

THE LEGISLATIVE TEXT AS A LEGAL STORY: A STORYTELLING APPROACH TO CONTEMPORARY LEGISLATIVE DRAFTING

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“[...] there is no just LAW without narrative”
(R.A. Matasar¹)

Abstract

A recent approach to legislative drafting, seen in common law jurisdictions which particularly praise plain and accessible legal communication, includes the presentation of legislative provisions to readers in a storytelling format. The legislative story develops progressively, by introducing legal characters, and describing relations, activities, and events. The paper draws on a number of drafting techniques, namely narrative-style drafting, the location of legal definitions in the structure of a legislative act, new types of legal definitions, the formal identification of terms and their signposting, as well as directness and personal tone. Based on various Commonwealth drafting directions, a legislative text is perceived and analyzed as a legal story written by lawyers and legislative drafters. This is in line with the discursive approaches of text linguists, such as De Beaugrande and Dressler, or van Dijk and Kintsch, who looked at the text as a process. Thus, text linguistics might be an adequate methodological framework to describe a legislative narrative.

To successfully tell a legislative story, the identified elements of the storytelling approach are needed, such as a coherent conceptual framework, clear formal identification of terms, their adequate location in the structure of a legislative act, and more. The storytelling approach in common law legislation may be worth considering

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¹ Richard A. MATASAR: Storytelling and Legal Scholarship. *Chicago-Kent Law Review* 68. (1992), 356. <https://scholarship.kentlaw.iit.edu/cklawreview/vol68/iss1/25>

in continental (civil law) jurisdictions to improve the readability, accessibility, and clarity of laws.

Keywords: storytelling, legislative drafting, narrative, style, signposting, legal definitions, defined terms.

1. Introduction

In the recent approach to legislative drafting², in common law jurisdictions, legislative provisions are presented to readers in such a way that they tell a story which develops progressively, leading one downwards through the structure of a legislative act.

“Just as a storyteller introduces characters in the story, describes their relationships with each other, the activities they engage in and the events that affect them in a progressive and unfolding way (rather than all at once), so too does the drafter when drafting legislation. The characters in the legislative story may be individuals or corporate bodies, statutory bodies or non-statutory bodies, governmental bodies or private bodies, any of which may be playing the leading role or a minor role. The events that happen to the characters and the activities they engage in may be many and varied, from being paid money or being granted a licence to committing a criminal offence. And instead of our story starting with “once upon a time”, we start with “the Parliament enacts”³.

The storytelling approach involves a number of drafting techniques, in particular drafting in a narrative style, which will be discussed in sections 2-5 of this paper. The aims of the research are the following:

- a) to identify elements of the storytelling approach in contemporary legislation, incl. typical drafting techniques;
- b) to reproduce the construction of a legal narrative;
- c) to find an adequate methodological framework to linguistically describe the legislative narrative;
- d) to analyze what is needed to successfully tell a legislative story in the contemporary legal culture, drawing attention to the benefits of plain and accessible legal communication.

The basis for analysis of the legislative narrative is constituted by binding Commonwealth drafting directions (U.S. Congressional and State, British, Canadian

² Louise FINUCANE: Definitions – A Powerful Tool for Keeping and Effective Statute Book. *The Loophole*, February, no. 1. (2017), <https://tinyurl.com/yckr4xz8>

³ FINUCANE op. cit. 18.

and Australian guides and manuals) and – for comparison – the Polish legislative drafting guidelines.

2. Narrative style and the plot

In the storytelling approach in legislation, drafting in the narrative style is of particular importance. Within each jurisdiction, various styles govern; it also depends on a legal genre (cf. de Cruz⁴). The notion of ‘style’ is widely used in comparative law and theory of law. Zweigert and Kötz, for example, by a ‘style’ of a legal system understand collectively a history of a legal system, mode of thought in legal matters, sources of law, and legal ideology⁵. Following Rene David⁶, Peter de Cruz notes that “a legal tradition is not a set of rules within a particular jurisdiction, but a set of historically conditioned attitudes to the role of law in a particular society, its characteristic mode of legal thought, and its legal sources and basic ideology”⁷. For example, civil law countries that have inherited the Romano-Germanic traditions, as part of the civil law traditions, have a distinctive juristic style⁸. Irrespective of differences, both French and German legal traditions “share a tradition of devising [...] codifications as their law-making style [...]” (ibidem). Both these tradition prefer for example, in their method of legal reasoning, the direction from the general to the particular⁹.

