

Liverpool Hope University, UK

From the Selected Works of Brian Christopher Jones

April, 2013

Westminster's Impending Short Title Quandary: And How To Fix it

Brian Christopher Jones, *Academia Sinica*



Available at: https://works.bepress.com/brian_jones/30/

Westminster's impending short title quandary: and how to fix it

☞ Bills; Short titles

The passing of the Protection of Freedoms Act 2012¹ marks only the second time in the history of Westminster that the word “freedom” was placed in the short title of a Public General Act. The only other instance in which the word was used came at the turn of the century, with passage of the Freedom of Information Act 2000.² It is unknown how or why the former piece of legislation used the word “freedoms”, as opposed to other designations, such as “rights” or even “amendments”. Essentially the bill is a list of repeals and amendments to other Acts, such as the Police and Criminal Evidence Act (PACE) and the Regulation of Investigatory Powers Act 2000 (RIPA).³ The word “rights” is relatively common in short title use: it has been used 17 times in Public General Acts dating back to 1861.⁴ Also, since the “Freedoms” Act is also composed of various repeals, it could have fallen under the common title “Statute Law (Repeals) Act”, which has been consistently used for Public General Acts since 1969. Yet it appears the Government wanted this bill to be uniquely named. It will certainly be interesting to see how future “rights”, “amendments” or “repeals” Bills are named, and what particular wording is chosen.

Whether this is a passing contemporary trend or a sign of change in the language that is used to title bills at Westminster is at this point impossible to predict. The only thing likely to remain constant in the lawmaking body is the fact that all bills presented to Parliament will continue to have short titles. Through the Short Titles Act of 1896, the Statute Law Revision Act 1948, and the Statute Law Revision (Scotland) Act 1964 Westminster decided that short titles were legal devices associated with the statute book, and that all bills and laws should contain one.⁵ Nevertheless, though some of these have been mandated by law for over a century, Westminster has still failed to state any official standards in regard to such titles, thus deferring to unofficial congeniality and negotiation among those involved in the process to work with one another. To date, such an arrangement has not radically impacted the statute book, as many short titles appear as descriptively bland as their historical predecessors. However, there are evermore signs that short bill titles are likely to become a problem in the coming years.

Other authors have acknowledged cases of short titles being used beyond their referential designations. Willet questioned whether the Food Safety Act 1990⁶ was more symbolism than substance, deriding the “safety” aspect of the measure and

¹ Protection of Freedoms Act 2012.

² Freedom of Information Act 2000.

³ Protection of Freedoms Act 2012, Explanatory Notes (London: TSO, 2012). *Legislation.Gov* at http://www.legislation.gov.uk/ukpga/2012/9/pdfs/ukpgaen_20120009_en.pdf [Accessed January 21, 2013].

⁴ Research performed by author, see *Legislation.gov* at www.legislation.gov.uk [Accessed February 19, 2013].

⁵ D. Greenberg, *Craies on Legislation*, 9th edn (London: Sweet and Maxwell, 2008), p.103; M. Jack (ed), *Erskine May's Parliamentary Practice*, 24th edn (2011); *The Law, Privileges, Proceedings and Usage of Parliament* (London: LexisNexis, p.527.

⁶ Food Safety Act 1990.

the government's inclusion of the term in the short title.⁷ In regard to the Act he further notes that “the legislative process—from White paper to statute book—manifests a significant degree of symbolism”.⁸ Orr acknowledged the unwieldy state of Australian short bill titles early last decade, and stated that his country's Parliamentary Bill titles had morphed into sloganeering,⁹ and then shortly thereafter, punning.¹⁰ Orr stated in his latter piece that the Australian Parliament had been inspired by the creative short titles in the US Congress, and transitioned from a more British style to an American style.¹¹ This author has recently brought to light that some of those close to the legislative process in Westminster, including lawmakers from the Commons and Lords, believe short titles to be important pieces of the legislative process.¹² Additionally, a Westminster drafter revealed that he “quite often gets requests” for evocative bill names,¹³ and individuals in and around Westminster believe that they will start personalising their bill titles in the future, akin to how the US Congress currently labels some of their bills.¹⁴

