



What a Difference a Comma Makes!

By Brian Madigan

If you were to audit a first year university course the day before an exam, one of the first questions you'd hear would be "does spelling count", closely followed by "what about punctuation"? Sadly, the too frequent response is "don't worry about it", and that probably applies to just about every course other than English grammar.

So, maybe we really shouldn't worry about it.

Let's look at two clauses:

First Paragraph) This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms, unless and until terminated by one year prior notice in writing by either party.

Second paragraph) This agreement shall be effective from the date it is made and shall continue in force for a period of five (5) years from the date it is made, and thereafter for successive five (5) year terms unless and until terminated by one year prior notice in writing by either party.

Did you notice the difference? It's hard to spot. Read it again, carefully. In the second paragraph, there is no comma following the word terms in the third line. So, does this make any difference to anybody.

Well, that comma is worth \$ 2.3 million.

It doesn't look any different than any other comma, but that's its value. The question boils down to this: when can you terminate using the one year notice?

There are two possibilities:

1) *with the comma.* Anytime, but you must give one year's notice.

2) *without the comma*. Anytime after the first five years, again subject to one year's notice.

This type of wording is really quite common and can be found in many commercial leases. Recently, Rogers leased some poles from Aliant for their cables. After a short while, Aliant wanted to raise the price for the rental. So, the question was: how soon could they terminate the lease and start charging the new higher price?

The CRTC applied the normal English rules of grammar to determine the meaning. The additional comma created a parenthetical clause within the sentence and the termination provisions accordingly apply to both the initial five years as well as any subsequent renewal terms. Rogers claims that this will cost an additional \$ 2.3 million and is considering appealing the case to the Federal Court of Canada.

Maybe they should just have someone study English grammar! However, to be fair, the clause was taken from precedents in the industry that were in common usage. And, no one will be having tag days for Ted Rogers, particularly when it comes to real estate. Remember, he's the one who bought the \$ 670 million SkyDome at the "firesale" price of \$ 27 million.

The moral of the story: spelling and punctuation counts!

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