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The Long Title: An Old But Useful Friend

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DEDICATION

To my parents, sister and late grandmother – thanks for being such a caring and loving family. To my husband, Mohd Ridzuan Abu Bakar and our two little angels, Imad Haidhar and Imad Qayyum - thanks for your perseverance. I give my deepest expression of love and appreciation for the encouragement that you gave and the sacrifices you made throughout my studies.

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CHAPTER 1

INTRODUCTION

1.1 Background

A long title is a common legislation feature. It is categorized as an amendable descriptive component of an Act, where its presence in the Act is subject to the possibility of amendment (as opposed to mere printing correction) when the Bill for the Act was going through Parliament.¹ As an introductory part of the statute, the long title serves various functions unnoticeably. The function of the long title as an interpretative device has always been exaggerated, as most of the available literature has limited the discussion on the long title as an interpretative device.² The long title also serves as a procedural device, as it is used as an introduction of a Bill during the passage of the bill. This dissertation intends to examine different functions of the long title namely the long title as a communicative device. This function receives scant attention in the literature, as it has been overlooked by all actors in the legislative and drafting process. As a result of considering the long title as an introductory part of the statute, less attention is given to its presence in the statute with the thought that the machinery part of the statute is more important than the introductory part.

¹ Oliver Jones, *Bennion on Statutory Interpretation* (6th edn, LexisNexis 2013) 678

² Francis Bennion, *Statutory Interpretation* (2nd edn, Butterworths London 1992) 496-506

A distinction is usually drawn between the operative components of the statute and other components, which surround or introduce them.³ Courts have in many occasions treated the operative components of a statute as receiving much more weight than the introductory part of a statute. Perhaps, the viewpoint between the drafter and the practitioner regarding the long title is so different as the drafter regards the long title as a procedural device while the practitioner, who knows little if anything of parliamentary procedure, regards the long title as a description of the Act's contents and an aid to its construction.⁴ Because of that, the presence of the long title in legislation is debatable as there is a recommendation that the long title should be omitted entirely. In some jurisdictions, the long title has been abolished, taking into consideration the presence of the purpose clause to accommodate its functions. However, in jurisdictions where the long title is still alive, it is not drafted with specific aims other than to introduce the law as it owes its presence to the procedural rules which govern parliamentary bills.⁵

For that reason, some would argue that the presence of the long title in legislation is only for the purpose of a Parliamentary procedure and occasionally, to some extent, for wider presentational issues.⁶ Because of diminished attention and less apprehension to its functions, there is no single

³ The components of an Act fall into three groups. The first group, to which the greatest weight is attached in interpretation, consists of operative components. The second group consists of amendable descriptive components, to which less weight is attached. This category includes the long title, preamble and purpose clause. The third group, to which the least amount of weight is attached, consists of unamendable descriptive components and this includes chapter number, date of passing, and the enacting Formula. See *Bennion on Statutory Interpretation* at 692; Pearce D.C., Geddes R. S., *Statutory Interpretation in Australia* (7th edn, Lexis Nexis Butterworths 2011) 154

⁴ Francis Bennion, 'Bennion on Statute Law' <<http://www.francisbennion.com/>> accessed 8 August 2014

⁵ Oliver Jones (n1) 679

⁶ D. Greenberg, *Craies on Legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation* (London: Sweet & Maxwell 2012) 866

acceptable practice on the style of drafting the long title. Some jurisdictions have opted to employ a broad and general long title form while others implement a more narrow and specific long title.

1.2 Hypothesis and methodology

The hypothesis of this study is despite the long title being drafted in broad and general; the long title should be maintained in the legislation as a means of communicating the main regulatory message of an Act to the reader. The aim of this study is to examine the effectiveness of a broad and general long title in accentuating the legal order to the ‘consumer’ of law. Although the topic of the long title is not relatively new, this dissertation takes the initiative to discuss in-depth the roles of the long title in accentuating the main regulatory message of the Act to the intended audience. This topic has been chosen as an effort to add to existing literature on various functions of the long title.

To pursue this point of demonstrating more fully what the long title is, firstly I develop an argument in comparative analysis focusing on the characteristics of the long title, preamble and purpose clause, as the nature of these provisions are often misunderstood.⁷ In examining the hypothesis, this dissertation proceeds to survey on the usage of the long title in legislation enacted in the United Kingdom, Australia, New Zealand, Canada and Malaysia. The objective is to illustrate the differences between these three preliminary provisions in terms of their

⁷ It is confirmed by Francis Bennion in Follow-up letter for Publication [Published in [1982] Law Society's Gazette 664.] <<http://www.francisbennion.com/>> accessed 8 August 2014. In this letter, he commented judges were not fully understood the nature of the long title and its true role in interpretation. He cited the case of *R. v. West Yorkshire Coroner (1982)* The Times, 5 April where Here Ormrod L.J. is reported to have referred to the long title of the Coroners Act 1887 as the 'short title'.

characteristics and functions. Further, I establish the acceptable components of a long title which is based on the opinion of various renowned writers on this matter.

Before proceeding to consider the main issue in this study, I highlight the purpose of legislation and to whom the main regulatory message of an Act should be addressed as there should be some consideration of who is the ‘consumer’ of legislation. This is essential for the drafter not intentionally write in language that the intended reader would be unlikely to understand. Next, I discuss how the main regulatory message of an Act can be communicated through the long title and whether a broad and general long title is effective in transmitting the government’s legal order to citizens. Having served various functions to different ‘consumer’ of legislation, lastly, in greater depth, I draw attention to the issues surrounding the long title in the following sections:

- (i)* The long title as a parliamentary procedure and as a presentational issue;
- (ii)* The long title as an interpretative device;
- (iii)* Whether the short title is sufficient to indicate the contents of the Act; and
- (iv)* Substitution of a purpose clause for the long title.

A conclusion will be drawn at the end of the study with a suggestion on best practices in drafting a quality long title. This study will not be focusing on specific jurisdictions, because the reasoning employed in this dissertation applies to legislation in all jurisdictions which maintain the presence of the long title in their legislation.

CHAPTER 2

CHARACTERISTICS OF THE LONG TITLE, PREAMBLE AND PURPOSE CLAUSE

2.1 Characteristics

2.1.1 The long title

Black's Law Dictionary defines the long title as, 'the full, formal title of a statute usually containing a brief statement of legislative purpose.'⁸ The definition given in Black's Law Dictionary coincides with the description of the long title proposed by many renowned writers. As observed by Xanthaki, the long title indicates the general purpose of the Act, but in a factual manner.⁹ She elaborated on this statement by explaining that the long title should describe the main mechanisms by which the Act attempts to reform the law.¹⁰

In contrast with the short title, which is merely intended to provide a convenient name for referring to it, the long title is observed as requiring a more comprehensive nature as a result of various functions that it serves.¹¹ Despite the general features of the long title, it is expected to

⁸ I choose to refer to the legal dictionary of the long title in comparison with the definition of the long title given by experts in legal drafting field. On this point, Tobias A. Dorsey in *Legislative Drafter's Deskbook: A Practical Guide* (The Capitol Net, Alexandria, VA 2006) observed that the long title is the official name of the law. It is sometimes referred to as the "official title, the statutory title or simply the title, although drafters conventionally call it the long title."

⁹ Professor Helen Xanthaki, *Thornton's Legislative Drafting* (5th edn, Bloomsbury Professional 2013) 229; See also Paul Salembier, *Legal & Legislative Drafting* (LexisNexis Canada 2009)

¹⁰ *ibid* 229

¹¹ The long title must take into account various functions that it serves, such as a procedural device, an explanatory and interpretative device and a descriptive device. All of these functions are proposed in

provide a summary description of the purpose or scope of the legislative instrument. In a complex and major legislation it is very helpful for the drafter to provide an inclusive long title that reflects the main government's legal order at the very beginning of the Act. An in-depth discussion on the long title will be deliberated in upcoming chapters.

2.1.2 The preamble

Black's Law Dictionary defines the preamble¹² as, 'an introductory statement in a constitution, statute, or other document explaining the document's basis and objective; especially, a statutory recital of the inconveniences for which the statute is designed to provide a remedy.'¹³ According to Carl Schmitt, the preamble is the part of legislation which best reflects the legislative understandings of the framers, or better known as their 'fundamental political decisions.'¹⁴ It is 'a key to open the minds of the makers of the Act, and the mischiefs which they intended to redress'.¹⁵

course materials from the Commonwealth Distance Training Course in Legislative Drafting, 'Section 2-How we draft titles, preamble and words of enactment? (Legislative Drafting © Commonwealth of Learning – III (2003))

¹² The preamble usually bears a formal heading '*Preamble*' or some alternative, equivalent title or in other cases it appears without a heading. In the early time, the word '*Albeit*' was used instead of '*Whereas*'. For example; preamble s to Laws in Wales Act 1535 (repealed) and Welsh Language Act 1967 (repealed). The preamble to the constitutions of Albania and Bahrain is called '*Foreword*'. The preamble to the Constitution of Japan is called '*Preface*.' See Liav Orgad, 'The Preamble In Constitutional Interpretation' (2010) 8 Oxford University Press and New York University School of Law 714–738

¹³ Black's Law Dictionary (St. Paul, Minn. : West, c2009)

¹⁴ See Carl Schmitt, 'Constitutional Theory' in Jeffrey Seitzer (trs and ed) 77–79 (2008). This was cited by Orgad (n12)

¹⁵ Jones (n1) 682

Generally, legislation can speak for itself without requiring assistance from the preamble, as it is better for the operative provisions of the Act to be left to speak for themselves.¹⁶ For that reason, the usage of the preamble has become rare in this day and age. However in exceptional circumstances, the preamble is required to provide background information about the circumstances that give rise to the legislation. As advocated by Liav Orgad, the contents of the preamble can be classified in five categories namely the sovereign, historical narratives, supreme goals, national identity and god or religion.¹⁷ The example of how a preamble is used in the Act according to these categories can be seen in Appendix A of this study.

Adversaries of the preamble believed that there should be total abandonment on the usage of the preamble in legislation, because the intention of an enactment can be found in the explanatory memorandum which accompanies every bill. However, the value of the preamble and explanatory notes are not equal. The preamble is carried in committee where they are debated and amended in the passage of a bill; thus, the preamble could therefore be presumed to represent the settled will and intent of Parliament in enacting legislation.¹⁸ Otherwise, the explanatory notes are not opened to amendment by Parliament and must therefore be approached with greater circumspection, even in cases where it is clearly permissible to look to them for assistance.¹⁹

¹⁶ The Renton Committee, *The Preparation of Legislation* 1975, Cmnd 6053 (Renton Report) para 11.7

¹⁷ Orgad (n12)

¹⁸ The preamble may also be used as a guide to legislative intention. See *Sussex Peerage's case* (1844) 11 Clark & Finnelly 85 [143]; *Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199. However, the recital of facts in the preamble to an Act does not amount to conclusive proof that the facts are true but constitutes prima facie evidence of them. See *R v Sutton* (1816) 4 M & S 532

¹⁹ D. Greenberg (n6) 112

Whether the preamble should be regarded as part of the Act?

