



GENDER DIVERSITY IN LEGAL WRITING:

PRONOUNS, HONORIFICS, AND GENDER-INCLUSIVE TECHNIQUES

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 - promote improvement of the administration of justice and respect of the law, and
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-

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In 1998, the BC Law Institute published a Gender Free Writing Guide, which was prepared by the late Arthur L. Close, QC. While this Gender Diverse Legal Writing Guide is not an update or a re-imagining of that publication, the BCLI continues to be grateful for Mr. Close's commitment to precision and clarity in legal writing.

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CONTENTS

I. Introduction	
A. Purpose and approach of this Guide	6
B. The importance of gender-diverse legal writing	7
II. The pocket guide to gender-diverse legal writing	9
III. Glossary of terms and common misconceptions	10
IV. Gender-diverse legal writing techniques	
A. Writing about specific persons	13
1. Honorifics, titles, and greetings	13
a) What to do when you don't know a person's honorifics	14
b) How to greet people in gender inclusive ways	15
2. Pronouns	15
a) How to use "they" as a singular pronoun	16
b) The use of "constructed" gender-neutral or non-binary pronouns	16
B. Writing about people generally	17
1. Avoiding exclusionary language	17
a) Avoid male or binary defaults	18
b) Avoid masculinized or feminized nouns	18
c) Avoid irrelevant and unnecessary gendering	18
2. Using gender-inclusive language	19
a) Neutral words or phrases	20
b) They/them as a neutral singular pronoun	21
c) Gender-diverse examples	21
d) Using plural forms	22
3. Using gender-neutral techniques	23
a) Eliminate the pronoun	23
b) Replace the pronoun	24
4. Changing point of view or voice	25
a) Write in the first or second person	25
b) Considered use of passive voice	26
V. Further resources	
A. Inclusive language guides	28
B. Pronouns	30
C. Courts	31
D. Sexual orientation, gender identity, and expression	31
Endnotes	32



I. INTRODUCTION

A. Purpose and approach of this Guide

Lawyers strive to deliver clear and persuasive messages through their legal writing. This Guide shows how to do so while respecting gender diversity and avoiding assumptions about gender.

Legal writing comprises many forms: legislation, court submissions, opinion letters, transactional writing (e.g., contracts, wills), communications with clients and other lawyers, legal memoranda, legal texts and academic writing, court forms, judgments and decisions, and other reports and papers. We write to people and about people. At some point, we are faced with choosing the right pronouns for those people or choosing writing techniques to avoid pronouns. This Guide assists in making those choices. The guidance is organized under two headings:

(1) **Writing about specific persons.** Lawyers write about (or to) specific people such as parties to a legal dispute, parties to a contract, or opposing counsel. This section deals with how to address specific people in a gender-inclusive and professional way. What do you do if you don't know a person's title or pronouns? How do you greet people you do not know in a gender-neutral way? What if someone does not use male or female pronouns? This section provides some assistance in answering these questions.

(2) **Writing about people generally.** Lawyers write about people generally in laws of general application, policy papers, or hypothetical examples in legal memoranda or court submissions. This section provides gender-inclusive and gender-neutral writing techniques to be employed when gender is unknown or irrelevant. It shows how to use gender-neutral words or phrases, gender-neutral pronouns, and a variety of techniques to avoid pronouns altogether.

Ultimately, the writer must choose the gender-inclusive techniques appropriate for their audience and subject matter.

B. The importance of gender-diverse legal writing

Like the law, language and styles of writing evolve over time to meet the needs of new generations. Canadian lawyers no longer write law, or write about the law, as if it only applies to men of European descent who own real property. Legal writing styles have changed to become more inclusive, initially with respect to bringing women under the umbrella of the law. Lawyers have attempted to right the historical imbalance between expressions of male and female gender in legal writing by adding examples with female actors or removing gendered pronouns or replacing male pronouns with “he or she” formulations.

Language and the law continue to evolve, moving towards even more inclusive language in legal writing. Inclusive language respects diversity and seeks to avoid discriminatory terminology. More specifically, it respects ability, indigeneity, race, ethnicity, gender, gender identity, gender expression, sexual orientation, age, and other attributes of personal identity that have been used to discriminate against and marginalize persons with those attributes. Inclusive language does not discourage a writer from discussing differences when it is important to do so. Instead, it asks that a writer not exclude and marginalize people by drawing differences or using exclusionary language where differences are immaterial to the information being conveyed.

Gender inclusivity¹ is one aspect of inclusive writing.² Society now recognizes that gender identity and expression are more diverse than “he and she” or a binary view of masculine and feminine. Just as women must be included in writing about the law, so too must people who identify as transgender, non-binary, agender, two-spirit, or genderqueer. Everyone is “equal before and under the law”³ and therefore deserves to see themselves reflected within it. Most importantly, no-one should feel excluded through the unnecessary or exclusive use of male or binary gender terms.

The highest levels of our profession have recognized that gender inclusivity is a matter of justice and professionalism. The British Columbia courts require all counsel to identify themselves and their pronouns.⁴ Administrative tribunals are adopting gender-inclusive policies.⁵ Universities and law schools promote inclusive language in teaching the next generation of professionals.⁶ The Canadian Bar Association BC Branch offers model scripts to lawyers for introducing themselves in a gender-inclusive manner.⁷ Governments incorporate gender-inclusivity as part of inclusive writing and communication protocols both for lawyers and more broadly in the provision of services.⁸ Other professions too recognize the value of gender-inclusivity in their communication and service models.⁹

More broadly, society has adopted language that reflects a modern understanding of gender, gender identity, gender expression, and sexual orientation. We no longer identify professions with binary gendered terms (we say firefighter, server, flight attendant, etc.). We speak of humanity or humankind rather than “man.” We speak of one’s partner as often as we refer to a husband or wife. We have adopted gender-inclusive ways of referring to people, in particular the use of “they” as a singular pronoun.¹⁰ In recent years, “they” in its singular form has become so widespread that the Merriam Webster Dictionary named “they” as its 2019 word of the year.

