

Facing the Challenge of Improving the Legal Writing Skills of Educationally Disadvantaged Law Students in a South African Law School

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Abstract

Many first-year students in the School of Law at the University of KwaZulu-Natal, Howard College, who have been disadvantaged by a poor primary and secondary education, exhibit poor legal writing skills. Over a period of four years, in order to address this urgent need for legal writing instruction, the School of Law introduced two successive legal writing interventions. The first intervention was the Concise Writing Programme, followed by the Integrated Skills in Context Programme. The Concise Writing Programme focused on English writing skills and grammar in the hope that first-year law students would be able to transfer these generic writing skills to the more specific legal discourse within which they were learning to operate. The Law School reviewed the success of this initial programme and found that students who took part in the programme not only lacked the motivation to learn generic English writing skills, but that they also did not find it easy to transfer these skills to the more specific legal writing environment. The Law School then implemented a second legal writing intervention – The Integrated Skills in Context Programme. This programme acknowledged the fact that legal writing has a multi-faceted nature, encompassing legal analysis and application, as well as logical sequencing and argument, all of which could not be taught in a vacuum, particularly when most of the student base was largely unfamiliar with any form of legal discourse and many had English as a second language. This paper recognises that there is no silver bullet to improving the legal writing skills of these students. The reality is that it will take hard work as well as financial incentives to make a difference to these students' legal writing skills. Our students need intensive one-on-one attention by qualified academics, and this means that those doing the instruction must be recognised and adequately compensated.

Keywords

Legal writing skills; South African Law School; generic English writing skills; academic disadvantage; legal discourse; legal analysis and application.

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1 Introduction

Each year, thousands of South African students enter tertiary education weighed down by the legacy of a largely dysfunctional school system.¹ The disadvantage of a poor primary and secondary education runs deep and wide. Educational disadvantage – in the South African context at least – is not something to be wished away or easily dispelled with the wave of a pedagogical wand. Impressive-sounding theories which are rich on jargon but poor on practical details of how to accomplish the hard work of dislodging firmly entrenched poor writing practices will simply not do.

In response to this issue, the School of Law at the University of KwaZulu-Natal, Howard College Campus instituted a programme aimed at improving the poor legal writing skills that many disadvantaged first-year law students demonstrate. The process began in 2009 with a writing intervention – the Concise Writing Programme – which was primarily aimed at correcting English grammar skills and required a relatively small budget to implement. It culminated in 2012 in a context-embedded legal writing programme – the Integrated Skills in Context Programme – that focused on logical thinking and persuasive legal writing. This programme was based on real-world problems and required a fairly substantial budget to design, implement and administer.

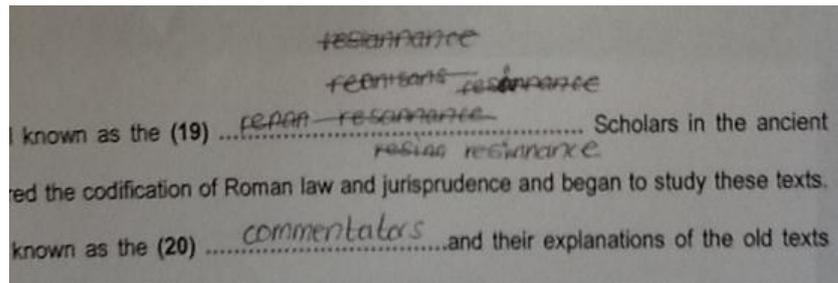
By 2009 the need to address the lack of legal writing skills among first-year law students at the University of KwaZulu-Natal had become critical. There were ever more plaintive pleas from the law profession and law lecturers that that students should be helped to improve their basic legal writing skills. The University of KwaZulu-Natal, School of Law formally decided to take a stand against this aspect of disadvantage which had been ingrained in our first-year law students through years of inadequate writing instruction.²

The extent of the struggle confronting these students is illustrated by the following student's attempt to spell the word renaissance:

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¹ Swanepoel expresses a similar sentiment: "... there is the sad reality, but mammoth challenge, regarding the general unpreparedness of students to study law" (Swanepoel and Snyman-Van Deventer 2012 *Obiter* 121, 122).

² Greenbaum stresses the importance of teaching legal writing, which she says is an "integral part of cognitive development" (Greenbaum 2004 *Stell LR* 8).



This simple example does not truly indicate the kind of challenge that educators at tertiary level were and still are facing. The challenge is not limited to teaching students how to spell difficult words and engaging with poor grammar or language skills. The superficial problems with these students' legal writing skills indicate a deeper underlying problem with their legal literacy and academic literacy skills.³ Among other things, the challenges we are facing encompass poor critical thinking skills, weak logical argumentation skills, and the lack of a general frame of reference within which to address legal problems at a tertiary level.

As the Law School began the process of brainstorming the design and details of potential writing interventions in 2009, one fact that was clear to all the academics involved was that quick-fix solutions would not be sufficient to address the effects of a deeply rooted legacy of disadvantage on the legal writing skills of the students affected. There would be no miraculous solution to the problems we were facing. Achieving success in a programme such as this would take a continued concerted effort both on the part of the first-year students who would participate in the programme and on the part of the educators who would implement it.

This led to the introduction of the University of KwaZulu-Natal, Law School's first legal writing intervention – the Concise Writing programme – in which the Law School teamed up with a language expert associated with the

³ Novice law students must learn to write within the legal writing conventions attached to legal discourse. Rideout and Ramsfield comment that law students "are learning to write within a highly conventionalized discourse, law, in which legal arguments are constructed according to certain unwritten discourse rules, or conventions" (Rideout and Ramsfield 1994 *Wash L Rev* 60). Kress describes the writer "...not as an isolated individual, but as a social agent, located in a network of social relations, in specific places in a social structure. For that social agent the grammar of a language, its syntax, phonology, and lexicon, has a very specific look, not 'language as such' but rather a particular set of potentials and possibilities within the whole language system. For her or him certain facets of the linguistic system are familiar, accessible, in constant use. Others will seem strange, used by speakers beyond the social grouping of this language user, in different work or professional environments, by members of other social classes or ethnic groupings or maybe differentiated by age or gender." (Kress *Linguistic Processes* 5).