While the preamble is written in a manner that appeals to many, it remains difficult to persuade jurists of its superior legal status. A decisive majority hold that the preamble is part of an Act, but it is generally agreed.²⁰

(a) That preamble cannot be given preference over the clear text of the legislation; and

(b) That courts are entitled to have regard to the preamble in construing unclear aspects of the text.

2.1.3 The purpose clause

A purpose clause is a provision that sets out in the body of the legislation a declaration of the principles or policies, which are intended to be implemented, or conversely, the objectives, which are intended to be achieved.²¹ Although the purpose clause is favoured by some writers,²² it is observed that some drafters reluctantly use the purpose clause due to the fact that the sponsoring ministry may take this opportunity to declare their political intent in legislation. The contents of statutes should consist of a series of commands, rather than declarations of policy or

²⁰This point has been agreed by many writers. See D. Greenberg (n6) 112 and Oliver Jones (n1) 682

²¹ Ruth Sullivan, *Sullivan on the Construction of Statutes* (4th edn, Butterworths 2002) 300

²² Duncan Berry, 'Purpose Sections: Why They Are A Good Idea For Both Drafters And Users' (Paper delivered to Commonwealth Association of Legislative Counsel Conference "Whose law is it?", Hong Kong, April 2009); E. Moran, 'The Relevance Of Statutory Interpretation To Drafting' in *Drafting for the 21st Century* (Materials from Conference at Bond University, Qld, 6-8 February 1991) 100 at 107

intent. Therefore, the purpose clause should not be used as a place to express a political statement; an action, which not only does not serve its function, but also can expose legislation to the dangerous hands of activist judges.²³

Whether the purpose clause should be regarded as part of the Act?

Because the purpose clause is merely descriptive of the legislature's goals, the purpose clause is likely to carry less weight than a more substantive provision. The position of the purpose clause, in regards to this issue, is similar to the preamble. In *S v. SACC*, the court ruled that:

“... such a clause cannot cut down the plain and unambiguous meaning of a provision if that meaning in its textual and contextual surroundings is clear. Whilst regard may be had to the purpose clause to resolve uncertainty and ambiguity, the purpose clause does not control clear statutory language, or command a particular outcome of exercise of discretionary power.”²⁴

In considering the weight of the purpose clause as an interpretative guidance, the court also has taken into account the following considerations:²⁵

²³ Rupert Cross, *Statutory Interpretation* (London : Butterworths 1995)

²⁴ Courts have ruled a similar decision in *National Farmers Union v. Potato Marketing Council (Prince Edward Island)* (1989) 56 D.L.R. (4th) 753 (P.E.I.S.C.) and *Minister for Urban Affairs and Planning v Rosemount Estates Pty Ltd* (1996) 91 LGERA 31

²⁵ Sullivan (n21) 303

- (a) How specific and coherent the declared principle or policies are;
- (b) What directives are given by the legislature respecting their use; and
- (c) Whether there are other indicators of legislative purpose.

The general rule is if there is conflict between a purpose clause and a substantive provision, the latter must always win. However, a clear and specific purpose clause prevails over a substantive provision when the provision contains a drafting error, in which case, the court may bring the substantive provision to be in line with the stated purpose of the Act.²⁶

2.2 Analysis on the usage of the long title, preamble and purpose clause

The example of how the long title, preamble and purpose clause are used in legislation enacted in the United Kingdom, Australia, New Zealand, Canada and Malaysia can be seen in Appendices A and B respectively. Below are the important points that can be deduced from both Appendices:

- (i) Generally, there are two approaches in drafting the long title either broad or specific. It is proposed that an informative long title will be of more assistance if they contain the acceptable components of a long title which are as follows:²⁷

²⁶ *ibid* 304

²⁷ I attempt to provide the acceptable components of the long title based on my research on the opinion of various renowned writers on this issue. However, there is no right or wrong answer as to the style of drafting the long title whether it is drafted specific or broad. What used to be an accurate informational component for long title has become a matter of discussion.

- (a) The main regulatory message of the legislation which entails the aim of policy maker; and
- (b) The legal mechanism, which the proposed bill works to have an effect on the existing law in order to achieve the desired regulatory result of an Act. The legal mechanism choose by the drafter depends on the type of proposed legislation, such as Acts that have a sole purpose of amending, consolidating, repealing or repealing and re-enacting earlier legislation.

It is also observed that most of the long title end with a phrase showing incidental purposes such as “... *and for [related matters] [connected purposes].*” This is designed simply to ensure that there, in some way, is inclusion of a small amount of the miscellaneous matter, which generally arises from or is related to the main substance of the Act.

- (ii) A distinction must be made between the long title and the purpose clause, as there is overlapping information between both. This intersection occurs because the long title should be describing ‘the purposes’ of legislation only in a limited sense of stating the ways in which the proposed legislation will affect the existing law; while the purpose clause should be explaining the aim and objective of the proposed legislation. The objective contained in the purpose clause will be used as criteria during post-legislative scrutiny to examine whether the enacting legislation has achieved the desired regulatory result. The purpose clause is different from the long title (*which states the way in which*

*the Act affects or changes the law) or the preamble (which states why it has been necessary to legislate).*²⁸

(iii) The decision to produce either a broad or specific long title depends on the following factors:

(a) The request from the sponsoring ministry to provide the essential information in the long title, as this matter is part of the policy decision.²⁹ Since the long title is carried in committee, and it is subject to Parliamentary debate, the sponsoring ministry would like to have a more general and broad long title so that both Houses will not spend too much time on debating the long title.³⁰ For that reason, the drafters are reluctant to draft a narrow and specific long title, as it would invite a more general debate on the intent and policy of the proposed bill. The Parliamentary debate should be directed to the substantive rules, which give effect to the policy objective of the Act. In extreme cases, the sponsoring ministry may request to convey the government's political intent in the long title, which is not an appropriate practice of the long title; and

²⁸ Helen Xanthaki, 'Lecture Notes on Preliminary Provisions 2013-2014' <<http://studyonline.sas.ac.uk/course/view.php?id=17>> accessed 2 August 2014

²⁹ Jim Evans, *Statutory Interpretation-Problems of Communication* (Oxford University Press 1988) 289

³⁰ For that reason, the drafter chooses to draft a broad and general manner of the long title and ending with the limb '*and for related matters*' with the impression that the long title has covered everything in the Bill including the miscellaneous provision.

- (b) The ability of the drafter in recognizing the value and usefulness of the long title, not only for parliamentary procedural and presentational layout, but also as a means of transmitting the government's legal order to citizens. However, the ability of the drafter to advise the sponsoring ministry in this issue depends greatly on the experience of the drafter to acknowledge the various functions of the long title serves. Indeed, an experienced and knowledgeable drafter might be able to suggest possible legislative solutions to any flawed proposals that emanate from the analysis that he or she conducts.³¹
- (iv) Based on the examples,³² the long title produced in United Kingdom legislation is more specific where it details the concrete elements of attempted law reform. The long title format in Malaysia, Australia and Canada legislation is drafted in a short and broad manner, and sometimes the purpose clause is used in the legislation of those jurisdictions, as evidenced in Appendix B to this study.
- (v) New Zealand has abolished the usage of the long title and what remains in the legislation is only the short title, supplemented with the purpose clause. A similar approach has been

³¹ Joseph G. Kobba, 'Criticisms of the Legislative Drafting Process and Suggested Reforms in Sierra Leone' (2008) X European Journal of Law Reform 219

³² I attempt to provide a comparative analysis on how the long title is drafted in various jurisdictions. The important caveat is that the examples given are not exhaustive and hence it cannot be generalized to reflect the practice of each jurisdiction.

adopted in some provinces in Canada.³³ An in-depth discussion on this matter will be deliberated in Chapter 4.

- (vi) The primary function of a preamble is to recite the circumstances and considerations that gave rise to the need for legislation or the “mischief” the legislation is designed to cure.³⁴ For that reason, it is useful that such circumstances and considerations be conveyed first-hand to the reader so that they can better appreciate the legislative background of the proposed legislation. However, not all legislative history or background details can be addressed in the preamble. There is a thin line between what should be considered in the preamble and what should be placed in the explanatory memorandum. It is proposed that the background of the legislation is better placed in the explanatory memorandum so that it would not detract the reader’s attention from the main regulatory message of an Act.
- (vii) It is also observed that the preamble is used in jurisdictions where the constitution of the country requires the preamble to be in legislation as a procedural stage of passing new law. However, in countries where the constitutional process is quite settled, the preamble does not take place in the procedural stages of passing a law. The preamble is also used in delegated legislation, which involves complex matters. However, the usage of a preamble must be taken with great care, as a reader may generate a different interpretation and understanding of the law due to the vague nature of the preamble. According to Xanthaki,

³³ It is observed that in some provinces in Canada, the long title disappears once the statute revision is conducted. See also Sullivan (n21) 294

³⁴ *ibid* 291

the preamble can be of use in jurisdictions that do not use long titles or purpose clauses, as it can accommodate the functions of these other types of provisions.³⁵

³⁵ Xanthaki (n9) 236

CHAPTER 3
THE LONG TITLE AS A MEANS OF COMMUNICATING
THE REGULATORY MESSAGE

3.1 Purpose of legislation

Statutes contain a constitutionally privileged command in the form of a legal order. In other words, statutes are manufactured by a constitutionally authorized legislative body and are directed towards those who are constitutionally obliged to implement, enforce or follow the law.³⁶ However, laws are not static, as they constantly evolve from the moment of conception, through to how they are interpreted and implemented.³⁷ Governments are increasingly using legislation as a tool to govern the populace and to achieve their political agendas.³⁸ The fact that the pace of the legislative process is daily becoming faster indicates that there should be a well-established mechanism for an effective drafting process in every country. Such a process would ensure that legislation, which can affect every facet of an individual's life, has gone through the most efficient drafting process before it is enacted.³⁹ This is because once the legislative proposal

³⁶ Cheryl Boudreau, Arthur Lupia, Mathew D. McCubbins, and Daniel B. Rodriguez, 'What Statutes Mean: Interpretive Lessons from Positive Theories of Communication and Legislation' (2007) 44 San Diego Law Review 4. Originally prepared for a University of Chicago Law School Workshop (April 28, 2005) and a Northwestern University School of Law Conference on "Positive Political Theory," (April 30, 2005).

³⁷ Maria Mousmouti, 'The 'Effectiveness Test' As a Measure of Legislative Quality' (University of London 2012)

³⁸ V.C.R.A.C. Crabbe, *Legislative Drafting* (Cavendish, London 1991) 1

³⁹ Isabel Omar, 'Scrutiny of Legislation in Uganda: A Case for Reform' (2012) *European Journal of Law Reform* (14) 2-3

becomes a law, it will remain on the books until it is amended and will continue to impact the rights and liabilities of individuals.

