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BCLI Report no. 2—Report on Gender-Free Legal Writing: Managing the Personal Pronouns

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The law applies to persons, a notion that embraces individuals of both sexes and a variety of artificial entities, such as corporations, that are endowed with legal personality. Some laws or statements about the law are, by their nature, capable of application to persons of one particular sex, to natural persons, or to artificial persons. Statements concerning the legal position of husbands, mothers, and companies are examples. The vast majority of laws, however, apply to persons of all kinds. Similarly, most words used to designate a person who has a particular legal status are not concerned with the characteristics of sex or artificiality. The word "trustee" may be used to designate a person who is male, female, or a corporation.

Where a statement of any complexity is made about a person, the maker of the statement may face decisions about how further references should be framed. This may pose no problem if the maker can appropriately use any of the pronouns such as he, she, him, her, his, hers, himself, herself, it, its, or itself. The use of these pronouns is appropriate when the statement can only apply to a particular sex or kind of person. Proper usage becomes more problematic when the person has no characteristics that dictate the use of particular pronouns.

For many, the answer is clear and straightforward—the masculine pronouns embrace all entities and filling the blanks with "he" and "his" is acceptable and appropriate. Others challenge this view, suggesting that the use of the masculine pronouns in general statements involves unsustainable assumptions about the legal system and those who interact with it. They would advocate moving toward a style of writing that does not involve such assumptions—a style sometimes referred to as "gender-neutral." In the end, the choice of whether or not to adopt a gender-neutral writing style is an individual or institutional one. The clear communication of ideas is the ultimate goal and it does not require the selection of one style in preference to another.

For those who wish to do so, adopting a style of writing that does not rely on the exclusive use of masculine pronouns can present a challenge. Some writers adopt the feminine pronouns either exclusively, as a kind of linguistic affirmative action, or in a mixture with the masculine pronouns achieving a balance of sorts. Other writers favour setting out both

forms of the pronoun in a "he or she" and "him or her" style of formulation. In some contexts these approaches may be satisfactory. Frequently, however, the result is a document that is so self-consciously gender-neutral that this quality detracts from its clarity and distracts the reader.

This report suggests that a better approach is to adopt a "gender-free" style of writing—one that avoids the pronouns entirely. The report explores a number of techniques that may be used in the creation of documents that are free of gender-specific pronouns. It is intended to serve three functions. The first is to convince those who entertain doubts that it is possible to write in this way without significant distortion or loss of content. The second is to serve as a guide to those who require instruction in this area. The third is to provide a source book with answers for writers who currently adhere to a gender-free style, but encounter specific problems.