University of KwaZulu-Natal's English Department in order to develop a language course tailored to meet the legal writing needs of first-year law students. This programme was continually overhauled and expanded over two years, as the School of Law learnt by experience. The Concise Writing Programme was finally replaced in 2011 by a more context-based programme, known as the Integrated Skills in Context Programme.

The purpose of this article is to describe the "nuts and bolts" of an educational endeavour carried out over four years by the School of Law at the University of KwaZulu-Natal, Howard College Campus. It will also evaluate, in some detail, each of the programmes referred to above, and will point out the fundamental differences between the two. After this the reasons behind the replacement of the Concise Writing Programme by the Integrated Skills in Context Programme will be discussed. Finally, the article will evaluate the relative success of the Integrated Skills in Context Programme, and also recommend improvements to be made to it.

2 The Concise Writing Programme

In 2009, after some months of brainstorming on how to address the challenge of improving our students' legal thinking and writing skills, with few resources and a handful of eager but overloaded teaching staff, it was decided to introduce a formal writing intervention at first-year level. The idea behind this intervention was to catch the students as early as possible in their law degree, in order to improve their basic English grammar. The good habits learned could then be reinforced in subsequent years.

The fundamental point of departure, which was true to remedial trends at the time, was that as long a student was taught basic English writing skills, even though not in the context of his or her particular discipline, these skills, once acquired, could quite easily and naturally be transferred by the student to his or her relevant writing discipline.⁴ The remedial writing instruction practice at the time maintained that teaching students generic writing skills in collaboration with English language experts, would be sufficient to produce a significant improvement in the specific writing skills required. It was thought, for example, that this would lead to a major improvement in writing skills in the discipline of law – within one academic year.⁵

⁴ Greenbaum 2004 *Stell LR* 5.

⁵ It is important to note, however, that certain authors had already begun to discredit this way of thinking and postulate a more integrated approach to teaching legal writing. In 2002 Candlin, Bhatia & Jensen wrote: "...we can argue that learning to

The pedagogical strategy underpinning the early development of this initial legal writing intervention was Vygotsky's theory of the zone of proximal development.⁶ The intervention sought to implement the idea of an expert in the field giving specific, directed instruction to the students on the use of the English language in legal writing. This was adapted and developed by appointing final-year LLB students as tutors, who would closely guide the writing practice of small groups of learners. This was intended to provide a scaffolded⁷ learning experience which, in accordance with the practice recommended by Cheyne and Tarulli, would be "informed by the tutor's constant appraisal of, and sensitivity to, the learner's level of functioning".⁸

The Concise Writing Programme was fully integrated into the first-year law module at the Howard College Campus of the University of KwaZulu-Natal. It consisted of two contact sessions per week: one large group lecture taken by an English specialist associated with the Law Faculty, and one small group tutorial, taken by students studying their Masters in English.

The lectures had a legal flavour, but were focused mainly on grammar, punctuation and general English language skills. Students were taught, for example, to summarise a paragraph describing a legal dispute or to correct the grammar in an article about a legal matter. They were tested on their knowledge of English comprehension, grammar, and punctuation. For example, in tests, students would be provided with a paragraph which did not necessarily contain any legally-related content, and were asked to

write legal discourse is part of a process of learning to participate in the affairs of the legal community and its disciplinary culture. On this argument, it is not enough to be able to construct legal sentences as part of the mastery of some specialist genres, but also to be aware of the place of such genres in the disciplinary community; in essence to ask *why* such genres are written the way they are. To do so is to evoke the conditions and processes of legal practice. It is exactly this mix of generic and disciplinary knowledge which constitutes the training of legal specialists." (Candlin, Bhatia and Jensen 2002 *ESP* 312).

⁶ Vygotsky defines the zone of proximal development as: "... the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers" (Vygotsky *Mind in Society* 86).

⁷ Scaffolding is described as a: "process that enables a child or a novice to solve a problem, carry out a task or achieve a goal which would be beyond his unassisted efforts" (Cheyne and Tarulli "Dialogue, Difference and Voice in the Zone of Proximal Development" 15, quoting Wood, Bruner and Ross 1976 *J Child Psychol Psychiatry* 90).

⁸ Cheyne and Tarulli "Dialogue, Difference and Voice in the Zone of Proximal Development" 15. The tutors involved in this programme received guidance from the lecturer in the form of a feedback workshop focusing on how to provide feedback to the students on both substance and writing.

provide a synonym for a certain phrase or to provide a précis of the paragraph.

After running the programme for several years, making minor changes to the materials along the way, the Law School undertook a careful review⁹ of the various facets of the programme, including the feedback from students. The review showed that, although all the ingredients of a good legal writing module were present – with an experienced and senior staff member lecturing students relevant material, and with large-group lectures being supplemented by practical classes supervised by senior, engaged tutoring staff providing a scaffolded learning experience – the feedback from students on the usefulness of the programme, as well as their enjoyment of the programme was not universally positive. Students with very poor English language skills found the programme to be moderately useful. The vast majority of students, however, said that they found the programme boring and did not know what it had to do with law. So, while it had been an excellent learning experience for the University of KwaZulu-Natal Law School in that it had provided invaluable experience in launching an initiative such as this – with all the incumbent logistical hurdles associated with administering 20 to 25 small group tutorials each week, and the creative expertise that goes into designing course materials and tests focusing on English writing skills – the programme was not really what the Law School was looking for to solve the massive problem faced by the Law School and its disadvantaged students. It was clear to the Law School that a deeply entrenched legacy of disadvantage remained stubbornly intact, which left its students without the English language skills needed for skilled and effective communication in legal discourse,¹⁰ without critical thinking skills, without legal argumentation skills, and without a general frame of reference which many simply expect students to possess at tertiary level.