The principal purposes of legislation are to establish and delimit the law, as well as to communicate the regulatory message in the law from the law-making authority to society, in particular to the persons affected by it.⁴⁰ These principal purposes of legislation coincide with the concept of legislative quality derived by Timmermans, which is based on two concepts. As legislation is intended to set boundaries to the social conduct, hence, firstly, it should be appropriate, adequate and precise in solving the problem it is intended to solve. Secondly, it should use language and a structure that is readily understandable to those who are affected by it, as well as to those charged with the responsibility of administering the law.⁴¹ The concept of legislative quality, as mentioned above is relatively significant as it requires the legislation to be understandable and communicable effectively to the intended audience. As observed by Lord Diplock in *Merkur Island Shipping v Laughton*-⁴²

“Absence of clarity is destructive to the rule of law; it is unfair to those who wish to preserve the rule of law. It encourages those who wish to undermine it.”

⁴⁰ Xanthaki (n9) 50

⁴¹ C.W.A. Timmermans, ‘How to Improve the Quality of Community Legislation: The Viewpoint of the European Commission’, in A. Kellerman (edn) *Improving the Quality of Legislation in Europe* (Kluwer Law International, The Hague 1998) 39

⁴² (1983) 2 All ER 189

3.2 Communication of regulatory message

The transmission of government's legal order to citizens is very crucial for them to know more readily the rules which govern their personal or business transactions.⁴³ It is strange for societies to arrive at situations where their members are governed from cradle to grave by texts which they cannot comprehend.⁴⁴ A non-proper transmission of a government's legal order may hinder the pace of a legal system of a country, because the society does not behave according to the legal order. Even a specialist in the legal field would not be able to appreciate accurately the contents of legislation in all fields, other than the field in which he or she specialized, if the regulatory message of an Act is not properly communicated in the legislation.

It is argued that the manner of how legislation is drafted is exclusively addressed to lawyers.⁴⁵ This is because the language used in the legislation can only be understood by an expert in a legal field. This issue has become a major challenge for the drafter. How can the drafter shift the feeling that only lawyers can understand the language of legislation that he or she writes? The protagonist of this issue support the contention that legislative language must be reduced to the language most suited to the lay reader.⁴⁶ On the other hand, the other group argued that the legislative language is meant only for legal professionals. A vocal and eminently well-qualified

⁴³ The New Zealand Law Commission, *The Format of Legislation* (NZLC R2Z)

⁴⁴ Francis Bennion, 'If It's Not Broke Don't Fix It: A Review Of The New Zealand Commission's Proposals on the Format of Legislation' (1994) 15 Statute Law Review 163-169

⁴⁵ The term lawyers are used to include all professional persons, whether technically lawyers or not, who have the expertise needed safely to construe the legislative document within its overall context.

⁴⁶ Paul Kendall Cooper, 'Is There A Case For The Abolition Of 'Shall' From EU Legislation?' [2011] © Paul Kendall Cooper

representative of this group, Bennion, has published a series of articles⁴⁷ in which he is strongly of the view not only that legislative readership is specialised, but also that the language of the law should not be simplified.⁴⁸ He argues that legislation has its own language and that '*... it should be a prime axiom of legislation that, unless there are over-riding reasons to the contrary, language which is destined to form part of the law should be framed solely with that end in view*'.⁴⁹ According to him no law can be directly comprehensible by non-experts because law is and has to be an expertise. It needs to be explained to the lay person, whether by officials or professionals in private practice.⁵⁰

Bennion's approach on the legislative readership need detailed analysis as it is beyond the scope of this study. However, as for drafter, the significant of identifying the 'consumer' of legislation relates to the choice of legislative language used in the statute book to suit the reader. It is impossible for the drafter to communicate directly and effectively with all recipients of law as they have different needs, interests and expectations.⁵¹ The identification of the intended audience has become a major challenge for the drafter. Because in reality, the regulatory message of an Act should be communicated successfully to three broad groups as follows:⁵²

⁴⁷ See generally <<http://www.francisebennion.com>> accessed on 8 August 2014.

⁴⁸ Paul Kendall Cooper (n46)

⁴⁹ Francis Bennion, 'Laws Are Not for Laymen' [1975] *Guardian Miscellany* *Guardian* 29th May: 11 <<http://www.francisebennion.com>> accessed on 8 August 2014.

⁵⁰ Francis Bennion, 'Can Non-Lawyers Understand Legislation?' at <<http://www.francisebennion.com>> accessed on 8 August 2014.

⁵¹ Ruth Sullivan, 'The Promise of Plain Language Drafting' (2001) 47 *McGill L.J* 97 at 109

⁵² Xanthaki (n9) 50

- (a) Communication to the lawmakers;
- (b) Communication to the persons concerned or effected; and
- (c) Communication to the judiciary.

Communication to the lawmakers

The term lawmakers are used to include all actors in the preparation of legislation. The main players in the drafting team are the policy maker, the instructing officer and the drafter. Each of the players has distinct roles to play as the policy maker is responsible for deciding the best policy, the instructing officer is responsible for preparing the drafting instruction and the drafter is responsible for preparing the draft. Once the drafting team have prepared the legislation, the Parliamentarians have the responsibility to decide on the ‘fate’ of the legislation.

Communication to the persons concerned or affected

Frequently, legislation contains a series of a command, authorization, order, prohibition or creation of rights and obligations, which are specifically addressed to the specific group of persons. For that reason, the main regulatory message of an Act should hit this specific group of persons at the first-hand. Further, the regulatory message also should be communicated to the expert or specialist who is responsible to advise and assist any persons affected by the law. As statutes are directed to the person who is constitutionally obliged to administer the law, laws should be drafted in a simple way that fosters understanding, as well as in a precise manner,

which at the same time, must be capable of being implemented to address a specific regulatory problem.

Communication to the judiciary

The subsequent recipients of the regulatory message are charged with the responsibility of interpreting the meaning of the words chosen by the legislature when passing the law. However, it is argued that courts have no constitutional authority to add or subtract the meaning of the words.

3.3 Can the regulatory message of an Act be communicated through the long title?

The regulatory message of an Act can be a powerful tool to influence the behaviour of the citizenry as they act on the basis of the message transmitted to them. It is crucial for government to influence the behaviour of society by drawing attention to the central theme, primary content, or underlying idea in legislation to the intended audience from the very beginning of the Act. For that reason, it is exceptional if the drafter is able to communicate the regulatory message of an Act as clearly as possible at the beginning of the text specifically in the long title as it appears at the beginning of the Act.⁵³ It would certainly make good sense for the drafter to present what is important at the beginning of the proposal before the substantive clauses come later in the Act. As for Parliamentarians, the main regulatory message of an Act, which is addressed in the long title, should be able to assist them in understanding the scope and purview of the proposed

⁵³ Xanthaki (n9) 227

legislation. An informative long title may benefit both Parliamentarians and those responsible for implementing what the Act sets out to do.

A question arises as to whether a broad and general long title can be an effective device in communicating the regulatory message to the reader since it has a very limited application and usefulness. A long title which is broad and general seems to deprive the reader of getting the main regulatory message of the Act as it does not contain sufficient information which ideally should be delivered to hit the reader at the first instance. The style of drafting a broad and general long title lacks the information about the legal mechanism employed to positively affect the existing law. Further, the policy objectives underlying the legislation are not usually stated in a broad and general long title, but they are to be inferred from the nature of the changes in the law itself.⁵⁴ Often, problems with a broad and general long title are associated with vagueness, which causes the reader to not know the boundaries of some terms and expressions used in the long title, because they are not precise.⁵⁵ At this instance, the presence of a purpose clause in the Act is very much helpful in settling the boundaries of some expressions used in the legislation.

Reluctance of the drafter

Despite there are many weaknesses in a broad and general long title, it is observed that the reluctance of the drafter to provide a narrow and specific long title is based on a number of reasons. In some jurisdictions, there is a constitutional requirement that the subject of all enacted

⁵⁴ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

⁵⁵ Evans (n29) 119

legislation must ‘be briefly expressed in the title’.⁵⁶ This requirement takes the drafter’s style and creativity in drafting the long title, which has caused some writers to propose that the drafter should be given an opportunity to improve the title at a post-enactment processing stage without altering the basic wording.⁵⁷ However, this proposal must be accepted with extra caution.

Additionally, in some jurisdictions the description of the long title has been limited to state succinctly ‘the general matter of the Act’ and this approach is assumed to apply to all laws.⁵⁸ To illustrate this point, I have given an example of a general long title:

‘An Act respecting the tenure of judicial office.’

This style of the long title serves no difference than the purpose clause as it offers little more than a repetition of the short title. The general purpose of the Act should be specifically described in the long title; but in this instance the reader would not be able to identify the nature of changes to the existing law that the Act is intended to bring about. The more a drafter can identify the impact of the law, the more specific and precise the regulatory message can be communicated to the reader. The long title should be concentrating on the major legal changes instituted by the law that will achieve the objective of the Act.

⁵⁶ For example; section 6 of Article III of the State Constitution of Florida

⁵⁷ Francis Bennion, *Statute Law* (3rd edn, 1990) Chapter 23

⁵⁸ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

Although a broad and general long title does not contain sufficient information for the reader, there are instances where courts upheld this style of long title. The Alaska Supreme Court upheld a title ‘relating to land’ even though it was challenged for being overly broad.⁵⁹ The reason given by the court is that the drafter might take a longer time to describe the major types of land affected by the bill. A specific and narrow long title might have tempted the court to construe the bill to be related only to the enumerated types of land and not to any types omitted from that list. The court in this case took into account the principal of statutory interpretative doctrines, ‘*noscitur a sociis*’, which declares that a general word of broad meaning may be limited in scope by the context in which it is used.⁶⁰ This case reminds the drafter on the relevant interpretative doctrine while drafting legislation. It is clear from this case, a broad lengthy long title is necessary if it will prevent confusion, aid in determining the constitutionality of an act by properly defining its scope, or help courts determine legislative intent.⁶¹

⁵⁹ *State v. First Nat'l Bank of Anchorage* (660 P.2d 406 (Alaska 1982))

⁶⁰ The other two statutory interpretative doctrines usually apply to the long title are:

- (i) *Expressio unius est exclusio alterius*, which in essence means if a detailed list is made by the legislature, it probably wants to include only the items on that list, and that it intends that others should be left out, by specifying these certain things. (2A Sutherland, Statutory Construction, sec. 47.23, 5th ed. 1994); and
- (ii) *Ejusdem generis* which involves the concept that a general word following a list is probably intended to be restricted to other things of the kind listed. (2A Sutherland, Statutory Construction, sec. 47.17, 5th ed. 1994).