In conjunction with this author's material, in the autumn of 2009 I interviewed 11 individuals close to the legislative process at Westminster (seven MPs, two Lords, one Baroness, and one Parliamentary Counsel drafter), about promotional and tendentious language in bill titles. In particular, I asked them whether or not they approved of using words such as “prevention” and “protection” in short titles.¹⁵ Their reactions were largely mixed. Some of them approved of such titles, including the drafter, who stated that “it is legitimate to name a bill after either what it's trying to stop or what it's trying to achieve”.¹⁶ He further noted that they previously could not use the word “reform”, but now it is used regularly. Others were in agreement that this practice was within proper bill titling procedures, noting that it was “not particularly objectionable”¹⁷; that “sometimes you might want to put a word in that indicates on which side of the argument the Act of Parliament is” on¹⁸; and that there is nothing “wrong with passing a piece of legislation expressing an ambition”.¹⁹

Other lawmakers had difficulties with such wording. One called the use of such language “political window dressing”,²⁰ and other colleagues noted that “there is a tendency to try to use words ... to define what the bill is intended to do rather

⁷ C. Willitt, “The Food Safety Act 1990: Substance or Symbolism?” [1991] *Stat L.R.* 12(2), 146–55.

⁸ Willitt, “The Food Safety Act 1990: Substance or Symbolism?” [1991] *Stat L.R.* 12(2), 155.

⁹ G. Orr, “Names Without Frontiers: Legislative Titles and Sloganeering” [2000] *Statute Law Review* 21(3), 188–212.

¹⁰ G. Orr, “From Slogans to Puns: Australian Legislative Titling Revisited” [2001] *Statute Law Review* 22(2), 160–61.

¹¹ Orr, “From Slogans to Puns: Australian Legislative Titling Revisited” [2001] *Statute Law Review* 22(2), 161.

¹² B. C. Jones, “Research Note: Do Short Titles Matter? Surprising Insights from Westminster and Holyrood” [2012] *Parliamentary Affairs*, 65(2), 448–462.

¹³ Jones, “Research Note: Do Short Titles Matter? Surprising Insights from Westminster and Holyrood” [2012] *Parliamentary Affairs* 65(2), 458.

¹⁴ B.C. Jones, “Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process” (2010) 6(1) *Legisprudence* 57–76.

¹⁵ The exact question was: “Legislation is often adorned with words such as ‘prevention’ or ‘protection’ in its titles (e.g. the Protection from Abuse Bill, or The Prevention of Terrorism Act). Do you think that this language implies that the bill will indeed be effective without any evidence to support these claims? Are using these words/phrases justified in these instances?”

¹⁶ UKBD1 (United Kingdom Bill Drafter 1).

¹⁷ HC1 (House of Commons Interviewee 1).

¹⁸ HC2 (House of Commons Interviewee 2).

¹⁹ HC3 (House of Commons Interviewee 3).

²⁰ HL2 (House of Lords Interviewee 2).

than what it does”,²¹ and that “you’re implying the bill’s going to succeed before the bill actually becomes law”.²² Further, the latter interviewee referred to such methods as “populist”,²³ and another colleague was suspicious of the titles that suggest “you’re a good boy if you support it, you’re not if you don’t”.²⁴ Another MP noted that using such language was “setting yourself up to fail”, suggesting that anytime a piece of legislation even slightly did not live up to expectations, Parliament would have to answer for it.²⁵ Thus, members of Parliament and drafters were divided on whether or not using such language is valid in lawmaking, as some viewed it as a legitimate parliamentary tactic while others found it unacceptable.

This article now examines the formal and informal rules and regulations in regard to short titles, and how they currently aid in confounding both drafters and others.

Formal/informal rules or policies on short titles

For well over a century now Westminster has employed a team of lawyers to assist with the preparation and drafting of legislation. The Office of the Parliamentary Counsel (“OPC”) is responsible for the drafting, co-ordination and progress of all UK Government Bills.²⁶ Yet once a drafter is given the assignment of drafting a Bill, he or she will find little information supplied by Westminster or the Parliamentary Counsel in terms of official short title policies.