In this respect, Boughey and McKenna make a valuable point about the nature of Academic Discourses as articulated by Gee. They maintain that:

One of the most important points made by Gee is that Discourses are inherently value-laden. Over time, particular Discourses become privileged because of their association with specific social spaces. Academic Discourses

⁹ The programme was evaluated using three instruments: an extended writing assignment; student questionnaires; and qualitative feedback from primary stakeholders. This is discussed further in s 5 below.

¹⁰ Kress describes the notion of "discourse" as follows: "A discourse provides a set of possible statements about a given area, and organizes and gives structure to the manner in which a particular topic, object, process is to be talked about. In that it provides descriptions, rules, permissions and prohibitions of social and individual actions." (Kress, *Linguistic Processes* 7).

are privileged in the university. If an individual's primary Discourse is closely aligned to the academic Discourses of the university, and typically this is the case for students from educated, middle class homes, then the acquisition of academic Discourses is easier. An individual whose home Discourse is very different from those of the academy will encounter academic Discourses as alien and even incomprehensible. We can thus begin to see how power and social privilege are implicated in developing the 'ways of being' valued by the university.¹¹

The inevitable "gap" between the knowledge and skills required at high school and those required at university has been referred to by Scott and Hendry as a "lack of effective educational continuity, or articulation, between consecutive educational levels". They believe that if there is not sufficient articulation between the levels then this will be a "counter-productive obstacle to student progression". They maintain that the path to effective articulation

... is not just about aligning formal entry requirements; rather, it is achieved by ensuring appropriate forms and levels of provision at the interface between educational types or phases, and by providing appropriate support for students making the transition. Articulation is thus a critical matter for educational planning as well as theory.¹²

The Law School concluded that, in order to increase student motivation and maximise its chances of success in a legal writing skills programme, it would have to focus on legal writing¹³ rather than English grammar. Through the Law School's experiences with the Concise Writing Programme, it had become obvious that it was unreasonable to out-source the teaching of these practical skills, even to an expert in English writing. This out-sourcing amounted to teaching English grammar skills out of context and then expecting students to have somehow gained insight into legal discourse.¹⁴

It was obvious that the multi-faceted nature of legal writing, encompassing legal analysis and application, as well as logical sequencing and argument, could not be taught in a vacuum,¹⁵ particularly when most of the student base was largely unfamiliar with any form of legal discourse and many had English as a second language. At the time, when researching possible

¹¹ Boughey and McKenna 2016 *CriSTaL* 1-9.

¹² Scott, Yeld and Hendry *Higher Education Monitor*.

¹³ Greenbaum summarises several authors' descriptions of the term "legal writing", all of which emphasise that the legal writer, in addition to displaying competent grammatical skills, should also demonstrate an awareness of legal discourse and how to communicate within this community (Greenbaum 2004 *Stell LR* 6).

¹⁴ Greenbaum also makes this point (Greenbaum 2004 *Stell LR* 5).

¹⁵ On this point Vinson notes that "Good legal writing includes the effective communication of legal analysis, rather than just technical proficiency with rules of grammar, syntax, and punctuation." (Vinson 2005 *Touro L Rev* 510).

reasons for our first-years' poor legal writing skills, the Law School noted with interest that other South African legal academics had commented on the negative effect that a student's lack of familiarity with the legal discourse could have on their writing skills. For example, Greenbaum makes the point that:

... added to the non-English mother tongue speakers' difficulties, a factor that cannot be ignored is that most of these students have less cultural familiarity with the legal discourse community and the business milieu within which it operates.¹⁶

She refers to this specific knowledge as "insider" knowledge, which is most easily learned from "experts" in the legal field. Greenbaum suggests that:

Outsiders need to learn how arguments are constructed according to certain unwritten rules or conventions, and they need to master an entire new technical vocabulary. By allowing students to be active writers, discussing the discourse conventions explicitly in a collaborative setting that takes into account the different background and learning style of each student, the social perspective can contribute toward a genuine socialisation of novice legal writers.¹⁷

At this juncture it is important to note that the unique, complex discourse of the legal community is in fact completely foreign to most law students – even those proficient in the English language.¹⁸ To master this complex and strange discourse is a major challenge for all law students.¹⁹ Thus, legal writing instruction should not be reserved as a remedial tool for so-called "outsiders" – but should be mainstreamed into the law curriculum, recognising that the challenge faced with legal writing skills is common to

¹⁶ Greenbaum *Teaching Legal Writing* 3.

¹⁷ Greenbaum 2004 *Stell LR* 14.

¹⁸ Rideout and Ramsfield make the point that "... if we find that students lack the kind of writing proficiency that we assume, we often treat them in remedial ways ... we may be overlooking the fact that these writers, regardless of the level of writing proficiency that they may have attained before law school, are now novices entering a new discourse. Their unfamiliarity with legal discourse may disguise their successes as writers in the past, or may make them appear remedial when grammar or sentence drills are not what they need. They may appear to have difficulty developing legal arguments, but such difficulties need not be symptomatic of a writer who has difficulty developing arguments 'generally'. Rather, a novice to legal discourse lacks the very methods of inquiry and internal dialogues available to someone who is 'situated' within the law." (Rideout and Ramsfield 1994 *Wash L Rev* 69).