The stylistics of legal acts vary widely, and there is no single style of formulating legislation, even within a single country. Often, the main source of diversity in style is identified as a legal tradition (Rosenbaum¹⁰; cf. also Koźmiński¹¹). Legislative styles reflect the way in which laws are made and applied (cf. also Zirk-Sadowski¹²). The origins of a given legal system usually have a significant influence on legislative style¹³. A comparison of the two main legal systems, common law and civil law, may

⁴ Peter de CRUZ: *Comparative law in a changing world*. London, Routledge-Cavendish, 2007. 254–266.

⁵ Konrad ZWEIGERT – Hein KÖTZ: *An introduction to comparative law*. Vol. I and II. Oxford, Oxford University Press, 1977. 62., quoted by Peter de CRUZ: *Comparative law in a changing world*. London, Routledge-Cavendish, 2007. 30.

⁶ Rene DAVID – John BRIERLEY: *Major legal systems in the world today*. London, Stevens & Sons, 1985.

⁷ CRUZ op. cit. 27.

⁸ Ibid.

⁹ Ibid. 28.

¹⁰ Kenneth L. ROSENBAUM: Legislative Drafting Guide – A Practitioner’s View. *FAO Legal Papers Online* No. 64, February 2007. http://www.fao.org/fileadmin/user_upload/legal/docs/lpo64.pdf

¹¹ Krzysztof KOŹMIŃSKI: *Technika prawodawcza II Rzeczypospolitej*. [Legislative technique of the Second Polish Republic] Warszawa, Wydawnictwo Naukowe Scholar, 2019. 111–112.

¹² Marek ZIRK-SADOWSKI: Sposoby uczestniczenia prawników w kulturze. [Forms of participation of lawyers in culture] *Ruch Prawniczy, Ekonomiczny i Socjologiczny*, vol. 56., no. 4. (1994).

¹³ Wim VOERMANS: Styles of Legislation and Their Effects. *Statute Law Review*, vol. 32., no. 1. (2010), 51. <https://doi.org/10.1093/slr/hmq013>

in fact reveal differences in sources of law, modes of reasoning and legal ideologies, which are collectively referred to as the ‘style of the legal system’¹⁴.

There is a well-known distinction by L. Campbell¹⁵ between the lengthy, convoluted, baroque, casuistic, fussy style characteristic for Anglo-Saxon law and the vague, general, blurred, fuzzy¹⁶ style, characteristic of continental law (cf. identically Steiner¹⁷). However, as H. Xanthaki¹⁸ points out, a certain convergence of the legislative techniques of the common law system and the civil law system has occurred over time, especially on the European continent. As W. Robinson notes¹⁹ (2017), early European acts were drafted in a ‘fuzzy’ or general principle style, but now we see a shift towards a ‘fussy,’ or more detailed drafting.

In different legal systems, the styles of formulating a legislative text are also subject to change. Douglass M. Bellis²⁰ (2008: 10), for example, distinguishes at least two styles in US legislation: (a) ‘legislative counsel style,’ comprising enumerations combined with graphic highlighting, indentation, and headings, and (b) the older ‘traditional style,’ characterized by a less elaborate form also in terms of headings and indentation. In the contemporary ‘legislative counsel style’ (a), the main idea of the section designated for the central, overall topic will come first and undergo elaboration further within the section, with sub-ideas subdivided into paragraphs and subparagraphs.²¹ A lesser but independent idea usually follows. The later subsections delve into details that flesh out the main idea covered in the first subsection, such as exceptions, definitions, special rules, etc.²²

In the ‘traditional style’, on the other hand, one section conveys several ideas, one after another, each in a separate subsection²³.

The American federal template for organizing a draft law (a bill) is to state the main message at the beginning as a general rule, then mention exceptions and general

¹⁴ ZWEIGERT–KÖTZ op. cit. 62., quoted by Peter de CRUZ op. cit. 30. On the similarities and differences between common law and continental law in comparative terms, see in detail Mathias SIEMS: *Comparative Law*. Cambridge, Cambridge University Press, 2014. 43–71.