Neither the Commons nor Lords standing orders make any mention of short titles.²⁷ On the Parliamentary Counsel website there is no official public bill drafting manual. In fact, there is only one technical document in regard to drafting practices.²⁸ This document mentions short titles, but only to state that the wording used to confer a short title on an Act is: “this Act may be cited as”.²⁹ Besides this brief mention, the closest the document comes to providing any related guidance on titles is found in its “clarity” section. Here it notes that a drafter must tell the story of the bill (or Act), because a “reader does not know what your message is until you deliver it”.³⁰ This is appropriate in relation to the formal role of the short title, because such titles usually provide some description about what the measure is in reference to. This section also notes that “different readers might be interested in different aspects of the story: for example, Ministers might be interested in how the Bill fits with a general policy”, and it further notes that “this may influence

²¹ HC5 (House of Commons Interviewee 5).

²² HC4 (House of Commons Interviewee 4).

²³ HC4 (House of Commons Interviewee 4).

²⁴ HC7 (House of Commons Interviewee 7).

²⁵ HL1 (House of Lords Interviewee 1).

²⁶ There are a few exceptions (i.e. Bills of the Westminster Parliament relating only to Scotland).

²⁷ *Standing Orders of the House of Commons* (London: TSO, 2011). Parliament.uk at <http://www.publications.parliament.uk/pa/cm/cmstords.htm> [Accessed January 21, 2013]; *Standing Orders of the House of Lords* (London: TSO, 2010). Available at <http://www.publications.parliament.uk/pa/ld/ldstords/ldstords.htm> [Accessed January 21, 2013].

²⁸ Office of the Parliamentary Counsel, *Drafting Guidance* (London: TSO, 2011). CabinetOffice.gov at http://www.cabinetoffice.gov.uk/sites/default/files/resources/Office_of_the_Parliamentary_Counsel_revised_guidance_16_12_11.pdf [Accessed January 21, 2013].

²⁹ Office of the Parliamentary Counsel, *Drafting Guidance* (2011), s.6.5.

³⁰ Office of the Parliamentary Counsel, *Drafting Guidance* (2011), s.1.2.

how you tell the story”.³¹ In relation to Ministers, as discussed below, this statement may have relevance to short titles.

A similar lack of short title discussion occurs in the recently declassified Cabinet Office drafting guidelines. Section 9.31 begins by noting that “Parliamentary Counsel will give the Bill its short and long titles”.³² They also state in this section that the “long title is of importance”, while they do not elaborate on short title significance at all.³³ However, both of these statements seem to be refuted in s.9.35, as it is noted that “The Bill Minister is likely to take a particular interest in the short title given possible presentation issues.”³⁴ Thus, in a matter of a few paragraphs, the Guidelines contradict themselves twice: (1) by not acknowledging in s.9.31 that the Minister responsible for the Bill is granted short title input; and (2) and in s.9.31, by not acknowledging that the short bill title also bears significance, even if only from a presentational standpoint. The statement regarding Ministers and short titles in s.9.35 is not elaborated on at all, and it is not particularly clear if the Minister has ultimate responsibility for the short title, or if they can merely make short title recommendations.

The first error mentioned above in regard to who is ultimately responsible for drafting short titles is refuted by other legislative texts. Greenberg acknowledges that:

“Sometimes it [the short title] is discussed with the Department with principal responsibility for the Bill, and sometimes aspects of it are discussed with the House authorities;”

but the passage goes on to demonstrate that misconceptions have arisen in regard to short titles, noting that

“the Parliamentary Under-Secretary in the Home Office said of the Disqualifications Bill 1999–2000, ‘The title of the Bill is a matter for parliamentary draftsmen; Ministers have not been involved in decisions of that kind.’”³⁵

Greenberg further declares that the understanding that drafters bear this responsibility “has become considerably eroded throughout the years”, and Ministers and others now have a larger input into such matters.³⁶ In accordance with Greenberg’s above statements, my doctoral research also disputes this claim by the Parliamentary Under-Secretary.

