¹¹ W. K. Brandt, George S. Day and Terry Deutscher, 1975, "Information Disclosure and Consumer Credit Knowledge: A Longitudinal Analysis," *Journal of Consumer Affairs*, 9.1 p.31.

technical language is not universal. One company rewrote its mutual fund prospectus so successfully that it reduced the grade requirement for comprehension from grade 27 (if there is such a thing) to a grade eight level. A law can specify that a contract must be understandable by 50 percent (or more) of the target population. Tests we conducted on comparable US agreements revealed the US has documents that are much more successful.

Detractors aside, the results achieved in the small sample of US documents assessed in this study suggest that such legislation may have had an effect. The lowest mean readability score among US documents was 44, close to the minimum suggested in legislation. In contrast, the lowest mean score among Canadian English-language documents was 25. Colbert, (see Vol. 1, Ch. 2, p.144).

We can obviously do better in Canada. And we must. Tests on most ATM agreements require grade 13 or so, placing the agreement beyond the understanding of most Canadians. One ATM agreement is decidedly more challenging: it needs grade 28 as measured by the Flesh-Kinkaid instrument. It is hard to believe such a document is designed to help the customer.

Increasing the Transparency of Prices; Two Experiments with Information

Earlier evidence showed that new options and repackaged alternatives among older offerings present the consumer with a bewildering choice. It is extremely expensive for the consumer, as an individual, to search among all these differentiated products. And it is not always true that a specialized information broker is rewarded for presenting the best advice from a consumer's point of view. In one report on the insurance industry,

[a broker] . . . agreed that it was next to impossible for consumers to see sample policies in advance of making an insurance decision. Using a computer program, the broker also demonstrated that among the major companies, annual premiums for the same coverage can vary by several thousands of dollars. Once again, it would be difficult for consumers to access this information, even if they were aware of the need to look for it. Colbert, (see Vol. 1, Ch. 2, p.49).

Perhaps a public effort to present clear information on price can provide enough transparency to achieve success. Two important efforts undertaken in Canada are reviewed here.

One is the publication of automobile insurance rates, in this case, in Ontario.

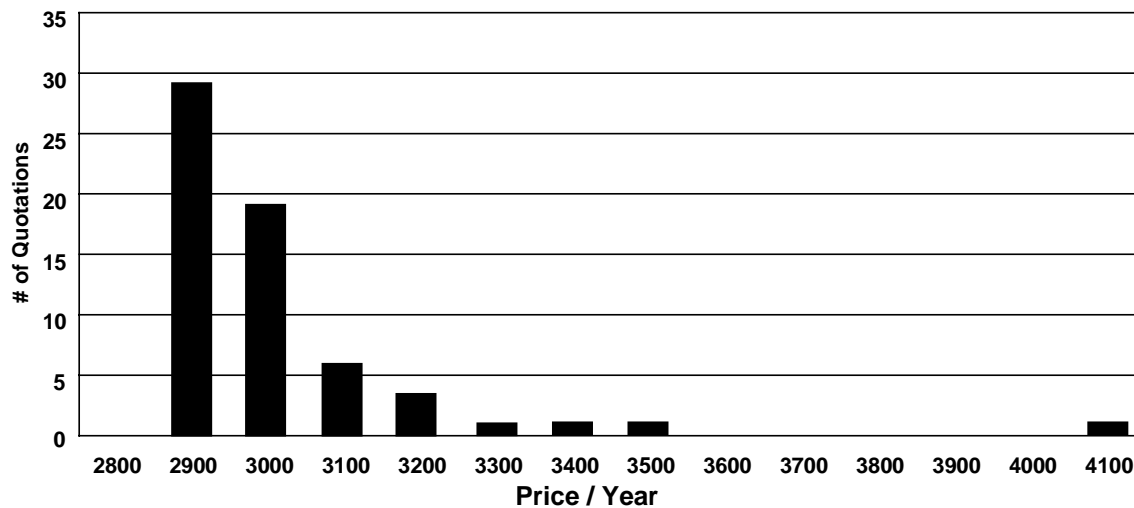
The second is Industry Canada's periodic publication of credit card prices.

Automobile insurance: search costs and benefits

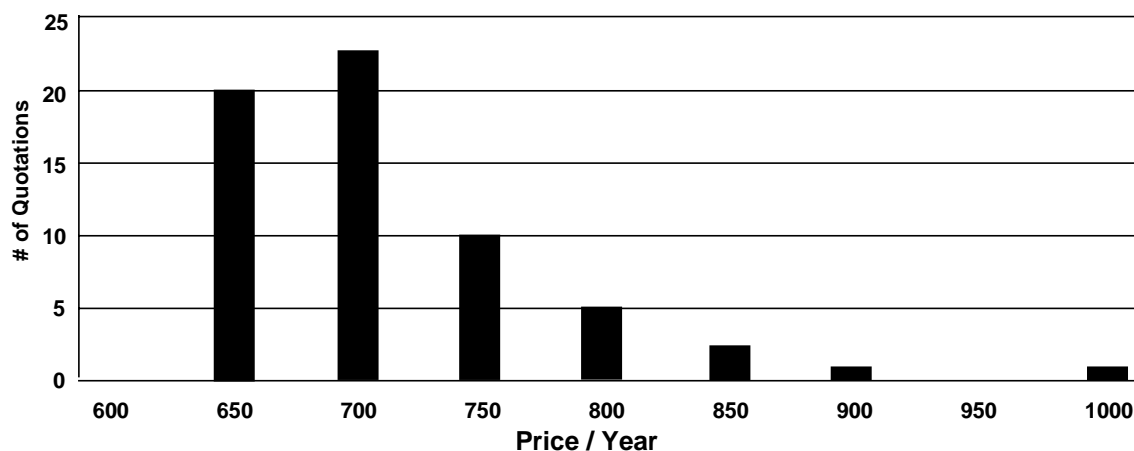
How well has our Canadian experiment in providing price information worked? Auto insurance in Ontario has now had four years of experience in providing price information to consumers

who ask for a free booklet. Has the market moved to obey the law of one price? If competition is high, a wide price dispersion cannot persist. As consumers move to look after their interest, we should see the one-price solution of supply and demand. Here is a small sample from the 1997 results:

**Auto Insurance
Premium Distribution
Profile 5, Toronto**



**Auto Insurance
Premium Distribution
Profile 4, Ottawa**



For the profile selected, prices range from the \$650 range to \$1000, with a median toward the lower end of the distribution. It is possible to run these price distributions through a combinatoric program to solve for the ideal number of searches a consumer should make. This was done for eight distributions. If a consumer's time is worth \$15 per hour it is always worth getting three price quotes and usually worthwhile to get five. Some of the other profiles selected

for comparison have a price dispersion is much greater. One has a range from \$1400 to well over \$4,000. The information being published has a very high value – though too few consumers seem to know this.

Before we look at the second experiment, consider very briefly, life insurance, which presents even higher search costs. Colbert found that companies are not willing to allow contracts to be examined without a broker looking over your shoulder. They also located an exceptional broker who illustrated the extraordinary price variation:

Using a computer program, the broker also demonstrated that among the major companies, annual premiums for the same coverage can vary by several thousands of dollars. Once again, it would be difficult for consumers to access this information, even if they were aware of the need to look for it. Colbert, (see Vol. 1, Ch. 2, p.49).

In the main, the experiment in providing information has undoubtedly helped some people. So far, the number of alert consumers moving to lower cost sources has not yet moved the market to a unique price-quantity equilibrium.

Provision of public information to lower the search costs for credit cards

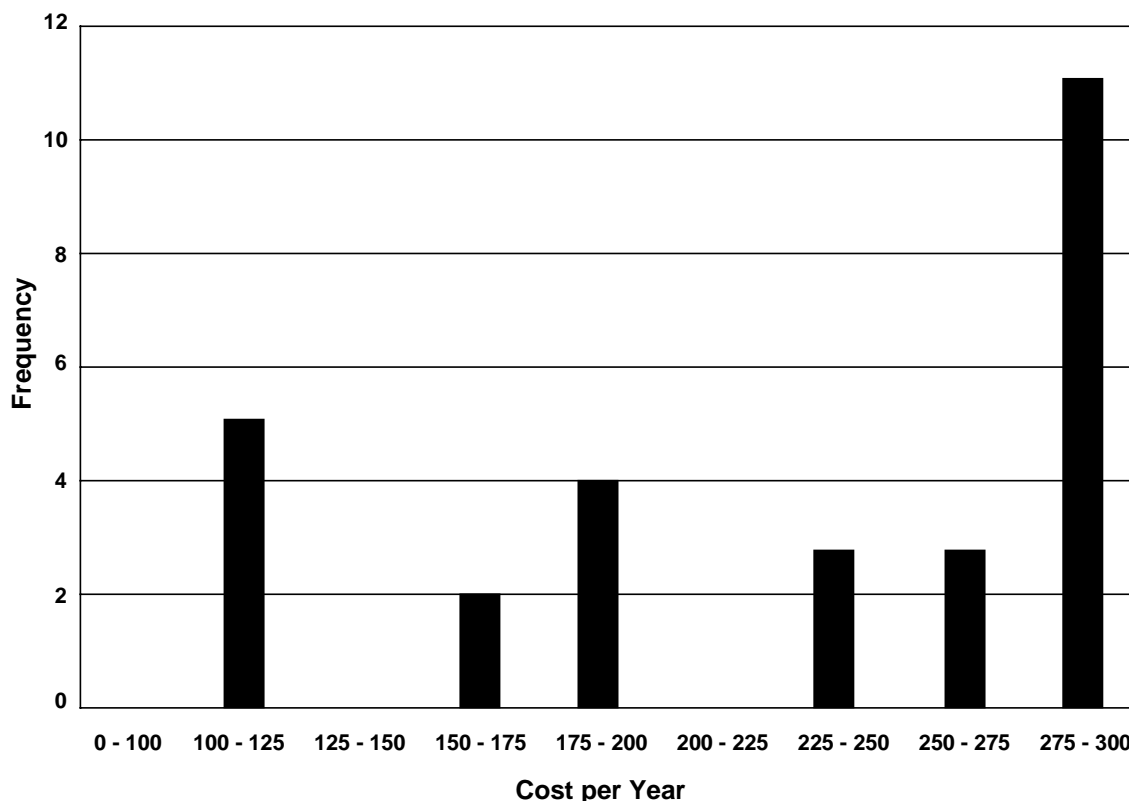
Experts at the Consumer Office of Industry Canada collect and present information on credit card prices. The results are provided in a press release and on the Ministry's popular web site. It is not known how many visit the credit card site but computer-aided consumers can find information fairly easily. The individual is asked about the average size of any unpaid monthly balance. A response of, say \$1,600, results in a table providing information on the dollar cost from using cards of Canadian banks and trust companies.¹² The number of different options (annual fees from zero to thirty dollars, grace periods of different lengths, interest charges etc.) meant that there were at least 28 options available. No fewer than 17 of these were truly different. It is true that some customers are not eligible for low-rate options for reasons of risk, so their options are fewer in number. If the non-price features of credit cards are important to consumers, our comparison on the basis of price alone will be less useful. Probably some of the product differentiation is significant: an annual fee vs. no annual fee, for instance. Other differentiation, like a 17-day grace period versus a 22-day period may be likened to bells and whistles on a service which is more or less standard. Collectively the 28 versions provide a measure of noise, making comparisons more difficult. Search costs can be prohibitive, given the

¹² Calculations are also made for the Canadian Tire card but not for recent entrants to the Canadian marketplace like Capital One. The table also reveals the related annual interest charge after factoring in the annual fee, if any. In March of 1998 (for the example above) the effective annual interest rate ranged from 6.9 percent to 18 percent.

notoriously poor correlation between price and quality for most consumer goods.¹³ This confusion is one main reason why the public provision of the low-cost sources should be valuable.

The lowest annual charge for a credit card was \$110 at National Trust. The highest price, \$294, was available at four sources: National Bank (standard card), Canada Trust, CS Co-op, and Bank of Montreal (standard card).

Credit Card Cost Per Year Unpaid Balance of \$1600 - Canada 1998



Source: Web site of Industry Canada, <http://strategis.ic.gc.ca/SSG/ca00603e.html>. The site provides a calculation for the Canadian Tire credit card (\$ 302). The card more closely resembles a department store card so it is not included above.

¹³ Product tests for 91 sets of Canadian products ". . . are remarkably similar to those obtained for the United States and Japan. Once again, price is found to be a weak and unreliable guide to quality: The range [of Spearman rank correlation coefficients] is from 0.94 for freezers to -0.82 for zoom lenses for cameras." p. 434 in Richard Bodell, Robert R. Kerton and Richard Schuster, "Price as a Signal of Quality: Canada in the International Context," *Journal of Consumer Policy*, 1986/4; 431-44. In eight research studies covering anywhere from 29 to 105 product tests each, the *highest* median correlation coefficient was 0.35, not a close relationship between price and quality. See also L. V. Geistfeld, 1988, "The Price-Quality Relationship: The Evidence We Have, The Evidence We Need," *The Frontier of Research in the Consumer's Interest*; E. S. Maynes (ed.), American Council on Consumer Interests, Columbia, 143-183.

The ratio of highest to lowest price is wide indeed (294: 110 or 2.7 to 1). While price dispersions of 1.5 to 1 are more frequent than most theorists expect,¹⁴ card rates provide an example of exceptional differences. The wide dispersion in prices implies major opportunities for savings gained by searching for lower prices. This valuable information is available at a reasonable price to users of the web. The "price" is the opportunity cost of the time taken to search out the site. Once in a while the information makes it into the print media where it is available to a wider audience. The maximum value of the information is \$184 per year (to someone currently paying the maximum, \$294). A half dozen major suppliers, (large banks and Desjardins) offered the service for about \$175 per year. Thus, it would be relatively easy for consumers paying the top price to save about \$120 per year.