¹⁵ Lisbeth CAMPBELL: 1996, Legal drafting styles: Fuzzy or Fussy?, *Murdoch University Electronic Journal of Law*, vol. 3., no. 2., (1996), <http://classic.austlii.edu.au/au/journals/MurUEJL/1996/17.html>

¹⁶ See also the Plain English Manual, 19 December 2013, Office of Parliamentary Counsel, Australian Government https://www.opc.gov.au/sites/default/files/2023-01/plain_english_0.pdf 7.

¹⁷ Eva STEINER: *French Law: a Comparative Approach*. Oxford, Oxford University Press, 2010. 14–24.

¹⁸ Helen XANTHAKI: *Drafting Legislation: Art and Technology of Rules for Regulation*. Oxford, Oxford University Press, 2014. 211.

¹⁹ William ROBINSON: EU Legislation. In: Ulrich KARPEN – Helen XANTHAKI (ed.): *Legislation in Europe: A Comprehensive Guide for Scholars and Practitioners*. Oxford and Portland, Oregon, Hart Publishing, 2017.

²⁰ Douglass M. BELLIS: *Statutory Structure and Legislative Drafting Conventions: A Primer for Judges*. Federal Judicial Center, 2008. 10. <https://www.fjc.gov/sites/default/files/2012/DraftCon.pdf>

²¹ Quick Guide to Legislative Drafting, Office of the Legislative Counsel, U.S. House of Representatives, 2019. 2. https://legcounsel.house.gov/sites/legcounsel.house.gov/files/quick_guide.pdf

²² BELLIS op. cit. 9.

²³ Ibid. 8.

rules.²⁴ A detailed overview of American state legislative drafting manuals is laid out in Hart²⁵.

By contrast, in the UK Parliament, legislation reflects the individual styles of legislators working in the Office of Parliamentary Counsel; there are no written rules of legislative technique²⁶. Style, however, plays a very important role in drafting laws. As B. Garner²⁷ rightly remarks: “When style suffers, so does the content. Upgrading the style inevitably upgrades the content”.

The approach discussed above mainly refers to structural and graphic changes, i.e. form, rather than content, for example, lexicon, sentence structure, global text structure, however it might also affect a substance of a legislative text in the sense of different meaning organization within a text (cf. Garner’s²⁸ observation on upgrading the content). The above changes are aimed at the final result that “a reader of statutes will have a better chance of gleaning the legislative intent that often hides deeply encrusted within the statute’s off-putting verbal exterior”²⁹. The legal assertions are also supported by linguistic theories, especially the developments of a notion of text in text linguistics, rhetoric, and discourse analysis, such as linguistic concepts of a text as a “communicative event” by text linguists De Beaugrande and Dressler³⁰, Enkvist’s semantic understanding of a text as a global sign³¹, ‘super- and macrostructures’ as forms of global organization of a text by Van Dijk³², ‘story grammar’ as a concept of narration schemes developed by Van Dijk and Kintsch³³, and the like. All of the linguistic models discussed above assume that one of the most important goals of human communication is to understand the global meaning of a text.

Legislative acts often reflect a chronological sequence of events or actions.³⁴ Narration in law also implies structuring provisions in such a way that “the legislative

²⁴ Ibid. 1.

²⁵ Grace E. HART: State Legislative Drafting Manuals and Statutory Interpretation. *The Yale Law Review*, vol. 126., no. 2. (2016–2017), <https://tinyurl.com/dhhrjta>

²⁶ Helen XANTHAKI: Legislative Drafting: The UK Experience. In: Felix UHLMANN – Stefan HÖFLER (ed.): *Professional Legislative Drafters: Status, Roles, Education*. Zürich–St. Gallen, Dike Verlag AG, 2016. 15.

²⁷ Bryan A. GARNER: How attention to style improves substance. *ABA Journal*, August, 2013. http://www.abajournal.com/magazine/article/how_attention_to_style_improves_substance/

²⁸ Ibid.

²⁹ BELLIS op. cit. 17.

³⁰ Robert-Alain de BEAUGRANDE – Wolfgang Ulrich DRESSLER: *Introduction to Text Linguistics*. London & New York, Longman. 1981.