⁶¹ The Florida Senate, Office Of Bill Drafting Services, *Manual For Drafting Legislation* (6th edn, 2009)

The proposal

Ideally, the long title should be drafted in a more specific manner so that it can be the positive gloss that the long title is designed to suggest.⁶² The more information given on the principal legislative device which the substantive rules use to give effect to the legislative proposal identified by the drafter, the more efficient the long title can be. Nevertheless, a balance must be reached between a general and specific long title. A long title must be broad enough to cover everything in the bill, but it must not be so broad as to lose its objective. Conversely, a long title that does describe each major element of a bill must not be so specific that it fails to cover minor elements of the bill.⁶³ The general rule for the drafter to follow is to avoid an extensively wordy, and overly specific long title in the absence of compelling reasons. Verbosity in a long title is as bad as verbosity in the body of the bill.⁶⁴ A quality long title does not need long-windedness in conveying the regulatory message of the Act. The more concise long titles, however, are generally the better.

A rhetorical long title

There are occasions where the sponsoring ministry requests to include an element of motivation, whether sloganistic or aspirational, to be in the long title, and this style of long title is known as a

⁶² Graeme Orr, 'Names Without Frontiers: Legislative Titles And Sloganeering' (2000) 21 Statute Law Review 188 - 212

⁶³ The Legislative Affairs Agency of Alaska, *Manual of Legislative Drafting* (2013)

⁶⁴ *Manual For Drafting Legislation* (Florida) (n61)

rhetorical long title.⁶⁵ Graeme Orr considered this type of long title as ‘a real sin of governmental abuses of legislative titling’ as they should not carry any rhetorical proposition of a government in any part of legislation.⁶⁶

Among the reasons a government desires to have a rhetorical long title in the Act is because it can be a product of illustrating a political agenda. Furthermore, such method of long titling provides opportunity for government to tell citizens that something is being done rather than to address a more serious public policy question in the Act.⁶⁷ The trend to have a rhetorical long title coincides with the practice of naming the bill towards political motives. Perhaps, it is not difficult for us to find a rhetorical rather than neutrally descriptive long title in the legislation.

To illustrate this point, I cite the following example:

Short title : *No Child Left Behind Act of 2001*⁶⁸

Long title : *An Act to close the achievement gap with accountability, flexibility, and choice, so that no child is left behind.*

This style of the long title does not really meet the prerequisite of the acceptable component of quality long title which consist of the main regulatory message of the Act and the legal mechanism that is employed to have effect on the existing law. It is fairly acceptable that the

⁶⁵ Orr (n62)

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ The United States House of Representatives passed the bill on 23 May 2001 and the United States Senate passed it on 14 June 2001. It becomes a law on 8 January 2002.

long title set out the ‘purpose’ of legislation in a limited sense but such purpose must be supported with the legal mechanisms of how the Act will have effect on the existing law. Perhaps, this style of the long title is more effective to be placed in the purpose provision, as it sets out the objective of the Act that it intends to achieve. This goal can be used during the post-legislative scrutiny cycle as a measurable criterion of effectiveness of the law in achieving the desired regulatory result.

The drafter will face an uphill task in dealing with the request from the sponsoring ministry, who desires to provide the political agenda in the long title. In this situation, the drafter must be able to advise the sponsoring ministry on the importance of a quality long title, which can be used as a means of imparting the regulatory message of the Act to the reader. Modern legislative drafting requires the regulatory message of an Act to be conveyed as early as possible.⁶⁹ Thus, the pursuit of modern drafters is to share that message with the ultimate users of the legislation in a manner that gets them to be heard loudly, clearly and as specifically as possible. After all, citizens can do whatever they wish unless prohibited by law. As rightly observed by *Xanthaki*, a quality long title should not be repetitive and useless. An abbreviated, truncated title serves no purpose other than that of a label, and that is the prerogative of the short title.⁷⁰

⁶⁹ Helen Xanthaki, ‘Legislative Drafting: A New Sub-Discipline Of Law Is Born’ [2013] 1 IALS Student Law Review 57-70

⁷⁰ See Xanthaki (n9). She gives an example of the ‘European Union (Approval of Treaty Amendment Decision) Act 2012 where the long title of this Act is “*An Act to approve the Treaty Amendment Decision*”. According to her, the real long title, which is an example of best practice, offers information as to how the law is reformed by the Act.

The presence of the long title in the Act is important as it serves various functions to different ‘consumer’ of legislation. Apart from being a communicative device to all three broad groups, the long title also serves specifically as an explanative device to the society, an interpretative device to the court and a procedural device to the Parliamentarians. There is a convincing need for the drafter to produce a quality long title as whichever functions the long title serves; it must serve as an effective device. Indeed, the nature of the long title is often misunderstood. Evidently, judges have even been known to confuse the long title with other descriptive components of an Act.⁷¹ Some judges have confused the long title with the preamble.⁷² Other judges perhaps, more surprisingly, have mistaken the long title for a heading.⁷³ In other cases, the long title has been judicially referred to as the short title. In more extreme cases, the long title may be drawn on to remedy deficiencies in the drafting of an Act.⁷⁴

⁷¹ Jones (n1) 679

⁷² *ibid* 678. See also *Thornton v Kirklees Metropolitan Borough Council* [1979] QB 626 t 635

⁷³ *ibid* 679. See also *Hodgson v Marks* [1971] Ch 892 [1970] 3 All ER 513 at 525; *Ward v Holman* [1964] 2 QB 580; *Coventry v Coventry* [1979] 3 All ER 815

⁷⁴ Court relied on the long title to answer the issue in this case as a result of defects in drafting of the Landlord and Tenant Act 1987. See *Kay Green v Twinsectra Ltd* [1996] 4 All ER 546

CHAPTER 4

ISSUES SURROUNDING THE LONG TITLE

The issues surrounding a broad and general long title in communicating a regulatory message to the reader will be discussed as follows:

4.1 It is argued that a broad and general long title is a result of it being drafted not with the goal of communicating the regulatory message, but more so for purposes related to Parliamentary procedure and, to some extent, to satisfy wider presentational issues

(i) Parliamentary procedure

In many jurisdictions, the presence of the long title in the legislation is a result of a legal requirement under the Standing Order of both Houses of Parliament and because of that the presence of the long title is said to be merely a procedural device.⁷⁵ As a Parliamentary procedure, all bills are required to be given a title indicating the purpose and scope of the proposed Act and this bring us to the doctrine of scope in the long title.⁷⁶

⁷⁵ For example; the United Kingdom, Australia, Malaysia.

⁷⁶ Sullivan (n21) 290; For example; Order 51 of the Standing Orders of the House of Representatives (Malaysia) provides that the Secretary of Parliament must ensure that the Bill shall contain nothing foreign to what the title provide. See also Order 150(a) of the House Standing of the Australia Parliament requires an amendment of a Bill to be within the title or relevant to the subject matter of the Bill.

For the purpose to limit the amendment

The presence of the long title in legislation relies heavily on the rules of both Houses of Parliament; under the Parliamentary procedure a bill cannot be amended outside the scope of its long title.⁷⁷ If the proposed legislation falls a long way outside the subject matter of the bill, it could be considered a misuse of the House's power if both Houses were to approve such legislation. For that reason, the drafter may opt to draft a broad and general long title with the thought that the more general the long title is, then the wider can be the scope of the Act.

Historically, the drafting of the long title is very strict in the sense that it must reflect all principles or scope of the enacted legislation. The strictness of parliamentary practice in this regard has led the long title to be drafted as comprehensively and lengthily as it should reflect the contents of the Act. However, there has been a considerable relaxation in regards to the strictness of the long title and this has led to briefer and less informative long titles.⁷⁸ Such relaxation has opened up the door to any amendments, which do not strictly fall within the terms of the bill. The generality of the provision in legislation shall be construed restrictively by reference to the long title and the balance of the Act; thus the long title can be used and should be read as part of the Act in the initial interpretive phase.⁷⁹ Strictly speaking, in jurisdictions where the strictness of the long title has not been relaxed, any amendments which are 'beyond the scope' of the long title

⁷⁷ Jones (n1)

⁷⁸ Rob Jerrard, 'Statutory Interpretation' (City of London Police, July 1984). See also Xanthaki (n9) 229

⁷⁹ *Dominion Breweries Ltd. v Baigent* [1954] N.Z.L.R. 274 on Repugnancy and Regulation

will be ruled out of order.⁸⁰ Therefore, the long title has a role to restrict the range and number of amendments that may be introduced as any amendment must be within the scope of the long title of the bill. Although sometimes the long title does not entirely determine the scope of the amendment, it influences the judgment of House officials in advising the Speaker or other person presiding at proceedings on the Bill to determine whether the proposed amendments are in order.⁸¹ In doing this, he will be guided by the long title.

Because of that the long title must be amended taking into consideration the provisions to be enacted so that it does not exceed the purpose or scope of the long title.⁸² However, amendments to the long title are not as easy as amendments to other provisions of the Act; as such the long title may be amended to narrow but not to broaden the subject matter of the bill as introduced.⁸³ There should be good reason for this as the single subject rule of the Act should be preserved.

For the purpose to limit the debate on the Bill

A considerable relaxation in the strictness of the long title permits a wide range of discussion on the bill, which may be made even though such discussion may not be strictly relevant to the

⁸⁰ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

⁸¹ Bennion (n4)

⁸² A. Fraser, W. Dawson J. Holtby, eds., *Beauchesne's Rules and Forms of the House of Commons of Canada*, (6th edn, 1989) 209

⁸³ Greenberg (n6) 112

terms of the bill.⁸⁴ However, where a government bill is so contentious, the sponsoring ministry may request the drafter to provide a more specific and narrow long title so as to reduce the number of issues that may be debated. It is often politically desirable to restrict the range of amendments that can be moved and consequently limit the debate on the Bill.⁸⁵ In situation where there is no desire on the part of the sponsoring Ministry to restrict debate, the long title can be brief and comprehensive. Conversely, if such restrictions are desired, it may be necessary to have a lengthy long title which is narrow and specific so that the debate will be limited just to the scope of the Bill. However, it should be emphasised that an amendment will not necessarily be out of order because it is not within the wording of the long title.⁸⁶ It may be said that the scope of a Bill containing one or two specific matters can be restricted in this way, but more than two specific matters will be likely to lead the debate is thrown open to the whole field of the Bill.⁸⁷ For that reason, it is difficult to say whether this practice is effective enough to limit debate on the bill as the scope of debate does not entirely rest on the long title and also the doctrine of the scope does not always keep out extraneous material.⁸⁸

However, can the Parliamentarians, who are mostly non-lawyers, be able to appreciate the main regulatory message in the legislation if the long title not specifically drafted to communicate

⁸⁴ This practice is parallel with procedural rules governing the debate during the Second Reading in both Houses where the Parliamentarians are allowed to debate any matters pertaining to the bill, provided that such debate is within the scope of the bill, as strictly addressed in the long title.