In 1988 the US Congress enacted a law requiring disclosure of credit card costs. Some consumers did benefit. Unhappily, individuals with large unpaid balances are least likely to shop around when making major credit decisions.¹⁵ Ausubel finds that the information does not reach consumers, that "buying convenience" is a factor in card use, and that many consumers did not intend to have an outstanding balance.¹⁶ A Canadian study shows that individuals facing personal bankruptcy report that "too much borrowing or credit card use" follows "loss of job" as a source of the financial distress.¹⁷ On the basis of work for the Task Force as reported above, it is evident that the high degree of difficulty in documents themselves accounts for much of the problem in Canada. When this low readability of Canadian information is combined with modest literacy / educational levels (especially concerning matters like present value etc.) The challenge is beyond the control of many consumers.¹⁸ Even with the superior US documents, James Brown offers:

In all likelihood, it is simply not realistic to expect consumers to take the time (and thus, incur the costs) to obtain adequate information, particularly in light of the questionable assumption they could adequately distinguish among various complex pieces of information even once assembled. James Brown, (see Vol. 2, Ch. 2, p. 160).

¹⁴ See E. Scott Maynes and Terje Assum, (1982). Informationally imperfect consumer markets: Empirical findings and policy implications. *Journal of Consumer Affairs*, 16; pp. 62-87

¹⁵ P. S. Calem and L. J. Mester, 1995, "Consumer behaviour and the stickiness of credit card interest rates," Paper 95-10, Philadelphia, Federal Reserve Bank of Philadelphia. The evidence is based on self-reporting from the US *Survey of Consumer Finances*

¹⁶ L. M. Ausubel, 1991, "The failure of competition in the credit card market," *American Economic Review*, 81(1), pp. 50-81.

¹⁷ Saul Schwartz and Leigh Anderson, 1998, *An Empirical Study of Canadians Seeking Personal Bankruptcy Protection*, http://strategis.ic.gc.ca/pics/ca/bank1_e.pdf: Industry Canada, Office of Consumer Affairs, Ottawa. For data, see "Personal Bankruptcies" in *Consumer Quarterly*, October, 1997, also published by Industry Canada at <http://strategis.ic.gc.ca>.

¹⁸ The degree of control can be measured. For example, for *consumer* decisions, individuals studying economics report more "control" and exhibit more "planful," deliberate behaviour than a second group studying psychology. Michael A. Busseri and Herbert M. Lefcourt and Robert R. Kerton, 1998. "Locus of Control for Consumer Outcomes: Predicting Consumer Behavior," *Journal of Applied Social Psychology*, 28, 12; pp. 1066-86.

Lack of "control" has been found to play a nasty and self-fulfilling role in financial markets.¹⁹

It would be extremely costly for the individual to try to search out information from all the sources, and especially so since much needs to be known about the exact terms of each card agreement before computation can even begin. It gets worse. Often one cannot even get a copy of the agreement without actually filling out the application form and waiting until the application is processed. This increases the value of the comparison table of the Office of Consumer Affairs. With the new public source of data, consumers will have shifted to lower cost sources. Yet for many people, search costs remain high and potential benefits unseen. The persistence of the wide range of prices testifies to the absence of a unique price for this financial service.

A preference – by sellers – for avoiding price competition is not unique to Canada. What has been done to encourage price competition? **Denmark perhaps has the best practices on transparency – to lower search costs.** As Susan Storm points out, Denmark may have the most useful lessons for Canada about effective consumer protection. Like Sweden, Denmark has found that sellers often avoid price competition. The country has, again like Sweden, a consumer agency. This is an arm of the consumer ombudsman. The consumer agency places a duty on banks to publish their fees on deposits, loans etc. including rates of foreign exchange. (see Vol. 2, Ch. 1)

The US has used Truth-In-Lending laws since 1968 in an effort to encourage price competition. Economic research indicates that the legislation has had the intended effect with highly literate or with high income consumers, but no impact is evident on others. Even with insurance, disclosure has been found to be effective,²⁰ but wordy or complex information can act as a detriment to understanding.²¹ Some sellers are eager, for their own reasons, to have the legislation rescinded. A continuing effort has been made, in the US, to have documents *highlight* salient price information (with larger type or a box around required data). As James Brown observes, this has been reasonably successful. In stark contrast, the Colbert study finds Canadian documents to be far more difficult to decipher.

¹⁹ An "external" sense of control [lack of perceived control] plays a role in problematic personal debt. Livingstone, S. M. & P. K. Lunt, 1992. "Predicting personal debt repayment: Psychological, social and economic determinants." *Journal of Economic Psychology*, 13; pp. 111-134. Too, the more one holds the belief that "it's beyond my control" – the more likely are persons to use consumer credit unsuccessfully. Tokunga, H., 1993. "The use and abuse of consumer credit: Application of psychological theory and research." *Journal of Economic Psychology*; 14, pp. 285-316.

²⁰ G. W. Eldred, 1980, AHow wisely do consumers select their property and liability coverage?@ *Journal of Consumer Affairs*, 14,2, pp. 288-306.

²¹ Jacob Jacoby, 1977, "Information Load and Decision Quality: Some Contested Issues," *Journal of Marketing Research*, 14, pp. 569-73; John H. Murphy and Jef I. Richards, 1992, "Investigation of the Effects of Disclosure Statements in Rental Car Advertisements," *Journal of Consumer Affairs*, 26,2, pp. 351-76.

Computer analysis of the 49 samples indicates that almost without exception, the documents are difficult and complex and require a college/university level of comprehension. They also proved to be less readable than warranty documents assessed in the United States. Colbert, (see Vol. 1, Ch. 2, p.58).

If the two Canadian efforts at public provision of information is viewed as an experiment in transparency policy, what can we make of it? The policy can be seen to be valuable but by no means successful enough to overcome rigidities in the market for credit by card. Why not? One reason is simply the cost of changing one's financial services provider. A second reason rests in the confusion created by all the messages about differentiated products. Card users have separated themselves into two markets. Sophisticated users of financial services are "low cost" seekers of information who find the low rate cards.²² Others find that the noisy marketplace makes it costly to see through the fog and most in this group pay the high 18 percent rate. The 1998 Angus Reid Survey found that overall consumer knowledge of low rate credit cards has increased from 18 percent in 1997 to 21 percent in 1998.²³ Sellers have little incentive to reduce the number of varieties of card nor to clarify the similarities among the offerings because transparency would shift customers into the low-cost market.

Is there anything to learn from recent Australian experience? Kell reports:

The initial focus was to reveal commission, fees and charges and other product features to ensure that consumers were aware how much they were actually paying and to reduce industry "mispractice." More recently there has also been an emphasis on improving the comparability of products to facilitate competition. (see Vol. 2, Ch. 3, p.207).

Both of the above experiments in providing information contain comparisons that can easily save a consumer a hundred dollars or more. If the information has a time cost of an hour, the benefit far outweighs the cost. Even so, the transparency policy is not a complete triumph: for the two financial services with publicly provided information, wide price differences persist even after the information is provided (and free of charge).

²² The separation into low and high cost searchers is precisely the outcome predicted in the seminal research paper by Stephen Salop: 1977. "The Noisy Monopolist, Imperfect Information, Price Dispersion and Price Discrimination," *Review of Economic Studies* 44, pp. 393-406. In the version of the model where a monopolist has perfect insight and control the firm can generate exactly the amount of noise it needs to maximise overall revenue from the two markets.

²³ "Home & Auto Purchase Considerations and Low Rate Credit Cards," reported on Industry Canada's site <http://strategis.ic.gc.ca/SSG/ca00958e.html>. About half of the population has heard that there is such a thing as a low rate card.

Transparency in Selling

Transparency in Sales Conditions: One-sided Contracts

Plain language allows one to see if a financial contract is one-sided but it does not provide the power to affect the bargain. Problems have existed in every one of the eight countries studied above. James Brown outlines how the incentives operate:

*... the theoretical element of negotiation inherent in contractual theory is essentially lacking in practice. Since the parties – consumer and provider – in no meaningful way possess anything approaching equality of bargaining power, the potential for consumer abuse is thus significant, particularly given the nature of many consumer financial services which are virtual necessities to consumers. Not only do many, if not most, consumers lack the capacity to negotiate with vendors, there are often circumstances such that they are effectively **not** free to decline to accept the services on less than attractive terms, e.g., insurance is required, or credit is essential. The services are necessary, and the search costs of obtaining alternatives may be (or be seen as being) overwhelming.*

James Brown, (see Vol. 2, Ch. 2, p.159).

The gap between actual practice and best practice in Canada is remarkable. For example, most deposit institutions require the customer to sign an agreement stating that if there is any problem with ABM records, the transaction record printed by the ABM does not have legal standing, under the contract, "dispute resolution" must use *only* the institution's electronic records.²⁴ Worse, discussions on legal arrangements for electronic commerce have virtually no consumer input.²⁵

New Directives of the European Union recognize that it is unconscionable to create **contracts whose terms can be changed by one party without the advance permission of the other**. And in the US, in 1989 the Home Equity Consumer Protection Act made one-sided changes illegal. Yet many financial services agreement packages bought by Canadian consumers allow the institution, on its own, to "...change, add to or delete any terms and conditions..." A contract whose terms can be changed unilaterally is anything but transparent.

²⁴ In many countries governmental systems for redress have seen financial cutbacks. Some have been targets because they work, others because they fail. In the era of deregulation it is expected, rightly or wrongly, that industry associations will establish common minimum criteria for corporate complaints handling processes.

²⁵ Particular concerns relate to arrangements to apportion loss in the event that software is defective. US developments do not seem designed to place the onus on the party in a position to affect the decision. Cem Caner, 1998, "Bad Software – Who Is Liable?" Address to the American Society of Quality Control, Annual Congress, Philadelphia, May 1998.

Transparency in Financial Counselling

Some of the worst problems in the marketplace occur when financial counsellors operate with hidden fees and commissions. The Stromberg report on mutual fund reward schemes found practices that are "more than questionable" ... "They are wrongful acts." The incentive system thrives on concealment in many sectors of the financial services industry. National action is required because of the lemon solution and because any one firm following a high moral road will not win under present circumstances. It is particularly reprehensible when the advisor sets up as an "independent" financial counsellor. This fails any reasonable consumer test. A number of voluntary codes have been proposed but they share the fate of all non-enforceable measures. Additionally, among 18 industrialised countries, Canada is the only one not requiring a bank to disclose on its financial report the commissions earned and paid. Some investment associations have voluntary codes requiring sellers to disclose information on payments designed to compromise the seller. These are voluntary and will be obeyed by those on the high moral road, to their disadvantage. What is needed is a clear truth-in-exchange law to require that *all* agents, counsellors or brokers reveal the source and amount of all such remuneration. The best sellers support reform, but the lag is significant.

One of the most challenging areas in the whole financial sector – from the point of view of the consumer – is the quest for expert advice. Many organizations offer skilled advice for a fee but the consumer cannot identify the expertise level. There are really two key issues: a principal-agent problem and a standards problem. "Consumers are not generally aware of conflicts-of-interest questions."²⁶ Often the consumer believes the advisor is an agent of the buyer. This misperception can be cleared up by requiring the counsellor to state, *ex ante*, the source of all payments being received, and the amounts. An alternative is a separate counselling operation that is **in fact** an agent of the consumer and therefore willing to make choices for consumers independent of any hidden trailer fee, performance level bonus or other inducement. For the standards problem, Canada needs one reliable standard setting body, not several. The existence of competing groups has not led to the type of competition that helps consumers. The ongoing string of problems is closer to a lemons outcome.

Canada may have wider latitude for misunderstandings and serious principal-agent problems but concerns about financial advisors are by no means unique to this country. Australian Financial Systems Inquiry came to a "Single Standard" solution and this was supported by the national consumers organization. As is the case in the UK, reliance was not placed solely on voluntary trade-related measures, public supervision is required.

²⁶ Weiss Ratings, Inc. 1995 (March). *Performance Review of Insurance Rating Agencies*, Palm Beach Gardens, Florida; p. 46. "Unfortunately, in their zeal to close a sale, some agents and financial planners will often downplay the risk level, sometimes withholding critical information." p. 46.

Financial advice and licensing

The proposals concerning financial advice and disclosure should help to rationalise and improve standards in this industry. These propose a single licensing and disclosure regime for financial advisers, and single minimum competency standards are being developed by the ASC. Kell, (see Vol. 2, Ch. 3, p.212).

Action on the twin problems in the purchase of financial advice represents a major opportunity to improve Canadian financial markets.

High Individual Search Costs: Public Search Capital

In some circumstances the costs of searching for information are far too high to justify any search at all by an individual. Sometimes a broker exists to provide the information for a fee. In other circumstances the missing information has all the characteristics of a public good: consumption of the information is non-rivalrous and it is difficult to exclude nonmembers from using the communication. A central bank meets this definition and, it can be argued, so does the collective provision of deposit insurance. Full coverage of deposits, it is alleged, brings new difficulties, particularly in effects on incentives. The argument against 100 percent deposit insurance puts an onus on depositors to assess the risk of deposit taking institutions so that depositors must make a careful choice about which institution is to receive the deposit. If government insurance covers 100 percent of the funds, the depositor does not need to care about the prudence of the financial institution. The Consumers Association of Canada which was pivotal in having deposit insurance raised from \$20,000 to \$60,000 – still much lower than the level in the United States²⁷ – now argues against any form of coinsurance for that level of \$60,000. Why? From its 1995 Briefing Paper on the CDIC:

It is extremely difficult for a depositor to assess the riskiness of the bank's activities. Professionals have not done very well.