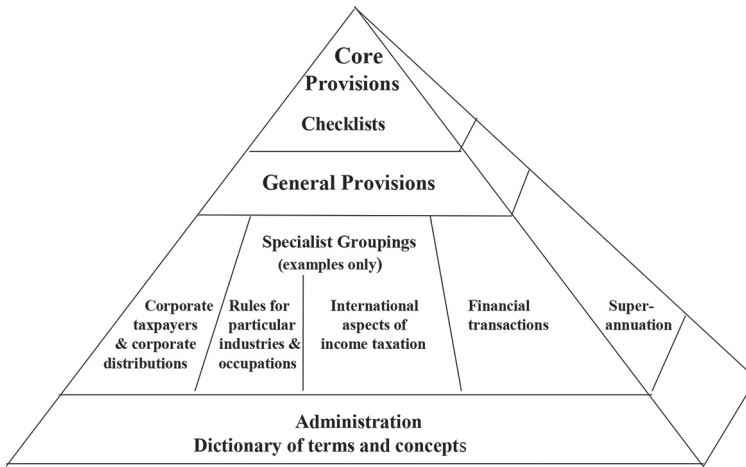
³¹ Nils Erik ENKVIST: From text to interpretability. In: Wolfgang HEYDRICH – Fritz NEUBAUER – János S. PETŐFI – Emil SÖZER (ed.): *Connexity and coherence. Analysis of text and discourse*. Berlin, Mouton de Gruyter, 1989. 369–382.

³² Teun A. van DIJK: *Text and context. Explorations in the semantics and pragmatics of discourse*. London, Longman, 1977.; Teun A. van DIJK: *Macrostructures*. Hillsdale, NJ, Erlbaum. 1980.

³³ Teun A. van DIJK – Walter KINTSCH: *Strategies of Discourse Comprehension*. New York, Academic Press, 1983.

³⁴ Cf. for example, ULCC Uniform Law Conference of Canada, Revision of the Drafting Conventions, Drafting Conventions (Approved 2023-08-22), Part 4 Arrangement, 10. Logical arrangement: “10.

story unfolds progressively, leading readers downwards in the structure from the general operative provisions to the more detailed operative provisions.” (Finucane³⁵; cf. also Tyszka³⁶). Moving from the general towards specific content is generally a semiotically-motivated principle³⁷. The process of interpretation of any text is related to comparing the significance of specific elements, namely statements or concepts³⁸. The direction of the interpretation, and the unfolding of a legislative plot from general to specific is well illustrated in Australia’s *Income Tax Assessment Act 1997*,³⁹ where in *Part 1-2, Division 2, Subdivision 2-B – How the Act is arranged*, a conceptual pyramid is included:



(Image source: <https://www.legislation.gov.au/>)

The pyramid reflects the arrangement of the conceptual structure of the Act as well as the principle of moving from the general case to the particular. Thus, the income tax law is organized in a way that core provisions are at the top of the pyramid, after

A legislative text should be logically arranged. A logically arranged text usually proceeds from the general to the particular or follows the chronological sequence of events. If it deals with matters that occur in a particular order, such as court or administrative proceedings, that order should normally be followed.” (p. 9) <https://tinyurl.com/269eve67>

³⁵ FINUCANE op. cit. 18.

³⁶ Przemysław TYSZKA: O czym opowiadają przepisy prawa? Elementy narracyjne w leges barbarorum. [What are the laws about? Narrative elements in leges barbarorum] *Czasopismo Prawno-Historyczne*, vol. LXVI., no. 1 (2014).

³⁷ Anna DUSZAK: *Tekst, dyskurs, komunikacja międzykulturowa*. Warszawa, Wydawnictwo Naukowe PWN, 1998. 48.

³⁸ Cf. DUSZAK op. cit. 49.

³⁹ <https://www.legislation.gov.au/Details/C2023C00178>

which general rules of wide application are described; provisions then move down to the more specialized topics.⁴⁰

Similarly, the *Quick Guide to Legislative Drafting* of the U.S. House (2012), Office of the Legislative Counsel provides for the following order of a legal utterance:

“General rule: State the main message. Exceptions: Describe the persons or things to which the main message does not apply. Special rules: Describe the persons or things to which the main message applies in a different way or for which there is a different message. Transitional rules. Other provisions. Definitions. Effective date (if different from date of enactment). Authorization of appropriations (if appropriate—see below)”.⁴¹

The rules on procedures reflect the chronology of a particular type of proceedings, i.e., commencement, hearing, decision, appeal, etc., as in the Polish Code of Administrative Procedure). If a legislative act deals with matters that occur in a particular order, such as court proceedings of administrative applications, that order is normally followed.