Gender-inclusive writing is powerful:

- It focuses on important issues instead of relaying extraneous information about a person’s gender.
- It appropriately indicates gender in writing about a specific person whose gender is known and relevant to the topic.
- It is simpler than attempting to balance writing with male and female pronouns.
- It includes people who do not conform to binary genders.
- It does not alienate readers based on outdated masculinization (or feminization) of language or gender stereotypes.
- It avoids the risk of misgendering someone, preventing a writer from committing a social faux pas, and sparing people from the real and tangible distress that comes from being misgendered.

Simply, gender-inclusive legal writing speaks to more people. It demonstrates a baseline level of professionalism required of legal writing.

II. THE POCKET GUIDE TO GENDER-DIVERSE LEGAL WRITING

Writing about Specific Persons

Honorifics, Titles, Greetings

Use and respect where titles are known
Common: Mr/Ms/Mrs/Mx (Gender-neutral
Mx pron. "mix")

When you don't know a person's title	Ask and respect Use role descriptor (e.g., Counsel) or academic title (e.g., Professor) Use full name (repeat if necessary) Use name or role as a defined term (e.g., Ginny Lau, the "Owner") Use gender inclusive language and gender-neutral techniques
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How to greet people when titles unknown	Use gender-inclusive greetings (e.g., To Whom It May Concern; Dear Counsel) Use greetings reflecting common role (e.g., Dear Members of the Jury)
---	--

Pronouns

Ask and respect
Common: He/she/they (singular)
Less common: constructed gender-neutral pronouns

When using they/them (singular), use plural conjugation ("they are" not "they is")

When using constructed gender-neutral pronouns, consider if explanation is required in footnote or parentheses.

Examples:
My junior on this file is An Turcotte (pronouns are ey/em/eir/eirself).

The custodian knew that Dale belongs to the club and assumed it must be hir¹ membership on the table. Ze must have forgotten it.

¹Ze/hir/hirs/hirself are gender-neutral pronouns used in the same way as they/them/their/themselves, he/him/his/himself or she/her/hers/herself.

Writing about People Generally

Avoiding Exclusionary Language

Avoid using male or binary defaults to refer to everyone

Avoid masculinized or feminized nouns (person hours not man hours; server not waitress)

Avoid irrelevant and unnecessary gendering

Using Gender Inclusive Language

Neutral words or phrases

Use role descriptive terms instead of man or woman (e.g., shopper, driver)

Use gender-neutral family terms (e.g., parent, spouse, sibling)

Use anyone, anybody, everyone, somebody, one, person, public, etc.

Use they/them as a neutral singular pronoun

Use gender-diverse examples (men, women, and non-binary people, not just men and women)

Use plural forms to avoid individual pronouns (e.g., "applicants must submit their papers" instead of "the applicant must submit his papers")

Using Gender-Neutral Techniques

Eliminate the pronoun

Simple removal if implied (e.g., "at home" instead of "at her home")

Restructure sentence to remove

Remove possessives (e.g., "when parking" not "when parking her car")

Replace the pronoun

Use "the," "a" or "an"

Repeat the noun

Use "who/whose" as relative pronouns

Use "personally"

Changing Point of View or Voice

Write in 1st or 2nd person (I/we/you instead of he/she)

Use passive voice (sparingly!) to remove pronouns

III. GLOSSARY OF TERMS AND COMMON MISCONCEPTIONS

Cisgender	Refers to a person whose gender identity aligns with their sex assigned at birth.
Deadnaming	Deadnaming refers to using a name that a transgender person no longer uses to identify themselves. A deadname may be associated with the sex that a trans person was assigned at birth, not their gender identity. Using a deadname may cause a person distress, may endanger them by outing them as trans, and should not be done without their permission. In some cases, a deadname may be the person’s legal name. If the context requires a legal name to be recorded, do so and then use the name the person uses to identify themselves going forward. Protect the person’s deadname as confidential information that should be accessible only to people who need to know it.
Gender	Refers to a social (or cultural) construct comprised of characteristics and behaviours associated with a particular sex.
Gender expression	Refers to a person’s public presentation of gender through clothing, hairstyles, use of make-up, mannerisms, voice, etc. It may differ from their gender identity.
Gender identity	Refers to a person’s internal experience of gender—an individual’s understanding of their own gender. It may or may not coincide with the sex they were assigned at birth.
Intersex	Refers to a person whose sexual anatomy or chromosome patterns at birth do not fit neatly into “male” or “female.”

Misgendering

Refers to using the wrong gender labels, titles, or pronouns for someone. Intentionally misgendering someone may be professional misconduct.¹¹

What to do if you've used the wrong gendered language to refer to someone?

Say sorry, correct yourself, and move on using the correct pronouns. If you misgender someone in writing, whether and how you correct yourself depends on the context. Correcting a private letter or email might be done through a simple apology and using the correct gender going forward. Correcting public or published documents could be more complicated and should be approached in consultation with the person who has been misgendered.

Non-binary/ Nonbinary

Refers to a person who does not identify exclusively as male or female or who may identify as neither. Related terms include agender, genderqueer, or bigender.