Both the Ministry of Finance and the CDIC recognize that it is difficult for individuals to assess the riskiness of a bank's lending practices. The difficulty for an individual in searching for rating information is made tellingly in a study on how the private sector conducts the risk rating of life/health insurers. The US General Accounting Office found that the scales used by five rating companies require great sophistication. Comparisons of ratings are difficult, even for persons with expertise. And the value of the ratings was not always high, even for experts.²⁸ A follow-up study by Weiss (March 1995) found that *not one* of the rating agencies assigned a "vulnerable"

²⁷ US\$100,000. The higher limit in the US has not always been respected there. Persons with deposits above the limit have none the less been reimbursed for losses. This does go beyond the issue of protecting under-informed, small depositors.

²⁸ United States General Accounting Office, *Insurance Ratings: Comparison of Private Agency Ratings for Life / Health Insurers*, Briefing Report to the Chairwoman, Subcommittee on Commerce, Consumer Protection and Competitiveness; Committee on Energy and Commerce, House of Representatives; US GAO, Washington, 1994.

rating to either Confederation Life of Canada – or its US counterpart – prior to the first public regulatory action.²⁹ It is therefore the regulatory action that is the reliable signal.

When the cost of search is so high for the individual, it is far cheaper to provide it collectively. Once the case for a public good is established, it still remains to see that the service is provided in the most efficient manner. If this is to be addressed from a clean slate, it is highly unlikely that the current mix of federal and provincial responsibilities would result. Strictly on the grounds of consumer protection there is a strong case for consolidating the activities in fewer offices. The final Report of Australia's Financial Systems Inquiry came precisely to this conclusion.³⁰

A second problem now concerning US regulators, and every bit as important in Canada, is the recognition that large institutions are "Too big to fail" so it is recognized that governments will come to the rescue whether deposit insurance exists or not. A recent appraisal of the US situation is:

The regulators have good reason to feel overwhelmed. Bureaucrats trained to monitor banks loan-by-loan may be unable to get their arms around new behemoths like Citigroup and the BankAmerica Corp.- NationsBank Corp. combo, which are racing toward the trillion-dollar barrier. "The marketplace is moving so fast that the government is unable to keep up with it," says William M. Isaac, former chairman of the Federal Deposit Insurance Corp. "Federal regulatory systems are 10 years out of touch." If the regulators are anxious, then taxpayers should be, too, because they'll be stuck with the tab if these supermarriages don't work out. A single mega-failure could bankrupt the taxpayer-backed deposit insurance fund . . . regulators would feel obliged to prop up the parent institution under the hallowed "too big to fail" doctrine.³¹

The biggest bank in the world, The Bank of Tokyo-Mitsubishi, is in difficulty of the most serious sort. Small customers are not well positioned to assess financial institutions; they will always be the last to learn of imprudent policies. Part of the solution to the "Too Big to Fail" problem rests in transparency policies, but surely the first steps are international accounting conventions, prudential supervision, and clearly understood rules for the failures that, on probabilistic grounds will strike some large institutions as well as others. From the perspective of small and medium sized customers, collective search and collective prudential supervision is the essential guarantee that justifies participation in financial markets.

²⁹ Weiss Ratings, Inc. 1995 (March). *Performance Review of Insurance Rating Agencies*, Palm Beach Gardens, Florida.

³⁰ Australia, Wallis Commission (1997), *Financial System Inquiry Final Report*, Commonwealth of Australia Information Service, Australian Government Publishing Service, Canberra. "Recommendation 1 : Corporations law, market integrity, and consumer protection should be combined in a single agency." p. 32.

³¹ "If This Safety Net Snaps, Who Pays?" Dean Foust, *Business Week*, April 16, 1998; bwwebmaster.

Taking Stock of Financial Agreements

Transparency policy needs much work in Canada. Despite good intentions and a measure of work, Canadian financial agreements are not up to the expected international standard. Only the highly educated portion of the population has any realistic hope of understanding the documents and the timing and delivery of many of them conspire to deprive many consumers of the information needed for decisions. Colbert reports:

In the end, no credit card agreements were available for analysis. It appears that agreements are sent directly to individuals who have submitted signed credit card applications. In such circumstances, consumers may need a special warning. It appears that the arrival of their new card is their first opportunity to examine the agreement to which they will be bound. Further, the application and/or agreement may state that use of the card constitutes their acceptance of the agreement. Since there is usually a considerable time lapse between signing of an application and receipt of a card, consumers who take great care in the application phase may be careless about details by the time their cards arrive. Consumers are likely to have great difficulty accessing an agreement before submitting a signed application. In contrast, a wealth of marketing information is readily available and in some cases easily mistaken for the agreement itself. Colbert, (see Vol. 1, Ch. 2, p.48).

Choices that should be routine are transformed into a serious challenge that only the experts can meet.

Progress is possible but Canada has not had the will. One of our most problematic areas is mutual funds where Canadian standards for selling are far behind those of the US. The best Canadian documents tested below the mean of those of the US on grounds of simple readability. And beyond that, the US has rules to limit the difference between a word and the truth ("no-load" for instance). And best practice in the US is a worthy example for which to strive. For example,

Without question, there was a greater unanimity among those surveyed that of all types of consumer financial services, the clear standard-setter in terms of best disclosures and best information practices for consumers was the Vanguard Group of mutual funds. Consumer representatives, regulators, academics, journalists, and fee-only certified financial planners all agreed that this group engaged in the "best" informational/disclosure practices. James Brown, (see Vol. 2, Ch. 2, p. 173).

If we look for areas where some progress has been made in Canada, the federal- provincial cooperation effort, the cost of credit initiative, deserves praise. As much as one admires the goodwill by all participants, what can we see as achievement after more than six years – and much promise? We are awaiting *individual* actions by the provinces. This really does not serve the consumer, nor the broad public interest. Methods for highlighting important information, widely used in the US, are not to be available to Canadians.

A different gap between practice in Canada and elsewhere arises from the war over turf waged by personal financial advisors, investment brokers, insurance firms and agents. The natural

monopoly argument surely applies to some of this regulation. The real issue is whether the nation state is large enough to be a logical source for establishing the basic rules for transparency, redress, privacy, prudential policy and some other matters.

The operation of successful firms in an era of globalization begs for general market principles rather than specific sectoral regulations. From a consumer point of view, there is no concern about which particular piece of background legislation is involved. The customer is interested in general principles of fairness, receiving what was promised and being compensated when unfair transactions have taken place. The simple requirements do not change when consumer shifts from buying check clearing services through buying a mutual fund or anything else. The need in the new marketplace is for *general* rules of fair exchange

Redress

What Address for Redress?

One-Stop Redress? How many offices?

The British approach up to 1997 has been to establish an Ombudsman for banking, another for insurance, and on and on, to the point where Jeremy Mitchell, in his review, reports seven different methods for redress in one financial services sector. (see Vol. 2, Ch. 1) This is to occur in a world where sellers are increasingly offering many products previously available from other sources. Under changes introduced in Canada's 1992 legislation, financial institutions must establish complaint procedures, advise customers of the right to contact the Office of the Superintendent of Financial Institutions (OSFI), and give its address. As noted earlier, OSFI did not get additional resources to deal with complaints and its main response is to redirect complainants to other sources. The 1992 change has increased the information available about the need for policies designed to eliminate problems. More than 12,000 contacts are now received per year, about two thirds of which are covered by other jurisdictions. It is hard to believe, but the frustration that results is still an improvement over the previous situation.

Canadian experience with ombudsmen is very recent, compared to what has been tried elsewhere. European countries have found them to be useful for several decades now. Sweden designated a specific Consumer Ombudsman as early as 1970.³² By 1995, when the Royal Bank put its ombudsman in place, all major banks had an ombudsman. The banking industry as a whole was able to announce the creation of a banking sector ombudsman to commence on April 1, 1996. At that time the office was directed to look after small business complaints. Consumers came a year later. The Association coopérative d'économie familiale du Centre de Montreal (ACEF), evaluated the ongoing Canadian ombud arrangements for banks on several occasions. Particular stress was placed on the evident lack of independence from banks. ACEF Centre (now called Options Consommateurs), also reviewed ombud offices in nine countries,

³² Kjersti Graver, 1987, *Consumer Redress Systems In Seven European Countries*, SWOKA, Stichting Wetenschappelijk Onderzoek Konsumentenaangelegenheden, Institute for Consumer Research, Den Haag, p. 90.

eventually concluding that the British model offered much.³³ The Canadian Community Reinvestment Coalition published their 1997 appraisal as *Banking Ombudsmen: Why They Must Be Independent*.³⁴ By 1998, the Office of the Canadian Banking Ombudsman had a majority of its Board members independent of banking interests, as recommended all critics.³⁵ So far, its existence is not yet widely known. In fact the avenues for redress in the sector are all too hard for the average person to find. Criticism about the invisibility of bank policies on redress persists. The House of Commons Standing Committee on Finance stated in June of 1998:

*The Committee believes that in addition to proclaiming Section 459.1 [on Tied Selling] into law, the banks should take additional measures to better inform customers of their consumer rights.*³⁶

And for an Ombud to be successful, there must be an acceptable method for showing that it deserves to be trusted. In particular, there must be a method of auditing its actions and a method for reporting its decisions to a supervisor and to the public.

In the financial sector as a whole, there is a fundamental problem with access. Where does one go? Start with the seller, and if that does not work, see if the sector has an Ombud or a similar office. Evidence from the UK (where the ombudsmen are more visible) reveals that the creation of ombudsmen has noticeably improved the odds of receiving redress at the first step. The reason, for the progress is not obvious: it is that the Office of a sectoral ombudsman provides messages to individual sellers about the need to improve service. If a successful system is set up to provide annual reports to the public on success or failure to meet benchmarks, helpful incentives will be in place. Thus, private and public redress methods are not substitutes: the Office of an Ombud is a complementary input with the firm's complaint management system.

There are two problems with coverage: one deals with getting all suppliers to join, and the other concerns the fast-changing product / service mix at each outlet. The difficulty arises from the large number of provincial and product jurisdictions that share responsibility for financial services. With the rapid proliferation of differentiated products, there is uncommon confusion

³³ ACEF concluded that the UK approach was most independent among many countries studied. Association coopérative d'économie familiale du Centre de Montréal, *L'Ombudsman des banques: un instrument pour s'accorder*; rapport présenté au ministère de l'Industrie du Canada, 27 Novembre, 1995, p. 61. A year later, the ACEF Centre, Montreal, issued *La création d'un ombudsman bancaire: quelques éléments d'analyse*, "document de référence, rencontre "Bétir l'avenir" Ottawa, 1996.

³⁴ CCRC *Position Paper No. 1*, September 1997, Ottawa, Canadian Community Reinvestment Coalition. In 1995 the affiliated group, Democracy Watch, had outlined much the same reasons for skepticism about the success of a banking ombudsman who is not independent. "Balancing the Financial Services Marketplace" Democracy Watch, November, Ottawa.

³⁵ Association coopérative d'économie familiale du Centre de Montréal, (ACEF), *L'Ombudsman des banques: un instrument pour s'accorder*; rapport présenté au ministère de l'Industrie du Canada, 27 Novembre, 1995; p. 87. ACEF asked for ". . . une forte majorité de personnes provenant de l'extérieur du milieu bancaire, y compris des représentants des consommateurs et des petites entreprises. Ce Council devrait notamment être chargé de la sélection de l'Ombudsman. Il pourrait également être chargé de l'adoption du budget annuel . . ." p. 87. As of 1998, the Canadian Banking Ombudsman can be removed only by the independent directors.

³⁶ House of Commons Standing Committee on Finance, *M. Bevilacqua, Chair: Report on Tied Selling: Section 459.1 of the Bank Act*. Report No. 07, June 17, p. 3. Ottawa

over where to go to seek redress. Clearly, the best outcome for the customer is a single source redress office. This might be financed on a deposit insurance model. All firms must pay a user fee to the Office of Financial Quality with a partial rebate to firms belonging to the One-Stop Ombudsman's Office provided they also live up to benchmark level of performance.

A Nordic Model

The proliferation of new financial services challenges any product-based, or any supplier-based approach to regulation. Even the approach to transparency that has worked so well in the past in the US is threatened by the blurring of product lines. Can we keep up with "Truth in _____" legislation for each new offering? Surely a general approach based on "Truth in Exchange" would be superior.

The Nordic system of combining competition surveillance (with a consumer focus) with an independent consumer ombudsman quickly brings problems to the attention of the participants concerned. Thus, it advances the time scale for adjusting the competitive structure. At first blush, it may appear to increase the social expense of surveillance because public offices register visible expenses. But firms and consumers work together to develop "guidelines" that are optimal for all. This brings cost savings in the form of (i) direct firm costs for document development, for court appearances, and from sales lost to suppliers of lemons, (ii) social costs of legal preparations and appearances, and (iii) costs of consumers deprived of redress.

Lessons from Down Under

In a Canadian context, there is a case for adding a serious new set of responsibilities to the Competition Bureau. This has, at a minimum, operational attractiveness.³⁷ The Bureau can focus on transparency principles and redress systems rather than on one or another specific financial service in the constantly evolving marketplace. The prospects for *functional* regulation are not good, given the current transmogrification of financial products and suppliers. The case for placing additional supervisory responsibility on the Competition Bureau is strong, especially in a country with Canada's constitutional division of responsibility. It can be argued, as it was in the conclusion of the Australian Financial Systems Inquiry in 1997, that an entirely *financial* supervisory agency is superior to the Competition Bureau approach. Here is how Peter Kell of the Australian Consumers Association assesses the recommendation of the Inquiry:

³⁷ The approach taken by competition guardians in most countries, Canada included, is one where the goal is to create the appropriate "framework" for market incentives. This is far less interventionist than administrative "firefighting" each time a problem arises in one or another financial sub-market.