3. Legal definitions

In the storytelling approach to drafting, legal definitions (as ‘basic interpretation directives’⁴²) are integrated into the narrative of the legislative story and “appear in the story just in time”⁴³. The location of definitions given ‘just in time’ in the structure of a legislative act may be analyzed by juxtaposing traditional and modern approaches to legislative drafting⁴⁴ to reflect their reader orientation role and the navigation of the legal story. More traditional approaches locate definitions in the so-called Dictionary at the beginning or within the interpretative part. The storytelling approach, on the other hand, puts definitions outside the Dictionary in the main operative provisions, or at the end of the legislative act.⁴⁵

⁴⁰ For comparison, see Lord Thring’s Five Rules of Drafting of 1902 which have been implemented in the traditional structure of the common law legislative text despite the absence of written principles of legislative drafting. Henry THRING: *Practical Legislation. The Composition and Language of Acts of Parliament and Business Documents*. London, 1902. 38.

⁴¹ Quick Guide to Legislative Drafting, Office of the Legislative Counsel, U.S. House of Representatives, Revised 10/6/2014 <https://tinyurl.com/mzz4a4zh>

⁴² Agnieszka CHODUŃ: *Aspekty językowe derywacyjnej koncepcji wykładni prawa*. [Linguistic aspects of the derivational conception of legal interpretation] Szczecin, Wydawnictwo Naukowe Uniwersytetu Szczecińskiego, 2018. 195.

⁴³ FINUCANE op. cit. 18.

⁴⁴ Peter BUTT: *Modern Legal Drafting. A guide to using clearer language*. Cambridge, Cambridge University Press, 2013. 221–222.

⁴⁵ Cf. Quick Guide to Legislative Drafting, op. cit. 1.

The ‘just in time’ approach to definitions is reflected in IMF Plain English Tax Law Drafting⁴⁶, for example: “The preference should be to put a definition in the body of the Act if it fits within the organisational structure.” For tax laws, with lengthy definitions, modern drafting principles suggest that a definitions section is best placed at the end of an act, “in order to avoid overwhelming the reader with a lengthy definitions section as the reader is beginning to confront the law.”⁴⁷ In special rules for Tax Code drafting (2006)⁴⁸, it is drafting policy in Australia accepted in Taxation Laws Improvement Project (TLIP)⁴⁹ to use ‘just in time’ definitions wherever possible; in other words, one should find the point in the narrative structure where the definition is most useful to the reader.⁵⁰ Defined terms “can be located on a ‘just in time’ basis with the provisions they relate to, but must also be signposted in the relevant Dictionary.”⁵¹

As for the location of definitions, most Anglo-Saxon legislative drafting guidelines agree that definitions should either be placed at the beginning of the general provisions or those of the relevant substantive part.⁵² Anglo-Saxon rules indicate that regulatory (clarificatory) definitions, e.g., the definition of ‘bank holiday’, may also be placed at the end,⁵³ which is in line with the legislative technique of storytelling⁵⁴. This approach prefers the inclusion of definitions in the text of substantive general or specific provisions, rather than the creation of a separate glossary⁵⁵, using column and row enumerations, and parenthetical definitions⁵⁶.

Regarding the ways in which legal definitions are inserted in the text of a legislative act, for example, Canadian federal Rules of Legislative Drafting called *Legistics* used to favour a so-called glossary, where explanations of statutory terms, in the form of a single sentence, were introduced by means of the following sentence:

“1. In this Act/these Regulations/this Part”.

Currently, each definition in Canadian legislation is formulated separately within a glossary which is preceded by the sentence:

⁴⁶ IMF Plain English Tax Law Drafting (2008), 9. <https://tinyurl.com/2radk8vr>

⁴⁷ IMF Plain English Tax Law Drafting Ibid. 9. <https://tinyurl.com/2radk8vr>

⁴⁸ Drafting Direction No. 1.8. Special rules for Tax Code drafting (2006). <https://tinyurl.com/nrehmab5>

⁴⁹ Taxation Laws Improvement Project (Australia)

⁵⁰ Drafting Direction No. 1.8. Special rules for Tax Code drafting (2006), 23.