Outing

Refers to the intentional or accidental revealing of someone's gender identity, sexual orientation, or sex assigned at birth without their knowledge or consent. Deadnaming and misgendering are ways of outing a person. Outing a person as trans or gay may expose them to social exclusion, harassment, or violence that they would not have otherwise faced. Outing someone in legal forums can present barriers to access to justice by discouraging the person who was outed from seeking legal resolutions or by otherwise obstructing the process.¹²

"Preferred" pronouns

Referring to "preferred pronouns" implies that pronouns and their associated gender identity are a choice and delegitimizes non-normative gender identities as "mere preference." Instead, refer simply to "pronouns."

Sex assigned at birth	Refers to the sex assigned to a person at birth, usually male or female, based on their anatomy. Some people are intersex (see above definition).
Sexual orientation	Refers to a person’s emotional, romantic, or sexual attraction to other people. A person’s sexual orientation may be toward persons of a different gender, the same gender, no gender, or more than one gender. A person’s sexual orientation is not dependent on their gender identity, or their sex assigned at birth.
Transgender man or trans man	Refers to a man who was assigned female at birth.
Transgender person or trans person	Refers to a person who experiences a gender identity that differs from the sex they were assigned at birth. Transgender includes many non-binary individuals. Some people mistakenly say “transgendered,” which is not a word. A person is transgender, not transgendered.
Transgender woman or trans woman	Refers to a woman who was assigned male at birth.
Two-spirit	<p>“Two-Spirit” is a term used within some Indigenous communities encompassing cultural, spiritual, sexual, and gender identity.</p> <p>The term reflects complex Indigenous understandings of gender roles, spirituality, and the long history of sexual and gender diversity in Indigenous cultures. Individual terms and roles for Two-Spirit people are specific to each nation.¹³</p>



IV. GENDER-DIVERSE LEGAL WRITING TECHNIQUES

Writing about the law involves either writing about or to specific people or writing about people generally. This Guide discusses gender-diverse writing techniques under these two broad headings.

The first, “Writing about specific persons,” deals with how to address specific people in a gender-inclusive and professional way. The second, “Writing about people generally,” sets out gender-inclusive and gender-neutral writing techniques that can be employed whenever gender is unknown or irrelevant. Some overlap exists between these sections. For example, if you are writing about a specific person whose gender is unknown, you may need to use the techniques under “Writing about people generally.”

A. Writing about specific persons

When writing for or about specific people, often the writer knows the genders, pronouns, or honorifics of those people. When the writer does not, gender inclusive greetings (and the gender inclusive or neutral techniques in the next section) may assist the writer.

1. Honorifics, titles, and greetings

“Honorifics” are titles such as Ms/Mr/Mrs/Mx. The gender-neutral option is “Mx” (pronounced

“mix”). Other common titles include Dr or Professor. Military or police ranks may also serve as a title (e.g., Major Smith, Sargeant Kumar, or Officer Nasir).

In legal writing, honorifics or titles are commonly used in letter greetings and in identifying people in court submissions or judgments. The use of honorifics should be done consistently: either use honorifics for everyone or for no one. Inconsistent use of honorifics within the same document can serve to elevate, belittle, or marginalize individuals by inadvertently singling out some people as more worthy of a title and therefore more important than others.

a) What to do when you don't know a person's honorifics

When a writer does not know the honorifics of a specific person, they have the following options.

- If possible, **ask** the person or someone who knows them. **Respect a person's honorifics** and be open to the possibility that someone does not want to be addressed with an honorific.*

How should I address you?

What titles do you use?

Does opposing counsel use Ms, Mr, or Mx?

- Use a **role descriptor or academic title** in place of a gendered honorific.

Counsel Wong served the expert report of Professor Brown within the time limit.

Dear Officer Nasir, We write concerning the accident that took place on January 2, 2022.

- Use the person's **full name**.

Dear Chris Davies

Jean Belliveau saw two people in dark coloured hoods slip through the broken fence behind the store.

- **Repeat the person's full name** as necessary.

Eliza Rahimi served as the deputy minister for six years before moving into the private sector. When

Eliza Rahimi took over from Arlo Jones, the corporation was in an uproar.

- Use a **defined term** representing the person's name or role.

* Questions such as “How should I address you?” or “What titles do you use?” are unlikely to offend someone. In contrast, someone might consider their gender a private matter; questions such as “What is your gender?” could cause them distress.

Ji-woo Kwon (“Kwon”) saw the accident. Kwon testified that two pedestrians were in the middle of the crosswalk, heading east across Granville Street when the plaintiff’s car, heading west on 41st Avenue, made the left-hand turn onto Granville Street. Kwon noted that one of the pedestrians was using a walker.

Ginny Lau (the “Owner”) agrees to rent the house at 46 Daybreak Street, Happyville, BC, to Patrice Bell (the “Tenant”) for a period of one year beginning on May 1, 2022. The Tenant agrees to pay the Owner the sum of \$2,500 per month in rent, due on the first day of each month.

- **Use gender-inclusive greetings** and writing techniques **until you learn** the person’s honorifics.

b) How to greet people in gender inclusive ways

Many types of legal writing require the writer to greet the audience of the written text, for example, a written address to a jury, a notice to members of a class action, or a letter to a large group of people. In such situations outdated gendered greetings, such as “ladies and gentlemen” or “Dear Sirs/Madams” can be replaced with gender inclusive forms that are appropriate to the situation.

- Use a **general-inclusive greeting**.

To Everyone Concerned

To whom it may concern

Dear Interested Persons

- Use a **greeting that reflects a common role**.