¹⁹ Baker comments that "The standard, and largely subconscious, repertoire of cognitive practices, reading techniques, and writing strategies students have relied on successfully in the past are frequently ill-adapted to the specialized demands of more purposeful discourse communities like legal practice." (Baker 1997 *Wm Mitchell L Rev* 491).

all new law students (although the extent of the challenge may differ from student to student).²⁰ Rideout and Ramsfield write:

Students cease to be 'empty' agents to be 'filled' with the law and legal analysis so that they can produce legal writing - legal words to represent legal thinking; rather they become novices to be socialized into the discourse and its practices. Students cannot have the law and legal patterns of analysis drilled into them so much as they must acquire them, in a manner analogous to the ways in which other students learn a foreign language. When students have difficulty writing legal analysis or making strong legal arguments, they are not necessarily hindered by poor thinking so much as they are struggling with the unfamiliarity of legal discourse and striving to master their entry into it. To label them as faulty writers is misleading; they are more like travelers, searching for a destination that is sometimes unclear to them and arriving at that destination at different rates.²¹

Armed with the knowledge gained from the implementation of the Concise Writing Programme, certain innovations were suggested in order to improve student learning and motivation. The Law School set out to meet the challenge brought by educational disadvantage and poor legal writing skills. The following principles were adopted:

- a) Law students should be taught the basics, as well as the more complex nuances of legal writing, by law lecturers or by legal practitioners.

The Concise Writing Programme showed that using experts in the English language to teach law students the intricacies of legal writing was ineffective in motivating law students to take the programme seriously or in improving their legal writing skills. It was thus important that law lecturers or legal practitioners were involved in the development of the teaching materials and in the teaching and facilitation of the programme itself. The developers of the programme – those who wrote the course materials and those who decided upon the teaching methodology – as well as the lecturers on the programme needed to have an in-depth knowledge of the subject material in order to present it in such a way as to motivate and immerse law students in it. To maximise motivation, students needed to understand in a very practical way the benefits of learning to write using particular legal writing conventions. It was not enough to be told "what" they had to do; they needed to be told "why" they were required to follow these conventions, as well as

²⁰ Greenbaum 2004 *Stell LR* 13.

²¹ Rideout and Ramsfield 1994 *Wash L Rev* 69.

the consequences that would ensue should they fail to heed the practical legal writing advice provided.²²

The Concise Writing Programme also revealed that, in addition to having expertise in the subject matter of the module, it was desirable for the designers of as well as the lecturers on such practical modules to have some expertise in teaching methodology. This was so that they would be able to introduce the materials and facilitate student learning in such a way as to elicit a deep learning²³ response from the students.

An example of teaching in this way is given by Hedegaard, who recommends that:

The teacher's planning must advance from the general laws to the surrounding reality in all its complexity. In order to explain these laws the teacher must choose concrete examples that demonstrate the general concepts and laws in the most transparent form.²⁴

Thus, it was important that the designers and lecturers on the programme were well versed in both the academic legal discourse and the professional legal discourse – so as to be able to provide a deep learning experience for the students and concrete examples of why, in the legal academic community or in the legal profession, certain writing conventions needed to be followed.

- b) The materials used to teach law students the intricacies of legal writing needed to be context-embedded.

It was clear to the academics involved in the programme that providing general guided instruction on the correct use of the English language in a programme that was required to impart the nuances specifically of legal writing was not enough. It was essential that scaffolded learning

²² Quinot emphasises the value of placing learning experiences in context: "The complex nature of learning also implies that knowledge and its construction cannot be broken up into 'discrete sub-skills' that can be taught separately and in isolation, and that concepts cannot be taught out of context. It is only within context and within a relational network that knowledge can exist." (Quinot 2012 *SALJ* 421-422). Also, Willimas and Williams highlight the importance of context in increasing student motivation. They maintain that motivation "... arises out of the interaction between a student and what he or she perceives as a significant and meaningful context" (Williams and Williams 2011 *RHEJ* 1-23).

²³ Fourie maintains that "Students who adopt a deep approach to learning seek to understand what they are learning; are actively interested in the learning material; try to relate ideas in a subject to ideas from other areas; and attempt to base conclusions on evidence and reasoned arguments." (Fourie 2003 *SAJHE* 123, quoting Ramsden *Improving Learning* 19).

²⁴ Hedegaard "Zone of Proximal Development" 227.

opportunities be embedded within actual legal discourse. Hedegaard explains the importance of contextualising learning by elaborating on Vygotsky's theory of the zone of proximal development:

The underlying assumption behind [Vygotsky's] concept is that psychological development and instruction are socially embedded; to understand them one must analyse the surrounding society and its social relations.²⁵

The need for socially embedded instruction takes on even more importance in the context of South Africa's constitutional dispensation. Quinot advocates that the constitutional imperative to transform encompasses legal education and that there is a need for "transformative legal education".²⁶ Quinot notes that, in practical terms, one of the consequences for legal education of the constitutional imperative to transform is:

Students should be educated not only in the new substance of the law but also in the new legal method or reasoning mode ... Matters of morality and policy, even politics, can no longer be excluded from legal analysis. This means that such matters should also enter the lecture hall. Law teachers will be failing their students if they do not enable them to engage with these ostensibly extra-legal considerations in dealing with the law. This also requires a much greater emphasis on the context in which law operates, and the society that it intends to regulate, or in our case transform.²⁷

A legal writing programme should thus provide students with the intellectual space in which to engage with their peers in meaningful discussions on the legal material and related social issues, while being led by a legally trained tutor who is well versed in the area of law – as well as the social and political context in which that law operates. One of the reasons behind adopting this teaching methodology on the programme is well articulated by Geo Quinot, who comments that:

Transformative constitutionalism forces us to imagine a different methodology. A methodology that enables students to participate actively in developing their own understanding of rules not only against their own background context, but also, critically, against the background context of others, would aid in developing an understanding of the law as a phenomenon that is socially constructed and situated.

In a similar vein, Dewey elucidates the "need for a theory of experience" in which there is an "organic connection between education and personal experience". However, he cautions that while this connection is essential to attaining a "genuine education", one must be mindful of the fact that not all

²⁵ Hedegaard "Zone of Proximal Development" 227.

²⁶ Quinot 2012 *SALJ* 412.

²⁷ Quinot 2012 *SALJ* 415.

experiences are "genuinely or equally educative".²⁸ This highlights the need for the educators in a legal writing programme to be experienced professional legal teachers who are not prepared to pay mere lip-service to the need for contextualised learning, but who are genuinely interested in providing the students with authentic examples of real-world experiences that will enhance their deep learning experience in a meaningful, transformative manner.