⁵¹ Ibid. 6.

⁵² Cf. British Drafting Guidance 2020: 33, sec. 4.1.20.: “A definition that is key to understanding a provision will often be best up front, either where it is first used or in introductory material.”

⁵³ “A definition that is merely clarificatory will often be left to the end so that the reader can get on with reading the main story before getting bogged down in the definitional detail (for example, “bank holiday”).” (Drafting Guidance 2020: 33, sec. 4.1.21).

⁵⁴ Cf. FINUCANE op. cit. 18.

⁵⁵ FINUCANE op. cit. 17.

⁵⁶ FINUCANE op. cit. 19.

“1. The following definitions apply in this Act/these Regulations/this Part”.

and may also consist of more than one sentence.⁵⁷ The current practice is said to be preferred because it recognizes that each definition stands on its own.⁵⁸

Alternatively, in accordance with the storytelling approach, new forms of setting out the meaning of a term in a legislative text have been recently introduced. Thus, interpretive provisions that convey the meanings of words are used in law, which are drafted as regular provisions without focusing on quoted words. This may be done in particular, when

- (i) a range of words is to be interpreted:
 - (1) A reference to a time of day in this Act is a reference to local time.
- (ii) the words being interpreted are adjectival or adverbial:
 - (2) For the purposes of this Part, one corporation is *affiliated* with another corporation if
 - (a) one of them is a subsidiary of the other;
 - (b) both are subsidiaries of the same corporation; or
 - (c) both are controlled by the same person.
- (iii) the provision has a substantive character:
 - (2) For the purposes of this Part, a public post-secondary educational institution is *considered to be public* if the Foundation is of the opinion that a substantial part of its funding comes from a provincial government.⁵⁹

Additionally, in Australian legislation, new types of definitions appear which bunch concepts for the convenience of the addressee, placing all designators of a name with common features (including those forming part of other provisions or texts). This is not about the scope of the legal definition, but about its function gathering the designators in one place in order to make it easier for the lay recipients (addressees) of the text (non-lawyers) to read correctly (= interpret) the legal norms contained in the definitions. This type of bunching definitions is not known to Polish legal theory. It allows one, in the opinion of the legislators, to talk about groups of things that have common properties in a comfortable and intuitive manner for the addressees of legal norms.⁶⁰

What counts as definition? In accordance with the Drafting Direction No. 1.8. Special rules for Tax Code drafting⁶¹: “[c]oncepts that bunch provide a convenient way of talking about groups of things that share a relevant characteristic”. “Wherever

⁵⁷ See more in: *Legistics. Definitions. Formal Aspects*, <https://tinyurl.com/2t55xsnx>

⁵⁸ Ibid.

⁵⁹ All examples and explanations on the basis of Legistics. Interpretation [Definitions] <https://tinyurl.com/2t55xsnx> Emphasis in the original.

⁶⁰ Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 3, What counts as a definition (2006). Cf. specific rules 16–21. <https://tinyurl.com/ywptah92>

⁶¹ Ibid 28.

possible, bunch in a way that is intuitive to the reader”. “Remember that a new item of terminology can become familiar quite quickly, especially if it fits well into the overall conceptual scheme of the legislation.”

Example 1

recognised tax adviser means:

- (a) A *registered tax agent; or
- (b) A *legal practitioner; or
- (c) an entity which is not a *registered tax agent but who is exempted under subsection

251L(2) of the Income Tax Assessment Act 1936
 from the operation of section
 251L (Unregistered tax agents not to charge fees) of that Act.⁶²

The appearance of new type of “definitions that bunch concepts” in Australian drafting fits the overall conceptual scheme of the legal text read in an intuitive, natural, *ordo naturalis* way⁶³.

4. Signposting

To follow the plot, formal identification of terms and their signposting (special typeface, hyperlinks, accompanying graphics, etc.) is also necessary. Among the most typical ways of marking the defined word/phrase in the definiendum is the use of “quotation marks” or ‘inverted commas’, for example,

In this Act, “institution” means any international financial institution named in the schedule.⁶⁴

The defined words are not usually capitalized in Canadian legislation, unless they are generally being capitalized.⁶⁵ However, when it comes to distinguishing defined terms, graphic conventions range from capital letters, italics, and bold print, to leaving the term without any distinction⁶⁶. Using several distinctions at the same time, e.g., italics and boldface, as in Australian Drafting Direction No. 1.5⁶⁷, is the exception.