Dear Committee Members / Colleagues / Counsellors

Dear Members of the Jury

Honoured Guests

2. Pronouns

Where a writer knows a person’s pronouns, the writer should use them and respect them, even where those pronouns do not fit the writer’s expectations based on the person’s name or appearance. Commonly used pronouns are they/them, he/him, and she/her. People with non-binary genders often use they/them in the singular form to refer to themselves. They/them is also used as a gender non-specific singular pronoun when a writer does not know a person’s

pronouns (see below under “Writing about people generally”). Other, less common, gender-neutral pronouns also exist (e.g., ze/hir or e/em—see table on page 17).

a) How to use “they” as a singular pronoun

Just like the pronoun “you,” they/them can be used in singular or plural forms.

After the purchasers agreed to the price, they withdrew their agreement, alleging material misrepresentations on the part of the sellers. (Plural use of they.)

Minister Williams said they misspoke when they said their budget was “balanced to the last penny.” Voters who heard the original recording of them questioned this new version of events. (Singular use of they.)

Even in its singular form, use plural verb conjugation with “they.”

Alex said they have five days to go until they are called to the bar. (Not “they has” or “they is.”)

Some debate exists about whether to use “themselves” or “themsel^f” for the reflective singular form (e.g., “Ajeet is excited about trying skydiving for themselves” verses “Ajeet is excited about trying skydiving for themsel^f.”) While “themsel^f” has some intuitive appeal when writing about a single person and has been recognized in some settings,¹⁴ “themselves” currently remains the grammatically correct form.

Although Dr James had been drinking, they volunteered themselves to perform the operation that had such devastating consequences for the plaintiff.

b) The use of “constructed” gender-neutral or non-binary pronouns

Aside from the singular use of they/them, several constructed gender-neutral pronouns exist, some dating back centuries.¹⁵ These are pronouns, such as ze/hir or ey/em, that have been constructed for the purpose of being gender-neutral. Constructed gender-neutral pronouns should be respected where someone indicates they use them. Because constructed pronouns are less common, they may require an explanation for some audiences. In written work, if appropriate, such explanation may be made through a footnote, or a short parenthetical explanation.

The custodian knew that Dale belongs to the club and assumed it must be hir* membership on the table. Ze must have forgotten it.

Further to our phone conversation, my junior on this file is An Turcotte (pronouns are ey/em/eir/eirself). Mx Turcotte will be your primary contact, so you will get to know em well as ey guides you through this process.

The following table provides a summary of some different pronouns in use.¹⁶

Subject Pronoun	Object Pronoun	Possessive form	Reflexive Form
She	Her	Her/hers	Herself
He	Him	His	Himself
They	Them	Their/theirs	Themselves
Ze (pronounced "zee")	Hir (pronounced "here")	Hir/hirs	Hirself
Ze	Zir (rhymes with "here")	Zie/zirs	Zirself
E or Ey (pronounced "ee")	Em	Eir/eirs (rhymes with "their/theirs")	Eirself or emself
Per	Per (rhymes with "her")	Per/Pers	Perself

B. Writing about people generally

Many instances of legal writing apply to people generally or discuss people in general or hypothetical ways. Writers may consider the following gender inclusive techniques.

1. Avoiding exclusionary language

In part, writing in a gender inclusive manner means avoiding language that excludes people based on their gender.**¹⁷

* Ze/hir/hirs/hirself are gender-neutral pronouns used in the same way as they/them/their/themselves, he/him/his/himself or she/her/hers/herself.

** While this Guide sets out ways to avoid exclusionary language with respect to gender, gender is only one aspect of inclusive legal writing. The following example provides a reminder to look beyond gender-neutrality. Consider the term "grandfathering" (or "grandfather clause"), which refers to the practice of excluding a pre-existing class of people or things from the application of a rule or law. Replacing "grandfather clause" with "grandparent clause" would be gender-neutral, but would not address the racist origins of the "grandfather clause". See endnote for further information.

a) Avoid male or binary defaults

Instead of ...

A well-advised testator will do his best to provide for anticipated changes.

Every mother or father may apply for the benefit.

The new Act ensures equal access for men and women of different economic status. A person may access services under the Act irrespective of whether he or she can pay for those services.

When a man is injured by another, the law's principal concern is to ensure that he is compensated for his losses. Something frequently overlooked is that his wife or family may be deprived of support or put to additional expense caring for him.

Try ...

A well-advised testator will provide for anticipated changes.

Every parent may apply for the benefit.

The new Act ensures equal access to everyone, regardless of economic status. A person may access services under the Act irrespective of whether they can pay for those services.

When someone is injured by another, the law's principal concern is to ensure compensation for their losses. Something frequently overlooked is that the person's spouse or family may lose support or bear additional expenses for the person's care.

b) Avoid masculinized or feminized nouns

Avoid masculinized nouns (mankind, mailman, etc.) or feminized nouns (hostess, actress, etc.). These types of nouns may perpetuate stereotypes and exclude people based on gender.

Instead of ...

Man, mankind

Mailman, policeman, fireman, etc.

Stewardess, waitress, hostess, actress

Man hours

Manpower

John Doe, Jane Doe

Try ...

Human, humankind

Letter carrier, police or police officer, fire fighter

Flight attendant, server, host, actor

Person hours

Workforce, staff

Person A, person B

c) Avoid irrelevant and unnecessary gendering

Irrelevant gendering can perpetuate stereotypes, exclude some genders, or distract from the central message through wordiness.