⁸⁵ Bennion, Drafting Practice <<http://www.francisbennion.com/>> accessed 8 August 2014

⁸⁶ Bennion (n4)

⁸⁷ *ibid*

⁸⁸ Jones (n1) 678

such a message to the intended audience? As precisely argued by Paul Salembier, most Parliamentarians who are responsible for enacting bills into law, routinely rely on government lawyers and parliamentary researchers to explain the effect of the legislative text produced by them.⁸⁹ Therefore, for the benefit of the Parliamentarians, the drafter should provide an informative long title which comprises the principle or scope of a bill that will assist Parliamentarians to comprehend the desired regulatory result of legislation. Although the long title relies heavily on the rules of both Houses of Parliament, the drafter must ensure that the long title is an effective procedural device. Conventionally, the long title of the amending Act strictly falls under the terms of the Interpretation Act. In this event, the provisions of the amending Act must be construed in alignment with the principal Act; thus leaving no room for the amending Act to be independent from the principal Act. However, it is not wrong for the drafter to provide an informative long title in the amending Act, as it is not necessarily limited by the title of the Act.⁹⁰

(ii) *Presentation/layout*

One of the recommendations of the New Zealand Law Commission in the *Report 35, Legislation Manual: Structure and Style (May 1996)* was the abolishment of the long title, because the remaining function of the long title appears to be to explain the general purpose of the Act.⁹¹ This recommendation is criticized by Francis Bennion. He argued the Committee failed to look

⁸⁹ Salembier (n9); See also Francis Bennion, 'The Readership of Legal Texts' (1993) 27 *Clarity* 18

⁹⁰ Sullivan (n21) 290

⁹¹ The New Zealand Commission, *Report 35, Legislation Manual: Structure and Style* (May 1996)

at the real functions of the long title, as they treated the long title as if it were only a question of layout. According to him, the mechanism of conveying the regulatory message in the legislation is through the legislative text itself, but not by virtue of the usage of a typographical device in the legislation.⁹² The better approach is to re-examine the utility of the long title in legislation, but not to abolish it.⁹³

The presence of the long title in legislation is not solely for reasons of drafting conventions, which explicitly agreed that the long title is to be one of the preliminary provisions appearing at the beginning of an Act. Usually, the long title is formulated by the sponsoring ministry and the drafter routinely agreed with the ministry's request without realizing the various functions of the long title. Caution should be given to the drafter in automatically applying any drafting conventions without acknowledging the reason why such conventions are written in that manner. Some of these conventions have statutory or case-law origins, which need to be understood correctly before one can adopt them. Even though, the convention is drafted by the expert in the drafting field, but the conventions themselves change over time to reflect changes in public thinking and legal trends.⁹⁴ Nevertheless, it is generally agreed that the drafting conventions have aided the drafter by providing a consistent way of drafting legislation.

⁹² Typographical is the art and technique of arranging type in order to make the language it forms most appealing to transparent learning and recognition.

⁹³ Bennion (n45)

⁹⁴ Lawrence E. Filson & Sandra L. Strokoff, *The Legislative Drafter's Desk Reference*, (2007); Dorsey (n5)

It would be ideal for the drafter to apply the drafting conventions, but with a mind toward making the provisions in the Act effective enough to work as a sound mechanism for achieving the desired regulatory result of an Act. Particularly, when drafting the long title, the drafter should be thinking of improving the efficiency of the long title in communicating the regulatory message to the reader. As agreed by Bennion, the attention of the reader should be drawn to the regulatory message in the legislation itself not to the structure and mechanics of the legislation even though the structure of legislation may help the reader to better comprehend the legislation.⁹⁵

Precedent

Peter Goodrich propounded that he sees symbolic communication not only in what is said, but also in the kinds of things that are said and the manner in which they are said.⁹⁶ Generally, the drafter prefers to follow the available precedent, which relates to the subject matter of the bill that he or she is working on. It is believed that the best source of drafting comes from other bills, and the drafter can save much time and effort if he or she can find the available precedent that is adaptable to a sponsor's current needs.⁹⁷ However, precedent can affect the drafter's work in two ways; it can be a great source of efficiency and also a great source of error, foolishness and bad

⁹⁵ Bennion (n2)

⁹⁶ This statement was cited by Desmond Manderson in 'The Semiotics Of The Title: A Comparative And Historical Analysis Of Drug Legislation' (1995) 2 Law Text Culture 160

⁹⁷ *Manual For Drafting Legislation* (Florida) (n61)

drafting.⁹⁸ In jurisdictions where everything is the responsibility of the drafter, from researching, drafting, proofreading and printing the Bill,⁹⁹ such an expansive job scope will lead the drafter to focus too much on the layout of the bill rather than concentrate on the details and implementation of the rules. Because of that, if the available precedent has a broad and general long title, the probability of seeing the same style of long title exists and there is likely to be a homogenous theme throughout the Acts. With a more clear understanding of the purpose of framework legislation, the drafter can more systematically describe its effects on the existing legislation and better provide recommendations for best practices in drafting the long title.¹⁰⁰

Catch-all phrase such as “... and for [related matters] [connected purposes]”

Generally, the standard templates of a bill currently in use include some catch-all phrase such as “*and for related purposes*”, “*and for other purposes*” or “*and for incidental or connected matters*” at the end of a long title.¹⁰¹ This inclusion is designed simply to provide notice to the reader that there may be minor, but non-consequential, changes contained within the Act.¹⁰² However, the question arises as to whether this phrase is really needed to warrant every provision of the bill is within the scope of the long title. How would the drafter make a choice of

⁹⁸ Material courses by Ruth Sullivan and Laura Hopkins, *Background Reading on Legal Drafting – Development Lawyers’ Course* (2d) (Rome: International Development law Institute, 2001)

⁹⁹ In this situation, the drafter is responsible for the bill at all stages until it becomes an Act. See Evans (n29) 289

¹⁰⁰ Elizabeth Garrett, ‘The Purposes of Framework Legislation’ (2005) 14 (J. Contemp. Legal Issues) 717

¹⁰¹ The Australia Parliamentary Counsel, *Drafting Direction No. 1.1 Long and Short Titles of Bills and references to proposed Acts* (Issued May 2006)

¹⁰² Greenberg (n6) 113

which catch-all phrase to use in the long title that he or she is working on? Some writers suggest that the choice among the phrases is interrelated with how one construes whether one catch-all phrase is more inclusive than the other. It is argued that the phrase “*and for other purposes*” is more widespread than “*and for related purpose*”. However, neither phrase could be relied upon to allow an amendment bearing no relation to the subject matter of the bill.¹⁰³

The term “*incidental*” refers to something that is a ‘necessary or expedient incident of the principal business of the instrument: something that is required to make it work.’¹⁰⁴ This may relate to regulations making power provisions which are provided in the Act but not directly covered by the principal statement of the long title. This term is crucial for the empowered authority to find a particular provision in the Act that allows the subsidiary regulations to be made.¹⁰⁵ The authority may regulate matters which are incidental to the implementation of a specific provision of the Act, if the specific provision has been identified. It is also observed that the phrase “*for connected purpose*” is provided by the drafter with the goal to expand the scope of the Act, in the event courts were to interpret the long title strictly. In some jurisdictions, this phrase is inserted to provide a device to shorten the long title.

The drafter should be more careful in removing this phrase or replacing it with something more narrow, especially in jurisdictions where there is a strict legal requirement on the long title as

¹⁰³ Drafting Direction No. 1.1 (Australia) (n101)

¹⁰⁴ Greenberg (n6) 140

¹⁰⁵ *ibid.* This principle was supported in *Bomberry v Ontario (Minister of Revenue)* (1989) 70 Ontario Report 662 (Division Court) where the court ruled that “the incidental power must have some peg to hang on.”

regards to the Parliamentary procedure. Even in cases where courts are more inclined to refer to the long title as an aid to interpretation, then it would be better for the drafter to include this phrase in order to broaden the scope and purview of the Act. Therefore, it is believed that in order to avoid problems regarding strict Parliamentary procedure or even strict interpretation by courts, it is better to have a more general title ending with this catch-all phrase. Possibly, the usage of this phrase is more relevant in some cases which involve the portfolio of a bill that combines a significant set of amendments of one or several Acts with the minor miscellaneous amendments of other Acts to indicate a broader application of the Act.

4.2 It is argued that a broad and general long title is a result of the drafter not working with a goal toward assisting the construction of an Act, instead the drafter relies only on the words used in the Act itself.

Other than being a procedural device, the long title is also regarded as an interpretative device where it gives assistance to judges in resolving a dispute. However, there are two approaches taken by courts in treating the long title as an interpretative device.

The two approaches

Firstly, courts have taken the approach of referring to the long title only when the provision of the Act is ambiguous.¹⁰⁶ In this instance, the long title will come into consideration as an aid for interpretation.¹⁰⁷ In *Birch v Allen*,¹⁰⁸ Latham CJ said:

¹⁰⁶ *Borch v Allen* (1942) 65 CLR 621

*“It may be proper to look at the title for the purpose of determining the scope of an Act; it may be referred to, not to contradict any clear and unambiguous language, but if there is any uncertainty it may be referred to for the purpose of resolving the uncertainty.”*¹⁰⁹

Also, *in the Estate of Groos*,¹¹⁰ the court refused to allow the long title to override the words of a law, as the general words in the Act should not be limited by reference to the long title. The long title is used as a guide to the scope of the Act when there is ambiguity or uncertainty in the meaning of substantive provisions.

Secondly, courts frequently called on the long title as an aid to interpretation, because the long title is considered to be a part of the Act. Since it is enacted and subject to amendments, courts treat it as an intrinsic tool for interpreting laws. Various cases law has given recognition to the idea that the title is a part of the Act, and accordingly is to be taken into account when considering the context in which other provisions appear.¹¹¹ Since the Act is to be read as a whole, the title can give colour to the meaning of other provision. For instance; in *Amatek’s* case,¹¹² the court referred to the long title in defining the purpose of the Act.

¹⁰⁷ From my observations, in the older cases law the court frequently called that the long title is limited to the resolution of ambiguity. See also Pearce D.C., Geddes R.S. (n3) 154

¹⁰⁸ (1942) 65 CLR 621 at 625-6

¹⁰⁹ A similar decision is held in *Manuel v. A.-G.* [1982] 3 All E.R. 822, 831 the court concluded that the long title could not be used unless the operative provisions were ambiguous.

¹¹⁰ [1904] P 269

¹¹¹ Pearce D.C., Geddes R.S. (n3) 155

¹¹² [1975] 1 All E.R. 810, 844

Which approach is acceptable?