⁶² Ibid.

⁶³ DUSZAK op. cit. 45.

⁶⁴ Example from Canadian legislative drafting guide Legistics. <https://tinyurl.com/2t55xsnx>

⁶⁵ Legistics <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/plp5.html>

⁶⁶ Cf. e.g., BUTT op. cit. 220–221.; Bryan A. GARNER: *A Dictionary of Modern Legal Usage*. Oxford, Oxford University Press, 2001. 258.; Angela ALEXANDER: New Drafter Training. What Does that Mean? Crafting and Using Definitions in Statutes, webinar 25.09.2014.

⁶⁷ Drafting Direction No. 1.5. Definitions. Document release 4.0, 29 May 2019, <https://tinyurl.com/28k9yzuv>

An approach recommended by the IMF Plain English Tax Law Drafting⁶⁸ is to use a special typeface, hyperlinks, or other tools to identify for the reader which terms in a legal act are defined, so that the reader can consult the definitions section as needed. In Australian legislation, many defined terms are identified by an asterisk appearing at the start of the term: as in “* business”.⁶⁹ The footnote that goes with the asterisk contains a signpost to the Dictionary definitions. Defined terms co-occurring with mathematical formulae are almost always marked with an asterisk (*), also in other parts of the act.⁷⁰ There are some exceptions, such as basic terms for tax law, both key participants in the income tax system and core concepts, such as amount, taxable income, assessment, income tax, company, entity, individual, and foreign resident⁷¹. Within a definition, the defined term (*definiendum*) is identified by bold italics.⁷²

5. Personal tone

Storytelling in law may additionally invoke the element of directness and add a more personal tone, for example, through the unusual technique of addressing the taxpayers in Australian legislation in the second person (‘you’). The following examples (2, 3) illustrate how a legislative story should be told to a taxpayer:

Example 2

“Generally, you should use “you” and draft in the second person when dealing with taxpayers.”⁷³

Example 3

Guide to Division 30

30-1 What this Division is about

This Division sets out the rules for working out deductions for certain gifts or contributions that **you** make.⁷⁴

Thus, tax law regulations in Australia are formulated in the second person (whether singular or plural).

Linguistically, the opposition of directness-indirectness is measured by the level of explicitness of linguistic forms⁷⁵. The explicitness of legislative texts is not derived

⁶⁸ IMF 2008 op. cit. 9.

⁶⁹ See for example Income Tax Assessment Act 1997 – Sect 2.10 (2) <https://tinyurl.com/bdzf5kyx>

⁷⁰ Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment B, TLIP Note 2 (2006). Special rules 16–21. <https://www.opc.gov.au/sites/default/files/dd1.8.pdf>

⁷¹ Income Tax Assessment Act 1997 Subdivision 2-C, 2–15. <https://tinyurl.com/3fdwn2ne>

⁷² Income Tax Assessment Act 1997 Subdivision 2-D, 2–20. <https://tinyurl.com/3fdwn2ne>

⁷³ Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment A, Example C. 2006. 15. <https://www.opc.gov.au/sites/default/files/dd1.8.pdf>

⁷⁴ Drafting Direction No. 1.8 Special rules for Tax Code drafting, Attachment A, Example C (2006). <https://www.opc.gov.au/sites/default/files/dd1.8.pdf>

⁷⁵ DUSZAK op. cit. 269.

from the communicative situation itself, but directly from the linguistic means used and the underlying legislative drafting techniques⁷⁶.

6. Conclusions

All in all, the storytelling approach is reflected in the narrative style, the location of terms in the macrostructure of a legal act, and the signposting of defined terms. It may come as a surprise to perceive a legislative text as a legal story written by lawyers/legislative drafters, though the very idea of legal narrative (in a broad sense) recalls the discursive approaches of text linguists such as De Beaugrande and Dressler⁷⁷, van Dijk⁷⁸, van Dijk and Kintsch⁷⁹, and Kintsch⁸⁰, who looked at the text as a process. The sequence of elements (“hypothetical worlds”) is constructed via modes of narratives⁸¹. The plot knits together certain elements into a coherent scheme⁸², but as a rule, there is no chronological dimension in a temporal sense (with the exception of broader normative acts, such as codes of procedure).