Consumer Protection Structure

The proposal to establish an integrated consumer protection regulator, the Corporations and Financial Services Commission, was supported by ACA. It is important to have consumer protection powers that are specific to the finance sector "under the one roof". The CFSC will be based on the Australian Securities Commission and will take on the Insurance and Superannuation Commission's consumer protection powers as well as those with the Reserve Bank Payments Systems Board and the ACCC's role in this industry. The danger is that the ASC will not get the resources to undertake its expanded role. (The CFSC name has been changed subsequent to the FSI Report and it will now be known as the Australian Securities and Investment Commission (ASIC)).

The removal of the ACCC's role is the key recommendation that has generated concerns for ACA. Recommendation 3 proposes that the CFSC has sole responsibility for administering consumer regulation in the finance sector. The ACCC loses its economy wide "backstop" consumer protection functions as they apply to the finance sector. The ACCC had a good track record in enforcement and driving industry reforms, and has developed the link between competition and consumer protection regulation. Furthermore, there was no evidence presented to the Inquiry that the ACCC's consumer protection role in the finance sector is posing any meaningful difficulties for industry.

Kell (see Vol. 2, Ch. 3, p. 211).

The tension evident is largely explained by the resources to be made available. Are we to compare the current situation to a well-staffed, and visible new supervisor or to an anaemic new facade?

Private Responses: Complaint Management

It can be more profitable to spend money to retain an unhappy customer than to try to gain a new one ("defensive marketing"³⁸). Only a small fraction of disappointed customers will "voice" a complaint.³⁹ Yet complaint information is an important source of dynamic product (service) improvement: some firms gain an edge by making prompt improvements based on information gained this way. Some US firms moved into "complaint management" with the program financed on an experimental basis by Esther Peterson's Office of Consumer Affairs under President Lyndon Johnson. The Technical Assistance Research Program eventually spawned many imitators and several US financial institutions adopted complaint management techniques

³⁸ Fornell, Claus and Birger Wernerfelt. 1987. "Defensive Marketing: Strategy of Consumer Complaint Management, Theoretical Analysis," *Journal Marketing Research*. 24, 337-46.

³⁹ Alan Andreason and A. Best, "Consumers Complain – Does Business Respond?", *Harvard Business Review*, July 1977.

more than two decades ago. Some Canadian firms adopted the methods by the early 1990s. Why were institutions in some countries, Canada included, slow to make use of complaint management? In fact, as late as 1997-98, the Ontario Insurance Commission (OIC) started to *require* auto insurers to keep statistics of the satisfaction of motorists who have submitted accident claims. The intention here is to provide potential customers with a signal of the quality of each firm. In an effort to entice firms into making use of complaint information, the OIC now requires each firm to appoint a senior executive to act as an ombudsman. The disappointments consumers face with insurance claims illustrates that even in a market that appears to be competitive – where there are more than a hundred suppliers – redress can still be a serious problem. Many senior executives have treated complaints as a negative message to be avoided. Under the conventional economic response to poor service, a customer merely leaves ("exits") the seller. This is a painful way to learn that "loyalty" is not in force.

In general, one finds, throughout the world, customers waiting in long lines or clients being treated to arrogant service, wherever the consumer is trapped in a relational exchange without a ready alternative. There are some astute American financial institutions with a two-decade lead on Canadian institutions⁴⁰ with a customer focus. But Canadian firms are not by any means always at the back of the pack. One clear advantage for Canadians is with ATM service – where we have high market penetration – because coast to coast banking has provided suppliers with efficiencies while also providing consumers with ready access to bank machines. This lessens the need to pay extra fees for using ATMs from suppliers other than your own. Some parts of insurance are handled at levels that earn export revenues. German banks exact such a high "time price" from customers that they are seeing remarkable "exit" as customers flock to electronic sellers.⁴¹ Canadian institutions are still well behind best international practice in certain areas of great importance to consumers, notably with transparency and redress.

⁴⁰ James Brown observes: "Amex is (and has been) widely hailed for endeavoring to (and generally succeeding in) making its informational practices among the best in the industry." (Vol. 2, Ch. 2, p. 169). On the basis of evidence from Canada's National Quality Institute and from complaint handling at the Consumers Association of Canada it can be seen that credit unions either generate few complaints or else they handle them well. Trust companies, including institutions large enough to require a competitive response in the marketplace, also had a customer focus as is evident from innovations important to consumers. These include daily interest computation, and hours of operation that were based on customer needs rather than on convenience of the suppliers.

⁴¹ Subsidiaries of foreign banks are seizing the opportunity to handle basic banking. "But the biggest shocker may come from tough new competitors, such as E*Trade . . ." with flat fees instead of the remarkably high percentages charged there. On the seller's side, the costs are also encouraging " . . . because, according to consultants' estimates, a transaction done on the phone costs half as much as in a branch. Internet transactions are even cheaper. Bank 24 figures each one costs 1 cent vs. \$1.12 via phone." *Business Week*, July 9, 1998 by bwwebmaster. In one woeful 1997 case a large German bank offered a customer hotline in an effort to improve service. A few seconds after a cheerful greeting the line would disconnect. Evidently they did not foresee the load.

Evidence on the Economics of Complaints

One important assessment of complaints handling systems was done recently in Australia. Referred to as the American Express – SOCAP⁴² Complaints Handling Study, it rounded up the usual suspects, finding that:

1. On average, 95 percent of customers *without* complaints will remain loyal.
2. On average, unsatisfied complainants tell nine people about their dissatisfaction.
3. Fully 89 percent of customers with a problem and not satisfied with the way their complaint was handled, will not deal with the company again.
4. Over 80 percent of those who express a complaint, and subsequently receive more than they asked for, will deal with the same company again.
5. Consumers who had experienced a complaint are more likely to return to deal with the same company in industries which were highly competitive and / or where choices were greatest.

The 1997 Canadian survey⁴³ by the National Quality Institute found that 72 percent of 10,333 consumers rated banks as "excellent" or "good" in overall service quality with real estate and life insurance earning slightly better ratings. Trust companies are always higher in these ratings and credit unions higher yet. Credit unions were third from the top among 21 services rated, auto insurance earned seventh spot and banks were seventeenth.

⁴² SOCAP is the Society for Consumer Affairs Professionals. The study is reported in: Australia Competition and Consumer Commission, *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace*, Discussion Paper, Commonwealth of Australia, Canberra, August 1997.

⁴³ Conducted by ACNielsen for the National Quality Institute using questions developed with the Consumers Association of Canada. *How Canadians View the Quality of Products and Services 1997 Annual Report*, National Quality Institute, Etobicoke, 1997.

**Perceived Changes in Service Quality Over Past Three Years
Financial Service Sector Compared to Average for 21 Services**

Canada

Data Collected in 1997 by the National Quality Institute

	% Improved	% Stayed the same	% Declined	Improve / Decline Ratio
	-1	-2	-3	(4) = (1)/(3)
Average for 21 Services	19	64	16	1.2
Credit Unions	25.7	64.8	9.6	2.7
Trust companies	25.9	57.9	16.3	1.6
Real Estate Agents	20.9	67.2	11.9	1.6
Auto Insurance	12	77.5	10.6	1.1
Insurance	12.6	71	16.4	0.8
Banks	17.8	57.2	24.9	0.7

Source: *How Canadians View the Quality of Products and Services*, 1997 National Report, National Quality Institute, Etobicoke, 1997. The survey, conducted by mail by A C Nielsen, had a response rate of 78.3 percent and included 10,333 consumer respondents.

More consumers see an improvement in quality over the last three years for auto insurance, real estate services, trust companies and credit unions. For banks and insurance firms, more consumers reported a decline in quality than an improvement. To try to get a better understanding of this finding one can look into the sub-components of quality. These are: quality of service people, after sales service, level of courtesy, promptness, and providing clear and complete information. The short answer is that little is added to our understanding because the ratings on the sub-components are very close to the overall ratings. Sellers in the financial services sector do well on "courtesy" and score higher in rankings for courtesy than on the overall index for quality. That is also generally true for the ratings based on the quality of service people. Auto insurance ranks seventh in the overall quality ranking but only tenth on the rank for after sales service. In the end we are not able to determine from the data whether the leaders in the financial services sector understand the consumers' views on quality or whether they have astutely calculated the level of quality needed for the confusing marketplace in which consumers find themselves.

Transparency, Redress and Quality

Greater Use of the Marketplace Requires Increased Emphasis on Transparency

The transparency regime has seen progress lately but a move to greater reliance on market forces requires much more attention to the need for essential market preconditions. In this effort we need to be sure that policy is practical enough to take account of cognitive limitations and informational overload. The sale of financial services includes serious problems with incentive incompatibility, especially as we continue to move from the single pasture financial world to one occupied by financial conglomerates. As we rely more on competition, the gaps between Canadian practice and standards for redress elsewhere, urgently need attention. Globalization is proving to be a second imperative for improved redress measures. Virtually every consumer review reveals major and unexpected problems with redress for international financial services. We must be certain that the new regulations do not make it too easy for the shady firms selling "lemons" to thrive at the expense of honest sellers and consumers alike.

There is a direct association between country's policies on redress and the quality of its goods and services. Though it may seem counterintuitive, the seller's assessment of the quality of the firm's service is not all that useful. To assess quality one really must incorporate the views of consumers. Redress policies are central to this assessment because they directly affect the customer's view of the quality of a firm's service. In addition, the information provided by one's customers has economic value, especially if a firm can use that information to gain an edge on competitors. Either way, since quality makes the firms competitive, quality has a central role in determining the future of the financial services sector, including success in the international marketplace.

Even though quality can only be assessed by the consumer's appreciation of the output, the history of quality control is beset by a fascination with inputs. In the early part of the century Frederick Taylor developed a theory of quality which was widely applied by industry. A main step forward was taken in the 1960s when the United States Office of Consumer Protection provided a grant for the formation of the Technical Assistance Research Program (TARP). Over time, this program developed a formula for measuring the economic impact and value of information contained in complaints. Although consulting activity was brisk, little impact was made on the overall economy until the concept was introduced into the marketing literature as "defensive marketing." This development ought to be mainstreamed off marketing experts and resulted in a huge increase in the number of firms providing expertise. One of these firms eventually won an award for quality excellence. By the end of the 1980s a large portion of the corporate sector was aware of the value of effective redress policies.

The redress policies of Canada's financial services providers must meet the best international practice if Canadian firms are to have a bright future in the international marketplace. There are two pieces of evidence to suggest that we were relatively late in recognizing the need for the effective redress policies. The first is the head start gained in Europe where firms had institutional incentives. These are outlined in a thorough summary done by Kiersti Graver in

1987 entitled *Consumer Redress Systems in Seven European Countries*.⁴⁴ A second type of assistance is demonstrated by the quality system already in place to assist firms, including financial firms, in Sweden.

Sweden has used a national customer satisfaction barometer since 1989.⁴⁵ The program provides firms in Sweden with results not available to others. Customers of firms in many different industries are surveyed to determine customer satisfaction with the major products or services of specific firms. The individual firms learn of their own scores and they learn the average score for the firms in their industry. This is a national effort at bench marking customer satisfaction. High performing sectors include automobiles, basic foods, and pharmacy. In middle is banking followed by insurance and followed by life insurance and other sectors. The information tells whether the firm is improving from year-to-year relative to its competitors. This provides Swedish firms with an important competitive advantage. Sellers who are near the bottom of their category get an early message that improvement is required. In the 1990s, a national satisfaction barometer was undertaken for United States. It is possible, therefore, that Canadian firms which are branch plants of US firms have gained this useful information. In general, such information will not be available to Canadian firms, including some fairly large firms in the financial services sector.

Transparency and Redress as Components of Quality

Matters like transparency and redress do not receive much attention in traditional approaches to banking and finance. The matters are of much interest in the "modern" approach to financial economics either. Perhaps this is explained by the focus on price and quantity, not asking much about quality. The result of this focus is that neither the traditional, nor the modern, approaches to finance is well designed to include quality, in any analysis. The focus on **suppliers** of financial services is partly to blame: Quality is wholly based in the minds of consumers.⁴⁶ Quality is a difficult concept in financial services because it consists of a wide variety of fundamental "characteristics" (e.g. promptness, helpfulness, clearness, etc.) with each consumer able to include a different mix of them, and with the general importance of the characteristics changing over time.⁴⁷

There is a core belief in the value of competition going back to The Wealth of Nations. Adam Smith's vaunted opposition to monopolies was clearly related to the ability of competitive markets to respond to the assessments of consumers. The tradition in micro-economics is that

⁴⁴ Kjersti Graver, 1987, *Consumer Redress Systems In Seven European Countries*, SWOKA, Stichting Wetenschappelijk Onderzoek Konsumentenaangelegenheden, Institute for Consumer Research, Den Haag, pp. 235.

⁴⁵ C. Fornell, 1992. A National Consumer Satisfaction Barometer: The Swedish Experience," *Journal of Marketing* 58; pp. 6-21.

⁴⁶ It is reminiscent of an apocryphal tale from baseball lore. According to the story. A crusty umpire asserts: AThey ain't balls; they ain't strikes; they ain't nothin' "till I calls em." High quality exists when the customer says so.