Sometimes, distinctions in gender (or assigned sex) may be relevant to a written work or might aid in understanding a subject matter. For example, in describing a study that compared the pay inequality between “men” and “women,” a writer would use the terms employed by the study’s authors. As well, gendered references may be appropriate in discussing impediments to access to healthcare for transgender verses cisgender persons. However, gendered references in health matters are not always as relevant or necessary as one might assume. Such references can be exclusionary. Writing about prostate cancer in terms of “men” excludes people with prostates who are not men. Similarly writing about pregnancy in terms of “women” excludes people with uteruses who are not women.*

In short, stopping to think about why gender is relevant and whether anyone might be erroneously excluded by a gender reference can guide writers toward the most inclusive language choices.

Instead of ...

The male nurse told Mr Wilson that there were no physicians able to see him.

The boys and girls saw the policeman's car hit the fence.

The regulatory board reviewed all the cases in which the doctor had treated women with uterine cancer. Where the doctor had treated women who were hoping to get pregnant, the board contacted those women directly.

Try ...

The nurse told Mr Wilson that there were no physicians able to see him.

The children saw the police car hit the fence.

The regulatory board reviewed all the cases in which the doctor had treated people with uterine cancer. Where the doctor had treated patients who were hoping to get pregnant, the board contacted those individuals directly.

2. Using gender-inclusive language

Gender inclusive language fills the gap once occupied by exclusionary language. The examples above foreshadow the techniques set out in the following pages.

* Sex assigned at birth is different from gender identity (see “Glossary of terms and common misconceptions”). A woman may have male anatomy and vice versa.

a) Neutral words or phrases

- Use **role descriptive terms** instead of “man” or “woman” or other gendered terms.

Ms Levy indicated to the shopper ahead of her in line that a teller was available.

(Not the woman or the man.)

The city councillor voted in favour of the bylaw. (Not councilman or councilwoman.)

The patrons who normally attended the theatre stayed away due to the protestors.

(Not ladies and gentlemen.)

- Use gender-neutral family relationship descriptors such as **child, parent, spouse, partner, sibling, or family member.***

A parent who wishes to enrol their child in a program must provide information about the child's medical history. A child who already has a sibling in the program will be given priority.

Benefits extend to the beneficiary's spouse and children, but not to family members who live in a different household without prior approval by the program administrator.

- Use gender-neutral indefinite pronouns or phrases like **anyone, anybody, everyone, everybody, someone, somebody, one, person, people, folks, others, the public, one and all, or individual.**

Instead of ...

A man cannot survive on love alone.

The contest was open to any man or woman who could pay the entrance fee.

The best man for the job is he who shows up.

Try ...

A person cannot survive on love alone.

The contest was open to anybody who could pay the entrance fee.

The best person for the job is the one who shows up.

* Husband or wife = spouse or partner; brother or sister = sibling; son or daughter = child; mother or father = parent; niece or nephew = sibling; aunt or uncle = sibling; grandmother or grandfather = grandparent. The neutral terms “spouse(s)” and “partner(s)” are also more inclusive of nonconventional sexual orientations or families than “husband” or “wife.”

Instead of ...

Where a student arrives more than an hour late for the examination, she will forfeit her fee and be required to reschedule her test. Otherwise, she will receive a failing grade.

The committee is awarding a prize to a boy or girl under the age of 18 who demonstrates advanced knowledge of astronomy.

Try ...

Any student who arrives more than an hour late for the examination will forfeit the fee and be required to reschedule the test. Otherwise, the individual will receive a failing grade.

The committee is awarding a prize to somebody under the age of 18 who demonstrates advanced knowledge of astronomy.

b) They/them as a neutral singular pronoun

See “How to use they as a singular pronoun” above (under “Writing about specific persons”). Note that in addition to being more inclusive than using “he or she” or “his or hers,” using “they” or “their” is less cumbersome.

Compare ...

If a buyer cannot complete the purchase, he or she may lose his or her deposit. This might occur if he or she cannot obtain financing or if his or her current property's sale does not complete as expected.

To ...

If a buyer cannot complete the purchase, they may lose their deposit. This might occur if they cannot obtain financing or if their current property's sale does not complete as expected.

c) Gender diverse examples

Sometimes writers want to use fictional people (with names and careers) in their examples to make their writing more tangible. When doing so, instead of using only people who identify as male or female in hypothetical examples, include examples of people who are non-binary or use gender-neutral titles and pronouns.*

A defendant has several possible defences to allegations of defamation. If Mary, a blogger, proves that what she wrote about Peter's car repair business is true, then Peter cannot succeed in a defamation claim against Mary.

* In addition to gender-diverse examples, where examples contain references to romantic or sexual relationships, consider reflecting diversity in sexual orientation or family composition (beyond heterosexual, two-parent families).

For example, in defending themselves against an allegation of negligence resulting in permanent nerve damage to a client, Mx Cohen, a physiotherapist, can argue they followed all standard practices and met the standard of care of a reasonable physiotherapist in the circumstances.

Consider the case where Sukhdeep Bajwa defended a claim of trespass against him on the basis that he had a possessory right to the land though a sublease agreement.

As well, consider whether you really need to add gendered references to make your writing more interesting. The above examples can all be rewritten to make their points using gender-neutral language:

A defendant has several possible defences to allegations of defamation. If a blogger proves that what they wrote about a car repair business is true, then the car repair business cannot succeed in a defamation claim against the blogger.

For example, in defending against an allegation of negligence resulting in permanent nerve damage to a client, a physiotherapist could argue they followed all standard practices and met the standard of care of a reasonable physiotherapist in the circumstances.

Consider the case where an alleged trespasser defended against the claim on the basis that they had a possessory right to the land though a sublease agreement.

d) Using plural forms

Instead of writing about a single hypothetical person, write in terms that apply to multiple people and then use the plural form of they/them.

Instead of ...