Thus, it was felt that allowing learners to apply their legal writing skills to a socially, politically and economically relevant fact statement reinforced by relevant teaching material written in legal language which was interesting and relevant to a first-year law student would enhance student cognition and motivation. It was felt that writing activities should be based on a scenario that the students could identify with strongly and even find themselves confronting in their first year of study.

c) Students must be exposed to a practical legal writing experience.

After reviewing the Concise Writing Programme it became clear that it was also imperative that students were involved in a practical legal writing experience in which they were afforded the opportunity to practice the skills taught in lectures through a series of tutorial tasks and assignments.²⁹ These tutorial tasks and assignments had to be designed to lead the students incrementally through the legal problem-solving process, allowing them to build their legal writing muscles gradually, until they were strong enough to produce well-rounded, persuasive pieces of writing on their own.³⁰ Greenbaum supports this so-called "process approach" to teaching legal writing skills, stating that:

²⁸ Dewey *Experience and Education* 25.

²⁹ Rideout and Ramsfield make the point that these students "cannot afford to remain passive spectators in the legal writing classroom. Their very participation in the dialogue of the classroom - its questioning about and inquiry into legal issues, its efforts at paraphrasing and synthesizing the law, and its analysis, debates, and conclusions - is essential to their socialization into legal discourse and, hence, their ability to write well within it. Through this participation, they will also be constructing themselves, rhetorically, as lawyer-writers, a construction that entails the development of a writer's persona and a professional voice." (Rideout and Ramsfield 1994 *Wash L Rev* 69).

³⁰ Hedegaard notes that in a teaching experiment that constantly required learners to participate in a guided research activity, they were gradually led to critically evaluate concepts (Hedegaard "Zone of Proximal Development" 247).

Students should receive feedback on their writing during the various stages in the composing process, and revising takes on a new significance as students develop their own valid professional and personal voices ...³¹

Having articulated the pedagogical improvements that needed to be made to the Concise Writing Programme in order to make it more effective and tailored for law students, it became clear to the Law School that there was no silver bullet that would magically bring about these improvements. What was needed at that point was the hard work and goodwill of all involved, students and lecturers alike, and, perhaps most critically, the funds to bring these changes to life. Thus, the fourth change that needed to be made to the Concise Writing Programme was an injection of cash into the programme – in order to incentivise the endeavour.

- d) Funds must be raised to support and enhance the legal writing skills initiative.

With a diverse class of upwards of 250 students, the Law School would need extensive financial resources to implement the improvements set out above. Thus it was fortunate that in 2011 the Law School received funding from the University for projects such as a legal writing programme. This was the ideal opportunity to introduce, in the following year, a more sophisticated legal writing programme tailored especially for law students. This gave rise to the development of the Integrated Skills in Context Programme.

3 Important principles underpinning the development of the Integrated Skills in Context Programme

The recommendations for improvement set out in the previous section of this article were implemented in the development of the Integrated Skills in Context Programme as follows:

Firstly, the developers of the programme materials and teaching methodology, as well as the lecturers on the programme, were all lecturers in law with an in-depth knowledge of the subject material. The materials for the Integrated Skills in Context Programme were developed by Professor Brook Baker – at the time a visiting honorary research fellow from the Northeastern University School of Law in Boston – in consultation with various staff members of the University of KwaZulu-Natal Law School. The academic coordinator responsible for the academic content of the lectures and tutorials within the programme was a senior lecturer at the University of

³¹ Greenbaum 2004 *Stell LR* 14.

KwaZulu-Natal Law School, as well as an advocate, and was well-versed in the conventions of legal writing in the academic domain and in the professional legal sector. The administrative coordinator responsible for the co-ordination of student tutorial groups and the allocation of lecturers and tutors to the programme was a University of KwaZulu-Natal Law School lecturer who was deeply invested in providing law students with a practical, context-embedded learning experience.

Secondly, in keeping with the Law School's vision to provide a set of context-embedded materials as a basis for the legal writing exercises, a series of tutorial tasks and writing assignments were developed that would capture the students' imagination and make them feel that they were learning to write like "real" lawyers. These tasks and assignments were administered in such a way that students could collaborate with so-called "experts" in the field, so as to be exposed to good quality legal discourse. In keeping with this ethos, during their first tutorial session students were informed that:

The course is designed to provide an opportunity for you to be much more active and lawyer-like in your learning. You are going to closely analyse and re-analyse a complex fact pattern involving a hypothetical case, *Khan v Singh*, involving the alleged harassment of a first-year female law student by a fellow first-year male student. The case file is quite thick and the facts are complex and multi-faceted.

The Integrated Skills in Context Programme materials supported a single factual scenario involving a case of alleged sexual harassment of one first-year law student by another first-year law student. The facts of this problem scenario were framed so as to capture the students' imaginations – as a problem with which they could readily identify. Then, using this single set of facts, the students were asked to deal with the problem at various levels. Starting at the lowest level, students were required to draft a legal opinion based on the University of KwaZulu-Natal Sexual Harassment Policy. The problem was then escalated to higher levels, and eventually students were instructed to address the matter from the perspective of the *Domestic Violence Act 116 of 1998*. In other words, the students were taken through a number of what may be termed "legal levels", with detailed feedback and evaluation at each level, enabling them to follow this matter and improve their skills in an integrated step-by-step manner. Thus, students were not just being taught grammar or provided with legal knowledge in a decontextualised manner. This was a "real-world" problem with a significant ethical dimension, which was legally complex, and which could realistically be encountered by students in the "real world".

Thirdly, in order to provide a practical experience for the students, the programme tutorials and tasks were designed to encourage the students to collaborate in tutorial groups. They were then required to write and rewrite different drafts after receiving advice from the programme "experts". Students would be expected to complete a first and then a second draft of each assignment, each of which would be marked meticulously by Law School lecturers, paying careful attention to each student's work in the form of directed, detailed written feedback comments (and face-to-face consultations if requested) on each assignment draft.