The difference in approach taken by courts in considering the long title as an interpretative device is a result of courts applying different treatment to the enacting parts of a statute versus that of the other parts which surround or introduce the statute. Essentially, courts have regarded the long title as indirect evidence rather than direct evidence, which has had the effect of classifying the long title as a lesser form of evidence compared to the enacted provisions.¹¹³ On that basis, a court does, in a rare occasion resort to the long title to glean the legislative intent, as the title is not used primarily to make law instead it is used primarily as a convenience to the reader. Further, the effect of the long title is very undemanding as the court ruled in *Pitt, Son & Badger Ltd v Sydney Municipal Council*,¹¹⁴ where it was decided that the long title did not cover all matters dealt with by the Act, and accordingly the court considered it would be unsafe to rely on the long title as a guide to the meaning of the provision before the court.¹¹⁵

The first approach taken by courts in referring to the long title only in the resolution of ambiguity is too restrictive. As rightly observed by Lord Simon of Glaisdale, who ruled in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg A.G*, the long title may always be consulted as ‘the plainest of all guides to the general objectives of a statute, although it will not always help as to particular provisions’.¹¹⁶ The existence of specific purposes, as stated in the

¹¹³ Sullivan (n21) 291

¹¹⁴ (1908) 24 WN (NSW) 203 at 204

¹¹⁵ See also *R v Stevenson* (1891) 24 SALR 16

¹¹⁶ [1975] 1 All E.R. 810, 844

long title, explains why there is no necessity for repetition of the restriction in individual sections in the Act, because such restriction has been catered to in the long title. Despite the long title may be broad and general, without any doubt, the long title is part of the Act and courts are obliged to refer to the long title in considering a dispute before them.

The long title is an integral part of the Act as it exists based on the legal requirement governing Parliamentary procedure and it is carried in committee after the other clauses are passed. Such importance is further confirmed in the Interpretation Acts¹¹⁷ and various decided cases.¹¹⁸ However, if there is a clash between a clear and unambiguous words and a title, courts must disregard their doubts and apply the clear and unambiguous words. The general rule is courts should disregard any doubt which may arise by any part of the statute, which does not enact anything, although they may be consulted as a guide to Parliamentary intent. Effect must not be given to any doubts, which they may raise about the meaning of those words.¹¹⁹

The most important rule for approaching the construction of a piece of legislation is to look at the provisions concerned in the context of the legislation as a whole. Often, particular provisions in a complex Act do not make sense until one sees them as part of an overall pattern. Therefore,

¹¹⁷ For example; section 15 of the Interpretation Acts 1948 And 1967 (Malaysia) provides that the long title to an Act or to any subsidiary legislation shall be construed and have effect as part of the Act or subsidiary legislation.

¹¹⁸ For example; in *Hudon v. United States Borax & Chemical Corp* (1970) 11 D.L.R. (3d) 345 (Sask. Q.B.), where the court held that the long title of a statute is itself an important part of an Act and should be taken into consideration in determining the scope and purview of the Act.

¹¹⁹ Cross (n23) 124-125

almost any part of an Act is available as a means of interpretation of any provision in it including the long title.¹²⁰ In *Hughes v. J.H. Watkins & Co.*,¹²¹—

“...when seeking to ascertain the purpose and scope of an Act of the Legislative or of a section thereof, we may and in most cases should be read and consider all the provisions of the Act, including the words of the title of the Act.”

Perhaps, the drafter should be more vigilant in drafting the long title. The legislative language used in the long title would be given an effect if it is contrary to the policy objective of the legislature. As clearly expressed in *Associated Newspaper Ltd v Wilson*,¹²² where the court held that:

“The courts’ traditional approach to construction, giving primacy to the ordinary, grammatical meaning of statutory language is reflected in the parliamentary draftsman’s techniques of using language at the most precision to express the legislative intent of his political masters and it remains the golden rule of constructions that a statute means exactly what it says and does not mean what it does not say.”

¹²⁰ Evans (n29) 274

¹²¹ [1928] 2 D.L.R. 176 at 183 (Ont. C.A.)

¹²² [1995] 2 WLR 354 at 362 HL

In more extreme cases, courts have referred to the long title in interpreting the statutory instrument made under the primary Act.¹²³ The language of the long title has effect not only to the primary legislation, but also to the provisions of the subsidiary legislation made under it. To sum up, once the long title is enacted, and subject to amendment, by the legislature; then its legitimate uses are for the purpose of interpreting the Act as a whole and ascertaining its scope.¹²⁴

4.3 It is argued that since the long title is drafted in a general and broad manner, the existence of the long title no longer serves any useful function, as reference to the short title is sufficient to indicate the contents of the Act.

Other recommendations of the New Zealand Law Commission specified as follows:

“An Act should have only one title, the function of which is to identify the measure. It appears as part of the enacting statement, is referred to simply as the title, and provides:

- *an easy means of citing or referring to the Act, and*
- *a sufficiently descriptive identification to help readers find the law they are looking for in indexes and elsewhere.*

¹²³ *No. 20 Cannon Street v Singer & Friedlander Pty Ltd [1974] 1 CH 229 Cole v Director-General of Department of Youth & Community Service (1987) 7 NSWLR 541*

¹²⁴ *Xanthaki (n6) 229. See also Vacher & Sons Ltd v London Society of Compositor [1913] AC 107 at 128*

*Having both a short and a long title no longer serves any useful function. Acts are invariably referred to not by their long title, but by their short title, and the remaining function of the long title appears to be to explain the general purpose of the Act.”*¹²⁵

The recommendation made by the New Zealand Law Commission has created a significant impact to the structure and style of New Zealand legislation. Based on such recommendation, a decision was called to abolish the long title as it serves no useful function. Without the long title, the reader will still be able to grasp the regulatory message of a law, which can be identified from the substantive provisions of the Act.

The primary function of the short title is to provide a concise and consistent way of citing an Act; it confers an official name in effect.¹²⁶ It can be the indispensable tool in the management of statute books and the cross-referencing within them.¹²⁷ As what happened in the long title, the short title has also been used deliberately to make a political impact. Slogans and even puns have been incorporated with a view to drawing continuing attention to the political purposes of legislation.¹²⁸ The short title which is memorable by using rhetorical, rather than descriptive, terms is more so sought by politicians; however, such rhetorical terms are not preferred by drafters.¹²⁹

¹²⁵ This is the actual wording of the Report 35 (n82).

¹²⁶ Sullivan (n21) 294

¹²⁷ Orr (n62)

¹²⁸ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

¹²⁹ The example of this kind of short title is “A New Tax System (Bonuses for Older Australians) Act 1999 and Roads to Recovery Act 2000 (allocating funds for road improvements).

There is great distinction between the long title and the short title, as the latter receives less weight than the former because of its nature as a ‘label’ for the Act. However, courts have in many instances ignored such distinction by treating the short title as if it were the sole title of the legislation.¹³⁰ The rationale behind this approach is that the short title, like the long title, is also subject to amendment during the passage of a bill. However, the short title’s sole purpose is to serve as a brief identifying label; it is by no means as helpful as the long title.¹³¹ The need for brevity often results in a short title that does not cover everything in the Act.

Despite its limitation, there is no reason why the short title could not sometimes be used as a guide to interpretation. In *R v. Thompson*,¹³² the court construed the principal purpose of the legislation from the original name of the Act namely the ‘Protection of Privacy Act’, which is to protect the privacy of individuals from electronic interception of their private communications.¹³³ Also, in *R v Swain*,¹³⁴ the court relied on the short title of British Columbia’s Heroin Treatment Act to conclude that, even though the Act provided for the involuntary detention of addicts, its main object was treatment rather than punishment. The Treatment Act was thus within the provincial competence over health matters.¹³⁵

¹³⁰ *The Ydun* [1899] P 236; *R v East Powder Justices, ex p Lampshire* [1979] QB 616 at 622

¹³¹ Cross (n23) 130

¹³² [1990] 2 S.C.R. 1111, at 58

¹³³ *ibid* 1160

¹³⁴ (1991) 63 C.C.C. (3d) 481 (S.C.C.)

¹³⁵ Sullivan (n21) 290

It is proposed that the long title cannot be substituted by the short title as they serve different functions. The functions of the long title are broader than that of the short title, and those functions include a communicative device, explanatory and interpretive device. Although sometimes the parliamentary purpose can be inferred from the short title, the drafter sees the long title as serving to facilitate the source for citation, reference and retrieval.¹³⁶ The long title should always be an important component of legislation that appears at the beginning of an Act. Without providing the long title in the Act, it will not automatically be supplied. Even though sometimes courts suggest that the long title should not be referred to unless the words to be interpreted, read in their immediate context, are ambiguous or unclear;¹³⁷ the better view is that the long title may always be considered, along with all the other elements of the legislative context. The abolishment of the long title is not impossible in jurisdictions where the constitution of the country requires the long title to be in legislation as part of the procedural stages to pass the law.

4.4 Substitution of a purpose clause for the long title

The recommendation of the New Zealand Law Commission has resulted in a significant impact on the structure of New Zealand legislation by bringing about the total departure of the long title and the presence of a purpose clause to accommodate its functions.¹³⁸ The current style of modern drafting seems to offer a choice between the long title and the purpose clause. However,

¹³⁶ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

¹³⁷ In *R v Galvin* [2987] Q.B. 862 at 869 (C.A.), the short title of the Official Secrets Act 1911 did not prevent section 2(1) being construed as including communication of a document which was arguably neither ‘official’ nor ‘secret’.

¹³⁸ This is the actual wording of the Report 35 (n82).

there is a scope for both, if one distinguishes their function adequately: the long title introduces, and even better lists, the main mechanisms used by the drafter to reform the existing law, whereas a purpose clause deals with the objective of the Act in question.¹³⁹

The purpose clause may be useful in limiting the discretion of the authority. In *Canadian Assn. of Industrial, Mechanical & Allied Workers, Local 14 v Paccar of Canada Ltd.*,¹⁴⁰ the court found that because the Board had ignored the goals of its mandate, as set out in its purpose clause, it had reached a patently unreasonable solution and so exceeded its jurisdiction. The general purpose clause not only aims to provide guidance to the administrative agency, but also seeks to identify the limits of the discretion it enjoys in the exercise of its statutory powers.¹⁴¹ The purpose clause may also have an effect in limiting the power of the authority to enact the delegated legislation as such delegated legislation is subject to the policy and objects of the Act, which can be determined by construing the Act as a whole.

The substitution of the purpose clause with the long title is dangerous in the sense that the purpose clause is no more than a manifesto, which may obscure what is otherwise precise, and exact.¹⁴² Although there is considerable regret by court in abandoning the purpose clause, this provision should not be applied in all Acts. By having the purpose clause in all legislation it might invite a conflict between the general purpose provision and the specific provision, which is

¹³⁹ Xanthaki (n6) 230

¹⁴⁰ (1989) 62 DLR (4th) 437 (SCC)

¹⁴¹ Sullivan (n21) 303. See also *Manukau City Council v Ports of Auckland* [2000] 1 NZLR 1 at 14

¹⁴² *ibid*

operated as a rule of law.¹⁴³ There is also a risk that the drafter is expressing the same thing, but in different words as it is not easy for the drafter to express a purpose in a few words. The main objectives of legislation cannot usefully or safely be summarized or condensed by such means.¹⁴⁴ Perhaps, without the presence of purpose clause in the Act, the enactments are to be interpreted in the light of their purpose by virtue of the injunction in the Interpretation Act.