Erskine May’s Parliamentary Practice is the main UK authority on legislative proceedings, and states that the titles of bills must “describe the bill in a straightforwardly factual manner. An argumentative title or slogan is not permitted”.³⁷ The footnote to this passage states that this standard was determined in a private ruling by the Speaker on “16 October 2001, that:

³¹ Office of the Parliamentary Counsel, *Drafting Guidance* (2011), para.2.

³² Cabinet Office, *Guide to Making Legislation* (June 2012), s.9. *CabinetOffice.gov*, http://www.cabinetoffice.gov.uk/sites/default/files/resources/Guide-to-Making-Legislation_0.pdf [Accessed January 21, 2013].

³³ Cabinet Office, *Guide to Making Legislation* (June 2012), 9.32.

³⁴ Cabinet Office, *Guide to Making Legislation* (June 2012), 9.35.

³⁵ D. Greenberg, *Craies on Legislation* (2008), p. 102 (*Hansard*, HC Deb. c.480 (January 25, 2000)).

³⁶ Greenberg, *Laying Down the Law: A Discussion of the People, Processes, and Problems that Shape Acts of Parliament* (London: Sweet & Maxwell, 2011), p.54.

³⁷ Jack, *Erskine May’s Parliamentary Practice* (2011), p.526.

“Women’s Representation Bill’ was not an appropriate title for a bill about sex discrimination in the selection of election candidates. Other proposed titles which have given rise to objection have included ‘Fairness at Work’, ‘Modernisation of Justice’, ‘Safe Communities’ and ‘Constitutional Renewal.’”³⁸

Earlier in the text it notes that:

“Speaker’s rulings constitute precedents by which subsequent Speakers, Members, and officers are guided ... Such precedents are noted and in course of time may be formulated as principles or rules of practice. They are an important source of determining how the House conducts its business.”³⁹

It also notes that “Such private rulings of the Speaker generally settle the questions at issue, but they may, if necessary, be supplemented by rulings given from the Chair”.⁴⁰ It is interesting to note that the 23rd edition of *Erskine May* did not include the above quoted passages in relation to bill titles, even though the Speaker’s private ruling on titles was apparently adjudicated in 2001.⁴¹

Thus, according to the latest *Erskine May*, any controversy over short bill titles in Westminster is settled, correct? Not quite. In a new book on Westminster Parliament legislative processes, Greenberg notes that “it is far from clear whether even the Speaker has the power to intervene formally to prevent a short title of which he or she disapproves on the grounds of propaganda”.⁴² This statement expressly contrasts with the latest edition of *Erskine May*.

Greenberg further states that when:

“Ministers are determined to exert their fullest influence, there is nothing to stop them from doing as they like. If a Minister directs the drafter to exclude particular materials, or to phrase things in a particular way, the drafter has ultimately no choice but to comply.”⁴³

He does note that drafters can appeal to higher authorities, such as the Law Officers, but “once Ministers have taken a decision as an appropriate exercise of collective responsibility, the drafter has no further recourse”.⁴⁴

House authorities and others also have relatively limited recourse. A dispute between Ministers and House Authorities over a controversial title would likely become one of “brinkmanship” regarding who will relent first, and this yielding largely depends on the individuals involved.⁴⁵ If the clerks have a problem with a particular title, they can ask for a ruling by the Speaker. Yet such rulings, especially private rulings, are not formalised powers which can enforce a prohibition on argumentative titles or slogans. It is Parliamentary custom to defer to the Speaker in regard to such matters; but it is not dictum. Though a “short title that was

³⁸ Jack, *Erskine May’s Parliamentary Practice* (2011), p.526.

³⁹ Jack, *Erskine May’s Parliamentary Practice* (2011), p.62.

⁴⁰ Jack, *Erskine May’s Parliamentary Practice* (2011), p.62.