The narrative of any legislative text may be enhanced with certain formal elements (a special typeface, hyperlinks, accompanying graphics, etc.) to help one better navigate the law texts. The storytelling in law may additionally invoke elements of directness. The explicitness of legislative texts is not derived from the communicative situation itself, but directly from the linguistic means used and the underlying legislative drafting techniques. Hence, elements such as the use of the grammatical category of tense should be researched, starting from the legislative guidelines constituting the canon of good legislation. The recent storytelling approach in contemporary common law (Australian) legislative drafting, as understood by L. Finucane⁸³, involves a number of drafting techniques, such as:

- a narrative style involving structuring legal provisions and introducing graphics (e.g., such as the conceptual pyramid in the Income Tax Assessment Act 1997⁸⁴);
- changing the architecture of a legislative text;⁸⁵
- signposting terms;

⁷⁶ Cf. also Sir Ernest GOWERS: *The Complete Plain Words*. ed. Sidney Greenbaum, Janet Whitcut, Harmondsworth, Penguin Books, 1987. 48.

⁷⁷ Robert-Alain de BEAUGRANDE – Wolfgang Ulrich DRESSLER: *Introduction to Text Linguistics*. London & New York, Longman. 1981.

⁷⁸ DIJK op. cit. 1980. Teun A. van DIJK (ed.): *Discourse studies: A multidisciplinary introduction*, vol. 1 and 2. London, Sage Publications, Inc. 1997.

⁷⁹ DIJK-KINTSCH op. cit. 1983.

⁸⁰ Walter KINTSCH: *Comprehension: A Paradigm for Cognition*. Cambridge University Press. 1998.

⁸¹ Elinor OCHS: Narrative. In: Teun A. van DIJK (ed.): *Discourse as Structure and Process*, vol. 1. London, Sage, 1997. 190., 189.

⁸² OCHS op. cit. 193.

⁸³ FINUCANE op. cit.

⁸⁴ <https://www.legislation.gov.au/Details/C2020C00381>

⁸⁵ <https://www.gov.uk/guidance/good-law#content-language-architecture-and-publication>

- a new location of legal definitions (“just in time definitions”, outside the dictionary, end of Act);
- introducing a new type of law definitions that bunch concepts, etc.

For other forms of drafting, see also Canada’s Legistics⁸⁶ and the Good Law initiative by the Office of the Parliamentary Counsel, UK⁸⁷.

To successfully tell a legislative story, several elements are needed, such as a coherent conceptual framework, clear formal identification of terms, their adequate location in the structure of a legislative act, and more. Among the outcomes of the possible future research at least two should be mentioned:

- a) the identification of the elements of the storytelling approach in contemporary common law legislation, incl. typical drafting techniques and the reproduction of the construction of a legal narrative (on the basis of common law legislative drafting guides and manuals),
- d) analyzing what is needed to successfully tell a legislative story in contemporary legal culture, drawing attention to the benefits of plain and accessible legal communication with particular future implications for translators, drafters, and e-tool developers, in the domain of institutional translation and public discourse.

The storytelling approach in common law legislation may be worth considering for implementation – at least partly – in continental jurisdictions, in order to improve readability, accessibility and clarity of laws. Unlike traditional legal writing, which purports to be neutral and dispassionately analytical, contemporary legislative styles and telling legal stories might invest texts with feeling and invite readers (addressees of a legislative text) to participate in a certain legal community⁸⁸. Legal stories may build consensus upon a common system of values which are implemented in a certain legal culture, or a culture of shared legal meanings and understandings, to enhance legal narratives⁸⁹.

⁸⁶ <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/legis-redact/legistics/toc-tdm.html>

⁸⁷ <https://www.gov.uk/guidance/good-law#good-law-the-vision>

⁸⁸ Cf. also Richard DELGADO: Storytelling for Oppositionists and Others: A Plea for Narrative. *Michigan Law Review*, 87, no. 8. (1989), 2040. <https://doi.org/10.2307/1289308> ; <https://www.jstor.org/stable/1289308>

⁸⁹ Cf. also DELGADO op. cit. 2414 ff.