⁴⁷ Greg M. Lepak, 1998, "A Bayesian Approach to Analysing the Services of Banking Institutions," *Journal of Consumer Affairs*, 32, 1 pp.121-44; Andrew C. Kormylo, 1991, *Consumer Satisfaction with Banking: The Concept of Quality in the Service Sector*, A research paper for the degree of Master of Arts, Economics, University of Waterloo.

increased competition leads to increased attention to consumer wants. The evidence leaves little doubt about a connection between market concentration (competition) and the quality of financial services. Testimony comes from survey data collected by the National Quality Institute. In a general sense, customers assess higher quality in those sectors with more players. Clearly a number of other factors are at work too, especially with credit unions (which might be, in local markets, few in number) but on the face of it one might expect banks to be rated higher than, say, auto insurers. Canada has well over a hundred auto insurers in many provinces and few banks. If "good" plus "excellent" responses are added together as representing positive appraisals of quality, consumers award higher scores to less concentrated sectors like auto insurance. Even before the recent takeovers, there was a close inverse relationship between the rankings of quality and the concentration of the sector. The concentration rankings, from most to least can be matched with service rankings by those in the 1997 NQI sample of 10,333.

	% of Market Held By Largest 4 Firms⁴⁸	NQI Quality Rank (of 21)
Domestic personal loans	(63%)	16
Life insurance	(35%)	13
Auto insurance	(21%)	9

Sectors with more competitors reveal higher quality as rated by customers. A better test can be administered for Sweden. Sweden's National Consumer Satisfaction Barometer collects detailed data which permits more accurate testing. This evidence is compelling: there is no doubt that sectors with fewer suppliers provide lower quality, as assessed by consumers.⁴⁹ A similar result is apparent in the Canadian securities industry which has rapidly become concentrated into fewer and fewer hands. The study by Greenwich Associates, based on interviews with 87 of Canada's largest fund managers uncovered concern about a decline in overall quality of service offered by brokerage houses. The evidence strongly suggests that the Canadian market will, in a dynamic sense, lag best practice elsewhere because of a reduction in the competitive pressure to provide the best technology available for trading.⁵⁰ Much of the reluctance to adopt new technology, cyber trading for instance, has a powerful economic motive.⁵¹ A firm can lose profit by moving high fee customers into the low price segment of the market.

⁴⁸ Edwin H. Neave, 1989. "Canada's Approach to Financial Regulation," *Canadian Public Policy – Analyse de Politiques*, XV, 1; pp.1-11.

⁴⁹ Claes Fornell, 1992. "AA National Consumer Satisfaction Barometer: The Swedish Experience," *Journal of Marketing* 58; pp. 6-21.

⁵⁰ Among other things, this reduces liquidity below what it could be. Andrew Willis, "Financial industry lagging on technology: survey," *The Globe and Mail*, 23 May, 1998; p. 23.

⁵¹ Trading fees for plain vanilla transactions (with a few computer glitches) "... have fallen by half over the past year and now average about \$16. Industry insiders say a trade costs an online broker about \$5, leaving plenty of room for profit. And like their traditional brethren, E-brokers earn another \$5 to \$10 on some NASDAQ stock trades from "payment for order flow" – a legal kickback for steering your transactions to a market-maker" Amy Dunkin and Dean Foust "Online Brokers: Do you get what you pay for?" *Business Week*, May 25, 1998; pp. 130-32.

On the other hand the degree of concentration in retail banking can have a few benefits. Financial sector analysis concerns itself with efficiency, a worthwhile focus, but fails utterly to investigate whether or not efficiency gains have been passed on to consumers. Vigorous price competition will achieve this. Some sophisticated treatments *assume* that markets are contestable so that benefits are passed along. This approach is naive about the barriers to entry posed by the need for a charter in the care of banks, or the cost of joining the Canadian Payments Association or the Interac system. From evidence collected for Australia's Financial Systems Inquiry, the efficiency of Canadian banking was at the top of the comparison set.⁵² In the concentrated sectors of our financial systems it is much less urgent to compete, and that includes competition on the bases of transparency, redress or other aspects of quality. The technological lag in investment services is testimony to that. It is highly unlikely that mutual fund buyers in Canada can do as well as those in the US where the informational standards are higher. Canada's Insurance industry has met international competition. In this regard, Jeremy Mitchell's assessment is that "It is no coincidence that Dutch and British insurance companies" – which have long operated in competitive national environments – are most likely to succeed in the international marketplace.

Quality, it seems, is a creature of competition.

Duelling Jurisdictions

It is held in some quarters that if sellers are allowed to choose the jurisdiction in which they are regulated, there will be a migration to the jurisdiction that best serves all. Jurisdictions with *costly* requirements for the provision of information (or other protection) *not* valued by customers will be avoided. Firms migrate to the jurisdiction with the most effective rules for providing the optimal amount of consumer protection. The opposite supposition is that sellers will operate, when there is a choice, from jurisdictions with the weakest provisions for consumer protection. If evidence is consulted, it threatens both positions but does not provide an unequivocal rule that provides practical resolution. Certainly in the history of food regulation there are some examples where sellers of superior products chose to signal that they operated to a high standard. Even today, some Canadian food imports from Europe state: "registered with the Pennsylvania Department of Agriculture," for example. The seller's intent is to signal that local obligations are met and there is a willingness to meet an even higher standard. The registration of ships in Liberia provides a contrary example. In financial services the most conspicuous example may be the New York Stock Exchange. Despite a few conspicuous problems, a listing on that exchange conveys a signal that the listing company has met reasonably high standards. A difference in signal exists, for many people, in listings on the Toronto versus Vancouver Exchanges. In 1998, Canada received international attention for the ineffectiveness of

⁵² On the basis of operating expenses as per cent of assets, the larger Canadian banks did slightly better than banks in the UK, Australia, the US and New Zealand over the whole of the 1986 to 1996 period. *Financial Systems Inquiry*, Australia, 1997; p. 464.

supervision by the Toronto Stock Exchange.⁵³ In most cases the firm wishing to sell in any province will be obligated to at least meet the local standard.

The theory on economic signals is a little help. The central argument is based on the reputation model in economics. The authors, Klein and Leffler, develop the conditions where reputation alone guarantees that the seller has an incentive to be truthful and reliable.⁵⁴ Banks and other institutions, for example, have a huge amount of non-salvageable capital in their brand name / reputation. Depositors normally represent a high present value as a stream of future transactions. Thus the incentive structure, on these two factors, obliges the institution not to disappear with the assets of customers. With the odd spectacular exception (like Principal, BCCI or Barings) honesty is normally what we observe.

A similar regime-shopping strategy can exist if many different product-specific standards are set. As Brown points out for the US, firms might be able to move some products (and in this industry, many products are amorphous) from one regime to another:

Some consumer representatives have accused some vendors of purposefully transforming what are functionally instalment credit obligations into putative open- end arrangements, in part to mask the true costs and terms of the arrangement behind the relative complexity of open-end disclosures. Several prominent lawsuits challenging such practices are currently pending. This practice is mentioned to point out the dangers in designing dramatically different disclosure regimens for what can be functionally (at least, nearly) interchangeable products.

James Brown, (see Vol. 2, Ch. 2, p. 168).

The example illustrates the advantage of a single standard for disclosure, as well as the advantage of a single supervisory authority.

A case might be made for having as many as two signals, one for "minimal" and one for "high" standards. But the existence of eleven standards for many of the increasingly complex⁵⁵ financial services in Canada is a guaranteed recipe for confusion among consumers. In this regard, the harmonization effort for transparency in lending deserves high praise. **If Canada's Cost of Credit (harmonisation) effort had been completely successful, Canada's transparency would have advanced to the level first achieved in the US in 1969.** Some of the impediments

⁵³ *Business Week* highlighted two prominent scams, BRE-X and YBM Magnex as scandals that should have been detected by effective supervision. "Red Flags? What Red Flags? Despite Bre-X, Canada's regulators let another lulu get by," June 8, 1998; pp. 114-15. Recently the TSE announced that it would hire more inspectors, a policy which would bring the number closer to the supervisory levels used elsewhere. Too, in 1998, the TSE began a practice of publicising the names of listed firms failing to provide information as required or on time.

⁵⁴ Benjamin Klein and Keith B. Leffler, 1981. "The Role of Market Forces in Assuring Contractual Performance," *Journal of Political Economy* 89 (4); pp. 615-41.

⁵⁵ Recall the appraisal of one inquiry, the warning about new "informational risks" as in Alberta's Cashion Report: "A further technological advances come on stream . . . extremely sophisticated products are appearing" [and] "distinguishing among the hundreds of choices at hand is confusing for all but a very few consumers" (*A Blueprint for Fairness*, 1989, p.22).

to achieving a single code are based in differences in legal traditions and in enforcement prospects but three costs result from the continued existence of differing systems. First, some consumers have high interpretation costs to decipher differences. Second, low quality sellers can hide in any confusion that continues. Third, compliance costs for differing systems must be passed on to the final customer.

In some important cases there is no jurisdiction providing the information so important to depositors, policyholders or individuals with funds at risk. Canada has, for instance, argued for international cooperation on capital movements to track circumstances where large financial institutions choose to have excessive participation in opaque foreign markets.⁵⁶ If the institution is "too big to fail" an individual might get some extralegal protection from the government, but even there, he or she is at risk as a taxpayer. In a recent emergency, bond rating agencies gave a relatively clean bill of health to troubled Asian institutions right up to crisis day. This rating difficulty has also occurred with unsound domestic financial institutions. Thus it is naive indeed to expect *individuals* to be able achieve the level of transparency needed for prudent decisions. This is not exactly new. Recall that in 1912, Wesley Clair Mitchell wrote that "*Our faults as spenders are . . . largely due to broad conditions over which as individuals we have slight control.*"⁵⁷ What is missing is an international public good in the form of an agency or an international sharing arrangement. Again, the problem cannot be addressed on an individual basis and no amount of jurisdictional competition is likely to resolve it.

A completely different argument for effective regulation rests in its ability to stretch suppliers to offer higher and higher quality service. Michael Porter argues:

*Strict regulatory standards can be a potent force for spurring upgrading in industry, provided they are designed and administered effectively. Strict product quality and safety standards pressure firms to improve products in ways that are eventually demanded by international markets. Regulatory standards in areas such as construction, telecommunications and transportation can stimulate early and sophisticated home demand. Tough standards for energy efficiency and environmental impact trigger innovations in product processes that are highly valued elsewhere. In all these areas governments in Canada should be continuing to move toward more stringent standards and regulations.*⁵⁸

⁵⁶ "The East Asian crisis [1997 -] can be described either as excessive borrowing abroad by the private sector, or as excessive lending by international financial markets. In any case, there is a failure of free capital markets to produce an optimal global allocation of capital. As pointed out by Alan Greenspan, it is clear that more investment monies flowed into these economies than could be profitably employed at modest risk. In this sense, it is a global crisis with a regional trigger. Yilmaz Akyüz, 1998. "The East Asian Financial Crisis: Back to the Future?" Web site www.unicc.org/unctad/en/pressref/prasia98.htm#fn4 for Dr. Y. Akyüz, Chief, Macroeconomic and Development Policies, UNCTAD, Geneva.

⁵⁷ Mitchell, W. C. 1912. "The Backward art of spending money". *American Economic Review*, 11, 269-281; at p. 269.

⁵⁸ *Canada at the Crossroads: the Reality of a New Competitive Environment*. A study prepared for the Business Council on National Issues and the Government of Canada by Professor Michael D. Porter, Harvard Business

The Consumer Interest in Deposit Insurance and its Supervision

Two different sets of responsibilities exist: prudential supervision and market practice supervision. Responsibility for deposit insurance rests with the Canada Deposit Insurance Corporation (CDIC). Regulation is jointly done by CDIC and the Office of the Superintendent of Financial Institutions (OSFI) which regulates the soundness of financial institutions. The CDIC Act lists three purposes:

1. to protect small and uninformed depositors,
2. to protect member institutions against "runs" and wasteful insolvencies,
3. to foster competition by lowering the costs of entry.

There is little doubt that the CDIC has been successful in protecting small depositors. In fact, the main dispute is over the level of protection: some feel that 100 percent coverage for losses of depositors in failed institutions is too high. The argument is one of "moral hazard" on the grounds that depositors would be more circumspect about where they put their money if they stood to lose something when an institution failed. In the United States, deregulation of the 1980s seriously relaxed the supervision of financial institutions, especially Savings and Loans operations (S&Ls). Every sharp owner could make unsafe loans to borrowers, including related party borrowers, leading to profits for all if the borrowing company succeeded. If the borrower defaulted, the S&L failed with subsequent claims on the U.S. deposit insurance system. The losses through the 1980's exceeded 150 billion (dollars with estimates to 500 billion). At its worst, loans were made to related companies, not to everyone on some democratic basis. More than 90 percent of the S&L losses involved "management weaknesses" and more than 30 percent was outright fraud. Thus there is much evidence in the US that the deregulation of financial institutions – especially S & Ls – led to perverse incentives or moral hazard.

It is difficult to find a comparable lack of supervision in Canada. If we want to stand on guard against similar abuse, there is some potential "moral hazard" which exists in any Canadian trust company having a dominant owner. Confederation Trust, in Canada had a dominant owner (Confederation Life) and made an excessively large portion of its real estate loans in an undiversified manner. Bad as this is, it is not so deplorable as many US examples. In Canada, the risk to be faced is that a conglomerate owner of a trust company will be tempted, in tough times, to make loans to other parts of the corporate empire. This could be much reduced if trust companies were treated on the same basis as banks by restricting owners to at most a 10 percent share of equity. That improvement is worth making. On the more general point, Canadian financial institutions operated with better supervision than what prevailed in the US in the 1980s.