⁴¹ W. McKay (ed), *Erskine May’s Parliamentary Practice*, 23rd edn (London: LexisNexus, 2004), p.535.

⁴² Greenberg, *Craies on Legislation* (2008), p.102.

⁴³ D. Greenberg, *Laying Down the Law: A Discussion of the People, Processes, and Problems that Shape Acts of Parliament* (London: Sweet & Maxwell, 2011).

⁴⁴ Greenberg, *Laying Down the Law: A Discussion of the People, Processes, and Problems that Shape Acts of Parliament* (London: Sweet & Maxwell, 2011), p.55.

⁴⁵ Greenberg, *Laying Down the Law: A Discussion of the People, Processes, and Problems that Shape Acts of Parliament* (London: Sweet & Maxwell, 2011), p.102.

positively misleading would, however, be likely to be deprecated”,⁴⁶ such deprecation, by the Speaker or others, does not equate to a formal power to disallow such a title. Therefore the situation is much more ambiguous and contentious than *Erskine May* states,⁴⁷ and the lack of any formalised processes or standards when disputes arise in regard to short titles is troubling.

Additionally, both Commons and Lords committee proceedings take into consideration the titles of bills and offer further avenues with which to amend titles. In the Commons, the bill titles are the final aspects the committee examines, following the clauses, new clauses, schedules, new schedules, and (if present) the preamble⁴⁸; the Lords committee proceedings are conducted similarly.⁴⁹ Amendments to the title of a bill can be taken under consideration, for example, when the Lord Chairman asks “That this be the title of the bill”.⁵⁰ Amendment of bill titles is also considered during the Report stage.⁵¹ However it is uncommon for a short title to change by amendment during these stages.⁵²

Possible remedies

The observations noted above suggest that Westminster’s long-standing tradition of descriptive legal short titles may need active surveillance. Therefore adopting some clarifying standards and procedures in relation to short titles seems appropriate at this stage. In addition, excluding overt policy statements or promotional language from short titles is a prudent remedy for preserving a certain amount of decency in the legislative process and in the statute book.

Short title recommendations

Although the instructions relating to proper short bill titling and appropriate resolution of disputes in Westminster are anything but precise, recommendations and reforms regarding short titles should be straightforward and easily comprehensible, because time spent on the titles of legislation should not be given precedence over time spent on the substance of legislation. Below are five short recommendations/reforms in relation to short titles that this author believes follows best practices:

- Accuracy is paramount. A short title should be as descriptive as possible without being unduly emotive, misleading, tendentious or otherwise controversial. Accuracy ensures that the short title easily encapsulates the subject of the bill for those who encounter it; aids in the overall interpretation of the bill for legislative, judicial and

⁴⁶ Greenberg, *Craies on Legislation* (2008), p.102. He goes on to note that “It is also important to avoid a short title which amounts to propaganda in the sense of an attempt to praise or justify the policy of the Bill: in an extreme case the Speaker of the House of Commons might refuse to print a Bill which a short title which was thought to mislead or to amount to an abuse of the procedures of the House” (pp.102–103).

⁴⁷ Jack, *Erskine May’s Parliamentary Practice* (2011), p.526.

⁴⁸ Jack, *Erskine May’s Parliamentary Practice* (2011), pp.583–84.

⁴⁹ Jack, *Erskine May’s Parliamentary Practice* (2011), p.609.

⁵⁰ Jack, *Erskine May’s Parliamentary Practice* (2011), pp.610–611.

⁵¹ Jack, *Erskine May’s Parliamentary Practice* (2011), p.591.

⁵² Yet, this is not completely out of the question. During the 2010–12 session it happened once: a Public Bill Committee changed the Local Government Ombudsman (Amendment) Bill to the Local Government (Review of Decisions) Bill.

other scrutiny; and provides for ease of use when placing or referencing an Act in the Statute Book.