Before an applicant becomes eligible for the grant, he must submit his application. If his application is incomplete or if he fails to contact the institution to provide proof of his identity, he will not be considered for the grant.

Try ...

Before applicants become eligible for the grant, they must submit their applications. If their applications are incomplete or if they fail to contact the institution to provide proof of their identities, they will not be considered for the grant.

Instead of ...

Where a party wishes to respond to a petition, she must file a response to petition and any affidavits on which she intends to rely. Beyond this, she may not file further affidavits without consent of the petitioner or the court.

Try ...

Where parties wish to respond to a petition, they must each file a response to petition and any affidavits on which they intend to rely. Beyond this, they may not file further affidavits without consent of the petitioner or the court.

3. Using gender-neutral techniques

a) Eliminate the pronoun

Pronouns can often be removed with the meaning of the sentence remaining intact.

- Sometimes **simple removal** works because the relationship is implied.

Instead of ...

At common law, a will operated to pass personal property owned by the testator at her death.

When in his home, a resident should not hear excessive noise from the nightclub next door.

Try ...

At common law, a will operated to pass personal property owned by the testator at death.

When home, a resident should not hear excessive noise from the nightclub next door.

- **Restructure the sentence** to remove the pronoun.

Instead of ...

It was unclear if the defendant directed his mind to the potential effect of his words on the plaintiff when he sent the email.

The plaintiff's argument will be stronger if he backs it up with specific facts.

Try ...

When sending the email, it was unclear whether the defendant had in mind the effect of the words on the plaintiff.

The plaintiff's argument will be stronger if backed up with specific facts.

- **Remove unnecessary** references to objects requiring a **possessive pronoun**.

Instead of ...

The trustee, acting in her capacity as executor for the deceased, owes fiduciary obligations to the beneficiaries.

A driver is required to pay when parking his car in a city lot.

Try ...

The trustee, acting as executor for the deceased, owes fiduciary obligations the beneficiaries.

A driver is required to pay when parking in a city lot.

b) Replace the pronoun

- Replace pronouns with the articles **“the,” “a,” or “an.”**

Instead of ...

Anyone who arrives by air must show his passport on arrival.

After you’ve met with your client, please send me a copy of her sworn affidavit.

The ideal candidate’s resumé includes his or her exemplary academic record and shows his or her strong commitment to social justice.

Try ...

Anyone who arrives by air must show a passport on arrival.

After you’ve met with your client, please send me a copy of the sworn affidavit.

The ideal candidate’s resumé includes an exemplary academic record and shows a strong commitment to social justice.

- **Repeat the noun** to replace a pronoun.

Instead of ...

Relevant extrinsic evidence of the testator’s intent should be more readily admissible to assist in the interpretation of his will.

The plaintiff’s argument will be stronger if she backs it up with specific facts.

Try ...

Relevant extrinsic evidence of the testator’s intent should be more readily admissible to assist in the interpretation of the testator’s will.

The plaintiff backs it up with specific facts.

Instead of ...

An articling student will be offered a position at the firm if he receives a positive evaluation.

- **Use “who”** (or “whose”) as a relative pronoun.

Instead of ...

In the event of a breach, a party may be excused from further performance if he has not yet consumed the product.

The notice provided that someone could apply for the position only if she had never held political office.

When questioned about her credentials, the expert testified that the school in Switzerland did not issue diplomas.

- **Use “personally”** in place of a reflexive “self” pronoun.

Instead of ...

The officer herself was caught up in the confusion about the missing signage.

Before the accident, the plaintiff took care of the children himself.

Try ...

An articling student will be offered a position at the firm if the student receives a positive evaluation.

Try ...

In the event of a breach, a party, who has not yet consumed the product, may be excused from further performance.

The notice provided that only someone who had never held political office could apply for the position.

The expert, whose credentials were questioned, testified that the school in Switzerland did not issue diplomas.

Try ...

The officer was personally caught up in the confusion about the missing signage.

Before the accident, the plaintiff personally took care of the children.

4. Changing point of view or voice

a) Write in the first or second person

Instead of writing in the third person, write in the first or second person such that “I” “we” and “you” become the operable pronouns. This option may be more appropriate in less formal

legal writing, such as a letter or presentation, than in a contract or a court submission.

Instead of ...

To write a good argument, a lawyer should research his subject matter and prepare an outline of his argument.

Everybody knows that if one wants to succeed, he must put in the effort.

For example, one can always hope that his or her dreams will be fulfilled simply by good luck, but he or she knows not to leave things to chance.

Try ...

To write a good argument, you should research your subject matter and prepare an outline of your argument.

We all know that if we want to succeed, we must put in the effort.

For example, I can always hope that my dreams will be fulfilled simply by good luck, but I know not to leave things to chance.

b) Considered use of passive voice

Recent generations of legal writers have learned the mantra “use the active voice.” The active voice satisfies a reader’s need for action while the passive voice obscures “who did what.” Given the abundance of gender-neutral techniques discussed above, writers may not need to resort to the passive voice very often. Still, since the passive voice does not require “actors,” it can offer a way to avoid using personal pronouns as part of gender inclusive writing.

Instead of ...

Once a consumer purchases the software, he must install it as specified by the manufacturer. If he fails to have the software installed by an approved technician, his warranty will be void.

A minister must not fetter his discretion. Where, without question, a minister adopts every recommendation of his senior staff, he shirks his responsibilities.

Try ...

Once the software is purchased by a consumer, it must be installed as specified by the manufacturer. If it is not installed by an approved technician, the warranty will be void.

Ministerial discretion must not be fettered. To adopt without question every recommendation of senior staff, is a shirking of responsibility.