Fourthly, when launching this labour-intensive programme, the Law School was well aware that it was imperative that the administration of the programme be well-planned and meticulously implemented so as to avoid logistical issues getting in the way of learning.

4 Structure of the Integrated Skills in Context Programme

The Integrated Skills in Context Programme was formally integrated into the second semester of the first-year law module Foundations of South African Law at the University of KwaZulu-Natal Howard College Campus, and made up 25% of the class mark. Each week students were required to attend one double period large-group lecture (taught by a law lecturer) and one single period tutorial (facilitated by a law Masters student).

As explained in the previous section of this article, students were required to examine a single factual scenario – the alleged sexual harassment of one first year student by another – on different legal levels. First, students extracted and applied the facts which they regarded as relevant to the University of KwaZulu-Natal Sexual Harassment Policy. They produced a first and then a final draft of a short, informal opinion as to the possible outcomes when the matter was brought before the student discipline court. Then they looked at the same set of facts through the lens of the *Domestic Violence Act* 116 of 1998 in order once again to produce a first and then a final draft of an informal legal opinion, this time as to the possible outcomes if the matter was brought before the criminal court.

In order to prepare students for their assignments, they were lectured *inter alia* on the following topics:

- Reading and interpreting the University of KwaZulu-Natal Sexual Harassment Policy.
- Summarising the rules in the policy document.

- The conventions of legal writing - for example, solving problem-type questions using the FIRAC method (Facts, Issue, Relevant law, Application, Conclusion) and an introduction to the basic principles of logic needed to critically analyse legal material.
- Drafting and revising an informal legal opinion and responding to written feedback.

The tutorials which complemented these lectures required students to complete, *inter alia*, the following tasks:

- Analysing the applicability of a set of facts to legal documents such as the University of KwaZulu-Natal Sexual Harassment Policy, the *Constitution of the Republic of South Africa, 1996* and the *Domestic Violence Act 116 of 1998*.
- Drafting a rule from a policy document and an Act.
- Applying the six rules of legal writing³² to specific examples.
- Completing an argument analysis exercise wherein they were expected to analyse a mock legal argument and redraft it more persuasively.

5 Research methodology used in this study of the Integrated Skills in Context Programme

The research methodology used in evaluating the Integrated Skills in Context Programme was a combination of action research and evaluation research. Qualitative research methods were used to gain insight into the success of the programme.³³ The perceptions of such success were gathered from three primary stakeholders in the process: firstly, the first-year LLB students participating in the programme - by means of the annual student module evaluation; secondly, the lecturers and markers involved in the programme - by means of regular informal meetings; and thirdly, a small group of final-year LLB students who had participated in the same ISC programme three years earlier - by means of author notes on informal class discussions.

³² Palmer and Crocker *Becoming a Lawyer*.

³³ Mouton *How to Succeed in Your Master's and Doctoral Studies*.

a) First-year LLB students

At the inception of the Integrated Skills in Context programme, all participants were informed that they were taking part in a pilot study specifically designed to improve their legal writing skills. The students were deliberately informed of the purpose of the programme so as to encourage them to view the study as a collaborative effort. In this way, students would have increased motivation to provide feedback on their perceptions of the programme on completion thereof.³⁴ Immediately after completing the Integrated Skills in Context Programme, they were asked to evaluate it.³⁵ A common theme that emerged in the responses was that they felt they were being taught how to think and write "like a lawyer". Even those students that complained of the programme's being very labour-intensive understood the logic behind the heavy workload and remarked that it had provided them with valuable insight into the legal writing process.

Fouché *et al* do caution, however, that, "a possible objection to using students' perceptions in determining the impact of an academic literacy intervention might be that information might not be entirely reliable". They recommend in such cases that, "additional feedback should preferably be obtained from subject experts". Thus, discussions were held with the lecturers involved in the programme in order to gather their perceptions of the programme.³⁶

b) Lecturers and markers involved in the Programme

Regular meetings whilst the programme was running, as well as a debriefing meeting immediately after the conclusion of the programme, were held with the lecturers and markers involved in the programme to ascertain their views on the success or otherwise of the programme. The informal discussions held during these meetings provided useful anecdotal evidence of the strengths and weaknesses of the programme as perceived by

³⁴ Fouché, Van Dyk and Butler agree with Carstens, saying that "the success of such interventions is equally dependent on how students perceive the interventions and the abilities addressed therein, as this determines, at least in part, students' motivation and the extent to which skills are transferred" (Fouché, Van Dyk and Butler 2016 *SPIL* 118).

³⁵ Examples of the types of questions asked in the first-year student questionnaires are: On a scale of 1–5, was your ISC tutor able to explain legal skills clearly?; Please tick the word which describes your ISC tutor's ability to help you learn legal analysis and writing: outstanding – excellent – very good – good – fair – poor; What is your overall evaluation of the ISC tutorials? Outstanding – excellent – very good – good – fair – poor; and General comments on the ISC tutorial system.

³⁶ Fouché, Van Dyk and Butler 2016 *SPIL* 118.

subject-experts intimately involved with the Integrated Skills in Context lectures and materials. Information gathered at these meetings proved to be a useful supplement to the information collected from the student questionnaires and allowed a narrative to be constructed around the different stakeholders' perceptions of the effectiveness and practical application of the programme. However, it must be cautioned that the low degree of control over the informal group discussions could be a limitation on the validity of the anecdotal feedback received.

c) Final-year LLB students

Informal class discussions were held with a small group of final-year LLB students who had completed the Integrated Skills in Context programme three years before and were now involved in marking the legal writing of first-year students who had not had the benefit of a legal writing intervention. These discussions were aimed at encouraging the final-year students to explore, with the benefit of hindsight, whether they thought the principles of legal writing that they had learnt during the original Integrated Skills in Context programme had improved their own writing skills to a greater extent than the unguided writing tasks had improved the writing skills of the current first-year students.