- If a short title can be easily construed as a policy statement; if the short title in essence makes suggestive or symbolic assumptions about what it will or will not accomplish with no reasonable measure available (i.e. without the measure being implemented as law and its impact sufficiently definable and susceptible to empirical study); or if the core meaning of the short title can be debated because of the ambiguous language contained within its text (i.e. “responsibility” or “accountability” to one individual does not necessarily mean “responsibility” or “accountability” to another individual); then such language should not be used.
- If the short title of a bill employs the name/s of a victim, member of Parliament, or anybody who could be used to either assist or hinder the legislation in question during the legislative process, then such language should not be used.
- If the short title of a bill uses language that spells an acronym that either: (a) spells a word or phrase that falls into above categories (1), (2) or (3); or (b) spells a word that intentionally misrepresents the legislation in any form or fashion, then such language should not be used.
- In order to ensure accuracy, and in the hopes of preventing overtly political or divisive bill names, all short titles should be provided by (and stay unamended other than at the insistence of) the lead drafter preparing the statute, honouring the principles provided in the above guidelines and giving ultimate deference to the impartiality, ease of reference and non-political nature of the Statute Book.

These five recommendations are constructed to ensure that short bill titles are easily understandable and representative of the legislation in question; accurate; non-political; and unemotive. Additionally, and equally importantly, the purpose of the recommendations is for individuals in the legislative process to focus on the substance of legislation, restoring the original intention behind the short titling of legislation: for titles to be used as referential devices in conversation, writing, debate or in the statute book. The standards above could be easily implemented through a number of methods: inscribed into an official drafting manual or a technical paper on short titles by the Office of the Parliamentary Counsel; inserted into the Standing Orders of both the Commons and Lords; placed into the Cabinet Office Guide to Making Legislation; or even inscribed through an official Act of Parliament.

Complementary Commonwealth standards

Other Commonwealth countries can also provide guidance in regard to such matters. In fact, they need look no further than their neighbours to the north for possible short title advice: Scotland uses merely one sentence to eliminate promotional or political short titles. Although, this sentence is located within the larger context of how the Scottish Parliament wants their Bills presented. All Bills introduced to

the Scottish Parliament must be in “proper” form. These regulations were introduced under Standing Orders of Rules 9.2.3 and 9A.1.4, and they have considerable implications for Bill titles. The “Presiding Officer’s Recommendations on the Content of Bills” explicitly states that:

“the text of a Bill—including both the short and long titles—should be in neutral terms and should not contain material intended to promote or justify the policy behind the Bill, or to explain its effect.”⁵³

Thus, the Presiding Officer has ultimate responsibility over the content of short titles, and this is clearly delineated. This regulation is a significant effort to keep the Scottish statute book free from overt policy statements, and establishes the standard desired for short titles, long titles and Bill text. Westminster does not have similar rules or recommendations in relation to the “proper form” of Bills; and they certainly do not have specific rules related to eliminating promotional language from both titles and Bill text.

Advice also lies outside the United Kingdom. In 2006 the Australian Parliamentary Counsel wrote Drafting Direction 1.1, which was in reference to the long titles and short titles of Bills. In reference to short titles, they note that:

“As a general rule, you should take particular care when naming Bills to ensure that the names you choose are informative as possible (within reason) and do not cause unnecessary confusion to Parliament or to any other users of legislation.”⁵⁴

Thus, the Australian standard is “informative as possible” and not to cause confusion with those interacting with legislation. The current Canadian drafting manual also discusses short titles. It notes that such titles are “used to identify the Act when discussing it or referring to it in other legislation”, and further states that it “should succinctly indicate the Act’s subject matter”.⁵⁵ The latter directive, the curt but effective Canadian standard in regard to subject matter, is also not mentioned by Westminster. Nevertheless, the above information demonstrates that other commonwealth countries have at least some standards, however brief, for their short titles.

Conclusion

This article has demonstrated that Westminster does not have adequate standards for its short titles or any clarified procedures to follow should a short title dispute arise between drafters, Ministers and/or House Authorities. This is a foreboding situation, as unchecked short titles can eventually transition into unwieldy

⁵³ The Scottish Parliament, *Guidance on Public Bills*, Annex A: Form and Content of Bills. *Scottish Parliament.uk* at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/25697.aspx> [Accessed January 21, 2013]; This was also noted in Jones, “Transatlantic Perspectives on Humanised Public Law Campaigns: Personalising and Depersonalising the Legislative Process” [2012] *Legisprudence*, 6(1), 57–76.