If the record of the CDIC is solid on the prudential section of its mission, its effects on market behaviour have still received criticism. The argument is one of "moral hazard" where depositors are tempted to place too many deposits in the risky institutions, presumably to earn higher

interest there. This seems more accurate for the US experience. The chief response of the Consumers Association of Canada to those pushing for coinsurance is this: How would coinsurance have prevented the Royal Bank or CIBC from making imprudent loans to Olympia and York? Would it have prevented any of the big banks from making their third world losses? "yes" answer makes the "PIT fallacy" of assuming a "Perfectly Informed Teller." If a depositor asked any bank teller (or the ATM) "Is your institution making unwise loans?" would the teller tell? Would the imprudent activities be listed on the web page? It is extremely difficult for a depositor to assess the riskiness of the bank's activities. Professionals have not done very well. Coinsurance would make poor decisions cheaper for the bank because the consumer would share the loan losses – which could lead to even more of the unwise loans.

The general conclusion is that consumers are so poorly informed about the lending practices of institutions that they cannot move their deposits to the safest bank or trust company⁵⁹. Coinsurance could only make sense if CDIC or some risk-rating body had a credible track record of providing depositors with understandable information on the riskiness of different institutions. Whatever may be the reason, there is great resistance to allowing depositors to know the risk classification of any financial institution. This reluctance is not restricted to Canada so it may be based on the general interest of owners and managers to protect their interests. It is inconsistent to argue that depositors should bear more of the losses from bad decisions at the same time that depositors are denied information on risks.

The second object of the CDIC is to prevent runs on banks. To date it has been successful. Thirdly, is an important argument that the existence of CDIC has encouraged new entrants. Possibly true if one can include trust companies. This has resulted in more competition on rates. Further, a large number of innovations – like competition on hours, or providing daily interest, or computer banking, or customer service – have come from new players so the goal is important. By 1998 the independent trust company has been taken over by a bank, often in a marriage arranged by OSFI after the trust company got into difficulty. Overall, the system set up by OSFI and CDIC has a record on *prudential* regulation that is not worse than its comparators. Almost certainly, this type of supervision exceeds the general standard.

In supervising marketplace behaviour, OSFI and the CDIC have room for improvement. The CDIC has made a good start. In 1997 the CDIC conducted a study of Canadians' awareness of deposit insurance. Only one respondent in ten was able to identify the CDIC as the agency supervising deposit insurance.⁶⁰ About half could identify CDIC when prompted. The study uncovered an alarming gap between those who understand what is covered, and others. The most recognized item as covered was the savings deposit, but only 25 percent of the 1109 respondents could specify that. About a third of the respondents thought they knew what was insured by CDIC but within that group 20 percent believed at least one ineligible product was covered. Within the two thirds who were aware of their lack of knowledge, fully 86 percent of respondents indeed had serious misunderstandings. At particular risk are the 28 percent of those who actually

⁵⁹ This is the argument in the Consumers Association of Canada briefing paper on *Consumers' Financial Security and Deposit Insurance*, Consumers Association of Canada, Ottawa, 1995.

⁶⁰ CDIC "Public Awareness Research in Support of CDIC Information ByLaw Changes," conducted by Eskos Research Associates Inc. July 1997; Ottawa.

own mutual funds and wrongly believe them to be covered by deposit insurance. The upshot of the Report is a valuable effort by CDIC to have sellers assume more responsibility for informing consumers when an item is not covered by CDIC.

From the perspective of the Task Force on the Future of the Canadian Financial Services Sector one can expect that confusion over coverage will increase so long as institutions traditionally covered by deposit insurance increase the number and range of financial services they offer. For example, those consumers buying mutual funds from banks are more likely to (wrongly) assume their purchase is covered by CDIC. The transparency gap is likely to increase in spite of well-founded efforts by the CDIC.

The CDIC has a clear understanding of its role. In addition, it recently added performance indicators as measurable standards. This is similar to, and superior to, worldwide efforts to get monopoly, or public sector, agencies to use measurable performance indicators. The CDIC measures can be improved, but they are impressive, compared to similar institutions and compared to other public institutions. For example, one of six "service standards" is "Within five days of the closure of a member institution, CDIC will provide depositors with information on deposit insurance coverage and on the deposit insurance payment process. One of five "payments standards" includes: "When advance payments are approved, CDIC will process requests from depositors, and either respond or issue cheques to them within 24 hours of receiving the request."⁶¹ The early evidence is encouraging: the lowest score achieved on any index was an 88 percent rating of "good" or "excellent" by those who had claims in 1996/97.

While the two main supervisory bodies, OSFI and CDIC have done well on prudential grounds, reality in Canada has consumers paying repeatedly for supervision at several different levels. Some of this supervision is conducted at an exemplary level but the duelling jurisdictions present unneeded confusion as well as efficiency losses to providers – losses to be recovered from consumers. The double presentations to the security commissions in Ontario and Quebec in 1998 are but one example. Jurisdictional turf wars are a fact of life everywhere.⁶² Some countries, Canada included, need to make exceptional efforts to reduce the burden of duelling jurisdictions.

Attaining Informed Consumer Input for Balanced Outcomes

Most countries have much more successful systems for providing consumer input that is available in Canada. These include independently financed scientific research organizations to provide researched reports on matters of consumer concern and they also include active consumer organizations. In some cases, the Netherlands for instance, the consumers' organization Consumentenbund (CB) has a very formal role in formulating policy, including

⁶¹ Canada Deposit Insurance Corporation, 1997. CDIC Annual Report 1996 / 1997, Ottawa; p. 30.

⁶² In the United States the important battle between the Federal Reserve Bank and the Treasury will probably end in a more efficient outcome than what can be achieved in Canada: "Greenspan, Rubin in turf war," *The Globe and Mail*, June 3, 1998; p. B10. In countries with fewer competing jurisdictions, Australia for example, the costs of regulation will normally be lower.

legal policy. The government makes regular use of a highly independent committee composed of consumer experts and others. Koopman writes:

*In 1965, a Committee for Consumer Affairs (CCA) was established [to give] advice to the Government on consumer policy issues in a rather independent manner . . . The task of the CCA has been, since its inception, twofold – to advise government and to act as a platform for dialogue between business and the consumer.*⁶³

Koopman, (see Vol. 2, Ch.1, p. 55).

This is also true in Denmark and Norway. In most cases this participation is viewed as part of a "public good" hands is wholly or partly funded through general taxation. Mitchell's review of the UK stresses the point:

*Individual consumers usually do not know how the policymaking process works and in any event may not be aware of the long-term impact of policy proposals on their own financial situation.*⁶⁴

Mitchell, (see Vol. 2, Ch. 1, p. 145).

Germany, which has a more legalistic approach, nonetheless contributes public funding to part of its national consumers' organization for its consumer testing unit dealing explicitly with the financial services sector. Canada once had a national consumer council but for years now, has had no comparable body to provide scientific expertise on consumer matters, much less specifically on financial sector issues. This absence allows Canadian financial institutions to be somewhat more lethargic than sellers in other countries.

Participation of organized consumers in redress procedures is, if anything, even more formalised in most other countries. Sweden and Denmark each have a consumer ombudsman, plus market courts in addition to regular courts, and "consumer agencies." The consumers' agency can represent consumer interests before the general appeal board of the market court. Sweden has gone even further. As an experiment from the first of December 1997 to November 30, 2002 the consumer ombudsman can intervene on behalf of a consumer in the ordinary courts whenever an important legal question is at issue. Special attention will be given to information disclosure in the use of standard terms and conditions. In the past, Swedish banks were prohibited from amending contract terms of savings accounts without notice.

Comparative solutions to resolve banking and mortgage disputes are virtually guaranteed by the method used in the Netherlands. Once again, the system makes formal use of the Consumentenbund.

⁶³ The CCA is currently composed of six representatives from CB, four from the largest confederation of trade and industry, two from the organisation of small and medium enterprises and six independent members.

⁶⁴ Mitchell is not convinced that the substantial (by Canadian standards) level of support is always going to be enough for success: "While the quality of work of the two main UK consumer organisations, Consumers' Association and the National Consumer Council, is high, they lack the human and financial resources to deal with every issue which has a potential impact on consumers." Mitchell, (see Vol. 2, Ch. 1, p. 145).

Two dispute settlement committees operate under the aegis of the Foundation for Dispute Settlement (SGR), the Committee for Banking Affairs and the Committee for the Mortgage Lending Code of Practice. Koopman, (see Vol. 2, Ch. 1, p. 63).

Most countries have made use of expertise provided by their national consumers association. Canada is not completely different in this regard, but the degree of participation is hampered significantly by lack of public funding here, compared to the countries noted. As a result, there is a necessity to make use of volunteer expertise.

The upshot is that Canada is decidedly different from all the other seven countries studied in its inability to get consumer input into public policy. The lack of public interest participation makes a difference for market reform. This lack of public input is the reason for the modesty of past reforms:

[Consider the] reason which explains why we did not get the oft-discussed Big Bang of deregulation in Canada, [and why] we got Small Whimper instead. Whimper is provided by the need for survival of the political groundhog. Once a year the groundhog produces a report for reform, then pops its head above ground to make sure there is no frightening shadow as a threat. In political reality, banks show impressive strength, trust companies have a measure of power and insurance agents are organized in every riding. Each is shining a brilliant beam of light right on Groundhog. There are three terrifying shadows. Thus there is a high political cost to being too venturesome, especially on the reforms needed to increase competition. Hundreds of millions (and more) in market share is at stake.⁶⁵

Market participants have strong views and legitimate concerns. But the real objective is the design of rules for the *users* of financial services, the ultimate consumers who are supposed to benefit from high quality financial products and efficient services. This requires participation by consumers, preferably organised consumers with researched positions. In the Netherlands, the official system for redress makes explicit use of organised consumers. Indeed, practice in most other countries indicates that a formal method for having organised consumers participate in the development of market rules is routine and extremely valuable. Why is Canada a laggard in making use of consumer input? Canada has particular problems in financing the "public good" and only a small contribution is possible. Two methods may help. First, the Canadian Community Reinvestment Coalition has argued for a compulsory mailout of an offer to join a Citizen's Utility Board to be sent with bank statements. Volunteer donations are to be used to finance consumer participation in financial sector issues. Such a policy exists in California and in three other jurisdictions. The Consumers Association of Canada (CAC), which has

⁶⁵ Robert. R. Kerton, 1990, "Financial Quality and the Consumer Interest", *Canadian Banker*, 97(4) July/August; pp. 6-13. With the take-over of the trust companies one might argue that the animal is blinded by only two bright lights. The candlepower may be as intense as before.

participated in many financial sector hearings in the past,⁶⁶ is unable to raise funds through magazine sales because of the high quality and appropriateness of *Consumer Reports* from the US. It is a particular tragedy that the CAC cannot run tests on the financial sector because financial services are very different, for a number of reasons (legislation, degree of concentration) and the US results in *Consumer Reports* do not apply with much accuracy. Moreover, the lack of forcefulness in Canadian consumers has been lamented. Michael Porter argues that

Companies that gain competitive advantage in sophisticated industries and industry segments often benefit from having domestic consumers who are among the world's most demanding buyers of the products and services. Such buyers provide a window or advanced customer needs, pressure companies to meet our standards, in encourage them to innovate, improve and upgrade into more advanced segments. In a ten-nation study, favorable home demand conditions were found to add competitive advantage in a vast majority of industries studied. Countries frequently gain competitive advantage in industries where the nature of home demand gives companies a superior or earlier understanding of emerging buyer needs. . . . Canadian buyers are rarely at the leading edge in demanding innovative consumer goods. They are also reluctant, at least compared to American consumers, to voice complaints or to utilize consumer advocacy agencies to pressure providers of goods and services to enhance the products.⁶⁷

The national consumers' association has a weak association with the Ministry of Industry which has a primary interest in other matters, including selling. CAC and similar groups should surely have a closer association with the Ministry of Finance because of the common concern with marketplace success, taxes, incentives and the direct interest in the financial sector. This is the case in Germany where the Economics Ministry provides support to the consumer sector. There is a noticeable gap between Canadian practice and the practice elsewhere for gaining consumer input to financial sector policy.

Nordic countries make use of consumer ombudsmen. In the Danish case, the office of the ombudsman has little power of coercion yet it still plays a significant role in influencing businesses to adopt high standards and consumer protection. In Canada, the institution of the ombudsman is barely visible. In its early forms it does not have the character, and certainly not the presence, of any general consumer ombudsman. The Canadian Community Reinvestment

⁶⁶ The CAC claims much of the credit for public interest work to introduce RRSPs and for increasing the limits on CDIC insurance from \$20,000 to \$60,000, among other things.

⁶⁷ Porter argued that ". . . high levels of corporate concentration in many sectors combined with historically weak competition laws and barriers to inter-provincial trade serve to dull domestic rivalry. These Canadian firms operate in a structure that allows them to achieve strong profit profitability but doubtless that does not translate into international competitiveness." *Canada at the Crossroads: the Reality of a New Competitive Environment*. A study prepared for the Business Council on National Issues and the Government of Canada by Professor Michael D. Porter, Harvard Business School and Monitor Co. October 1991. ISBN: 0-662- 19218-4. p.52

Coalition has proposed a checkoff scheme for financial consumers as a method of financing input. Such a system exists in California and three other states. Not surprisingly, the concept is universally opposed by sellers in the Financial Services Sector. The upshot is that in Canada none of the main methods for providing researched consumer input is available. There is no national consumer council, nor is there a soundly financed association of consumers, nor is there a consumer ombudsman. The result is that with the proliferation of new products and new sellers deploying new marketing techniques, Canada is singularly ill prepared to provide researched consumer input for balanced outcomes.