Sometimes, the presence of the purpose clause in legislation is obviously redundant with the operative provisions of a law, which adds no useful information.¹⁴⁵ In fact, the presence of the purpose clause in the Act also has invited judges to apply the purposive approach rather than the literal approach. A purpose clause should not be a proper substitution for the long title. Although there may be an overlapping of information, as one characteristic of the long title is to specify the principal purpose of an Act, the long title serves a broader function than the purpose clause. The criticisms made by Francis Bennion in regards to the recommendation of the Committee to abolish the long title and substitute it with the purpose clause, is fairly acceptable. Bennion illustrated his point with section 1 of the rejigged Defamation Act of 1992, which provides that *‘The purpose of this Act is to amend the law relating to defamation and other malicious*

¹⁴³ Renton Report 1975 (n13)

¹⁴⁴ Daniel Greenberg, *Laying Down the Law* (Sweet & Maxwell 2011)

¹⁴⁵ *Statute Law Deficiencies: Report of the Committee appointed by the Society to examine the failings of the present statute law System* (London: Sweet & Maxwell, 1970) at 36. In this report, an example is given on a redundantly obvious purpose clause, which adds no useful information:

“7- The Commission shall perform the functions assigned to the Commission by this Act.”

falsehoods.' According to him, this is not the purpose of the Defamation Act of 1992, but a jejune description of its effect.¹⁴⁶

¹⁴⁶ Bennion (n44)

CHAPTER 5

CONCLUSION

The various functions of the long title indicate it is a vital component of an Act. The idea of abolishing the long title should not be placed as the preamble, purpose clause and short title would not be able to accommodate its functions and attributes. The long title should be maintained in the Act despite being drafted general and broad. The placement of regulatory message in the long title at the beginning of the Act makes such message easy to locate so that busy readers will spend their time understanding the message rather than searching for it. With good style of drafting the long title, the drafter can tell the reader about the purpose of the Act and the relationship among the pieces of information are clear.

Many have regarded the long title as a minor component of an Act, because its presence does not give much impact to the reader of a statute. It is true that the long title owes its presence to the procedural rules which govern parliamentary bills.¹⁴⁷ Regardless of the various functions that the long title serves, still its true function pertains to the Parliamentary procedure, so in a sense its true function pertains to the bill rather than the Act. However, the function of the long title as a communicative device, as put forward in this dissertation, cannot be denied. Hence, the drafting of the long title should not be taken lightly, as evidence shows that it is not uncommon if the long title to contain drafting defects.¹⁴⁸ It is contended that the best long title is the long title

¹⁴⁷ Jones (n1) 679

¹⁴⁸ See *Bennion on Statutory Interpretation* (n1). The example given is the information which was provided in the long title has nothing to do with the body of the Act. The long title to the Rating and Valuations Act 1928 (repealed) include the words ‘to provide for obtaining decisions on points of law with a view to securing uniformity in valuation.’

which is factual, concrete, and expertly drafted as the words chosen by the drafter in the long title must reflect the intentions of policy makers as well the intention of the legislature.¹⁴⁹

The drafter is concerned to comply with parliamentary rules of order under which the long title must be wide enough to embrace the contents of the Bill. At the same time the drafter may be so anxious to keep the long title as narrow as possible. The long title can serve a more effective role if it is drafted as specific as possible listing out the principal innovations of a bill, which should cover all of the principal purposes of a law.¹⁵⁰ However, noting the limitations on the drafter in producing quality long title, including the inexorable constraints on the legal requirement that the long title must be brief, limit the amendments and debate of the contentious bills, the drafter is left with no choice rather than to produce it broad and general. Nevertheless, caution must be taken by the drafter, for an expansive and general provision is likely to give rise to different interpretations and inevitable challenges. If a provision is drafted too precisely, it may also be subject to a potential challenge. Therefore, achieving a healthy balance between the two extremes represents a great challenge to any legislative drafter.¹⁵¹ An important prefatory remark is that the way in which a person drafts a law, or any other document, must depend on the

¹⁴⁹ In *Dominion Breweries Ltd.*'s case, the court held that the very general language of section 14 (1) of the Act should be construed restrictively by reference to the long title and the balance of the Act. The intent and purposes of the Act may be deduced from its long title- "an Act to make Provision for the Regulation of Medical Advertisements". See also Rob Jerrard (n73) where he stated that the purposes of the Act and the mischief rule are, therefore, closely connected, and it is very genuine to look at the long title.

¹⁵⁰ D. Lidderdale, *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (19th edn, London Butterworths, 1976) at 506

¹⁵¹ Brian Hunt, 'Plain Language in Legislative Drafting: An Achievable Objective or a Laudable Ideal?' (2003) 24 *Statute Law Review* 112

principles which will be applied by those reading it. Lord Bridge of Harwich in *Associated Newspapers Ltd v Wilson*¹⁵² said that:

“The court’s traditional approach to construction, giving primacy to the ordinary, grammatical meaning of statutory language, is reflected in the parliamentary draftsmen technique of using language with the utmost precision to express the legislative intent of its political masters and it remains the golden rule of construction that a statute means exactly what it says and does not mean what it does not say.”

In producing a quality long title, the drafter’s prime objective is not to provide an aid to deal with ambiguity, but rather to describe the principal ways in which the bill will have effect upon existing law and to indicate the central features or legal mechanism employed in the legislative scheme underlying the bill.¹⁵³ As a start,¹⁵⁴ the drafter should be able to identify the main effects upon the existing law, which the Act is intended to bring about. The more a drafter can identify the effect on the existing law, the more specific can be written into the long title. The expression used for indicating the new arrangements, which the Act will make, depends on the policy objective of a law. For example; the term *“to provide”*, *“to make further provision for”*, *“to authorize”*, *“to enable”*, *“to establish”*, *“to prohibit”*, *“to restrict”* or *“to regulate”* should be

¹⁵² [1995] 2 WLR 354, 362 HL

¹⁵³ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

¹⁵⁴ The best practices on drafting the long title are based on my research on various techniques of drafting the long titles proposed in several legislative drafting manuals. For example; OPC Drafting Manual (Australia), Drafting Techniques Group of the Office of the Parliamentary Counsel (United Kingdom), Drafting Manual (Malaysia), Drafting Manual (Alaska), Drafting Manual (Florida), Legislation Advisory Committee, ‘Guidelines on Process and Content of Legislation 2001 edition and amendments’ (New Zealand), Guide to Making Federal Acts and Regulations, 2nd edn (Canada)

given serious consideration before the drafter chooses to use it.¹⁵⁵ Choosing the most appropriate terms should confirm the principal legislative devices that the substantive rules give effect to legislative proposals.

The long title should not be an explanation as to what the bill contains; hence a narrative title should be avoided. A broad and general title is better than a title attempting to catalogue the constituent parts of legislation. For more complex bills, it is recommended that the long title be drafted in the form of a list, in precise terms, identifying how the law has changed, and leaving purpose and objectives aside for the purpose clause.¹⁵⁶ With wise typography, the drafter can make the text easy to read. Although the substance of the law may be difficult to understand; the presentation of the law on the page should not make the understanding of the law more difficult. The drafter must be careful to distinguish between the complex subject matter and complex presentation. As the structure and the contents of the bill may change as the drafting progresses, the initial draft of the long title may require modification. Strictly speaking, a Bill is out of order if it introduces several principal clauses which are not covered in the long title. For this reason, the all-catch phrase such as “*and for connected purposes*” is to be preferred rather than the archaic language such as “*connected therewith*” or “*with the “matters aforesaid*”. However, the use of all-catch phrase is to be discouraged.

¹⁵⁵ Legislative Drafting © Commonwealth of Learning – III (2003) (n11)

¹⁵⁶ Xanthaki (n9) 231

APPENDICES

Appendix A: Contents of Preamble¹⁵⁷

Categories	Explanation	Examples
<p>The Sovereign</p>	<p>Most preambles specify the source of sovereignty. This is necessary for the reader to understand and evaluate the coherence of the legislation in relation to the legal systems of the countries.</p> <p>The preamble indicates the legal basis of legislation.</p>	<p><u>Territorial Sea Act 2012 (Malaysia)</u></p> <p><i>“WHEREAS the Proclamation of Emergency issued by the Yang di-Pertuan Agong on 15 May 1969 under <u>Article 150 of the Federal Constitution</u> had been annulled by both the Dewan Rakyat and Senate on 24 November 2011 and 20 December 2011 respectively and had ceased to have effect pursuant to Clause (3) of Article 150 of the Federal Constitution;</i></p> <p><i>AND WHEREAS the Emergency (Essential Powers) Ordinance, No. 7 1969 [P.U. (A) 307A/1969] was enacted and promulgated by the Yang di-Pertuan Agong on 2 August 1969 for the delimitation of the territorial waters of Malaysia pursuant to <u>Clause (2) of Article 150 of the Federal Constitution</u> and which came into force on 10 August 1969;</i></p> <p><i>AND WHEREAS by virtue of <u>Clause (7) of Article 150 of the Federal Constitution</u>, the Emergency (Essential Powers) Ordinance, No. 7 1969 will cease to have effect at the expiration of a period of six months beginning with the date on which the Proclamation of Emergency ceases to be in force except as to things done or omitted to be done before the expiration of that period;”</i></p>

¹⁵⁷ Liav Orgad, ‘The Preamble In Constitutional Interpretation’ (Oxford University Press and New York University School of Law, 2010, Vol. 8 No. 4) 714–738

Categories	Explanation	Examples
<p>Historical Narratives</p>	<p>The preamble specifies the historical narrative which includes narratives of a state, a nation, or a people, telling specific stories that are rooted in language, heritage, and tradition.</p>	<p><u>Native Title Act 1993 (Australia)</u></p> <p><i><u>“The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement.</u></i></p> <p><i>They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands.</i></p> <p><i>As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society.”.</i></p>
<p>Supreme Goals</p>	<p>The preamble outlines a society’s fundamental goals. These may be universal objectives, such as-</p> <ul style="list-style-type: none"> ✓ the advancement of justice, fraternity, such as maintaining the union; ✓ the practice of protecting human rights; ✓ the achievement of economic goals, such as advancing a free market economy. 	<p><u>Education Act 1996 (Malaysia)</u></p> <p><i><u>“WHEREAS acknowledging <u>that knowledge is the key determinant of the destiny and survival of the nation:</u></u></i></p> <p><i><u>AND WHEREAS <u>the purpose of education is to enable the Malaysian society to have a command of knowledge, skills and values necessary in a world that is highly competitive and globalised,</u></u></i> arising from the impact of rapid development in science, technology and information.”</p>