⁵⁴ Australian Parliamentary Counsel. *Drafting Direction No.1.1: Long titles and short titles of Bills and references to proposed Acts* (2006). *Office of Parliamentary Council*, available at http://www.opc.gov.au/about/docs/drafting_series/DD1.1.pdf [Accessed January 21, 2013].

⁵⁵ Canadian Privy Council office, *Guide to Making Federal Acts and Regulations*, 2nd edn, Pt 2 Ch.2.2: Development and Cabinet Approval of Policy p.84. *Canadian Privy Council Office* at <http://www.pco-bcp.gc.ca/docs/information/publications/legislation/pdf-eng.pdf> [Accessed January 21, 2013].

promotional and political short titles (i.e. see the US Congress).⁵⁶ On a larger level, this article has revealed that contrary to other commonwealth nations, the Westminster Parliament currently does not have a bill drafting manual or an official proper form by which Bills should be drafted. Relying on convention is fine for certain matters, but not having either of these mechanisms in a parliamentary democracy which relies on the legal doctrine of legislative supremacy of Parliament seems altogether quite odd.

Describing Bills with insufficiently informative titles, one of the MPs I interviewed declared that “if you think the title is way off, you can just vote the legislation out ... or it becomes law”.⁵⁷ This statement is deeply flawed. Surely some excellent (or even sufficient) legislation suffers from insufficient titling. If legislators in any legislative body are voting down Bills because of insufficient titles and not because they fundamentally disagree with the substance of the legislation, then there remains a major flaw in standards by which short titles are inscribed. Thus, implementing a set of rules or regulatory guidelines in regard to such titles that provide a necessary informational component to both lawmakers and citizens of the Bills introduced and the laws that govern them would be of much constitutional benefit. As scholars have pointed out

“[t]hat legislation should be accessible, intelligible and clear to all audiences is both a democratic right and also an essential prerequisite in the process of making better law.”⁵⁸

Matt Korris of the Hansard Society recently penned an article suggesting a Parliamentary Standards Committee, which could act as a gatekeeping mechanism that can decline to consider poorly prepared legislation.⁵⁹ The concept of such a Committee is wholly endorsed by this author: it would be a welcome addition to the constitutional framework of the Westminster Parliament. The minimum technical preparation standards would likely mitigate some of the concerns raised by interviewees which were highlighted above and in previous publications.

The drafter who revealed that he “quite often” receives evocative short title requests further noted that legislating is a political process, and therefore there would always be this tension between Ministers and drafters regarding the presentational aspects of short titles.⁶⁰ Moreover, when asked whether or not Westminster is striking a good balance between these legal and political aspects of legislation, he declared that they “were getting it about right”, but further noted that “it’s a judgment we have to keep making”.⁶¹ Yet it is unknown why this judgment should continually be made without any reference to clear short title standards or guidelines regarding how to resolve disputes. Perhaps implementing some principles of good practice would ease the tension between Ministers and

⁵⁶ For further information about this, see B. C. Jones, “Drafting Proper Short Titles: Do States Have the Answer?” (2012) 23 *Stanford Law and Policy Review* 455–476.

⁵⁷ HC6.

⁵⁸ R. Fox and M. Korris, *Making Better Law: Reform of the Legislative Process from Policy to Act*. (London: The Hansard Society, 2010), p.99.

⁵⁹ M. Korris, “Standing Up for Scrutiny: How and Why Parliament Should Make Better Law” (2011) 64(3) *Parliamentary Affairs* 564.

⁶⁰ UKBD1.

⁶¹ UKBD1.

drafters, and take a major step in resolving Westminster's impending short title quandary.

Brian Christopher Jones, PhD

Postdoctoral Research Fellow, Institution Jurisprudentiae, Academia Sinica