Consumer Education

Consumer education in the success of consumers depends upon the difficulty of a consumer decision. This in turn is based on the complexity of decision to be made and the resources available to the consumer for making a decision. The decision-making capability of consumers is restricted by the difficulty "d" of the decision to be made. Contrary to what many seem to believe, this is not a single-valued variable. The difficulty is also based, in a very important way, on the amount of effort and resources placed in consumer education. The relationship therefore is of the following sort, where "d", the difficulty depends on the ratio of "C" the complexity, to R, the resources available for decision-making.

$$\text{Thus } d = C / R.$$

The duty of providing consumer education is taken very seriously in most countries. In the United States, for example, the Federal Reserve Board has a large unit providing printed and electronic materials for general consumers and especially for classroom use. In Denmark the consumer ombudsman produces both seminars and materials for training. In Sweden the consumers' agency provides courses to local consumer advisers and provides educational material through the school curriculum. In the Netherlands general education takes place through a weekly television program and considerable effort is made to ensure that consumer education allows citizens to participate in the market economy by making effective financial decisions.

In Canada, some effort is devoted to consumer education in schools. Within this effort, financial institutions have provided learning material.⁶⁸ This can raise some concerns such as those in Sheila Hardy's *Hucksters in the Classroom*. In the main however, the chief difference between Canada and comparable countries is the relative lack in Canada of publicly researched material on financial sector purchases. In United States, some concern has been expressed about the participation of course material from corporations in the classroom. Indeed some self-serving examples have come to light. However in the well- financed consumers union has an important

⁶⁸ Noteworthy for being early with pedagogically sound material was the Royal Bank. Each province has its own perspective on consumer education but in general, the move away from "consumer protection" to deregulated markets has not been accompanied by increased efforts in consumer education. In the mid 1990s, the federal government has initiated a small experiment, managed jointly with the Consumers Association of Canada, on consumer literacy.

effort through its magazine and through sound resources devoted to the regular media and to the Web.

Elements of Some Practical Policies

For successful redress, the financial services sector must first have some common agreed-upon benchmarks for what an effective compliance system should contain. The core items outlined in chapter 1 cover the main ingredients. A recent survey of consumer protection mechanisms is reported in *The Global Enforcement Challenge*⁶⁹. The exercise enlarges the list to identify 11 essential components for complaint handling systems. Policies are to be:

- quick
- affordable
- transparent
- fair
- effective
- user friendly
- accessible
- well-publicized
- straightforward
- professional, and
- appealable.

The list identifies components that would enter into an effective standard for complaint handling. With this, and other inputs, Standards Australia has succeeded in developing a standard [18 S. 4269 – 1995], which sets out the essential elements for effective complaint handling. It also provides guidelines and implementation measures.

More useful for Canada is the conversion of the characteristics into six "benchmarks." The list, published by the Australian Ministry for Customs and Consumer Affairs,⁷⁰ is:

- **Benchmark 1 – Accessibility**
- **Benchmark 2 – Independence**
- **Benchmark 3 – Fairness**
- **Benchmark 4 – Accountability**
- **Benchmark 5 – Efficiency**
- **Benchmark 6 – Effectiveness**

⁶⁹ Australia Competition and Consumer Commission, *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace*, Discussion Paper, Commonwealth of Australia, Canberra, August 1997.

⁷⁰ Australia, *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Senator Chris Ellison, Minister for Customs and Consumer Affairs, Consumer Affairs Division, Department of Industry Science and Tourism, Canberra, August 1997.

The adoption of such benchmarks in the financial services sector was seen as controversial only a decade ago. In 1992 a study of redress policies of major financial institutions proved to be unexpectedly difficult when most of the banks surveyed were unable even to produce copies of their official redress policies.⁷¹ Six short years later, impressive progress has been made. Industry specialists in customer affairs, including experts who belong to the Society of Consumer Affairs Professionals, will find it easy to work with clearly defined benchmarks.

Who Should Administer the Benchmarks?

As always, each firm can administer its own system as a first step, but more than that is needed. A number of possible mechanisms exist, each one with different merits and costs. Among them:

1. Public complaint boards

These vary in quality and, as noted in the country studies, oblige consumers to search out the redress channel. The UK and Australia have researched the alternatives and have come to the conclusion that one common redress path would be superior to the tangled set of opportunities now available. As the offerings in the financial services sector have transformed, and as sellers have entered each other's markets, some common approach seems essential to deal with the new reality.

2. Voluntary trade codes

Canada has recently completed an evaluation of voluntary codes.⁷² The method can offer much but cannot stand by itself because it allows freedom for opportunistic behaviour by those who choose to operate on the dark side of the marketplace.

3. Consumer organisations

As noted above, the national consumer's association has a role in every one of the countries surveyed, but much less so in the financial sector in Canada. On occasion, leaders in Canada's financial sector have noted that consumer input could be improved here. The participation is highly formalised in the Netherlands, especially in redress matters. In the Nordic countries more emphasis is placed on the consumer ombudsman and the consumer court. However, the existence of those two bodies provides a forum for participation in financial sector matters, a forum not available in Canada. In Australia, Germany, the UK and the US, independent consumer testing organisations have enough power to influence outcomes. In addition, the US has a policy action group, the Consumer's Federation of America, a research association, the

⁷¹ By no means the least cooperative was Prenor Trust which "... conceded that they had a policy on redress but would under no circumstances release it to an individual who was not affiliated with their organization." The clear exception as best in its class was the Bank of Nova Scotia. In 1998, all banks have clear policies, each has an ombudsmen and there is now a banking sector ombudsman. Michael Dohaney, "Redress as a Component of Quality in the Financial Service Sector," Major Paper for the M. A. degree at the University of Waterloo, 1993.

⁷² Industry Canada, Office of Consumer Affairs, 1998. *Voluntary Codes, Ottawa*. The publication offers a balanced assessment of where such codes will be an improvement and where they will be inadequate.

American Council on Consumer Interests, Nader- inspired Public Interest Research Groups and specific financial sector groups like the four Citizens' Utility Boards financed by donations in response to mailouts included in bank statements. Canada's input on financial sector issues is the lowest of the countries surveyed.

4. Government-run or trade-run arbitration schemes

In the context of the financial sector, this method dovetails with sectoral supervisory arrangements and / or alternative dispute resolution schemes. Jeremy Mitchell observes that

Self regulation as the mainspring of regulation is considered to have failed in the years since 1986. It is being replaced by an integrated, statute-based system, though with some practitioner input and some self regulatory components. Mitchell

Private sector plans need complementary backstopping by the courts (an expensive option) or supervisory bodies. In Canada, supervision requires resources, public input, and measurable benchmarks.

5. The courts

In the approach used in Germany and in the US, great emphasis is placed on contract law and *ex post* correction. Germany puts all of its faith in the legal approach, and further, it funds an action group to take on court cases:

In Germany, there is virtually no tradition of securing consumer protection by means of agreements or codes of practice. Formal agreements between banking trade associations and consumer organisations are unknown. Metz, (see Vol. 2, Ch. 1, p.89).

The Verbraucherschutzverein (Association for Consumer Protection) is an organisation which specialises in class actions in the areas of unfair contract terms and unfair competition (for example, misleading advertising). It is funded by the Federal Government. Metz, (see Vol. 2, Ch. 1, p. 88).

In the US, the legal approach makes use of high damage awards to convince a potential deviant that socially undesired actions will, on private calculation, be unprofitable. For example, the law on electronic funds transfers

. . . provides for treble damages where it is determined that a financial institution did not investigate an alleged error in good faith, or failed to provisionally recredit the consumer's account as envisioned. Brown, (see Vol. 2, Ch. 2, p.196).

It is therefore argued that the redress provisions have significant effects in **preventing** problems. Brown concludes:

Whether this model is transferable to Canada is, of course, open to debate.

*Nonetheless, the utilization of **mandated** error investigation and resolution procedures involving questions of **substantive rights**, founded upon **credible** enforcement mechanisms, is clearly the US' version of a "best practice". Brown, (see Vol. 2, Ch. 2, p.199).*

6. Superintendents and/or Ombudsmen

Most countries have developed some arrangement for getting all interests included in supervision. In the US, the Federal Reserve Board has set up a unit with consumer expertise at a cost of about \$15 million.⁷³ The unit participates, with consumer groups and financial institutions, in the formulation of model contracts, education and other measures. Denmark uses the Marketing Practices Act (1994) with express powers to develop "guidelines." There, the Consumer Ombudsman ". . . with little power of coercion but playing a very significant role in influencing business to adopt high standards. . . ."74

7. Licensing or Certification

Licensing has the potential for the creation of an entry barrier, while certification, done well, allows the consumer to assess the quality of the service.

The methods selected can be voluntary or compulsory. They can be resourced adequately or they can fail to have the staff and facilities they need. One shortcoming has been a naive belief that *only* a law or *only* a voluntary system is needed. Usually the best voluntary system has a legal base to be used to deal with noncompliance. There is little reason to ignore the experience of comparable countries.

Some Lessons for Canada

The transparency gap has widened as a result of all the transformations in the marketplace for financial services. The standard of transparency in the financial services sector in Canada is not high enough to ensure consumer success. Moreover, the standard is lower than it is in comparable countries. This harms the standard of living in Canada and it fails to reward our best suppliers. The recent increase in difficulty dates to the breakdown of the traditional "four pastures" (or four pillars) of regulation. It also receives impetus from the remarkable proliferation of new services, and from the availability of old services at new outlets. In Canada consumers must also pay for any burden from lost scale economies or duplicate compliance in competing provincial jurisdictions. All of these developments point to the need to abandon the old "line of service" approach to regulation to achieve something more general.

⁷³ There are fifteen skilled professionals, lawyers, economists and others, preparing educational materials or drafting model codes. The direct budget, excluding communications is about US \$ 15 million. The US Federal Deposit Insurance Corporation also has a Consumer Policy Unit. In Canada, many federal supervisory authorities have a volunteer consumer advisory panel. No doubt that brings a consumer perspective at meeting time. It falls short of the US practice (which uses such panels too) in the provision of resources for a continuing base of consumer expertise.

⁷⁴ Susan Storm, see Vol. 2, Ch. 1 at p. 112.

If redress measures are to succeed, they must be seen as at least meeting the benchmarks – specified above. In the best of situations, the redress method would also impose costs on sellers of poor services and no costs on sellers who meet the expectations of their customers. With the steady movement toward globalization, Canada must have a redress system which is up to best international practice, not only to serve domestic consumers, but also to give Canadian financial institutions an edge in international markets.

Other countries, most recently Australia⁷⁵, have made considerable progress on transparency for consumers, on privacy protection, and on redress. For consumer success – and for competitive success in world markets – Canada urgently needs practical measures which embody the best available principles in the framework governing its financial services sector.

It is difficult or impossible for the consumer, acting as an individual, to make much of a difference in the rapidly changing marketplace. Consumers need transparency in exchange. They need redress for wrongs *in general*, not on a service by service basis in the financial sector. If the sellers with superior services are to succeed in having their offerings seen – so that the market succeeds – decisive improvements need to be made in the general provisions for fair markets. And one-stop redress can make a huge improvement in consumer welfare. That, in turn, will improve the performance of the financial services sector at home and in the international marketplace.

In summary form, the following five observations can be drawn from the evidence in the chapters above:

Canada Uses a Thicket of Regulations for the Financial Services Sector

The proliferation of new services – combined with the melding and transformation of sellers – has produced a marketplace where regulation by function is increasingly meaningless. Perpetual shifting among products and services points to an urgent need for one-stop consumer protection. If there was one home for the creation of a simplified framework within which sellers of the best financial services could make the superior offerings available, two clear advantages could be gained. First, the regulatory burden of a multiplicity of product-based jurisdictions could be reduced significantly. Second, consumers could receive services that met some universal standard, and if not, they would be able to go to one source for redress.

There is every reason to use a one-stop office of an independent ombudsman, perhaps even a new expanded office of the banking ombudsman. This office of a financial sector ombud would need to meet the standards or benchmarks outlined above. The evidence from other countries suggests that a vigorous visible office can achieve much. Suzanne Storm concludes:

⁷⁵ Australia, Wallis Commission (1997), *Financial System Inquiry Final Report*, Commonwealth of Australia Information Service, Australian Government Publishing Service, Canberra.. Of 115 recommendations in the Report, the first three deal directly with transparency in the *consumer* sector of the market for financial services.

The Consumer Ombudsmen's work in financial services in Denmark and Sweden is marked by a very flexible approach, with more and better results being obtained by negotiations between the Consumer Ombudsmen and the financial services organisations than by taking cases to court. In both countries, great emphasis is put on the provision of detailed information both before and after contracts are made. Unreasonable contract terms are also the focus of attention. Denmark is remarkable for having focused in particular on standards of the conduct of business by financial services organisations.
Storm, (see Vol. 2, Ch. 1, p. 121).

The country with the most experience with sector-specific redress is surely the United Kingdom. Jeremy Mitchell points out that by 1998, the fragmented UK system provided no fewer than five ombudsman schemes, and three additional systems for eight different routes for redress, all in the financial services sector.

"There is considerable consumer confusion over which regulatory body is responsible for what and where to go with a complaint. From the industry side, there is continuous grumbling about the excessively detailed content of rule books and the oppressive nature and high cost of regulation, which is paid for by the industry." Mitchell, (see Vol. 2, Ch. 1, p.131).

Mitchell observes that the patchwork quilt of responsibilities across the industry with little apparent consistency or harmonization. The UK now has a new proposal for a unitary regulator to be in place as early as 1999.