The final-year students responded most positively, stating they were glad they had had the chance to participate in the programme, which was practical and well-structured. They commented that their early exposure to interpreting and analysing facts in such detail definitely helped to develop their legal writing skills and their ability to develop logically coherent arguments. They also remarked on the usefulness of the first draft/second draft process, which enabled them to gauge their progress continually, and to make adjustments to their legal writing as and when they were needed. The students concluded that the ISC programme had enabled them to achieve a more nuanced set of writing skills by the end of their first year than those displayed by the current first-year students, who were no longer being taught these skills. However, the issue of the labour-intensive nature of the programme and the heavy workload that was added to an already full first-year programme was reiterated. Many students emphasised that this was a demotivating factor.

After successfully completing the Integrated Skills in Context Programme for the first time, the Law School was able to stand back and take stock of positive features which could be entrenched in the programme going forward. Likewise, the challenges encountered during the year and

improvements envisioned for future programmes were assessed in order to develop the initiative further.

6 Significant positive features of the Integrated Skills in Context Programme

The Law School noted several significant positive features of the Integrated Skills in Context Programme, which were integral to achieving an improvement in the legal writing skills of its first-year students:

- a) The programme was fully integrated into the first-year law module, with a formal mark allocation. This prompted a definite improvement in student motivation to engage with the materials and to perform diligently in the assignments.
- b) There was a strongly contextualised set of facts. The tutors reported that the sexual harassment problem really seemed to capture the students' imaginations and engendered much debate during the tutorials. In fact, during the tutorial discussion sessions many students commented that the incidents described in the problem were something that they had themselves experienced. They were genuinely interested in discussing and debating the potential legal solutions to the issues raised. Another unexpected and valuable outcome of using this particular factual scenario was that many students felt empowered by the realisation that, even with their limited legal knowledge, they could solve a practical problem of this nature.

Also, because the programme's factual scenario involved an incident between students of different cultures and backgrounds, it raised issues of diversity on a number of levels, such as gender, religion, culture, background and personality. Discussions of these issues of diversity proved invaluable to the first-year students. For many of them it was the first time they had encountered issues such as these.

Lastly, because of the relative complexity of the facts, the problem allowed the students to experience at first hand the complexity and nuances of a real-world issue, where facts are not always black and white and often can be argued on the basis of contradictory assumptions.

- c) Students were able to experience at first hand the difficulties of working with a document (the University of KwaZulu-Natal Sexual Harassment Policy) that had not been drafted by legally trained persons, and were able to appreciate the problems that ambiguities in

a document such as this can generate. Although this "real-world ambiguity" can be taken as a strength of the programme, it must be noted that certain lecturers thought this was a flaw in the programme, since it made the student assignment materials unnecessarily complicated.

- d) The large-group lectures were taught by experienced members of the Law School, who would be teaching these same first-year students in future years of study and were thus, in the eyes of the students, experts in the field who commanded their respect and undivided attention. Similarly, tutorials were facilitated by senior law students, who quickly gained the respect of the first-year students.
- e) In addition to the inherent legal knowledge that the tutors possessed as final-year law students, they also received weekly training on the upcoming first-year tutorial, both in respect of the material to be taught and in the teaching methodologies relating to small group facilitation.
- f) The tutorial tasks and assignments were designed to start simply with a basic analysis of the fact statement, and thereafter to focus on building the students' writing, analytical and logical reasoning skills incrementally, until they were able to produce a legal opinion. The tutors were instructed to employ a variety of small-group facilitation techniques during their tutorials designed to encourage collaborative peer-learning. They were also very aware that they were to focus on constructing the knowledge together with the students in an active learning environment.
- g) Students received detailed written feedback on the first draft of each assignment, after which they were allowed to make the suggested changes, and then they were instructed to submit a second and final draft on which they once again received detailed written feedback. It was interesting and somewhat worrying to note that for some of the first-year students this was the first time during their educational careers that someone had paid such detailed individual attention to their work. This process of providing in-depth, personalised, written feedback on both drafts³⁷ of a student's work also gave the

³⁷ Boughy talks of the importance of establishing a "conversation in writing" when providing feedback on student writing. She maintains that: "Time spent on responding to students' writing is wasted if they are not able to use the comments and questions to improve the written task... It has been argued that much of the poor writing submitted at South African universities is in effect 'speech written down' and results from a failure to monitor meaning-making given students' predominant

programme's markers invaluable insight into the kinds of legal writing problems that these students were actually facing. The result was that Law School staff could now get involved on ground level in a relevant way, and could make a real difference to the quality of these students' skills.

- h) Assignments were marked by members of the Law School, who met to discuss the specific marking requirements of each assignment and who marked according to a marking rubric so as to ensure that the marking was as consistent as possible. The marking process, which included marking and feedback on both content and legal writing, was interesting. Due to the complexity of the factual scenario and because the legal document on which the problem was based was a real University of KwaZulu-Natal document (the University of KwaZulu-Natal Sexual Harassment Policy), the lecturers did not always agree on the most correct answers to the questions asked in the assignment. Having six or seven lecturers in the marking team meant that the markers often found themselves debating points of law. This again provided valuable insight into the dilemmas that students face when dealing with assignment questions.

Despite the programme's significant positive features, a number of challenges were also encountered, which would need to be addressed in future legal writing programmes.

7 Challenges encountered on the Integrated Skills in Context Programme, and recommendations for its improvement

The programme was resource-hungry in terms of:

- *Staff:* A large number of Law School staff were needed to make the programme viable, and it was difficult to find enough staff who were genuinely interested in participating in a programme of this nature. With the ever-increasing institutional emphasis on research, a teaching intervention such as this was not a priority for many lecturers, who felt that they were already stretched to capacity.

experience of having meaning monitored by other participants in face-to-face conversations. The purpose of the 'conversation in writing' advocated in this article is to teach the need for self-monitoring." (Boughey 2008 *Journal of Independent Teaching and Learning* 21).