V. Further Resources

A. Inclusive language guides

“APA Style, Gender” (September 2019), online: *American Psychological Association* <<https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/gender>>.

“Gender-inclusive writing: correspondence (Linguistic recommendation from the Translation Bureau)” (last modified 1 December 2021), online: *Government of Canada* <<https://www.noslangues-ourlanguages.gc.ca/en/writing-tips-plus/gender-inclusive-writing-correspondence>>.

“Gender inclusive language” online: *United Nations* <<https://www.un.org/en/gender-inclusive-language/>>.

“Guide de communication inclusive” (October 2021), online (pdf): *Université du Québec* <https://www.uquebec.ca/reseau/fr/system/files/documents/EDI/guide-communication-inclusive_uq-2021.pdf>.

“Guidelines for Inclusive Language” (November 2016), online: *Linguistic Society of America* <www.linguisticsociety.org/resource/guidelines-inclusive-language>.

“Inclusive Language and Terms” online: *Province of British Columbia* <<https://www2.gov.bc.ca/gov/content/home/accessible-government/toolkit/audience-diversity/inclusive-language-and-terms>>.

“Legistics Gender-neutral Language” (last modified 1 June 2020), online: *Department of Justice* <canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p15.html>.

Frances Peck, “Gender-neutral writing (Part 1): The pronoun problem” (last modified 15 October 2015), online: *Public Works and Government Services Canada* <https://www.btb.termiumpplus.gc.ca/tpv2guides/guides/favart/index-eng.html?lang=eng&lettr=indx_autr8jiZHa-hDjSg&page=9mtUeINzyZ1E.html#zz8jiZHa-hDjSg>.

“Style Guide: Inclusive Language Guidelines” online: *Queen’s University* <<https://www.queensu.ca/brand-central/writing-style/inclusive>>.

“Style Guide: Section 5: Inclusive language” online: *University of Victoria* <<https://www.uvic.ca/brand/story/style/inclusivity/index.php>>.

Trans Care BC, “Gender Inclusive Language” online (pdf): *Provincial Health Services Authority* <http://www.phsa.ca/transcarebc/Documents/HealthProf/Gender_Inclusive_Language_General.pdf>.

“TRU Style Guide: Inclusive Language” online: *Thompson Rivers University* <www.tru.ca/marcom/styleguide/Inclusive_Language.html>.

“Words Matter: Guidelines on using inclusive language in the workplace” (last modified 18 May 2018), online (pdf): *Province of British Columbia* <www.gov.bc.ca/assets/gov/careers/all-employees/working-with-others/words-matter.pdf>.

Karen Yin, “Gender, Sex + Sexuality” (2015-2021), online: *Conscious Style Guide* <consciousstyleguide.com>.

B. Pronouns

American University, The Centre for Diversity and Inclusion, Office of Campus Life, "Pronouns: A Guide for the American University Community" online (pdf): *The Centre for Diversity and Inclusion, Office of Campus Life, American University* <<https://www.american.edu/ocl/cdi/upload/pronouns-explained.pdf>>.

Dennis Baron "A brief history of singular 'they'" (4 September 2018), online (blog): *Oxford English Dictionary* <<https://public.oed.com/blog/a-brief-history-of-singular-they/>>.

Dennis Baron, *What's Your Pronoun? Beyond He & She* (Liveright, 2021).

"How do I use singular they?" (4 March 2020), online: *MLA Style Centre* <<https://style.mla.org/using-singular-they/>>.

"Pronouns" (2017), online: *The Chicago Manual of Style Online* <www.chicagomanualofstyle.org/qanda/data/faq/topics/Pronouns.html>. See also the online manual section 5.48 for "Singular They."

"They" (2020), online: *Merriam-Webster* <www.merriam-webster.com/dictionary/they>.

"They" (2021), online: *Cambridge Dictionary* <<https://dictionary.cambridge.org/dictionary/english/they>>.

University of Colorado, Office of Equity, "Resources for Using 'they' as a Singular Pronoun" online (pdf): *Office of Equity, University of Colorado* <https://www1.ucdenver.edu/docs/librariesprovider102/default-document-library/resources-for-using-they-as-a-singular-pronoun.pdf?sfvrsn=1ef238b9_2>.

Michael Waters, "Where Gender-Neutral Pronouns Come From", *The Atlantic* (4 June 2021), online: <<https://www.theatlantic.com/culture/archive/2021/06/gender-neutral-pronouns-arent-new/619092/>>.

C. Courts

The Court of Appeal of British Columbia, “Practice Directive (Civil and Criminal): Appearing before the Court” (18 November 2021).

The Supreme Court of British Columbia, “PD-59 Practice Direction: Forms of Address for Parties and Counsel in Proceedings” (16 December 2020).

The Supreme Court of British Columbia, “PD-60 Practice Direction: Form of Address” (18 November 2021).

The Provincial Court of British Columbia, “NP24 Notice to the Profession and Public, Form of Address for Parties and Lawyers” (16 December 2020).

D. Sexual orientation, gender identity, and expression

“Chairperson’s Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics” (last modified 17 December 2021), online: *Immigration and Refugee Board of Canada* <<https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx>>.

Alexa Drake, “An Employer’s Guide to Using Gender Inclusive Language in the Workplace” (23 June 2020), online: *Learn Hub* <<https://learn.g2.com/gender-inclusive-language>>.

“Internationally recognized sexual orientation or gender identity or expression (SOGIE) definitions” (last modified 5 October 2020), online: *Government of Canada* <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/refugee-protection/resettlement/priority-special/sexual-orientation-gender-identity/definitions.html>>.