In Canada, as elsewhere, the cost of searching for the right avenue for redress is getting more difficult daily as new products are brought to market. Often these are provided by sellers who used to operate in different pastures prior to the breakdown of the regulatory fences. The very first recommendation of Australia's 1997 Financial Systems Inquiry called for a unified system of supervision. The case is strong for the same consumer-focused approach in Canada.

Canada Makes Relatively Little Use of Model Terms and Universal Guidelines

The piecemeal approach is a leftover from days gone by. With the transformation of the sector and the introduction of new offerings on a daily basis it is a waste of public and private resources to fight each fire after it is underway. One highly successful method is exemplified by the so-called "Federal Box" used, mostly in the banking sector, in the US. A public effort to design the essence of positive information, aided by the input of all affected – firms and customers – can greatly simplify documents. This has been shown to reduce the resources used to create documents, and to provide a measure of "safe harbour" for sellers, all while presenting salient information to consumers in understandable form. Federal US regulations ask that this information appear in the largest type font used in the document. Further, the information must appear in a box, making it easy to find amidst long paragraphs. Canada has had some experience with this approach in its effort to reduce some of the inter-provincial barriers to financial transactions. This "cost of credit" initiative has made serious progress since 1992 but is still only

an agreement in principle. Most provinces wish to follow their own method of adhering to the intent of the agreement. Regrettably, the effort does not include the proposals on type size, nor the box, that would lower the search cost of the consumer.

A second method urgently needed is the use of universal guidelines. This offers much whether it is carried out by a universal ombud's office or some new supervisory office. The experience in Denmark is telling:

The power to issue guidelines opens a quick, efficient and flexible approach which is a great advantage for a public authority in its dealings with business. It also has the advantage of offering an easy way of adjusting the market to changing standard of good marketing practice in accordance with developing needs in an area like financial services where rapid changes are taking place. Also, the power to issue guidelines enables the Consumer Ombudsman to negotiate their content with the parties concerned and to listen to their views before the guidelines are published. Storm, (see Vol. 2, Ch. 1, p. 112).

The United States has been able to make favourable changes through the use of model contracts. James Brown outlined the success with communication and with the "safe harbour" advantages for firms. One reason why Canada has not had similar success is the absence of any central office with both consumer and seller expertise. This expertise is developed in different ways in different countries. The Netherlands has a committee of consumer and business experts.⁷⁶ The US makes use of a well-resourced consumer unit in the Federal Reserve Bank. The Nordic countries use a combination of market courts and ombudsmen,⁷⁷ often working to develop guidelines for marketplace conduct. No such central source of expertise exists in Canada in spite of a large number of regulatory supervisors. Canada can ill afford to fritter away public or private resources on piecemeal solutions, especially "solutions" that arrive after the problem has moved into new territory.

Best Practice Suggests There Are Standard Terms to Include or Avoid

Certain terms are part of a strategy of obfuscation. These tactics must be eliminated in the interest of transparency to permit the success of consumers and of honest sellers. The marketing court in Sweden places a very explicit duty on sellers, disallowing contract clauses which are designed to operate against consumers.

⁷⁶ As noted earlier by Jan Koopmans, (see Vol. 2, Ch. 1) the committee is drawn from financial institutions, citizen experts and from the national consumer organization, Consumentenbund.

⁷⁷ Prudential supervision exists alongside the marketplace conduct agency. In both Sweden and in Denmark there is an overall Finance Inspection Board supervising banks and other financial institutions including insurance companies. These prudential bodies are expected to work with market courts and the ombudsman.

*Furthermore, the court has prohibited contract terms by which a bank reserves its right to unilaterally terminate a loan to the consumer.*⁷⁸
Storm, (see Vol. 2, Ch. 1, p.120)

Moreover, a list of misleading and/or offensive terms was published in 1993. Another common weakness of contracts with regard to transparency concerns the limitation on consumers' rights. One-sided contracts are often the duty of lawyers employed by one side of the contract arrangement. In Denmark, card issuers are forbidden by law from including measures that limit the cardholder's right to complain. In legislation addressing distance purchases, Danish consumers are guaranteed that written confirmation of purchase agreements will be provided. This confirmation is to arrive *by mail* with the deadline for receipt specified in legislation. Denmark's provision is the strictest of the eight countries studied. Rules being proposed by the OECD Committee on electronic commerce are mild, by comparison. The current OECD proposal includes: "Mechanisms should be developed to ensure that consumers are clearly informed about what they are accepting and to allow them to indicate their acceptance unambiguously."⁷⁹

Best Practice in the Sector Needs Sharply Improved Consumer Input for Transparency, Redress and Quality

The future for firms in the Financial Services Sector would be brighter if standards were appropriate and demanding, if customers were more vocal, and if firms had to better information on customer satisfaction. Some progress has been made by individual firms seeking to improve their data on customer satisfaction. This is by no means an easy feat and this progress comes at a price. While we should await more evidence, at this point it seems that the regulatory environment for many firms in the financial sector has been reasonably demanding on *prudential* grounds, and this may, on its own, be a competitive advantage for the future of the sector. This may be outweighed by the lack of challenge from a stiff, market-based consumer (self-) protection regime. On the basis of indirect evidence on market share, and on an outside assessment, it seems that Canadian firms in parts of the financial services sector have not been obliged to be as attentive to customers as have firms in more demanding environments. Canadian documents are noticeably less consumer- friendly than documents used in the US. What little evidence we have from customer satisfaction surveys does allow the interpretation that Canadian firms have quite some way to go. Unhappily, Canadian firms have less information on the success of customer policies than is available in Sweden or the US where firm-specific data is provided as feedback from a National Consumer Satisfaction Barometer.

⁷⁸ Sweden is exploring a method of designing progressive changes to contracts drawn up by sophisticated sellers. Swedish banks have already been prohibited from amending contract terms of savings accounts without notice. As an experiment from the first of December 1997 to November 30, 2002 the consumer ombudsman can intervene on behalf of a consumer in the ordinary courts whenever an important legal question is at issue. Special attention will be given to information disclosure in the use of standard terms and conditions. See Vol. 2, Ch. 1, Susan Storm.

⁷⁹ OECD "Draft Recommendations of the Council Concerning Guidelines for Consumer Protection in the Context of Electronic Commerce," October --, 1998; (98)4B1 DOC, Paris.

The sector is befuddled by incentives which compromise customer service. Nowhere is this worse than in the market for personal financial advice. Sellers of financial products in Canada are able to design incentives to tempt the counsellor to act against the best interest of the ultimate customer. While this problem can be addressed with personal financial advisors, it seems more efficient to erect some overall truth-in-finance principles as part of a new "universal" approach to truth, transparency and redress.

Regulators at all levels make efforts, sometimes even heroic efforts, to include consumer input in discussions of methods of improving policy in the financial services sector. In Canada these efforts are destined to failure because there is no continuous source of expertise prepared to provide public interest input to discussions.

Sweden and Denmark (Susan Storm) (see Vol. 2, Ch. 1) have national organisations active in the financial sector and in providing educational material to classrooms. In the Netherlands, Consumentenbund has a formal role in redress procedures as well as an explicit consultative role in formulating consumer policy. In the US, Consumer's Union has recently increased its focus on the financial sector, especially in *Consumer Reports*. Consumers Union also has a widely distributed educational magazine for children called *Zillions*. The UK has a research body for longer term issues, the National Consumer Council and a vigorous testing association publishing *Which?*

In Germany, the independent, consumer-oriented testing organisation is part of the national strategy.⁸⁰ The country has

Stiftung Warentest (Foundation for Comparative Testing), primarily a product testing organisation which currently publishes two magazines, Test and Finanztest, and a large number of books.
Metz, (see Vol. 2, Ch. 1, p. 88).

Unlike any other country, the testing organisation allows sellers to comment on the appropriateness of their tests **before they are conducted**. The more alert sellers can begin to improve the product or service even before the test results are published. The immediate goal is to improve the German standard of living but it is also the intention to give German sellers an edge with better offerings in the international marketplace. The associated financial publication *Finanztest* was launched in 1990 and in the short time since then, it has brought forward quite a number of improvements in quality. Among them are: better loan arrangements, improved timing and terms for mortgage renewals, better information from investment funds, sharply better insurance settlement methods, higher quality telephone banking and fairer contract terms, among other things. *Finanztest* magazine conducts about 30 tests per year and has a circulation of more

⁸⁰ The plan for a national testing operation came from the Ministry of Economics in 1954. In 1962 Chancellor Konrad Adenauer announced the government's intention and it was set up as an independent institute with government funds in a unanimous vote of the Federal Parliament in 1964.

than 370,000 copies every two months. The organisation receives financial support from the Ministry of Economics.⁸¹

Canada is unique among the countries studied in the absence of either a well-funded research council or a professional consumer interest body able to participate in financial sector development.

Transparency of Canadian Documents

Whatever improvements have been made over the last decade, Canadian documents are in urgent need of attention. A large portion of the confusion facing the consumer of Canadian financial services comes from the turmoil in the industry – from the proliferation of new products and services which daily challenge all but the most sophisticated buyers. That granted, the language and the terms in Canadian contracts are simply beyond the level that can be understood by the typical customer.

The first challenge is to gain access to the document that is to govern transactions. Some banking and insurance sellers were "out of stock." Other documents arrive too late for the decision at issue.

It appears, therefore, that many of these documents are unavailable to average consumers in advance of completing a transaction. Consumers without a personal contact within an institution or who must cope with barriers such as age, disability or unfamiliarity with language have an even greater disadvantage.
Colbert, (see Vol. 1, Ch. 2, p. 50).

Standard analysis of readability found average performance that is abysmal. The *best* of 49 English language documents was the mutual fund prospectus. The documents of six firms were sampled, revealing that a grade 16 education was required (on the Flesch-Kinkaid measure) to understand the contents. Seven life insurance policies had a requirement of grade 20 on the test. Four different banking documents had required levels between grades 15 and 17. The qualitative analysis did not much change these conclusions. For Francophones the situation can be even worse. First, some agreements are extremely difficult.⁸² Document availability is a second hazard to overcome. The third unreasonable challenge is that consumer support is almost nonexistent in many parts of the country outside Quebec, and this is true even when assistance is promised in electronic formats. These are distressing results that do much to explain the feeling of helplessness among consumers of Canadian financial services.

⁸¹ The subsidy is now about \$C 14 million in an overall budget almost exactly \$100 million. Two other groups receive federal government support. One is an alliance of 37 consumer organisations to represent consumer interests in the creation of public policy. The other is an office of some twenty professionals working with teachers, journalists, and others, on consumer education.

⁸² The Colbert *et al* study observes A. . . literacy research suggests that complex financial documents are likely to be accessible to less than 14 percent of francophones in Québec, and to an even smaller number outside that province.

The Canadian results compare poorly with contracts in the US. Several of the US states have a requirement that agreements meet a certain standard of readability. Only one of the Canadian life insurance policies achieved the average level of US policies.

Similarly, the highest mean Flesch-Kincaid grade level achieved by US documents was Grade 12.5 and scores ranged from upward from Grade 9.7. Flesch-Kincaid grade levels for English-language Canadian documents extended from Grade 15 to 24. Once again, the lowest mean score was higher than the highest mean US score. Scores for French-language documents reached Grade 23, although one category was so complex that a grade level did not register. The lowest was 13.5, also higher than the highest mean US score. Colbert, (see Vol. 1, Ch. 2, p.177).

The offerings to Canadians do not need to be this dismal: one mutual fund prospectus required **grade 27** when tested December of 1997, yet it was successfully rewritten by June of 1998 to a level of **grade eight**.⁸³ The market alone does not seem able to drive the level of transparency to an acceptable level. Canadian firms serve the Canadian market poorly on this criterion. By the same standard, Canadian firms seem ill prepared to meet international competition.

Financial services contain a degree of intrinsic complexity. Concepts like risk and present value are difficult for many people. That is unavoidable complexity. Add to that language demands that require university education – merely to read an agreement about access to an ATM. The resulting degree of difficulty is a challenge beyond the ability of most customers. An efficient market needs consumers who are in "control" of their choices. Control of many financial decisions is beyond many, perhaps most, consumers. The resulting chaos can permit a "lemons" outcome, or some partial version of it where inferior services thrive along with the others. This helps explain the persistence we found for alarmingly wide price differences for similar or identical financial services like credit cards or auto or life insurance. It also explains great disappointment when consumers eventually learn, to their dismay, their contracts are not what they expected.

These lessons for Canada are not mere technical improvements in market efficiency. Many of them strike at the notion of fairness or unfairness. The lag behind best international practice may be caused by lack of clear redress policies, by principle-agent problems, by outrageously difficult contract language, or by regulatory confusion. The lag negatively affects the standard of living of Canadians.

The sellers with the best offerings are not necessarily the winners in a marketplace drowned in confusion. But with the breakdown of the regulatory fences between "the four pastures," the mushrooming of new or transformed services backed by one-sided legal documents written to lofty standards, and the absence of even the modest public support available in comparable countries, the Canadian consumer feels powerless. It is not altogether a new feeling. In 1912, well before the creation of agencies to supervise the financial sector, Wesley Clair Mitchell

⁸³ Colbert, (see Vol. 1, Ch. 2), special tabulation. The original version had an *average* of a mind-numbing 63 words per sentence.

pointed out our difficulty. "Our faults as spenders," he said, "... are largely due to broad conditions over which, *as individuals*, we have slight control." At the end of the millennium, we have dismantled the old consumer protection regime without setting in place institutions to allow a consumer the information and power needed to engage in self protection. Without effective rules for transparency and redress, the consumer has a well-deserved feeling of helplessness. To regain a measure of control, our collective institutions need to be brought up to date. That way, the consumer can have a much better future in Canada's financial services sector.