Categories	Explanation	Examples
<p>Commitment of a Country</p>	<p>The preamble presents the commitment of a country to resolve disputes by peaceful means, to abide by the principles of the UN Charter, or to further national aspirations as stated in a declaration of independence.</p>	<p><u>Territorial Sea Act 2012 (Malaysia)</u></p> <p><i>“AND WHEREAS the United Nations Convention on the Law of the Sea was done at Montego Bay on 10 December 1982;</i></p> <p><i>AND WHEREAS <u>Malaysia deposited her instrument of ratification</u> on 14 October 1996 and therefore in accordance with Article 308 of the Convention, the said Convention entered into force as far as Malaysia is concerned on 14 November 1996;”</i></p> <p><i>NOW, THEREFORE, IT IS ENACTED by the Parliament of Malaysia as follows:</i></p> <p><u>Native Title Act 1993 (Australia)</u></p> <p><u>The Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms</u> through:</p> <ul style="list-style-type: none"> <i>(a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and</i> <i>(b) the acceptance of the Universal Declaration of Human Rights; and</i> <i>(c) the enactment of legislation such as the Racial Discrimination Act 1975 and the Human Rights and Equal Opportunity Commission Act 1986.</i>

Categories	Explanation	Examples
<p>God or Religion</p>	<p>A preamble may include references to God or religion.</p>	<p><u>Dawat-e-Hadiyah Act 1993 (c. x) (United Kingdom)</u></p> <p><i>“WHEREAS His Holiness Dr. Syedna Mohammed Burhanuddin is the fifty-second incumbent in the office of the Dai al-Mutlaq, having been duly appointed by an act of designation <u>in accordance with the canons and principles of the mission</u> known as Dawat-e-Hadiyah:</i></p> <p><i>And whereas the Dai al-Mutlaq is the supreme head of Dawat-e-Hadiyah and its people professing Islam distinguished as the Shiah Fatimi Ismaili Tayyibi Dawoodi Bohras known as the Dawoodi Bohra Community:</i></p> <p><i>And whereas Dawat-e-Hadiyah promotes and fosters the interests of the Dawoodi Bohra Community:</i></p> <p><i>And whereas the principles and tenets of Dawat-e-Hadiyah require that the Dai al-Mutlaq hold, control, administer and protect all properties and institutions of Dawat-e-Hadiyah and all such properties and institutions of the Dawoodi Bohra Community as are dedicated for the purposes of Dawat-e-Hadiyah and are recognised as such by the Dai al-Mutlaq:”.</i></p>

Appendix B: Analysis of the United Kingdom, Malaysia, Canada, Australia and New Zealand’s drafting styles on long titles

Countries	Legislations	Title/Long title/Purpose Clause	Comment
United Kingdom	House of Lords Reform Act 2014 (Chapter 24)	<p><u>Long title</u></p> <p>An Act to make provision for resignation from the House of Lords; and to make provision for the expulsion of Members of the House of Lords in specified circumstances.</p>	<p>This is a good example of a long title as it specifies the principal innovations that the Act requires. One, to make provisions for resignation from the House of Lords and two, to make provisions for the expulsion of members of the House of Lords.</p> <p>This example illustrates how the long title determines the scope of a bill for the purpose of debate and the moving of amendments. The long title will provide guidance to the speaker of the House to restrict the debate and the moving of amendments based on these two points.</p>
	Intellectual Property Act 2014 (Chapter 18)	<p><u>Long title</u></p> <p>An Act to make provision about intellectual property.</p>	<p>This is the example of a broad and general long title. If we compare this style of long title with the above example, this style will allow a more free debate to range over the whole subject of intellectual property.</p> <p>However, this style of long title is poorly expressed as it prevents readers from getting the main regulatory message of the act, which is not conveyed first-hand. Additionally, a broad and general long title does not give much assistance to courts and is likely to lead to misinterpretation when referring to it.</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
	<p>Immigration Act 2014 (Chapter 22)</p>	<p><u>Long title</u></p> <p>An Act to make provision about immigration law; to limit, or otherwise make provision about, access to services, facilities and employment by reference to immigration status; to make provision about marriage and civil partnership involving certain foreign nationals; to make provision about the acquisition of citizenship by persons unable to acquire it because their fathers and mothers were not married to each other and provision about the removal of citizenship from persons whose conduct is seriously prejudicial to the United Kingdom's vital interests; and for connected purposes.</p>	<p>This is good example of a long title as it specifies the principal innovations that the Act is intended to do. It embraces everything contained in the bill when it is introduced. This style of long title is more appropriate for more complex legislation as the long title should describe each of the principal purposes of the legislation. When the bill has several main clauses, it is better for the drafter to identify each of them in the long title.</p> <p>It is appropriate for the drafter to start with the principal one and then follow the order in which the bill deals with each subsequent clause (which is typically in descending order of importance).</p>
<p>Malaysia</p>	<p>Goods and Services Tax 2014 [Act 762]</p>	<p><u>Long title</u></p> <p>An Act to provide for the imposition and collection of goods and services tax and for matters connected therewith.</p>	<p>This is an example of a broad and general long title where it does not specifically state the concrete elements of attempted law reform in the long title.</p> <p>However, it is understood why the drafter chose to produce this style of long title as it is more appropriate to have a broad and general long title for this type of legislation. On the other hand, if</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
			<p>the drafter chooses to list all main clauses in the long title, then it may invite courts to apply the relevant statutory interpretative doctrines to construe the bill to be related only to the enumerated types of taxes and not to other types omitted from that list.</p> <p><u>Note:</u> Throughout my research, there has been located no single drafting manual that specifically address which style of long title best suit every type of Bill or Act. Usually, the choice of producing a general or specific long title depends on the request from the sponsoring ministry and the drafter's knowledge of various functions of the long title.</p>
	<p>Islamic Financial Services Act 2013 [Act 759]</p>	<p><u>Long title</u></p> <p>An Act to provide for the regulation and supervision of Islamic financial institutions, payment systems and other relevant entities and the oversight of the Islamic money market and Islamic foreign exchange market to promote financial stability and compliance with <i>shariah</i> and for related, consequential or incidental matters.</p>	<p>This is a good example of a long title as it indicates the mechanism of attempted law reform so that the reader will recognize the intended spirit and scope of the Act at the beginning of it.</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
	<p>Corrosive and Explosive Substances and Offensive Weapons Act 1958 [Act 357]</p>	<p><u>Long title</u></p> <p>An Act to amend the Corrosive and Explosive Substances and Offensive Weapons Act 1958.</p>	<p>Conventionally, the long title of the amending act strictly falls under the terms of the Interpretation Act. In this event, the provisions of the amending act must be construed in alignment with the principal act, thus leaving no room for the amending act to be independent from the principal act.</p> <p>However, it is not wrong for the drafter to provide an informative long title in the amending Act, as it is not necessarily limited by the Act's title. If the bill amends one or two provisions of the principal act, then it is more appropriate if the drafter specifies the provisions that are being amended in the long title. On the other hand, if there are numerous provisions that are being amended, then it is acceptable to use this style of long title.</p>
<p>Canada</p>	<p>Competition Act (R.S.C., 1985, c. C-34)</p>	<p><u>Long title</u></p> <p>An Act to provide for the general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition.</p> <p><u>Purpose clause</u></p> <p>The purpose of this Act is to maintain and</p>	<p>This style of long title is reasonably produced by the drafter taking into consideration the presence of the purpose clause in the act. If the sponsoring ministry requested that the aim and objective of the proposed legislation be included in the bill, then it would be more effective to communicate such aims and objectives in the purpose clause.</p> <p>The presence of the long title and the purpose clause in this Act assists the reader in understanding the scope and purview of the Act. The purpose clause serves as a means of expressing the intent</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
		<p>encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.</p>	<p>of the legislator in concrete terms, thus bridging the gap between the policy and the law.</p>
	<p>Antarctic Environmental Protection Act (S.C. 2003, c. 20)</p>	<p><u>Long title</u> An Act respecting the protection of the Antarctic Environment.</p> <p><u>Purpose clause</u> The purpose of this Act is to protect the Antarctic environment, particularly by implementing the Protocol.</p>	<p>This long title does not offer more than the purpose clause since it gives little more than repetition of information in the purpose clause. A quality long title should not be repetitive and useless. It is more appropriate if the information on the “<i>implementation of Protocol</i>” in the purpose clause is added in the long title because one of the characteristics of the long title is to specify the legal mechanism that the act is intended to bring about; if this happens, there is no need to have a purpose clause in the act.</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
	<p>Economic Action Plan 2013 Act, No. 1 (S.C. 2013, c. 33)</p>	<p><u>Long title</u> An Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures.</p>	<p>It is worth to noting here that not all Canadian legislation has both a long title and purpose clause.</p>
<p>Australia</p>	<p>(i) Fair Work Act 2009</p> <p><u>Long title</u> An Act relating to workplace relations, and for related purposes.</p> <p><u>The objects of this Act</u> The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:</p> <p>(a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia’s future economic prosperity and take into account Australia’s international labour obligations; and</p>	<p>Most of the long title format in Australia legislation is drafted in a short and broad manner, sometimes supplemented with the purpose clause. In this example, the purpose clause is drafted in length to share the reasoning behind the passage of the act and the aspirations of the legislature in seeing it through.</p> <p>The concrete list of the purpose clause will be used as measurable criteria by which the effectiveness of the legislation is to be assessed after its passage.</p> <p><u>Note:</u> The decision to maintain the long title was agreed upon by virtue of Drafting Direction 11/2006.</p>	

Countries	Legislations	Title/Long title/Purpose Clause	Comment
	<p>(ii) Aged Care Act 1997</p> <p><u>Long title</u></p> <p>An Act relating to aged care, and for other purposes.</p> <p><u>The objects of this Act</u></p> <p>(1) The objects of this Act are as follows:</p> <p>(a) to provide for funding of *aged care that takes account of:</p> <ul style="list-style-type: none"> (i) the quality of the care; and (ii) the *type of care and level of care provided; and (iii) the need to ensure access to care that is affordable by, and appropriate to the needs of, people who require it; and (iv) appropriate outcomes for recipients of the care; and (v) accountability of the providers of the care for the funding and for the outcomes for recipients; 		

Countries	Legislations	Title/Long title/Purpose Clause	Comment
<p style="text-align: center;">New Zealand</p>	<p style="text-align: center;">Resource Management Act 1991</p>	<p><u>Title</u> This Act may be cited as the Resource Management Act 1991.</p> <p><u>Purpose clause</u></p> <p>(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.</p> <p>(2) In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—</p> <p style="padding-left: 40px;">(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and</p> <p style="padding-left: 40px;">(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and</p>	<p>The recommendation of the New Zealand Law Commission in <i>Report 35, Legislation Manual: Structure and Style (May 1996)</i> has resulted in a significant impact on the structure of New Zealand’s legislation by bringing about the total departure of the long title and the presence of a purpose clause to accommodate its functions.</p>

Countries	Legislations	Title/Long title/Purpose Clause	Comment
		<i>(c)</i> avoiding, remedying, or mitigating any adverse effects of activities on the environment.	

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