Dustin Klautd & Lee LMG Nevens, “No Need to Guess”, *CBA/ABC National* (10 February 2021), online: <<https://www.nationalmagazine.ca/en-ca/articles/law/opinion/no-need-to-guess>>.

Amy Salyzyn & Samuel Singer, “Challenging ‘Compelled Speech’ Objections: Respectful Forms of Address in Canadian Courts”, *SLAW, Canada’s Online Legal Magazine* (14 December 2021), online: <<http://www.slaw.ca/2021/12/14/challenging-compelled-speech-objections-respectful-forms-of-address-in-canadian-courts/>>.

Endnotes

- 1 See the “Glossary of Terms and Common Misconceptions” following the “Introduction” to this Guide for definitions of gender, gender identity, sex, gender expression, etc.
- 2 While this Guide focusses on gender-inclusive writing and language choices for the legal profession, inclusive writing encompasses more than attention to gender. Language choices may have unintended effects in relation to other aspects of personal identity.
- 3 *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.
- 4 The Court of Appeal of British Columbia, “Practice Directive (Civil and Criminal): Appearing before the Court” (18 November 2021); The Supreme Court of British Columbia, “PD-59 Practice Direction: Forms of Address for Parties and Counsel in Proceedings” (16 December 2020).
- 5 For example, the Civil Resolution Tribunal’s *Code of Conduct for CRT Parties, Representatives and Helpers* sets out a duty to not behave abusively. It defines “abusive behaviour” as including “Deliberately refusing to use a person’s indicated name, title, or pronouns, in written or verbal communications.” Rule 1.3(4) of the Tribunal’s Rules makes compliance with the Code of Conduct mandatory, and Rule 1.4(2) allows the Tribunal to take actions, including dismissing a claim, for non-compliance.
- 6 See: “Style Guide: Inclusive Language Guidelines” online: *Queen’s University* <<https://www.queensu.ca/brand-central/writing-style/inclusive>>. “TRU Style Guide: Inclusive Language” online: *Thompson Rivers University* <www.tru.ca/marcom/styleguide/Inclusive_Language.html>.
- 7 “Counsel Introduction Scripts” (21 December 2020), online (pdf): *CBA BC Branch* <https://www.cbabc.org/CBAMediaLibrary/cba_bc/pdf/PracticeResources/Counsel_Introduction_Scripts.pdf>.
- 8 See: “Words Matter: Guidelines on using inclusive language in the workplace” (last modified 18 May 2018), online (pdf): *Province of British Columbia* <www.gov.bc.ca/assets/gov/careers/all-employees/working-with-others/words-matter.pdf>. “Legistics Gender-neutral Language” (last modified 1 June 2020), online: *Department of Justice* <canada.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/p1p15.html>. “Chairperson’s Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression, and Sex Characteristics” (last modified 17 December 2021), online: *Immigration and Refugee Board of Canada* <<https://irb-cisr.gc.ca/en/legal-policy/policies/Pages/GuideDir09.aspx>>.
- 9 See: “APA Style, Gender” (September 2019), online: *American Psychological Association* <<https://apastyle.apa.org/style-grammar-guidelines/bias-free-language/gender>>.
- 10 People have used “they” in its singular form since the 1300s. See: Dennis Baron, “A brief history of singular ‘they’” (4 September 2018), online (blog): *Oxford English Dictionary* <<https://public.oed.com/blog/a-brief-history-of-singular-they/>>. The singular form of “they” can be compared to “you,” which may also refer to one or more persons.

- 11** See discussion in Amy Salzyn & Samuel Singer, 'Challenging "Compelled Speech" Objections: Respectful Forms of Address in Canadian Courts', *SLAW, Canada's Online Legal Magazine* (14 December 2021), online: <<http://www.slw.ca/2021/12/14/challenging-compelled-speech-objections-respectful-forms-of-address-in-canadian-courts/>>.
- 12** See: Dustin Klautt & Lee LMG Nevens, "No Need to Guess", *CBA/ABC National* (10 February 2021), online: <<https://www.nationalmagazine.ca/en-ca/articles/law/opinion/no-need-to-guess>>.
- 13** Definition copied from: Trans Care BC, "Two-Spirit" online: *Provincial Health Services Authority* <<http://www.phsa.ca/transcarebc/gender-basics-education/terms-concepts/two-spirit>>.
- 14** See: Trans Care BC, "Gender Inclusive Language" online (pdf): *Provincial Health Services Authority* <http://www.phsa.ca/transcarebc/Documents/HealthProf/Gender_Inclusive_Language_General.pdf>.
- 15** Michael Waters, "Where Gender-Neutral Pronouns Come From", *The Atlantic* (4 June 2021), online: <<https://www.theatlantic.com/culture/archive/2021/06/gender-neutral-pronouns-arent-new/619092/>>. Dennis Baron, *What's Your Pronoun? Beyond He & She* (Liveright, 2021).
- 16** This table is based on a similar table, see: American University, The Centre for Diversity and Inclusion, Office of Campus Life, "Pronouns: A Guide for the American University Community" online (pdf): *The Centre for Diversity and Inclusion, Office of Campus Life, American University* <<https://www.american.edu/ocli/cdi/upload/pronouns-explained.pdf>>. See also: "Gender Census 2021: Worldwide Report" online: *Gender Census* <<https://gendercensus.com/results/2021-worldwide/#pronouns-checkboxes>>.
- 17** See Alan Greenblatt, "The Racial History of the Grandfather Clause" (22 October 2013), online (blog): *NPR* <<https://www.npr.org/sections/codeswitch/2013/10/21/239081586/the-racial-history-of-the-grandfather-clause>>. In this situation "legacy clause" might provide a better option.