- *Funding:* Since the project was externally funded, the ten or so Law School staff participating in lecturing and marking the Integrated Skills in Context Programme were paid for their time. However, the programme had to be discontinued when the funding was withdrawn. Without external funding the lecturing and tutoring duties attendant on a programme such as this would either need to be worked into the official teaching load of the staff involved or be incentivised by other creative means. For example, data generated³⁸ from students' legal writing projects undertaken during the programme could form part of the empirical research of certain staff members researching in this area, or the legal writing produced by top students on the programme could be used as a basis for further research.
- *Lecture slots and venue allocations for timetabling:* The logistics of allocating an additional double period lecture and a single period tutorial to an already full first-year LLB timetable, as well as finding an additional large-group lecture venue for a double period and 20 small group tutorial venues per week, was a mammoth task. With numbers at the time at 250 per class, and pressure to increase the numbers, this was only going to get worse.
- *Time:* The programme was immensely time-consuming for the Law School staff, who were involved either in taking the lectures or in marking the two drafts of the assignments. Although the staff were paid for their extra work, all of the lectures took place during normal working hours. Also, producing extensive written feedback on two drafts of two relatively complex assignments was time-consuming for the markers.
- *The programme was time-consuming for first-year students.* The first-year modules were 16 credit-point modules, each carrying approximately 11 notional study hours per week. The law and writing lectures and tutorials for the module alone took up about seven notional hours, thus leaving only four hours per week for the students to prepare for lectures and tutorials, study for tests, and prepare assignments. The legal writing assignment would need to form a more

³⁸ The kind of data that could be generated by students participating in these legal writing projects would depend on the research interests of the lecturer setting the writing task. For example, a lecturer interested in researching in the area of the use of translated materials for second language law students could set a legal writing exercise requiring the students to provide their informed opinions and perceptions on the use of isiZulu translations in law tutorials to enhance their comprehension of legal material. The insights provided by the student body could prove invaluable for this research endeavour.

substantial part of the summative assessment for the first-year module, so that the notional hours required to produce two drafts of a fairly complex legal opinion were justified.

- *The Law School markers on the programme decided to focus their attention on the quality of the legal writing produced when giving written feedback and not to pay too much attention to grammar deficiencies.* Thus, although the markers did pay some attention to grammar and punctuation, they focused their feedback comments rather on the structure and logical flow of student writing. In part, this was because as experienced as law lecturers are in legal writing, they are not trained English teachers, and in part because excessive attention to grammatical errors would ultimately distract the students from the actual task at hand and demotivate them.³⁹
- *Consistency in marking:* Although the markers met to discuss the marking standard and marked to a rubric and model answer, there were still problems with consistency in marking standards, with some lecturers marking more leniently than others. Part of the problem, of course, was that the programme had not had time to bed-in, and there was no opportunity for all the teething problems to be addressed. A possible solution to this lack of consistency in marking would be to design a somewhat detailed set of grading criteria to guide the marking team more closely.

8 Conclusion

So – there is good news and bad news. The good news is that it is very possible to make a real difference to the legal writing skills of the vast majority of students in a relatively short time period.⁴⁰ The bad news is that

³⁹ The issue of editing grammatical errors is complex and interesting, with Bonanno commenting that grammatical errors have different levels of gravity. She notes that the seriousness of the grammatical error will be determined by whether the error affects the overall comprehensibility of the writing, as well as by whether the error would cause the reader to become irritated (Bonanno "Tolerance of Academic Staff").

⁴⁰ Although this is beyond the scope of this article, it must be noted that it is notoriously difficult to show a causal link between a specific writing intervention and improved writing skills over a short period of time. This is not only because a number of instruments must be used to evaluate the success of the intervention but also because in the early stages of writing development there is much more to improving writing than just improving the writing skills themselves, much of which is intangible. An improved ability to write can take many forms, such as improved motivation to write effectively in a particular discourse or gaining understanding of the context of a particular piece of writing or becoming situated in a particular discourse by

there is no silver bullet to solving the problem. The reality we are faced with in overcoming the legacy of a poor secondary education is that it is not going to come cheap. If the University and the country are serious about improving student skills, then resources will need to be made available so that real, individual attention can be paid to students by senior law school staff. E-learning and the like may help, but there is nothing to replace one-on-one personal attention and guidance and repeated feedback by staff who do not see this as a lost cause. The author believes there is a vast reservoir of goodwill among academics, who are more than eager to attempt to address the problems bequeathed to our students by a poor primary and secondary education. But, if we are to engage in a grinding battle of attrition, which can be won only by hard fighting, then those in charge of the purse strings must know that they have to untie them. Our students need intensive one-on-one attention by qualified academics, and this means that those addressing the problem must be recognised and adequately compensated.

By focusing the attention of all senior staff members on high-level research at the expense of first-year teaching, by stripping resources from programmes such as the Integrated Skills in Context Programme, and by insisting on a continual increase in student numbers without any increase in resources we are simply asking for the problem to get larger and not smaller. Just give us the tools and we will finish the job.

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acquiring insight into the writing conventions of that discourse. For example, Van Dinther, Dochy and Segers maintain that "Though competent behaviour is largely understood in terms of developing relevant knowledge, skills and attitudes, researchers in educational settings are increasingly drawing attention to the role students' thoughts and beliefs play in the learning process." They refer to this ability of the students to believe in their own competence as "self-efficacy". (Van Dinther, Dochy and Segers 2011 *Educational Research Review* 96).

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List of Abbreviations

CriSTaL	Critical Studies in Teaching and Learning
ESP	English for Specific Purposes
ISC	Integrated Skills in Context
J Child Psychol Psychiatry	Journal of Child Psychology and Psychiatry
RHEJ	Research in Higher Education Journal
SAJHE	South African Journal of Higher Education
SALJ	South African Law Journal
SPIL	Stellenbosch Papers in Linguistics
Stell LR	Stellenbosch Law Review
Touro L Rev	Touro Law Review
Wash L Rev	Washington Law Review
Wm Mitchell L Rev	William Mitchell Law Review